

# **STANDARDS COMMITTEE AGENDA**



**Tuesday 15 December 2009**

**at 4.00 p.m.**

**in Committee Room C,  
Civic Centre, Hartlepool.**

MEMBERS: STANDARDS COMMITTEE:

Councillors Coward, Fleet, Lauderdale, Preece, Shaw, Simmons and Turner.

Co-opted Members: Barry Gray and Ted Jackson.

Parish Councillor Ray Gilbert, Elwick Parish Council, Alan Bell, Hart Parish Council.

1. **APOLOGIES FOR ABSENCE**
2. **TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
3. **MINUTES**
  - 3.1 To confirm the minutes of the meeting held on 20 October 2009.
4. **ITEMS FOR DECISION / INFORMATION**
  - 4.1 Business Report (Chief Solicitor)

# **STANDARDS COMMITTEE**

## **MINUTES AND DECISION RECORD**

20 October 2009

The meeting commenced at 4.00 pm in the Civic Centre, Hartlepool

**Present:**

Ted Jackson (In the Chair)

Councillors: John Lauderdale, Arthur Preece, Jane Shaw, Chris Simmons and  
Mike Turner

Parish Councillor: Alan Bell

Officers: Peter Devlin, Chief Solicitor  
Angela Hunter, Principal Democratic Services Officer

### **10. Apologies for Absence**

Apologies for absence were received from Barry Gray and Councillors John Coward and Mary Fleet.

### **11. Declarations of interest by Members**

None.

### **12. Confirmation of the minutes of the meeting held on 15 September 2009**

Confirmed – subject to the inclusion of Parish Councillor Alan Bell's attendance at the meeting.

### **13. Local Government (Access to Information) (Variation Order) 2006**

Under Section 100(A)(4) of the Local Government Act 1972, the press and public were excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in the paragraphs referred to below of Part 1 of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information)(Variation) Order 2006.

Minute 14 – Consideration of an Investigation Report into an Alleged

Breach of the Members' Code of Conduct (Information relating to any individual para 1 and information presented to a Standards Committee or to a Sub-Committee of a Standards Committee, set up to consider any matter under Regulation 13 or 16 to 20 of the Standards Committee (England) Regulations 2008, or referred under Section 58(1)(c) of the Local Government Act 2000.

**14. Consideration of an Investigation Report into an Alleged Breach of the Members' Code of Conduct**  
*(Chief Solicitor and Monitoring Officer)*

The Chief Solicitor and Monitoring Officer presented a report which provided the background and outcome to the investigation. Further details were included within the exempt section of the minutes.

**Decision**

Details were included within the exempt section of the minutes.

**The meeting returned to open session.**

**15. Any other exempt items which the Chairman considers are urgent**

The Chairman ruled that the following item should be considered by the Committee as a matter of urgency in accordance with the provisions of Section 100(B)(4)(b) of the Local Government Act 1972 in order that the matter could be dealt with without delay:

Minute 16 – Resignation of Parish Councillor Ray Gilbert

Minute 17 – Standards for England Assembly

Minute 18 – Standards Board for England dvd

**16. Resignation of Parish Councillor** *(Chief Solicitor and Monitoring Officer)*

The Chair informed Members that Ray Gilbert had written indicating he had resigned from Elwick Parish Council on 29 September 2009 and therefore from his position on Standards Committee. The Chief Solicitor would send Mr Gilbert a letter of appreciation for his work and contribution as a Parish Council representative upon the Committee. The Chief Solicitor would also approach Elwick Parish Council to seek a replacement nomination on Standards Committee for the remainder of this municipal year.

### Decision

- (i) That Mr Gilbert's resignation be noted and the Chief Solicitor to send a letter of appreciation for Mr Gilbert's work and contribution as a Parish Council representative upon the Committee.
- (ii) That the Chief Solicitor approach Elwick Parish Council with a view to seeking a replacement nomination on Standards Committee for the remainder of the municipal year.

