

Committee: STANDARDS COMMITTEE

Date: 18 July 2005

Agenda Item No: 5

Title: REPORT ON RESPONSE OF STANDARDS BOARD
TO THE COMMITTEE'S COMMENTS ON THE
INVESTIGATION OF A MEMBER

Author: MICHAEL PERRY (01799) 510416

Summary

- 1 On 17 January 2005 the Committee received a report on the outcome of an investigation by the Standards Board into an allegation of a breach of the Code of Conduct by a Member. The Committee expressed its misgivings into the manner in which the investigation was dealt with. As a result, the monitoring officer, in consultation with the Chairman of the Committee, wrote to the Standards Board expressing the Committee's concerns. The Standards Board regarded the letter as a complaint to which it has now responded. This report is to inform Members of the Standard Board response to the complaint.

Background

- 2 The Committee commented that the investigation was protracted and recommended that Ethical Standards Officers should provide parties with a timetable, report on progress against the timetable and explain any deviations from it. The Board acknowledged the delay in commencing the investigation due to lack of adequate resources at the time the complaint was made. More investigators have now been engaged and the Board have stated that procedures have been changed to ensure complainants are kept informed of delays. The Board states that it is difficult to provide a timetable but that investigators ought to be able to give the monitoring officer a rough estimate and investigators will be encouraged to do this. The Board take a view that it would be difficult to provide progress reports and explain slippages without disclosing information, which may jeopardise the integrity of the investigation. The Board mentioned that the case record shows that the investigator had contact with the Councillor concerned by telephone at least once per month during the investigation when progress was discussed.
- 3 The Member had stated that she had a number of telephone interviews with the investigating officer and was told that notes of the interviews would be sent to her. This was not done and the Committee expressed a view that notes of interviews should be sent to interviewees in every case. The Board's response is that due to an oversight, the investigator failed to send the Councillor notes of substantive conversations with her. The investigator has

passed on an apology for this oversight. Telephone attendance notes are not, as a matter of practice, passed to the parties.

- 4 The Councillor had been told that a final draft report would be sent to her in 2 weeks. The report took 6 weeks to arrive. When the final report was published, the Councillor was informed that it would appear on the Standards Board website within 4 weeks. It did not appear for 3 months. A representation was made that where Ethical Standards Officers have set a timescale for an action, they should either adhere to it or give a written explanation for any delay. The Board state that further enquiries were necessary at the draft report stage and information was not provided for several weeks. The final report was issued 2 weeks after this information was obtained. The Board accept that the Councillor ought to have been informed of this delay. The Board further apologises for delays in issuing case summaries due to a large number of cases being processed at that time.
- 5 Representations were made regarding the duty of confidentiality. On the face of the legislation, a member who is the subject of a complaint is unable to seek support from third parties. The Committee recommended that the confidentiality rules be changed to permit Members undergoing investigation to discuss matters with a lawyer or friend who signs a confidentiality statement and is approved by the Standards Board. The Board have indicated that they do not object to subject Members discussing the investigation with a solicitor and do not consider that such discussions would be in breach of the statutory provision regarding confidentiality.

RECOMMENDED that Members note the contents of this report.

Background Papers: Letter dated 25th March 2005 from UDC to Standards Board for England
Letter dated 12th May 2005 from Standards Board to UDC

Committee: Standards
Date: 18 July 2005
Agenda Item No: 6
Title: Allegation of a Breach of the Code of Conduct by Two Members of Little Hallingbury Parish Council
Author: Michael Perry Executive Manager Corporate Governance (01799) 510416

Summary

- 1 In July 2004 a complaint was made to The Standards Board that two Members of Little Hallingbury Parish Council had failed to treat an officer of Uttlesford District Council with respect. The complaint was accepted by the Standards Board for investigation and referred to an ethical standards officer.

This report is to inform Members of the Committee of the outcome of the investigation.

