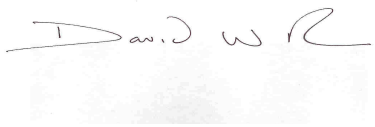
Public Document Pack

Standards Committee

Wednesday, 1 November 2006 at 3.00p.m. Committee Room 1, Runcorn Town Hall



Chief Executive

COMMITTEE MEMBERSHIP

Mr William Badrock (Chairman)	
Parish Councillor Ronald Crawford	
Mr Tony Luxton	
Councillor David Lewis	**Conservative**
Councillor Stan Parker	**Labour**
Councillor Stephen Pearsall	**Labour**
Councillor Linda Redhead	**Liberal Democrat**
Councillor Mike Wharton	**Labour**

Please contact Lynn Cairns on 0151 471 7529 or e-mail lynn.cairns@halton.gov.uk for further information.
The next meeting of the Committee is on Wednesday, 10 January 2007

ITEMS TO BE DEALT WITH
IN THE PRESENCE OF THE PRESS AND PUBLIC

Part I

In accordance with the Health and Safety at Work Act the Council is required to notify those attending meetings of the fire evacuation procedures. A copy has previously been circulated to Members and instructions are located in all rooms within the Civic block.

Agenda Item 3

REPORT TO: Standards Committee

DATE: 1st November 2006

REPORTING OFFICER: Strategic Director Corporate & Policy

SUBJECT: Annual Assembly of Standards Committees

WARD(s): Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To provide a report back to the Committee on the Annual Assembly of Standards Committees to be held at Birmingham on the 16th and 17th October.

2.0 RECOMMENDATION

2.1 That the report be noted.

3.0 SUPPORTING INFORMATION

3.1 The Chairman, Cllr Wharton and the Council Solicitor will be representing the Committee at the Annual Assembly in Birmingham. Any information in relation to the future development and direction of the ethical agenda in local government will be reported to the Committee at the meeting.

4.0 POLICY FINANCIAL AND OTHER IMPLICATIONS

4.1 None.

5.0 RISK ANALYSIS

5.1 Not applicable.

6.0 EQUALITY AND DIVERSITY ISSUES

6.1 None

7.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

7.1 None.

REPORT TO: Standards Committee

DATE: 1st November 2006

REPORTING OFFICER: Strategic Director Corporate & Policy

SUBJECT: Training Update

WARD(s): Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To update Members of the Committee on training activity.

2.0 RECOMMENDATION

2.1 That the report be noted.

3.0 SUPPORTING INFORMATION

3.1 The Council Solicitor conducted a training session for Councillors on the Code of Conduct on the 26th September. The session was attended by 11 councillors and was generally well received (see feedback attached). All of the most recent intake of councillors attended.

3.2 In relation to the proposed away day for the Standards Committee and the proposed appeals training, further details will be given at the meeting.

4.0 POLICY FINANCIAL AND OTHER IMPLICATIONS

4.1 None.

5.0 RISK ANALYSIS

5.1 Not applicable.

6.0 EQUALITY AND DIVERSITY ISSUES

6.1 None

7.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

7.1 None.

SUMMARY

Halton Borough Council
Elected Member Development Programme
Course Evaluation Form

Section 1 - Personal/Course Details

NAME	
COURSE TITLE	**Code of Conduct**
DATE	**26th September 2006**
VENUE	**Marketing Suite Municipal Building**
TIME	**5.30pm – 8.30pm (Refreshments at 5pm)**
COURSE TUTOR	**John Tradewell**

Section 2 – Post-Evaluation

1	Was the course relevant to your needs?	Yes x 10
2	Were you able to participate?	Yes x 10
3	Were the experience, knowledge and skills of the trainer satisfactory?	Yes x 10
4	Were the venue and admin/domestic arrangements satisfactory?	Yes x 9 /No x 1 (wanted more coffee)
5	Was the pace of the course:	Too slow x 0.5 Just right x 8.5 Too fast x1 (But only because it couldn't be any other way)

PTO

SUMMARY

Section 2 - Continued

6 - Any comments on the course materials and development activities used?

- *Useful to brush up on the aspects of Code of Conduct.*
- *Very useful 'cook's tour' through a legal minefield.*
- *Appropriate to the training.*
- *Taught me to think before I speak, because of the possible pitfalls, and the integration of the three parties was a good advantage.*
- *Thoroughly prepared and comprehensive.*
- *Good wide range of knowledge/ scenarios helped with course material, making content of course easier to follow.*
- *Well presented.*
- *The information pack given will act as a reference were I can revise back to.*

7 - Please circle **five words** which best describe the course for you:

well tutored x 7	professional x 5	insightful x 2	well presented x 6
rushed	good handouts x 2	interesting x 4	motivating
boring	intellectual	nothing new	helpful x 6
participative x2	hard work	basic	disorganised
interactive x 3	exciting	irrelevant	too long
waste of time	stimulating x 2	exhausting	refreshing
practical x1	valuable x 5	thorough x 1	

8 - What did you learn from the course that will contribute to your role as an Elected Member?

- *If in doubt take advice.*
- *It has enabled me to have a more sensitive understanding of this issue.*
- *The need to think carefully before each meeting as to potential breaches.*
- *Quite a lot, it is obvious that a Councillor needs to be whiter than white and above normal standards of conduct.*
- *Refreshed current knowledge.*
- *In particular the proposed changes in the Code as they will affect new Members.*
- *Clarification on potential issues that may come up as a Councillor.*
- *Knowing boundaries to work within.*
- *To use boundaries guidance.*
- *It will make me more responsible for my actions, aware of pitfalls and danger areas I could become subject to.*
- *I now have a better understanding about the Code of Conduct and what is expected of me.*

9 - Are there any changes you could suggest to enhance the effectiveness of the course?

- *Role Play.*
- *Divide the scenarios up – to enable them all to be covered effectively.*
- *Provide some examples with the "Answers" in advance of the course.*
- *Problems with computers and e-mails.*
- *More detail.*

10 - Have you any further comments?

- *Should be compulsory for all Councillor s to attend.*
- *Very good course.*
- *Enjoyable.*
- *Leads one to worry about the burden of this present system on ordinary members.*
- *I felt very comfortable with the way the tutor presented this course,*
- *Regardless of the individuals experience, all Cllrs should revisit this type of training.*
- *Really enjoyed,*

SUMMARY

REPORT TO: Standards Committee

DATE: 1st November 2006

REPORTING OFFICER: Strategic Director Corporate & Policy

SUBJECT: Standards Board Information Round Up

WARD(s): Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To bring Members of the Committee up to date with the latest news from the Standards Board.

2.0 RECOMMENDATION

2.1 That the report be noted.

3.0 SUPPORTING INFORMATION

3.1 I am attaching for members information a copy of a report entitled "A Question of Standards - Prescott's Town Hall Madness" produced by Owen Paterson MP and Gerald Howarth MP. The report is scathing of the whole ethical standards agenda in local government and recommends the abolition of both monitoring officers and the Standards Board. As this report has generated a degree of media interest I felt that the Committee ought to see it, together with the Standards Board's response to it.

4.0 POLICY FINANCIAL AND OTHER IMPLICATIONS

4.1 None.

5.0 RISK ANALYSIS

5.1 Not applicable.

6.0 EQUALITY AND DIVERSITY ISSUES

6.1 None

7.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

7.1 None.

A Question of Standards

Prescott's Town Hall Madness

A Cornerstone Paper

by Owen Paterson MP and Gerald Howarth MP

Strictly embargoed: 4 September 2006

Executive summary

In the past few years local government in England and Wales has been through an extraordinary revolution. Instigated by John Prescott and the Office of the Deputy Prime Minister, local councillors have become subject to a draconian new system of regulation through a new "Code of Conduct". This is enforced at national level by the lavishly paid officials of the Standards Board and at local level by "monitoring officers" employed by each council.

This new regime has drastically curtailed Councillors' right to free speech and their ability to represent the views of their electors. This undermines principles and practice of local democracy more than any previous act of central government. Its effect has been to:

- deprive councillors of the right to speak for the communities which elected them
- create a climate of fear in our town halls and council chambers
- transform the relationship between councillors and officials
- poison relations between councillors and within councils generally
- cut off councillors from their electors to a degree unprecedented in the history of local government.

In this report we record some of the bizarre and highly damaging effects of this revolution. These were first drawn to our attention by councillors in our own constituencies. As soon as these were made public, we were amazed by the deluge of cases brought to our attention by other MPs and Councillors throughout the country.

We find that not only is the Code of Conduct having a malevolent effect, but that the Standards Board has since amplified it, invoking a Common Law provision of "predetermination" which is preventing Councillors from expressing their opinions, or even campaigning properly during elections. Such is the effect of this provision that we and many of colleagues in the House have remarked that if the House Commons were to be "monitored" like local councils, it would soon be empty.

In our view, this report provides ample evidence that the new system for monitoring the standards of elected officials in local government is not working. Councillors and other elected representatives are uncertain what they can do; their public duties and responsibilities are heavily and wrongly circumscribed. They are no longer able properly to represent their constituents.

We recommend both the abolition of the Standards Board and monitoring officers. John Prescott's system is a technocratic response to a democratic system in decay. Instead, local Councillors must be responsible for raising a far higher proportion of what they spend locally which will galvanise people to vote. John Prescott's powers to bully and cajole local government from the centre have been wholly malign and thankfully, now that he has departed, we have an opportunity to reenergise local democracy.

A Question of Standards

A Cornerstone Paper By Owen Paterson MP and Gerald Howarth MP

Our work is important to everyone who cares about the maintenance of an open and honest system of local governance.

From the Standards Board website.[1]

Introduction

In the past few years, almost unnoticed by the public at large, local government in England and Wales has been through an extraordinary revolution.

At the instigation of John Prescott and the Office of the Deputy Prime Minister, local councillors have become subject to a draconian new system of regulation which has drastically curtailed their right to free speech and their ability to represent the views of their electors.

Mr Prescott's system involves subjecting councillors to a new "Code of Conduct", enforced at national level by the lavishly paid officials of a Standards Board and at local level by "monitoring officers" employed by each council, which has done more to undermine the principles and practice of local democracy than any previous act of central government.

Its effect has been to

- deprive councillors of the right to speak for the communities which elected them
- create a climate of fear in our town halls and council chambers
- transform the relationship between councillors and officials
- poison relations between councillors and within councils generally
- cut off councillors from their electors to a degree unprecedented in the history of local government

The bizarre and highly damaging effects of Prescott's revolution were first drawn to our attention by councillors in our own constituencies.

[1] http://www.standardsboard.co.uk/

In the Hampshire constituency of Aldershot one of us, as the local MP, called together a meeting of councillors with a developer to discuss an exciting proposal for the redevelopment of the town centre. The councillors were told by officials of Rushmoor Borough Council that their presence at the meeting would disbar them from taking part in any discussion of the issue in the council chamber. In 2005, a member of the same Council, representing a part of the area called North Camp, was disbarred from taking part in a discussion on the redevelopment strategy in his ward simply because he was a member of 'North Camp Matters', an association involving a wide range of local people. As this gave him an alleged 'prejudicial interest' he had to leave the room.

In Shropshire in 2005, North Shropshire District Council proposed to withdraw from running swimming pools in Ellesmere and Wem. Although these proposals provoked uproar in the towns affected, the councillors for the two communities, one Conservative, one Liberal Democrat, were told by council officials that new legislation on "prejudicial interest" would prevent them from taking part in any debates on the issue. This was despite the fact that they were so steeped in their communities that they both sat locally as Town, District and County Councillors. This particular incident was resolved when Owen Paterson sent the full text of the Statutory Instrument to the two Councillors, urged them to ignore the official advice and to speak on the topic which affected so many of their constituents.

Then, in September 2005 an enthusiastic young professional and mother, was elected as Conservative Councillor for Oswestry Borough Council, representing the village of West Felton. Shortly afterwards this village became involved in a planning dispute following the erection by Orange of a 50 foot tall telephone mast on the edge of the village which blocked the views of a number of residents.

The Parish Council and the villagers did not object to the idea of a mast in the village but did object to the chosen site which blights the view of the Berwyn Mountains and devalues their properties. These were not the only grounds for objection. Of the ten procedures set down in the planning rules, nine had not been complied with. She was approached by the Parish Council and asked to intervene.

She duly raised the matter with Oswestry Borough Council and was astonished to be told by senior officials at the council that because of the new legislation she was unable to speak up for the very people she was elected by, as the act of representing the views of her community gave her a "prejudicial interest". As a Councillor, they said, it was for her to support the council and not express the opinion of her electors.

When in the spring of 2006 each of these cases were reported in *The Sunday Telegraph*, by the columnist Christopher Booker, who was running a lengthy series of articles on the havoc being created by Prescott's "Code of Conduct", we were astonished by how many other MPs approached us at Westminster to report similar cases in their own constituencies. Mr Booker himself received

dozens of letters giving further examples from councillors in all parts of the country.

Almost the most startling instances of all came to light during the 2006 local council elections when senior council officials in Chester as well as Reigate and Banstead, wrote to all the candidates standing for election telling them that they must avoid mentioning any controversial local issues during their election campaigns. This was because, if they were elected, not only would it disbar them from taking part in any discussion of these issues in council but it might even lead to legal action against the council.

From this nationwide flood of evidence it is abundantly clear that the establishment of the Standards Board to enforce Prescott's Code of Conduct has had a devastating effect on our local democracy.

Although neither of us has been involved in local government recently and neither of us has a front bench responsibility for it, constituency cases have led us to take an interest. Correspondence, attending meetings and tabling Parliamentary Questions have encouraged us to expose the mayhem that Prescott has caused. As the Conservative Party has embarked on a wide review of its policies, we hope that those who finally decide the party's policies on local government will find this paper a useful contribution to their discussions. We believe that this has become a national scandal which has proved to be one of the most damaging blunders for which the present Government has been responsible.

Historical Background: Mr Prescott's Revolution

Although little noticed at the time, one of the most far-reaching provisions of the Local Government Act 2000, introduced by John Prescott at the time when he headed the huge department known as 'the Office of the Deputy Prime Minister' (ODPM), was the setting up of what was to be known as the Standards Board for England. This was formally established in March 2001 (and a similar system was set up by the Welsh Assembly).

Although created by an Act of Parliament, the Standards Board claims that it is completely independent of government and that its function is to maintain confidence in local democracy, as "a cornerstone of our way of life". This "can only be achieved when elected and co-opted members of local authorities are seen to live up to the high standards the public has a right to expect from them."

The Standards Board for England is thus responsible for promoting high ethical standards in local government and for investigating allegations that councillors' behaviour may have fallen short of the required standards.

With the Board came a new breed of officials known as 'Ethical Standards Officers' (ESOs). These were to become the chief enforcers of the new

system, working through the newly formed Adjudication Panel for England, an "independent judicial panel" to which the ESOs could refer complaints.

This system was reinforced by a network of "local standards committees", to which less serious complaints could be referred, while local enforcement was undertaken through "monitoring officers" appointed by each local authority.

In fact these officials had already been called into being under Section 5 of the Local Government and Housing Act 1989. This Act had provided for every principal authority to designate one of its officers as a monitoring officer whose task was to report to the authority on any proposal, decision or omission by the authority which has given rise to, or is likely to give rise to, a breach of the law.

The monitoring officers' function was also to give advice to councillors about 'personal or prejudicial interests', to conduct investigations into misconduct allegations and to present their findings to the local standards committee for its determination.[2]

Nevertheless this already existing system was given immeasurably more prominence and power by the 2000 Act, which required every authority to adopt a Code of Conduct, based on the statutory model, setting out rules which must govern the behaviour of its members. All elected, co-opted and independent members of local authorities, including parish councils, fire, police and National Parks authorities, are covered by the Code.

The Code of Conduct was set out in the Local Authorities (Model Code of Conduct) (England) Order 2001. This is, effectively, the executive instrument which the Standards Board ultimately enforces. Authorities were allowed to add their own local rules to the Model Code if they wished, although most adopted the Model Code without additions. They had until 5 May 2002 to adopt their own codes, after which the Model Code was automatically applied to those who had not adopted their own codes.

The Code of Conduct covers areas of individual behaviour such as members not abusing their position or not misusing their authority's resources. In addition there are rules governing disclosure of interest and withdrawal from meetings where members have relevant interests. Members are also required to record on the public register their financial and other interests.[3]

To a certain extent, the provisions of the Codes are unexceptional. Paragraph eight of the Statutory Instrument, for instance, deals with "Personal Interests", stating:

> A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be

[2] This is a summary of an answer to one of Owen Paterson's Parliamentary Questions. See: http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060309/text/60309w32.htm

[3] http://www.standardsboard.co.uk/TheCodeofConduct/IntroductiontotheCodeofConduct/

> given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend …

This, on the face of it, is exactly the sort of provision which might apply to Members of Parliament, as indeed is paragraph 10, on "Prejudicial Interests". This states:

> … a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

With these provisions in place, the Standards Board, with a budget just short of £10 million, rising to above that in 2007, believes that "independent scrutiny of the behaviour of members of local authorities contributes to public confidence in local democracy."

To back it up, it was able to preside over a system that could apply a range of sanctions to the elected officials who it or the local monitoring officers called to task. The local standards committees can suspend members for up to three months, partially suspend members for up to three months, restrict their access to resources or censure them. It can also require members to take training on the Code of Conduct, take part in conciliation or apologise for their behaviour.

The Adjudication Panel for England has an even greater range of sanctions. It can disqualify members for up to five years or suspend them for up to a year. These penalties are, however, reserved for the cases involving the most serious misconduct, while most are referred to the local level.

The Board is also proud of its work. In its 2005-8 Corporate Plan,[4] it declares:

> In 2003/04 we handled over 3500 allegations; referred 1105 for investigation; raised our assessment threshold to focus on more serious cases; passed cases to tribunals which imposed sanctions on over 200 members who had breached the Code of Conduct; increased the number of our staff with local government experience; supported the work of standards committees in the first 43 local hearings; advised government on draft regulations for the conduct of local investigations; and appointed a new chief executive. In addition, our Board was reappointed by the ODPM.

Also from the 2005-8 Corporate Plan, the Board was at pains to point out that it was not going to allow itself to be used as "a political football" and nor did it see its role as refereeing quarrels between members. Additionally, it declared:

[4] http://www.standardsboard.co.uk/Aboutus/Plansandpolicies/filedownload,223,en.pdf

> The Board also recognises that members have a political platform from which to defend themselves against political attack. As a result, the referrals threshold for bad behaviour towards another member is higher than that for similar conduct directed at officers or members of the public. As a general rule, ill-considered or rude language between members and dubious or arguable claims in political leaflets are unlikely to be referred for investigation unless the alleged conduct is particularly offensive or forms a pattern of behaviour.