## 17. Standards for England Assembly

The Chair informed Members that both he and Councillor Jane Shaw had recently attended a conference held by the Standards for England Assembly. Both members of the Committee had found the conference extremely informative and helpful and had produced a precis of the conference which the Chief Solicitor would circulate to all members of the Committee. In addition to this, an information pack had been produced and this would be placed in the Members' lounge.

### Decision

Members noted the comments made and the Chief Solicitor would circulate a copy of the precees to all Members of the Committee.

## 18. Standards for England Assembly dvd (*Chief Solicitor and Monitoring Officer*)

The Chief Solicitor had received a dvd from the Standards Assembly for England which provided Members with an overview of their role on the Standards Committee in the local assessment and determination process through a number of different scenarios.

### Decision

Members noted the content of the dvd.

The meeting concluded at 6.00 pm

CHAIRMAN

## **STANDARDS COMMITTEE**

15<sup>th</sup> December, 2009



**Report of:** CHIEF SOLICITOR

**Subject:** BUSINESS REPORT -

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### **1. TRANSFER OF THE ADJUDICATION PANEL FOR ENGLAND INTO THE UNIFIED TRIBUNAL STRUCTURE**

- 1.1 As Members will be aware the Adjudication Panel for England, established by the Local Government Act, 2000, is a disciplinary body to hear and determine references concerning the conduct of local authority Councillors. Furthermore, regulations allowed the Adjudication Panel to act as an appellate body to determine appeals against the decisions of Local Standards Committees. The 2000 Act also established an ethical governance framework designed to maintain high standards of behaviour for Members of local authorities and associated bodies. Accordingly, all relevant authorities are required to act in accordance with a Code of Conduct, wherein a failure to comply with the Code can lead to a Member being suspended from office or disqualified from being a Member.
- 1.2 On the 1<sup>st</sup> September, 2009, the General Regulatory Chamber (GRC) was launched as part of the First-tier Tribunal. At that time, the work of four jurisdictions transferred into the GRC, namely: Charity, Estate Agents, Consumer Credit, and some functions of the Transport Tribunal. It is anticipated, that the work of the Adjudication Panel for England will be transferred in to the GRC in January, 2010. Further, the Claims Management Services Tribunal, Gambling Appeals Tribunal, the Immigration Services Tribunal and the remaining part of the Information Tribunal, is similarly being transferred into the GRC at this time. A "Transfer of Tribunal Functions Order" allowing for the above, is presently before Parliament, for consideration. The effects of the Order when in place, is to abolish the Adjudication Panel for England. It's functions will thereafter be undertaken by the First-tier Tribunal. The jurisdiction will be known as the First-tier Tribunal (Local Government Standards, England). Of note, since being established the Adjudication Panel has operated without any formal Rules. That situation will change as a result on the transfer of work into the First-tier Tribunal. The Procedure Rules provide more explicit powers of direction to the First-tier Tribunal than were available to the Adjudication Panel, including the power to summon witnesses. All proceedings taking place after the

Transfer Order comes into effect will be conducted in accordance with the Rules applicable to the First-tier Tribunal. However, in regard to those cases of which proceedings have already started prior to this formal Transfer, will proceed and be in accord with the procedures operated by the Adjudication Panel.

## RECOMMENDATIONS

1. For Members to note the anticipated transfer of the functions of the Adjudication Panel for England into the unified Tribunal structure.
2. That a further report be brought to the Committee outlining changes to the First-tier Tribunal (Local Government Standards, England).

