

Public Document Pack



Standards Committee

Wednesday, 21 November 2007 at
3.00p.m., Conference Room 1, Municipal
Building, Widnes

A handwritten signature in black ink that reads 'David W R'.

Chief Executive

COMMITTEE MEMBERSHIP

Mr Bill Badrock (Chairman)

Parish Councillor Ronald Crawford

Mr Tony Luxton

Councillor David Lewis

Conservative

Councillor Stan Parker

Labour

Councillor Linda Redhead

Liberal Democrat

Councillor Kevan Wainwright

Labour

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, 9 January 2008

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

Part I

Item No.	Page No.
1. MINUTES	
2. DECLARATIONS OF INTERESTS	
Members are reminded of their responsibility to declare any personal or personal and prejudicial interest which they have in any item of business on the agenda no later than when that item is reached and (subject to certain exceptions in the Code of Conduct for Members) to leave the meeting prior to discussion and voting on the item.	
3. ACTION LIST	1 - 2
The Committee's Action List is attached for consideration and amendment as necessary.	
4. SIXTH ANNUAL ASSEMBLY OF STANDARDS COMMITTEES - FEEDBACK	3 - 4
5. STANDARDS BOARD TRAINING DVD	5 - 6
6. STANDARDS BOARD INFORMATION ROUND-UP	7 - 29
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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.

HALTON BOROUGH COUNCIL

STANDARDS COMMITTEE: 21 November 2007

DRAFT ACTION LIST

The following list is for consideration by the Committee:-

No.	Priority	ACTION	BY	DATE
1	HIGH	Further role play session repeating the 'hearing' on 28 February 2007 with more time allowed - Role of Chair – To maintain impartiality throughout hearing. Facilitate and ensure compliance with procedure. Secure fairness of hearing. (previously 1, 5, 8, 10) Council Solicitor to prepare and circulate flowcharts illustrating the sequence of events and deadlines in relation to hearings. Consider further training involvement by Charles Kerry (Chester) Consider further training involvement by Graeme Creer (Weightmans)	OD	December 2007
2	LOW	Training DVD from Standards Board – not yet available. Useful to build into training when available	OD	December 2007
3	HIGH	Council Solicitor to arrange for Standards Committee members to attend other Council's Standards Committee hearings as a training opportunity.	OD	March 2008
4	HIGH	Attend Standards Board Conference and report back to Standards Committee	Chair/OD	October 2007
6	HIGH	Consider cost of training initiatives and make provision in budget for 2008/9. Consider funding sources for training during 2007/8.	OD	November 2007
7	MEDIUM	Develop Standards Committee internet website presence.	OD	June 2008

No.	Priority	ACTION	BY	DATE
9	LOW	Video of interview with Leader of Council and Chief Executive. Further use in conjunction with later training sessions. Explore ways of using training video as part of civic responsibility training in Halton's schools (previously 9, 16) [the new monitoring officer to review the video when in post, taking into account recent changes, to determine what amendments are required]	OD	Feb 2008
11	LOW	Consider use of external investigators – firms of solicitors/others. Impact on staff time if such action not taken.	Chair/OD	Jan 2008
12	MEDIUM	Council Solicitor and Chair invite Halton's parish council clerks and chairpersons to meeting to explore training needs of parish councillors. Halton's parish council clerks and chairpersons training session of parish clerks and chairpersons (prev 12, 13)	Chair/OD	February 2008; June 2008
14	HIGH	Members of Standards Committee to receive copies of the Members Information Bulletin and the Leader's weekly newsletter.	OD	September 2007
15	MEDIUM	Explore the idea of small loose-leaf folder for members of the Committee to keep copies of key documents: e.g. Principles, Code of Conduct and Guidance.	Chair/OD	March 2008
16	HIGH	Halton's preparations, arrangements and training for dealing with local filter duties.	OD	November 2007

Rob Barnett
Group Solicitor (Policy and Regeneration)
5 November 2007

REPORT TO: Standards Committee

DATE: 21 November 2007

REPORTING OFFICER: Strategic Director Corporate & Policy

SUBJECT: Sixth Annual Assembly of Standards Committees
- Feedback

WARDS N/A

1.0 PURPOSE OF THE REPORT

1.1 To provide feedback on the Sixth Annual Assembly of Standards Committees held on 15th and 16th October 2007.

2.0 RECOMMENDATION

2.1 That the report be noted.

3.0 SUPPORTING INFORMATION

3.1 Following the previous meeting, the Council managed to secure one place on the Annual Assembly of Standards Committees in Birmingham, which took place on 15th and 16th October 2007.

3.2 The Chairman attended the event and will provide feedback for Members at the meeting.

4.0 POLICY IMPLICATIONS

4.1 None.

5.0 OTHER IMPLICATIONS

5.1 None.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 **Children and Young People in Halton** – None.

6.2 **Employment, Learning and Skills in Halton** – None.

6.3 **A Healthy Halton** – None.

6.4 **A Safer Halton** – None.

6.5 **Halton's Urban Renewal** – None.

7.0 RISK ANALYSIS

7.1 No key issues have been identified which require control measures.

8.0 EQUALITY AND DIVERSITY ISSUES

8.1 None.

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

Document	Place of Inspection	Contact Officer
None.		

REPORT TO:	Standards Committee
DATE:	21 November 2007
REPORTING OFFICER:	Strategic Director Corporate & Policy
SUBJECT:	Standards Board Training DVD
WARDS	N/A

1.0 PURPOSE OF THE REPORT

- 1.1 To introduce to Members of the Committee the new training DVD issued by the Standards Board for England, entitled The Code Uncovered.

2.0 RECOMMENDATION

- 2.1 That the Report be noted.