Nevertheless, the system has taken its toll on elected members. Between September 2003 and March 2005:

• members were found to have breached the Code of Conduct in 78 (93%) of the hearings
• most of the hearings resulted in some kind of sanction – standards committees recommended a penalty in 72 cases (86%)
• 31 members were censured for their misconduct (37%)
• 41 members were partially or completely suspended for between one week and three months (48%)
• eight members were suspended for the maximum period of three months, with another three members given conditional suspensions for three months
• three members were partially suspended for one, two and three months respectively

Some of the suspensions were conditional, dependent on whether members took action to remedy their misconduct. For example, four parish councillors were suspended for a month unless they agreed to take training within a six-week period. Another parish councillor was suspended for ten working days on the condition that the suspension would end if she provided a full written apology to the chairman of the parish council and the monitoring officer.

About one-seventh of the hearings involved alleged failures to treat others with respect. Just over a quarter included alleged disrepute but these often overlapped with other alleged breaches of the Code of Conduct. So some members who failed to treat others with respect also brought their offices or authorities into disrepute. Similarly, alleged attempts to secure an improper advantage or disadvantage and alleged failures to register interests were often considered alongside other allegations. A small number of cases involved the disclosure of confidential information, the misuse of the authority's resources and the withholding of information to which the public were entitled.

Theory versus Practice

From all the official documentation, it might sound as if Mr Prescott's new rules are working well, to enforce an eminently reasonable system. However, as always in politics it is wise to measure the theory behind any proposal against the realities of how it operates in practice.

The first complaints about the Code of Conduct began to be heard from councillors even before it came into force. These centred on the new rules defining what constituted a 'personal interest'. Parish councillors up and down the land were affronted to discover that they were expected to declare any gift or hospitality they received of a value more than £25. Could it really be true that if they were innocently taken out to dinner by friends and the bill came to more than £25 a head, then this must be solemnly reported to the parish clerk?

So nitpickingly absurd and condescending did some of the rules drawn up by Mr Prescott's officials seem, that hundreds of affronted parish councillors resigned rather than submit to what they considered to be a needless indignity wholly irrelevant to their conduct as honest and responsible servants of their community.

Once parish councillors had got over the shock of these initial difficulties, however, many soon discovered that the new rules on what constituted a 'personal' or 'prejudicial interest' had turned the everyday conduct of their council activities into something of a minefield. When, for instance, the chairman of Glen Parva Parish Council in Leicestershire proposed that a grant of £300 should be made to a village club for retired people[5], two members, Councillors Button and Pearce, "declared an interest" as club members. Consequently, they did not speak or vote on the matter. Simply because they had not then left the room, an anonymous complaint was made to the Standards Board that they and two other councillors were in breach of the rules.

The resulting investigation lasted nine months, culminating in a full hearing involving 15 people including lawyers, district councillors and a senior "enforcement officer" of the Standards Board (salary £61,000). The hearing lasted four hours, including a free lunch. All four Glen Parva councillors were found guilty and sentenced to a course of "training" in how to follow the rules. The whole charade cost tens of thousands of pounds.

The Standards Board had issued a pamphlet encouraging members of the public to complain about councillors' conduct and reminding councillors themselves of their duty to report on misconduct by each other. The booklet twice underlined that complaints could only be made about councillors, not about officials, even those who thought it sensible to spend thousands of pounds of public money investigating a wholly innocuous grant of £300.

Later it emerged that the officials who policed the Code for the Standards Board, the army of "Ethical Standards Officers", were each being paid a salary of £61,000 a year.[6] These officials, it seemed, were fuelling the considerable mayhem that was now developing in town and village halls, not least since one of its effects, contrary to the Standards Board assertions, was to incite councillors to complain about each other's conduct.

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[5] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2004/05/09/nbook09.xml
[6] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2004/06/13/nbook13.xml

Not untypical of these was an incident reported in *The Coventry Evening Telegraph* on 16 May 2005, where Councillor Ann Lucas was accused of repeatedly swearing in a foul manner and making other rude remarks in three meetings of Coventry City Council. This triggered a complaint from Cllr Hunter to the Standards Board to the effect that Cllr Lucas had failed to treat her with respect, discriminated against her and had brought the council into disrepute. The ever-zealous Standards Board decided to investigate her claims.

More problematical was a three-year long drama which unfolded in Telford and Wrekin, Shropshire. A Conservative councillor, Lt Col Denis Allen, formerly chairman of Wrekin Conservatives, had publicly accused the Labour-dominated council of "double standards".

This had so upset the council leader, Phil Davis, described as "a considerable luminary in Labour local government circles", that he had formally complained to the Standards Board, alleging that Cllr Allen had brought his council into disrepute. After a year-long investigation, the Board's officials referred the judgement of Councillor Allen's behaviour back to the same Council he was accused of defaming.

The drama had begun in 2001 when two Telford and Wrekin Councillors had been caught breaking the law. One, a Labour councillor, was found to have been regularly making fraudulent expense claims, amounting to more than £1,000. The other, a Conservative councillor, had been found, after voting on the Council's annual rate, to have unwittingly been £37 in arrears with his council tax.

Councillors and officials did not formally report the Labour councillor to the police, who agreed that it was acceptable for the council to deal with the crime internally. Eventually the miscreant resigned but as soon as the Tory councillor's offence came to light, Telford and Wrekin called in the police. Only after investigation by the Crown Prosecution Service was the matter dropped.

When a Tory councillor then asked Cllr Davis to explain what procedures had led to the decision not to report the Labour councillor for criminal investigation, he was subjected by several of the Labour group to ridicule. Cllr Allen then wrote a letter to *The Shropshire Star*, pointing out that the contrasting response to the two cases seemed to show the Council to be operating "double standards".

His letter, according to a first hand report, provoked "mayhem". First, Telford and Wrekin's chief executive was so incensed that the letter mentioned his name in connection with the affair that he ordered Cllr Allen to sign a five-page "grovelling" apology. When Cllr Allen said he was only prepared to apologise for a technical breach of protocol in naming him and then wrote a further letter to the press, Cllr Davis lodged a formal complaint with the

Standards Board that Cllr Allen had brought the council and himself into disrepute.

On 16th June 2003, Cllr Allen was interviewed by Emmanuel Acquaah of the Standards Board for England. A transcript of their exchanges reveals an almost comical lack of mutual understanding, as Cllr Allen tried to explain what he meant by "double standards", while the official solemnly tried to explain how the council had correctly followed all the required procedures.

After considering the case, the Standards Board ruled that Cllr Davis's complaint against Cllr Allen had to be ruled on by Telford and Wrekin Council's own local standards committee which meant that Cllr Allen was to be judged by a tribunal of his fellow-councillors.

As Cllr Allen put it in a letter to the Ethical Standards Officer who heard his case, he could not understand why it rested with a group of councillors, rather than the police, to decide whether or not one of their own number should face prosecution for committing a crime.

"I am aware," he wrote, "that the Deputy Prime Minister can assault a member of the public and be immune to prosecution. It would now appear that the immunity to prosecution bestowed by membership of the Labour Party applies to councillors as well."

By 12th September 2004, the situation had developed to the point where another report[7] was pointing out that it had become "increasingly baffling" for those prepared to serve their communities in this way to know what it is safe to say.

Members of South Cambridgeshire District Council, for instance, had been told by their monitoring officer, Chris Taylor, that they might be disqualified from discussing the siting of a mobile phone mast if they themselves used a mobile phone. Neither could they pronounce on a park-and-ride scheme if they drove a car nor speak out against a proposed wind farm if they had previously made known their doubts about wind power.

This had sparked serious concern among South Cambridgeshire Councillors (five of whom were then currently the subject of complaints to the Standards Board), following an incident involving a long-serving member of the council, Robin Page, a farmer and writer who runs the Countryside Restoration Trust.

No issue was more sensitive in South Cambridgeshire then than the pressures for new development, not least through pressure from the ODPM's house building policy. The area faced the prospect of over two thousand new homes a year, including a new town of up to ten thousand homes.

[7] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2004/09/12/nbook12.xml

When Mr Taylor, as the council's legal officer, told councillors that they must not hesitate to voice the faintest suspicion that any of their colleagues might be allowing themselves to be unduly influenced by developers, Councillor Page echoed his concerns. "In my opinion," he told a committee, "the relationship between some councillors, some officers and some developers is far too close." Even if no money changed hands, "this could be interpreted as a form of corruption". Mr Page therefore indicated that a certain councillor might have been reckless in attending a "soiree" given by a local developer which was planning a controversial scheme that he had opposed.

When the councillor objected, pointing out that it had not been a "soiree" but merely a private meeting at the developer's office, Mr Taylor himself complained about Mr Page's conduct to the Standards Board. Their investigations have now lasted for more than a year. Aware that more of his fellow councillors are now the subject of complaints, Mr Page asked Mr Taylor for a clearer definition of what councillors are permitted to say.

Mr Taylor then set out his guidelines in a memorandum, including the suggestion that members with a mobile phone may consider themselves ineligible to discuss the siting of phone masts which he equated with using influence to get a relative on to the housing list. So convoluted were these guidelines that councillors were more baffled than ever as to what they could or could not say, although it appeared that Mr Taylor was arguing that they must remain "open-minded" even on issues on which they campaigned for election.

One councillor, who has asked not to be identified, declared: "In the old days this sort of thing was sorted out by councillors themselves. Now it is getting so Orwellian that we no longer know, if we speak our minds, whether we will be risking a year-long investigation or not."

The South Cambridgeshire saga was to continue into 2006 when the ODPM announced plans for a new town of 8-10,000 homes, Northstowe,[8] on land owned by English Partnerships, a body run by his department. It was to be the biggest single planning application ever submitted in the UK.

Yet the councillor for the community most immediately affected by these plans was told that, under the Code of Conduct, he could not in any way represent the views of his electors. He must leave the room whenever the plans were discussed and it would be an offence for him even to discuss the subject with other councillors.

This could not have been a clearer example of the way the Code of Conduct was being used to suppress democracy in local government, not least because Councillor Alex Riley was elected to South Cambridgeshire council in 2004

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http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/03/05/nbook05.xml&sSheet=/news/2006/03/05/ixhome.html

specifically to voice the concerns of the villagers of Longstanton over the proposal for a new town next to their village.

Cllr Riley was astonished to be told that he would in no way be permitted to put the views for which his neighbours elected him. This was repeatedly made clear to him by Colin Tucker, now the council's monitoring officer.

Mr Tucker ruled that, because Cllr Riley lived near the site of the new town and has made his concerns about it known, this gave him a "personal and prejudicial interest", which not only excluded him from any discussion of it in the council but barred him from even mentioning it to fellow councillors.

A series of complaints were then lodged with the Standards Board, not only against Mr Riley but other councillors. Councillor Riley's latest "offence", for which he had been threatened with disqualification to act as a councillor anywhere in the country, was to e-mail other councillors asking them for help in rectifying an inaccurate entry in the minutes of a council meeting relating to Northstowe, from which he had been barred.

So concerned had Councillors become about this issue that, in January 2006, South Cambridgeshire's chief executive, John Ballantyne, sought advice from David Prince, the chief executive of the Standards Board. He explained that many people felt Mr Tucker's interpretation of the Code of Conduct had been "over-zealous" and were troubled by the fact that Mr Riley was not being allowed to represent the views of his electors. He enclosed a QC's opinion, commissioned by Mr Tucker, which supported Mr Tucker's view and suggested that one option would be for Cllr Riley to resign.

Mr Prince conceded that similar concerns about "over-zealous interpretation" had been expressed "up and down the country" but confirmed that Mr Tucker's reading, "far from being over-zealous", was fully supported by the Standards Board.

Ironically, Mr Prescott's department then took to boasting on its website that the new town will contain 10,000 homes. The Office of the Deputy Prime Minister was taking it for granted that its scheme would be approved by its own inspector, while the councillor chosen by the local community to oppose it had to remain silent.

The controversy struggled on until May 2006,[9] when Cllr Riley was taken by the Standards Board for England before an independent tribunal; after listening to a long list of charges, they decided not to impose any punishment other than that he should attend a "training course" on Mr Prescott's code.

The issue was raised in the Commons by his MP, Andrew Lansley, leaving the minister, Phil Woolas, to read out forlornly what he supposed to be the law barring councillors speaking on issues in which they have a "prejudicial

[9] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/05/07/nbook07.xml

interest". All he could find was a passage disbarring anyone who supports or assists a planning application. There was nothing to disbar a councillor from opposing a proposal.

In other words, try as he might, the minister only seemed to confirm that all his hundreds of "monitoring officers" had not even understood the law they were meant to enforce.

The most extraordinary case has recently arisen in Shropshire. North Shropshire District Council suggested imposing parking charges in car parks in three of the main market towns. This was a matter of huge interest to nearly all local people and has provoked a lively debate. Some claimed that the fragile economies of the towns would be damaged by parking restrictions, some worried that cars were being dumped all day blocking space and others argued that valuable funds could be raised for public transport.

Councillors had widely differing views, reflecting the vigorous discussions amongst their constituents. However, public debate was discouraged. Councillors were encouraged to attend a training session given by a monitoring officer from Milton Keynes, arranged some time earlier. This outlined the dangers of making decisions prior to meetings without all the relevant information. Councillors were also sent a circular letter by a senior official explaining how the new legislation affected the local debate on car parking:

> When the Council is making a decision on whether to impose charges on its car parks and if so which ones and how much it should charge, it is exercising a discretion. Whenever the Council does this you as a Member of the Council should under no circumstances reach a final conclusion on the matter before you come to a decision on it. This is the common law concept of predetermination that has always applied to local authority decision-making and is also enshrined in guidance on Members Code of Conduct issues by the Standards Board for England.
>
> Members of the District Council should therefore resist making comments in public forums that could be interpreted as your having already committed to making a particular decision about the introduction of the revised car parking enforcement regime. If this could be interpreted from the comments you have expressed and you subsequently speak at a Council meeting at which the decision is being taken, I do not believe that the decision would be flawed. However should you then proceed to vote on the matter the decision could be open to a legal challenge.

However, Shropshire councillors were not alone in being exposed to this type of absurdity; they were now sharing the problem with hundreds of others, many of whom had written to us and other Members of Parliament. By 12th March 2006,[10] we were remarking that if the House Commons was "monitored" like local councils, it would soon be empty.

[10] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/03/12/nbook12.xml

Perversely, the Standards Board was also proving that it was far from perfect itself. As early as 2002, it had responded to a complaint by a Labour member of Islington Borough Council against the conduct of five Liberal Democrat councillors. This turned out to be the board's longest ever and most expensive investigation costing £1.1 million. After three years the five councillors were cleared of all charges but only after their efforts to defend themselves had landed them with personal legal bills totalling £350,000. Eventually in 2006 the Standards Board offered them a formal apology.

This exposure to financial peril was underlined by another case involving the leader of West Norfolk council John Dobson. He had been forced to take legal advice which enabled him to reverse a Standards Board ruling in favour of a complaint made against him, also by a political opponent. This left him with a bill for more than £23,000.

The outcome of Dobson's reversal demonstrated clearly that the Code was being used to enable politically and maliciously inspired complaints, bringing in the Standards Board's highly-paid Ethical Standards Officers to intervene in petty local squabbles.

Predetermination

The part played by these national officers was only part of the problem. Causing just as much confusion and dismay were the "bizarre" rulings by over-zealous local monitoring officers, that councillors could not even remain in the room during discussions of issues on which they are judged to have a "personal and prejudicial interest", even though these may well be the very issues on which they were elected.

When this began to attract unfavourable attention from MPs and journalists, the Standards Board came up with an ingenious new defence of the system over which it presided. In the summer of 2005 one of us (Gerald Howarth) had an exchange of letters with David Prince, the board's chief executive, over one of the cases cited in our introduction.

Several Rushmoor councillors had been instructed that they could not take part in debates on local planning issues because their participation in meetings on these issues outside the council chamber was ruled to have given them a "personal and prejudicial interest". When Mr Howarth persisted in questioning this, as undermining the principles of local democracy, Mr Prince insisted that the Board was "strongly of the view that councillors perform a vital role in representing people in their area". But he went on to claim that it was a "well-established principle of the common law" that "decision-making by public bodies should be approached with an open mind'.

What was remarkable was that his statement that this "rule against predetermination and bias", was quite "independent of the Code of Conduct". So, if they had previously given an impression that they had a view on an

issue, this in itself would be enough to prevent councillors taking part in a discussion of that issue, irrespective of the Code.

This was entirely endorsed by Sir Anthony Holland, describing himself as "Chair" of the Standards Board. In a letter to *The Sunday Telegraph* on 19 March 2006,[11] he insisted that, although the Code governed the conduct of council members, the Board also relied on "predetermination" as "a separate issue". Again he emphasised that this stemmed from common law, not the Code or the Standards Board. According to Sir Anthony, "It simply means that decisions shouldn't be made if people are not willing to consider the alternatives, i.e., they must not have closed minds."

The extraordinary aspect of this new tack was its assumption that it would be an offence under the common law for any local politician to express a view on an issue before it came up for debate in the council. Yet if this same principle was applied to MPs, who are supposed to be elected precisely because they have declared their "predetermined" view on a whole gamut of policies set out in their party's manifesto, not one of them would be allowed to enter the Commons Chamber.

A *reductio ad absurdum* of the Board's argument came during the 2006 council elections, when all candidates for election to Chester council were sent a letter by the city's monitoring officer Charles Kerry. This stated that any prospective councillor who had expressed a 'pre-determined' view on any issue could not, 'as a matter of law', take part in any decision relating to that issue. This covers 'any expression of opinion in any election material, newsletters, letters of press coverage'. The only way a candidate could refer to contentious issues, Mr Kerry advised, must be along the lines of "From what I know at the moment, I am concerned by...".

During the same campaign in Surrey there was much local anger over a plan by Reigate and Banstead council to close the local swimming pool and sports centre in order to sell off the land for housing. All the candidates were sent a letter by the council's chief executive, Nigel Clifford, warning them that they must not express any view on this proposal during the campaign because this would indicate that they had "closed their minds". They must wait until they had seen a report on the plan being prepared by Mr Clifford's officials.

The Borough of Rushmoor includes the Farnborough aerodrome, home of the famous air show. When the Ministry of Defence decided it was surplus to their requirements there was a proposal to turn it into an executive jet centre. Patrick Kirby stood for election as an independent at the local elections on a platform hostile to the proposition. He won but was promptly told that his predetermined position on the issue would debar him from membership of the key planning committee and indeed, from voting at full council. Although disagreeing profoundly with Cllr Kirby's view, Gerald Howarth has been

[11] http://www.telegraph.co.uk/opinion/main.jhtml?xml=/opinion/2006/03/19/dt1901.xml

highly critical of the Board and its agents for their shameful denial of Cllr Kirby's right to speak out on the very issue which won him his seat.

Closing down the debate

An even more serious example of how Mr Prescott's Code and the associated regime were giving unelected officials power to clamp down on legitimate political debate was one raised at this time in letters from councillors in many parts of the country. This was the charge that both officials and senior councillors were applying the new rules to operate a system of 'double standards'.

