

**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN at 4.00 pm on 29 JANUARY 2007**

Present:- S A Brady (Chairman and Independent Person).
Councillors C A Cant, C D Down, R T Harris and R M Lemon
(Uttlesford Members), Councillor P G Leeder (Town and Parish
Councils) and M Hall (Independent Person).

Officers in attendance:- M J Perry and M T Purkiss.

S12 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Mr S Brady and Mr M Hall declared personal non prejudicial interests in agenda item 6 (Appointment of Independent Persons to Standards Committees).

S13 MINUTES

The Minutes of the meeting held on 20 November 2006 were received, confirmed and signed by the Chairman as a correct record.

S14 GUIDANCE FROM THE STANDARDS BOARD

At its last meeting, the Committee considered a report on the outcome of the case of Ken Livingstone v The Adjudication Panel for England. The Assistant Chief Executive reported that the Standards Board had now issued guidance in the light of this case and he informed Members of the content of this guidance.

He reminded the Committee that paragraph 4 of the Code of Conduct provided "a Member must not in his official capacity or in any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute".

In the Livingstone case, Mr Justice Collins decided that the expression "any other circumstances" was limited to situations where the Member was performing his functions. Whilst this could extend to actions beyond those carried out in a Member official capacity, the scope was clearly limited. This decision had been viewed with concern and the Local Government and Public Involvement in Health Bill contained a proposed amendment to the Local Government Act 2000 to the effect that with accepting office as a councillor, the member must undertake that he will observe the authority's Code of Conduct whether or not he is "performing his functions". Apparently the Government considered that this would obvert the judgement in the Livingstone case. However, until such time as the Bill had been enacted and had been brought into force, the Livingstone judgement stood.

For the time being, the Board offered the following guidance as to when a Member might be in breach of the Code by bringing himself or the authority

into disrepute notwithstanding that the Member was not acting in an official capacity.

- (i) The Member has used or tried to use their status as a member improperly (commonly known as the “using one’s position” test).
- (ii) Where the Member uses information obtained in his capacity as a councillor for his personal benefit.
- (iii) The conduct alleged is such as to damage the reputation of the office or authority as opposed to damaging the reputation of the individual concerned.

The Board considered that it would be difficult to establish that a Member had brought himself or the authority into disrepute when not acting in an official capacity. Examples given by the Board where this might be the case were:-

- (i) Where the Member has put his private interests over and above the public interest, has flouted public interest for private gain or used his position to secure a personal profit.
- (ii) Where a Member defies important and well established rules of the authority for private gain.
- (iii) Where a Member engages in conduct which directly and significantly undermines the authority’s reputation as a good employer or responsible service provider.

S15

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH BILL

Following extensive consultation by the Standards Board for England and the report of the Committee on Standards in Public Life, the Government had committed to reform the Ethical Standards Framework contained in Part III Local Government Act 2000.

The Government had now published the Local Government and Public Involvement in Health Bill which put forward amendments. The Assistant Chief Executive informed Members of the proposed amendments, some of which arose from the consultation undertaken by this Standards Board and some from the decision in the Ken Livingstone case.

Section 49 of the Act empowered the Secretary of State to specify principles governing the conduct of members of relevant authorities. These principles were contained in the Relevant Authorities (General Principles) Order 2001 and are reproduced in the Members Handbook. Section 50 of the Act empowered the Secretary of State to issue a model Code of Conduct. Codes of Conduct were issued in the Local Authorities (Model Code of Conduct) (England) Order 2001 and the Parish Councils (Model Code of Conduct) Order 2001. Local authorities were permitted to add to but not detract from the Model Codes. This Council and (so far as officers are aware) all of the town and parish councils within the district adopted the Model Codes without

amendment. Section 51 of the Act obliges relevant authorities to adopt Codes of Conduct. With respect to all of these sections, amendments were proposed to make it clear that the provisions were not limited to a member or co-optive member acting only in his official capacity.

Section 52 of the Act imposed a duty upon members to comply with the Code of Conduct. The section is limited to occasions where the Member was “performing his functions”. The Bill proposed that the words “performing his functions” should be removed from the section.

