

The ethical framework for local government

Summary: This document provides key information and answers to frequently asked questions about the ethical framework for local government and the role of the Standards Board for England.

Date published: 1 October 2007

Key facts

- The current ethical framework for local government first emerged from the Committee on Standards in Public Life's third report in 1997.
- The report responded to concerns over a series of high-profile political scandals during the 1990s and that public confidence in councillors was being undermined.
- It formed part of the broader drive by government to modernise local government and make it more accountable to local communities.
- The key elements of the ethical framework are the Code of Conduct for elected and co-opted members of local authorities, local authority standards committees and the Standards Board for England.
- The Standards Board for England was formally established in March 2001, by an Act of Parliament in Part III of the *Local Government Act 2000*.
- The Standards Board for England is independent of government, although it reports to the minister of state for local government.

Frequently asked questions

Q1 What does Part III of the *Local Government Act 2000* govern?

- Every local authority is required to adopt the Code of Conduct and most elected, co-opted, appointed and independent members are covered by it.
- Each principal authority is required to have a standards committee, comprising members of the authority and at least one independent representative.
- Standards committees have specific and general functions, including promoting standards of ethical conduct of members and carrying out local determinations of allegations of breaches of the Code of Conduct.
- Establishment of the Standards Board for England as an independent body to promote high ethical standards in local government and to investigate allegations that members may have breached the Code of Conduct.

Q2 What is the difference between the Standards Board for England and the Adjudication Panel for England?

The Standards Board's main roles are to ensure that standards of ethical conduct are maintained across authorities and to deal with complaints of misconduct against individual members.

This differs from the Adjudication Panel for England, which is an independent judicial tribunal set up to deliver judgement on matters concerning the Code of Conduct of local authority members. The Adjudication Panel considers cases referred to it by ethical standards officers of the Standards Board for England and also considers appeal cases.

Q3 What are the general principles of standards in public life?

The ten general principles of public life come from the Nolan Committee's First Report on Standards in Public Life. They define the standards that members should uphold, and serve as a reminder of the purpose of the Code of Conduct.

The principles, as set out in the Relevant Authorities (General Principles) Order 2001, are:

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|-------------------------|--------------------------|
| ■ selflessness | ■ personal judgement |
| ■ honesty and integrity | ■ respect for others |
| ■ objectivity | ■ duty to uphold the law |
| ■ accountability | ■ stewardship |
| ■ openness | ■ leadership |

Additional information

- *The Code of Conduct: Guide for members May 2007* offers more guidance on the Code and can be downloaded from our website - www.standardsboard.gov.uk.
- A full range of factsheets and frequently asked questions is available from the Code of Conduct section of our website.
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Bullying

Relevant Code paragraphs: 3(2)(b) and 3(2)(c)

Summary: This document provides key information and answers frequently asked questions about bullying under the 2007 revised Code of Conduct for members.

Date published: 1 October 2007

Key facts

- You must not bully anyone including other councillors, council officers or members of the public.
- Bullying can be described as offensive, intimidating, malicious, insulting or humiliating behaviour, towards someone weaker than you or someone you have, or believe to have, influence over.
- Bullying may happen once or be part of a pattern of behaviour.
- Bullying attempts to undermine an individual or group of individuals and it can have a damaging effect on a person's confidence, capability and health.
- You must not intimidate anyone who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a Code of Conduct investigation.
- Bullying can be contrasted with the legitimate challenges a member can make when questioning policy or scrutinising performance (as long as it is done appropriately and is not offensive or disrespectful).

Frequently asked questions

Q1 Why is bullying such a serious issue?

Bullying can have a significant effect on victims and the authority's ability to provide services by affecting the morale of staff and the authority as a whole. This is because bullying can create a working environment with an atmosphere of mistrust, insecurity and fear.

In some cases, bullied officers require long periods of leave because of ill health or stress which can damage the running of an authority. This is particularly the case in parish and town councils, where there may only be a small team of employees. Quite often, officers feel unable to return to their role or even to carry out work of a similar nature.

Q2 Is bullying only bullying when it is done face-to-face?

Bullying is any insulting or offensive behaviour towards an individual or group of individuals.

This includes using physical force or making abusive personal remarks about or to the victim not only face-to-face, but by email, letter, through the press, at council meetings or by other means.

Q3 How can it be proved that bullying has occurred?

It is possible to investigate complaints of bullying if there is clear evidence that it may have occurred, for example if the complainant has kept a detailed record of the incidents and the context in which they took place.

Clear evidence is required so objective assessments can be made more easily as to whether these may be a breach of the Code of Conduct. This is because it is more difficult to judge bullying from general remarks, such as 'the councillor is always undermining me through her comments'.

To test whether bullying is taking place, ask yourself whether a neutral third party with all the facts would regard the conduct as bullying. In some circumstances, the claims are cases of oversensitivity to criticism, or a breakdown in a relationship between officers and members without an indication of any bullying.