Background

- 2 On 17 February 2004 an officer from Uttlesford District Council attended a meeting of Little Hallingbury Parish Council to answer questions on issues relating to that area.
- 3 The officer alleged that one councillor stated that the officer's professional reputation was "appalling" and that he was regarded as a "Hitler".
- 4 It was further alleged that another councillor tried to trap the officer by raising an issue which he did not know was going to be discussed, that he accused the officer of lying and that he implied that the officer was corrupt. It was further alleged that this councillor chaired the meeting in an unstructured manner allowing a councillor and members of the public to make inappropriate comments about the officer.
- 5 With regard to the first councillor, the ethical standards officer concluded that by referring to the officer as "a Hitler" the councillor had both failed to treat the officer with respect and had further breached the Code of Conduct by bringing his office or his authority into disrepute. However, the ethical standards officer took account of the fact that the councillor concerned expressed regret for using the expression "Hitler". He considered that the incident was a "one off" provoked by the controversy over the issues discussed at the meeting. In the circumstances, the ethical standards officer found that no action needed to be taken.
- 6 With regard to the second councillor, the ethical standards officer concluded that he did not fail to treat the officer with respect by the way he chaired the meeting, he did not try to trap the officer by mentioning a particular issue and he did not call the officer a liar but merely disagreed with him. However, the ethical standards officer also concluded that the councillor had implied that the officer was corrupt and in so doing he failed to treat the officer with respect at one point in the meeting but that as the issues discussed were controversial and evoked strong feelings he had not brought his office or authority into disrepute. Again, the ethical standards officer found that no further action needed to be taken.
- 7 The complaint was made before regulations were in place permitting referrals to be made to monitoring officers for local investigation. It is considered likely that this type of complaint may be referred for local investigation and determination in the future.

RECOMMENDED that Members note the contents of this report.

Background Papers: Case Summaries supplied by the Standards Board for England under cover of letters dated 3 May 2005.

Committee: Standards
Date: 18 July 2005
Agenda Item No: 7
Title: Probity in Licensing
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Summary

- 1 This report is to inform Members of changes in the law relating to licensing and to seek Members' views as to what guidance (if any) it wishes to give to Members of the Council regarding probity in licensing
- 2 Licensing of the sale of alcohol and the provision of various types of entertainment is currently governed by various statutes with some aspects being controlled by magistrates and others by local authorities. The Licensing Act 2003 creates one licensing regime for the sale or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment. Under the Act the District Council is the Licensing Authority. Currently, matters are in a transitional stage during which existing licensees may convert their existing licences into local authority licences. The transitional period comes to an end on 6 August 2005. Thereafter any new applications will be dealt with afresh and not under the transitional arrangements. The Act will be fully in force on the second appointed date, yet to be announced but likely to be in or around November 2005.
- 3 Under the Act licensing authorities must grant a licence unless there are objections from relevant authorities or interested parties. In the absence of objections the grant of a licence is an administrative function delegated to officers. Where representations have been made, however, the licensing authority must hold a hearing to determine the application. After a hearing the authority may grant the application, modify the application by inserting conditions, remove a licensable activity from the licence or refuse the application.
- 4 Where there are objections the licensing function is quasi judicial. Decisions of the Licensing Committee will have far reaching implications. For example, the hours premises are permitted to trade will have a significant impact upon their profitability. Similarly permitting licensed premises to trade for long hours may impact upon the quality of life of local residents or businesses. It is likely that Members of the Council who are not Members of the Licensing Committee will also face lobbying by applicants and objectors. It is therefore

essential that the Council's functions as a licensing authority are seen to be carried out fairly and objectively.

- 5 For some time now the Council has had a Code of Good Practice for Probity in Planning. This was last considered by this Committee in 2003 when it recommended some amendments to the then existing Code which were subsequently adopted by the Council. That guidance is binding upon all Members of the Council.
- 6 This Committee is requested to consider whether it wishes to offer any guidance regarding probity issues in connection with licensing matters to Members of the Council. In the event that Members do wish to give guidance a draft Code of Good Practice for Probity in Licensing is attached at Appendix 1. This is drawn from the Code of Good Practice for Probity in Planning and guidance issued by LACORS (Local Authorities Coordinators for Regulatory Services).