Subject to the Bill becoming law, members and co-optive members of relevant authorities all had a period of two months to give a written undertaking that they would observe the authority’s Code of Conduct for the time being and if they fail to do so within that period they would automatically cease to be a member of the authority.

The Bill anticipated that there would be no immediate change in either the principles governing conduct of members or the Model Codes of Conduct. With regard to future acts of members these would be governed by the new legislation but anything done prior to the new legislation coming into force which would not breach the Code under the existing law would not be deemed to be a breach of the Code merely because the Bill passes into legislation.

At present, any allegations of a breach of the Code of Conduct must be made in writing to the Standards Board for England. The Bill proposed an entire new procedure. A new section (section 57A) was proposed to the Act which enabled people to make written allegations to the Standards Committee that a Member may have failed to comply with the authority’s Code of Conduct. This would apply both to allegations relating to members of the district council and to town and parish councillors.

When an allegation was made to a Standards Committee it could refer the allegation to the Monitoring Officer, refer the allegation to the Standards Board or decide that no action should be taken. If the allegation was against a person who was no longer a member of the relevant authority concerned but is a member of another relevant authority in England, the Committee might refer the allegation to the Monitoring Officer of that authority.

Where the Standards Committee decided to take no action, it must notify the person who made the complaint and that person had a right to request the Standards Committee to review its decision. On a review the Committee had the same powers as it had on an original reference. Only one such review was allowed. The Standards Board for England had power to dis-apply these provisions to individual Standards Committees and may direct that in those circumstances allegations be referred to the Standards Board for England or to the Standards Committee of another relevant authority with that authority’s consent.

Where a Standards Committee determined to refer an allegation to the Standards Board, the Standards Board must either refer the case to one of its Ethical Standards Officers for investigation, decide that no action should be taken or refer the allegation back to the Standards Committee of the authority. Where the Board decided to take no action, there was no statutory provision

for a review of the decision. However, the Board had recently been operating a system of review and its decisions were subject to scrutiny by way of judicial review at the instance of an aggrieved party.

The Standards Board would be given a monitoring function and there would be a duty upon authorities to provide the Board with information concerning the exercise of their powers.

As was anticipated, the legislation would require Standards Committees to be chaired by an independent person. This authority had always adopted that principle as being good practice.

An amendment was proposed to empower the Secretary of State to permit the formation of joint Standards Committees with other authorities. The detail of this power would be contained in a statutory instrument to be published some time in the future. Section 66 of the Act contained provisions for matters to be referred to Monitoring Officers by the Standards Board. The Bill indicated that regulations would be made which would enable the Monitoring Officer to refer back to the Standards Committee any matters which were referred to him for investigation by the Committee. In such circumstances, it was anticipated that the regulation would provide for the Standards Committee to have power either to refer the matter to the Standards Board for England or to direct the Monitoring Officer to carry out an investigation.

The Bill does not expand upon the “sentencing powers” of Standards Committees. Under the Act, Standards Committees had no power to disqualify a person from being a member of a relevant authority. Standards Committees did have power to suspend. The maximum period permitted by the current delegated legislation was 3 months although the Secretary of State had power by statutory instrument to extend this for up to 1 year. (The maximum period of suspension by the Adjudication Panel is 1 year). Where the Standards Committee are of the opinion that the sanctions which it could impose are insufficient the Committee may refer the case to the President of the Adjudication Panel for England for a decision by members of the Panel on the action which should be taken. As drawn, it appeared that where such a reference was made the Adjudication Panel was bound by the Standards Committee’s findings of fact and its conclusion that there had been a breach of the Code. The Panel’s only function would be determining the sanction to be applied (subject to the member’s right of appeal against the Committee’s decision).

The amendment allowing reference to the Adjudication Panel for the determination of a sanction was inconsistent with a proposed new section 78A contained in the Bill. This provided that an Adjudication Panel which adjudicated on “any matter” must decide whether or not any person to whom the matter relates had failed to comply with the Code. Ultimately it would be for the courts to resolve this apparent contradiction in the event that the Bill passed un-amended in this respect.

At present there was an unfettered right to appeal to the High Court from decisions of the Adjudication panel. There was a proposed amendment contained in the Bill which provided that an appeal might not be brought except with the permission of the High Court.