## 2. THE IMPACTS AND EFFECTIVENESS OF THE ETHICAL FRAMEWORK FOR LOCAL GOVERNMENT IN ENGLAND – CENTRE FOR LOCAL AND REGIONAL GOVERNMENT RESEARCH (CARDIFF UNIVERSITY)

- 2.1 The Standards for England have commissioned the Centre for Local and Regional Government Research to investigate the impacts and effectiveness of the ethical framework, primarily upon Local Government processes, culture and values. This research, is a five year analysis, collecting data in 2008, 2010 and 2012 across nine different local authority case studies. The research is based on a “multi-method” approach, including interviews (with Monitoring Officers, Council Leaders, Chief Executives, Party Group Leaders, Partner Bodies etc.), document and media analysis and public surveys. Overall, it appears that many interviewees felt that the conduct of Councillors had improved in recent years and that ethical issues were being treated more seriously than they had been in the past. In those Councils which generally displayed good conduct, with few complaints, a number of “mutually reinforcing ingredients” were in place. Such ingredients, encompassed the following;
- A proactive Monitoring Officer supported by Council leaders (both managerial and political) who also set high standards of ethics themselves and who were prepared to intervene informally to avert potential conduct problems.
  - A strong sense of identification with the Council and an entity with a reputation worth protecting for its own sake.
  - Ethics seen as integral to the whole governance of the organisation ie ethics aligned to Council performance and evidenced in CPA evaluation.
- 2.2 Conversely, those authorities which “react” to a constant stream of complaints with Councillors identification with Wards or Political Parties/Groups, often outweigh a concern for the reputation of the Council. Further, Council leaders could be implicated in the making of complaints. Where there was some connection between personal and politically

motivated complaints, some Councillors outside of the mechanics of a controlling group sought to justify their actions through complaints becoming an alternative means of debate or alternatively, a way of 'holding the Executive to account'.

- 2.3 Notably, the research has also found that the behaviour of Councillors was not a major factor shaping peoples' trust in the Council – the level of Council Tax, quality of services being rated much more important (42% and 34% respectively, to 14% to Councillor behaviour). It was also noted, that although Councillors publicised the existence of the Ethical Framework, public awareness was relatively low ie fewer than 20% of the public had claimed to have heard of the Local Standards Committee. In conclusion, the research, which is to be seen as a continuing process, has identified the following factors;

- The requirement for the Standards Committee to be proactive working with Council leaders, brokering conversations with political parties/groups in dealing more swiftly with trivial complaints;
- The importance of seeing the Ethical Framework and good conduct generally as being integral to a wider process of governance;
- Ensuring political parties/groups locally take full responsibility for the conduct of Members, including considering ethical risks when recruiting new Members, being one example;
- To identify the Ethical Framework not just as a set of standards to be met but part of an ongoing process of improving conduct.

## RECOMMENDATION

1. To note and discuss.

## 3. STANDARDS FOR ENGLAND – “ON LINE GUIDES / CASE SUMMARIES”

- 3.1 Standards for England have produced a range of Code of Conduct 'On Line Guides' which relate to those matters most frequently encountered through telephone enquiries by Standards for England personnel. One of the key functions of Standards for England is to provide guidance for authorities in relation to the Code of Conduct. Such guidance is primarily intended to aid the interpretation of the provisions of the Code of Conduct and builds upon the 'Code of Conduct: Guide for Members', as issued in May, 2007. Appended to this report (**Appendix 1**) are those guides which provide a short synopsis of the following matters;

- Bullying and the Code of Conduct;
- Lobbying;
- Personal and prejudicial interests;
- Disclosing confidential information;

- Gifts and hospitality;
- Pre-disposition, predetermination or bias and the code.

- 3.2 Also appended herewith (**Appendix 2 and 3**) are recent Case Summaries publicised by the Standards for England, for Members' information. The Case Summaries relate to case no: SBE06045 relating to Essex County Council and an allegation that a Member failed to withdraw from a meeting in which he had a prejudicial interest and failed to complete his Register of Interests (**Appendix 2**). The second reported case under case references: SBE06680 and 06681 relates to Plymouth City Council and an allegation that a Member failed to treat others with respect, brought their office or authority into disrepute and misused the authority's resources (**Appendix 3**).