RECOMMENDED that Members consider what guidance (if any) they wish to give to the Council regarding probity in licensing

Background Papers: LACORS Guidance: The Role of Elected Members in Relation to Licensing Committee Hearings under the Licensing Act 2003 for Local Authorities in England February 2005.

LACORS Guidance: Licensing Committee Hearings under the Licensing Act 2003 for Local Authorities in England and Wales March 2005.

Uttlesford District Council Code of Good Practice Probity in Planning.

APPENDIX 1

CODE OF GOOD PRACTICE: PROBITY IN LICENSING

Introduction

- 1 The Licensing Act 2003 transfers control of Licensing from magistrates to Local Authorities. Although the licensing function is by law delegated to the Licensing Committee all Members of the Council may become involved in dealing with applications e.g. by representing the views of constituents or debating upon the Council's Licensing Policy. Decisions must be taken to promoting the licensing objectives and with regard to the Council's Licensing Policy. Applications can be highly contentious. It is important that the process is characterised by open and transparent decision making.
- 2 The Licensing Act seeks to balance freedom of greater choice in how people spend their leisure time with safeguards to prevent crime and nuisance, to ensure public safety and to protect children from harm. Performing this role, licensing necessarily affects licencees, those living or carrying on business in the vicinity of licensed premises and the public at large. It is important, therefore, that the Council makes licensing decisions affecting those interests openly, impartially, with sound judgement and for justifiable reasons. There should be no grounds for suggesting that a decision has been biased, not impartial or not well founded in any way.

CONDUCT OF COUNCILLORS AND OFFICERS

General

- 3 Councillors and officers have different, but complementary roles.
- 4 Both Councillors and officers are guided by codes of conduct. The Councillors Code of Conduct provides guidance and standards for Councillors. Breaches of the Code may be regarded as maladministration by the Local Ombudsman and may lead to a Councillor being reported to the Standards Board for England. Such a report may result in sanctions being imposed upon the Councillor concerned. Officers will be subject to a Statutory Employees Code of Conduct. Breaches of the Code may be subject to disciplinary action by the Council. In addition to these codes, the Council's Procedure Rules set down rules which govern the conduct of Council business.
- 5 Officers from different departments within the Council also have different roles with regard to licensing. Licensing officers are responsible for the administration of licences. As such they must be completely impartial and not express a view on applications. In particular reports from licensing officers will not contain any recommendations. Environmental Health and Planning are statutory consultees on applications. Officers from these departments will

make representations on some applications and will suggest conditions or even that a licence should be refused within those representations.

- 6 Councillors must not instruct officers from any department to make a particular representation nor to take a particular course of action other than through a decision of the Council or one of its Committees. Officers must give objective professional advice, based on their professional judgement and not be compromised or influenced by political considerations.

Public Duty

- 7 The Councillors Code of Conduct sets out the duties and responsibilities of Councillors. It states that, whilst Councillors have a special duty to their ward constituents including those who did not vote for them, their overriding duty is to the whole community. The Council's Licensing Policy is adopted in the interests of the whole community, following public consultation. It therefore reflects the overall public interest, rather than those of individuals or organisations. Councillors and officers must support the Council's Licensing Policy and make decisions in accordance with it unless there are sound reasons for not doing so.

