

The Standards Committee of 18 June 2002

Report title: **Progress Report on Complaints outstanding against Members**

1. Purpose

The purpose of this report is to update the Standards Committee on the present state of play of complaints outstanding against Members.

2. Recommendations

It is recommended that The Standards Committee

- **Note this report**

Report authorised by: **John Suddaby, Monitoring Officer**

Contact officer: J Suddaby – Deputy Borough Solicitor – Legal Services
Telephone: 020-8489 3974

3. EXECUTIVE SUMMARY

This Item relates to two separate complaints received against two elected members in February of this year which were each allegations of misconduct and potential breaches of the National Code of Local Government Conduct applying to members' conduct since 1990.

4. Access to information:

Local Government (Access to Information) Act 1985

National Code of Local Government Conduct 1990 (Appendix A), The Relevant Authorities (General Principles) Order 2001 (Appendix B).

5. Background

- 5.1 Following the Council meeting of 14 January 2002, the Head of Local Democracy received a written complaint from a member of the public (Complainant A) present at the Council meeting complaining about the conduct of two councillors, X and Y, at the meeting and requesting an apology from them. On 15 January, an e-mail was sent to the Chief Executive by an elected member B making a complaint in similar terms against the conduct of Councillor X. Councillor B asked the Chief Executive to refer the matter to the Council's Standards Committee.
- 5.2 The Complaints were referred to the Council's Monitoring Officer who advised that they each constituted potential breaches of National Code of Local Conduct 1990 and of principles contained in the Relevant Authorities (General Principles) Order 2001. It was agreed that the Monitoring Officer should investigate the allegations against the two members, seeking the response of these members to the allegations and based on this either carrying out a further investigation or seeking to mediate a resolution, which could include an apology.

6. Complaint against Councillor X

- 6.1 In his letter of 15 January 2002, Complainant A stated as follows:
- “ I was a last night's Full Council Meeting and I was deeply offended by two Councillors. Councillor X looked up at the Public Gallery and shouted “Tory Scum” to members present.”
- 6.2 Councillor Z's complaint was in the following terms :
- “ I am advised that, shortly after I left the Chamber last night, Cllr X used the epithet “Tory scum” in referring to supporters in the gallery.”
- 6.3 The Monitoring Officer informed Councillor X of the allegations and requested a response. Telephone contact was made on 14 March 2002 in which Councillor X denied making any comment to those in the public gallery and particularly denied making the comments complained of.
- 6.4 On 19 March the Monitoring Officer wrote to the two complainants requesting any further evidence they wished to supply which supported their allegations. No reply was received to these letters and on 11 April, the Monitoring Officer wrote a letter to the two complainants informing them the Councillor X did not agree with their descriptions of events. The letter informed them that as a result of this it would be necessary to conduct a formal investigation of the allegations and requested that they confirm that they wished to proceed with their complaint. The letter repeated the request made in the earlier letters of 19 March, asking them for a statement of any additional evidence they wished to offer and also asked them to supply the names and addresses of any witnesses that are prepared to give evidence supporting their allegations.
- 6.5 The Monitoring Officer has received no reply to these letters from the complainants and subject to the views of the Standards Committee will write forthwith to the complainants informing them that unless he hears from them to the contrary, he intends to take no further action in relation to their allegations against Councillor X.

7. Complaint against Councillor Y

6.6 In his letter of 15 January 2002, Complainant A stated as follows:

“ Minutes after this appalling *incident* (referring to the matter complained against Councillor X), Councillor Y responded to Cllr T’s written question He, like Councillor X, looked at members sat in the Public Gallery and said:

“ “ This is typical of the Tories.

“ “ They are, like the Daily Mail and Evening Standard, xenophobic, racist and bigoted.” ”

“ Looking directly at the Gallery, he went on to say:

“ “ Yes, you are xenophobic, racist and bigoted.” ”