It was noticeable how the rules were all too often being used to exclude from debates councillors who opposed official policy because this supposedly gave them a "prejudicial interest", while members supporting their council's policy or ruling establishment seemed curiously immune.

One of many cases that came to light was when the North-East Regional Assembly earmarked a ward represented on Derwentside Council as suitable for more wind turbines, in addition to six wind farms already allowed in the area. John Pickersgill, the ward councillor, decided to organise a local referendum. Faced with the prospect of 17 more turbines, 80 percent of the residents voted, more than 80 per cent of them opposing the proposal.

Despite this exercise in local democracy, when Councillor Pickersgill tried to raise this in a debate on the assembly's regional planning strategy, he was excluded from the room as having a "prejudicial interest". However, it was deemed quite acceptable for the council's leader, Alex Watson, to speak in favour of the assembly's policy, even though he did not even think it necessary to declare that he was himself also the regional assembly's chairman.

When Mr Pickersgill raised this with the council's "monitoring officer", he was told that the leader had done nothing wrong. This seemed so anomalous that he reported the case to the Standards Board. An independent inquiry ruled that Councillor Watson was in breach of the Code after all. Sadly, Mr Pickersgill had become so disillusioned by the demoralising effect of the Code on his council that he nevertheless resigned in disgust.

In yet another example from South Cambridgeshire, one prominent councillor failed to declare a prejudicial interest or to leave the room during interviews with representatives of five charities funded by the council, even though she herself was chairman of one of the charities. The monitoring officer ruled that a complaint to the Standards Board would be "inappropriate" though no fewer than 11 complaints had been lodged against other councillors.

In Dorset, Richard Thomas, a town councillor in Shaftesbury known for frank criticism of the council's establishment, was driven to ask whether having had ten complaints about him lodged with the Standards Board by fellow councillors constituted a record. One investigation, which cost council taxpayers more than £20,000, was eventually found to be based on a false allegation and all the remaining complaints were eventually rejected or dropped.

Yet what was now being called "the reign of terror" continued. In Hastings, on 2nd April,[12] it was reported that a row had arisen when Councillor John Wilson chaired a discussion and voted on a planning application for a site only 80 yards from his home. Another councillor, David Hancock, protested that he should have declared an interest. This was because, the previous year, Councillor Hancock himself had been found guilty of breaching the Code of Conduct by failing to declare an interest when the planning committee was discussing an application for a site 700 yards from where he lived. The council's standards committee was obliged to consider Councillor Hancock's complaint, but voted, seven to one, that the hearing should be in secret. Only when the minutes were leaked to the local press did it emerge that Councillor Wilson had been cleared of any offence.

In Somerset, Paul Crossley, the leader of Bath & North East Somerset council, was a prime mover in a highly contentious plan to allow the University of Bath to extend over 55 acres of open space above the city, which are not only part of Bath's green belt but are also included in its World Heritage Site and an Area of Outstanding Natural Beauty. Yet it was Councillor Crossley who, in 2002, suggested that the university should be allowed to build on this site and who was now urging local residents to write in support of the plan.

Under the Code, this clearly constituted a prejudicial interest. Members of the Campaign to Preserve the Green Belt at Claverton Down lodged a complaint, pointing out that if the rules were applied consistently, he should have been barred from any discussion of the scheme. The council's monitoring officer refused to take any action against his council leader.

Towards the end of May 2006 a number of councillors were directly rebelling against the imposts of their monitoring officers. Councillors in South Hams, Devon and in County Durham voted unanimously that they deplored the Code of Conduct; they demanded their right to freedom of speech and to represent the views of their electors.

The most senior representative of local government in the country, Sir Sandy (now Lord) Bruce-Lockhart, chairman of the Local Government Association (LGA), the influential cross-party body representing 500 local authorities in England and Wales, chose to express the LGA's serious concern over the issue.[13]

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[12] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/04/02/nbook02.xml
[13] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/05/21/nbook21.xml

In a report entitled "Closer to People and Places", Sir Sandy and his colleagues, including his Labour predecessor Sir Jeremy Beecham, called on the Government "to ensure that councillors are not legally restricted from speaking out for their communities" on issues such as planning.

The LGA fell short of calling for the outright scrapping of the Standards Board. At least it called for an end to the pernicious anomaly whereby councillors were being forbidden to speak for their communities and even to express the very views they had been were elected to represent.

A system gone mad

The functioning of local authorities depends on two clear elements, the elected councillors who determine policy and the officers who implement it. The councillors also approve the budget, monitor the performance of their officers and approve their actions, especially where powers are delegated and the officers are permitted to make certain decisions without prior reference to the elected members.

The councillors themselves therefore perform two functions. First and foremost, they are elected representatives, voted in to carry out the wishes of their electorate. Secondly, but with equal force, the councillors are part of the management of a corporate body, jointly and severally liable for its conduct and its compliance with the laws which determine the powers and responsibilities of local authorities.

What is clear from the narrative is that the system set up by John Prescott and enforced by the Monitoring Officers and the Standards Board, has ignored the first function and concentrated entirely on the second. Councillors under the Prescott regime are corporate managers and must represent the Councils in much the same way as directors represent their companies.

Furthermore, the system introduces an anomalous situation where Councillors, who are theoretically in charge of their officers and accountable to their electorates for their actions, are now effectively held to account by officers who claim a higher precedence than the electorates. No longer are the voters in any way the arbiters of Councillors' behaviour. Their masters are the monitoring officers.

Here also, there has developed an insidious and unwelcome flaw in the system. The monitoring officers are appointed not by the Council as a whole but depending on the council, either by the chief executive alone or with the approval of one or other of the committees responsible for senior appointments. Evidence has been given by a number of councillors that appointments have been "rigged" and are quite often politically biased.

In some cases, the appointments have been made to suit the Chief Executive, whose politics are not necessarily the same as the ruling body on the council, or have been made by a "cabal" of senior councillors who have ensured that "their man" is in place to do their bidding. That this is the case is evident from the many accounts of partisan monitoring officers offered by councillors. What the system does not consider therefore is the ancient question, "*Quis custodiet ipsos custodes?*"

Then there is the issue of "predetermination" which is not in the Code but is invoked by the Standards Board and enthusiastically taken up by monitoring officers throughout the country. This would appear to negate the very basis of representative democracy. Voters, it would appear, cannot expect a councillor to hold fixed views on anything or to represent their views in the debating chamber.

Where the problem seems to lie is in a fatal confusion where councillors, as a collection of individuals, are taken to be the "Council". Thus, they are expected to behave in a corporate manner. In our system, however, it is only through the synthesis of a debate that a view can be reached and it is the adversarial system where opposing sides argue out an issue that allows decisions to be reached where the best way forward is often a matter of opinion.

The effect of "predetermination" applied to the Council as a whole, is that it must not take a fixed view on any issue until such time as it has been aired and voted upon through the democratic process. Without councillors taking fixed positions and arguing their cases there can be neither democracy nor good governance.

Furthermore, there has now arisen a fear of challenge by the Board and its agents which has had the effect of creating nervousness among councillors and officers. In Rushmoor, those councillors nominated by the authority to sit on the Board of Pavilion Housing Association have been disbarred from speaking, let alone voting, on matters to do with Pavilion when anything to do with the housing association comes before the council. So disillusioned have the council become that they have removed their councillors from the Pavilion board, thereby depriving the council of valuable input into the association.

A Resolution

This report provides ample evidence that the system for monitoring the standards of elected officials in local government is not working. Councillors and other elected representatives are uncertain what they can do; their public duties and responsibilities are heavily and wrongly circumscribed. They are no longer able properly to represent their constituents.

The central resolution to what is a crisis of local democracy, must be both the abolition of monitoring officers and the Standards Board. There can be no

place for a system whereby officials are able to hold elected councillors to account.

That leaves the need for a system to deal with Councillors who do break the rules. It is pointless expecting the electorate to sanction misbehaviour. Most times, voters will be unaware of the details of what are, in many cases, breaches of arcane rules and in any case elections are decided more often by issues unrelated to the performance of individual councillors.

There remain criminal sanctions for corruption and law-breaking, with investigations carried out by the police. The local government ombudsman has a vital role in bringing to the fore cases of maladministration and perhaps its remit could be strengthened, with less reliance on ex-local government investigating officers, to give it greater intellectual independence.

There is always provision for the councillors themselves, as a body or individually, to make representations through their political groups to the chief executive of any council, asking for one of his senior officers to carry out *ad hoc* investigations of the conduct of any councillor. The findings could then be dealt with through the normal political process. When it comes to sanctions for conduct which is not contrary to law, the electorate must be the final arbiter.

The central problem is that as long as voters are not engaged in the local political process, electoral sanctions are meaningless. The problem of checking councillors' behaviour, therefore, is the problem of local government as a whole. Such issues as reforming local government financing, with far greater local tax-raising powers and much less reliance on central funding, undoubtedly need to be re-examined.

Mr Prescott's system is a technocratic response to a democratic system in decay. It is addressing the symptoms and not the disease, in a system that requires more profound and fundamental reform. Abolishing monitoring officers and the Standards Board, therefore, will not solve whatever problems there are but then they were never the solution to the problem in the first place and have created even more problems. The supposed cure, if not worse than the disease, has not made it any better.

Local Government will breathe a huge sigh of relief now that the blundering John Prescott is tantalisingly close to the exit door. His natural instinct to bully and cajole local government from the centre has had a wholly malign impact. He has had his powers to interfere in local democracy removed and now is the time to unwind his legacy. We look forward to a full debate on the way local government should go, in which councillors themselves can take full part, unhampered by unaccountable monitoring officers and the machinations of Mr Prescott's Standards Board.

Part of that debate must be a means by which the process of local democracy can be re-energised, for that is really where the problem and the solution lies.

For instance, with our example of the Coventry councillor who swore in the chamber at her colleagues, would she survive in a system where the public took a keen interest in the proceedings of their local council and voted on the performance and behaviour of their representatives? Do we really need some vast apparatus of state to control such behaviour?

At the heart of the problem are two issues. Firstly that so much of local government finance is provided by central government, so that there is no direct relationship between the performance of councils and the amount of local tax charged. Secondly, so many of the duties and functions of local government are dictated by central government that local authorities at all levels are little more than paid agents of central government.

As a result, most people tend to the view that local elections are of little consequence and that not much will change, whoever is voted in. The feeble turnout in recent local elections is directly related to the reduction in the influence a local vote will have on local taxation and the performance of the local council. This continues through the terms of the local representatives, where little interest is taken of the day-to-day proceedings of councils and even local newspaper reporting is spasmodic and incomplete. Such is the situation that in our constituency post bags many of the complaints addressed to us should be more properly directed to local councillors, as they concern local authority issues. Yet, such is the lack of confidence in the local government system that many people make their MPs their first, not last, port of call.

If this is to change, local authorities must be given much more autonomy in how and to what level they provide services. Even where there are statutory provisions such as education and social services, local authorities must be allowed to determine the nature and scale of provision so that they are then answerable to their local electors rather than central government for delivery.

Changes such as these, in themselves, will not alter anything overnight but would certainly stop the slow death of local democratic government. It would also stop the steady haemorrhaging of high quality councillors who are fed up with the central interference, overregulation and lack of autonomy in local government. It is most certainly the case that fewer fresh people of high calibre are being attracted to local government service, not least because there is so little of importance to decide and little opportunity to have a real influence on local policy.

A return to true localism where local authorities have a large degree of autonomy and are responsible to local voters for their performance would transform local government.

The Standards Board and all it represents has been a disastrous move in the wrong direction. It is a centralising agency which diminishes rather than strengthens local government and puts far too much power in the hands of unelected officials. It is a drain on the taxpayer. It should be abolished without delay.

The Standards Board for England responds to the Cornerstone paper "A Question of Standards: Prescott's Town Hall Madness"

The Standards Board for England believes that the public has a right to expect high standards of behaviour from elected and co-opted members of local authorities. We believe that a lack of trust in elected officials undermines confidence in them, politics and ultimately our democracy. The Standards Board is responsible for promoting high ethical standards in local government, and welcomes debate as to how this might best be achieved.

The paper referred to above, which was recently published by the Cornerstone Group, identified five 'damaging' effects of the current ethical standards framework on local government. The Standards Board would like to clarify some misinterpretations in the paper – regarding our work and the Code of Conduct – that may have led its authors to reach these conclusions.

Each of the five effects identified are addressed below:

1. Deprive councillors of the right to speak for the communities that elect them

The paper argues that the Code of Conduct deprives members of the right to speak for the communities that elected them. However, this argument relies upon on a misinterpretation of what it means for a member to have either a personal or a personal and prejudicial interest in a matter, as opposed to holding a predetermined view. The paper cites the following example: that a monitoring officer advised members that if they owned a mobile phone, they would not be able to take part in discussions on the siting of phone masts in the authority's area.

The monitoring officer also advised that members who owned a car would not be able to take part in discussions on a proposed park and ride scheme in the area. The monitoring officer's advice stated above shows a misunderstanding over the personal and prejudicial interests provisions in the Code of Conduct. To clarify, a personal interest arises when the issue being discussed affects a member's well-being or financial position, or that of a friend or relative of theirs, more than others in the authority's area. No personal interest will arise where a matter affects the member, or their friend or relative, to the same extent as other council taxpayers, ratepayers or inhabitants of the area. So, for example, a member would not have a personal interest in the setting of the level of council tax or other measures that apply equally across the whole of the authority's area. If a member has a personal interest they can still remain in the meeting and vote.

In order to determine whether or not a member's personal interest is prejudicial, a member has to consider how a reasonable and objective observer with knowledge of all the relevant facts would view the situation and, in particular, how the circumstances are likely to impact on the member's judgment of the public interest. For a personal interest to be prejudicial, the interest must be perceived as likely to harm or impair the member's ability to

judge the public interest. The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. To constitute a prejudicial interest, there must be some factor that will positively harm the member's ability to judge the public interest objectively. If a member has a prejudicial interest they are required to leave the room while that item is being considered.

The issue of predetermination in terms of local authority members being able to take part in decision-making is a separate issue to a member having a personal or prejudicial interest in a matter. As the paper rightly states, predetermination is a common law principle. However, this is a legal concept that the courts have always applied to local authority decision-making, and it was therefore established well before the Code of Conduct, with cases going back to the 1940's, and is not altered by it.

2. Create a climate of fear in our town halls and council chambers

The paper states that the current system has created a climate of fear in our town halls and council chambers. The Standards Board for England commissioned research from MORI that has shown there is actually a high level of support for the Code of Conduct. This research revealed that 89% of officers and members surveyed from principal authorities agreed that members should sign the Code of Conduct, and that 78% agreed that maintaining high standards of behaviour of members is one of the most important issues facing local government.

The Standards Board is working hard to raise ethical standards among local authorities to improve public confidence in local democracy. Our work has laid the foundation for the government to be able to propose even greater access to locally based decision-making in conduct issues, as well as an overall move towards the local ownership of standards within local authorities.

3. Transform the relationship between councillors and officials

The paper argues that the current system has transformed the relationship between members and officers to the extent that officers have the power to clamp down on legitimate political debate by members. This argument was primarily aimed at monitoring officers. The paper appears to have misunderstood the role of the monitoring officer. Monitoring officers play a key role in promoting and maintaining ethical standards in local authorities, particularly in advising and training members on the Code of Conduct. However, it is local authority standards committees, made up of elected and co-opted independent members, who actually hold hearings into complaints that members have breached the Code of Conduct, and pass sanctions on members if they find that a breach has occurred.

Furthermore, our statistics from April 2006 to the present reveal that just 5% of allegations come from council officials, compared with 59% from the public and 34% from fellow councillors.

It should also be noted that it was the previous government, through the Local Government and Housing Act 1989, that made provision for the appointment of monitoring officers and placed a duty on local authorities to designate one of their officers for this role.

4. Poison relations between councillors and within councils generally

The paper makes reference to politically motivated allegations. We try to discourage such complaints and have been vociferous in this regard including releasing press statements and announcements at our annual conference. Part of our assessment of complaints includes considering whether the complaint is malicious, vexatious or otherwise misconceived. The Standards Board also keeps its referrals criteria under regular review in light of experience and feedback. Indeed, since April 2006, only 18% of the complaints we have received have been referred for investigation.

5. Cut off councillors from their electors to a degree unprecedented in the history of local government

A member's status means that they must give up certain rights that other members of the public may exercise. However, in relation to the impact of the Code of Conduct on members being able to represent their constituents, a member can still represent their constituents' views to a meeting if the member has a prejudicial interest and cannot attend themselves. The member can make written representations to officers or arrange for another member of the authority to represent those views.

However, the Standards Board for England does recognise that the Code of Conduct has restricted members' ability to act as community advocates. This is why we recommended to government, as part of the recent review of the Code of Conduct, that the rules around personal and prejudicial interests are clarified, to encourage greater participation while ensuring that decisions are made in the public interest.

Evidence from the Standards Board's own research suggests that much work needs to be done to improve the trust that the electorate has in local government. For example, in a face-to-face questionnaire survey of 1,027 members of the public, just 26% of respondents had a favourable opinion of local councillors. On balance more people say that local councillors only sometimes or rarely tell the truth (53%), than think they tell the truth always or most of the time (36%).

We believe that the public has a right to expect a high standard of ethical behaviour from their elected representatives in local government. The ethical behaviour of members can have a direct impact on the trust of the people they serve. In a recent speech, the Minister for Local Government said that: "If the trust between members and the people they serve is missing, people will not invest their time and energy in taking part in the democratic process. For that to happen, I take it as read that the starting point is to ensure our elected representatives follow the highest standards of behaviour when serving the

public, and to ensure that people understand such standards are the norm not the exception.

REPORT TO: Standards Committee

DATE: 1st November 2006

REPORTING OFFICER: Strategic Director Corporate & Policy

SUBJECT: Feedback from Meeting with Chief Executive of Standards Board

WARD(s): Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To provide feedback to the Committee on a meeting with the Chief Executive of the Standards Board.

2.0 RECOMMENDATION

2.1 That the report be noted.

3.0 SUPPORTING INFORMATION

3.1 The Council Solicitor attended an ACSES North West Group meeting on the 22nd September at which David Prince, the Chief Executive of the Board, and Paul Hoey, the Head of Policy and Guidance attended to speak to the Group. The session provided a useful opportunity to discuss with colleagues and senior officers from the Standards Board how the standards agenda was likely to develop over the next year or two, and the following is a distillation of a few of the points that came out during he discussion:

- Code of Conduct – the revised code of conduct is likely to be produced in draft from within the next month or so, possible in time for the Annual Assembly of Standards Committees. There will then be short period of consultation and the code being finalised early in the new year. Authorities will be given six months to adopt the Code in the same way as happened when the original Code was launched. (N.B. the launch of the new Code will have training implications for all members, and the Standards Committee also has responsibility for ensuring that the Parishes in the area implement the new Code)

- Local Filtering - the forthcoming Local Government Bill will make provision for the local filtering of complaints. This is likely to come into effect in 2008. It is a matter of some debate as to whether a system of complaining to a local body, as opposed to a national body, will result in an increase in the number of complaints. If there is an increase in the number of complaints received there are clearly workload implications for local authorities.