Voting and Impartiality

- 8 Members of the Licensing Committee, must not declare which way they intend to vote in advance of the consideration of an application. To do so would, in effect, be pre-judging the application and expose the Council to the possibility of legal challenge, an appeal or a charge of maladministration. Members must not make up their minds until they have read the relevant Committee reports, heard the evidence and considered the representations. It is important that Members hear all the evidence and representations prior to reaching a decision. Consequently Members should ensure that they are present in the Council Chamber/Committee Room at all times whilst an item is being discussed. In the event that a Member arrives after consideration of a particular application has commenced or leaves the Council Chamber/Committee Room during the consideration of an application and then returns then that Member should not vote on the application.
- 9 Councillors who are also members of town or parish councils may find that they are expected to express a view at a Town or Parish Council meeting or vote on whether the town or parish council should object or comment on a proposal from its point of view. Unless the Town or Parish had operational premises in the vicinity of the site of an application the Town or Parish Council has no standing to make representations in its own right. It may only do so on the basis that it is representing persons living or carrying on business in the vicinity of premises in respect of which an application has been made. As the Council represents the entire Town or Parish it could only be seen to represent a small group if it were asked to do so. In such circumstances dual

hatted Members who sit on the Licensing Committee should not declare outright support or opposition for a proposal and should abstain from voting to make clear that they are not prejudicing the decision they will have to make as a District Councillor. This will assist in ensuring that the propriety of their vote at the Council's Committee meeting cannot be challenged.

- 10 If a Councillor does declare his outright support for or opposition to a proposal at a Town or Parish Council meeting or elsewhere before the matter has been put before the Committee where that Councillor would be entitled to vote he should, if attending the Committee meeting when the matter is being discussed or reported, make an open declaration to that meeting to that effect and take no part in the voting on that item.
- 11 Councillors should not organise support for or against a licensing application and should not lobby other Councillors since this would also signal that they had made up their mind before hearing the evidence. Each Councillor should make up his own mind on the evidence and facts presented to the Committee.
- 12 The basis of the licensing system is often the balancing of conflicting interests. Opposing views are frequently strongly held by those involved. Whilst Councillors should take account of various views expressed on an application they should not favour or show bias against or towards any particular person, company or group or any particular premises or locality. They should not put themselves in a position where they may appear to do so.

Gifts and Hospitality

- 13 Councillors should be very cautious about accepting gifts and hospitality and must follow the advice in paragraph 16 of the Councillors Code of Conduct. They should also have regard to the Guidance on receipt of gifts and hospitality in the Members' Handbook (pages E27-29). Officers should follow that Guidance.

Declaration and Registration of Interests

- 14 The Councillors Code of Conduct set out requirements and guidance for Councillors, for the registration of interests on declaring personal and prejudicial interests and the consequences of having such interests. These must be followed scrupulously and Councillors should review the situation regularly. It must be borne in mind that the Code advises that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct. Responsibility for this rests individually with each Councillor. When declaring an interest at Committee this should be done at the beginning of the meeting and Councillors should be clear and specific in identifying the item on the agenda in which they have a personal interest, if so whether the interest is prejudicial or not and in either event the nature of that interest.
- 15 Officers must declare any personal or financial interest in any planning matter before the Council, must not deal with such matters on behalf of the Council

and must not give advice to Councillors or other officers on them. An officer with a personal or financial interest in a licensing matter must withdraw from any relevant Committee meeting whilst that matter is discussed. Officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the licensed trade or environmental or other pressure or amenity groups.

Licensing Proposals Submitted by Councillors and Officers

- 16 Unopposed proposals to the Council by serving Councillors and officers and their close friends and relatives will be dealt with under delegated powers as the Council has no power to refuse a licence where no representations are made. Where representations are made from relevant bodies or interested parties the matter will be dealt with by a hearing before the Licensing Committee in the usual way. However to avoid any suspicion of impropriety in the case of Member or Officer applications Environmental Health and Planning officers will prepare full reports on the applications for consideration by their respective Committees which will determine what (if any) representations ought to be made.
- 17 Serving Councillors who act as agents for people pursuing a licensing matter with the Council or submitting licensing applications on behalf of their employers as part of their job, must declare an interest and take no part in the processing of the application or in the decision making process. Any Councillor who is a licensing or similar agent will not be appointed to the Committee.
- 18 Members of the Committee should not act as agents or submit licensing applications for other parties or voluntary bodies. To do so would give rise to suspicion that the Committee was not impartial or may be influenced in the decision making process.

