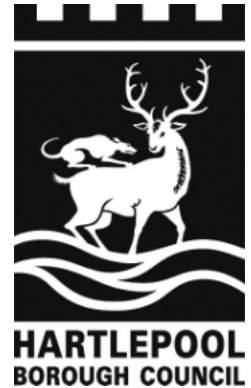


# **STANDARDS COMMITTEE AGENDA**



**Tuesday, 15 June 2010**

**at 4.00 pm**

**in Committee Room A, Civic Centre, Hartlepool**

**MEMBERS: STANDARDS COMMITTEE:**

Councillors Fleet, Griffin, Dr Morris, Preece, Shaw, Simmons and Sutheran.

Co-opted Members: B Footitt, B Gray and T Jackson.

Parish Councillors: A Bell, Hart Parish Council and 2 vacancies

- 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 23 March 2010
- 4. ITEMS FOR DECISION / DISCUSSION**
  - 4.1 Business Report – *Chief Solicitor* (to follow )
- 5. ANY OTHER ITEMS CONSIDERED URGENT BY THE CHAIR**

# **STANDARDS COMMITTEE**

## **MINUTES**

23 March 2010

The meeting commenced at 4.00 p.m. in the Civic Centre, Hartlepool

### **Present:**

Mr Barry Gray (Independent Member) (In the Chair)

Councillors: John Coward, Arthur Preece, Jane Shaw and Mike Turner.

Independent Members: Prof. Brian Footitt and Mr Ted Jackson.

Parish Councillor Alan Bell (Hart Parish Council).

Also Present: Councillors Brash and Dr Morris.

Mr Kevin Lincoln and Mr Philip Beavers – Independent Members  
of Doncaster MBC's Standards Committee.

Officers: Peter Devlin, Chief Solicitor and Monitoring Officer  
David Cosgrove, Democratic Services Team

### **35. Apologies for Absence**

Councillors Fleet, Lauderdale and Simmons and Parish Councillor Dickinson  
(Elwick Parish Council).

### **36. Declarations of interest by members**

None.

### **37. Confirmation of the minutes of the meeting held on 9 February 2010**

Confirmed.

### **38. Visit by Independent Members from Doncaster MBC**

The Chair welcomed Mr Kevin Lincoln and Mr Philip Beavers, two independent Members of Doncaster MBC Standards Committee. Messrs Lincoln and Beavers were visiting a number of Standards Committees in order to view the different working practices in other authorities. A meeting with the Doncaster representatives and members of the Committee had been held in advance of the meeting.

### **39. Hartlepool Borough Council Standards Committee Annual Report 2009** (*Chief Solicitor and Monitoring Officer*)

The Chief Solicitor and Monitoring Officer presented the draft Annual Report for 2009 for the Committee's consideration. The main elements of the Annual report were outlined to the Committee with the focus on the complaints considered by the various sub committees during the year. There had been seventeen complaints received and considered during 2009. Statistics showing the type of complaints received and the number referred for investigation (fourteen of the seventeen received) were set out in the report.

The Chief Solicitor highlighted the changes to the Committee's membership over the last year, including the recent appointment of Prof Footitt as an Independent Member. There would be further advertising for an additional Independent Member to bring the total to four and further consultation with the Parish Councils to increase the number of parish representatives to three.

The Annual report also included reference to the Committee's consideration of the Whistle-blowing procedure and the reviews of the Monitoring Officer Protocol, The Standards Committee (Further Provisions) (England) Regulations 2009, the Planning Committee Code of Practice, Tees Valley Ethical Governance Standards Training, Maintaining Members Register of Interests Electronically, and Good Practice – Standards Committees.

The Chief Solicitor indicated that the finalised annual report, once approved by Members and with a foreword by the Chair, would be published on the Council's website.

Members welcomed the report and the Chair commented that the Committee needed to work towards a more proactive role, particularly with political leaders. Members considered that the report reflected the council's willingness to be transparent which could only improve the public's perception of the authority. Members were concerned at the issue of vexatious complaints and the potential changes highlighted in the Review of the Local Standards Framework, later on the agenda where there could be a greater role for the Chief Solicitor in determining which complaints went forward for investigation.

The Chief Solicitor stated that at present, he had no powers to investigate a complaint until it had been considered and referred for investigation by an Assessments Sub Committee. Members were concerned at the potential workload associated with complaints, particularly vexatious complaints. There was suggestion that such issues should be considered by the Committee, with the potential for identifying such individuals. The Chief Solicitor remarked that there were always a number of individuals who regularly communicated with the Council. It wasn't until such communications manifested themselves as complaints that any measure of them being vexatious could be applied. To some extent such issues came with a complaints procedure and the position of Monitoring Officer.

**Decision**

That, subject to the addition of a foreword from the Chair, the draft Hartlepool Borough Council Standards Committee Annual Report 2009 be approved for publication.

**40. Standards for England – A Review of Local Standards Framework** (*Chief Solicitor and Monitoring Officer*)

The Chief Solicitor reported that Standards for England have produced the results of their recent review of the Local Standards Framework “Local Standards 2.0 – The Proportionality Upgrade” which was submitted as an appendix to the report. The report covered the operation of the local assessment and determination process which had been operative since May, 2008. This allowed a more “localised” assessment and review process into allegations that a Member/Co-opted Member had failed to accord with the Code of Conduct. The review had some seventeen recommendations which were considered with in the report. The Chief Solicitor indicated that the Standards for England report had been submitted to the Department for Communities and Local Government (DCLG) but was not subject to consultation.

Some concerns were raised by Members at some of the recommendations suggested to the DCLG by Standards for England (SfE). In relation to recommendations 1 and 2 which suggested a greater role for the Monitoring Officer in determining complaints; and Recommendation 12 which proposed that decision notices only need be publicised through a Council’s website. Members were concerned that the SfE seemed to be sidelining Members in the complaints process and that not everyone had access to the internet so may never see decision notices if they were only published on the website. Members also suggested that the SfE should promote the use of plain English to allow the process to be accessible to all.

Members in general were critical of the proposals that seemed to streamline the process a little too far, primarily to the detriment of Committee member involvement. The public needed to have confidence in the process and that could only be encouraged through the involvement of ‘independent’ members.

In relation to decisions, Members referred to the suggestion that the Chair being involved in the writing of the decision letter. The Chief Solicitor indicated that he at present published the decision notice following the consideration of complaints. Any comments raised by the sub committee during their consideration of the complaint could be and had been included in the Chief Solicitor’s covering letter with the decision notice.