3.0 SUPPORTING INFORMATION

- 3.1 The DVD produced by the Standards Board for England has now been received. It uses a dramatised scenario to illustrate the lead up to a potentially explosive planning committee meeting, and highlights the key changes to the revised Code of Conduct.
- 3.2 The film examines the rules about declaring interests, disclosing confidential information and bullying. It also features learning points identifying key elements to consider when following the rules governing Members' behaviour.
- 3.3 Arrangements have been made for the DVD to be shown at the meeting.

4.0 POLICY IMPLICATIONS

- 4.1 None.

5.0 OTHER IMPLICATIONS

- 5.1 None.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

- 6.1 **Children and Young People in Halton** – None.
- 6.2 **Employment, Learning and Skills in Halton** – None.

6.3 **A Healthy Halton** – None.

6.4 **A Safer Halton** – None.

6.5 **Halton's Urban Renewal** – None.

7.0 RISK ANALYSIS

7.1 No key issues have been identified which require control measures.

8.0 EQUALITY AND DIVERSITY ISSUES

8.1 None.

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

Document	Place of Inspection	Contact Officer
None.		

REPORT TO:	Standards Committee
DATE:	21 November 2007
REPORTING OFFICER:	Strategic Director Corporate & Policy
SUBJECT:	Standards Board Information Roundup
WARDS	N/A

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 A copy of Bulletin 35 released since the last meeting of the Committee is attached.
- 3.2 The document considers the implications for Authorities of the expected move towards a locally based ethical framework from April 2008 and provides an update on the recent local filter pilot projects. It also deals with specifications for the role of independent members of Standards Committees.
- 3.3 The Occasional Paper on predetermination and bias referred to in the information roundup to the last meeting has now been published, and is attached for members' information, along with the promised advice from Counsel.

4.0 POLICY IMPLICATIONS

- 4.1 None.

5.0 OTHER IMPLICATIONS

- 5.1 None.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

- 6.1 **Children and Young People in Halton** – None.
- 6.2 **Employment, Learning and Skills in Halton** – None.

6.3 **A Healthy Halton** – None.

6.4 **A Safer Halton** – None.

6.5 **Halton's Urban Renewal** – None.

7.0 RISK ANALYSIS

7.1 No key issues have been identified which require control measures.

8.0 EQUALITY AND DIVERSITY ISSUES

8.1 None.

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

Document	Place of Inspection	Contact Officer
None.		

THE BULLETIN #35

September 2007

Welcome to Issue 35 of the *Bulletin*.

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Contact

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With the expected move towards a locally based ethical framework from April 2008, this edition of the *Bulletin* looks at some of the likely effects for authorities, and provides an update on the recent local filter pilot projects. For the majority of authorities, the resource implications of the new system look likely to be relatively small.

The Standards Board for England welcomes the move to a locally based framework. We believe that this will reinforce the importance of high standards at a local level, with standards committees taking the lead in ensuring that the Code is upheld. Specifications of the role for independent members of standards committees are also explored in this issue of the *Bulletin*.

The next edition of the *Bulletin* will be in December 2007, as we will be producing a short series of newsletters in the autumn to coincide with our sixth Annual Assembly. These newsletters will be distributed to delegates or will be available from our dedicated website: www.annualassembly.co.uk.

The Annual Assembly is now fully booked. It will be a key event for standards committees and those who work with the Code of Conduct, and presentations from many of the sessions will be available on the conference website following the event.

David Prince
Chief Executive



the Standards Board
for England

Amendments to the Local Government Act 2000

The *Local Government and Public Involvement in Health Bill* is currently before the House of Lords, and is expected to receive Royal Assent in the autumn.

An important amendment to the *Local Government Act 2000* is to enable the Code of Conduct to cover some conduct in a private capacity. It will cover conduct which has led to a criminal conviction.

This amendment seeks to address the High Court's decision last year in *Livingstone v Adjudication Panel for England*. Prior to this decision, it was understood that a member could breach the Code through their conduct in a private capacity. The High Court decided that Section 52 of the Act required members to comply with the Code in their official capacity only, and that it could not govern the private conduct of members.

Until the amendment becomes law, private capacity conduct cannot be covered by the Code. Despite the wording in paragraph 2(3) of the Code, only if a member's alleged misconduct is linked to the functions of their office will any conduct in their private capacity currently be covered, even if it results in a conviction.

Lobby groups and single-issue campaigns

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

The Code of Conduct requires members to declare a personal interest in any matter that relates to an interest they must include in their register of interests - so they are required to declare a personal interest if they are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at their authority.

Members may not have a personal interest in the related discussion or decision of their authority if they merely campaigned on an issue as an individual, perhaps during their election campaign, and they are not a member of a relevant lobby group. As a result, they could not have a prejudicial interest in the matter. Members should still consider the general test for personal and prejudicial interests and whether there is any other reason outside of the Code why they should not participate in the decision, including bias.

Of particular relevance to members of lobby or campaign groups, the revised Code provides an exception to having a prejudicial interest in the following circumstances:

- where the decision does not affect the financial position of a member or their interests
- or
- does not relate to a licensing or regulatory matter brought by them or a person or body in which they have a personal interest

For example, a member will not have a prejudicial interest in a developer's planning proposal against which they and their lobby group campaigned if they or any other person or body in which they have a personal interest are not affected financially by the matter.

It is not relevant for the purposes of the Code that the planning proposal will impact on the aims of the lobby or campaign group that the member belongs to. The Code is focused on the actions of individuals and as such is about preventing improper personal advantage. Under the 2001 Code, the indirect impact on campaign groups was a relevant factor in deciding whether or not a prejudicial interest arose, even if members were achieving no personal gain. Under the revised Code, however, the focus is now on financial impacts and improper personal gain. For further information on personal and prejudicial interests, please see our publication *The Code of Conduct – Guide for members*, available from our website at www.standardsboard.gov.uk

‘To Higher Standards’ – Annual Review published

The continuing development of the Standards Board’s new role as a strategic regulator, how the new arrangements for a locally based ethical system are taking shape and the introduction of a new, less restrictive Code of Conduct are the main themes addressed in our *Annual Review 2006-07*.