### **RECOMMENDATION**

1. To note and discuss.

## **4. CONVENING OF A CONSIDERATION SUB-COMMITTEE OF STANDARDS COMMITTEE**

- 4.1 Following previous referrals for investigation under references SC05 -2009 and SC06, SC07, SC08 - 2009, it is requested the Standards Committee forms two Consideration Sub-Committees relating to the Monitoring Officer's findings in respect of these particular matters. That relating to case reference SC05 - 2009 relates to a matter involving a Member of a Parish Council and accordingly a Parish Council representative of Standards Committee will be required to sit on this particular Sub-Committee. The second matter relates to three Members of the Borough Council and follows an allegation relating to the conduct of those Members in a "planning matter". Again a Sub-Committee will need to be formed to fully consider the Monitoring Officer's report in relation to those matters of complaint. It is therefore suggested, that the Standards Committee do form two separate Consideration Sub-Committees and that an officer from the Council's Democratic Services Team do liaise with Members of the Committee to form the composition of these particular Sub-Committees.

### **RECOMMENDATION**

1. To note and for Standards Committee to formally action.



## Bullying and the Code of Conduct

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Paragraph 3(2)(b) of the Code of Conduct says 'you must not bully any person'. This includes other members, officers and members of the public.

### What is 'bullying'?

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We characterise bullying as offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim's confidence, capability and health.

Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs, (but within the scope of the Code of Conduct).

It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a member will be found guilty of bullying when both parties have contributed to a breakdown in relations.

### What are the consequences of bullying?

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When officers are bullied, it can affect the authority's ability to provide services. 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 can particularly be 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.

### What about criticism of officers?

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Criticism of officers will not in itself constitute bullying. Members are allowed to express disagreement with officers, and question officer performance, so long as it is done in an appropriate and private way. A personal attack, or criticism that is offensive, is likely to cross the line of what is acceptable behaviour.

### Complaining about bullying

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If you believe you have been the victim of bullying by a member you can complain to the local standards committee. Information about making a complaint to a local standards committee can be found [here](#).

### Anyone alleging bullying should:

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provide examples of the words or actions used provide clear, objective evidence of bullying try to describe the specific behaviour they are concerned about, providing dates, times and locations. This is because it is more

difficult to judge bullying from general remarks.


### Find out more

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Please read our [Code of Conduct: Guidance for members 2007](#)

Call our enquiries line on 0845 078 8181

Email us at [enquiries@standardsforengland.gov.uk](mailto:enquiries@standardsforengland.gov.uk)

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## Lobbying

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Lobbying is covered by paragraphs 5, 6(a), and 8-12 of the Code of Conduct.

### What is lobbying?

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Lobbying and campaigning is the practice of influencing decisions made by government at a national or local level. Many local councillors are involved in a number of groups or campaigns either as a member of a particular interest group or as an individual.

### What should I do?

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#### 1) Register your interest

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".

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.

#### 2) Declare your 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 are required to declare a personal interest.

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.

You will not normally have a personal interest in the related discussion or decision of your authority if you merely campaigned on an issue as an individual (perhaps during an election campaign) but are not a member of or in a position of general control or management of a lobby group campaigning on the same issue.

#### 3) Consider whether to withdraw from the meeting

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

You cannot have a prejudicial interest in a matter if:

- The matter falls within one of the exempt categories of decisions under paragraph 10(2) (c). A full list of exempt categories can be found in our publication **Code of Conduct: Guidance for members 2007**.
- 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 any groups you are a member of have campaigned against, if you, any person, or any body you have a personal interest in is not financially affected by the proposal. However, you may need to ask your monitoring officer about the common

law principles of bias and pre-determination if you are in this situation.

If your personal interest in a matter falls outside the exempt categories mentioned 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.

If a prejudicial interest arose, you would still be allowed to address the meeting on the issue in order to answer questions or make representations, provided that the same right was available to members of the public.

## Find out more

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- Please read our Code of Conduct: Guidance for members 2007
- Call our enquiries line on 0845 078 8181
- Email us at [enquiries@standardsforengland.gov.uk](mailto:enquiries@standardsforengland.gov.uk)

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## Personal and prejudicial interests

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Personal and prejudicial interests are covered by paragraphs 8-13 of the Code of Conduct.