Q4 Is it possible to take part in a vigorous political debate without breaching the Code of Conduct?

Disrespectful, intimidating or demeaning behaviour which is not carried out from a position of power or authority may not be bullying. But it may still be a breach of the Code of Conduct, e.g. by failing to treat others with respect.

For example, if a member uses inappropriate language or is disrespectful to another member during a debate, it may not be classed as bullying because a platform is present for the other member to defend themselves.

On the other hand, a member making abusive and disrespectful comments about an officer during a debate may be seen as bullying because the officer is not able to defend themselves.

Additional information

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Disclosing confidential information

Relevant Code paragraphs: 4(a)

Summary: This fact sheet provides a summary of key points and frequently asked questions about disclosing confidential information under the 2007 revised Code of Conduct for members.

Date published: 1 October 2007

Key facts

- Confidential information can only be disclosed when at least **one** of the following circumstances applies:
 - 1) You have to disclose the information by law.
 - 2) An authorised person says that you can disclose it.
 - 3) You need professional advice from a third party, for example your lawyer, and that person agrees not to pass the information to anyone else.
 - 4) The disclosure is in the public interest. This is only justified in limited circumstances (see below).
- Disclosure of confidential information, or information which you believe to be confidential for any other reason, is likely to be a breach of the Code.
- Disclosure of confidential information in the public interest can only be justified when **all** of the following requirements are met:
 - a) The disclosure must be reasonable.
 - b) The disclosure must be in the public interest.
 - c) The disclosure must be made in good faith.
 - d) The disclosure must be made in compliance with any reasonable requirements of your authority.

Frequently asked questions

Q1 When is a public interest disclosure “reasonable”?

This depends on the facts of the case and is a matter of judgement. However, you will need to consider issues such as:

- Whether you believe that the information disclosed, and any allegation contained in it, is true. If you do not believe it is true, then the disclosure is unlikely to be reasonable.
- Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
- The identity of the person to whom you make the disclosure. It may be reasonable to disclose information to the police but not to the world at large through the media.
- The extent of information disclosed. The inclusion of unnecessary detail is unlikely to be reasonable.
- The seriousness of the matter. The more serious it is, the more likely it is that the disclosure will be reasonable.
- The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, then the disclosure may be less likely to be reasonable than if the matter is continuing or is likely to reoccur.
- Whether the disclosure involves your authority failing in a duty of confidence to another person.

Q2 When is a disclosure “in the public interest”?

For a disclosure to be in the public interest it needs to involve at least one of the following matters, or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- A criminal offence is committed.
- Your authority or some other person fails to comply with any legal obligation to which they are subject.
- A miscarriage of justice occurs.
- The health or safety of any individual is in danger.
- The environment is likely to be damaged.
- Information showing any of the above is deliberately concealed.

Q3 When is a public interest disclosure “made in good faith”?

To make a disclosure in good faith you must not act with an ulterior motive, for example to achieve political advantage.

Q4 How do I comply with the “reasonable requirements of my authority”?

Before considering releasing confidential information you must ensure that you comply with your authority’s policies or protocols on matters such as whistle-blowing or member-officer relationships and confidential information, in addition to considering requirements (a)-(c) in the key facts above.

If your authority does not make any requirements to cover the possibility of a member considering a release of information, then the test for disclosing confidential information is a three-stage one – namely it must satisfy the requirements (a)-(c) as above.

However, the Standards Board recommends that authorities ensure they have policies on matters such as whistle-blowing in place and that they take steps to ensure that all members are familiar with the provisions.

Appropriate and robust authority protocols can assist in ensuring the protection of confidential information where appropriate, and in promoting and upholding high ethical standards more generally.

Q5 When is a public interest disclosure not capable of being justified?

When a disclosure amounts to a criminal offence or when information is protected by legal professional privilege, it is extremely unlikely its release could be justified in the public interest.

Additional information

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Gifts and hospitality

Relevant Code paragraphs: 8 and 13

Summary: This document provides key information and answers frequently asked questions about registering gifts and hospitality under the 2007 revised Code of Conduct for members.

Date published: 1 October 2007

Key facts

- You must register any gifts or hospitality worth £25 or over that you receive in connection with your official duties as a member. You must also register the source (for example, the person, firm, body or company) of the gift or hospitality.
- You must register the gift or hospitality and its source within 28 days of receiving it.
- You automatically have a personal interest in a matter if it relates to or is likely to affect the source of the gift or hospitality that is registered.
- You must declare the existence and nature of the gift or hospitality, the source who gave it to you, how the business under consideration relates to that source, and then decide whether that interest is also a prejudicial interest.
- Once three years have passed since you registered the gift or hospitality, your obligation to disclose that interest to any relevant meeting ceases.

