

Sevenoaks District Council
September 2005

Councillors' standards and ethics



The Councillor's code of conduct

The public have a right to expect honest and upright behaviour from their elected representatives. Confidence in local democracy is essential to an open and inclusive society. This confidence can only be achieved when those serving their communities adhere to – and can be held accountable for – the high standards the public has a right to expect of them.

On accepting office, councillors are required to sign the statutory code of conduct, a set of provisions that guides councillors towards the standards of behaviour expected of them. The Standards Board for England oversees the code of conduct and issues guidance on how to follow the code's rules. The Standards Board for England can also receive allegations that the code of conduct has been breached and can, if necessary, refer an allegation for investigation.

Nolan Committee

The Nolan Committee on Standards of Conduct in Public Life reported in 1997 that it found that standards of conduct in local government were generally high. However, the occasional cases of misconduct that did arise led to a public perception of impropriety and dishonesty in local government. The Nolan Report outlined a set of principles to which those in public office should adhere.

- selflessness – holders of public office should take decisions solely in terms of the public interest and should not do so to gain financial or material benefits for themselves, their family or their friends
- integrity – holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties
- objectivity – in carrying out public business, including making public appointments awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit
- accountability – holders of public office are accountable to the public for their decisions and actions and must submit to whatever scrutiny is appropriate to their role
- openness – holders of public office should be as open as possible about all the decisions and actions that they take and should give reasons for their decision, restricting information only when the wider public interest clearly demands it
- honesty – holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest
- leadership – holders of public office should promote and support these principles by leadership and example.

These principles form part of an ethical framework designed to modernise and reinforce the democratic process. The framework builds on the principles outlined above and was implemented in Part III of the Local Government Act 2000. The Act contained provisions for a Model Code of Conduct that had to be adopted by local authorities by May 2002. All councillors are required to comply with its provisions and an agreement to abide by the Code of Conduct is part of the oath of office for new councillors.

The Act also set up The Standards Board for England to oversee the Code of Conduct and, in partnership with local government, promote and maintain high standards of conduct by all councillors. The Act also required authorities to setup local standards committees to oversee the ethical framework at a local level.

The Standards Board for England

The Standards Board for England was setup under Part III of the Local Government Act 2000 and was established as an independent, non-departmental public body in March 2001.

Nolan recommended a streamlined and consistent set of arrangements for local government so that people in public office and the public they serve were clear about the standards expected of them. He sought to change the negative perception and general mistrust the people had of its elected representatives at the local level of government.

The role of the Standards Board is to promote and maintain high standards of conduct in local government, investigate allegations of misconduct, and oversee the Model Code of Conduct.

The Standards Board covers a wide range of authorities, including:

- county, unitary, borough and district councils
- parish and town councils
- police authorities
- national park authorities
- the Broads Authority
- fire and civil defence authorities
- passenger transport authorities
- Greater London Authority
- the Corporation of London
- the Council of the Isles of Scilly.

The Standards Board is only concerned with the conduct of councillors and co-opted councillors. Its remit does not extend to the conduct of authorities as a whole, or to the conduct of council staff.

The code of conduct

All councillors and co-opted councillors are covered by the code of conduct. Each code of conduct must include the provisions of the Model Code of Conduct, although additional local provisions can be added so long as they are consistent with the Model Code.

The code of conduct covers areas of individual behaviour such as councillors not abusing their position or not misusing their authority's resources. There are also rules governing registration and disclosure of interests. Whenever they are conducting council business or representing the council, councillors are bound by the code.

Two provisions of the code of conduct apply regardless of whether or not councillors are conducting council business. They may breach the code if at any time they act in a way that brings their authority or office into disrepute, or use their office to improperly secure for themselves, or any other person an advantage or disadvantage.

General obligations

Under the code of conduct councillors have a positive obligation to:

- promote equality by not discriminating unlawfully against any person
- treat others with respect
- not seek to improperly influence decisions to the advantage or disadvantage of themselves and anyone else
- listen to advice from their monitoring officer or chief finance officer in relation to the legality of decisions
- report a breach of the code of conduct to The Standards Board if they reasonably believe another councillor has broken the authority's code of conduct
- only use the resources of the authority in accordance with its requirements
- make sure they don't misuse the authority's resources, in particular, for political purposes, unless it is to carry out their responsibilities.

Councillors have an obligation not to:

- compromise the impartiality of anyone who works for, or on behalf of, the authority

- disclose confidential information without valid consent
- prevent anyone getting information they are entitled to
- bring their office or authority into disrepute at any time
- use their position improperly to the advantage or disadvantage of themselves or anyone else.

Personal and prejudicial interests

At council meetings, each councillor has a duty to declare an interest if it is a personal or prejudicial interest.

What is a personal interest?

A personal interest in a matter is one that can be reasonably regarded as affecting the individual, family or friend more than other people in the area. If a councillor has a personal interest they can stay, take part and vote at the meeting. The code of conduct was designed to encourage participation in an open manner, not restrict participation.