### What is a personal interest?

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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 or bodies 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).

### What should I do if I have a personal interest?

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You must declare that you have a personal interest and the nature of the interest as soon as it becomes apparent to you in all formal meetings before the matter is discussed.

However, 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
- you will only need to declare your interest if and when you speak on a matter, provided that you do not have a prejudicial interest.

### What is a prejudicial interest?

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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 is about a licensing, planning or other regulatory matter that might affect your 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.

## What should I do if I have a prejudicial interest?

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You must declare that you have a prejudicial interest and the nature of that interest as soon as that 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).

If your authority does not provide members of the public with any right to speak, you would need to leave the meeting room after declaring the nature and extent of your interest. However, you can:


- Make written representations in your private capacity. These should be addressed to officers rather than members of the authority.
- Use a professional representative to make an application, for example a planning application, on your behalf.
- Arrange for another member of the authority to represent the views of your constituents.

## Find out more

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- Please read our Code of Conduct: Guidance for members 2007
- Call our enquiries line on 0845 078 8181
- Email us at [enquiries@standardsforengland.gov.uk](mailto:enquiries@standardsforengland.gov.uk)

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## Disclosing Confidential Information

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**Confidential information and the Code of Conduct:** Confidential information is covered by paragraph 4(a) of the Code

Paragraph 4(a) of the Code says you must not disclose information given to you in confidence by anyone. You must also not disclose information which you believe, or ought reasonably to be aware, is of a confidential nature – except where certain exceptions apply.

### What is 'confidential information'?

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Information is a broad term. It includes facts, advice and opinions. It also covers written materials, including tapes, videos, CDs, DVDs and other electronic media.

Information is confidential:

- if it is about something serious and not trivial
- if the nature of the information is sensitive or personal, for example it is a business secret
- if it is information that you would expect people would want to be private
- if it was divulged in a way which implied it should be kept confidential
- if disclosing the information would be detrimental to the person who wishes to keep it confidential

If the council, the executive or a committee of the council has voted to treat the information as exempt, then you should maintain it as confidential.

### When can confidential information be disclosed?

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You are able to disclose confidential information when:

- the person authorised to give it has given you the consent to disclose it
- you are required by law to do so
- the disclosure is made to a third party in order to obtain professional advice, for example a lawyer
- the disclosure is in the public interest.

### Justification for disclosure in the public interest

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Disclosing confidential information in the public interest can only be justified when all of the following points are met:

- the disclosure must be reasonable – this is a matter of judgment. However, when making this decision, you

should consider carefully why you want to disclose the information, whether it is true, how serious the issue is and who to tell

- **the disclosure must be in the public interest** – information is in the public interest if:
  - a criminal offence is committed
  - the authority fails to comply with its legal obligations
  - a miscarriage of justice occurs
  - the health and safety of an individual is in danger
  - the environment is likely to be damaged
  - information about any of the issues above is deliberately concealed
- **the disclosure must be made in good faith** – the disclosure will not be justified if it is being made to promote your interests or is for political gain
- **the disclosure must be made in compliance with any reasonable requirements of your authority** – you must first raise your concerns through the appropriate channels set out in your authority's policies and procedures. For example, policies on whistle-blowing or member-officer relationships should be followed before making a disclosure.

### When would a public interest disclosure not be justified?

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If the disclosure would amount to a criminal offence or when information is protected by legal professional privilege, it is unlikely that its release could be justified as being in the public interest.

### Find out more

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- Please read our Code of Conduct: Guidance for members 2007
- Call our enquiries line on 0845 078 8181
- Email us at [enquiries@standardsforengland.gov.uk](mailto:enquiries@standardsforengland.gov.uk)

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## Gifts and hospitality

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**Gifts, hospitality and the Code of Conduct:** Gifts and hospitality are covered by paragraphs 8 and 13 of the Code.