After a wide ranging debate on the Standards for England recommendations, Members noted the report and the fact that the recommendations had only been sent to the Department for Communities and Local Government for consideration and not to authorities for consultation. Members considered that this committee worked well with all members bringing positive and



proactive ideas to the table.

The representatives from Doncaster MBC thanked the Chair, Members and Officers for the hospitality shown and the insight into the work of the Hartlepool Standards Committee.

**Decision**

That the report be noted.

The meeting concluded at 5.20 p.m.

CHAIRMAN

## STANDARDS COMMITTEE

15<sup>th</sup> June 2010



**Report of:** Chief Solicitor and Monitoring Officer

**Subject:** BUSINESS REPORT

---

### 1. DECENTRALISATION AND LOCALISM BILL

- 1.1 The Decentralisation and Localism Bill was included in the Queen's Speech on 25<sup>th</sup> May, 2010. The main purpose of this Bill was stated as follows:

*"To return power to local authorities and communities to a number of measures including control of housing and planning decisions".*

- 1.2 Although the main provisions of this Bill will have fundamental impact on Council decision-making in relation to housing and planning it was also a stated purpose to "abolish the "Standards Board Regime". The Chair and Chief Executive of Standards for England in response, have issued a statement in the following terms:

*'We are very disappointed that the Government's decision to abolish the Local Government Standards Regime.*

*Since 2007, the Standards for England have dealt only with those matters which Local Authorities could not deal with themselves. A recent review of this devolved local framework found that it is delivering increased confidence in the accountability of local politicians, improved Member behaviour and contributing to better governance.*

*We do not have clear details as yet of what is proposed for the future, but for now the Local Standards Framework remains pending legislative change. Our priorities are to fulfil our statutory duties, to support local authorities in maintaining high standards and to assist the Government in developing and implementing any new arrangements'.*

- 1.3 In addition to the above statement, the Chair of Standards for England has issued correspondence for the attention of Independent Chair of Standards Committees and the same is attached herewith for the Committee's consideration (**Appendix 1**). Whilst it is noted the present uncertainty as to what will transpire in the light of a proposed abolition of the "Standards

Board Regime” there is the request for Standards Committees to provide their views as to how any future arrangements could most effectively work. The comments of the Committee upon the appended document are therefore invited.

**RECOMMENDATION** – To note and make comment upon the Appended document.

## **2. TEES VALLEY STANDARDS COMMITTEE – DEVELOPMENT PROGRAMME 2010/11**

- 2.1 Members will be aware of the various training initiatives organised through the Tees Valley Legal and Administrative Group, which amount to a “rolling programme” of training in relation to the Ethical Framework provisions, as introduced under the Local Government Act, 2000. This has previously encompassed combined training for all Standards Committees within the Tees Valley area with presentations from Standards for England and a Monitoring Officer peer as part of the overall development of good practice amongst the Tees Valley authorities in this particular area. In addition, there has been Town/Parish Council training, which again has included representation from the Standards for England and the involvement of the Local Councils’ Association. Finally, there has been Independent Members Forums which has allowed for the exchange of information and the ability for such Members to network as part of the overall dissemination of good practice and procedures.
- 2.2 Members will therefore note that it is anticipated in July, 2010, that a further “Standards Committee Workshop” will be conducted which will consider the Local Assessment criteria adopted by each individual Standards Committee, together with the imposition and implication behind sanctions, where a finding of fault has been made, as well as a consideration upon joint working through applicable regulations. It is also envisaged, that a further Town/Parish Council training event will also take place, shortly thereafter, as indicated upon the attached programme (**Appendix 2**).

**RECOMMENDATION** – To note the contents of this report and the Appended document.

## **3. JOINT STANDARDS COMMITTEES**

- 3.1 The Standards Committee (Further Provisions) (England) Regulations, 2009, enable authorities to establish Joint Standards Committees. The Regulations therefore allow Joint Standards Committees to undertake the functions of a Standards Committee as provided under Part III of the Local Government Act, 2000 or Part I of the Local Government and Housing Act, 1989.

3.2 In the guidance provided through Standards for England, it is indicated that such joint arrangements whilst providing for additional flexibility can also extend to situations where resources might be limited. Of note, whilst a Police Authority is presently prohibited from participating in a joint arrangement with other Police Authorities, such a restriction would not prohibit such an authority, in joining with other types of other local authority in a joint arrangement. The guidance indicates the potential benefits of having such joint committees as follows:

- Avoidance of conflicts of interests through a wider pool of Members.
- Consistency of procedures.
- Public confidence in the Complaints Process enhanced through a greater “distance” between Standards Committees and the complaints Subject Members.
- Greater capacity to meet the increased role and workload for Standards Committees under the Local Standards Framework.
- Efficient and effective use of resources through sharing of resources and pooling expertise.
- Increased ability to promote high ethical standards through a raised profile of the Standards Committee.
- The ability to jointly commission and fund mediation, training and investigations.
- The opportunity to create stronger support and advisory functions.

3.3 However, it is also recognised a number of potential problems/issues, which might arise through the creation of a Joint Standards Committee, which would need to be considered against the perceived benefits as listed above. Those areas which would need to be considered are as follows:

- The possibility that it could become an overly bureaucratic and more complex process;
- Member resistance;
- Differing resource implications for authorities;
- Loss of local ownership of Standards and Ethical issues.

3.4 Members will be aware that a more “localised” Ethical Framework became fully operational on the 8<sup>th</sup> May, 2008, where after this date all complaints alleging Member misconduct would be directed, in the first instance, to the Local Standards Committee for assessment and initial determination. Through any joint arrangement, it will need to be determined which powers and functions would be passed to such a Joint Committee and a “model structure” is also appended herewith (**Appendix 3**) for the general information of the Committee. A Joint Standards Committee would be composed in a similar fashion to an existing Standards Committee and therefore based upon the following requirements:-

- Inclusion of at least one elected Member of each authority;
- At least 25% of the Members must be Independent Members;

- At least three people must be in attendance for any meeting to be Chaired by the Independent Member;
- If a Joint Standards Committee was to be given a remit to be responsible for Parish/Town Council matters, at least two representatives from such bodies would need to be included in any joint arrangement.

3.5 Clearly, there are a number of issues associated with the formation of a Joint Standards Committee and the purpose of this particular item of the Business Report is merely to make Members aware of this particular provision and likely subsequent discussion, not least within the Tees Valley Standards Committee Development Programme.