The review focuses on the progress that has been made in preparing for a shift in ownership of the ethical conduct regime to a local level. The majority of cases are now being dealt with locally and the introduction of a system of local assessment of complaints is on course to come into effect in April 2008.

In our new role we are committed to defining what people can expect the standards regime to deliver. This includes the role of monitoring officers and standards committees, and providing support and guidance to local authorities to help them operate effectively.

The review also details our achievements over the 2006-07 financial year, which included:

- The majority of our recommendations were implemented by government, leading to the introduction of an improved, less restrictive Code of Conduct
- The initial assessment time for complaints was nine working days
- The Fifth Annual Assembly of Standards Committees was sold out, with an overall satisfaction rate of 91%
- The Standards Board’s move to Manchester was successfully completed

Copies of the Annual Review are now available on our website at

www.standardsboard.gov.uk/Publications

Our Annual Report 2006-07 will be laid in Parliament in autumn 2007 and will be available in hard copy shortly afterwards.

Positive support for the Code of Conduct

An overwhelming majority of local authority members, clerks and monitoring officers support the need for a Code of Conduct, according to research undertaken on behalf of the Standards Board.

The research, carried out earlier this year, assessed attitudes towards the Code of Conduct and the ethical environment generally, as well as the degree to which local authorities are prepared for changes in the way the ethical framework will be managed.

The requirement for members to sign a Code of Conduct was supported by 93% of respondents – up from 84% in similar research in 2004.

Unsurprisingly, of those surveyed, monitoring officers and standards committee members

showed the most support for the Code. However, 85% of elected members were also in favour.

In comparison to 2004's survey, more respondents also felt that members' standards of behaviour in their authority had improved in recent years, and almost three-quarters of those surveyed felt that members' behaviour was important to the general public.

Local filter for Code of Conduct complaints – impact for local authorities

What is happening?

The *Local Government and Public Involvement in Health Bill* proposes the introduction of two key changes to the management of compliance with the Code of Conduct:

- A locally managed framework. This will involve local standards committees making initial assessments of misconduct allegations, and most cases being handled locally.
- A revised strategic regulatory role for the Standards Board. This role is to provide supervision, support and guidance for local authorities and to ensure some degree of consistency in the application of the Code.

Some investigations and hearings are already carried out by authorities. Under the new arrangements, authorities' standards committees will receive all complaints relating to the Code.

Standards committees will decide whether to refer complaints for further action locally, whether to refer complaints to the Standards Board, or whether no further action should be taken. Aside from asking for an investigation, standards committees will also be able to

resolve cases by alternative means such as mediation or training. In cases where the committee considers the sanctions available to it are insufficiently serious, cases can be referred to the Adjudication Panel for England.

How many complaints can authorities expect to receive?

For the majority of authorities the impact of the local system is likely to be relatively minimal. For example, during the financial year 2006-2007, the Standards Board received about 3500 complaints under the Code, of which just under 700 (an average of approximately 18%) were referred for investigation.

On average, based on the number of complaints received by the Standards Board over the last five years, all authorities could expect to receive approximately six complaints a year. On top of this, a district council with 20 parishes may expect about three or four complaints a year about their parishes. A district council with 100 or more parishes may expect around 18 parish complaints each year.

Some authorities, however, may receive no allegations at all over a significant period. Of the approximately 8000 parish and town councils, 80% have not been the subject of a single complaint over five years. There has been at least one complaint about a member of each district council over five years. Of the authorities which are not districts, 25% have not had any complaints in five years.

A small number of authorities have received a significant number of complaints about their members or about members of one or more of their parishes. In the worst case, 125 complaints were made over five years about members of a principal authority.

What will be the impact on authorities?

The Standards Board estimates that individual complaints will take an average of two and a half hours to assess upon receipt. Our pilot work on the local filter has shown that standards committees take up to an hour to reach a decision on whether to refer a complaint for further action based on the information available.

We expect that authorities will refer only some of the complaints they receive for investigation, although the pilot work has indicated that standards committees may refer a greater proportion of the complaints they receive in the earlier stages of the local system, as it becomes established.

As authorities become increasingly proficient in determining complaints, we estimate that even authorities which receive a higher volume of complaints will refer about 25% per year for further action. In terms of the impact on workload, therefore, based on an average of six complaints per year and a referral rate of 25% across all authorities, an average authority can expect to conduct one or two investigations per year. Even for a district council with over 100 parishes, an average of only six investigations per year would be anticipated. These are of course average assumptions, but provide a guideline to the increase in workload that authorities should expect with the move to a locally based framework.

Standards committees will have the opportunity to promote high ethical standards in their authority. They can do this through developing effective procedures for managing the local system in the following ways:

- 1) Responding to and deciding complaints in the right way and on time.
- 2) Becoming proficient in identifying what is

appropriate for investigation/sanction and what is not.

- 3) Being proportionate in their decisions to the nature of the issue and the harm caused.
- 4) Aiming to resolve the harm caused by non-compliance, and aiming to deter future non-compliance.
- 5) Participating fully in the reporting protocols operated by the Standards Board and sharing good practice.

The Standards Board will monitor the operation of the local filter by:

- 1) Ensuring our reporting systems are as simple as possible whilst allowing us to do our job effectively.
- 2) Measuring outcomes as well as outputs.
- 3) Offering support and guidance where authorities may be experiencing difficulties.
- 4) Using our statutory powers to remove local powers only as a last resort and only after efforts to support the authority have been unsuccessful.
- 5) Ensuring our monitoring is complimentary to, and does not duplicate, the work of other regulators.

We will also share good practice and ensure that we are responsive, offering guidance and support for local authorities.