### What do I have to do?

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- You must register any gifts or hospitality worth £25 or over.
- You must also register the donor (for example, the person, company or body) of the gift or hospitality.
- You only have to register gifts that you receive in connection with your official duties as a member. You do not have to register other gifts and hospitality, such as birthday gifts from family.
- Ask yourself "Have I been given this because I am a member?" If the answer is 'yes' then you must register the item.
- You should register an accumulation of small gifts you receive from the same donor over a short period that add up to £25 or more.
- You must register the gift or hospitality and its donor within 28 days of receiving it, and if an accumulation, when it gets to £25.

### What are the implications?

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- You will have a **personal interest** in a matter if it relates to, or is likely to affect, the donor of the gift or hospitality that is registered.
- You must declare the existence and nature of the gift or hospitality, the donor and how the business under consideration relates to that donor. You must then decide whether that interest is also a prejudicial interest.
- If more than three years have passed since you registered the gift or hospitality, you will no longer have to declare a personal interest in a matter that relates to or is likely to affect the donor.

For further information on interests see our factsheet on personal and prejudicial interests.

### What happens if I do not know the value of the gift?

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- We suggest you register it anyway as a matter of good practice.

### Do I have to register gifts or hospitality I do not accept?

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- No, but you may wish to do so as a matter of good practice.

## What does “hospitality” mean under the Code?

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

## Do I have to register the interests of the donor of the gifts or hospitality?

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- No. We believe the Code only requires you to register the gift or hospitality worth £25 or over, received in connection with your official duties, and the donor of that gift or hospitality.

## Do I have to register gifts or hospitality from council-owned companies?

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- Yes. Wholly-owned companies are separate bodies from the authority.

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

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- 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.
- We take the view that there is no requirement under the Code to register hospitality, if that hospitality has been extended to the office holder for the time being rather than the individual.

## Find out more

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- The Code of Conduct: Guide for members May 2007 offers more guidance on the Code and can be [downloaded here](#).
- Call our enquiries line on 0845 078 8181
- Email us at [enquiries@standardsforengland.gov.uk](mailto:enquiries@standardsforengland.gov.uk)

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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.

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## 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.**

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## **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.

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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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**Essex County Council**

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<b>Case no.</b>	SBE06045
<b>Member:</b>	Councillor Lord Hanningfield
<b>Authority:</b>	Essex County Council
<b>Date received:</b>	18 Jun 2009
<b>Date completed:</b>	10 Nov 2009

**Allegation:**

The member failed to withdraw from a meeting in which he had a prejudicial interest and failed to complete his register of interests.

**Standards Board outcome:**

The ethical standards officer found that the member failed to comply with the Code of Conduct, but in the circumstances of the case, no further action needed to be taken.

The complainant alleged that Councillor Lord Hanningfield, of Essex County Council, participated in council decisions that resulted in the Academies Enterprise Trust (AET), of which Councillor Lord Hanningfield was both patron and director, taking control of five secondary schools in Essex. It was further alleged that Councillor Lord Hanningfield failed to declare his association with AET at five public meetings held to discuss the future of secondary education in Colchester. The complainant also alleged that Lord Hanningfield had failed to register his links with AET in the council's register of interests.

Councillor Lord Hanningfield is the leader of Essex County Council.

In 2007 a federation of three academy schools in Witham and Hockley was created, under a scheme in which high-performing secondary schools act as sponsors to low-performing partner schools, enabling both high-performing and low-performing schools to become academies. An organisation was set up called the Academies Enterprise Trust (AET). The AET was set up as the operating division of the Greensward College Trust, Greensward College being the former name of the sponsor academy in the federation, now known as Greensward Academy.

Following the decision of the Department for Children, Schools and Families (DCSF) that the Greensward College Trust would sponsor the new academies, Councillor Lord Hanningfield was approached with a proposal that he become patron of the soon-to-be-established AET and agreed, although he stated that he had never expected that he would participate actively.

Documentation from Companies House showed that on 19 March 2008, Councillor Lord Hanningfield signed paperwork in respect of the AET, registering him as a director, at the time at which the AET was incorporated as a private limited company on 19 June 2008. When the company was later registered as a charity in August 2008, Councillor Lord Hanningfield was listed as a trustee.