- Independent Chairs – it is thought that when the legislation is brought forward it will include a requirement for Standards Committees to have independent Chairs (which has always been the policy at Halton)

- Multi Authority Standards Committees – at the present time multi authority Standards Committees are not permitted but the forthcoming bill may seek to allow this.

4.0 POLICY FINANCIAL AND OTHER IMPLICATIONS

4.1 None other than as outlined above.

5.0 RISK ANALYSIS

5.1 Not applicable.

6.0 EQUALITY AND DIVERSITY ISSUES

6.1 None

7.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

7.1 None.

REPORT TO: Standards Committee

DATE: 1st November 2006

REPORTING OFFICER: Strategic Director Corporate & Policy

SUBJECT: Annual Report of the Adjudication Panel for England

WARD(s): Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To make members aware of the Annual Report from the Adjudication Panel for England.

2.0 RECOMMENDATION

2.1 That the report be noted.

3.0 SUPPORTING INFORMATION

3.1 I am attaching a copy of the Annual Report from the Adjudication Panel for England. The report provides an interesting insight into how the standards regime looks from the perspective of the President of the Adjudication Panel.

3.2 One interesting point in the report is what the President has to say about local Standards Committees. In particular, it is interesting that the President believes it would be better for hearings to be chaired by lawyers with experience of the Competency Framework for Chairmen and Members of Tribunals. If nothing else the President's comments serve to reinforce the urgent need for some practical training for the Committee on carrying out hearings.

4.0 POLICY FINANCIAL AND OTHER IMPLICATIONS

4.1 None other than as outlined above.

5.0 RISK ANALYSIS

5.1 Not applicable.

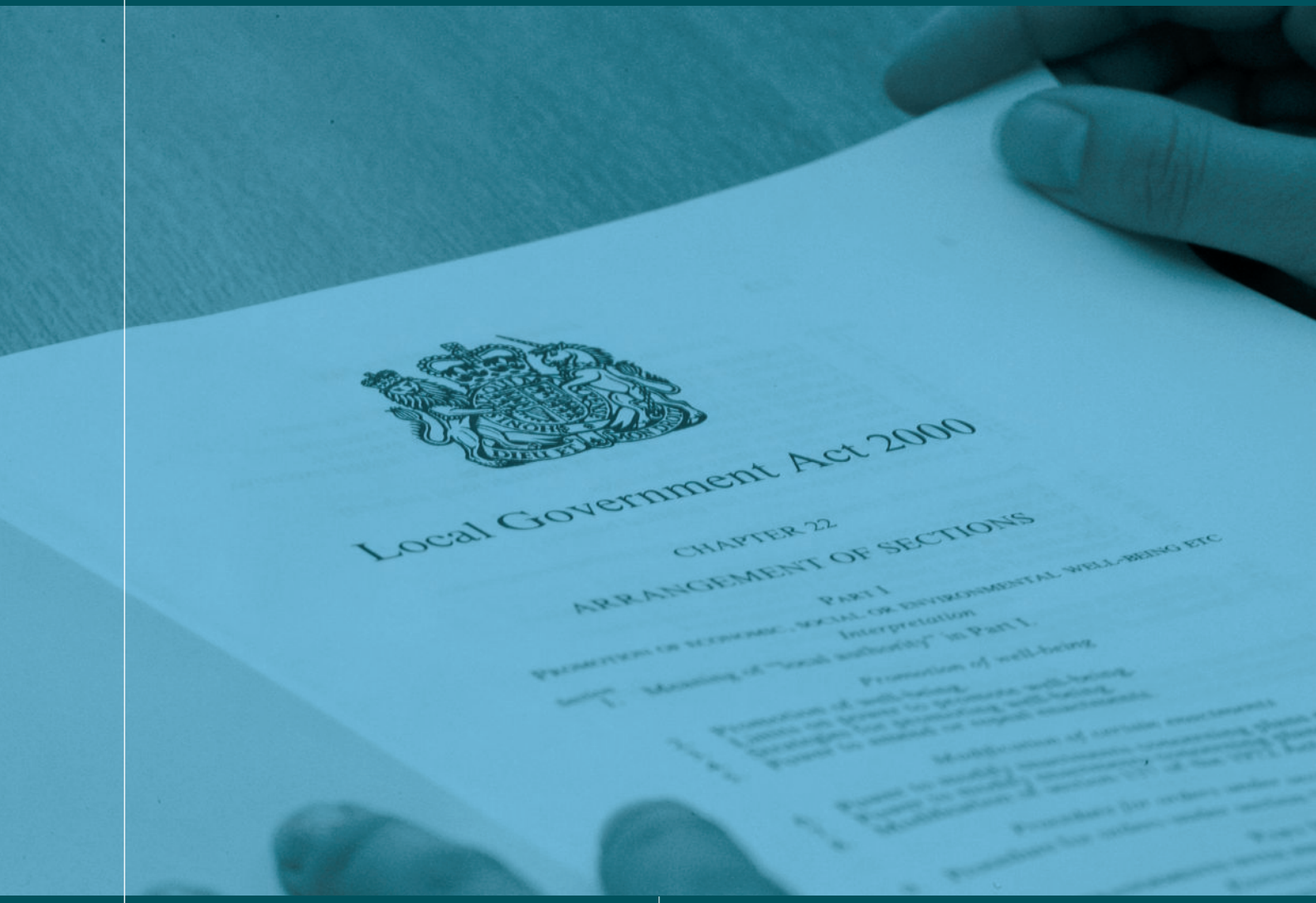
6.0 EQUALITY AND DIVERSITY ISSUES

6.1 None

7.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

7.1 None.

THE
ADJUDICATION PANEL
FOR ENGLAND



Annual Report

For the year ending 31 March 2006

THE
ADJUDICATION PANEL
FOR ENGLAND

Annual Report

For the year ending 31 March 2006

Contents

Introduction by the President

In reporting last year on the early years of the work of the Adjudication Panel, I expressed some doubt as to whether that work provided a reliable base against which to produce comparative statistics. This was largely because an undue proportion of the caseload was taken up by decisions involving parish councillors who, midway through their terms of office, had refused to comply with the requirements of the Local Government Act 2000 by registering details of their financial or other interests.

The same caution, but for a different reason, needs to be expressed this year. The bulk of the Adjudication Panel's workload for the past year has arisen from references made directly to me by an Ethical Standards Officer. But the year ending in March 2006 has also involved Tribunals dealing with appeals against decisions taken by local Standards Committees. Toward the end of the year the first appeals were received where not only had the decision been taken by a local Standards Committee but where the investigation of the complaint had been undertaken by the Monitoring Officer or someone appointed to act on his or her behalf. The indications are that matters of this kind will assume an increasing proportion of the Adjudication Panel's workload in future years.

Thus the work reviewed in this Report has been against a changing background. The indications are that the process of change will be continuing in the light of the Government's response to the recommendations from both the Committee on Standards of Conduct in Public Life and to the report of the Select Committee. There are also changes afoot in the Tribunal world with the Adjudication Panel expected to join other Tribunals in a unified Tribunal Service by April 2008.

The appeals from decisions by local Standards Committees which have so far found their way to the Adjudication Panel have usually represented the first decisions taken by the Standards Committees concerned, some of whom would seem to be having difficulty in coming to grips with both procedural issues and how to produce a reasoned decision. Some 38% of appeals have cited alleged procedural irregularity by the local Standards Committee as a ground of appeal.

Potential Appellants need to recognise that concerns about the procedure used by the local Standards Committee do not directly bear upon whether or not the Appellant has failed to comply with the Code of Conduct. The alleged procedural faults of the Standards Committee are not likely to be duplicated by the Appeals Tribunal which will form its own view on whether there has been a failure to follow the provisions of the Code of Conduct. The Regulations require me, in deciding whether to give permission for an appeal to be made, to take account of the likely success of the appeal. If, despite the alleged procedural regularity, there is no dispute as to the essential facts and it is clear that those facts do evidence a breach of the Code of Conduct then my practice has been to refuse permission for the appeal to proceed.

The early evidence suggests that there should probably be a requirement for the hearings by Standards Committees to be chaired by a lawyer who is familiar with the Competency Framework for Chairmen and Members of Tribunals. Experience with disciplinary procedures in other areas of work suggests that there is unlikely to be public confidence in the process unless the number of independent members on the Standards Committee is at least equal to the number of serving councillors.

But even with those changes the Adjudication Panel can envisage circumstances when the very local nature of the Standards Committee will make it difficult if not impossible to avoid the impression of apparent bias even where no real bias exists. The role of determining whether there has been a breach of the Code of Conduct and if so on what sanction is to apply, is similar to that undertaken by bodies charged with upholding professional standards in other fields, such as medicine and the law. For such decisions to be taken at first instance at a geographically local level by people who may well have some existing contact with the person involved is not a practice which is found in those other jurisdictions.

Steps were taken during the year to appoint Simon Bird as the Deputy President of the Adjudication Panel. This will ensure that any absence on my part will not disrupt the appointing of

Tribunals or deciding whether to allow appeals to be lodged against local decisions. His appointment will also enable the development of the Panel's appraisal scheme for members and monitoring of the way members hold hearings and reach decisions against the framework of competencies produced by the Judicial Studies Board. I have been involved in various seminars and consultations by the JSB in producing those standards and an appraisal scheme.

In the course of the year I worked on revising guidance which Case Tribunals should take into account when determining what action should be taken in the light of a finding that there has been a failure to follow a Code of Conduct. That guidance had originally been drafted before any Case Tribunal had been held. In undertaking the revision I have been able to take account not only of the library of decisions now available on the Adjudication Panel's website but also of a number of decisions from the High Court made as a result of Appeals from Case Tribunals. This report includes as a separate chapter a summary of the Appeals which have been heard.

In my report last year I commented on the difficulties inherent in the present legislative provisions about Interim Tribunals whose use would be to consider whether to suspend a councillor pending further investigation. I note that no action has been taken by the Government to amend the legislation so as to overcome those difficulties.

In addition to addressing that issue I also draw attention to the following issues arising from the Adjudication Panel's work:

- The need for paragraph 4 of the Model Code of Conduct to be more restricted than presently applies.
- To allow councillors to participate in discussions or take other action on some matters where, under the present Model Code, they would be regarded as having a prejudicial interest.

David Laverick

President

August 2006

Legislative and Administrative Background

The Adjudication Panel for England was established by the Local Government Act 2000 to hear and determine references from Ethical Standards Officers (ESO's) as to whether there had been a failure by identified members of relevant authorities to follow the provisions of the Codes of Conduct adopted or applied to such bodies.

Such references are heard and determined by Case Tribunals each consisting of three members of the Adjudication Panel. The Adjudication Panel consists of a President, Deputy President and 31 Members, 10 of which are Legal Members. All of the Panel have been appointed by the Lord Chancellor with the concurrence of the Secretary of State. The practice has been to appoint a Legal Member (or the President or Deputy President) as the Chairman of a Case Tribunal together with two other members.

The Panel is supported by the Office of the Adjudication Panel for England established by the Standards Board for England, the members of staff concerned being used exclusively for the purposes of the Tribunal and not otherwise involved in the investigation of complaints made to the Standards Board.

The legislation provides for Interim Case Tribunals to be established to deal with Interim Reports from ESO's.

Regulations made by the Secretary of State allow some matters to be referred after investigation by an ESO to the Standards Committee of the relevant authority concerned with the member involved then having a right to seek to appeal to the Adjudication Panel against the resulting decision. The Regulations also allow the ESO to refer matters for investigation by a Monitoring Officer who may in turn arrange for some other person to conduct the investigation.

Permission to appeal against decisions of a Standards Committee needs to be sought from the President of the Adjudication Panel. If permission is granted then an Appeals Tribunal is appointed, whose composition mirrors that of Case Tribunals.

A member who is subject to determination by a Case Tribunal has a right of appeal to the High Court. There is no similar right to appeal against the decisions of an Appeals Tribunal but such decisions will presumably be capable of Judicial Review.

The Government has established the Tribunal Service to provide administrative support to a range of Tribunals from different jurisdictions and indicated an intention to roll out the operation of the Tribunal Service and to bring the Adjudication Panel within its compass in April 2008.

Procedures

The legislation gives power for the Secretary of State to make regulations with respect to adjudications. No such regulations have so far been made. Instead I have issued general guidance as to the procedures which are followed and I issue a Listing Direction for each case based on that guidance.

The usual Direction is for Case Tribunals to adopt a three stage approach: they first determine the relevant facts, then determine whether those facts amount to a failure to follow one or more provisions in the relevant Code of Conduct and finally, if a breach of the Code has been found, they determine what sanction to apply. Experience has shown that such an approach has been readily understood by those appearing before the Tribunal and has enabled the Case Tribunal to focus on the key issues in dispute. That procedure was adopted after consultation with various stakeholders and has also been discussed with the Council on Tribunals.

All of the Adjudication Panel procedures are published on the Adjudication Panel's website and also produced in booklet form.

Revised guidance, which Case Tribunals should take into account when determining what action should be taken in the light of a finding that there has been a failure to follow a Code of Conduct, has now been issued and is set out at **Appendix A.**

Members of the Council on Tribunals have attended several Case Tribunal hearings and have provided positive feedback.

Membership

The Membership of the Panel is shown in **Appendix B** and has not changed in the course of the year.

All members of the Panel have undertaken induction training either through the Adjudication Panel's own events or by attending the Judicial Studies Board's Tribunal Skills Course. Topics covered during the year included:

- Council on Tribunals - 'Framework of Standards'
- Taking account of High Court Appeals
- Working Party update
- Presentation - Engaging with the Human Rights Act
- Tribunal Service Programme - presentation on the new organisation
- Case studies: Sentencing guidelines

During the year 66 references were received from ESO's, by comparison with 82 in the previous year. 89 Determinations were made by Case Tribunals by comparison with 59 the previous year. **Figure 1** gives a breakdown of the outcome of those hearings and the corresponding illustration for the previous year can be found in **Figure 2.**

Figure 1: Breakdown of Tribunal decisions for year ending March 2006

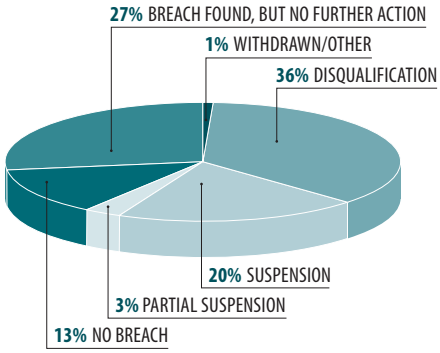
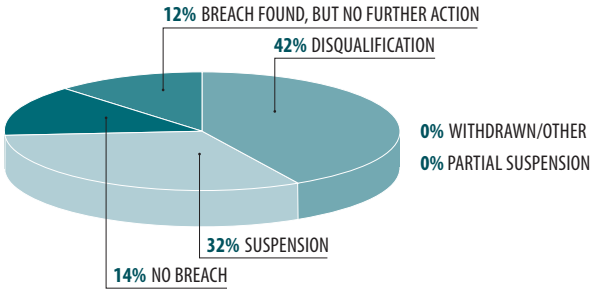


Figure 2: Breakdown of Tribunal decisions for year ending March 2005



There has been no significant change in the proportion of references which result in a finding as to whether or not there has been a breach of the Code of Conduct. There has been an increase in the proportion of references which have resulted in a decision by the Case Tribunal not to impose any sanction. That in turn has led to a fall in the proportion of Respondents who have been subject to disqualification or suspension. The most frequent reasons why Case Tribunals did not feel it necessary for any sanction to be imposed was that the Tribunal was satisfied that the member concerned was unlikely again to repeat the failure to follow the provisions of the Code and showed genuine remorse for his or her error.

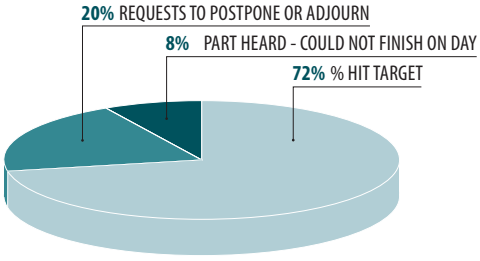
A second reason why the proportion of members subject to disqualification has reduced is that Case Tribunals have heeded decisions from the High Court which have tended to discourage use of the sanction of disqualification.

All of the Case Tribunals' decisions are published in full on the Adjudication Panel's website.

The Adjudication Panel's procedures are aimed at ensuring that a determination is made within 16 weeks of receipt of the reference. It follows that any reference that is received in the last third of the financial year will not be dealt with until the following year.

The Adjudication Panel's 16 week's target was achieved for 72% of the determinations made during the year **(Figure 3).** This compares with 87% in the preceding years. Of the 28% which took longer than 16 weeks to complete, the main reason was that the Adjudication Panel acceded to requests from Respondents for the matter to be delayed. The other reason was because; although most Case Tribunals last for no more than one day some 8% of cases could not be completed within the day allowed for the hearing. This is to a large extent a reflection of the fact that those issues which are now being referred to the Adjudication Panel are the more complex matters referred for investigation by the Standards Board: the simpler cases are instead being directed for local determination. But it does pose logistical problems: all members of the Adjudication Panel are part time and thus there are difficulties in finding another date when all three members can reconvene; the Adjudication Panel does not as yet have any dedicated or regularly booked hearing centres and this too prevents a case being rolled over to the following day in a way which might be possible in the Courts; there is also a need to take account of the availability of the parties and their representatives.

Figure 3: 16 week target for 2005/6



The longest hearing with which the Adjudication Panel has been concerned was that involving a complaint about the way the appointment had been made of the Chief Executive of Islington Council. That Case Tribunal sat in total for 17 days spread over a long period partly to accommodate the limited availability of the various Counsels who were involved.

The Adjudication Panel's procedures were drawn up at a time when it was assumed that Case Tribunals were unlikely to be faced with conflicts as to findings of fact but would instead be being asked to determine disputes as to whether, on agreed facts, there had or had not been a failure to follow the provisions of the Code. A reference to the Panel comes only after the ESO has sent out a draft of his proposed report and had the opportunity of revising that draft in light of any representations from the Respondent. Yet, of the 89 determinations made in the course of the year, 53(60%) involved hearing oral evidence in order to resolve disputed facts. If this pattern continues the Adjudication Panel may need to budget for a greater proportion of its cases taking more than one day with a consequent increase in the cost per determination.

The cost per case determined by the Adjudication Panel for the year ending 31 March 2006 fell to £5197 by comparison with £5436 for the preceding year. That figure is calculated by dividing the total expenses of the Adjudication Panel by the number of decisions issued in the year.

About half of the Respondents who appear before Case Tribunals and Appeal Tribunals conduct their own case. Where they are represented this is more usually by way of a friend than a legally qualified advocate.