Frequently asked questions

Q1 Is the gift or hospitality connected to my official duties as a member?

You should ask yourself, “would I have been given this if I was not on the council”? If you are in doubt as to the motive behind a gift or hospitality, we recommend that you register it or speak to your monitoring officer (or your parish or town clerk where appropriate). What matters is to show who you have received a gift or hospitality from, and to make that known when business related to them is discussed at a council meeting at which you are present.

You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept.

However, you should always register a gift or hospitality if it could be seen as something given to you because of your position or if your authority requires you to do so. It may also be good practice to register declined gifts.

Q2 What if I do not know the value of a gift or hospitality?

The general rule is, if in doubt as to the value of a gift or hospitality, you should register it as a matter of good practice and in accordance with the principles of openness and accountability in public life.

You should also register an accumulation of small gifts you receive from the same source over a short period that add up to £25 or more.

Q3 What about official gifts or hospitality given to the civic mayor or chair of a council?

There are no special rules for those who serve as mayor or chair of an authority. Gifts that are clearly made to the authority do not need to be registered. Gifts made directly to a mayor or chair’s charity appeal also do not need to be registered.

On the other hand such gifts ought to be recorded for audit, and perhaps insurance purposes on the council’s asset inventory. Although the mayor or chair may attend many social functions they are not exempt from the requirement to register hospitality.

However, where the hospitality is extended to the office holder for the time being rather than the individual, the Standards Board takes the view that there is no requirement under the Code to register the hospitality.

All hospitality over £25 must be registered under the Code.

Q4 What does “hospitality” mean?

Hospitality can be defined as any food, drink, accommodation or entertainment provided free of charge or heavily discounted.

Q5 Does the revised Code require me to register the interests of people that give me gifts or hospitality?

No. The Standards Board believes the revised Code requires you to register any gifts or hospitality worth £25 or over that you received in connection with your official duties, and the source of the gift or hospitality.

Q6 Do I have to transfer my gifts and hospitality register from before 2007 onto the new, publicly available, general register of interests?

If you were a member prior to the revised Code being introduced in 2007, you are likely to have a register of gifts and hospitality which was separate to the publicly available registers of members’ interests under the 2001 Code.

You do not need to copy or transfer your register of gifts and hospitality onto your general register of interests under the revised Code. This is because we believe the new Code cannot be applied retrospectively.

As a result, gifts and hospitality received prior to the revised Code coming into effect in your authority (on 1 October 2007 or on the date your authority adopts it - whichever is earlier), will also not give rise to a personal interest under the revised Code.

Additional information

- *The Code of Conduct: Guide for members May 2007* offers more guidance on the Code and can be downloaded from our website - www.standardsboard.gov.uk.
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Lobby groups and declarations of interest under the Code of Conduct

Relevant Code paragraphs: 8 – 12

Summary: This document provides key information and answers frequently asked questions about lobby groups and declarations of interest under the 2007 revised Code of Conduct for members.

Date published: 1 October 2007

Key facts

The revised Code of Conduct

- The Code of Conduct was revised in 2007. It is now less restrictive than the 2001 Code for members who participate in campaigns or are members of lobby groups. Some members, who found they were prevented by the 2001 Code from voting on a matter important to them or their lobby group, will not have a prejudicial interest under the revised Code of Conduct.

Register of interests

- Membership of lobby or campaign groups should be included on your register of interests, as these are bodies “whose principal purposes include the influence of public opinion or policy” under paragraph 8(1)(ii)(cc).
- Even if your lobby group does not keep a formal membership list, the Code of Conduct still applies to you. If you are acting as a member of the group – perhaps attending meetings or participating in group activities – you should still register your membership of the group and declare interests, where appropriate.

Personal interests

- The Code of Conduct requires you to declare a personal interest in any matter relating to an interest you must include in your register of interests.
- You are required to declare a personal interest if you are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at your authority.
- You should declare the existence and nature of your interest at the meeting so that members of the public are informed about interests that may relate to your decisions. You can continue to participate unless the interest is also prejudicial (see the section on prejudicial interests below).
- You may not have a personal interest in a related discussion or decision of your authority if you merely campaigned on an issue as an individual and not as member of a relevant lobby group - for example, if you tackled an issue as part of your election campaign.

However, you should still consider the general test for personal and prejudicial interests and whether there is any other reason why you should not participate in the decision, including the possibility of bias.

You may want to discuss your circumstances with your monitoring officer. For information on bias and predetermination, see our occasional paper, which is available from our website - www.standardsboard.gov.uk

Prejudicial interests

Under the Code of Conduct, you only have to withdraw from a meeting where your personal interest is also prejudicial.