Local filter pilot projects: update

Thank you for the positive response following Bulletin 32 in February 2007 from authorities keen to participate in three pilot projects. The aim of these projects is to help the Standards Board plan for its strategic role in support of local government taking on the local filter.

Operating the local filter

An exercise in filtering ten real life allegations and reviewing two appeal cases has been

completed by 38 standards committees. Several committees were facilitated or observed by officers from the Standards Board's monitoring and audit team, who were able to gain a valuable insight into how the local filter will operate at local level.

Standards committee members and monitoring officers benefited from training in undertaking the local filter and operating the appeal mechanism, as set out in the *Local Government and Public Involvement in Health Bill*. Constructive feedback has been received from each volunteer authority. This feedback will now be used to contribute to the shaping of national policy, sharing of good practice, and in helping the Standards Board develop its guidance to relevant authorities.

Joint arrangements

Significant work is underway with seven groups of authorities with a keen interest in developing joint working for standards committees. The output of this second pilot is expected to be:

- 1) The establishment of a set of four to five model structure options for joint arrangements.
- 2) To provide direction and influence for the preparation of the regulations which will underpin joint working.

Full consultation is taking place with volunteer authorities in considering the scope that the legislation allows for joint standards committees. Participating monitoring officers have been invited to a consultation event in September, after which the Standards Board's proposals for joint working will be finalised.

Future monitoring and audit

The Standards Board's monitoring and audit team is developing the way in which it will monitor, assess and demonstrate compliance with the new statutory regime at local level.

An online information return system, based on periodic returns and an annual report, will be tested with volunteer authorities in autumn 2007. The system will be proportionate to our monitoring needs and will not add undue burden to authorities.

The types of information we will collect include:

- the timeliness of standards committee referral and review decisions
- the timeliness of carrying out investigations and hearings
- the outcomes at different stages of the process
- any failure by an authority to meet statutory requirements in respect of its standards committee

The approach is intended to support improvement, to enable authorities to be kept informed at regular intervals about their own performance, and to enable the Standards Board to analyse the information received in order to identify good practice.

Gifts and hospitality register

The obligation on monitoring officers to maintain a **separate** register of gifts and hospitality no longer exists following implementation of the revised Code of Conduct for members which does not incorporate paragraph 17 of the 2001 Code.

The absence of paragraph 17 does not mean that the details of gifts and hospitality could not be kept separately from other interests that have to be registered – as long as they form part of the register of interests that monitoring officers are obliged to keep under Section 81 of the *Local Government Act 2000*. The difference in treatment of gifts and hospitality between the new and old Code is that instead of monitoring officers keeping a

separate register for them, they will now form part of the register of financial and other interests.

Section 81(1) of the *Local Government Act 2000* and paragraph 13(1) of the revised Code require elected and co-opted members to notify their monitoring officer of any personal interests that fall within a category mentioned in paragraph 8(1)(a) of the revised Code.

Gifts and hospitality are captured by subparagraph 8(1)(a)(viii) along with the person who gave them. The Standards Board's guidance *The Code of Conduct: Guide for members*, issued in May 2007, recommends that the existence and nature of the gift or hospitality are given, as well as the name of the person who gave it to them.

How this information is held is a matter for each monitoring officer who can decide what works best for them.

The Code Uncovered

The Code Uncovered, the Standards Board's new training DVD, will be distributed to all monitoring officers and County Association secretaries next week. The DVD uses a dramatised scenario to illustrate the lead up to a potentially explosive planning committee meeting, and highlights the key changes to the revised Code of Conduct.

The film examines the rules about declaring interests, disclosing confidential information and bullying. It also features learning points identifying key elements to consider when following the rules governing members' behaviour.

The DVD will be of particular value to councillors who want to increase their understanding of certain parts of the Code

we hope that you will find the DVD a useful addition to our existing guidance and look forward to hearing your feedback.

For information on how to obtain additional copies, contact us on 0161 817 5335 or email ellie.holmes@standardsboard.gov.uk. There is a charge of £38 per extra copy requested.

Independent members of standards committees

The Standards Board has been asked the following questions:

Q: "Can an independent (i.e. lay) member of a standards committee also be an independent member of a standards committee of another authority or does membership of the first standards committee mean that they are a 'member' of that authority, making them ineligible to be an independent member elsewhere?"

A: No, it does not make them ineligible.

Under section 53(4)(b) of the *Local Government Act 2000*, a standards committee must include at least one person who is not a member, or an officer, of that **or any other** relevant authority.

Also, under regulations, a person cannot be appointed as an independent member of a standards committee unless they have not been a member or officer of **that** authority within the five years immediately preceding the date of appointment.

Section 54(8) of the *Local Government Act 2000* states:

"...a member of a standards committee of a relevant authority in England or a police authority in Wales **who is not a member of**

the authority is entitled to vote at meetings of the committee."

This seems to confirm that membership of the standards committee does not make the independent members into members of the authority. Therefore, an independent member of one standards committee can also be an independent member of another.

Q: "Is an independent member who subsequently becomes an officer with another relevant authority disqualified from being an independent member of the standards committee of their non-employing authority?"

A: No.

When an independent member of a standards committee subsequently becomes an officer or member of another relevant authority, they no longer fall within the description of people in section 54(4)(b) of the *Local Government Act 2000*. Therefore, they could not be re-appointed to the standards committee as an independent member.

However, an independent member in this situation would not be instantly disqualified from being a member of the standards committee, as there is nothing in the legislation which would require them to resign from the committee after the change has occurred. The committee would have to comply with Section 53(4) of the *Local Government Act 2000*, but it would do so if at least one member of the committee continued not to be a member, or an officer, of that **or any other** relevant authority. However the qualifying member would then be needed for the duration of every meeting to constitute its quorum.

Therefore, the Standards Board would generally recommend that independent

members should resign from membership of a standards committee once they can no longer be re-appointed.

Sixth Annual Assembly sold out

The Sixth Annual Assembly of Standards Committees is now fully booked, with over 750 delegates set to attend the event in October.