**RECOMMENDATION** – For Members to note this report and to consider the appended document.

#### 4. PARISH COUNCIL REPRESENTATION

- 4.1 Although the Standards Committee (England) Regulations 2008 specify that two Parish Council representatives should participate in the business of Standards Committee, when dealing with Parish Council affairs, the guidance issued through Standards for England recommended a composition of three Parish Council representatives. This Council have therefore decided that there should be in accordance with the guidance, three Parish Council representatives upon the Committee. Whilst, Mr Alan Bell, has been nominated by Hart Parish Council and continues to be a Parish Council representative, following the resignation from Elwick Parish Council, Councillor Mike Dickinson, needs to be replaced upon the Committee, together with an additional representative.
- 4.2 Previously the Council has been reliant upon receiving nominations from discussions amongst the five Parish Councils operating within the Borough of Hartlepool and it now seems appropriate that those arrangements be reviewed to allow for greater representation and engagement by Parish Council representatives upon Standards Committee. It is therefore recommended that the Parish Councils do nominate a Parish Council Liaison Officer, amongst their Parish Clerks as being a point of contact for the better administration of the appointment of Parish Council representatives. It is therefore envisaged, that meetings will take place with Parish Council representatives in order to agree a procedure for nominations and if necessary on a rotational basis, for such nominations to be forthcoming from the respective Parish Councils. Accordingly, a formal invitation is to be issued to Parish Clerks for a meeting to discuss appropriate arrangements to facilitate the appointment of Parish Council representation upon the Standards Committee, and it is enquired whether the Committee sees a role for itself in such a meeting.

**RECOMMENDATION** – To note and discuss.

## 5. 'ON-LINE' GUIDES

5.1 Members have previously been provided with certain 'On-line' Guides as provided through the Standards for England, which Members have found to be particularly useful in the overall interpretation of the obligations placed upon Members in compliance with the Code of Conduct. It has also been a consideration for the Committee to provide copies of the On-line Guides to Members of the Authority and also to provide notification to Parish Councils. In addition to those On-line Guides provided to Members previously, there has been some additional Guides produced and in order for a comprehensive view to be taken upon such publications, the entire catalogue of such reference material, is appended herewith (**Appendix 4**).

- Blogging
- Bullying and the Code of Conduct
- Charitable Trustees and Personal Interests under the Code
- Disclosing confidential information
- Freemasons and the Code of Conduct
- Gifts, hospitality and the Code of Conduct
- Independent Members
- Lobbying
- Notifications to Parish and Town Councils concerning complaints about their Members
- Personal and prejudicial interests
- Role and appointment of Parish and Town Council reps to Standards Committee

Appendix 1

APPENDIX 1

Sent via email

1 June 2010

Dear Colleague

As you will no doubt be aware the Government announced in the recent Queen's Speech that the proposed Decentralisation and Localism bill will include proposals to 'abolish the Standards Board regime'. Beyond this statement, we do not currently have clear details of the scope or implications of this proposal. However, until such time as the relevant legislation is passed, the statutory framework remains operative.

We will therefore continue to work with you to support your work. In turn, we expect you to continue with your statutory duties including the assessment of allegations, and we will continue to consider cases which you refer to us.

We remain committed to ensuring that there is a proper framework of local accountability in which the public can have confidence and we wish to work with central and local government to develop any proposals. As more details emerge we will keep you informed of developments and would be interested in hearing your views about how future arrangements could most effectively work.

In the meantime, if you need clarity on any specific issues, please do continue to call our enquiries line.

Yours sincerely



Dr Robert Chilton  
Chair

**APPENDIX 2**

**Tees Valley  
Standards Committees  
Development Programme  
2010/11**

<b>Event</b>	<b>Lead Authority</b>	<b>Date</b>
Town/Parish Council training event - local assessment; revised code of conduct	Hartlepool/Stockton	8 May 2009
Standards Committees Independent Members Forum (networking event)	Darlington/Redcar	19 October 2009
Standards Committees Independent Members' Forum (in Stockton)	Stockton	22 April 2010
Standards Committees Workshop - local assessment criteria; sanctions; joint working regulations	Middlesbrough	July 2010
Town/Parish Council training event	Darlington/Redcar	October 2010



## MODEL TERMS OF REFERENCE FOR JOINT STANDARDS COMMITTEES IN ENGLAND

*[This document provides the terms of reference for a joint standards committee of relevant authorities in the form of a template for a model constitution. It is written in broad terms so that it can be used by authorities of the same type, or by authorities of different types. In some instances alternative approaches are offered, or authorities may wish to use this model as the basis for discussions leading to the production of a different document.]*

### 1) Definitions

In this Constitution:

“the Act” means the Local Government Act 2000

“the Constituent Authorities” means

(a) *[insert name]*

(b) ... *[etc]*

“Executive”, “Executive Member”, “Elected Mayor” and “Executive Leader” have the same meaning as in the Act

“Independent Member” has the same meaning as in the Standards Committee Regulations

“the Joint Standards Committee” means the *[insert name]*

“Monitoring Officers” means the officers designated by the Constituent Authorities under section 5 of the Local Government and Housing Act 1989 and any deputy nominated by them acting where they are unable to do so owing to absence or illness

“Proper Officer” has the same meaning as in the Local Government Act 1972

“the Regulations” means the Standards Committee (Further Provisions) (England) Regulations 2009

“Relevant Authority” has the same meaning as in the Act

“Scheme of Allowances” means any scheme of allowances made under the Local Authorities (Members Allowances) Regulations 2003

“the Standards Committee Regulations” means The Standards Committee (England) Regulations 2008

### 2) Constitution and Terms of Reference

2.1) The Constituent Authorities, in exercise of their powers under the Regulations, have each determined to establish a joint standards committee, to be known as the *[insert name]* to exercise those functions conferred by or under Part 3 of the Act or Part 1 of the Local Government and Housing Act 1989 set out in this Constitution.

2.2) The Joint Standards Committee is the standards committee to which written allegations under section 57A (1) of the Act may be sent *[either]* for all the Constituent Authorities *[or]* for the following Constituent Authorities: *[insert names]*.

*[It is important that each constituent authority is clear about whether it, or the joint committee, will receive written allegations, and that the process for publicising, receiving and submitting written allegations is clear and effective.]*

2.3) This Constitution contains the Terms of Reference of the Joint Standards Committee for the purposes of Regulation 15 of the Regulations and section 53 (9) of the Act.

