

**STANDARDS COMMITTEE – 14 JULY 2009**

**STANDARDS BULLETIN NO. 2**

Report of the: Monitoring Officer

Status: For information purposes

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**Executive Summary:** The report sets out recent developments surrounding the local standards regime and the ethical agenda. Topics that are covered include Guidance on Other Action, Councillor's Guide 2009/10, Application of the Code to Private Capacity, Apparent Bias and the Conservative Local Government Conference.

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**This report supports the Key Aim of** effective management of Council resources.

**Portfolio Holder** Cllr. Elaine Bracken

**Head of Service** Head of Legal and Democratic Services – Christine Nuttall

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**Recommendation:** Members are requested to note this report.

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**Background**

- 1 The local standards regime continues to develop and this Bulletin updates Members as to how matters are progressing. This Bulletin follows on from the first Bulletin presented to the Committee on the 23 April 2009 and covers current developments taking place in relation to the ethical agenda.

**Guidance on Other Action**

- 2 The Standards Board for England (the Board) received a number of enquiries highlighting several issues about 'other action' since the local assessment began in May 2008.
- 3 As a result the Board has produced further guidance on the topic in order to clarify the position on when other action is appropriate and what other action might constitute.
- 4 The guidance is set out as an Appendix to this report and discusses what other action is, what it can involve, when it is appropriate and what to do if it is not successful. It also addresses the role of the monitoring officer, adjournment of assessment committee meetings, and explains why other action closes the opportunity to investigate.
- 5 The guidance states at paragraph 25 that some assessment sub-committees are reluctant to refer a complaint for other action without knowing whether the subject member and other members of the authority will cooperate with the

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proposed approach. They say that one way of dealing with this issue is by adjourning the assessment of a complaint that the assessment sub-committee considers might be suitable for other action. The standards committee can then ask the monitoring officer to find out whether the member or members will cooperate. Although this option is not specifically provided for by the legislation the Board does consider that it is not prohibited. Meetings may also be adjourned to find out more information about the complaint.

- 6 The guidance at paragraphs 28 and 29 sets out the advantages and disadvantages of adjournments. One of the advantages quoted is that when members indicate that the action would be ineffective, the sub-committee still have the option of deciding to refer the complaint for investigation.
- 7 The guidance states that apart from considering the advantages and disadvantages of adjournment when making a decision the authority should bear in mind that assessment decisions should be made within an average of 20 working days, and that an adjournment may mean that the average assessment time increases.
- 8 The Board has suggested an alternative to adjourning the assessment meeting, whereby the standards committee could agree that the monitoring officer seeks views on other action when the complaint is received. However, there are potential disadvantages in this course of action one of which is that the member can always change his/ her mind after the committee had made a decision thereby cutting off the committee's ability to investigate.

**Councillor's Guide – The Essential Guide for all New Councillors 2009/10**

- 9 The Improvement and Development Agency (IDeA) just recently published a new edition of the Councillor's Guide which has been revised and updated to reflect the latest legislation and thinking concerning local government in England.
- 10 The Guide focuses principally on the needs of newly elected councillors, although more experience councillors will find it useful too.
- 11 The Guide explores things new councillors need to know at the start of their careers in public life. It discusses councillors' roles and responsibilities as ward representatives, explains how councils work and how they are funded, examines the various checks and balances that regulate councils and councillors and stresses the importance of community leadership.
- 12 The Guide is a free pdf file on the IDeA website [www.idea.gov.uk/register](http://www.idea.gov.uk/register). The IDeA's website also features extensive information for councillors that is not covered by the Guide including a weekly email bulletin that features a handy digest of the latest news and best practice.

**Application of the Code to Private Capacity**

- 13 The Board has received a number of queries on whether or not the application of the 2007 Code of Conduct is still affected by the decision set out in the case of Ken Livingstone v. Adjudication Panel for England 2006.

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- 14 The 2006 ruling decided that Section 52 of the Local Government Act 2000 required members to comply with the Code in their official capacity only, and that it did not extend to their private conduct.
- 15 The judgement in the Livingstone case invited Parliament to be explicit about whether it wanted private conduct to be covered by the member's Code.
- 16 Section 183(4) of the 2007 Act, removes the words "in performing his functions" from Section 52(1)(a) of the 2000 Act, to enable the Code to cover some conduct in a private capacity.
- 17 At present, Section 183(4) of the 2007 Act is only in force in Wales; so in England, the Code still does not cover members at any time in their private capacity. We understand that the government's intention is that these amendments will become effective at the same time as the new Code becomes operative.
- 18 As a result the Livingstone case is still relevant to gaining an understanding of official capacity. When drafting the 2007 Code, Parliament incorporated some of the judge's reasoning in the Livingstone case. Official capacity in the Code is construed as
- conducting the business of your authority or office, or
  - acting, claiming to act, or giving the impression that you are acting as a representative of your authority.
- 19 It is the Board's view that the reasoning in Livingstone is still relevant to a proper interpretation and understanding of official capacity, because it helps to interpret what is meant by the two phrases above that define official capacity.