The programme at this year's conference – *Down to detail: Making local regulation work* – will tackle the issues facing standards committees in the changing ethical environment.

Sessions will take an in-depth look at the logistics of the forthcoming local filter for complaints, and will focus on the practical implications for standards committees.

Breakout sessions are filling up fast and those who have already secured a place at the conference are urged to choose their sessions and return their preference forms as soon as possible to avoid disappointment.

Presentations from many of the sessions will be available on our dedicated conference website following the Annual Assembly. Three issues of our conference newsletter will also be available, providing a round-up of information from the event.

For more information, visit the conference website, at: **www.annualassembly.co.uk**, which offers a one-stop-shop of conference information including the latest news on speakers, sessions and fringe events.

Code of Conduct guidance

Authorities have until 1 October 2007 to adopt the revised Code of Conduct. After this time, members of authorities that have not adopted

it will be automatically covered by it. If your authority has not already done so, we urge you to do so now at the earliest possible opportunity.

As October approaches, we have taken the decision that, to avoid confusion with the previous Code, we will no longer be issuing guidance on the 2001 Code. This guidance will automatically be superseded when the new Code applies in October.

The Standards Board has distributed its *Guide for members* on the revised Code to all relevant authorities, along with a pocket guide to the Code, and this guidance offers a comprehensive overview of the requirements of the new Code. All guidance relating to the old Code, including the booklets on lobby groups and registering gifts and hospitality, along with guidance on standards committees, will no longer be available for distribution in hard copy format. It will, however, still be available from our website, **www.standardsboard.gov.uk**

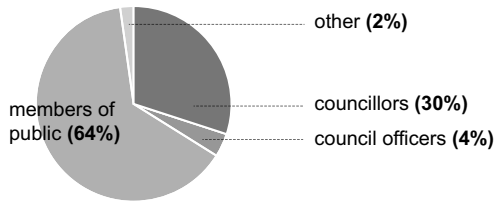
We hope that this move will improve clarity for authorities on the new Code in the final few weeks of the transition period.

Referral and investigation statistics

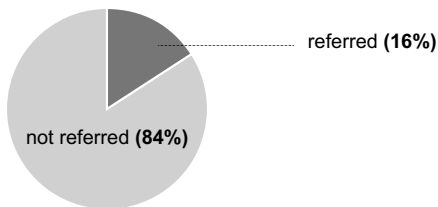
The Standards Board for England received 653 allegations between 1 April 2007 and 31 May 2007, compared to 605 during the same period in 2006.

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

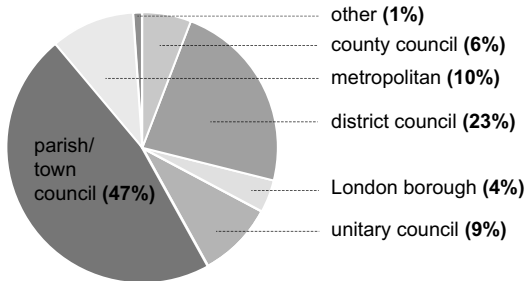
Source of allegations received



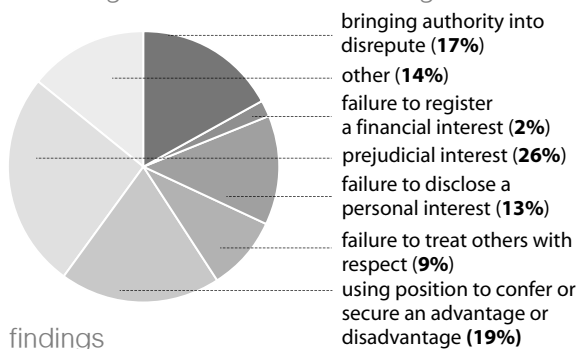
Allegations referred for investigation



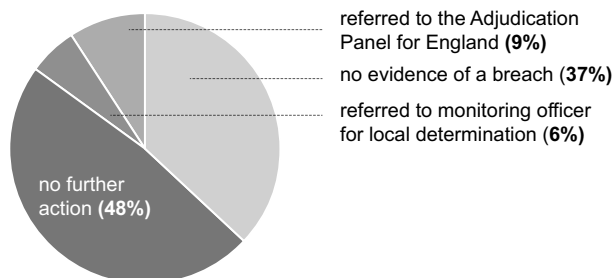
Authority of subject member in allegations referred for investigation



Nature of allegations referred for investigation



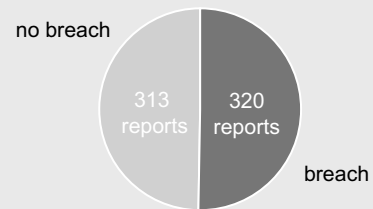
Final findings



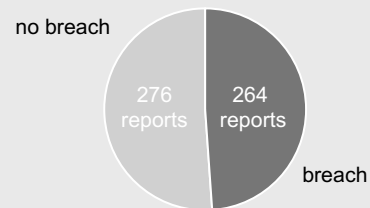
Local investigation statistics

For the period 1 April 2007 to 31 May 2007, ethical standards officers referred 66 cases for local investigation – equivalent to 65% of all cases referred for investigation. Since 1 April 2007 there has been one appeal to the Adjudication Panel for England following standards committee hearings. Of all cases referred since November 2004 for local investigation, we have received a total of 585 reports – please see below for a statistical breakdown of these cases.