- 6.7 The Monitoring Officer communicated this complaint to Councillor Y and asked for his response to it. Councillor Y replied by e-mail on 12 March 2002 not denying that he had used the words complained about but denying that he had directed them against individuals present at the meeting. In his e-mail, Councillor Y maintained that he was at all times “referring to the Conservative Party as a political entity and its policies.”
- 6.8 The Monitoring Officer replied to this e-mail on 14 March suggesting that he and Councillor Y meet to discuss the complaint and his response to it. In response to this, telephone contact was made and following this it was agreed that the Monitoring Officer should draft a letter to the complainant in terms agreed and pass it to Councillor Y for consideration.
- 6.9 This course of action was followed and a draft was sent to Councillor Y for his comments on 7 May 2002.
- 6.10 Prior to this, the Monitoring Office had written to the complainant asking him to provide any additional evidence he wished to produce in support of his complaint.
- 6.11 To date the Monitoring Officer has not received a reply to his letter of 19 March to the complainant requesting any further evidence he wishes to supply.
- 6.12 To date the Monitoring Officer has not received a reply to the draft response sent to Councillor Y on 7 May 2002.
- 6.13 If, following the meeting of the Standards Committee, the Monitoring Officer does not receive a response from either complainant or Councillor Y, he proposes to write to the complainant, asking him whether he wishes his complaint to be pursued . In the event that the complainant confirms that he wishes his complaint dealt with, the Monitoring Officer proposes to conduct interviews with both parties and any other witnesses and report his findings to a future meeting of the Standards Committee.

Appendix A

National Code of Local Government Conduct 1990
To be attached.

6-214 United Kingdom being found in breach of its obligations by the European Court of Justice but also in liability of a local authority towards an unsuccessful tenderer.

Enquiries

9. Enquiries on this Circular should be addressed (in England) to LG3 Division, Department of the Environment, 2 Marsham Street, London SW1P 3EB and (in Wales) to EPLG Division (LG), Welsh Office, Cathays Park, Cardiff CF1 3NQ.

*Joint Circular dated April 10, 1990, from the
Department of the Environment (8/90)
Welsh Office (23/90)*

6-215 THE NATIONAL CODE OF LOCAL GOVERNMENT CONDUCT

The Code

1. We are directed by the Secretary of State for the Environment, the Secretary of State for Scotland and the Secretary of State for Wales to draw the attention of your authority to the National Code of Local Government Conduct, which they have issued under their powers under section 31 of the Local Government and Housing Act 1989. A copy of the Code is annexed.

2. A code of conduct for local government was proposed and drafted by the Redcliffe-Maud Committee on Local Government Rules of Conduct in 1974 and endorsed by the Salmon Royal Commission on Standards of Conduct in Public Life. A code in line with these proposals was issued by the Department of the Environment, the Scottish Development Department and the Welsh Office in 1975. The Widdicombe Committee on the Conduct of Local Authority Business recommended that the Code should be given statutory status, and that provision should be made for new councillors to declare that they would be guided by it. Sections 30 and 31 of the Local Government and Housing Act 1989 implement these recommendations.

3. The Code now issued is based on a revision of the 1975 Code carried out by a joint working group representing the Government Departments concerned and the local authority associations. The local authority associations were consulted on the draft prepared by that working group. The Code now issued incorporates amendments to reflect their comments.

4. The Code has been approved by resolutions of both Houses of Parliament, in accordance with section 31 of the Local Government and Housing Act 1989, and therefore carries their authority.

5. The Code applies to all members of the authorities and other bodies to which this circular is addressed, including members coopted to committees, sub-committees and joint committees.

6. It is important that the new Code is drawn to the attention of all existing members of your authority, and of all new members, as and when they are elected or appointed. Where local authorities provide for copies of their standing orders to be distributed to all members, they should consider including the Code as an annex. 6-215

7. The Code replaces that given in the joint circular dated 2nd October 1975 (DOE 94/75, WO 166/75 and SDD 95/75) which is cancelled.

Declaration on acceptance of office

8. Section 31 of the Act also provides that the form of declaration of acceptance of office under section 83 of the Local Government Act 1972 or section 33A of the Local Government (Scotland) Act 1973 may include an undertaking by the declarant to be guided by the National Code of Local Government Conduct in the performance of his functions. The Secretaries of State intend making orders to this effect to come into force on 3rd May 1990 for authorities other than parish and community councils, and 1st January 1991 for parish and community councils.

Local Ombudsman

9. In carrying out an investigation, the local ombudsman may find that a breach of the National Code of Local Government Conduct by any individual member of the authority, constitutes maladministration. Section 32 of the 1989 Act requires that in these circumstances the local ombudsman must name the member or members concerned in his report on the investigation and give particulars of the breach unless he is satisfied that it would be unjust to do so. The Secretaries of State also intend to bring this provision into force on 3rd May 1990.