On 28 January 2009, Councillor Lord Hanningfield amended his register of interests to include his patronage of the AET, but did not include any reference to his role as a director or trustee.

Councillor Lord Hanningfield told Standards for England that he had not registered his patronage straight away because he had not at first been aware of the need to do so. When asked why he had not included his role as director of the AET, he told the investigator that he had not been aware of it until very recently. Although he had signed the form consenting to be a director of the Trust, he stated that he did very little of his own paperwork and relied on people providing him with the correct forms when his signature was required.

David Triggs, the AET's chief executive, stated that all communications with Councillor Lord Hanningfield had only been in relation to him becoming a patron, and that it was not clear how or why he had been registered as a director. He also confirmed that Councillor Lord Hanningfield had received no payment from the AET – he was

not paid any sort of salary and had claimed no expenses. Neither had he attended any board meetings. None of the AET's documents refer to him in any other capacity than patron.

In August 2009, following the complaint about his conduct in relation to his role with the AET, Councillor Lord Hanningfield resigned as both patron and director.

In May 2008 and June 2009, Councillor Lord Hanningfield attended cabinet meetings relating to the proposals for the Witham and Hockley academy federation. He declared a personal interest as a patron of AET, and remained in the room while the matter was discussed, as someone with a personal interest is entitled to do under the members' Code of Conduct.

During 2008 and 2009, Councillor Lord Hanningfield had attended and chaired a number of public meetings about proposed changes to secondary education in Colchester. One of the proposals was to close a local arts college and re-establish it as an academy. However, witnesses told Standards for England that there had never been any intention for AET to be its sponsor.

In September 2008, the DCSF, in consultation with senior officers, decided to appoint AET as the sponsor for another proposed academy in Clacton-on-Sea. Councillor Lord Hanningfield played no part in this decision.

Councillor Lord Hanningfield signed an expression of interest document in the Clacton proposal in November 2008 to create the Clacton Coastal Academy. The ethical standards officer considered that this was not inappropriate, given his status as cabinet member for schools and early years.

The ethical standards officer took into account that the funding arrangements between the DCSF and academy sponsors do not allow the sponsor to profit financially from their management of schools, and this was also reflected in AET's memorandum of association, which confirms that the income and property of the Trust cannot be used to benefit any of its directors.

The ethical standards officer noted Councillor Lord Hanningfield's explanation that he had not initially appreciated the need to register his patronage and that he had not known that the forms he had signed for AET authorised his agreement to become a director and trustee. However, it was ultimately Councillor Lord Hanningfield's own responsibility to know the full range of interests he needed to register and to record them accordingly, and although the ethical standards officer accepted that Councillor Lord Hanningfield relied heavily on others in respect of the forms he had signed, she did not consider that this excused him from the need to register his status as a director and trustee of AET. Therefore she found that Councillor Lord Hanningfield's failure to register his patronage of AET on time, and his failure to register his directorship at all, were technical breaches of the Code of Conduct.

With regards to Councillor Lord Hanningfield's participation in meetings relating to proposals for academy schools while a patron and director of AET, the ethical standards officer found no evidence that he had acted improperly. He declared his personal interest as a patron, and so was clearly not attempting to conceal it. The public meetings that he had chaired were not meetings of the council as defined by the Code, which meant that he was not, in any case, required to declare interests at all in those instances.

Councillor Lord Hanningfield did not stand to gain financially from any decisions made at the cabinet meetings at which he was present, and as a councillor he was not responsible for appointing or recommending the sponsor for the proposed academy schools: this was in fact the role of the DCSF.

Consequently, the ethical standards officer found that the only breach of the Code that had occurred was the failure to register interests correctly. These breaches were not intentional and there was no evidence to suggest that Lord Hanningfield had ever attempted to conceal his interests deliberately. Consequently she found that no further action was necessary.