3) Functions to be exercised by the Joint Standards Committee

3.1) The Joint Standards Committee may exercise the functions set out in Appendix 1.

3.2) Any Standards Committee established by any of the individual Constituent Authorities may not exercise any function set out in Appendix 1.

4) Membership of the Joint Standards Committee

*[The following version is for a joint committee where at least one constituent authority is responsible for parish councils. If no constituent authority has this responsibility then 4.1 (b) and 4.5 should be deleted and the other sub-paragraphs renumbered]*

4.1) The Joint Standards Committee shall consist of:

- a) *[insert number]* members of the Constituent Authorities, appointed by those authorities in accordance with paragraph 4.2;
- b) *[insert number]* members of parish councils for which any of the Constituent Authorities is responsible, appointed in accordance with paragraph 4.5;
- c) *[insert number which must be at least 25% of the total membership of the committee]* Independent Members, appointed in accordance with paragraph 4.6.



4.2) Subject to paragraphs 4.3 and 4.4, the following Constituent Authorities shall appoint the following numbers of members of those authorities to be members of the Joint Standards Committee:

- a) [Name of Constituent Authority] : [number] members
- b) [etc]

4.3) Appointment of Executive Members

- a) No more than one of the members of the Constituent Authorities appointed under paragraph 4.2 shall be a member of the Executive of any of the Constituent Authorities.
- b) If an Executive Member has previously been appointed to and is still a member of the Joint Standards Committee then no further appointment of an Executive Member will be valid.
- c) Otherwise, if the Constituent Authorities seek to appoint more than one Executive Member then only one appointment will be valid and the other Constituent Authorities will be required to make a new appointment. The valid appointment shall be agreed between the Constituent Authorities or in default of agreement shall be made annually in turn by each of the Constituent Authorities in the order set out in paragraph 4.2 starting with the Constituent Authority named in paragraph 4.2 (a).

*[Alternative: provide as follows but amend annually – Only [insert name of Constituent Authority] may appoint a member of the executive of any of the Constituent Authorities as a member of the Joint Standards Committee.]*

4.4) None of the members of the Constituent Authorities appointed under paragraph 4.2 shall be the Elected Mayor or Executive Leader of any of the Constituent Authorities.

4.5) The Constituent Authorities that are responsible for parish councils shall each appoint [insert number] members of the parish councils for which they are responsible, who are not also members of any of the Constituent Authorities, to be members of the Joint Standards Committee.

*[Alternatively – The following Constituent Authorities shall appoint the following numbers of members of the parish councils for which they are responsible, who are not also*

members of any of the Constituent Authorities, to be members of the Joint Standards Committee:

- a) [Name of Constituent Authority] : [number] members
- b) [etc]

4.6) The following Constituent Authorities shall appoint the following numbers of Independent Members (in accordance with the provisions of the Standards Committee Regulations) to be members of the Joint Standards Committee:

- a) [Name of Constituent Authority] : [number] members
- b) [etc]

4.7) A person who is disqualified under Part 5 of the Local Government Act 1972 or by the decision of a Case Tribunal under Part 3 of the Act for being a member of a relevant authority shall be disqualified for membership of the Joint Standards Committee.

5) Tenure of office and casual vacancies

5.1) A member of the Joint Standards Committee will hold office until one of the following occurs:

- a) He or she resigns by giving written notice to the proper officer of the Constituent Authority that appointed him or her;
- b) He or she is removed or replaced by the Constituent Authority that appointed him or her;
- c) He or she is disqualified for membership of the Joint Standards Committee;
- d) He or she ceases to be eligible for appointment to the Joint Standards Committee in the capacity in which he or she was appointed;
- e) The Constituent Authority which appointed him or her ceases to participate in the Joint Standards Committee.

*[Options – We recommend that the appointing authority be given the power to replace a member under (b) but it is not essential. It is possible, instead, for all members, or a class of members such as independent members, to be appointed for a fixed term. In that case (b) would read:*



- b) He or she [*option –* , being an independent member/parish council member/member of a constituent authority] has held office for a period of [*insert period*] years.]

- 5.2) A casual vacancy shall be filled as soon as possible by the Constituent Authority which appointed the member of the Joint Standards Committee whose membership has ceased.

#### 6) Sub Committees

- 6.1) The Joint Standards Committee shall appoint Sub Committees in so far as is necessary to exercise its functions under Part 3 of the Act and may establish Sub Committees for other purposes in the exercise of its functions.
- 6.2) Each person appointed as a member of a Sub Committee must be a member of the Joint Standards Committee.
- 6.3) The Joint Standards Committee will determine the membership and terms of reference of the Sub Committee, and the quorum for its meetings, when it is appointed.
- 6.4) If the Joint Standards Committee appoints more than one Sub Committee to exercise one or more of its functions then it shall ensure that the Proper Officer of the Constituent Authority providing support to the Joint Standards Committee allocates particular matters to a Sub Committee first on the basis of the availability of the members required to constitute the Sub Committee, and thereafter by rotation, and summonses meetings accordingly.

#### 7) Meetings and proceedings

- 7.1) The meetings and proceedings of the Joint Standards Committee shall be conducted in accordance with the rules set out in Appendix 2.
- 7.2) The Joint Standards Committee will adopt standing orders or rules of procedure for the conduct of its meetings. The standing orders or rules of procedure must be consistent with the requirements of the Act, the Standards Committee Regulations and the rules set out in Appendix 2. They may provide for different procedures to be followed when the Joint Standards Committee or a Sub Committee is exercising different functions.

#### 8) Monitoring Officers

- 8.1) The Monitoring Officers will agree and keep under review a protocol about how they will exercise their functions in relation to the matters dealt with by the Joint Standards Committee.

- 8.2) The initial protocol is set out in Appendix 3. The Monitoring Officers will inform the Joint Standards Committee and the Constituent Authorities of any changes to the protocol.

9) Support

- 9.1) The Joint Standards Committee will appoint one of the Constituent Authorities to provide accommodation and professional, technical, administrative and clerical support for its meetings.
- 9.2) The Joint Standards Committee will keep the appointment under review and may from time to time make a new appointment having regard to the geographical area that it covers and to the interests of economy, efficiency and effectiveness.