A councillor may have a personal interest if it affects:

- them, their partner, relatives or friends
- their employer, or the employer of their partner, relatives or friends
- any corporate body in which they, their partner, relatives or friends hold shares with a nominal value of more than £5,000 or of which they are a director
- any firm in which they, their relatives or friends are partners.

A councillor must also declare a personal interest if discussion concerns one of the following organisations in which they, relatives or friends hold a position of control or management with:

- a body where they are a representative or nominee of the authority
- a body exercising public functions
- a company, industrial and provident society, charity or body directed to charitable purposes
- a body which seeks to influence public opinion or policy
- a trade union or professional association.

It is up to individual councillors to decide if a personal interest exists, with advice from the authority's monitoring officer.

Councillors who believe they have a personal interest should make their declaration at the beginning of the meeting or as soon as they become aware of the issue being discussed.

They should also say if anything being discussed relates to anything they are required to declare on the register of interests.

What is a prejudicial interest?

Under the code of conduct, the test for determining whether a councillor has a prejudicial interest is if someone who knew all the relevant facts would view a councillor's personal interest in an issue to be so great that it was likely to prejudice the councillor's judgement of the public interest. If a councillor has a prejudicial interest they must leave the meeting. The councillor must leave the room entirely and not seek to influence any decision-making.

Councillors will also have a prejudicial interest if they are members of an overview and scrutiny committee that is considering a decision taken by another committee to which they belong.

They must use their own judgement when deciding if they have a prejudicial interest and where there is doubt should ask their monitoring officer for advice.

They may regard themselves as not having a prejudicial interest in a matter, and, in some situations, not have to withdraw from the meeting, if it relates to, among other things:

- another relevant authority of which they are a member
- another public authority in which they hold a position of general control or management
- a body to which they have been appointed or nominated by the authority as its representative
- the housing functions of the authority where the councillor holds a tenancy or lease with a relevant authority, provided that they do not have arrears of rent of more than two months, and the functions do not relate particularly to the councillor's tenancy or lease.

Each situation should always be judged on its own merits. Given that the wording includes the term "may regard" there is an indication that there will be some circumstances where it would be inappropriate for a councillor to rely on this exemption. Those circumstances will generally exist where there are additional factors beyond the mere fact that an interest falls into the exemptions noted above.

Registering interests

Councillors must register any interests listed in part three of the Model Code of Conduct, which covers financial and other interests. This is so that the public,

council staff, and fellow councillors can be aware of things that might give rise to a conflict of interest. It will also help protect the councillor by demonstrating that they are open and honest in their dealings.

Councillors are responsible for deciding whether or not they should declare an interest in a meeting, but it can be helpful to know early on if others think that a conflict might arise.

It is also important for public confidence that people who are interested in an authority's meetings know about any interest that might have to be declared by councillors.

Councillors must register their interests, in writing, with their monitoring officer within 28 days of being appointed. The register of interests will be available to the public at the authority's offices at all reasonable hours, but may not be posted onto the internet without councillor's consent.

Financial interests

Information that should be registered by councillors includes.

- their job and their businesses
- the name of their employer, any firm in which they are a partner and any company of which they are a paid director
- the name of any person other than a relevant authority who has helped them with expenses associated with their election or their duties as a councillor
- the name of any "corporate interest" – any organisation that has a place of business or land in the authority's area and in which they have shares with a face value of more than £25,000 or one per cent of the total amount invested in the organisation
- a description of any contracts for goods, services or work between the authority and themselves, any firm in which they are a partner, any company of which they are a paid director, or any of their corporate interests
- the address or other description of any land in the authority's area in which they have a beneficial interest. The address or other description must be good enough to identify the location. A councillor would have a beneficial interest in land if, for example, they owned it, rented it, or were entitled to, or through a trust would become entitled to, the proceeds of it.
- the address or other description of any land which any firm in which they are a partner, any company of which they are a paid director, or any of their corporate interests, leases from their authority.

Other interests

Councillors should register their membership of, general control of or management of:

- organisations where they represent their authority
- other public authorities or organisations that deliver public services
- companies, industrial and provident societies, charities or charitable organisations
- organisations with a main purpose that includes influencing public opinion or policy
- trade unions or professional association.

Gifts and hospitality

Councillors must register any gifts or hospitality worth £25 or more, received from the same source, in connection with their official duties. A culmination of small gifts that add up to £25 or more also should be declared.

Gifts and hospitality that are not related to their role as a councillor, such as Christmas gifts from friends and family, do not need to be registered, nor are gifts they do not accept. However, councillors should always consider whether any gifts or hospitality could be seen as being connected to their role as a councillor. If they are in doubt they should speak to their monitoring officer.

Complaints and investigations

Anyone who believes that a councillor has breached the code of conduct can make a written allegation to The Standards Board for England.

On receipt of a complaint The Standards Boards Referrals Unit will assess the allegation to determine whether or not it should be referred for investigation.

If an allegation against a councillor is passed for investigation by an ESO (ethical standards officer), the councillor's monitoring officer will be informed. The councillor under investigation will usually be informed too. Notification will only be delayed if notifying the councillor concerned might delay or harm the investigation.