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#### Relevant paragraphs of the Code of Conduct

The allegations in the case relate to paragraphs 6(a), 9, 12 and 13 of the Code of Conduct.



## Plymouth City Council

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Case no.	SBE06680 and 06681
Member:	Councillor Tudor Evans
Authority:	Plymouth City Council
Date received:	13 Jul 2009
Date completed:	06 Oct 2009

**Allegation:**

The member failed to treat others with respect, brought their office or authority into disrepute and misused the authority's resources.

**Standards Board outcome:**

The ethical standards officer found that the member did not breach the Code of Conduct.

The complainant alleged that Councillor Tudor Evans, by referring to a member of the public in derogatory terms on a social networking website, bullied and intimidated him, failed to treat him with respect and brought his authority into disrepute. It was further alleged that by using his council-provided BlackBerry device to access the site, Councillor Evans had contravened the council's IT policies.

Councillor Evans uses Twitter, the social networking and micro-blogging site which enables users to post and read messages, limited to 140 characters, known as tweets. Tweets are displayed on the user's Twitter homepage. Councillor Evans' homepage includes the title 'Councillor Tudor' and the words 'Leader of the Labour Group of Plymouth City Councillors' appear in the 'Bio' section. The page contains no other reference to Plymouth City Council. While some of Councillor Evans' tweets are related to council business, many of them are comments on national party politics or relate to his social activities.

On 16 June 2009, Councillor Evans attended a local Co-operative Society meeting, in his role as a member of the society. The purpose of this meeting was to decide on a proposed merger with the national Co-operative Group. During the debate, another society member, who belongs to the British National Party (BNP), voiced his objections.

When other members reacted negatively to this, Councillor Evans posted a tweet using his council-provided BlackBerry which stated: "Nazi nobjockey trying to stop the merger. So he's got slow handclapped and ironic claps when he sat down."

Councillor Evans' tweet was reported in the local press and the monitoring officer received complaints.

Councillor Evans stated that he used the word 'nobjockey' as it was alliterative with 'Nazi'. He understood it to be a generally derogatory term and not, as alleged, an offensive way of describing a homosexual man. He considered that the word 'Nazi' was acceptable political rhetoric when describing the BNP.

When he learned of the press report, Councillor Evans posted a further tweet stating: "Sorry. Thought the word meant something else. It does, but it wasn't seen that way. My comments about the BNP only meant to offend the BNP." Councillor Evans also apologised to the monitoring officer and gave an assurance that he would not use the word again.

Councillor Evans stated that he regretted his comment, but while he used the title of Councillor on his Twitter home page, he said he was not "always on duty" and felt that followers of his tweets could distinguish between what was council-related and what was not. He said that he made this particular comment as a private individual who did not like the BNP.

In reaching her finding, the ethical standards officer took into account a previous case concerning blogging and

use of websites, in which an appeals tribunal for the Adjudication Panel for England decided that the question of whether a councillor was acting or claiming to act in his official capacity was fact-sensitive and would very much depend on the content of the comments posted.

The ethical standards officer noted that many of Councillor Evans' tweets did not relate in any way to council matters or to Councillor Evans' function as a councillor. The meeting at which Councillor Evans posted the tweet was not a council meeting and he was attending in his private capacity. The ethical standards officer therefore considered that Councillor Evans was acting in his private capacity when he posted the tweet and his actions were not subject to the Code of Conduct.

The ethical standards officer found no failure to comply with the Code of Conduct.

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#### Relevant paragraphs of the Code of Conduct

The allegations in this case relate to paragraphs 3(1), 5 and 6(b) of the Code of Conduct.

Paragraph 3(1) states that a member must "treat others with respect".

Paragraph 5 states that "a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute".

The allegation in this case relates to Paragraph 6(b) of the Code of Conduct.

Paragraph 6(b) states that a member "must, when using or authorising the use by others of the resources of the authority – (i) act in accordance with the authority's requirements; and (ii) ensure that such resources are not used for political purposes (including party political purposes)".

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