[Alternatively the Constitution may provide for the rotation of the support function. Where this is done appropriate arrangements will need to be made for dealing with on-going cases]

For the period stated in column 1 of the following table, the Constituent Authority identified in Column 2 shall be appointed to provide accommodation and professional, technical, administrative and clerical support for its meetings.

Table	
Column 1 Period	Column 2 Constituent Authority
<i>[insert period, eg 1 June 2009 to 31 May 2009. Consider whether to rotate quarterly, six monthly, annually or less frequently.]</i>  [etc]	<i>[Insert name]</i>  [etc]

- 9.3) The Proper Officer appointed by the Constituent Authority for the time being providing such support will discharge the proper officer functions under the Local Government Act 1972 that relate to the meetings of the Committee. He or she will therefore prepare agendas and minutes and summaries of meetings and arrange for notices and other communications to and from the Joint Standards Committee to be given and received, save in so far as one of the Monitoring Officers agrees to undertake this activity.



10) Expenses of Joint Standards Committee

- 10.1) The expenses of the Joint Standards Committee and of the discharge of functions relating to matters dealt with by the Joint Standards Committee will be defrayed by the Constituent Authority providing support and by any Constituent Authority whose Monitoring Officer has dealt with or exercised his or her functions in relation to such matters.
- 10.2) The other Constituent Authorities will make payments to the Constituent Authority that has incurred expenses under paragraph 10.1, to defray them in such proportions as the Constituent Authorities shall all agree or in the case of disagreement as shall be determined by a single arbitrator agreed on by the Constituent Authorities, or, in default of agreement, appointed by the Secretary of State for Communities and Local Government.
- 10.3) In determining the allocation of expenses the Constituent Authorities or any arbitrator appointed under paragraph 11.2 will have regard to the principles set out in Appendix 4.
- 10.4) The Constituent Authority for the time being providing support will report to the Joint Standards Committee at least annually on such expenses, on their allocation between the Constituent Authorities and on the financial provision made by the Constituent Authorities to cover present and future expenses. The Joint Standards Committee may notify the Constituent Authorities if it considers that the financial provision is or is likely to be inadequate.

11) Allowances

- 11.1) The Constituent Authorities will review the Schemes of Allowances for their members, will consult each other for the purposes of the review, and will seek [Option - (with a view to ensuring that all members of the Joint Standards Committee of the same type and whose responsibilities are, in principle, the same, should have broadly the same entitlement)]:
  - a) To reach agreement as to which members of the Joint Standards Committee should receive allowances, the level of allowances, and whether related attendance or activity should affect, either directly or by reason of any calculations that are performed, the entitlement to allowances;
  - b) *[Option, if the joint committee appoints Independent Members – To determine which Constituent Authority will pay any allowances to Independent Members appointed by the Joint Committee;]*

- c) To ensure that no member of the Joint Standards Committee is paid more than one allowance, or more than one enhanced allowance, on account of such attendance or activities;
- d) To ensure that the agreement reached is reflected in the Constituent Authorities' Schemes of Allowances.

11.2) An agreement reached under paragraph 11.1 shall not bind the Constituent Authorities so as to prejudice the legality of their decisions, or compromise their decision-making processes, under the Local Authorities (Members Allowances) Regulations 2003.

12) Withdrawal from the Joint Standards Committee

12.1) A Constituent Authority may cease to participate in the Joint Standards Committee by resolution to that effect taking effect on the date of the next annual meeting of the Constituent Authority, and communicated in writing to the Proper Officer the time being providing support to the Joint Standards Committee at least six [alternative – nine or twelve] months before the date on which it is to take effect.



## Bullying and the Code of Conduct

---

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'?

---

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?

---

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?

---

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

---

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:

---

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

---

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)

 Print this page

# Charitable Trustees and declarations of interest under the Code

---

## Introduction

---

This guide is aimed at councillors who are trustees of charitable organisations. It explains the different types of charities that you may be involved in. It also aims to provide you with a better understanding of your role so that you know when to register and declare your interest under the Code of Conduct.

Any mention of a charitable organisation in this guide refers to a registered charity or an unregistered body which is directed to charitable purposes.

## Understanding your charity

---

There are two main types of charities, incorporated charities and unincorporated charities.

An **incorporated charity** is a corporate body which has a legal existence that is separate from the individual persons that form it.

Most incorporated charities are limited companies registered with Companies House and the Charities Commission.

An **unincorporated charity** may be a 'trust' or 'association'.

An unincorporated charity cannot itself 'hold' the legal title to land or other forms of investment because it has no separate legal status. For this reason, its land or investments will be held on its behalf by:

- individuals or an incorporated body known as a custodian trustee
- a holding trustee or
- a nominee.

## Appointment

---

A charity's governing document sets out your charity's purposes and how it is to be administered. It will also, usually, set out how trustees are to be appointed which can vary according to the individual charity.

The governing document may be:

- a trust deed
- a constitution
- memorandum and articles of association or
- another document.



A trustee can be appointed directly by a charitable organisation or nominated by their local authority. He or she may be appointed to manage the charity or to only hold the title to the charity's land or investments. It is important to understand your role as a trustee in order to understand if you have an interest to register.

## Charity trustees

---

Charity trustees serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members, or they may be referred to by some other title. For example, some charity trustees are known as 'officers' and have special responsibilities such as chair, treasurer or ex-officio trustee. An 'ex-officio trustee' is a type of charity trustee who is in that position because of their office, such as the mayor of a town or the head teacher of a school.

Whatever their title the principles and main duties of a charity trustee are the same. Charity trustees have and must accept ultimate responsibility for directing the affairs of a charity. They must ensure that it is solvent, well-run, and delivers the charitable outcomes for which it has been set up, for the benefit of the public. To act outside of their powers is a breach of trust.

## Nominated trustee

---

Sometimes an individual is nominated by an organisation to be a charity trustee. For instance, a local authority may nominate its councillors onto the governing body of a charity that operates in its area and for which it has provided funding. Despite being appointed in a different way, nominated trustees (sometimes known as representative) have the same legal duties and responsibilities as any other charity trustee.

## Other types of Trustee

---

There are three types of trustees who only hold the charity's land or investment; a custodian trustee, a holding trustee and a nominee.

A **custodian trustee** is a corporation, such as the treasury solicitor, limited companies, health authorities, local authorities or other types of organisations, whose main function is to hold the legal title to all investments and property on behalf of the charity. Note that an individual can never be one.

A **holding trustee** and a **nominee** can either be an **individual** or a **corporation**. They too hold the legal title to a charity's property or investments on behalf of the charity.