Council Applications

- 19 The Council's own applications must be dealt with on exactly the same basis as applications submitted by members of the public. Officers must make representations having regard only to the licensing objectives and the Council's licensing policy and must not have regard to any other benefits, financial or otherwise, which may accrue to the Council as a result of any particular decision on a licensing application. Councillors must make decisions similarly. Unless there are representations the applications will be dealt with under delegated powers. However to avoid any suspicion of impropriety in the case of a Council application Environmental Health and Planning officers will prepare full reports on the applications for consideration by their respective Committees which will determine what (if any) representations ought to be made.

Lobbying of and by Councillors

- 20 Lobbying is an attempt to influence Councillors' views in order to achieve a particular decision. It can be of Councillors by applicants, agents or objectors or by other Councillors. Lobbying may be verbal or by the circulation of letters or documents to all or some Councillors. Licensing decisions must be made strictly on the facts and policies relating to each application. Lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of a Councillor being called into question. When being lobbied, Councillors, and members of the Committee in particular, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such circumstances they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying that they should make written representations to the relevant officer in order that their opinions can be presented with the Officer's report to the Committee.
- 21 A Committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If a Member responds to lobbying by deciding to go public in support of, or against, a particular outcome it would be very difficult for that Member to argue convincingly when the Committee takes its decision that he has carefully weighed the evidence and arguments presented at Committee. Although not amounting to a prejudicial interest according to the Code the proper course of action for such a Member would be to make an open declaration not to vote. However, this is a severe restriction on the Member's wish - duty, even - to represent the views of the electorate. Thus, Councillors should, generally, avoid organising support for or opposition to a planning application and avoid lobbying other Councillors. Such actions can easily be misunderstood by parties to the application and by the public. Where a Member makes a declaration that he or she will not vote then the Member should withdraw from the Committee table but may remain in the room and speak on behalf of his or her ward members either for or against the application.

Circulation of Information

- 22 Licensing applications must be determined on the basis of the documents and information formally submitted. Any submissions from applicants' agents or objectors which are formally received by the Council can properly be taken into account in making a decision. It can cause problems if Councillors are given information or assurances by applicants which are not part of the formal application and which are not, therefore, enforceable. Problems can also arise if Councillors are given information by objectors which may be misleading, untrue or irrelevant. Councillors should return such information to the sender and draw attention to the fact that only officially submitted representations can be considered. As there are strict time limits for parties to make representations this should be done promptly.

No Political Decisions on Licensing Applications

- 23 Decisions on licensing applications must not be taken in political group meetings prior to Committee meetings. The view of the Ombudsman was that the use of political whips to influence the outcome of a planning application was contrary to the National Code and amounted to maladministration. There is nothing in the Councillors Code of Conduct which would contradict this view. By analogy the same would apply to licensing applications which are also quasi judicial in nature. The use of political whips to influence the outcome of a licensing could also give rise to an appeal or a legal challenge.