Figure 4 opposite shows a breakdown of cases according to which paragraph of the Model Code was involved and **Figure 5** provides a similar breakdown for the preceding year.

Figure 4: Year ending March 2006

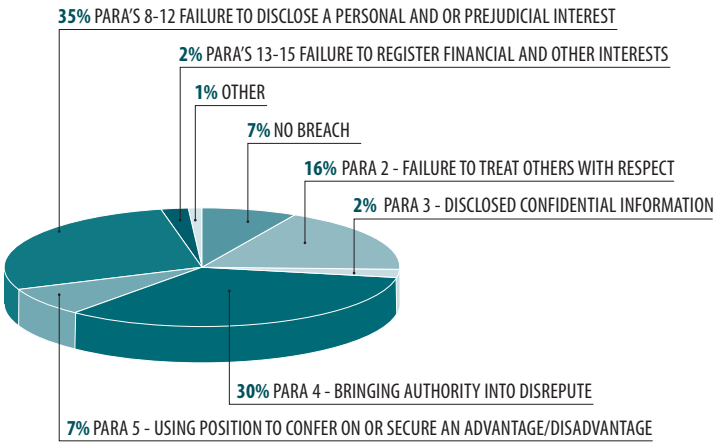
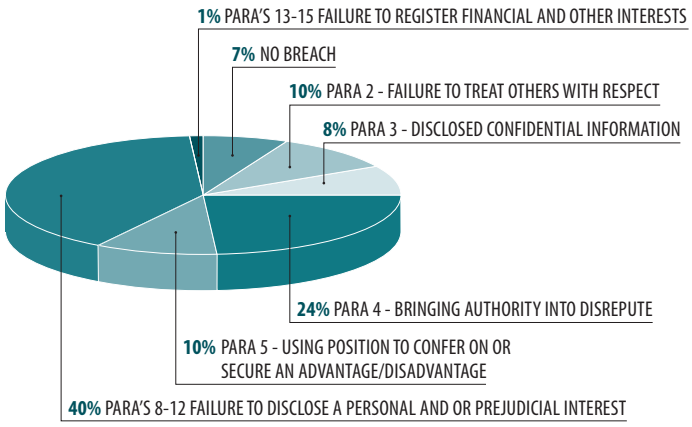


Figure 5: Year ending March 2005



The major differences are a decrease in the number of cases alleging disclosure of confidential information (paragraph 3 of the Model Code) and an increase in the number involving allegations that the conduct of the member has brought his or her office or authority into disrepute (paragraph 4 of the Model Code). As indicated in its response to the consultation on reviewing the Code, the membership of the Adjudication Panel believes that there is a case for amending paragraph 4 of the Code so as to limit its operation to actions

taken in a member's official capacity but subject to making some specific provision to allow consideration of whether criminal conduct by a member should result in suspension or disqualification.

The present wording of paragraph 4 of the Model Code does interfere with the right of freedom of expression enshrined in Article 10 of the European Convention on Human Rights. But the Article makes clear that interference with that right may be justified on the grounds set out in paragraph 2 of the Article. The High Court has indicated that such interference can indeed be justified in that way.

The extent to which the Model Code of Conduct involved interference with rights enshrined in the European Convention was also an issue considered by the Case Tribunal which found that a Westminster City councillor had disclosed confidential information to a journalist. The Case Tribunal determined after taking account of decisions of the European Court of Human Rights that paragraph 3(a) of the Code of Conduct jurisprudence, should be read so as to allow for the disclosure of information of a confidential nature in circumstances where it is appropriate in the public interest to do so.

That left the Case Tribunal needing to determine what was in the public interest by undertaking a balancing exercise, weighing the public interest in maintaining confidence against a countervailing public interest favouring disclosure. A somewhat unusual key factor in that balancing exercise was that the High Court had issued a Restriction on Communication Order which applied to some of the information that the councillor disclosed. The Case Tribunal found that the Article 10 right of freedom of expression was subject to an exception on grounds set out in paragraph 2 of that Article and that, whilst the threshold is, because of the recognised importance of press freedom a high one to cross, the councillor in the light of the Restriction on Communication Orders had a duty to prevent the disclosure of particular information that he had received in confidence. The Case Tribunal concluded that as a consequence of not fulfilling that duty, the councillor was not acting in the public interest in passing confidential information to a journalist

The two cases which I have mentioned above attracted the most media interest in the course of the year. It may not be coincidence that all three cases occurred in London. But it is in the main the local press which reports on the determinations made by the Adjudication Panel's Tribunals. By far the majority of those reports are about cases which involve the actions of councillors in participating in council business despite having what the Model Code of Conduct refers to as a prejudicial interest.

Many councillors have difficulty in recognising that their interest is of such a kind. They assert for example, that in opposing proposed developments they are acting in the public interest and in the interests of their constituents and cannot understand how it can be that because their own immediate environment would be affected by the proposal they are debarred from so doing. The Adjudication Panel has no doubt however, that this is the effect of the wording of the present Model Code and the High Court has upheld decisions to that effect.

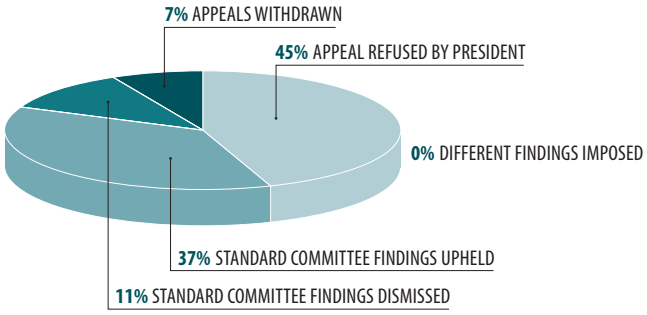
As the Adjudication Panel said in its response to the consultation about revision of the Code, a particularly unfortunate consequence of the present wording is that where there is some local issue which galvanises a neighbourhood, a councillor who is elected with a specific mandate to pursue that issue may well not be able to put forward precisely the views he or she has been elected to represent. The Adjudication Panel welcomes proposals from the Standards Board for England and the Government to change the Model Code in this area but recognises the difficulty of balancing the need to allow the democratic voice to be heard and the need to guard against members seeking improperly to promote their own interests.

Appeals against Local Standards Committee Determinations

18 applications were received for permission to appeal against the determinations of local Standards Committees by comparison with 8 in the previous year. Expressed as a percentage of the number of decisions understood to have been taken by local Standards Committees the applications have increased from 11% to 32%.

Of the 18 applications received, 11 were allowed to proceed, the remainder being refused either as disclosing no reasonable ground of appeal or because I judged that there was no prospect of an appeal succeeding. Appeals Tribunals determined six appeals by comparison with nine the previous year. Of those six which were considered by Appeals Tribunals half were upheld. Because the number of appeals was so small any attempt to draw statistical deductions from the figures would be subject to a very large margin of error. However, I set out a chart below which shows the outcome of the various cases.

Figure 6: Shows the outcome of the decisions of Appeals Tribunals up to March 2006



External Contacts

In the report I published last year I noted that the Adjudication Panel was in the process of responding to the Consultation proposals issued by the Standards Board for England on possible amendment of the Model Code of Conduct. A copy of the Adjudication Panel's response is reproduced as **Appendix C.**

As in previous years, I have liaised with my counterparts in Scotland and Wales. A joint training session was held with the Adjudication Panel for Wales which was also attended by some Scottish colleagues. I attended a training day which the Scottish Commission for Standards arranged for Monitoring Officers in Scotland.

I participated in a series of seminars organised by the Nuffield Foundation on the theme of Administrative Justice as well as the annual conference organised by the Council on Tribunals.

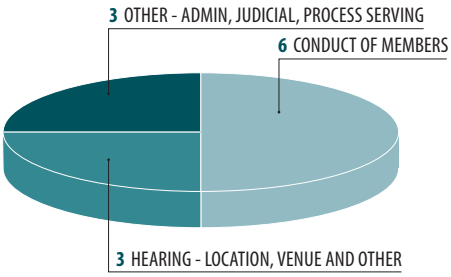
One of the characteristics of Tribunals is that they develop a feedback loop with the body whose decisions they are reviewing. In that context I meet, usually on a quarterly basis with the Chief Executive of the Standards Board for England and on an annual basis with the Chairman of that body.

Arising from my discussions with the Chief Executive of the Standards Board, a working party has been reviewing the way references to the Panel are drafted. The aim is to allow Case Tribunals to proceed more smoothly and perhaps with less need for hearings to last for more than one day.

I have been able during the year to participate in some training for members of local Standards Committees and have also talked directly with some councillors. Other members of the Adjudication Panel have also accepted invitations of that kind. The part time nature of our appointments means that it is not always easy to accept such invitations but I generally welcome the opportunity for such exchanges of views.

Complaints

Chart detailing breakdown of complaints received



The Adjudication Panel recognises that those who have dealings with it may wish to complain about matters which would not be subject to a right of appeal. To that end the Adjudication Panel has adopted a complaints procedure details of which are available on the website.

Seven of the 12 complaints dealt with this year, came from one Respondent who also appealed unsuccessfully to the High Court. None were seen to have any substance.

Nor were two others from another Respondent who had been disqualified by a Case Tribunal.

Other complaints related largely to the choice of location used for the Case Tribunal and the facilities available in the particular hearing room. Some Case Tribunals do have to be held in rooms which cannot accommodate as many members of the public who would like to attend. But this is also true of some other Courts and Tribunals which deal with cases which attract attention and cannot reasonably be avoided.

The current policy of the Adjudication Panel is to try to hold the hearing close to the area of the particular council involved but this is not always possible. I am, in any event, keeping under review the possibility of changing that policy in favour of Case Tribunals instead using hearing centres which are more fitted to the particular purpose. But I am bearing in mind that while such premises might be more suitable from the point of view of members of the Tribunal, they are likely to be less easy to reach for interested members of the public.

In addition to the above complaints I have also received a number of letters which are critical of the substantive decision or the wording of decisions made by Case Tribunals. Those are not matters to be dealt with under the complaints procedure. Once a Case Tribunal has reached its decision, neither I as the President nor the staff of the Adjudication Panel can alter the decision or the wording. The Adjudication Panel's policy is not to entertain requests for wording to be amended or clarified in a document which is a matter of public record.

High Court Appeals against Case Tribunal Decisions

Respondents have a right of appeal to the High Court against a decision of a Case Tribunal. Such appeals are dealt with by the Administrative Division of the High Court. 6 such appeals had been lodged with the High Court during the year ending 31 March 2006. A similar number had been lodged previously. The outcome is shown in the following table.

List of High Court Appeals

APE Case Ref No.	Date Appeal Lodged	Respondents Name	Date of High Court Hearing	Outcome
139	Oct-2003	Hathaway	13-May-04	**Appeal dismissed**
164	Sep-2004	Murphy	19-Oct-04	**Sanction reduced from 1 year down to 4 months**
169	Jun-2004	Sloam	25-Jan-05	**Appeal dismissed**
193/4/5	Dec-2004	Scrivens	14-Mar-05	**Appeal dismissed**
191	Sep-2004	Sanders (1)	19-May-05	**Sanction reduced from 2 years down to 1 year partial suspension**
166	Jun-2004	Adami	28-Jun-05 21-Nov-05	**June 05 - the original Tribunal decision & sanction was quashed by High Court** **Nov 05 - The Court of Appeal overturned the High Courts decision and referred the matter back to Tribunal who imposed a disqualification**
190	Apr-2005	Sanders (2)	15-Jul-05	**Disqualification quashed**
234	Jan-2005	Gill	26-Jul-05	**Sanction reduced from 1 year disq down to 3 months suspension**
296	Dec-2005	Hare	16-Jan-06	**Appeal dismissed**
270	Aug-2005	Wilson	22-Feb-06	**Appeal dismissed -** APE awarded costs at first hearing. **Appeal dismissed** in its entirety at Feb hearing
281	Sep-2005	Connors	06-Mar-06	**Appeal struck out**

A brief summary of the issues raised in all the Court's decisions during the year is set out on the following pages.

Hathaway v Ethical Standards Officer [2004] EWHC 1200 (Admin) High Court, England - Evans-Lombe J

Councillor Hathaway had been disqualified for one year and appealed against that sanction on the ground that because of the electoral cycle the effective period of disqualification would be considerably longer. He argued that the Case Tribunal should have opted to suspend him.

Evans-Lombe J dismissed the appeal.

The Court indicated that in examining the decisions of bodies such as Case Tribunals, in particular where they are exercising discretions given them by statute, the Court should set aside any order only if satisfied that the Tribunal exercised its discretionary powers in an unreasonable way.

The Court held that the discretion had not been exercised in an unreasonable way. And that the effect of the disqualification had not been to exaggerate the penalty.

The Judge did note, however, that the effect of an electoral cycle may well exaggerate the punishment inflicted as the result of a disqualification and that Case Tribunals would have to be careful to ensure that any period of disqualification imposed on Respondents is not so exaggerated. In Councillor Hathaway's case, however, as the next date for local government elections was some three and a half years away, that was unavoidable.

Murphy v Ethical Standards Officer of the Standards Board for England [2004] EWHC 2377 (Admin) High Court, England - Keith J

Councillor Murphy disputed a finding that he was in breach of the Code of Conduct by failing to declare the existence or nature of a personal and prejudicial interest, failing to withdraw from a meeting, and speaking in discussion of a report from the Local Government Ombudsman which had been critical of him. He appealed against the imposed sanction of one year's suspension. He also claimed he had not received a fair trial as required by the European Convention on Human Rights.

Keith J dismissed Councillor Murphy's appeal against the finding that there had been a failure of the Code of Conduct. The Code of Conduct describes a personal interest as arising if a decision might reasonably be regarded as affecting the well-being or financial position of the member to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area. Councillor Murphy argued that his well-being did not stand to be affected. The Judge agreed with a commentary produced by the Standards Board which indicated that, because of the use of the word 'well-being', the range of personal interests is likely to be very broad. He also indicated that it was for the Case Tribunal to determine whether the council's discussion might reasonably be regarded as affecting Councillor Murphy's well-being. His subjective reaction, or likely reaction, to the council's discussion was not relevant to that question.

The Judge stated that the Case Tribunal knew the relevant facts and was the embodiment of the informed member of the public referred to in the Code of Conduct. The Judge disagreed with Councillor Murphy's contention that his interest in the Ombudsman's report was no greater than that of other councillors, and said that even if Councillor Murphy was right in that contention his interest remained greater than that of other local people.

His complaint about an alleged breach of Article 6 of ECHR was based on his not being asked to give evidence on oath or being able to call witnesses. The Judge noted that there was no issue of disputed fact to be decided by the Case Tribunal, let alone one which depended on the recollection of a witness. Thus he did not need to give evidence; all he needed to do was to make submissions, which is what he did.

As to the witnesses, prior to the hearing the President of the Adjudication Panel had indicated that Councillor Murphy's proposed witnesses did not appear to be in a position to give factual evidence relevant to the determining whether or not

there had been a breach of the Code of Conduct. He advised that Councillor Murphy would need to make an application direct to the Case Tribunal if he wished to call witnesses. No such application was made.

The Judge commented that whether Councillor Murphy had a personal and prejudicial interest in the Ombudsman's report was a judgment that the Case Tribunal had to make on the primary facts. The Case Tribunal would not have been helped by the views of others as to what that judgment should be.

Councillor Murphy did, however, succeed in persuading the Court to vary the length of his suspension. The Judge concluded that the Case Tribunal could not have given sufficient weight to the unusual features of the case, namely that Councillor Murphy's interest in the Ombudsman's report was known to everyone, and to conflicting and confusing advice he had received as to whether he needed to declare a personal and prejudicial interest. Those facts, coupled with the mitigating features which the Case Tribunal had expressly recognised (in particular, his long public service and the evidence that no-one had called Councillor Murphy's integrity into question) lead him to conclude that, although this was a case for suspension, Councillor Murphy should only have been suspended from acting as a member of the council for four months.

Sloam v Standards Board for England [2005] EWHC 124 (Admin) High Court, England - Bennett J

Councillor Sloam appealed a finding by a Case Tribunal that he had improperly sought to use his position to confer an advantage on himself or any other person. He also appealed against the sanction of one year's disqualification imposed by the Case Tribunal in respect of that and other breaches of the Code.

Dismissing the appeal about the finding of breach of the Code the Judge described the inference drawn by the Case Tribunal as being irresistible.

Dismissing the appeal about the level of sanction, Bennett J indicated that the Court should be slow to intervene in matters that have been decided by a specially trained Tribunal. The Tribunal had not only to take into account the effect of any decision upon the individual but also the wider picture encapsulated in the guidance from the President, i.e. of upholding and improving the expected standards of conduct and discouraging future failures to follow that standard not only by the particular councillor but also by others. The Case Tribunal had clearly taken account of the mitigating submissions put forward by the councillor without which a longer disqualification would have been imposed.

Scrivens v Ethical Standards Officer [2005] EWHC 529 (Admin) High Court, England - Burnton J

Councillor Scrivens appealed against a finding that he had failed to declare a personal and a prejudicial interest.

Councillor Scrivens, through his representative at the appeal, argued that the decision of the Case Tribunal applied the wrong test (objective) for determining whether he was to be treated as having a personal and (if so) a prejudicial interest. Councillor Scriven's representative reiterated the submission he made at the hearing on 9 September 2004 that the conclusion that it was unnecessary to declare an interest and (if prejudicial) withdraw from the room was one that a reasonable councillor could have reached on the facts known to him at the meeting i.e. the test that should be applied to determine the presence of an interest is a subjective one. That same submission was made on the basis of the Court of Appeal in the case of ***R (Richardson) v North Yorkshire County Council [2003] EWCA Civ 1860*** and this should be binding on the Tribunal.

Burnton J stated that the appeal raised an important issue as to the correct test to be applied in determining whether a councillor had personal or prejudicial interests.

For Councillor Scrivens it was argued that the test should be a subjective one which the Judge said would confer

considerable latitude on the conduct of members and seriously detract from the express object of the Act and purpose of the Code.

Nevertheless there appeared to be support for the interpretation urged by Councillor Scrivens in a decision of the Court of Appeal (***R (Richardson) v North Yorkshire County Council [2003] EWCA Civ 1860)***. Burnton J noted that although a particular passage of the judgement of Simon Brown LJ in the Court of Appeal appeared to favour a subjective test this was inconsistent with other parts of that judgement. Having examined the skeleton arguments provided to the Court of Appeal, Burnton J concluded that the point as to whether the test should be subjective or objective had not been argued before the Court of Appeal and that as the Court of Appeal found that Mr Richardson's view was both mistaken and irrational it was not called upon to determine whether a mistaken but rational view would have entitled that councillor to participate.

The Judge held that the Case Tribunal had correctly held that it was not bound by the apparent support in ***Richardson*** for the argument that the test should be subjective and that the Appellant's contention for a subjective test should be rejected. As a member is very much a judge in his own cause, an objective test for both the existence of a relevant interest and a failure to comply with the Code is appropriate and indeed necessary.