Certain posts within local government were “politically restricted”. This meant that a person holding such a post might not be a member of any other relevant authority. The power to grant dispensations was currently vested in the Secretary of State. This function was proposed to be transferred to Standards Committees under the new legislation.

S16 **APPOINTMENT OF INDEPENDENT PERSONS TO STANDARDS COMMITTEES**

The Committee recalled that the Council had been operating its Standards Committee under transitional arrangements and now needed to re-advertise the post of Independent Persons to sit on the Committee. An advertisement had been placed in the local press on two occasions for two independent persons to be appointed and the final closing date was 31 January 2007. The Assistant Chief Executive said that three applications had been received together with one expression of interest.

The Council had determined that the selection process should be carried out by the Constitution Task Group who would ultimately recommend candidates for appointment by Full Council.

S17 **TRAINING**

The Assistant Chief Executive said that further training for Councillors would be required after the elections on 3 May 2007. Also, further training would be required on the new Code of Conduct and assistance might be given to support training for parish and town councils.

The Chairman added that at the conference at Birmingham last year, there had been a section on raising your profile where some standards committees were giving talks to local schools as part of the citizenship programme.

S18 **DRAFT CODE OF CONDUCT**

The Chairman agreed to the consideration of this matter as an urgent item of business as the consultation period expired before the next ordinary meeting of the Standards Committee. The Assistant Chief Executive said that a revised draft of the Code of Conduct had been circulated for consultation and the consultation period was only six weeks. He said that as the Government wanted the new Code to be in place for May 2007, the closing date for comment was 9 March 2007. It would be necessary to arrange an extraordinary meeting of the Committee to consider this matter and it was

RESOLVED that an extraordinary meeting of the Standards Committee be held on 21 February 2007 commencing at 6.00 pm.

S19 **MEMBERSHIP OF SSE**

The Chairman agreed to the consideration of this matter as an urgent item of business as a decision was required before the next scheduled meeting of the Committee.

The Assistant Chief Executive said that following the decision of the Council to refuse the planning application for the expansion of Stansted Airport, a Councillor had rejoined SSE and had asked for a dispensation to speak and vote on airport matters. However, as less than half of the Council now belonged to that organisation a dispensation could not be granted.

He explained that prior to the planning application being submitted, more than half of the Council were members of SSE. However, SSE had changed its objects from opposing more runways to opposing the expansion of the airport and the majority of Councillors had resigned from SSE. He said that it was clear that membership of SSE was a personal interest which needed to be registered, but following the decision of the Development Control Committee, it was not a live issue and he did not feel that the interest was prejudicial.

Councillor Cant said that from a personal point of view, she felt that having maintained independence, it would be hypocritical to rejoin SSE until the appeal had been determined, but she agreed with the views expressed by the Assistant Chief Executive and this was supported by other Members.

RESOLVED that Councillors be advised that membership of SSE is a personal non prejudicial interest which should be registered.

S20 **DISPENSATIONS**

The Chairman agreed to the consideration of this matter as an item of urgent business as a majority of members of the Environment Committee were on the management boards of community/village halls.

Councillors C A Cant and C D Down declared a personal and prejudicial interest in this item and left the meeting during the discussion and voting thereon.

It was reported that five Councillors had made requests for dispensations to enable them to speak and vote on the issue of the collection of waste from community and village halls. The reason being that more than half of the Environment Committee had a prejudicial interest in this matter.

RESOLVED that

- 1 Councillor C ACant be permitted to attend and speak and vote at meetings of the Environment Committee when issues relating to charges for the collection of waste from community and village halls are discussed.
- 2 Councillor C M Dean be permitted to attend and speak and vote at meetings of the Environment Committee when issues relating

to charges for the collection of waste from community and village halls are discussed.

- 3 Councillor C D Down be permitted to attend and speak and vote at meetings of the Environment Committee when issues relating to charges for the collection of waste from community and village halls are discussed.
- 4 Councillor R M Lemon be permitted to attend and speak and vote at meetings of the Environment Committee when issues relating to charges for the collection of waste from community and village halls are discussed.
- 5 Councillor A M Wattebott be permitted to attend and speak and vote at meetings of the Environment Committee when issues relating to charges for the collection of waste from community and village halls are discussed.

The meeting ended at 5.10 pm.