Exceptions

You cannot have a prejudicial interest in a matter if:

- a) The matter falls within one of the exempt categories of decisions under paragraph 10(2)(c), for example, any ceremonial honour given to members. A full list of exempt categories can be found in the Standards Board's Code of Conduct guidance, which is available on our website - www.standardsboard.gov.uk
- b) The matter does not affect your financial interests or does not relate to a licensing or regulatory matter brought by you or a person or body in which you have a personal interest.

For example, you will not have a prejudicial interest in a developer's planning proposal which you and your lobby group have campaigned against, if you, any person, or any body you have a personal interest in is not financially affected by the proposal.

The planning proposal might indirectly affect your lobby or campaign group since it relates to things it campaigns for or has expressed public opinions about. However, in this context, it will not be relevant for the purposes of the Code.

Nevertheless, you may have a prejudicial interest where the matter is an application for a grant for funding for a body on your register of interests, or a planning or licensing application made by you, a person or a body on your register of interests.

If your personal interest in a matter falls outside the exempt categories mentioned in a) above, and does affect your financial or regulatory interests, you will then have to consider the following **general test for prejudicial interests**:

Would a member of the public, who knows the relevant facts, reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest?

If the answer is 'yes' then you would have a prejudicial interest.

Frequently asked questions

Q1 How has the Code of Conduct changed for members of lobby or campaign groups?

Under the original Code of Conduct 2001, members of lobby groups were required to consider whether the indirect impact of a decision on their group would give rise to a prejudicial interest under the general test (see above). As a result, members declared personal and prejudicial interests in matters which they or their group had campaigned on or had expressed public opinions about.

Under the revised Code, members will not be prevented under the Code of Conduct from voting on a matter if their only interest is that they hold views on the matter, for example based on their experiences or political outlook.

Q2 Do I have a personal and prejudicial interest if I am a member of a group that campaigned against a planning application submitted by a developer?

No. You will only have a personal interest which you should declare the existence and nature of at the meeting considering the application. This is so that members of the public are informed about interests that may relate to your decisions.

However, you should still consider the general test for personal and prejudicial interests and whether there is any other reason why you should not participate in the decision, including bias. You may want to discuss your circumstances with your monitoring officer.

Q3 What should I do if my membership of a pro-development campaign does not give rise to a prejudicial interest, but I have other interests that may be relevant?

You still need to consider whether you have any personal interests that may also be prejudicial interests. For example, a prejudicial interest is likely to exist where a particular development financially affects your sister, as her property is two doors away from the development site. Please see our specific factsheet entitled *Personal and Prejudicial Interests*.

Additional information

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Personal and prejudicial interests

Relevant Code paragraphs: 8 – 13

Summary: This document provides key information and answers to frequently asked questions about the ethical framework for local government and the role of the Standards Board for England.

Date published: 1 October 2007

Key facts

Personal interests

There are two types of personal interest.

You have a personal interest in any business of your authority where it relates to or is likely to affect:

- 1) An interest that you must register.
- 2) An interest that is not on your register but where the well-being or financial position of you, members of your family, or people with whom you have a close association, is likely to be affected by the business of your authority more than it would affect the majority of:
 - inhabitants of the ward or electoral divisions affected by the decision (in the case of authorities with wards or electoral divisions)
 - inhabitants of the assembly constituency affected by the decision (in the case of the Greater London Authority)
 - inhabitants of the authority's area (in all other cases)

Note:

- 1) You must declare that you have a personal interest and the nature of that interest, as soon as it becomes apparent to you in all meetings before the matter is discussed.
- 2) There are two exemptions to the rule on declaring a personal interest, which is a key change under the revised Code.

Exemptions apply where an interest arises solely from membership of, position of control or management on:

- Any other body to which you were appointed or nominated by the authority.
- Any other body exercising functions of a public nature for example, if you have been appointed as a school governor.

In these exceptional circumstances you only need to declare your interest if and when you speak on a matter, provided that you do not have a prejudicial interest (see below).

Prejudicial interests

Your personal interest will also be a prejudicial interest if it meets all of the following conditions:

- a) The matter does not fall within one of the exempt categories of decisions under paragraph 10(2)(c), for example, setting the council tax.
- b) The matter affects your interests financially or a licensing or regulatory matter, for example an application for a grant funding to a body on your register of interests, or a planning or licensing application made by you or a body on your register of interests.
- c) A member of the public, who knows the relevant facts, would reasonably think your personal interest so significant that it is likely to prejudice your judgement of the public interest.

Note: in order for your interest to be prejudicial, it must be a financial or regulatory matter.

What to do if you have a prejudicial interest

If you have a prejudicial interest in a matter being discussed at a meeting:

- You must declare that you have a prejudicial interest and the nature of that interest as soon as the interest becomes apparent.
- You should leave the room unless members of the public are allowed to make representations, give evidence or answer questions about the matter. If this is the case, you can also attend the meeting for that purpose.
- You must leave the room immediately once you have finished speaking, or when the meeting decides that you have finished (if that is earlier).