Whether a member has a personal or a prejudicial interest is a question to be determined objectively. The mistaken but reasonable view of the member that he has no such interest is irrelevant.

Sanders v Kingston [2005] EWHC 1145 (Admin) (Sanders number 1) High Court, England - Wilkie J

Councillor Sanders appealed against findings that he had failed to treat others with respect and had conducted himself in a way which could reasonably be regarded as bringing his office or authority into disrepute. He also appealed against the decision to disqualify him for two years. The finding arose from the way Councillor Sanders had responded to a request from a council in Northern Ireland seeking support for an inquiry to be held into the death of a young soldier.

The Court indicated that the main ground of appeal concerned the interface between the system of adjudication upon complaints about the conduct of a local councillor and the fundamental right to free speech enshrined in Article 10 of the European Convention on Human Rights.

Wilkie J set out his view that he was not exercising a purely supervisory function. He was permitted to engage with the merits but in doing so had to pay due deference to the role of the Tribunal in particular where it is a specialist Tribunal selected for its expertise and trained to its task.

The Judge dismissed a claim that the Case Tribunal had not displayed any proper process of reasoning, saying that the Case Tribunal's judgement could not be faulted in terms of its form or its adequacy in revealing the Tribunal's thought processes. The Case Tribunal was fully entitled to find that Councillor Sander's conduct was in breach of both paragraphs 2(b) and 4 of the Code of Conduct.

He considered, but dismissed, an argument that the Code of Conduct was insufficiently precise so as to enable persons to foresee when they may be in breach of it, holding that the concept of failing to treat others with respect is perfectly capable of being applied by a reasonable person to know whether what they were doing or were about to do complied with the Code. The paragraph prohibiting conduct which could reasonably be regarded as bring an office or authority into disrepute adopted a concept well known in a number of different contexts as a method of identifying a level of conduct expected of persons holding certain conditions or being members of certain bodies. The reasonable person could predict whether or not his actions would be in breach of that provision.

The Judge also dismissed a challenge that Article 6 was breached by the fact that under the particular statutory

regime a councillor can be required to submit himself to interview on pain of criminal sanction. None of the Case Tribunal's use of material from the interview with Councillor Sanders disclosed any material not available elsewhere and none remotely caused the Case Tribunal's hearing to constitute an unfair trial.

Article 10 of ECHR (the right to freedom of expression) was engaged but it was necessary to look at the nature of expression indulged in by Councillor Sanders in order to see whether the interference with free speech was lawful. The forms of expression engaged in by Councillor Sanders fell short of being the expression of a political view attracting the high level of protection which the authorities demonstrate should be given to political expression because of its fundamental importance for the maintenance of a democratic society. What Councillor Sanders had written amounted to little more than personal anger and did not contain anything which could be dignified with the description of a political opinion or the importation of information. Similarly what he had said was little more than vulgar abuse.

Having established that Councillor Sanders' letters and statements did not attract the high level of protection given to expressions of political views Wilkie J then considered whether the interference with Article 10(1) rights was justified in terms of Article 10(2). He held that the measures involved were sanctioned by law, had an objective sufficiently important to justify limiting freedom of speech and were no more than were necessary to accomplish the legislative objective. Thus the interference with the right to freedom of expression was lawful.

He recognised that were the machinery to be used against a member of a local authority who did give expression to political opinions of an offensive nature or expressed in an offensive way there might be circumstances where there would be an unlawful infringement of the rights protected by Article 10. However, as a matter of fact that did not apply in the case before him.

Wilkie J varied the sanction imposed by the Case Tribunal noting that its attention had not been drawn to the guidance issued by the President of the Adjudication Panel and had not been made aware of exceptional circumstances which made the electoral cycle of great importance. These were that since the wide publicity given to the matters which had resulted in Councillor Sander's appearance before the Case Tribunal, he had been re-elected as a councillor. It is a very serious thing for a non-elected body such as the Case Tribunal to disqualify from membership of a council a person who has been elected to that body by the electorate after the events complained of. Whilst it cannot be said that this would never be an appropriate course for the Case Tribunal to take, where the matter complained of was, by inference put before the electorate as an issue and they have delivered their verdict through the ballot box, it cannot be right to override that verdict. Accordingly the Court substituted the two year disqualification for a partial suspension for one year preventing Councillor Sanders from acting as leader of the council.

Adami v Ethical Standards Officer of the Standards Board for England [2005] EWHC 1577 (Admin) High Court, England - Bean J

Councillor Adami appealed against the decision of a Case Tribunal that he had committed several breaches of the Code of Conduct. The decision had been made in the absence of Councillor Adami, a course of action which the Judge said was in the circumstances entirely right and proper

The President's Listing Direction had contained a fair and clear summary of the points which it was understood were being made by Councillor Adami in answer to the complaint. The Tribunal were quite entitled to reject his various grounds for striking out the case

The Judge did, however, allow the appeal on the basis that the Case Tribunal had not provided a reasoned decision as to why it preferred the reasoning of the ESO rather than that of Councillor Adami as to why there had been breaches of the Code.

It is the duty of a Court or a Tribunal established by statute, adjudicating on the rights of a citizen, to give reasons for its decision sufficient to enable the losing party to know why he has lost. An important factor is that the loser must know why his arguments have been rejected. It was not apparent at all from the Tribunal's decision why each of Councillor Adami's submissions were rejected.

As the Case Tribunal's decision was being quashed it was unnecessary to go on to consider Mr Adami's appeal against the four-year disqualification.

Court of Appeal - Auld, Maurice Kay and Lloyd LJJ - 21 November 2005

The Court of Appeal stated that an appellate court had widely expressed and clear powers to remit to the court below any issue, which might involve adequacy of reasons as to the decision under challenge. The normal course would be for an inadequately reasoned decision to be remitted for explanation or reconsideration and reformulation in the light of an appellate court's judgment. Moreover, in circumstances where a regulatory framework had been put in place designed to control the behaviour of councillors, a judge's failure to remit a decision for further reasons usurped the functions of the specialist regulatory body.

In the instant case, the judge had had jurisdiction to remit the matter for want of its being adequately reasoned, and he should have taken that course, particularly in the light of his finding of the likely integrity of the Tribunal's decision. The judge's decision was therefore set aside and the matter was remitted to the Case Tribunal for reconsideration and adequate formulation of reasons.

Gill v Ethical Standards Officer of the Standards Board for England [2005] EWHC 1956 (Admin) High Court, England - Collins J

Councillor Gill appealed against the sanction (one year's disqualification) imposed by a Case Tribunal following findings that she had acted in a manner which had compromised the impartiality of officers, used her position improperly to confer on or secure an advantage for another and brought her office or authority into disrepute.

Collins J varied the sanction of the Adjudication Panel, and reduced Councillor Gill's 1 year disqualification to 3 months suspension. He accepted a submission that Councillor Gill's conduct was no worse than that of Councillor Murphy and that a relatively short period of suspension was appropriate.

Sanders v Steven Kingston (Ethical Standards Officer) [2005] EWHC 2132 (Admin) (Sanders number 2) High Court, England - Sullivan J

This appeal was determined on the basis that it was an appeal only against the penalty imposed following a finding that Councillor Sanders' behaviour when attending an interview conducted by, and writing to, council staff who were conducting as part of an investigation of alleged benefit fraud was in breach of paragraph 2(b) and 4 of the Code of Conduct. It was accepted in the course of the appeal that nothing turned upon the breach of paragraph 4.

The judge held that the Tribunal was entitled to assume that Councillor Sander's solicitor would have familiarised himself with the Guidance issued by the President of the Adjudication Panel as to the action likely to be taken following findings that there had been a breach of the Code. A copy of that guidance had been supplied to the solicitor. Unfortunately, the Tribunal's entirely reasonable assumption was incorrect. The solicitor had seen the relevant booklet but had not appreciated its significance, and the ESO who was well aware of the Guidance felt constrained not to mention it. In consequence, there was no reference to the Guidance at the hearing before the Tribunal.

On the particular facts of this case, the Tribunal's failure to engage with the Guidance in its decision was an error of principle. If it had engaged with the Guidance, it is

difficult to see how it could reasonably have concluded that the Appellant's conduct could be equated with the kinds of conduct described in the Guidance as meriting disqualification. It was plainly wrong (because manifestly excessive and/or disproportionate) to disqualify the Appellant for 18 months for the breaches of the Code.

Having regard to the Guidance, a short period of suspension for a maximum of six months would have been the appropriate response to the Appellant's conduct in the interview and in writing the letter. For the letter alone a reprimand would probably have sufficed. When both incidents (the meeting and the letter) are considered, together with the lack of any contrition, suspension would be appropriate, bearing in mind the need to avoid repetition.

It was common ground before the Tribunal that the Appellant could not be suspended because he had already been disqualified by a different Case Tribunal adjudicating on a different matter for 2 years from 7 September 2004. Since there was no power to impose the appropriate penalty (suspension), a reprimand would have marked the seriousness of the breaches of the Code, and repetition would in any event have been prevented by the disqualification then in force until September 2006.

The Appellant had been disqualified for some 20 weeks, from 25 February to 14 July 2005 when the appeal was allowed. This was more than a sufficient penalty and no further penalty should be imposed.

Wilson v (1) the Adjudication Panel for England and (2) the Standards Board For England [2005] EWHC 615 (Admin) High Court, England - Lloyd-Jones J

Councillor Wilson appealed against a decision that he had failed to comply with paragraphs 2(b) and 4 of Lewes District Council's Code of Conduct.

The Court dismissed Councillor Wilson's claim that the original complainant had no power to make a complaint and thus that there should not have been an investigation. It is not necessary that the complainant should be a person who has allegedly suffered as a result of the conduct complained of. It is open to any member of the public to make such a complaint. Once the complaint is made, the only concern at that stage for the Standards Board is whether it is a complaint which should be investigated. The Board has jurisdiction, regardless of the identity of the complainant.

The Court also dismissed his claim that the findings were based on a communication which should have been regarded as privileged. Arguments in relation to privilege which might be available in defamation proceedings cannot afford any defence to the charges which Councillor Wilson faced. The Court rejected his claim that the Tribunal was under a misapprehension as to whom his communication had been circulated: its decision had clearly set out the correct position.

Councillor Wilson alleged that there were procedural irregularities in the way the investigation had been carried out by the Ethical Standards Officer, Lloyd Jones J noted that he was not shown any evidence which supported the argument that the Ethical Standards Officer failed to carry out a proper investigation. He was also satisfied that Councillor Wilson had not suffered any prejudice as a result of the time taken investigating the matter. There was no substance in his complaint that the matter had been broadened.

Councillor Wilson also alleged that the Chair of the Tribunal showed bias towards him by asking questions about the background of the matter instead of leaving the matter to Counsel. This point was hopelessly wrong. This was a full merits hearing before the Tribunal. The Chair had an obligation to make sure that she fully understood the position. She was certainly entitled to ask questions of witnesses and of legal representatives in order to be satisfied that she was fully aware of the issues on which she had to make informed decisions.

It was contended by Councillor Wilson that the members of the Case Tribunal were biased, as they were appointed after

consultation between the Office of the Deputy Prime Minister and the Lord Chancellor, the former being responsible for planning matters and thus responsible for the context in which Councillor Wilson had been writing. His submission was totally lacking in any substance. He did not begin to establish a case of actual or apparent bias against the members of the Tribunal. There was no prejudice to Councillor Wilson as a result of the procedure followed by the Tribunal.

Also dismissed was Councillor Wilson's claim that it was inappropriate for the Adjudication Panel to require the district council to give effect to the suspension until such time as he had had an opportunity to appeal to the High Court. It would have been open to Councillor Wilson, had he considered it appropriate, to have applied to the High Court for a stay pending the outcome of the appeal.

The Tribunal's conclusions in relation to the charges under paragraphs 2(b) and 4 of the Code of Conduct were entirely correct.

The appeal was dismissed with an order for costs being made against Councillor Wilson.

Hare v Nick Marcar (Ethical Standards Officer) & Bedford Borough Council [2006] EWHC 82 (Admin) High Court, England - Silber J

Councillor Hare appealed against the sanction (suspension for six months) imposed by a Case Tribunal which found that he had failed to treat officers of the council with respect in his correspondence with them.

The Tribunal considered that the failure to apologise was a significant aggravating feature and accordingly the Case Tribunal concluded that Councillor Hare should be suspended from the service of the council for a period of 6 months.

On appeal to the High Court, Councillor Hare sought to challenge the sentence imposed on him both on the basis it was excessive and because of procedural reasons. On the procedural matters, Councillor Hare made a number of complaints about the way in which the ESO's legal advisor conducted himself at the hearings.

He alleged that it was wrong or inappropriate for the barrister representing the ESO to have made submissions on sanction. The judge dismissed this noting that there was nothing wrong with the stance adopted by the barrister who had made fair and even-handed points especially bearing in mind that Councillor Hare had been given and taken the opportunity to respond to them. There was no merit in Councillor Hare's criticism of the way the barrister had referred to the facts in another case [Sanders (2)] considered by the High Court. It was of great importance that Councillor Hare had been able to address the Tribunal after the ESO's submissions and seek to rebut each or any of the points made.

The Tribunal were quite entitled to conclude that an immediate Tribunal was required and not to suspend its operation to allow for the possibility of an appeal.

The substance of Councillor Hare's appeal was that he should not have been suspended or, if he had been suspended, the period of suspension should have been for a shorter period than six months. Silber J stated that the penalty to be imposed has to take account of all the circumstances which vary greatly from case to case. Nevertheless it is important that there should be some consistency between the penalties imposed in different cases and so it was a worthwhile exercise to compare the appellant's case with that of Councillor Sanders. There were very substantial differences. Although the letter written by Councillor Sanders was culpable it was not in the same category as the repeated allegations by Councillor Hare that officers of the council who were professional lawyers had sought deliberately to lie and mislead people who included the Land Registry and to cover up those lies. Nor did Councillor Hare have similar mitigation to that put forward by Councillor Sanders. Finally although Councillor Sanders was acting in the way he believed to be in the best interests of his constituents, Councillor Hare was not acting in the capacity of a ward councillor but instead was engaged in earning money representing someone.

There were serious aggravating features in this case namely, "allegations of an essentially criminal nature against professional staff in senior positions of trust in a major body", the failure of Councillor Hare to apologise, and the view of the Tribunal as the fact finders, who had seen and heard Councillor Hare, that "the lack of understanding and insight shown by the Respondent caused the Case Tribunal serious concern that this conduct was likely to be repeated". Councillor Hare fell a long way short of showing that the order of suspension of 6 months imposed on him was "plainly wrong". Thus notwithstanding the detailed and sustained submissions of Councillor Hare, the appeal was dismissed.

Court of Appeal

Councillor Hare sought leave from the Court of Appeal to appeal against the judgement of the High Court.

Refusing permission for Councillor Hare to appeal, Tuckey LJ held that Councillor Hare's submission based on other cases is one which is often made but seldom successful for the very simple reason that no two cases are the same. Penalty for breaches of the Code of Conduct such as this were a question for the specialist Tribunal. A court should not interfere with the penalty imposed by the Tribunal unless it is satisfied that there has been some error of principle or that the penalty is plainly wrong. When considering whether a court is so satisfied, the court must pay due deference to the Tribunal's expertise in matters relating to local government. Tuckey LJ could see no justification for the Court interfering with the applicant's suspension. Silber J reached the right conclusion about this and there was no real prospect of the Court of Appeal disagreeing with him.

Appendix A

Guidance on decisions to be made by a Case Tribunal where a Respondent has been found to have failed to comply with a Code of Conduct

Introduction

1. Section 75 of the Local Government Act 2000 provides that the President of the Adjudication Panel for England is responsible for training members of the Panel and for issuing guidance on how tribunals drawn from the Panel are to reach decisions. This guidance is issued in accordance with that power and applies to how Case Tribunals are to reach decisions after a finding has been made that there has been a failure to follow the provisions of a Code of Conduct. The guidance is not prescriptive. The decision to be made in each case is a matter for the Case Tribunal and will in a large part depend on the particular facts and circumstances as found by the Case Tribunal.

2. The powers available to the Case Tribunal are set out in Section 79(4) of the Local Government Act 2000 and in essence are:

    2.1. To disqualify the Respondent.

    2.2. To suspend the Respondent.

    2.3. To partially suspend the Respondent.

3. Although not expressly specified in Section 79 of the Local Government Act 2000, if the Case Tribunal decides not to suspend or disqualify a Respondent, it might be appropriate to warn the Respondent as to future conduct. Where such a warning has been recorded this is likely to be taken into account should the Respondent be found again to have failed to follow the provisions of the Code as a result of some later action.

4. In the case of a suspension or disqualification the Case Tribunal will also need to consider the period over which such a sanction should apply:

    4.1. A period of disqualification must not exceed 5 years.

    4.2. A period of suspension or partial suspension must not exceed one year or the remainder of the Respondent's term of office if shorter.

5. In the case of a partial suspension the Case Tribunal will need to decide from what activities the Respondent is to be suspended.

6. Generally the length of disqualification is likely to be the same whether elections are due imminently, or at some future time. There may sometimes be occasions when the timing of a Case Tribunal and the time when a disqualification might expire will result in the penalty having a disproportionate effect. Case Tribunals should be willing to hear submissions as to why the length of disqualification should be varied in such circumstances.

7. Whilst this publication contains guidance on the likely term of disqualification or suspension which might be imposed, that term may need to be varied upwards or downwards to take account of aggravating or mitigating factors. Such factors may at times also be sufficient to persuade the Case Tribunal to impose suspension where disqualification would otherwise have been their first thought and vice versa.

8. Examples (but not an exhaustive list) of mitigating factors are:

    8.1. An honestly held (although mistaken) view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.

    8.2. A members' previous record of good service.

    8.3. Substantiated evidence that the member's actions have been affected by ill-health.

    8.4. Recognition that there has been a failure to follow the Code; cooperation in rectifying the effects of

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that failure; an apology to affected persons where that is appropriate; self-reporting of the breach by the member.

8.5. Compliance with the Code since the events giving rise to the determination.

8.6. Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

9. Examples (but again not an exhaustive list) of aggravating factors are:

9.1. Dishonesty.

9.2. Continuing to deny the facts despite clear contrary evidence.

9.3. Seeking unfairly to blame other people.

9.4. Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.

9.5. Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

10. The High Court has suggested that Case Tribunals should be reluctant to interfere with the democratic will of the electorate. This comment was made in circumstances where the member concerned had been re-elected since the events giving rise to his or her appearance before the Case Tribunal and where the electorate, who could be taken to have knowledge of those events, had nevertheless re-elected the member. But in another decision the High Court has recognised that Parliament has expressly provided Case Tribunals with such a power and that such interference may be a necessary price to pay for the need to maintain public trust and confidence in the local democratic process. This may at times mean disqualifying members whose conduct has shown them to be unfit to fulfil the responsibilities which the electorate have vested in them.