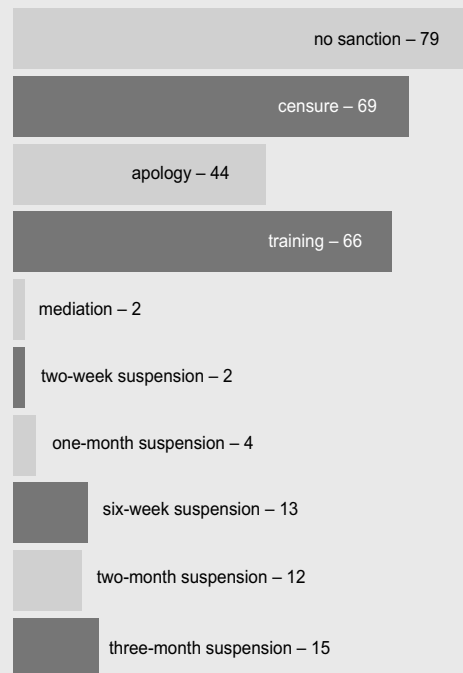
Monitoring officers' recommendations following local investigations



Standards committee hearings



Standards committee determinations



Predisposition, Predetermination or Bias, and the Code

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

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

Sir Anthony Holland
Chair, the Standards Board
for England

What is predisposition?

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

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

What is predetermination or bias?

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

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

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

Making the decision

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

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

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

How can predetermination or bias arise?

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

Connection with someone affected by a decision

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

example

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

Contrast this with:

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

Improper involvement of someone with an interest in the outcome

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

example

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

Prior involvement

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

example

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

Commenting before a decision is made

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

example 1

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

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

example 2

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

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

Conclusion

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

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

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the
Standards Board
for England

Confidence in local democracy

IN THE MATTER OF PART III OF THE LOCAL GOVERNMENT ACT 2000

AND LOCAL AUTHORITIES (MODEL CODE OF CONDUCT)(ENGLAND) ORDER 2001

AND THE DRAFT LOCAL AUTHORITIES (MODEL CODE OF CONDUCT)(ENGLAND) ORDER 2007

ADVICE

1. I am instructed to advise the Standards Board for England concerning guidance it proposes to issue for monitoring officers and councillors regarding the dividing line between (permissible) policy pre-disposition on the part of councillors in relation to matters which they decide upon and (impermissible) pre-determination of such matters by them. I am also instructed to consider draft guidance in layman's terms on this topic, and to amend it as I think appropriate. A copy of the draft guidance as amended and approved by me is attached as an Annex to this Advice.
2. The basic legal position is that a councillor may not be party to decisions in relation to which he either is actually biased (in the sense that he has a closed mind, and has pre-determined the outcome of the matter to be decided irrespective of the merits of any representations or arguments which may be put to him) or gives an appearance of being biased, as judged by a reasonable observer. The test in relation to appearance of bias is that laid down by the House of Lords in *Porter v Magill* [2002] 2 AC 357, at para. [103] per Lord Hope: "the question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased".

3. However, in the current context, in relation to both actual bias and appearance of bias, the question arises: what is to be taken as the relevant dividing line between permissible policy pre-disposition in relation to a particular matter and impermissible pre-determination of a matter? It is only if a councilor actually is, or gives the appearance of being, on the wrong side of that dividing line, that it would be unlawful for him to participate in a decision.
4. In addressing that question, two points should be made at the outset. First, the common law test of bias and appearance of bias falls to be adjusted according to the particular context in which it is to be applied. The test will apply very strictly in relation to courts and tribunals, which are judicial institutions, independent of the parties which appear before them. It will apply less strictly, and only after necessary adjustment for the different context, in relation to administrative decisions and decisions by local government, which are taken by bodies which are in place to promote their own policies and objectives, often in opposition to the interests of particular persons who may be detrimentally affected by their decisions.
5. *Porter v Magill* illustrates this point. The decision of the district auditor which was in issue was taken by an official who combined the roles of investigator, prosecutor and judge in a way which would be regarded as impermissible under Article 6(1) of the ECHR in the case of a court (see paras. [89]-[92]); the common law test for appearance of bias was adjusted to bring it into line with that under Article 6(1) (see paras. [95]-[103]); but when applied to the district auditor, it was held that he had not acted in such a way as to give an appearance of bias (see paras. [104]-[105]). In my view, this judgment indicates that the basic test of appearance of bias falls to be applied with adjustments in a specific case to take account of the particular context in which that case arises. An approach which may be impermissible on the part of a court will not necessarily be impermissible when adopted by an administrative body or by local government.

6. Secondly, it is of the essence of local democratic politics that councillors or parties may seek election by declaring to the electorate what their policies will be if they are elected. It would defeat the object of the exercise if, once elected, they were then to be treated as being barred from participating in those very decisions which they may have been elected to take. Also, the importance and validity of councillors being able to formulate policies and then being permitted to participate in decisions to implement those policies is not confined to what happens at election time. The identification of a particular need or problem which requires to be met as a matter of policy, the formulation of proposals for measures to meet that need or problem and the taking of decisions to implement those measures, is again a normal part of the democratic process and represents one of the major functions of government at any level.
7. The fact that a councillor may have made it clear that he has a policy predisposition to favour a particular outcome in relation to a decision to which he is party does not in itself mean that it is unlawful for him to participate in making that decision. Something more would be required before the conclusion could be drawn that there was unlawful bias or an unlawful appearance of bias on the part of a councillor in relation to a particular decision: an indication that the councillor was not prepared fairly to consider whether the policy he wished to promote should be adjusted, or potentially not applied, in the light of any detailed arguments and representations concerning the particular facts of the case falling for decision.
8. The basic principle is set out in Wade and Forsyth, *Administrative Law* (9th ed.) at pp. 472-473 (in terms which, in my view, are equally applicable to local government decisions by councillors):

“It is self-evident that ministerial or departmental policy cannot be regarded as disqualifying bias. One of the commonest administrative mechanisms is to give a minister power to make or confirm an order

after hearing objections to it. The procedure for the hearing of objections is subject to the rules of natural justice in so far as they require a fair hearing and fair procedure generally. But the minister's decision cannot be impugned on the ground that he has advocated the scheme or that he is known to support it as a matter of policy. ... The key to all these decisions is the fact that if Parliament gives the deciding power to a political body, no one can complain that it acts politically. The principles of natural justice still apply, but they must be adapted to the circumstances [reference to *R v Amber Valley DC, ex p. Jackson* [1985] 1 WLR 298]" (emphasis added)

