

MEMBER/OFFICER PROTOCOL

Introduction

- 1 The purpose of this Protocol is to *promote positive relationships between Members and Officers of the Council* so as to ensure the smooth running of the Council. *It is not a statutory requirement and therefore has the status of guidance. However, adoption of this protocol by the Council demonstrates commitment to its principles and the Council expects all members and officers to comply with it. The protocol may also be taken into account by The Standards Board or Standards Committee when considering complaints.*
- 2 Given the variety and complexity of *member/officer* relations, this Protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other issues.

Role of Members/Officers

- 3 The *Council's Code of Conduct for Members sets out a number of general, mandatory obligations including the following:*

A member must-

- (a) promote equality by not discriminating unlawfully against any person;*
- (b) treat others with respect; and*
- (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority*

- 4 Members undertake many different roles. Broadly these are:-
 - * As decision makers - on full Council, on Committees, on partnership organisations
 - * As policy makers - developing and reviewing policy and strategy
 - * Providing scrutiny and overview - monitoring and reviewing policy implementation and service quality
 - * As regulators - regulating certain activities eg planning, licensing
 - * *As employers – responsible for the employment conditions and policy direction of the paid workforce.*
 - * As politicians - expressing political values and supporting the policies of the group to which they belong.

- * As representatives and advocates - representing the ward and the citizens who live there
- * As community leaders and networkers - through active partnerships with other organisations.

These roles are reflected in the job descriptions for Councillors elsewhere in this Handbook.

5 *A new Employees' Code of Conduct is being developed by the Government as another element of Local Government's ethical framework. It will complement the Councillors' Code and will ensure that a number of common core requirements are placed on all local government employees. Its enforcement will remain within the Council (as employer) and employment law.*

6 In broad terms, Officers have the following main roles:-

- * Managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services and for proper practice in discharging their responsibilities.
- * Implementing Council decisions and agreed policy.
- * Initiating policy proposals.
- * Providing advice to the Council, its Committees, Sub-committees and Members in respect of its services.
- * Ensuring that the Council acts in a lawful manner.

7 *Officers thus give professional advice to Members who then make decisions for which they are accountable. Members' decisions are collective. They should not expect to receive information about operational decisions relating to individual residents (other than planning and licensing), except where the constituent has raised a concern with the Member.*

Relations between Members and Officers

8 *The General Principles of Conduct in Local Government also include:*

Respect for Others

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 or upon any other grounds. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

- 9 *These principles of the objectivity of officers and the mutual respect of roles are paramount. It is vital that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position.*
- 10 Officers serve the Council through its Committees and working groups. They work to the instructions of their senior officers - not individual members of the Council, whatever office the Member may hold. It follows, therefore, that Officers must not be asked to exceed the bounds of authority they have been given by their manager nor should they have unreasonable demands placed on them in terms of support to an individual Member (or Members).
- 11 It is not enough to avoid actual impropriety. Members and Officers should, at all times, avoid any occasion for suspicion and any appearance of improper conduct. Members *should* declare to the Chief Executive any relationship with an Officer which might be seen as influencing their work as a Member, or vice-versa. This includes any family, business or close personal relationship. It is not possible to define exactly the range of relationships that would be considered as close or personal. Examples, however, would include a family or sexual relationship or regular social mixing such as holidays or meals together.

Complaints or concerns about Officers or services

- 12 Members have the right to criticise reports or the actions taken by Officers but they should always:-
- * avoid physical or personal attacks on or abuse of Officers,
 - * ensure that criticism is constructive and well founded, and
 - * take up any concern about a specific matter with the Officer privately, where possible.
- 13 Members should not raise matters relating to the conduct or capability of an Officer at committee meetings or in any public forum. This could be damaging both to effective working relationships and to the image of the Council. An Officer has no means of responding to such criticisms in public.
- 14 If a Member feels he has not been treated with the proper respect, courtesy or has any concerns about the conduct or capability of an Officer, and fails to resolve it through direct discussion with the Officer, he should raise the matter with the appropriate *Head of Service or Director*. The relevant Senior Manager will look into the *matter* and report back to the Member. If the Member continues to feel concern, he should then report it to the appropriate Director who will look into the matter afresh. A complaint about a *Head of Service* should be raised with the appropriate Director and then the Chief Executive. Similarly a complaint about a Director should be raised with the Chief Executive. A complaint about the Chief Executive should be raised with the Leader and/or the statutory officers. Any action taken against an Officer in respect of a complaint will be in accordance with the provisions of the Council's disciplinary rules *and any statutory provisions which may apply*.