**Apparent Bias**

- 19 A recent case, entitled R (on the application of Gardner) (Claimant) v Harrogate Borough Council (Defendant) and Mr. & Mrs Atkinson (Interested Party) (2008), relating to the judicial review of a planning decision, has brought attention to the common law test of bias and planning decisions. In relation to this case the Local Government Ombudsman (LGO) and the Board had both received complaints about a planning matter. An ethical standards officer from the Board and the LGO both proceeded to investigate the case.
- 20 Each of the investigations were designed to draw out relevant evidence for the separate jurisdictions of maladministration and of a breach of the Code of Conduct. The case draws attention to matters which can cause concerns affecting both jurisdictions. However, it also highlights where they part company in practice and in the application of the relevant law.
- 21 The ethical standards officer did not disagree with the findings of bias affecting maladministration which was the basis of the LGO decision, as he did not consider bias as part of his investigation. Rather the ethical standards officer's investigation was mainly concerned with personal and prejudicial interests and

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the evidence of close friendship. Conversely, the LGO's investigation was not designed to draw evidence of a breach of the Code.

- 22 In the case, Councillor A was granted planning permission on the casting vote of Councillor S. The permission was granted against strong officer advice and major planning policy reasons which did not support granting permission. There was a connection between both councillors and it was the nature of this connection which drew the distinction between the two jurisdictions, the investigations and the relevant law to be applied in both.
- 23 For the purposes of the ethical standards officer's investigation, the evidence did not suggest a "close friendship" and therefore no breach of the Code was found. However, the Court said that "it does not follow that there will be no apparent bias if the relationship is less close". So there was apparent bias acknowledging that both councillors were friendly acquaintances.
- 24 Mr. Justice Jeremy Sullivan made the following observations in the Harrogate case which are of note:-

*I of course give appropriate weight to Mrs Atkinson's evidence, but the critical question is not her perception of the relationship between herself and Councillor Simms, but how Councillor Simms' relationship with her would have appeared to the fair-minded and informed observer. Whatever the arguments as to the details of the extent of the social and other contact between them, on both the Ombudsman's and the Board's findings, that contact went beyond the contact which might normally be expected between fellow Councillors who were simply in the same political party. Although they were not friends, as defined by the Board, they were fairly described as "friendly acquaintances", and were plainly perceived as such by their fellow Councillors, including Councillors who were the political allies of Councillor Simms.*

*It is also relevant, as part of the surrounding circumstances, that his vote was not simply one amongst a large number of votes either in favour of or against a particular proposal, his was the casting vote. Moreover, it is of particular importance that his casting vote in favour of planning permission was a vote contrary not simply to one but to two very strong recommendations by the Planning Officers to refuse planning permission. I would readily accept the submission that officers recommend and Members decide, but in looking at all of the circumstances of this case, it is relevant to bear in mind that the officers' recommendations that planning permission should be refused on policy grounds were expressed in very strong terms. In the officers' view this was not a finely balanced decision. There were very clear policy objections to the proposed development.*

*In these circumstances, in my judgement any fair-minded and informed observer would conclude that there was indeed a real possibility of bias in the decision to grant planning permission."*

- 25 The Administrative Court held that the application for judicial review succeeded and accordingly the planning permission was quashed. Councillor Atkinson and her husband were ordered to pay costs.

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- 26 The case illustrates the need for Members of the Planning Committee to have regard to the guidance on declarations of interest and the need to seek advice from the Monitoring Officer or another Senior Officer before the start of the Committee meeting if there is a question on the need to make declarations of interest although the final decision to declare interests needs to be made by Members.
- 27 In addition, Members of the Planning Committee need to keep an open mind and attach appropriate weight in the decision making process to the recommendations of the Planning Officer on planning applications. This is especially important when Members of the Planning Committee consider planning applications submitted by fellow Councillors in the same political group.

**Conservative Local Government Conference**

- 28 On the 27 and 28 February 2009 the Board exhibited at the Conservative Councillors' Association Local Government Conference in Leeds. The conference was attended by council leaders, executive members, councillors and members of the shadow cabinet, as well as key stakeholders in local government, candidates and party activists.
- 29 The Conservative representative on the Board, Councillor Sir Ron Watson CBE and policy advisers from the Board answered questions and got feedback on the Board's work and the work of local standards committees. Delegates visited the Board's exhibition stand to ask questions, raise concerns and to share information about how the assessment of complaints is working locally.
- 30 The Board felt that the vast majority of delegates who visited the Board's stand supported the need for the Code of Conduct and for the Board to continue to provide the national and independent oversight.

**Options (and Reasons for the Recommendation)**

- 31 The report is for information and discussion.

**Key Implications**

Financial

- 32 There are no identifiable financial implications.

Impact on and Outcomes for the Community

- 33 This report endeavours to set out the recent developments within the ethical framework thus providing Members and the public with news on current developments, changes and events taking place.

Legal, Human Rights etc.

- 34 The information provided shows how the ethical framework is evolving and the legal changes taking place based on legislation, guidance and case law.

Resource (non-financial)

- 35 No additional non financial resource implications are identified.

Value For Money and Asset Management

- 36 There are no identifiable value for money and asset management implications associated with the contents of this report.

Equality

- 37 All members of the public have access to the information contained within this report.

Sustainability Checklist

- 38 The ever evolving ethical framework should provide the public with confidence that a robust system exists for enabling high ethical standards to be applied across all levels of local government.

**Conclusions**

- 39 Some of the recent developments surrounding the local standards regime and the ethical agenda are high-lighted in this report in order that both Members and the public are kept informed and can discuss the implications of the changes and proposed changes.

**Risk Assessment Statement**

- 40 No risks have been identified by the contents of this report.

**Sources of Information:**

Bulletins from the Board – April 2009

Councillor's guide The essential guide for all new councillors 2009/10

Other Action Guidance – from the Board

R (Gardner) v. Harrogate Borough Council and Mr and Mrs Atkinson (2008)

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