## Corporate trustees

---

A corporate trustee is a corporation such as a local authority which has itself been appointed to act as a trustee of a charity. It may be appointed as a charity trustee or custodian trustee (holding trustee or a nominee) or both.

A local authority may act as the custodian trustee only if the charity is for the benefit of the people living in the whole or part of its area, and not an ecclesiastical charity or a local charity for the relief of poverty. For example, parish councils are often appointed custodian trustees of charitable village halls, recreation grounds and youth clubs.

If the corporation is appointed as a charity trustee it may be a "trustee for all purposes" acting on its own (a

sole trustee) or one of a number on a body of charity trustees (a joint trustee). A corporation does not itself need to be charitable to be a trustee of the charity.

Many local authorities act as sole trustees of local charities – especially charities for recreational or educational purposes. This means the local authority as a corporate body both holds the property and oversees its application as a charity trustee.

If a local authority is itself the charity trustee, it decides within the scope of local government law, what structures should be used to reach decisions in its name as a charity trustee. For example, it may decide all the decisions are to be reached by the council or it may decide to delegate the decisions to a separate management committee. Whatever the structure employed, the individual councillors concerned are not themselves charity trustees and are not required to register their role in relation to the charity in their register of interests. When making charity decisions at the council or management committee meetings, they must only act in the best interests of the charity and independently of their local authority interests.

## What personal interests should I register?

---

The Code of Conduct says you have a personal interest in any business of your authority where it relates to or is likely to affect an interest that you must register.

You must register your membership or position of control or management in:

- any body to which you are appointed or nominated by your authority
- any body directed to charitable purposes

If you are a charity trustee, you must always register your interest in the charity whether you are appointed directly by the charity or nominated by your local authority. This is because you are a member and in a position of management over the charity.

An example of this would be paying the charity's employees or making decisions on the organisation direction.

## Are there circumstances when I do not have to register a personal interest?

---

Yes there are. A holding trustee or nominee who only holds the charity's land or investment will not have a personal interest and will not need to register an interest. This is because he or she will not be a member of the charity nor in a position of general control or management. This type of trustee can only act on the lawful instructions of the charity trustees and in accordance with any provisions contained in the governing document.

**Please note:** Holding the legal title to a charity's property is usually all that holding trustees do. However, occasionally a charity's governing document may confer additional powers and responsibilities on a holding trustee. If you are a holding trustee who has any decision-making powers in the way the affairs of the charity are managed – either solely or together with other trustees you will be acting as a charity trustee and must register your interest as explained above.

If you do not have any of these decision-making powers, then you will not need to register your interest as an individual holding trustee.

## Personal interests that affect your well-being or financial position

---



It is important to remember that even when your role does not give rise to an interest that needs to be registered it may still be a personal interest that you need to declare. This is because a decision in relation to the business of your authority which relates or affects the charity might reasonably be regarded as affecting your well-being or financial position more than it would affect the majority of inhabitants of the ward or electoral division or authority's area affected by the decision.

For example, you might have a personal interest if you are on a local authority's management committee, a trustee of a non-charitable trust, or a holding trustee or nominee.

### **Case Example**

Haven Parish Council ("council") is the custodian trustee of Haven Village Hall. Councillor Jones is a parish council member and has been appointed by the Council to the governing body of the Village Hall Trust ("Charity Trustee"). The village hall is in need of repairs and the Charity Trustee applies for a council grant for the repairs. The council meets to consider the surveyors report and agree the funding. Does Councillor Jones need to declare any interest at the meeting?

- As a custodian trustee the council holds the legal title to the Haven Village Hall. The council will be able to act as a custodian trustee if the charity is for the benefit of the people living in the whole or part of its area. However the council can only act on the lawful instructions of the charity trustees of the Village Hall Trust. The council itself is not a charity trustee.
- Councillor Jones has been nominated on to the governing body of the Village Hall Trust by the council. Whether appointed directly by the trust or nominated by the council, Councillor Jones is a charity trustee. He must register this interest because he is a member and in a position of general control or management of a body to which he has been nominated by the council and also as it is a body which is directed to charitable purposes.
- When the matter relating to the grant application comes before the council, Councillor Jones will have a personal interest which he has registered and he must declare this interest at the meeting.
- As the matter affects the financial position of the trust, Councillor Jones may also need to declare a prejudicial interest and withdraw from the room if in his view an objective person would consider his interest as so significant that it is likely to prejudice his judgment of the public interest.

### **Find out more**

---

- 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)

**Published on 4th January 2010.**



Print this page



Search

Search

Text size: Increase • Decrease • Reset

- Home
- Guidance
  - The Code of Conduct
  - The local standards framework
  - Guidance documents & pages
- News
  - Latest news
  - Press office
  - View from the Chair
  - Articles about SfE
  - Newsletters
  - Site updates
  - Events
- Case information & reporting
  - Making a complaint
  - SfE case summaries
  - Case analysis
  - Monitoring returns
  - Local statistics
- Resources
  - Resource library
  - The Standards forum
  - Publications A-Z
  - Notable practice
  - Research
- About us
  - Who we work with
  - SfE Investigations
  - Our people
  - Corporate information
  - Useful links
  - Careers
  - Contact us
  - About this site

## Charitable Trustees and personal interests under the Code

Personal interests are covered by paragraph 8 of the Code of Conduct. This guide is for councillors who are trustees of charitable organisations. Its purpose is to enable you, a trustee of a charitable organisation, to understand when you have a personal interest.

### Appointment

A charity's governing document will usually set out how its trustees are to be appointed. This will vary between charities. They may be appointed directly by a charitable organisation or may be nominated by their local authority.

### Types of trustees



It is important to understand your role as a trustee in order to understand when you have an interest to register. There are generally two types of trustees;

- Charity trustees responsible for managing the decisions of the charity,
- Holding trustees or nominees who are only responsible for holding the legal title to the charity's land or investment.

## What interests do I need to register?

You must register your membership or position of control or management in:

- any body to which you are appointed or nominated by your authority
- any body directed to charitable purposes.

Therefore if you are a charity trustee you must always register an interest in the charity regardless of whether you have been appointed directly by the charity or nominated by your authority. This is a personal interest because you are a member and in a position of management over the charity. If you are a holding trustee or a nominee you will not be managing the decisions of the charity and, therefore, you do not have an interest to register but it may still be a personal interest (see below).