Frequently asked questions

Q1 Is paragraph 12(2) mandatory for my authority?

Paragraph 12(2) is mandatory for most authorities. However, paragraph 12(2) is not mandatory for the following authorities:

- parish and town councils
- English and Welsh police authorities
- the Greater London Authority
- national park authorities
- fire and rescue authorities

If your authority wishes paragraph 12 (2) to apply, it will need to pass a resolution adopting the Model Code of Conduct including paragraph 12(2).

If your authority is a parish or town council and you wish to adopt paragraph 12(2), you can do so by adopting the Standards Board's *Model Code of Conduct for parish and town councils 2007*, which is available on our website on our website -

www.standardsboard.gov.uk

If paragraph 12(2) is included in your authority's Code, the Standards Board recommends that standing orders or procedural rules should be put in place for clarity. These should clearly set out the circumstances in which members of the public can attend the authority's meetings to make representations, give evidence or answer questions.

If your authority does not provide members of the public with any right to speak, paragraph 12(2) will have no effect at your authority. This means that members with a prejudicial interest would have to continue to leave the meeting room after declaring the nature and extent of their interest.

Q2 What rights are available to members with a prejudicial interest?

Paragraph 12(2) gives members with a prejudicial interest in a matter the same rights as members of the public to speak at a meeting on the matter. Members must then leave before the main discussion and voting takes place.

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Predisposition, Predetermination or Bias, and the Code

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

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

Sir Anthony Holland
Chair, the Standards Board
for England

What is predisposition?

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

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

What is predetermination or bias?

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

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

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

Making the decision

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

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

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

How can predetermination or bias arise?

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

Connection with someone affected by a decision

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

example

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

Contrast this with:

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

Improper involvement of someone with an interest in the outcome

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

example

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

Prior involvement

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

example

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

Commenting before a decision is made

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

example 1

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

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

example 2

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

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

Conclusion

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

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

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**the
Standards Board**
for England

Confidence in local democracy

Satisfaction with the Standards Board for England and Attitudes to the Ethical Environment: Qualitative Investigation following Quantitative Survey

This report summarises the results of qualitative research undertaken during November and December 2007. Six standard focus groups and one on-line focus group were held England-wide, capturing the views of monitoring officers, standards committee chairs and members, councillors, and parish councillors. These groups explored in some depth issues arising from a postal survey of stakeholders conducted earlier in 2007¹.

The findings of this research concur strongly with much of the previous, quantitative study. Again, much of the feedback is very positive, with strong support expressed among all stakeholder groups for the Code of Conduct and much satisfaction with local standards committees and the performance of monitoring officers. There is also a great deal of satisfaction with key Standards Board publications.

1.1.1 The link between stakeholders' satisfaction and relationship with the Standards Board

A key area of additional insight which the focus groups bring is a deeper understanding of the link between satisfaction with the Standards Board and stakeholders' perceptions of the closeness (or remoteness) of the relationship between themselves and the organisation. Stakeholders who express the most positive views of the organisation tend to work closely with the Standards Board and the Code of Conduct. They receive more publications and attend more Standards Boards events than those who have more negative views. Typically those with the most positive views are monitoring officers and members of standards committees. They also tend to feel that the reputation of the Standards Board is gradually improving over time.

¹ BMG 2007
<http://www.standardsboard.gov.uk/Aboutus/Research/filedownload,6462,en.pdf>

In contrast, those who have minimal direct contact with the Standards Board, or feel 'remote' from it, are more likely to hold a neutral or more negative view. Those whose relationship with the Standards Board tends to be weakest are backbench councillors, parish councillors and Conservative members. Some in these groups feel they derive little personal benefit from the existence of the Standards Board and resent what they sometimes see as its needless interference in their voluntary work for the community. Even some of the standards committee members consulted feel somewhat detached from the Standards Board, since they feel the only link between the Standards Board and their committee and authority is their monitoring officer. Those members of standards committees who feel least well informed about the Standards Board are lay members, as opposed to elected members.

It seems that length of involvement with the Standards Board may be linked with satisfaction. Long-standing members of standards committees have much more positive views of the Standards Board than those who have been appointed more recently. This is because they have a greater familiarity with, and confidence in, the organisation's guidance and procedures. Long-standing councillors tend to have more positive views of the Standards Board than those councillors who have been elected more recently.

Stakeholders who feel they have a distant relationship with the Standards Board are more likely to base their views on myth rather than personal experience. Their perceptions seem to be constructed largely from local hearsay and local, and to a lesser extent national, media reports. It seems that media coverage of the very high profile Livingstone and Islington cases has not been a key driver of dissatisfaction with the Standards Board among most stakeholders. Stakeholders believe that the general public's perceptions of behaviour among elected members are based on media outputs, particularly negative stories in local newspapers. It was suggested that the Standards Board needs to publicise its work much more widely in order to meet what some see as its objective of enhancing the reputation of local government among the public.