15 Where an Officer feels that he has not been properly treated with respect and courtesy *by a Member, the aim should be to try to resolve the matter informally. The officer should in the first instance discuss it with his Head of Service, Director or the Chief Executive as appropriate. The Head of Service, Director or Chief Executive will endeavour to mediate by approaching the individual Member and/or Group Leader accordingly. If appropriate, a meeting may be arranged between the member and the officer concerned, with others present, to seek to resolve the difficulties. If it does not prove possible to resolve the matter informally the officer may make a complaint to the Standards Board in accordance with the normal procedures for complaints about Members.*

16 Members and officers have a duty to raise any issues where they have reason to believe fraud or corruption of any sort is involved. (See Anti- Fraud Policy Statement - pages E.20-21 of the Members' Handbook).

Officer advice to Members and Party Groups

17 It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual Member of the Council.

18 There is statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to provide information to party groups but must at all times maintain political neutrality. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even handed manner. *This means that, on occasions, information requested by one group will in fact be provided to all.*

19 The support provided by Officers can take many forms, ranging from briefing meetings with the Chairman/Vice-chairman and opposition spokesperson prior to a Committee meeting, to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.

20 Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:-

- * Officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not expected to be present at meetings or parts of meetings, when matters of party business are to be discussed.

- * Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
 - * Similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee when the matter in question is considered.
- 21 Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons are not bound by the *Council's Code of Conduct* (in particular, the provisions concerning the declaration of interests and confidentiality). For this and other reasons Officers *should not be expected to* attend and give information and advice as they would to a Members' only meeting.
- 22 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they *must* not relate the content of any such discussion to another party group.

Officer/Chairman relationships

- 23 It is clearly important that there should be a close working relationship between the Chairman of a Committee and the Officers who report to or interact with that Committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members and other party groups. *It is good practice for the lead officer for a Committee or Working Group to brief the Chairman in advance of a meeting and similarly to brief an opposition spokesperson as required.*
- 24 *A Lead Officer is identified for each Committee and that officer is responsible for drawing up the agenda for Committee meetings. The Officers will always be fully responsible for the contents of any report submitted in their name. It is essential that any proposals from Members in reports to Committees are clearly identified as such.*
- 25 *The Council's Delegation Scheme sets out the nature and level of decisions which may be taken by Committees or officers in discharging the Council's functions. In relation to action between meetings, it is important to remember that the Council's Constitution and, because of the nature of that Constitution, the law only allow for decisions to be taken by a Committee or an Officer. The Constitution does not allow for such decisions to be taken by a Chairman or indeed by any other single Member.*
- 26 At some Committee meetings, a resolution may be passed which authorises named Officers to take action between meetings in consultation with the

Chairman. It must be recognised that it is the Officer, rather than the Chairman, who takes the action and it is the Officer who is accountable for it.

- 27 *It should be remembered that Officers within a Section are accountable to their Head of Service and that whilst Officers should always seek to assist a Chairman (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director.*

Correspondence

- 28 Correspondence between an individual Member and an Officer, particularly when it has been initiated by the Member, should not normally be copied by **any** Officer to any other Member. Where it is necessary to copy the correspondence to another Member, this should be made clear to the original Member. In other words, a system of "silent copies" should not be employed.
- 29 Official letters on behalf of the Council should normally be sent in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain circumstances (eg representations to a Government Minister) for a letter to appear in the name of a Member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.
- 30 *Where an officer is dealing with a specific local matter which has been raised by a Member or could have significant implications for a ward or area, the correspondence should be copied to the relevant local Member(s).*

Media Liaison

- 31 Communications with the media can be an important part of a Member's workload - issuing press releases or responding to queries. *In any media contact, Members and Officers should always have regard to the reputation of the Council.* Generally, Members provide comments and views and Officers provide factual information. *This factual information may well include explaining the Council's policy on a particular issue.* If any Member is unsure about the facts of any issue he should contact the appropriate Officer or ask the media representative to do so. *Members should avoid being seen to anticipate decisions of the Council or its Committees and should not criticise Officers in the media.*
- 32 If a Member contacts or is contacted by the media he should indicate in what capacity he is speaking eg in a personal capacity, as Ward Member, as Chairman of a Committee, on behalf of the Council or on behalf of his political group. *Members should avoid giving the impression they are speaking on behalf of the Council when expressing a personal view.* It may be useful to advise the Committee and *Communications* Manager, or other appropriate Officer, of the press release or discussion.