THE DECISION MAKING PROCESS

Pre-application Discussions

- 24 Discussions between a potential applicant, relevant authorities, interested parties and the Council (through its Licensing Officers) prior to the submission of the application can be of considerable benefit. It should always be made clear at the outset that the discussions will not bind the Council to make a particular decision and that any views expressed by officers are personal and provisional. Advice should be considered and based upon the licensing objectives and the Council's licensing policy. There should be no significant difference of interpretation by Licensing Officers. A written note should be made of all potentially contentious meetings and telephone discussions. A follow up letter may be advisable
- 25 Councillors should not seek to advise applicants, agents, relevant authorities or interested parties about the likely acceptability of licensing proposals. They should advise such parties to contact the appropriate officer for advice on both policy and procedures. They should make it clear that they will only be in a position to take a decision after having considered the Officers' reports and any representations and heard any debate in the Committee meeting.
- 26 Councillors should not meet applicants or agents or third parties in connection with a current or proposed licensing application. If Councillors do agree to meet they should only do so in the presence of a Licensing or Legal Officer. In exceptional circumstances, where it is not possible to arrange a meeting in the presence of an Officer without causing undue delay Councillors should notify the relevant Officer of the proposed meeting beforehand and the notification should be recorded in the application file. Councillors should listen and may ask questions but should not comment or negotiate. They must make clear that any views they express are personal, rather than those of the Council. A note should be taken of the meeting and placed on the application file. The fact that a Councillor has discussed any proposal with the applicant, agent, relevant authority or interested parties must be made clear when the application is before the Committee for determination.
- 27 Paragraphs 25 and 26 do not apply to Councillors when they are acting as agents for people pursuing a licensing matter with the Council or submitting licensing applications on behalf of their employers as part of their job. However, they should make it clear to their clients that they cannot and will

not use their position as a Councillor to influence the outcome of an application.

Reports to Committee

- 28 Officer reports to Committee should be accurate and cover, amongst other things, the substance of objections and views of consultees. Reports should be impartial and should not contain any recommendations. Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur.

Committee Procedures and Decision

- 29 The Committee's decision must be in accordance with the provisions of the Council's Licensing Policy unless material considerations indicate otherwise. Any decision contrary to the provisions of the Licensing Policy must be clearly justified and recorded in the Minutes.

Adjournments

- 30 Hearings should not be adjourned without proper justification. In no case should a hearing be adjourned to a date after which a decision is required to be taken by legislation.

Public Attendance at Committee Meetings

- 31 Except in exceptional circumstances where the public interest requires it licensing applications, other than those to be determined by officers exercising delegated powers, will be considered in public session and all background information will be made available for public inspection upon publication of the agenda papers, unless there are specific reasons for exempting information in accordance with the Local Government Act 1972. However to enable Members to have a free and frank debate and exchange of views the Committee will normally consider it in the public interest to exclude the press and public from that part of the meeting when the Members discuss the application and form their conclusions. The legal advisor will remain with the Committee whilst it considers applications. However any legal advice will be given in public and the parties will be given the opportunity of commenting upon it.
- 32 The applicant, relevant authorities who have made representations and interested parties who have made relevant representations may speak at the meetings. They may if they wish be represented by a lawyer or some other person. With the permission of the Committee these parties may also call witnesses. Permission to call a witness should not be withheld unreasonably.

Site Visits

- 33 Site visits are unlikely to be necessary and may lead to accusations of bias. In the event that a Member of the Committee considers that a site visit is necessary he should inform the Executive Manager Corporate Governance in writing as soon as possible setting out his or her reasons as to why a site visit is required. A site visit will only be arranged if approved by the Chairman or (in the case of the request coming from the Chairman) the Vice Chairman. Site visits if arranged will be on the day of the meeting and should be attended by all Members who will take part in the decision making process. All site visits must be carried out in the presence of a Licensing and/or Legal Officer. A site visit is not part of the formal Committee proceedings and is not a forum for debate or making planning decisions. Site visits are not open to the public and should not be used to canvass local opinions or promote an opportunity for lobbying or advocacy. Councillors should not express personal opinions during site visits.

ADMINISTRATIVE MATTERS

Member Training

- 34 Councillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices, either verbally at meetings or as briefing notes (for example in the Members' Bulletin). Officers will arrange training on licensing issues. All members of the Council will be invited to attend. All members of the Licensing Committee should attend.

Complaints

- 35 Any complaints received about the way in which a licensing application or other licensing matter has been dealt with in terms of procedures or fairness will be investigated under the Council's complaints procedure. The fact that someone may disagree with the decision the Council has reached is not a complaint which will normally necessitate investigation as such. However, officers will explain the reasons for the Council's decision in any particular case.