1.1.2 Criticisms of the Standards Board

Criticisms of the Standards Board expressed by some respondents to the quantitative survey were also made in the focus groups. These include a perception that the organisation has, at least in the past, been overly-bureaucratic and has spent too much time and money investigating allegations which were frivolous and



unfounded ('sledgehammer to crack a nut'). Conversely, others criticise the Standards Board's decision in a large proportion of cases not to investigate, because it is deemed there is 'no case to answer' ('toothless tiger'). Across the groups there is much concurrence that many allegations received by the Standards Board are petty complaints made out of spite by a political opponent or by someone who does not properly understand the organisation's purpose or the Code of Conduct.

Parish councillors and others who have had a complaint made against them at some point are least satisfied with the performance of the Standards Board, especially with its corporate reputation and investigations. Some of the parish councillors consulted feel strongly that they are over-regulated by bodies such as the Standards Board. They also feel that the Standards Board has failed to understand that parish councils have a different way of working from that of other types of local authorities.

1.1.3 Standards of member behaviour

Many respondents feel that the behaviour of elected members has improved to some degree since the Standards Board has been in existence. Some feel that the improvement has been dramatic. Others feel it has been less so, simply because they believe behaviour in their authority has always been exemplary. It is widely held that most elected members and parish councillors are honest and have considerable integrity. It is felt that most of those who have had an allegation made against them upheld have unintentionally fallen foul of the Code, by not being fully aware of the rules. Those who are most likely to feel that standards of behaviour have stayed the same or even worsened are backbench or parish councillors. Given that in the future the majority of authorities will be investigating at a local level it will be interesting to see if the same criticism is levelled at local authorities.

Since the Standards Board has been in existence, many feel that there has been a marked reduction in examples of serious and flagrant misbehaviour such as misuse of authority resources for election campaigns and abuse of expenses. However, most obvious say respondents, is a more respectful use of language during meetings, less bullying behaviour and prejudicial interests now being disclosed routinely at meetings. The reason given by most for the perceived improvement in member behaviour is the existence of the Code of Conduct and high levels of awareness of the rules of behaviour. Several members of standards committees believe behaviour in meetings has

improved because meetings are now observed by at least one member of the standards committee. This means that anyone behaving inappropriately can be warned informally, before an official complaint is made. Monitoring officers also suggest that political parties' own discipline has also kept members' behaviour in check. Scrutiny committees are also considered to have improved ethics with regard to the decision making process. It was suggested that inappropriate language is more likely to be used in meetings if no one party has overall political control.

Respondents feel that member behaviour worsens at election time and during heated debates such as those which are part of the budget setting process. Meetings discussing the possible closure of local facilities were also mentioned as likely to produce inappropriate language by members. Participants also comment that member behaviour tends to deteriorate during fiery meetings which are not chaired sufficiently strictly or are attended by newspaper journalists.

As was found in the quantitative research, there is much disappointment expressed that the general public have not noticed any improvement in the behaviour of local councillors. Participants feel this is mainly due to press interest, particularly by local newspapers, in printing allegations of misbehaviour, but not necessarily drawing attention to decisions of 'no case to answer' or where the accused has been found not to be in breach of the Code of Conduct.

1.1.4 Ethical framework changes

All groups say they were fairly well prepared for the changes to the ethical framework in 2007. Most of those consulted say they have received good or adequate training or induction on the revised Code of Conduct, either from their monitoring officer, from an external consultant or at a Standards Board event. Monitoring officers however, say they would have liked to have had more time to prepare for its introduction. Most useful preparation for backbench councillors, parish councillors and members of standards committees was face-to-face training, conducted usually by their monitoring officer, consolidated with publications from the Standards Board or written materials based on these. Elected members say they receive so much reading material from numerous sources, that it is difficult to recall which piece of written guidance was most useful in preparing them for the 2007 Code. Monitoring officers value most highly the opportunity to learn about the changes face-to-face, at Standards Board roadshows and the Annual Assembly.



Some have also been supported by monitoring officers in neighbouring authorities.

1.1.5 Code of Conduct 2007

There is very little real dissatisfaction with the Code of Conduct 2007 among any of the stakeholder groups. Most respondents feel that although the changes were fairly minor, it is now clearer, more comprehensive and demonstrates more common sense than the original Code. In particular, respondents appreciate greater clarification and tighter definition of terms. Respondents also support councillors' new freedom to speak at meetings when they have a prejudicial interest.

Backbench councillors and parish councillors seem to struggle most with interpretation of parts of the Code of Conduct. Some find it especially difficult to explain the new rules to their constituents. It is clear that some councillors and many of the parish councillors have not received, or not absorbed, sufficient training on the new Code. In particular, they are still unsure about what they are and are not allowed to say in meetings, especially at planning committees. Some also question the suitability of a single Code of Conduct for every type of authority.