Conclusion

- 33 Mutual understanding, openness and respect are the greatest safeguard of the integrity of the Council, its Members and Officers.
- 34 Copies of the Protocol will be issued to all Members along with other documentation (eg *Procedure Rules*) upon election.

February 2003

Committee: STANDARDS COMMITTEE
Date: 2 APRIL 2003
Agenda Item No: 5
Title: OPERATION OF THE STANDARDS BOARD
Author: Michael Perry (01799) 510416

Summary

- 1 This report is to update Members on the workings of the Standards Board, to advise Members of proposed changes in legislation and to inform them of the current position regarding proposed s.66 regulations (regulations dealing with the reference of complaints to local authorities for investigation and determination).

Background

- 2 As at the end of February 2003 the Standards Board had received 2700 complaints. Of these 1082 (44%) had been referred for investigation. 43% of complaints were Member on Member, 40% from the public, 10% from Monitoring Officers and a small number uncovered as a result of investigations by Ethical Standards Officers. 71% of complaints relate to parishes.
- 3 There have to date been 368 findings with regard to complaints. 88 have been referred to the Adjudication Panel. In 94 cases there was no evidence of a breach of the Code. In 186 cases no action was taken.
- 4 The Standards Board has considered four complaints regarding Town and Parish Councillors in Uttlesford. 3 of these were not passed for investigation. 1 case was referred to an Ethical Standards Officer. The decision in that case was that no further action was required.
- 5 The Adjudication Panel has now dealt with 30 cases. All of these have involved Parish Councillors failing to complete the Register of Interests. 28 of these cases have resulted in the Members concerned being disqualified from being a councillor for 12 months. In the other 2 cases the Members completed the Register after the reference to the Panel but before the Panel hearing. In one of these cases the Panel made a finding that there had been a breach of the Code and issued a reprimand. In the other the (differently constituted) Panel disqualified the Member from being a councillor for 18 days – a period sufficiently short to enable her to stand at the forthcoming elections.

- 6 As indicated in the Report to this Committee on 23 January 2003 the Standards Board is taking a more robust approach in determining what cases will be investigated. In its early months of operation any complaint which suggested that there may have been a breach of the Code was referred for investigation. Now the Board will only refer cases which it feels warrant investigation. Trivial complaints will no longer be considered. In particular, allegations of "name calling" will not be investigated as failing to treat others with respect unless there is an aggravating element such as discrimination or bullying.
- 7 In addition to proposed amendments highlighted in earlier reports the Government have given an assurance to the Standards Board that 3 provisions will be included in the Local Government Bill currently before Parliament. The first will permit the Standards Board to delegate the power to take decisions on whether to refer a complaint for investigation to officers. At present all cases must be considered by the Board which currently meets weekly. The second will be to permit Standards Committees to delegate decision making (and possibly the granting of dispensations) to a sub-committee. This is considered desirable as some authorities have very large Standards Committees which would not be considered appropriate for dealing with hearings. The final proposal will enable the Monitoring Officer to delegate any of his functions on a referral.
- 8 The present intention of the Government with regard to regulations under s.66 is to introduce these in 2 stages. The first should be laid in April and will permit the reference of complaints to the Standards Committee for determination. The Committee will receive a report from the Ethical Standards Officer who investigated the complaint, determine whether there has been a breach of the Code of Conduct and if so what sanction within its powers (if any) should be imposed. In October it is anticipated that further regulations will be laid enabling complaints to be referred to the Monitoring Officer for investigation prior to the Standards Committee determining the complaint. This 2 stage approach to introducing s.66 regulations is to enable the Monitoring Officer to have the power of delegation referred to in paragraph 6 above before he is required to investigate complaints.
- 9 The Standards Board have indicated that in cases where there is an apparent conflict of interests (e.g. the complaint arises from the action of a Member who acted upon advice received from the Monitoring Officer) the matter will not be referred to the Monitoring Officer for investigation.

FOR INFORMATION

Background Papers: Notes of meeting of the Association of Council Secretaries and Solicitors 21st March 2003
Standards Board Website

Committee: STANDARDS COMMITTEE
Date: 2 APRIL 2003
Agenda Item No: 6
Title: GUIDANCE WITH REGARD TO THE CODE OF CONDUCT
Author: Michael Perry (01799) 510416

Summary

- 1 This report is to inform Members of some likely changes to the Code of Conduct (one of which is due to an error in the drafting of the Statutory Instrument) and to comment on guidance previously given by the Standards Board which is likely to be modified in the near future.