11. In deciding what action to take, the Case Tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Case Tribunal should be designed both to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others.

12. Case Tribunals should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

13. This guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code. Any such tariff would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.

Disqualification

14. Disqualification is the most severe of the sanctions available to the Case Tribunal. This option is likely to be appropriate where:

14.1. The Respondent has deliberately sought personal gain (for either him or herself or some other person) at the public expense by exploiting his or her membership of the body subject to the Code of Conduct.

14.2. The Respondent has deliberately sought to misuse his or her position in order to disadvantage some other person.

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14.3. The Respondent has deliberately failed to abide by the Code of Conduct, for example as a protest against the legislative scheme of which the Code forms part. Members of local authorities are expected to uphold the law. Where the Code has been deliberately breached to reflect the Respondent's opposition to the principles underlying the legislation, the Case Tribunal is likely to think of a disqualification of one year.

14.4. There have been repeated breaches of the Code of Conduct by the Respondent.

14.5. The Respondent has misused power or public assets for political gain.

14.6. The Respondent has misused council property.

14.7. The Respondent has committed a criminal offence punishable by a sentence of three months or more imprisonment.

15. There may be other factors not listed above which also merit disqualification. Nor will disqualification always be appropriate even if the listed factors are present.

16. A short period of disqualification may be appropriate when the Respondent is no longer a member in circumstances where, had he or she been a member, suspension would have been the likely sanction. This would ensure that a member does not return to service as a councillor earlier than the period for which he or she would have been suspended had he or she not resigned.

17. Disqualification may be imposed as an alternative to suspension in order to avoid an authority being inquorate or the electorate left without adequate representation. Disqualification would allow by-elections to take place whereas this would not be possible if the member concerned were suspended.

18. Case Tribunals should take into account that disqualification is likely to involve a financial impact upon the member who will lose any entitlement to allowances and expenses.

19. The law imposes an automatic disqualification for five years on any member who is subject to a term of imprisonment for three months or more. That a Court has imposed a lesser sanction does not mean that a five year disqualification is inappropriate. If the Case Tribunal is of the view that the member concerned is unfit to hold public office and is unlikely to become fit over the next five years, then it may well be appropriate to impose such a disqualification. Nor, if the matter does come before a Case Tribunal should the view be taken that because a Court has imposed a sentence of 3 months imprisonment or longer that the maximum disqualification should automatically be imposed. The same facts as might give rise to such an outcome from criminal proceedings might not usually attract a five year disqualification by a Case Tribunal.

Suspension

20. Suspension is appropriate where the circumstances are not so serious as to merit disqualification but sufficiently grave to give rise to the need to impress upon the Respondent the severity of the matter and the need to avoid repetition. A suspension of less than a month is not likely to have such an effect.

21. Suspension is likely to be appropriate where the Respondent has been found to have brought his or her office or authority into disrepute without either being found in breach of any other paragraph of the Code, or being found to have committed a criminal offence punishable by at least three months imprisonment.

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22. Whereas a disqualification will apply to membership of all authorities to which the Local Government Act 2000 applies, suspension will be limited to precluding the Respondent from participating as a member of the authority whose Code has been found to have been broken. If the facts giving rise to a breach of the Code are such as to render the Respondent entirely unfit for public office then disqualification rather than suspension is likely to be the more appropriate sanction.

23. Suspension may have some financial impact on a Respondent who may be denied payment of allowances during the period of suspension. This is a factor which Case Tribunals should take into account.

24. Suspension is not an option if the member has resigned or has not been re-elected to the particular authority.

Partial Suspension

25. This option might be appropriate where there is a concern that the Respondent is judged to have difficulty in understanding or accepting the limitation placed on his or her actions by the Code of Conduct in relation to a particular matter or area of activity but the difficulty does not affect the Respondent's ability to act properly in relation to other matters. Suspending the Respondent from exercising some particular function or having particular responsibilities (such as being the holder of a particular office or a member of a particular committee or sub committee) may in the view of the Case Tribunal provide an adequate safeguard against such a future breach whilst leaving the Respondent able to make an effective contribution to the other work of the body.

26. The option may also be seen as an effective sanction in respect of a Respondent exercising executive functions for the body to which the Code of Conduct applies.

A decision not to impose Disqualification, Suspension or Partial Suspension

27. Circumstances where such a decision may be appropriate include:

    27.1. An inadvertent failure to abide by the Code of Conduct.

    27.2. An acceptance that despite the lack of suspension or partial suspension, there is not likely to be any further failure to comply on the part of the Respondent.

    27.3. The absence of any harm having been caused or the potential for such harm as a result of the failure to comply with the Code of Conduct.

Appendix B

List of Members as at 31 March 2006

President

Mr David Laverick

Legal Members

Ms Karen Aldred

Mr Angus Andrew

Mr Simon Bird (Deputy President)

Ms Melanie Carter

Mr Malcolm Gilbert

Mr Nicholas Holden

Mr Chris Hughes

Ms Sally Lister

Mr Patrick Mulvenna

Mrs Beverley Primhak

Mr Steve Wells

Lay Members

Dr David Billing

Mr Richard Boyd

Mr Peter Dawson

Mr Richard Enderby

Mr Trevor Jex

Mr Sam Jones

Mrs Nan Kirsen

Ms Alison Lowton

Mr Narendra Makanji

Mr Brian McCaughey

Mr William Nelson

Mr Peter Norris

Mr Neil Pardoe

Mr Chris Perrett

Mr Ian Prosser

Mr David Ritchie

Mr Alex Rocke

Mr Keith Stevens

Mr Darryl Stephenson

Mr Stan Szaroleta

Mr Richard Tyndall

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Consultation on The Code of Conduct

Response from The Adjudication Panel for England

Introduction

This response has been drafted to reflect the views of Members of the Adjudication Panel for England. The Adjudication Panel comprises the President, 11 Legal Members and 21 Lay Members although some of the latter are legally qualified. Amongst the membership of the Panel are those with current or past experience as councillors or local government officers as well as those without direct experience of the working of local authorities.

Members were appointed in 2001-2 and have been determining cases since January 2003. The collective experience now encompasses 250 determinations.

This paper seeks, where possible, to reflect a consensus amongst the membership. Where there are clearly divided views this is reflected. The Standards Board may also receive individual responses from some members. Members may also have played a part in shaping the responses from some other bodies and organisations.

Approach to Revising the Code

The Adjudication Panel has noted from the Consultation Paper that the Standards Board has concentrated its consultation on some key issues and these cover the main problem areas which the Adjudication Panel has itself identified:

- The application of paragraph 4 to conduct outside the role of the councillor
- The conflict between the right to freedom of speech and the need to show respect and to maintain confidentiality
- The ban on councillors participating in discussions on matters where they have a prejudicial interest.

The Adjudication Panel is wary of a tendency which can be seen in many aspects of public life of digging up the roots before they have really had time to take hold. On the other hand, it is conscious that neither the Adjudication Panel nor the Standards Board were responsible for the present Code so there may be a case looking fundamentally at the whole Code rather seeking merely to make some minor modifications. A starting point might be to assess each of the present paragraphs in order to identify which of the general principles the particular paragraph is seeking to put into effect and whether the wording of the paragraph is inconsistent with any of the other general principles. There could be a similar audit to assess whether all paragraphs of the Code can be seen as complying with the rights guaranteed by the European Convention on Human Rights.

There has been some criticism that the Code is written more in the style of telling councillors what they must not do rather than encouraging them toward putting the principles into effect to achieve best practice. The Adjudication Panel can understand that those who stand to have sanctions imposed upon them for failing to comply with the Code of Conduct might wish to see that Code written in a prescriptive and black and white style. An advantage of such a style is that it more easily allows for the Code to be interpreted from the viewpoint of the impartial observer rather than from the more subjective viewpoint of the individual councillor. But there may be attraction in expressing the Code more in the nature of principles which should be followed supplemented by illustrative guidance. This for example is the approach adopted in the Guide to Judicial Conduct. Such an approach might overcome some of the difficulties identified by the Consultation Paper on the definition of personal and prejudicial interests.

The Adjudication Panel's view is that the Code is there primarily to ensure that the public can gain and maintain confidence in the ethical behaviour of their elected representatives.

The Standards Board will no doubt be aware of the risk that those responding to its consultation paper may not be proportionately representative of the general public. There is a danger of those with special interests seeking to have the

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Code adjusted to take particular account of those interests which may not be for the greater good of the wider community.

It is difficult to review the Code in isolation from the statutory context. The Consultation Paper itself recognises a number of areas where identified difficulties within the Code can be avoided by sensible discretionary action on the part of the Standards Board in deciding when to refer matters for investigation, and by sensible decisions by Ethical Standards Officers as to when to refer matters for determination. That may however, leave problems where the decisions taken are sometimes less sensible. Moreover what may seem sensible to one person may be less so to another, particular if that other has a particular axe to grind. The Adjudication Panel can see that from the point of view of those who are liable to be sanctioned as a result of the statutory machinery, there may be a preference to clarify the Code itself rather than to rely on the sensible use of executive or judicial discretion.

Finally the Adjudication Panel draws attention to the existence of various other Codes which, in their different contexts are designed to uphold the same ethical standards as those to which the Code of Conduct is directed. The principles which apply to the use of resources by local politicians should not significantly differ from those which apply to the use of resources by those in national government and thus account should be taken, in drafting or revising the Code of Conduct of local government of the provisions in the Ministerial Code of Conduct and indeed in other Codes.

Members of the Adjudication Panel are subject to the Guide to Judicial Conduct, one paragraph of which reads:

> *A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or anyone else.*

Paragraph 5 of the Code of Conduct for local government says:

> *A member must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage;*

This is an example of different wording being used to prevent much the same mischief. Of course there will be some characteristics of different offices which justify differences in the wording of the various Codes applying to the different office holders. But there is probably scope for much more consistency than is presently found.

1 Should the ten general principles be incorporated as a preamble to the Code of Conduct?

It would be useful for the ten principles to be included as part of the introduction to the Code. That would not mean, however, that a failure to follow any of those principles would of itself result in a sanction for failing to follow the provisions of the Code: such a sanction would be possible only if there were some failure to follow the more detailed and prescriptive provisions of the Code.

There may be benefit in re-visiting the wording of the principles set out in the relevant Order but that goes beyond the terms of reference of the current review of the Code itself.

2 Are there any other principles which should be included in the Code of Conduct?

The Code of Local Government Conduct should be seen in the wider context of Standards in Public Life. The Government should seek to avoid a situation whereby different standards of conduct apply to different aspects of public life unless a convincing case can be made to show why misconduct prohibited in one area of public life is accepted or condoned in another.

The Rules which govern the conduct of Ministers could well be applied to govern the conduct of those who occupy executive positions in local government.

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3 Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?

A question which the review should consider is why paragraph 2 of the Code does not simply follow the wording set out in the Principles Order:

> *"Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees."*

The wording of the first sentence of that extract would suggest that the reference to "treating people with respect" is to be interpreted in the context of promoting equality and avoiding discrimination on specified grounds. That interpretative context is lost in the present version of the Local Government Code of Conduct.

The second sentence seems to be aimed primarily at how members should treat the staff of the authority concerned.

A better wording of the concept described in the principles might be to omit the reference to respect in the first sentence which could read:

> *Members should promote equality by not discriminating unlawfully against any person, and by treating people without regard to their race, age, religion, gender, sexual orientation or disability.*

Such a provision could form paragraph 2 (a) of the Code and the present second sentence, subject to slight amendment could became 2 (b).

> *Members should show due respect to the impartiality and integrity of the authority's statutory officers and its other employees.*

The amended wording seeks to reflect the reality that some members of the staff of authorities may at times lack impartiality and prejudice their integrity. The Code should not seek to prevent Councillors from being critical in such situations.

That would then leave two key areas on which discussion should focus:

(a) Should there be some provision about the way in which members should deal with each other?

(b) Should there be some provision about the way in which members deal with members of the public?

The Adjudication Panel observes that complaints about (a) are a feature of the incoming workload of the Standards Board and that a proportion of them find their way into the workload of the Adjudication Panel. It further observes that the present Code of Conduct appears to impose a higher standard upon how local politicians treat each others than is applied to national politicians.

The Adjudication Panel suggests that the Code of Conduct should limit itself to saying that members should refrain from making libellous or slanderous comments about other members. Passion and conflict are an accepted part of the flavour of political life in this country and the Code needs to avoid having the effect of suppressing this.

There would be nothing to stop individual local authorities from adding to the Code more detailed requirements specifying how members should treat each other. There could be similar incorporation of member/officer protocols.

4 Should the Code of Conduct include a specific provision on bullying? If so, should the definition of bullying adopted by the Code of Conduct reflect the Acas definition of bullying?

The Adjudication Panel doubts whether the framework of complaints to the Standards Board and determinations by the Adjudication Panel should be the primary method of dealing with complaints from members of staff about alleged bullying

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by councillors. The primary route should be by the council's own grievance procedure and the Adjudication Panel would expect the Standards Board to take account of this in deciding whether such complaints should be accepted for investigation. The fact that the consultation document itself refers to an Acas definition underlines the Adjudication Panel's view that such complaints are primarily employment matters.

Nevertheless there will be some such complaints of alleged bullying which are suitable for investigation and which, after investigation may be referred to the Adjudication Panel. Grievance procedures may not be available or suitable, for example, for complaints about the treatment of officers of Parish Councils where the number of staff is very small and indeed often consists simply of the Clerk to the Council.

The Adjudication Panel would **not** favour incorporation into the Code of the Acas criteria. That criteria identifies bullying as a pattern of behaviour so that a single incident would fall outside the definition. Yet such a single incident would be caught by the Code's present provision requiring councillors to treat others (including staff) with respect.

Further criteria in the Acas Code are that the pattern of behaviour

(a) attempts to undermine the individual
(b) gradually erodes their confidence and capability
(c) may cause the individual to suffer stress.

The first of those factors could give rise to a defence that the perpetrator of the behaviour did not intend his or her actions to have such an effect. A better test which should be applied in judging the appropriateness of a councillor's actions towards a member of test should be whether a reasonable man observing the matter would view the actions as objectionable.

The Adjudication Panel is aware that in some contexts the view has been put forward that discrimination occurs where it is felt by the recipient regardless of the intent of the perpetrator. The Adjudication Panel has doubts about such an approach. The basic test ought to be whether the reasonable man could perceive that his actions are likely to be construed as causing offence. However, the perpetrator should be expected to take account of evidence as to the effect which his or her behaviour is having on individuals. It may not be reasonable to expect the perpetrator to know at the outset that the individual concerned is, for whatever reason, particularly sensitive but if such sensitivities do become apparent or should have become apparent to the perpetrator then the latter might reasonably be expected to modify his behaviour.

The third of the Acas criteria (may cause them to suffer stress) does, the Adjudication Panel notes, involve an objective test of what the likely effect will be of the behaviour rather than a retrospective assessment of what the effect has been.

Rather than seeking to produce a specific paragraph about bullying the Adjudication Panel would favour incorporation into the Code of a requirement for councillors to follow the provisions of member/officer protocols which are now to be found in many local authorities.

5 Should the Code of Conduct contain an explicit public interest defence for members who believe they have acted in the public interest by disclosing confidential information?

6 Do you think the Code of Conduct should cover only information which is in law 'exempt' or 'confidential', to make it clear that it would not be a breach to disclose any information that an authority had withheld unlawfully?

Broadly, the Adjudication Panel would wish to arrive at effectively the same end point as if the answer to question 5 were "yes" but would prefer to do so by adopting a more limited definition of what constitutes confidential material. The Adjudication Panel would prefer Question 6 to have been worded differently. In the Adjudication Panel's view there should be no restriction on a councillor disclosing

information which would be obtainable under the Freedom of Information Act.

The Adjudication Panel's view is that the Code's current restrictions on a councillor's freedom to impart information may be incompatible with Article 10 of the Human Rights Act. While paragraph (2) of that Article allows restrictions to be imposed on the right freely to impart information, the Adjudication Panel is concerned that the restrictions imposed by a combination of the present Code and the provisions governing what information is exempt from publication under the Local Authority Access to Meetings legislation go further than is necessary. The real need is for Government and Parliament to revisit that latter legislation. That legislation emerged from a time when the starting point was that public administration should remain confidential unless there was a good reason for disclosure whereas the reverse principle generally holds good today.

The Adjudication Panel would prefer the Code (and indeed the definitions of Exempt Information contained in the Local Government legislation) to match up with the provisions in the Freedom of Information Act so that what constitutes confidential information under the Code would equate to information of a kind which under the Freedom of Information Act would be exempt from disclosure. The Code should also incorporate a test similar to that in the Freedom of Information Act:

> *In all the circumstances of the case, the public interest in maintaining confidentiality outweighs the public interest in disclosing the information.*

As for other provisions of the Code the test as to whether or not the Code has been breached should rest on the reasonable man's view as to the public interest and not on the subjective view taken by the particular councillor.

The Code also needs to make provision for a situation where a councillor receives information in the expectation that it will be disclosed by him but only in limited circumstances: thus a councillor may be alerted to alleged abuse in a children's home. The councillor could properly be expected to convey that concern both within his own local authority and perhaps also with other public bodies such as the police or Social Services Inspectorate. But it may be a breach of confidence for him to reveal the concern elsewhere.

Finally the Code needs to make clear that where information is properly to be treated as confidential the restriction applies where information has **reached** the councillor in his capacity as a councillor. In improperly disclosing the information, the councillor is arguably not acting in his official capacity and thus under the existing Code any breach might more appropriately be of paragraph 4. It would be better if the wording of paragraph 3 made clear that the cloak of confidentiality (where it properly applies) extends to action taken by a councillor outside his official capacity.

7 Should the provision related to disrepute be limited to activities undertaken in a member's official capacity or should it continue to apply to certain activities in a member's private life?

Members of the Adjudication Panel have been uneasy at applying sanctions to conduct which has not been undertaken in a councillor's official capacity although Case Tribunals have adopted a wide definition as to what is to be regarded as action falling within a councillor's official capacity. The Adjudication Panel's Case Tribunals have no problem in imposing sanctions in respect of action which a member has taken, or which the member has refrained from taking, because he is a councillor.

There is, a view held by some but not all members of the Adjudication Panel to the effect that a distinction cannot be drawn between the private and public life of a councillor: by standing and being elected to public office the councillor does expose the whole of his conduct to the possibility of investigation and review.

A difficulty with that view is that the investigation of a complaint and determination of a reference may involve an interference with the right of privacy not only of the member

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concerned but also of other people, such as his family, friends and associates. The Adjudication Panel has some reservations as to whether such an interference can be justified in the terms set out in paragraph 2 of Article 8 of the European Convention on Human Rights.