1.1.6 Local assessment

Most stakeholders are aware to some extent of local assessment which will apply from April 2008. Least aware of the implications of this are those whose relationship with the Standards Board is weakest, namely some of the backbench and parish councillors. The move to filtering cases and investigating most of them locally is broadly welcomed. Respondents feel it is sensible for local standards committees to handle all but the most complex cases, freeing up the Standards Board to move towards a role of strategic regulator and 'critical friend'. Monitoring officers also feel that local assessment will improve the speed of case resolution and allow them more flexibility in resolving complaints. However, there is concern that local assessment will mean a vastly increased workload for monitoring officers and standards committees – especially those with large numbers of parish councils, which are believed by all stakeholder groups to be the source of the majority of complaints. Some standards committees expect that they will need more members to handle the work. Conversely, some feel that standards committees which handle few cases will not build up sufficient experience to handle any which do arise, on their own. Monitoring officers also foresee possible conflicts of interest for elected members and

for themselves, as well as damage to working relationships with members. A few participants feel local assessment will result in more allegations being made. Conversely others believe that it will result in fewer allegations – because the monitoring officer may be able to resolve complaints before an official complaint is made.

Monitoring officers and some members of standards committees are concerned about the costs of conducting investigations locally. They say it has been extremely difficult to set a budget for this because they do not know how many allegations will be made and how many they will need to investigate.

There is much less preparedness for the local assessment, amongst members of standards committees. Although many have heard much about the local assessment at the Standards Board conference, they comment that the regulations and procedures around handling cases are not yet finalised. They are concerned that once this happens, they may not have enough time to digest them and put them into practice. In conclusion, respondents are reserving judgement on local assessment until they have had time and opportunity to see how it works in practice.

1.1.7 Support and guidance

Monitoring officers are very satisfied with communications with the Standards Board. Some commented that the standard and clarity of Standards Board publications has improved in recent years. The number of publications received, and satisfaction with them, varies enormously among the other stakeholder groups. Long-standing members of standards committees are most satisfied and receive more Standards Board publications – all from their monitoring officer. Some respondents also seek clarification and guidance by telephone. Those newly-appointed to standards committees, backbench councillors and parish councillors seem to have received, recall and read far fewer Standards Board publications. In fact, because they receive so much written information from various sources, some seem to find it difficult to remember which documents have originated from the Standards Board.

Standards Board publications are said to reach councillors via their monitoring officer, or town clerk in the case of parish councillors. Some are comfortable with this, since they trust that the monitoring officer or town clerk provides them with all the information and guidance they need, and will often help to put this into



the local context for them. Others feel their understanding of the Code of Conduct is lacking and would like to see more of the publications produced by the Standards Board. Some respondents feel uneasy that the Standards Board seems to rely solely upon monitoring officers to cascade all relevant information to members.

Some of the backbench councillors did not recall receiving any Standards Board publications apart from *The Code of Conduct 2007 :Guide for members* until prompted with them during the discussion. It is clear that some of these respondents do not regularly read carefully or refer to Standards Board publications, but keep them on file in case they are needed in future. They would welcome being reminded of the key points of the Code of Conduct. Many parish and backbench councillors are satisfied with the publications they receive, but would like to receive more of them, or at least know of their existence and know where they can be obtained. Very few are aware that they can be downloaded from the Standards Board's website. Many would be happy to receive publications directly from the Standards Board, either in addition to, or instead of receiving them from their monitoring officer or town clerk.

Some of the parish councillors indicate that many of their number are either unable to understand the Code of Conduct fully, because of the difficult terminology used, or consider it irrelevant to their role. Some also complain that much of the information received from the Standards Board is not relevant to parish councils.

Most participants like the formats of the publications they have seen and consider them to be relevant, concise, clear and useful. Most respondents prefer to read a hard copy rather than online versions, although they say information must be concise in either format. *The Code of Conduct 2007: Guide for members* is the Standards Board publication which most respondents have seen and find most useful. In fact several respondents brought this booklet to their meetings as an example of clear guidance (received from any source). Those who have received *The Code of Conduct 2007: Pocket guide* were also extremely impressed with this. Fewer respondents recalled spontaneously reading *The Case Review, Town and Parish Standard, Occasional Paper* and *To Higher Standards*, but all those who did were very satisfied with them. Respondents also brought these publications to the groups as examples of clear communication. Some respondents are aware that they receive other publications and guidance from the

Standards Board but could not recall their titles. Monitoring officers and members of standards committee members say they find the *Bulletin* useful. They like its format and conciseness.