## When my local authority is the trustee

A corporation such as a local authority can itself have been appointed to act as a trustee of a charity, usually known as a corporate trustee. It may be appointed as a charity trustee, or a holding trustee or nominee, or as both.

If your local authority is itself the charity trustee, it decides within the scope of local government law, what structures should be used to reach decisions in its name as a charity trustee. For example, it may decide all the decisions are to be reached by the council or it may decide to delegate the decisions to a separate management committee. Whatever the structure employed, the individual councillors concerned are not themselves charity trustees and do not have an interest to register but it may still be a personal interest (see below).

## When do I have a personal interest?

It is important to remember that even when your role as a holding trustee or nominee does not give rise to an interest that needs to be registered or when you make decisions for your authority as the charity trustee, it may still be a personal interest that you need to declare at a meeting of your authority. This is when a decision in relation to the business of your authority relating or affecting the charity might reasonably be regarded as affecting your or a relevant person's well-being or financial position more than it would affect the majority of inhabitants of the ward or electoral division or authority's area affected by the decision.

## Find out more

- Please see the guidance on the **Charity Commission's Website**
- Please see our Online Guide to Charitable Trustees and declarations of interest under the Code
- Call our enquiries line on 0845 078 8181
- Email us at [enquiries@standardsforengland.gov.uk](mailto:enquiries@standardsforengland.gov.uk)

## Guidance

In this section:



- The Code of Conduct
  - Code Guidance
    - Guide for members
    - Online guides
    - Guidance FAQ
  - Code legislation
- The local standards framework

**Useful Tools:**

- ▶ [Print this page](#)
- ▶ [Follow our RSS Feed](#)
- ▶ [Bookmark or Share this page](#)
- ▶ [Send us feedback about this site](#)

Last Modified: 03 02 2010

[Contact us](#) • [Site map](#) • [Accessibility](#) • [Privacy policy](#) • [Freedom of Information](#) • [Careers](#)

© Standards for England 2010



## Disclosing Confidential Information

**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'?

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?

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

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?

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

- 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)

Published on 8 October 2009.

 [Print this page](#)

# Freemasons and the Code of Conduct

---

## What is a Freemason?

---

Freemasonry is one of the world's oldest secular, fraternal and charitable societies. The United Grand Lodge of England administers Lodges of Freemasons in England and Wales. When freemasons pay their annual subscription fee to their respective Lodges, part of the fee goes automatically to the Freemasons' Grand Charity. The United Grand Lodge distributes charitable grants to individuals and groups through the Grand Charity.

## Why do I need to declare my membership?

---

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

You have a personal interest in any business of your authority where either it relates to or is likely to affect any body directed to charitable purposes.

Overall, freemasons are not singled out by the Code. The Code applies to membership of any body that is directed to charitable purposes.

Under paragraph 8(1)(a) (ii) (bb) of the Code, freemasons who are members of the Grand Charity must register membership of the Grand Charity in their register of members' interests and, where appropriate, declare their membership of the Grand Charity as a personal or prejudicial interest before or during council meetings. If an individual lodge is one which has charitable status or could be described as a body directed towards charitable purposes, then membership of that lodge would also need to be registered.

Councillors who are freemasons will also need to declare membership of their lodge as a personal interest in a matter to be discussed if that matter would affect the member to a greater extent than the majority of other people in the area affected by the decision. The member will also need to consider whether that interest is prejudicial. For example, if the councillor's own lodge was making a planning application it would be necessary to declare a personal and prejudicial interest when that matter is considered.


The recent government decision that freemasons will no longer need to declare their membership when applying for positions on the judiciary does not affect the need to register membership as an interest under the Code.

## Find out more

---

- 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)

Published on 4th January 2010.

 Print this page





APPENDIX 1

## Gifts and hospitality

**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?

- 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?

- 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?

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

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

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

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

- 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?

- 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?

- 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?

- 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

- 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)

Published on 15 October 2009.



# Independent members

---

## Who is an independent member?

---

Independent members are members of standards committees with no link to the authority they are overseeing. They are important in helping increase public confidence in the local standards framework. They provide a clear signal that the standards committee is acting fairly and impartially. Independent members also bring a wider perspective from their outside experiences. A person can only be an independent member if they:

- have not been a member or employee of the authority for the previous five years, or
- are not a member or officer of that or any other relevant authority, or
- are not a relative or close friend of a member or employee of your authority.

## Attributes and skills of an independent member

---

Coming from outside the authority gives the independent member a different perspective and gives balance to the standards committee. Some of the attributes and skills expected of an independent member are:

- a keen interest in standards in public life
- a wish to serve the local community and uphold local democracy
- high standards of personal integrity
- the ability to be objective, independent and impartial
- sound decision-making skills
- questioning skills
- leadership qualities
- the ability to chair meetings.

## The process of selecting an independent member

---

The position of independent member will be published in at least one local newspaper and in other similar publications or websites.

Each authority will have slightly different procedures for the recruitment of independent members but all will have an application and interview process. The appointment of an independent member has to be approved by a majority of the members of the council.

Each authority decides how to select independent members and how long an independent member should sit on the committee. This period of time should be long enough for them to gain an understanding of the committee, the authority and its workings, but not so long that independence is lost.

## Independent members on multiple standards committees

---

An independent member can be a member of several standards committees, for example on county and district committees. Independent members may also be temporarily appointed to another standards committee to consider a particular assessment, review or hearing or for a particular period of time. For example, an independent member can be appointed to a neighbouring standards committee for a short period in situations where a permanent member is unwell or if there is a conflict of interest.

## Reappointment of independent members

---

Standards for England recommend independent members should serve no longer than two four year terms, but this is at the discretion of each authority.


Independent members cannot be automatically reappointed, and must go through a recruitment process.

## Find out more

---

- 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)

**Published on 4th January 2010.**

 **Print this page**

## Lobbying

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

### What is lobbying?

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?

#### 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

- 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)

Published on 28 October 2009.

 Print this page



## **Notifications to parish and town councils concerning complaints about their members and the Standards Committee (England) Regulations 2008 (the 2008 Regulations)**

---

The 2008 Regulations make it clear that parish and town councils must be given notification that a complaint concerning one of their members has been assessed. After that, unless the initial assessment sub-committee decides to take no action on the complaint, the parish or town council must then be informed of certain significant subsequent steps taken in dealing with that complaint.