Financial and Manpower Implications

10. This Circular has no significant implications for either the expenditure or the manpower of local authorities.

Enquiries

11. Enquiries on this circular should be addressed (in England) to the Department of the Environment, Local Government 1 Division, 2 Marsham Street, London SW1P 3EB, 01-276 4108; (in Wales) to the Welsh Office, Local Government Division (LG), Cathays Park, Cardiff CF1 3NQ, 0222 823236; and (in Scotland) to the Scottish Development Department, Local Government Division, New St., Andrews House, Edinburgh EH1 3SX, 031-244 4060.

ANNEX

NATIONAL CODE OF LOCAL GOVERNMENT CONDUCT

Introduction

The National Code of Local Government Conduct provides, by way of guidance to members of local authorities, recommended standards of conduct in carrying out their duties, and in their relationships with the council and the council's officers.

6-215 *The Code is issued jointly by the Secretary of State for the Environment, the Secretary of State for Scotland and the Secretary of State for Wales, under the provisions of the Local Government and Housing Act 1989. The Code has been agreed by associations representing local authorities in all three countries, and approved by both Houses of Parliament.*

The Code applies to all members of
in England, county councils, district councils, London borough councils, the Common Council of the City of London, the Council of the Isles of Scilly and parish and town councils;
in Scotland, regional councils, islands councils, district councils, and joint boards and committees;
in Wales, county councils, district councils and community and town councils.

All councillors are required on accepting office to declare that they will be guided by the Code.

The Code also applies to all members of committees, joint committees, and sub-committees of these authorities, whether or not they are councillors, and whether or not they are voting members of those bodies.

The Code represents the standard against which the conduct of members will be judged, both by the public, and by their fellow councillors. The local ombudsmen may also regard a breach of the Code as incompatible with good administration, and may make a finding of maladministration by the council in these circumstances.

THE CODE

The Law and standing orders

1. Councillors hold office by virtue of the law, and must at all times act within the law. You should make sure that you are familiar with the rules of personal conduct which the law and standing orders require, and the guidance contained in this Code. It is your responsibility to make sure that what you do complies with these requirements and this guidance. You should regularly review your personal circumstances with this in mind, particularly when your circumstances change. You should not at any time advocate or encourage anything to the contrary. If in any doubt, seek advice from your council's appropriate senior officer or from your own legal adviser. In the end however, the decision and the responsibility are yours.

Public duty and private interest

2. Your over-riding duty as a councillor is to the whole local community.

3. You have a special duty to your constituents, including those who did not vote for you.

4. Whilst you may be strongly influenced by the views of others, and of your party in particular, it is your responsibility alone to decide what view to take on any question which councillors have to decide.

5. If you have a private or personal interest in a question which councillors have to decide, you should never take any part in the decision, except in the special circumstances described below. Where such circumstances do permit you to participate, you should never let your interest influence the decision.

6. You should never do anything as a councillor which you could not justify to the public. Your conduct, and what the public believes about your conduct, will affect the reputation of your council, and of your party if you belong to one. 6-215

7. It is not enough to avoid actual impropriety. You should at all times avoid any occasion for suspicion and any appearance of improper conduct.

Disclosure of pecuniary and other interests

8. The law makes specific provision requiring you to disclose both direct and indirect pecuniary interests (including those of a spouse with whom you are living) which you may have in any matter coming before the council, a committee or a sub-committee. It prohibits you from speaking or voting on that matter. Your council's standing orders may also require you to withdraw from the meeting while the matter is discussed. You must also by law declare certain pecuniary interests in the statutory register kept for this purpose. These requirements must be scrupulously observed at all times.

9. Interests which are not pecuniary can be just as important. You should not allow the impression to be created that you are, or may be, using your position to promote a private or personal interest rather than forwarding the general public interest. Private and personal interests include those of your family and friends, as well as those arising through membership of, or association with, clubs, societies and other organisations such as the Freemasons, trade unions and voluntary bodies.

10. If you have a private or personal non-pecuniary interest in a matter arising at a local authority meeting, you should always disclose it, unless it is insignificant, or one which you share with other members of the public generally as a ratepayer, a community chargepayer or an inhabitant of the area.

11. Where you have declared such a private or personal interest, you should decide whether it is clear and substantial. If it is not, then you may continue to take part in the discussion of the matter and may vote on it. If, however, it is a clear and substantial interest, then (except in the special circumstances described below) you should never take any further part in the proceedings, and should always withdraw from the meeting whilst the matter is being considered. In deciding whether such an interest is clear and substantial, you should ask yourself whether members of the public, knowing the facts of the situation, would reasonably think that you *might* be influenced by it. If you think so, you should regard the interest as clear and substantial.