1.1.8 Clarity

Those who are most familiar with Standards Board publications feel that they are as clear and easy to read as they can be. Readers like the use of plain English, occasional humour, text in columns, large and bolded fonts, bright colours and the use of bullet points, boxes and white space to break up the text and flow charts to describe processes visually. The Q & A format is also considered easy to read.

When prompted on the subject of clarity, some stakeholders, notably backbench and parish councillors, commented that sometimes text is a little too 'wordy', that the subject matter itself is difficult, and that layouts could be more user-friendly. It was also noted that some documents lack an executive summary which would aid understanding. Some feel that the perceived lack of clarity identified in the BMG Research survey conducted in early 2007 could refer to 'grey areas' of the original Code, which have been clarified in the revised 2007 version. It also seems possible that some respondents are confusing documents originating from other sources with those from the Standards Board. Further, it was suggested that Standards Board publications seem clearer to long-standing members of standards committees than to those, particularly lay members, who have been appointed more recently and are not as well informed.

All respondents concur that what they want from Standards Board publications is clear guidance and illustrative examples and case studies. They expect publications to be well laid out, concise and easy to read, so that the salient points can be easily extracted. With a few exceptions, all types of respondents prefer to receive a large number of short factsheets dealing with one issue at a time than a small number of long detailed documents. Across all of the groups, and especially amongst older respondents, there is a clear preference for hard copies rather than electronic versions.

1.1.9 Standards Board's website, DVDs and events

Monitoring officers use the Standards Board's website regularly and are satisfied with it. Few members of the other groups have seen the website – either because they are unaware of its existence or because they



prefer to read hard copy documents. Those who have looked at it have mixed views on its usability. In contrast with monitoring officers, some comment that they have found it difficult to find what they were looking for on the website and that this lack of accessibility adds to the feeling of remoteness from the Standards Board. Only one respondent has noticed that the website has changed recently – although he was not able to recall exactly what the changes had been.

There was widespread praise for the two Standards Board DVDs which many respondents have seen. The most recent one, illustrating a hypothetical planning meeting was considered especially interesting and useful. Standards Board roadshows and the Annual Assembly are also extremely popular methods of disseminating information, especially among elected members. Respondents also find the break-out sessions and written materials provided at these very useful.

1.1.10 Suggestions for ways of improving support and guidance

The most popular suggestion for improvement of communications was more provision of bespoke publications (with relevant examples and digests of case studies) for particular audiences, particularly parish councillors and for those whose authority is a police, fire, parks or passenger transport authority – rather than a local authority. Parish councillors would like simplified and shorter versions of the documents, which relate only to the work of parish councils. They suggest the publications aimed at them should follow the simple, plain English, bullet-point style of the *Code of Conduct: Pocket guide*. They also suggest that new publications should be piloted in a small number of parish councils before being rolled out nationwide. Monitoring officers were especially keen to see more events and training geared towards the needs of parish and town councillors.

Despite wanting to avoid being overloaded with paperwork, backbench councillors and parish councillors in particular feel the Standards Board should make more effort to make them aware of all of its publications, and signpost them to where they can be obtained. Some feel that publications, at least the principal documents, should come direct from the Standards Board, rather than via the monitoring officer or town clerk. Participants stress that any documents available for download from the Standards Board website should be in an easily printable format. As in the quantitative survey, it was also suggested that the

website be made more easily 'searchable' for case histories.

Backbench councillors suggested that the Standards Board should inform them of what they can expect to happen if an allegation is made against them. They would also like to know what rights a councillor has during the process and what help and support the Standards Board can provide. Many of those who have been subject to a complaint feel that there should be more publicity for cases where it is deemed there is no case to answer, or the case is not upheld. Many also feel strongly that action should be taken against those found to be making false and malicious complaints.

Another popular spontaneous suggestion among backbench councillors, was the idea of Standards Board staff contributing articles in magazines which they already read regularly as part of their role. They suggest *Councillor Magazine* and *Local Government First* as suitable titles.

Monitoring officers would like the Standards Board to provide information and guidance on major changes with improved timeliness. They also suggested that conferences could be shortened and some roadshows tailored for monitoring officers. More regional training events, perhaps held on Saturdays, were also suggested by other groups. Many of the standards committee members and parish councillors also suggested that visits from Standards Board staff to their meetings would help to reduce the perception of the organisation's remoteness. It was also suggested that the Standards Board could facilitate opportunities for members of standards committees to visit neighbouring standards committees to share ideas and best practice.

Finally, it was also suggested that the Standards Board should improve accessibility and transparency by publicising the names, photographs and contact details of key staff whom respondents may have contact with. Some monitoring officers state explicitly that Standards Board staff should make more efforts to develop a closer relationship with them. Many respondents would also like the Standards Board to raise awareness of its role and remit among the general public, and among backbench and parish councillors. In particular, details of how to make a complaint and an outline of the investigation procedure would be welcomed by parish and backbench councillors.

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