### **What information should be received?**

---

Where a sub-committee of a standards committee meets to assess an allegation or to review a decision it must send in writing to the parish or town council concerned the main points considered, its conclusions, the reasons for its decision and may name the member unless to do so is not in the public interest or would prejudice an investigation. The decisions are whether to investigate the allegation, or whether to take some other action in relation to the alleged behaviour.

A parish or town council should also receive notification after a standards committee meets to consider the report into an investigation and whether to accept a finding about whether a councillor has breached the code of conduct or not. They should also receive notification of the outcome of a hearing and reasons for it, if one is held.

### **When should notifications be sent?**

---

The duty to give notifications has no specific time frame. The general rule is that notification should be given as soon as is reasonably practicable. However, Standards for England recommend that notification be sent out within five working days of the decision being made for most decisions and within two weeks of any hearing being concluded.

### **The purpose of notifications**

---

As a parish or town council you will be given these notifications to inform you of a case against one of your members and to keep you informed of significant events as the case progresses. This is important so that you have time to prepare or preserve evidence relevant to the complaint. You will also be able to make appropriate arrangements between the member and an employee where the complaint has been made by the employee. The rationale of the notification is to facilitate the standards committee's action, not to start new action within the parish or town council.

### **What to do when you get a notification**

---

Each council needs to consider what it can lawfully do with the notifications it receives. Parish or town councils should consider putting in place protocols that deal with:

- access to information
- sharing of information
- how various legal obligations are met including those under the general law of confidentiality, the Freedom of Information Act and the Data Protection Act.

## Notification procedures

Standards for England recommend that each parish or town council adopt procedures about how to deal with notifications. The clerk should then notify the monitoring officer of these procedures once they have been implemented so that the monitoring officer knows who to send the notifications to. The rules should clearly set out the limits on what information each member, employee and the public are able to receive about each complaint.

They should:

- Ensure that if the council is to be informed of a notification it is normally done by sending out an information item for members, rather than including the notification on the agenda of a council meeting.
- Choose a nominated employee (usually the clerk) and select a council committee to deal with and be informed of such notifications when they are received.
- The nominated employee and the committee should, if required to discuss the notification at a council meeting:
  - draft the summonses and agendas so the identity and subject matter of the complaint are not disclosed
  - ensure that any background papers are not made public
  - ensure that the public and press are excluded from meetings where appropriate
  - ensure that the minutes of meetings are written so as to preserve confidentiality
  - make appropriate arrangements, where the complainant is an employee, between the employee and the subject member.
- Take into account who will deal with providing further evidence or information needed by the standards committee about a complaint, be it the nominated employee or a member of the selected council committee.

By having appropriate arrangements in place your parish or town council will ensure that the rights of all concerned in a complaint will be considered. They will also ensure that complaints are dealt with lawfully, effectively and fairly, and will identify only those who need to know or are entitled to know certain information at the various stages of a complaint.


## Find out more

- 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)

**Published on 4th January 2010.**

.....

.....

 Print this page





## Personal and prejudicial interests

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

### What is a 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 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?

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?

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?

---

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

---

- 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)

**Published on 27 October 2009.**

 **Print this page**



## **The role and appointment of parish and town council representatives to the standards committee and the Standards Committee (England) Regulations 2008 (the 2008 Regulations)**

---

Paragraph 4(2) of the 2008 Regulations states that, 'where an authority is a responsible authority, it must ensure that at least two members of the standards committee are members of parish councils for which it is responsible, who are not also members of the responsible authority.'

Paragraph 7(4) of the 2008 Regulations states that, 'where a meeting of a standards committee, or sub-committee of a standards committee, is convened to discharge any function specified... relating to a member or former member of a parish council, no decision may be taken unless at least one member of a parish council for which the authority is the responsible authority, is present when such matters are being considered.'

### **The role of parish representatives**

---

Parish representatives can be involved in any case being considered by the standards committee. However, the 2008 Regulations make it a requirement that any sub-committee or standards committee meeting that makes any decision on a case concerning a parish councillor has to have a parish representative.

Having a parish representative on cases about parish or town councillors ensures that the standards committee has a member with experience and understanding of local councils. They also bring with them knowledge about local issues which is helpful when assessing parish cases.

### **The best structure for a responsible authority's standards committee**

---

Although the legislation states that a standards committee of a responsible authority must have at least two members that are parish councillors, Standards for England recommends they have three and that at least two are from different parish councils.

### **Why is it important to have three parish representatives?**

---

Having three parish representatives on the standards committee of an authority will ensure that cases concerning parishes can be considered and dealt with in a timely manner. It ensures there are sufficient parish representatives to hear a case at all stages; even in the instance where one of the representatives is conflicted out, sick, on leave or otherwise unavailable.

In cases where a standards committee only has one parish representative who is conflicted out of dealing with a case, the authority will have to appoint a new parish representative before continuing with the case. The 2008 Regulations do not make it possible to borrow a parish representative in the way they do independent members.

### **Appointment of parish representative**

---

Your authority must decide how to recruit and appoint parish or town council representatives. Your parish and town council representative should have the trust of town and parish councils in your area, so you should involve them in the selection procedure.

If you are finding it difficult to find a parish or town council representative, your local county association of local councils may be able to help you. For example, the county association may be able to give you a list of possible candidates. They may also be prepared to conduct an election process for you.

This process should receive the support of the parish and town councils in the area and show that you want to appoint standards committee members in a fair and open way.

**Note:** Not every parish or town council in a district area has to have an appointed standards committee member.

## Find out more

---

- 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)

**Published on 4th January 2010.**



Print this page



# 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.**

The Standards Board for England  
Fourth Floor  
Griffin House  
40 Lever Street  
Manchester M1 1BB

Enquiries line: 0845 078 8181  
Minicom: 0161 817 5449  
[enquiries@standardsboard.gov.uk](mailto:enquiries@standardsboard.gov.uk)

[www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)



the  
**Standards Board**  
for England

Confidence in local democracy

---



## APPENDIX 2

## Essex County Council

Case no. GDE06046  
Member: Councillor Lord Hanningfield  
Authority: Essex County Council  
Date received: 18 Jun 2009  
Date completed: 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 2008, 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.

#### 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.



APPENDIX 3

## Plymouth City Council

Case no. ODC00000 and O0001  
Member: Councillor Tudor Evans  
Authority: Plymouth City Council  
Date received: 13 Jul 2009  
Date completed: 05 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, I 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.

#### 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)".

 Print this page