12. In the following circumstances, but only in these circumstances, it can still be appropriate to speak, and in some cases to vote, in spite of the fact that you have declared such a clear and substantial private or personal interest:

- (a) if your interest arises in your capacity as a member of a public body, you may speak and vote on matters concerning that body; for this purpose, a public body is one where, under the law governing declarations of pecuniary interests, membership of the body would not constitute an indirect pecuniary interest;

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- (b) if your interest arises from being appointed by your local authority as their representative on the managing committee, or other governing body, of a charity, voluntary body or other organisation formed for a public purpose (and not for the personal benefit of the members), you may speak and vote on matters concerning that organisation;
- (c) if your interest arises from being a member of the managing committee, or other governing body of such an organisation, but you were not appointed by your local authority as their representative, then you may speak on matters in which that organisation has an interest; you should not vote on any matter directly affecting the finances or property of that organisation, but you may vote on other matters in which the organisation has an interest;
- (d) if your interest arises from being an ordinary member or supporter of such an organisation (and you are not a member of its managing committee or other governing body), then you may speak and vote on any matter in which the organisation has an interest.

Dispensations

13. Circumstances may arise where the work of your authority is affected because a number of councillors have personal interests (pecuniary or non-pecuniary) in some question.

14. In certain circumstances, you may be able to get a dispensation to speak, and also to vote, in spite of a pecuniary interest. Such dispensations are given under statute by the Secretary of State in the case of county, regional, islands, district and London borough councils, and (in England and Wales) by the district council in the case of town, parish and community councils.

15. In the case of non-pecuniary interests, there may be similar exceptions to the guidance contained in paragraphs 9 to 12 of this Code. In the circumstances below it may be open to you to decide that the work of the council requires you to continue to take part in a meeting which is discussing a matter in which you have a clear and substantial private or personal interest.

16. Before doing so, you should

- (a) take advice from the chairman of your local authority (if this is practicable) and from the appropriate senior officer of the authority as to whether the situation justifies such a step;
- (b) consider whether the public would regard your interest as so closely connected with the matter in question that you could not be expected to put your interest out of your mind (for example, the matter might concern a decision by the council affecting a close relative); if you think that they would, you should never decide to take part in a discussion of, or a vote on, the matter in question; and
- (c) consider any guidance which your council has issued on this matter.

17. The circumstances in which (after such consultation and consideration) you may decide to speak and vote on a matter in which you have a clear and substantial private and personal non-pecuniary interest are *if, but only if*:

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- (a) at least half the council or committee would otherwise be required to withdraw from consideration of the business because they have a personal interest; or
- (b) your withdrawal, together with that of any other members of the council or committee who may also be required to withdraw from consideration of the business because of a personal interest, would upset the elected party balance of the council or committee to such an extent that the decision is likely to be affected.

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18. If you decide that you should speak or vote, notwithstanding a clear and substantial personal or private non-pecuniary interest, you should say at the meeting, before the matter is considered, that you have taken such a decision, and why.

19. The guidance set out in paragraphs 15-18 above also applies to sub-committees. However if the sub-committee is very small, or if a large proportion of members declare a personal interest, it will usually be more appropriate for the matter to be referred to the parent committee.

Disclosure in other dealings

20. You should always apply the principles about the disclosure of interests to your dealings with council officers, and to your unofficial relations with other councillors (at party group meetings, or other informal occasions) no less scrupulously than at formal meetings of the council, committees and sub-committees.

Membership of committees and sub-committees

21. You, or some firm or body with which you are personally connected, may have professional, business or other personal interests within the area for which the council are responsible. Such interests may be substantial and closely related to the work of one or more of the council's committees or sub-committees. For example, the firm or body may be concerned with planning, developing land, council housing, personnel matters or the letting of contracts for supplies, services or works. You should not seek, or accept, membership of any such committee or sub-committee if that would involve you in disclosing an interest so often that you could be of little value to the committee or sub-committee, or if it would be likely to weaken public confidence in the duty of the committee or sub-committee to work solely in the general public interest.

Leadership and Chairmanship

22. You should not seek, or accept, the leadership of the council if you, or any body with which you are associated has a substantial financial interest in, or is closely related to, the business or affairs of the council. Likewise, you should not accept the chairmanship of a committee or sub-committee if you have a similar interest in the business of the committee or sub-committee.

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Councillors and officers

6-215 23. Both councillors and officers are servants of the public, and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the council. Their job is to give advice to councillors and the council, and to carry out the council's work under the direction and control of the council, their committees and sub-committees.

24. Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillors and officers can damage this relationship and prove embarrassing to other councillors and officers.

25. The law and standing orders lay down rules for the appointment, discipline and dismissal of staff. You must ensure that you observe these scrupulously at all times. Special rules apply to the appointment of assistants to political groups. In all other circumstances, if you are called upon to take part in appointing an officer, the only question you should consider is which candidate would best serve the whole council. You should not let your political or personal preferences influence your judgement. You should not canvass the support of colleagues for any candidate and you should resist any attempt by others to canvass yours.

Use of confidential and private information

26. As a councillor or a committee or sub-committee member, you necessarily acquire much information that has not yet been made public and is still confidential. It is a betrayal of trust to breach such confidences. You should never disclose or use confidential information for the personal advantage of yourself or of anyone known to you, or to the disadvantage or the discredit of the council or anyone else.

Gifts and hospitality

27. You should treat with extreme caution any offer or gift, favour or hospitality that is made to you personally. The person or organisation making the offer may be doing, or seeking to do, business with the council, or may be applying to the council for planning permission or some other kind of decision.

28. There are no hard or fast rules about the acceptance or refusal of hospitality or tokens of goodwill. For example, working lunches may be a proper way of doing business, provided that they are approved by the local authority and that no extravagance is involved. Likewise, it may be reasonable for a member to represent the council at a social function or event organised by outside persons or bodies.

29. You are personally responsible for all decisions connected with the acceptance or offer of gifts or hospitality and for avoiding the risk of damage to public confidence in local government. The offer or receipt of gifts or invitations should always be reported to the appropriate senior officer of the council.

Expenses and allowances

30. There are rules enabling you to claim expenses and allowances in connection with your duties as a councillor or a committee or sub-committee members. These rules must be scrupulously observed.

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Dealings with the council

31. You may have dealings with the council on a personal level, for instance as a ratepayer or community chargepayer, as a tenant, or as an applicant for a grant or a planning permission. You should never seek or accept preferential treatment in those dealings because of your position as a councillor or a committee or sub-committee member. You should also avoid placing yourself in a position that could lead the public to think that you are receiving preferential treatment: for instance, by being in substantial arrears to the council, or by using your position to discuss a planning application personally with officers when other members of the public would not have the opportunity to do so. Likewise, you should never use your position as a councillor or a committee or sub-committee member to seek preferential treatment for friends or relatives, or any firm or body with which you are personally connected.

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Use of council facilities

32. You should always make sure that any facilities (such as transport, stationery, or secretarial services) provided by the council for your use in your duties as a councillor or a committee or sub-committee member are used strictly for those duties and for no other purpose.

Appointments to other bodies

33. You may be appointed or nominated by your council as a member of another body or organisation—for instance, to a joint authority or a voluntary organisation. You should always observe this Code in carrying out your duties on that body in the same way you would with your own authority.

CIRCULAR NO. 11/90

Dated August 2, 1990, issued by the Department of the Environment

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Local Authority Capital Finance*Introduction*

1. I am directed by the Secretary of State for the Environment to draw attention to Part IV of the Local Government and Housing Act 1989 ("the Act"), which received Royal Assent on 16 November 1989 and which provides for a new system of local authority capital finance, and to the following regulations ("the regulations") which have been made under Part IV:

- the Local Authorities (Capital Finance) Regulations 1990 (SI 1990 No. 432: referred to below as the "Capital Finance Regulations")
- the Local Authorities (Capital Finance) (Rate of Discount) Regulations 1990 (SI 1990 No. 316: the "Rate of Discount Regulations")
- the Local Authorities (Approved Investments) Regulations 1990 (SI 1990 No. 426: the "Approved Investments Regulations")
- the Local Authorities (Borrowing) Regulations 1990 (SI 1990 No. 767: the "Borrowing Regulations") as amended by the Local Authorities (Borrowing) (Amendment) Regulations 1990 (SI 1990 No. 1091)
- the Local Authorities (Capital Finance) (Prescribed Bodies) Regulations 1990 (SI 1990 No. 404).

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Appendix B

THE GENERAL PRINCIPLES

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. 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. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

EXPLANATORY NOTE

This Order specifies the principles, which are to govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, in accordance with section 49(1) of the Local Government Act 2000.

Article 3(1) gives effect to the Schedule to the Order, and paragraph (2) of that article provides that the principles are expected to govern only the official conduct of members and co-opted members, apart from the second and eighth, which have effect on all occasions. The Schedule specifies the principles.