If an allegation is not investigated, The Standards Board will notify all parties concerned. The Standards Board is unable to deal with allegations outside its remit. If it receives complaints that relate to matters that the police, ombudsman, Audit Commission or other bodies deal with, it will work with them to determine which organisation would best handle the matter.

It is worth noting that allegations of corporate maladministration should be referred to the local government ombudsman.

If an investigation is undertaken the ESO can reach one of five findings:

- there is no evidence of a breach
- no further action should be taken in relation to the matters investigated
- the matter be investigated and determined prior to completing an investigation or, at the end of an investigation, refer the matter to the standards committee for determination.
- the matter requires neither investigation nor determination; instead the ESO can issue a direction to an authority to resolve the matter
- to refer the matter to the Adjudication Panel for England.

The Adjudication Panel for England is constituted separately from The Standards Board for England. It was established under the Local Government Act 2000 to hear and adjudicate on matters concerning the conduct of local authority councillors. The panel consists of a president and councillors appointed by the Lord Chancellor. It considers matters referred to it by an ESO. Any councillor who is the subject of adjudication may appear or be represented before the panel. When the panel finds misconduct has occurred, it may decide on:

- suspension from being a councillor or a co-opted councillor for up to one year.
- disqualification for being or becoming a councillor for up to five years
- no disciplinary action.

The individual has a right of appeal to the High Court.

Standards Committee Hearings

Under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, ESOs can now refer completed investigation reports to monitoring officers for standards committees to decide whether or not a councillor has failed to follow the code of conduct.

Following a hearing, the standards committee can make one of the following decisions:

- the councillor has not failed to follow the authority's code of conduct
- the councillor has failed to follow the authority's code of conduct, but no action needs to be taken
- the councillor has failed to follow the authority's code of conduct and should be penalised.

If the standards committee finds that a councillor has failed to follow the code of conduct and that he or she should be penalised, it may do any one or a combination of the following:

- censure the councillor – the only form of penalty available when dealing with a person who is no longer a councillor of the authority
- restrict the councillor's access to the resources of the authority for up to three months, which could include limiting their access to council premises
- suspend or partly suspend the councillor for up to three months
- suspend or partly suspend the councillor for up to three months on the condition that the suspension or partial suspension will end if the councillor apologises in writing, receives any training, or takes part in any conciliation that the standards committee orders them to. Conciliation involves an independent person helping the relevant people try to reach an agreement on the matter set out by the standards committee.

Monitoring officer investigations

The Local Government Act 2000 enables ESOs to refer an allegation for local investigation by a monitoring officer or a nominated deputy at any time before they complete the investigation. The Local Authority (Code of Conduct) (Local Determination) (Amendments) Regulations 2004 set out how this provision should be followed.

When considering whether or not to refer the allegation to the monitoring officer, ESOs will decide such things as:

- the matter does not appear to need the heavier penalties only available through the Adjudication Panel for England
- the allegation is of an entirely local nature and does not raise matters of principle
- the initial investigation by an ESO has highlighted issues that are more to do with the effective governance of the authority than an individual's misconduct.

On receiving a referred allegation, the monitoring officer will investigate and produce a final report for consideration by the standards committee. The monitoring officer can find that there has not been a breach of the code of conduct. The standards committee must meet to decide if it agrees with that finding. If the standards committee agrees, a notice can be published. If it disagrees then either the committee or a sub-committee should hold a hearing.

If the monitoring officer finds that there has been a breach of the code of conduct, the standards committee must meet to discuss the findings and any potential sanctions (see above section on standards committee hearings).

Standards committees

Under section 53 of the Local Government Act 2000 (LGA 2000), each principal authority must setup a standards committee. The Relevant Authorities (Standards

Committee) Regulations 2001 set out the rules governing the size and membership of the standards committee and how it should run its business.

Under the LGA 2000, standards committees have seven functions. They must:

- give the council advice on adopting a local code of conduct
- monitor the effectiveness of the code
- train councillors on the code, or arrange for such training
- promote and maintain high standards of conduct for councillors
- help councillors to follow the code of conduct
- adjudicate on cases referred by an ESO (see above section on complaints and investigations)
- decide whether to grant dispensation requests from councillors.

Each dispensation request should be judged on its own merits and a decision reached after full consideration of all relevant facts.

Standards committees must have at least three members, of whom at least one must be independent, such as a lay citizen, and at least one must be a councillor. Independent councillors must be appointed through open advertisement. The Standards Board recommends that an independent councillor should chair the standards committee.

If local authorities are operating executive arrangements, the standards committee may not include the directly elected mayor or leader, and may not be chaired by a member of the executive. The standards committees of English district and unitary councils will also be the standards committees for the parish councils within their boundaries and, in these cases, must include at least one parish councillor, although Standards Board guidance states a preference for at least two councillors.

More information

The Committee on Standards in Public Life at www.public-standards.gov.uk

The Standards Board for England at www.standardsboard.co.uk

The Adjudication Panel for England at www.adjudicationpanel.co.uk

Local Government Association at www.lga.gov.uk

National Association of Local Councils at www.nalc.gov.uk

Local Government Ombudsman at www.lgo.gov.uk