Background

- 2 When the Code of Conduct was first introduced a number of Parish Councillors expressed concern at the requirement for them to register details of their employment. Some stated that they were constrained by the Official Secrets Act from disclosing such information. Others expressed concern on safety grounds (e.g. working in an occupation which may attract the interest of animal rights campaigners). It seems that the Government has recognised that there may be some circumstances where the needs of the Councillor for privacy outweigh the desirability of public registration. It is proposed that the Code of Conduct will be amended to take account of such situations. Precise details of the proposed amendment and the timing of its introduction are not yet available.
- 3 An error has been identified in the model code of conduct. As the contents of the model code are mandatory it follows that this error has been replicated in all local authority codes of conduct. The intention of the government was that in declaring or registering interests, shareholdings in limited companies which were not significant should not be the subject to either declaration or registration. There are three references to companies in the model code. The first at paragraph 8(1)(b) is that a beneficial interest in securities of a corporate body which exceeds a nominal value of £5000 is a personal interest. The second is at paragraph 13(d) which requires registration in the register of members' interests details of a beneficial interest in securities of a corporate body which exceeds a nominal value of £25000 (or 1/100th of the nominal issued share capital) if it has a place of business or land within the authority's area. The third reference to an interest in a corporate body is at paragraph 14(c). This provides that membership of a company is a registerable interest. (Members are reminded that, by definition, all registerable interests are personal interests and must be declared as such at any meeting where an item of business relevant to that company is likely to be

discussed). In company law the holder of one share in a company is a member of it. Further, the requirement to register membership of a company is not limited to beneficial interests. It follows that a Member of a Council who is a shareholder in a company either on his own account or as trustee or nominee for another has a duty to register that interest and to declare it as a personal interest regardless of the value of the shareholding. This was not the intention of the government. However, although it is understood that an amendment to the model code will be forthcoming, no timescale has been indicated. In the meantime, failure by Members to register and declare as personal interests shareholdings in companies of whatever value will be a technical breach of the Council's Code of Conduct.

- 4 One of the questions often asked is whether membership of a lodge of freemasons should be registered and declared as a personal interest. It is understood that the Grand Lodge has obtained counsel's opinion that it is not a charity and that registration of membership is not required. However, it seems that, in giving her advice, counsel was unaware that the Lodge's website proclaims it to be the largest secular charity in the UK. Counsel has since qualified her advice but it seems that this qualification has not been passed down to the regional branches. Membership of a charity is a registerable interest by virtue of paragraph 14(c) of the Code. Consequently membership of a freemasons lodge should be registered and declared as a personal interest whenever a matter relating to freemasons is discussed at a meeting.
- 5 The Standards Board has previously stated that, where a Member has a personal interest which is not a prejudicial interest (so that the Member can participate in the discussion and vote), he or she must declare the interest and the nature of it so that the public can be aware of the interest. The Board was of the view that transparency is essential in such circumstances. However the Board also went on to say that, where a Member had an interest which was personal and prejudicial, the Member had merely to declare that he or she had a prejudicial interest and then leave the room. It seems that this guidance was based upon discussions between the Board and the Local Ombudsman who was of the view that declaring the nature of a prejudicial interest could be seen as lobbying. The Board now accepts that this advice was incorrect. All interests which require declaration or registration are personal interests. Such interests may be prejudicial (in which case the Member must leave the meeting while the item in question is being discussed) or non-prejudicial (when the Member can remain in the meeting, speak and vote). Paragraph 9 of the Code requires a Member with a personal interest to declare the existence and nature of the interest at the commencement of the consideration or when the interest becomes apparent. The paragraph does not distinguish between personal interests which are prejudicial and those which are not. Accordingly a Member who is declaring a prejudicial interest before withdrawing from a meeting must declare not only the existence of the interest but also the nature of it. However as paragraph 11(b) of the Code imposes an obligation upon a Member with a prejudicial interest not to seek improperly to influence the decision about the matter, the declaration of the interest should be as limited as is possible in the interests of transparency and

made in such a way as not to appear to be lobbying. Revised guidance will be issued by the Standards Board in due course but the Committee may feel that Members ought to be aware of what is required of them now.