9. See to the same effect Supperstone, Goudie and Walker, *Judicial Review* (3rd ed.) at paras. 11.15.1 to 11.15.16, especially the following:

“In many administrative situations the possibility of bias is built into the system. Proposers of a scheme may have strong and carefully thought-out views on the subject, and yet may have guidelines to help them in their day-to-day application of legislation. In such situations the concept of a fair trial may be impossible and, indeed, undesirable to achieve. It has been pointed out (1932 (Cmd 4060)) that the more indifferent to the aim in view the less efficient is a Minister or civil servant likely to be. After all, it is his job to get things done. So while the obvious prejudgment of an issue is not allowed, a challenge to a decision on the grounds of departmental bias is unlikely to succeed. It is a Minister's job to have a policy and to support it in public” (para. 11.15.4).

10. Again, reference may also be made to De Smith, Woolf and Jowell, *Judicial Review of Administrative Action* (5th ed.), at para. 12-048:

“The normal standards of impartiality applied in an adjudicative setting cannot meaningfully be applied to a body entitled to initiate a proposal and then to decide whether to proceed with it in the face of objections. What standards should be imposed on the Secretary of State for the Environment when he has to decide whether or not to confirm a compulsory purchase order or clearance order made by a local authority ...? It would be inappropriate for the courts to insist on his maintaining the lofty detachment required by a judicial officer determining a *lis inter partes*. The Secretary of State's decisions can seldom be wrenched entirely from their context and viewed in isolation from his governmental responsibilities.”

11. The passage cited above from Wade and Forsyth (as it appeared in the 8th edition) was cited with approval by Lord Slynn in *R (Alconbury) v Secretary of State for the Environment* [2003] 2 AC 295 at para. [48]; see also per Lord Nolan at para. [64]; Lord Hoffmann at para. [123]; and Lord Clyde at paras. [142] to [143]; see also the Scottish case of *London and Clydeside Estates Ltd v Secretary of State for Scotland* [1987] SLT 459.

12. The point is further explained in *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172, in which Cooke J. stated:

“Realistically, it was clear that the government had decided that the project was to go ahead – but it was a fallacy to think that because the Government was highly likely to advise in favour of the Order, that they were disqualified from making a determination”.

13. This approach has been reiterated many times in the local government context. So, for example, the approach in the *Amber Valley* case (above) has been followed in *R v Sevenoaks DC, ex p. Terry* [1985] 3 All ER 226, *R v St Edmundsbury BC, ex p. Investors in Industry Commercial Properties Ltd* [1985] 1 WLR 1157 and *R v Carlisle CC, ex p Cumbrian Co-operative Society Ltd* [1985] 2 EGLR 193. See also, for a recent decision, *R (Island Farm Development Ltd) v Bridgend County Borough Council* [2006] EWHC 2189, in which it was alleged that a decision by a committee of the council not to proceed with a proposed sale of land necessary for a development was vitiated by apparent bias where the relevant councillors had previously expressed their strong objection to the development. Collins J. held there was no bias:

“In principle, councillors must in making decisions consider all relevant matters and approach their task with no preconceptions. But they are entitled to have regard to and apply policies in which they believe, particularly if those policies have been part of their manifestos. The present regime believed that the development ... was wrong and they had made it clear that that was their approach. In those circumstances, they were entitled to consider whether the development could be lawfully prevented ... in the context of a case such as this I do

not believe that bias can exist because of a desire to ensure if possible that the development did not take place.”

14. See also the decision of the Court of Appeal in *National Assembly for Wales v Condrón* [2006] EWCA Civ 1573, in which it was held that there was no apparent bias, notwithstanding that the committee chairperson told an objector his conclusion on a planning decision before the relevant committee meeting, because the evidence was that in fact the question was fully considered at the meeting. At paras. [48] to [51], the Court of Appeal observed that evidence that the meeting fully explored relevant issues before reaching its conclusion was of “substantial weight” in determining that there was no apparent bias.
15. This does not mean that a decision by local government councillors cannot be held to be vitiated by actual bias or an appearance of bias. For example, in *Anderton v Auckland City Council* [1978] 1 NZLR 657 the New Zealand Court of Appeal held that, even though Parliament had made the council judge in its own cause by vesting in it the right to hear and determine objections to its own scheme, nonetheless the council had gone beyond the boundary of what was permissible by having become excessively closely associated with the development company’s attempts to secure planning permission for its project that on the facts it had completely surrendered its powers of independent judgment and had determined in advance to allow the application.
16. In my view, the test of lawfulness in this context is whether the councillors in question have genuinely addressed themselves to the relevant issue to be determined by them (weighing relevant considerations, ignoring irrelevant considerations in the usual way), taking into account their policy on that issue and giving weight (it may be, considerable weight) to it, but being prepared fairly to consider also whether the policy they wish to promote should be adjusted, or not applied, in the light of any detailed arguments

and representations concerning the particular facts of the case falling for decision.

17. Finally, I should address a distinct issue raised in the context of the draft guidance. To what extent is it legitimate for a councillor who is not himself a party to a decision to be taken (eg he does not sit on the relevant decision-making committee), but whose ward is affected by the decision, to make representations to the decision-makers seeking to persuade them to act in a particular way? In my opinion, there is nothing illegitimate in a councillor taking such steps to represent the interests of the constituents in his ward. One part of his functions is to represent the interests of his ward in relation to decision-making by the local authority of which he is a member, and this is a legitimate and appropriate way in which he may seek to do that.
18. If those instructing me have any comments or suggested amendments in relation to the draft guidance annexed to this Advice, I would be happy to discuss them. My clients have day to day involvement with these matters, and will have a better understanding than me of the form of guidance which is most likely to be found to be useful by monitoring officers and councillors.