It would be better if the words *"in his official capacity, or any other circumstance"* were omitted from paragraph 4 of the Code. There should also be a corresponding revision of paragraph 1 (2) of the Code to read:

> *An authority's code of conduct shall not have effect in relation to the activities of a member undertaken other than in, or arising from, an official capacity*

8 If the latter, should it continue to be a broad provision or would you restrict it solely to criminal convictions and situations where criminal conduct has been acknowledged?

Despite its response to Question 7, the Adjudication Panel is of the view that it may be appropriate to suspend or disqualify a councillor who has been subject to a criminal conviction.

This view is of course consistent with the provision in primary legislation that a member who is subject to a term of imprisonment of more than three months is automatically subject to five year disqualification.

The existence of a criminal conviction also largely overcomes the unease about interfering with a right to privacy. Because the Criminal Courts operate in public the facts will already have been placed in the public domain.

Whether *any* criminal conviction should be regarded as a breach of the Code of Conduct may be more debateable. Are motoring convictions to be so regarded? The Adjudication Panel suspects that most members of the public would feel it unreasonable to disqualify a councillor who had been found to have been speeding; on the other hand if a councillor were convicted of dangerous driving while under the influence of drugs or alcohol a sanction may be seen as appropriate.

A possible test might be to specify that the commission of a criminal act which is punishable by a sentence of 3 months imprisonment or more should be regarded as being a breach of the Code of Conduct. Regardless of whether such a sentence has actually been passed drafting the Code in that way would also cover the situation where a caution has been issued which is presumably what the Standards Board has in mind by its reference to criminal conduct being acknowledged.

9 Do you agree that the Code of Conduct should address the three areas set out in 4.4.11 of the Consultation Paper?

- **a breach of the 1986 Code of publicity;**
- **a breach of any local protocol;**
- **misuse of resources, in particular officer time, for inappropriate political purposes.**

10 If so, how could we define 'inappropriate political purposes'?

11 Do you agree that the Code should not distinguish between physical and electronic resources?

The Adjudication Panel has noted the comment from the Standards Board that this is an area of the Code which can be most suitably be left to the local custom and practice of individual authorities. There is, however, a danger of local custom and practice failing to observe the distinction between promoting the interests of the council and promoting the interests of individual Councillors or of a particular political party. The Code of Conduct needs to guard against attempts to use the resources of the council for this latter purpose.

The Adjudication Panel notes the view of the Standards Board that paragraph 5 (a) of the Model Code of Conduct *[a member must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for*

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himself or any other person, an advantage or disadvantage] should remain unchanged. In the Adjudication Panel's experience that wording has not caused any difficulties of interpretation.

In the Adjudication Panel's view, that wording is sufficiently wide as to catch the improper use of resources for political purposes so that there is no need for paragraph 5 (b) (ii) and hence no need to define what is meant by political purposes.

The present wording of paragraph 5 (b) (ii) *[a member must ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed]* is certainly not without difficulty, primarily caused by the words after "authority" although the omission of such words would lead to an excessive restriction on the use of resources by those who form the local political opposition.

The Standards Board has suggested that there is no need to amend paragraph 5 (b) (i) [a member must, when using or authorising the use by others of the resources of the authority act in accordance with the authority's requirements]. Again, in the Adjudication Panel's view this sub paragraph is probably unnecessary: if a member were acting in accordance with his authority's protocol is difficult to see how he could be regarded as improperly seeking to confer or secure an advantage for himself.

The Adjudication Panel is of the view that the Code should not distinguish between the use of physical and electronic resources.

12 Should paragraph 7 (Duty to make an allegation) be retained in full, removed altogether or somehow narrowed?

13 If you believe the provision should be narrowed, how would you define it? For example, should it only apply to misconduct in a member's public capacity, or only to significant breaches of the code?

Those cases where matters have been reported to the Standards Board which do not merit investigation, or where the investigation reveals no cause for further action, do not usually find their way to the Adjudication Panel. The Adjudication Panel is not, therefore well placed to comment on the extent to which the duty imposed by paragraph 7 is causing matters to be subject to complaint which would not otherwise be referred to the Standards Board.

The Adjudication Panel is not convinced that the present requirement that Councillors should make complaints about each other is helpful or that its deletion would diminish public confidence in the process. The Adjudication Panel suspects that the present wording is sometimes used as alleged justification for councillors to pursue political differences before the Standards Board and the Adjudication Panel's Case Tribunals. Subject to one possible exception set out in the next paragraph, the Adjudication Panel would remove the requirement. Such removal of a duty to report would not prevent Councillors from making complaints where they felt it appropriate so to do.

The exception to the above view is that the Adjudication Panel can see validity in a requirement that the individual member should himself notify the Standards Board of matters such as a criminal conviction or of other possible breaches of the Code by himself.

The question of whether there should be a duty to make a complaint is essentially a different issue than determining, to where complaints are to be made, i.e. whether the recipient should be the national Standards Board or the local Standards Committee. In the Adjudication Panel's view that latter issue is one which should be resolved by primary legislation rather than by a revision of the Code of Conduct.

14 Should there be a further provision about making false, malicious or politically motivated allegations?

That an allegation is made with some malicious or politically inspired motivation does not mean that there has not been a breach of the Code. The present legislation envisages a

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filtering role for the Standards Board in determining whether a complaint should be accepted for investigation.

The Code's present provisions against bringing an authority into disrepute could be used to deal with cases where Councillors are effectively seeking to abuse the system, particularly if the duty on them to report breaches is removed.

The Adjudication Panel therefore answers "No" to this question.

15 Does the Code of Conduct need to provide effective protection for complainants against intimidation, or do existing sections of the Code of Conduct and other current legislation already cover this area adequately?

The Adjudication Panel believes that existing provisions are sufficient.

16 Do you think the term 'friend' requires further definition in the Code of Conduct?

Starting with a clean sheet of paper, the Adjudication Panel might prefer not to use the term "friend "at all.

The underlying issue which needs to be addressed in the context of the need to declare an interest is whether a member of the public with knowledge of all relevant facts would reasonably consider that the member's actions have been improperly influenced by a range of improper motives one of which may be the advancement or demotion of the private interests of himself, his family or some other person or body with whom he is associated.

A relationship with a person who does not come within the ordinary definition of a friend (for example a business associate or a member of the same social charitable organisation) may nevertheless be of a kind which ought to require declaration and which might require the member concerned not to participate in discussion of a particular matter. But the key is to examine the issue in its particular context and with knowledge of all relevant facts. Because a planning application is being considered from someone who is one of 3000 members of a golf club to which a councillor belongs is probably not a reason for that councillor to debar himself. If, however, the applicant regularly plays a round of golf with the councillor it almost certainly is a reason for the councillor not to participate.

Thus the Adjudication Panel would prefer that the term "friend" is replaced; if the term is to be retained there should be a definition set out in the Code as the mischief against which the Code is intended to protect, is likely to require "friend" to be given a different meaning than that which would be regarded as ordinary and natural.

The Adjudication Panel is also concerned about the very wide definition given in the Code of "relative" (spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons). Can members of local authorities really be expected to know who the current partner is of all of their nephews and nieces let alone what their employment or business is? Can they be expected to know whether any of that range of people has a beneficial shareholding with a nominal value of more than £5,000?

17 Should the personal interest test be narrowed so that members do not have to declare interests shared by a substantial number of other inhabitants in an authority's area?

Some changes need to be made to paragraph 8 of the Code.

The paragraph presently defines a personal interest as arising if a decision on the matter would affect the particular councillor to a greater extent than other council tax payers, ratepayers or inhabitants of the council area. The result could for example be that a councillor with young children might be seen as having a personal interest when the council is discussing changes to its Educational Policy: such a decision is likely to affect the councillor to a greater extent than those inhabitants without children. This cannot be what is intended

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and in that context the introduction of a reference to an interest not arising simply because the councillor would be affected to the same extent as a substantial number of other people would be an improvement on the present wording.

A particularly unfortunate consequence of the present wording is where there is some local issue which galavanises a neighbourhood, for example proposals for some kind of major local redevelopment. Candidates from the affected neighbourhood may stand for election campaigning on a single issue in response to such proposals (eg "Save the Allotments", "Say No to a Waste Tip Here"). Under the present Code these candidates if elected will almost certainly have to declare a personal interest when the council comes to discuss such a proposal and are highly likely to have to declare a prejudicial interest. Thus they will find themselves unable to take part on the discussion and decision making of the exact matter for which they were elected. That cannot be seen as a sensible outcome for democracy.

While being clear on the need for change, the Adjudication Panel is not convinced that the change needs to be to the definition of what constitutes a personal interest; the change might more appropriately be to the definition or effect of having a prejudicial interest. The Adjudication Panel can see merit in encouraging councillors publicly to acknowledge that they do stand to be affected by particular decisions and sees some illogicality in saying that there is no need for such a declaration if 1000 homes stand to be affected by say the closure of an access onto a road but that an interest would have to be declared if only 25 homes were so affected. The effect on the particular councillor's home would be the same.

In deciding what is substantial, what account should be taken of the size of the local authority concerned? An issue affecting 1000 people may affect a substantial part of the population of a parish whereas in the context of a City of half a million, do 1000 inhabitants constitute a substantial number?

The Adjudication Panel is frequently faced with councillors arguing that although they do have an interest which, under the present Code constitutes a personal interest, and which in the Case Tribunal's view constitutes also a prejudicial interest, they should nevertheless be able to represent the views of their constituents. This is not an argument which succeeds under the present Code but the Adjudication Panel is uneasy that as a result the legitimate views of people, who do stand to be affected by the council's decisions, cannot be put forward by their elected representatives. The suggestion that the views can be advanced by the particular councillor in other ways than by direct participation in the council's meeting does not, in the Adjudication Panel's view, have much weight of moral legitimacy.

18 Should a new category of 'public service interests' be created which is subject to different rules of conduct?

19 If so, do you think public service interests which are not prejudicial and which appear in the public register of interests should have to be declared at meetings?

20 Do you think paragraph 10(2) (a-c) should be removed from the Code of Conduct?

21 Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups?

The Adjudication Panel endorses the proposals of the Standards Board set out in paragraphs 5.1.15 and 5.1.16 of the consultation paper. The Adjudication Panel also endorses the proposal in paragraph 5.1.12 of the Consultation Paper.

There is a need for some rewording of paragraph 10 (2). Mere membership of another public body of the kind specified in paragraphs (10 (2) (a-c) should not automatically give rise to the member being regarded as having a prejudicial interest in a matter which affects that public body. But it does not follow that no prejudicial interest based on membership of the public body can ever be seen as occurring.

A better articulation of the test of what constitutes a prejudicial interest might have the effect of making paragraph 10 (2) largely redundant.

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22 Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?

23 Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?

If the present definition of prejudicial interest is maintained, the Adjudication Panel would be in favour of amending the Code to allow members with prejudicial interests to speak but not vote upon matters. A different view might be taken if the definition of prejudicial interest were more tightly drawn.

It would be wrong to allow councillors who are motivated or influenced by their own personal gain to participate in any shape or form in the taking of a decision by the body of which they are a member. But should the fact that a member feels passionately about a particular matter, so passionately that it clearly gives the impression that he cannot approach the discussion in an unprejudiced way, nevertheless preclude him from expressing that view?

Perhaps account should be taken of the forum in which the discussion is taking place. If that forum is not itself taking an executive decision is there any reason why the councillor should be precluded from expressing a view? Local government is moving away from its 19th and 20th century style of government through executive committees and decisions by the full council into something closer to the Westminster model. In Westminster those members who hold ministerial office are subject to a more stringent Code of Conduct than applies to other Members of Parliament. Could this be a model for local government to follow?

24 Should members employed in areas of sensitive employment need to declare their occupation in the public register of interests?

The Adjudication Panel has noted the Standards Board's proposal but wonders whether it is the right way to overcome the perceived problem which is presumably to preserve the safety and security of the members' concerned. The Adjudication Panel's starting position is to note that there may be some threat to the safety and security of all those in public life and that those putting themselves forward for public office might be expected to take account of this.

The concern which lies behind the proposal from the Standards Board arises not so much from the registration of employment details but from the use which might then be made of that information by those inspecting the Register. But the proposal has the result that the information is denied to those who might have a legitimate desire to learn whether a member has been improperly influenced, when discharging the role as a councillor by considerations which arise from his employment.

The problem which the Standards Board has identified and seeks to overcome is one which should be dealt with by amendment if need be to Section 81 of the Local Government Act 2000 (and probably also of the Freedom of Information Act) rather than by the wording in the Code.

The Adjudication Panel is inclined to the view that the choice is between having a Register of Interests available for public inspection or of not having such a register. The Adjudication Panel is not in favour of the double standards which would be involved in adopting the Standards Board's proposals.

25 Should members be required to register membership of private clubs and organisations? And if so, should it be limited to organisations within or near an authority's area?

If membership of private clubs and organisations is to be registered at all, then the Adjudication Panel doubts the practicality or desirability of incorporating a geographical limitation of the kind suggested.

A councillor might be a member of a nationwide club which has a very small membership. The charge that he might be influenced by that membership when considering, in the course of council business, a matter in which either the club

itself has an interest, or another of the small membership has an interest, is just as likely to be made as it would if the club were locally based.

The answer may be not to require any such interests to be registered at all but instead to rely on the duty to declare an interest where that is appropriate.

26 Should the Code require that the register of gifts and hospitality be made publicly available?

If the purpose of requiring the registration of such gifts is to make clear whether there is any suggestion that members are being improperly influenced then there is a powerful argument for ensuring that the register is available for public inspection.

27 Should members also need to declare offers of gifts and hospitality that are declined?

The Adjudication Panel can see little risk of the public feeling that a councillor who has declined a gift or hospitality has thereby been influenced. The purpose of requiring the registration of gifts which have not been accepted is not in essence concerned with the conduct of councillors but instead relates to the conduct of those offering the gifts. Nor would such a requirement be related to the principles governing the Code of Conduct of councillors. The Adjudication Panel does not therefore endorse the proposal from the Standards Board.

28 Should members need to declare a series of gifts from the same source, even if these gifts do not individually meet the threshold for declaration? How could we define this?

29 Is £25 an appropriate threshold for the declaration of gifts and hospitality?

The Adjudication Panel would favour a significantly higher limit than £25 and offers £100 as a suggestion.

The Adjudication Panel would favour a requirement requiring declaration of a series of gifts/hospitality which taken together breached that higher limit. This could be achieved by requiring declaration of all items within a financial year although there could be difficulties if the gift or hospitality came from different but associated sources, for example from different companies within the same group.

Although no specifically numbered question is posed in the Consultation Paper, the Adjudication Panel notes that the paper discusses whether a definition is needed of hospitality. The Adjudication Panel shares the view of the Standards Board that no such definition is needed.

Appendix D

Casework Statistics

Table detailing the sanctions issued in respect of all completed cases up to 31 March 2006

Decisions Issued	Length of time	Cumulative
Disqualification	5 years	3
	4 ½ years	1
	4 years	6
	3 years	9
	2 years	19
	1 year	117
	18 months	9
	15 months	3
	9 months	2
	6 months	6
	5 months	1
	3 months	2
	2 months	2
Suspension	1 year	12
	9 months	7
	6 months	7
	5 months	2
	4 months	4
	3 months	9
	2 months	4
	1 month	3
	1 week	11
	19 days	1
	5 days	1
Partial suspension	12 months	1
	6 months	2
	2 months	1
Reprimanded		2
No Breach		25
Breach but no further action		34
Case Withdrawn		1
Case closed no decision		1
Total		**308**

Figure 7: Below shows the % of cases referred for a Tribunal by the type of authority

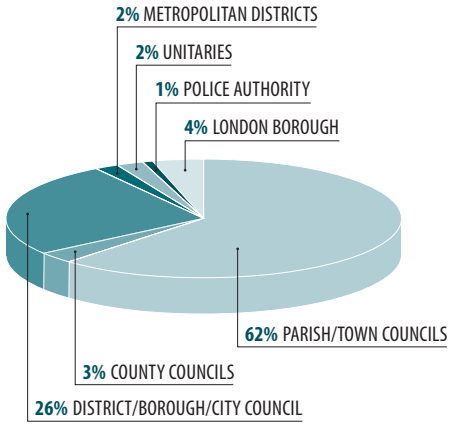


Figure 8: Below shows the % of cases referred for a Tribunal by origin of complainant

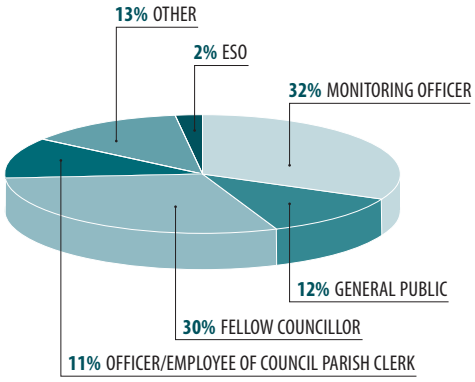
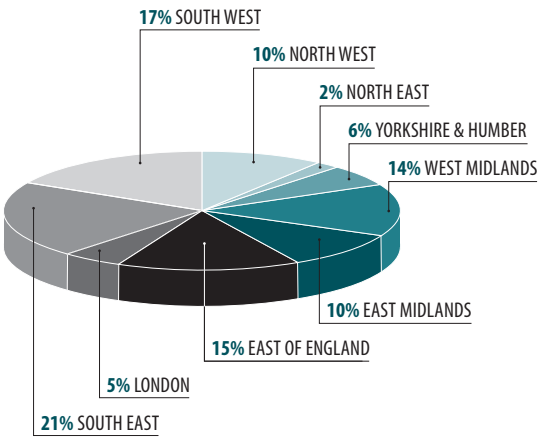


Figure 9: Geographical spread of cases based on all cases received up to March 2006



Appendix E

Expenditure

The table below shows details of the Adjudication Panel for England's expenditure for each year.

Costs	2005-2006 £	2004-2005 £	2003-2004 £
Staff Salaries	136,083	129,500	137,000
President, Members & Agency Staff Fees	152,230	104,000	114,500
Travel & Expenses	52,303	37,000	41,800
Office & Other Costs	85,957	68,000	92,700
Accommodation Costs	103,500	47,500	50,000
Cost Per Determination **Total spend divided by no of determinations**	£5197 (102)	£5436 (71)	£2725 (160)
Total spend	**530,073**	**386,000**	**436,000**

The Adjudication Panel is supported by four full time staff.

The President and Members are all appointed on a part time basis and receive a daily fee for the work which they undertake. Case Tribunals are assisted on the day of the hearing with administrative and technical support by Tribunal Assistants employed by an Agency.

The remuneration of the President and Members is set by the Office of the Deputy Prime Minister which has now been renamed Department for Communities and Local Government (DCLG) - as at 31 March 2006 the daily fees payable are:

President	£452.00
Legal member	£379.00
Lay member	£175.00

The Adjudication Panel does not have any dedicated premises for use by its Case Tribunal's. Accommodation therefore, is hired as required.

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THE ADJUDICATION PANEL FOR ENGLAND

The Adjudication Panel for England

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