- 6 Paragraph 10 of the Code provides that Members may regard themselves as not having a prejudicial interest in a matter which relates to membership of certain outside bodies. One of these is a body to which the Member has been appointed or nominated by the authority as its representative. Local authorities have appointment or nomination rights to a number of outside bodies. However, the fact that the authority appoints a Member to such a body is not of itself sufficient to permit the Member automatically to regard the membership as not being prejudicial. The Member must be appointed as the Council's representative. There will be occasions when there will be a conflict between the best interests of the Council and the best interests of the organisation. In such cases, if the Member concerned has a duty to vote in the best interests of the Council, he or she is appointed as a representative of the Council. If the Member has a duty to vote in the best interests of the organisation, then the Member is a member of the organisation and not the representative of the Council. In the latter case, the Member cannot rely upon paragraph 10 of the Code to support the view that a matter relating to the outside body is not a prejudicial interest. Where paragraph 10 can apply, it does not necessarily mean that the Member does not have a prejudicial interest. There may be circumstances where the matter under discussion is so relevant to the organisation concerned that the public would regard it as being likely to prejudice the Member's judgement of the public interest. In such cases, notwithstanding paragraph, 10 the interest would be prejudicial and the Member concerned should not seek to take part in the debate.

RECOMMENDED that the Committee considers what guidance (if any) it wishes to give to District, Town and Parish Councillors further to consideration of this report.

Background Papers: Notes of meeting of Planning Law Forum held on 14
February 2003

Committee: STANDARDS COMMITTEE
Date: 2 APRIL 2003
Agenda Item No: 7
Title: DISPENSATIONS
Author: Michael Perry (01799) 510416

Summary

- 1 This report is to advise Members of the power of Standards Committees to grant dispensations in certain circumstances permitting Councillors with prejudicial interests to take part in discussions and vote on issues even though such interests arise

Background

- 2 The mandatory provisions of the Code of Conduct provide that a Member with a personal interest in a matter under discussion must declare both the existence and nature of that interest when the matter comes up for consideration or when the interest becomes apparent. If the interest is also a prejudicial interest, then the Member must also withdraw from the room whilst the matter is under consideration and must not seek to improperly influence the decision.
- 3 s.81(4) Local Government Act 2000 provides that it is not a breach of the mandatory provisions of the code for a Member to take part in a discussion on a matter in which he or she has a prejudicial interest if that Member holds a dispensation from the Standards Committee for the Authority. The Relevant Authorities (Standards Committee)(Dispensation) Regulations 2002 set out the circumstances in which a dispensation can be granted.
- 4 The regulations provide that a dispensation can only be granted if the business of the Council would be impeded because either more than one half of the members of the authority would be prohibited from taking part or (in the case of the District Council) the authority would be unable to comply with its obligations regarding political balance. The same principle applies to committees. The obligation is on the Members concerned to make a written application to the Standards Committee for a dispensation explaining why a dispensation is desirable. If the Standards Committee is satisfied with regard to all of these matters AND that, with regard to all the other circumstances of the case, it is appropriate to grant a dispensation then a dispensation can be issued. This latter phrase anticipates that there will be occasions when the Standards Committee is satisfied that the business of the authority would be impeded for either of the reasons contained in the regulations but that, nevertheless, it is not appropriate in the circumstances of a particular case for

a dispensation to be granted. The granting of dispensations by the Standards Committee is a discretionary power, not a duty.

- 5 Although not expressly stated in the regulations, the Standards Board takes the view that it is open to the Standards Committee not only to determine whether to grant a dispensation but also, if it decides that a dispensation should be granted, what the extent of the dispensation should be. For example, in some circumstances the dispensation may permit a Member to speak but not vote. In other cases the Member may be allowed full rights of participation.
- 6 It is the opinion of the Standards Board that the power to grant dispensations does not extend to granting a general dispensation. Thus the dispensation should specify what matters it extends to. Dispensations need not, however, be applied for on a meeting by meeting basis. It is for the Standards Committee to determine how long a dispensation should last. The maximum duration of a dispensation is four years from the date it is granted. However Members may consider that it would not be prudent to grant a dispensation extending beyond the date of the next Council election in case the circumstances which gave rise to it being granted change.
- 7 Whatever the circumstances, a dispensation cannot be granted to a Member permitting him or her to take part in the consideration by a scrutiny committee of a decision of another committee or sub-committee of the authority of which he is also a member.
- 8 It is the responsibility of the Standards Committee to ensure that the existence, duration and nature of any dispensation is recorded in writing and that the record is kept with the register of Members' Interests required by the Local Government Act 2000. In practice, this will be done by the Monitoring Officer.

RECOMMENDED that the Committee considers what guidance (if any) it wishes to give to District, Town and Parish Councillors further to consideration of this report.

Background Papers: Standards Board Bulletin No.7 November 2002