PHILIP SALES QC

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5 April 2007

REPORT TO: Standards Committee

DATE: 21 November 2007

REPORTING OFFICER: Strategic Director Corporate & Policy

SUBJECT: Local Government & Public Involvement in Health Act 2007

WARDS N/A

1.0 PURPOSE OF THE REPORT

1.1 To advise Members of the enactment of the Local Government and Public Involvement in Health Act 2007 and, in particular, of the implications for the Code of Conduct.

2.0 RECOMMENDATION

2.1 That the Report be noted.

3.0 SUPPORTING INFORMATION

3.1 A briefing note received from Messrs Weightmans is appended to this report for the information of Members. It details the change in legislation, meaning that the Code is capable of being applicable to a Member's conduct in his or her private capacity.

4.0 POLICY IMPLICATIONS

4.1 None.

5.0 OTHER IMPLICATIONS

5.1 None.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 **Children and Young People in Halton** – None.

6.2 **Employment, Learning and Skills in Halton** – None.

6.3 **A Healthy Halton** – None.

6.4 **A Safer Halton** – None.

6.5 **Halton's Urban Renewal** – None.

7.0 RISK ANALYSIS

7.1 No key issues have been identified which require control measures.

8.0 EQUALITY AND DIVERSITY ISSUES

8.1 None.

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

Document	Place of Inspection	Contact Officer
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None.

Local Government - October 2007

Local Government and Public Involvement in Health Bill receives Royal Assent

At long last, and after several last minute amendments, the Local Government and Public Involvement in Health Act 2007 received Royal Assent on 30 October 2007. This will be met with great relief as well as trepidation as to the implications and implementation of the reforms for local government contained in the Act.

Future bulletins will look at different aspects of the Bill.

For elected members, the 2007 Act brings a change to the code of conduct meaning that it is capable of being applicable to a member's conduct in his or her private capacity.

The new model code of conduct which came into force in May 2007 provides that paragraphs 3(2)(c), 5 and 6(a) have effect, at any other time, where that conduct constitutes a criminal offence for which the member has been convicted. However, these paragraphs have not been enforced because of the restrictive wording in the Local Government Act 2000. Members were required by section 52 of the 2000 Act to give a written undertaking that they would observe the code when performing their functions. The **Livingstone** case showed that the effect of section 52 was to prevent misconduct which involved neither an actual nor a purported discharge of official functions breaching the code. In other words misconduct in private life, outside official capacity, was not caught by the code. The Government's solution, to alter the wording of the 2000 Act to allow, in limited circumstances, the code to apply to conduct other than an official capacity, was set out in the Local Government and Public Involvement in Health Bill. The original drafting of the Bill provided that the general principles and the model code of conduct may contain provisions applying **at all times** to members. Throughout its passage through the House of Commons and Lords, several motions to amend were made. The last amendments, which appear to have been made by the House of Lords on 22 October 2007, replace the rather simpler phraseology originally prepared and insert five new sub-paragraphs into sections 49, 50 and 51, all of which deal with the application of the code in certain circumstances to the conduct of a member acting in his or her private capacity.

The amendment to section 50 of the 2000 Act which gives the Secretary of State the power to issue a model code of conduct for members, is as follows:

“(4A) A model code of conduct issued under subsection (1) must provide, as respects each provision of the code which relates to the conduct expected of the persons mentioned in that subsection—

- (a) that the provision applies to a person only when acting in an official capacity; or
- (b) that it applies to a person only when not acting in an official capacity;

but the code may provide as mentioned in paragraph (b) only as respects a provision within subsection (4B).

(4B) A provision is within this subsection if it prohibits particular conduct (or conduct of a particular description) where that conduct would constitute a criminal offence.

(4C) A model code of conduct issued under subsection (1) may define for the purposes of the code—

“official capacity”; and “criminal offence”.

(4D) Provision included under subsection (4A) or (4C) in a model code of conduct—

(a) must be consistent with the provision for the time being included in an order under section 49(1) by virtue of section 49(2A) or (2C);

(b) is to be mandatory except to the extent that it relates to an optional provision;

(c) to the extent that it relates to an optional provision, is to be mandatory where that optional provision is incorporated in a code of conduct under section 51.

(4E) A model code of conduct issued under subsection (2) may include—

(a) provisions which are to apply to a person at all times;

(b) provisions which are to apply to a person otherwise than at all times.”

The amendments to sections 49 and 51 largely follow suit. They substantially narrow the ability of the Secretary of State to include in a model code of conduct provisions which would apply to a member’s conduct other than in an official capacity. The provisions of a model code may only apply to conduct in a private capacity where that conduct would amount to a criminal offence. It shows the intention of Parliament that, generally, the code should regulate the conduct of members carrying out their official functions rather than apply to the entire life of a member. It also reminds us of the views expressed by the Lords in the summer, that they have some sympathy with the proposal that the code should apply to members private life behaviour where they have committed criminal offences; but do not consider it proportionate for a code to apply to conduct which is “absolutely unassociated with your council life”. Proportionality seems to have been a key factor in the wording used. Interestingly, however, the amendments allow the National Assembly greater flexibility in including provisions which allow the model code of conduct for members of authorities in Wales (other than police authorities) to apply to a member at all times.

There have been some suggestions that we may see small revisions to the model code of conduct to ensure that it accords with the amendments to the 2000 Act. We will wait to see whether any such amendments are made or recommendations to local authorities to revise their own local codes. However we will surely see local authorities amending the form of written undertaking, and seeking members to sign the amended form so that they agree to abide by all provisions of the code.

There are large tasks ahead of local authorities in ensuring that they are prepared for the new ethical framework once enabling Regulations come into force. We will be featuring future articles our thoughts on local filtering and the implementation of the new obligations.