

**Committee:** STANDARDS COMMITTEE

**Agenda Item**

**Date:** January 29, 2007

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**Title:** GUIDANCE FROM THE STANDARDS BOARD

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Item for information

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### Summary

1. On 20 November 2006 this Committee considered a report on the outcome of the case of Ken Livingstone v the Adjudication Panel for England. The Standards Board have now issued guidance in the light of this case and this report is to inform members of the content of that guidance.

### Background Papers

2. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.
  - Email to the Monitoring Officer from the Standards Board for England dated 5 January 2007.

### Impact

3.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Finance	None.
Human Rights	None.
Legal Implications	Ignoring the guidance may lead to successful appeals to the Adjudication Panel which would be resource intensive for the authority.
Ward-specific impacts	None.
Workforce/Workplace	None.

## Situation

4. Paragraph 4 of the Code of Conduct provides “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”. Prior to the Livingstone case the Adjudication Panel had considered the general principles of conduct in local government in determining whether or not a member had acted in such a way as to bring himself or his authority into disrepute.
5. In the Livingstone case Mr Justice Collins decided that the expression “any other circumstances” is limited to situations where the member is performing his functions. Whilst this could extend to actions beyond those carried out in a member’s official capacity the scope was clearly limited.
6. The Government, the Adjudication Panel for England, the Association of Councillors, Secretaries and Solicitors and the Standards Board have all viewed Mr Justice Collins’ decision with concern. Indeed the Local Government and Public Involvement in Health Bill contains 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 consider that this will obvert the judgement in the Livingstone case. However, until such time as the bill has been enacted and comes into force, the Livingstone judgement stands.
7. For the time being the Board offer the following guidance as to when a member may 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). Members may recall the case of Councillor Sloam of the London Borough of Barnet where some members attended the hearing before the Adjudication Panel. Councillor Sloam improperly used his title as councillor to try and avoid parking fines on behalf of a relative. This conduct is likely to be deemed to be bringing the member into disrepute notwithstanding that the action was not carried out in an official capacity.
  - (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.

8. The Board considers that it would be difficult to establish that a member has brought himself or the authority into disrepute when not acting in an official capacity. Examples given by the Board where this may be a case are:
  - (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.

### **Risk Analysis**

9. None associated with this report.