

STANDARDS COMMITTEE – 2ND DECEMBER 2010

STANDARDS FOR ENGLAND CASE REVIEW 2010

Report of the: Monitoring Officer

Status: For Consideration

Executive Summary:

The Standards for England has prepared a new Case Review which can be accessed from their web site at:

<http://www.standardsforengland.gov.uk/caseinformationreporting/onlinecasereview2010/>

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

Portfolio Holder Cllr. Elaine Bracken – Portfolio Holder for Safe Community

Head of Service Head of Legal and Democratic Services – Mrs. Christine Nuttall

Recommendation: It be RESOLVED that the report be noted.

Background

- 1 The new Case Review is a paragraph by paragraph analysis of the Code of Conduct issued by Standards for England. It is intended primarily as a research tool for Monitoring Officers and Standards Committees. It has been developed to help them understand how tribunals and higher courts have interpreted the Code of Conduct.
- 2 Standards for England will not be distributing a printed version. However, they will be including on their web site a document version which we may wish to save locally or to print.

Introduction

- 3 The new Case Review has been produced to enable Monitoring Officers to have an up to date online resource. Each paragraph of the revised Code (2007) is explored through a series of questions and answers, followed by tribunal and court case examples wherever possible. The Review covers cases up to the end of October 2010 and will be under constant review and we will be kept informed of changes as they are made.
- 4 The online Case Review is too voluminous to attach to this report but can be accessed via the link provided above. The document is also too large to carry

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out a complete summary and so within this report highlights are given concentrating on those areas of the Code that have been considered by the Assessment Sub Committee this year. The highlights are as follows:

When does the Code of Conduct Apply?

- 5 Most of the Code's provisions only apply to activities performed whenever members act in an official capacity. This means whenever members conduct the business of their authority, or act, claim to act or give the impression they are acting in their official capacity or are representing their authority.
- 6 At the moment unless there is Parliamentary approval for amendments to Section 52 of the Local Government Act 2000 the Code does not apply to conduct outside of the functions performed as a member. Only activities linked to the functions of a Member's office will be covered by the Code. Only if legislative amendments are passed will the Code also apply to criminal activity which has led to a conviction, whether or not it is linked to a Member's office.

What Kinds of Conduct are not Covered when it Comes to Respect?

- 7 A very clear line has to be drawn between the Code of Conduct's requirement of respect for others, including members of the authority with opposing views, and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other.
- 8 A rule of thumb is expressed in this comparison:
 - "You're talking drivel" is likely to be an acceptable expression of disagreement.
 - Calling someone a "incompetent moron", on the other hand, is more likely to be a failure to comply with paragraph 3(1) of the Code.
- 9 We can see that the first comment is aimed at the expression of an idea or argument. The second is aimed at the person and their personal characteristics.
- 10 An example given of insults amounting to disrespect is when a councillor had inadvertently and under the pressure of barracking and his own strong feelings described the Conservative ruling group as "corrupt". On appeal this was held to have been disrespectful, and brought his office and the council into disrepute. However, the decision of the standards committee not to impose a sanction was upheld.

What Would be a Breach of the Anti-Discrimination Laws?

- 11 Broadly speaking breaches of anti-discrimination laws can occur in four main ways. These are:

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- Direct discrimination occurs when someone is treated less favourably on the grounds of their protected characteristics or a perception that they have those characteristics or are associated with someone who has them. For example, if a woman was not called for an interview for a chief executive post, despite the fact that she fulfilled the person specification better than any of the men short-listed, it is likely that direct discrimination occurred.
- Indirect discrimination may occur where a requirement or condition has a disadvantageous and disproportionate impact on members of particular groups that are defined by protected characteristics. Consider a situation where members decide that all applicants for council employment must be six foot tall. This requirement would have a disproportionate impact on women and members of many racial groups. It would also be unjustified.
- Victimisation occurs if a person is treated less favourably because they have complained about unlawful discrimination or supported someone else who has. An example would be where a Member sought to undermine the employment prospects of an Officer, when the Officer has supported someone who made an allegation of discrimination against the Member.
- Harassment occurs where unwanted conduct violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment on grounds of their protected characteristics. An example would be if Officers were subjected to unwanted banter or teasing about their sexual orientation or beliefs.

What is Meant by 'Bullying'?

- 12 Standards for England defines bullying as offensive, intimidating, malicious, insulting or humiliating behaviour by an individual or group of individuals, based on abuse or misuse of power or authority, which attempts to undermine an individual or a group. It can have an impact on a council's effective use of resources.
- 13 Officers who are subject to bullying are frequently away from their posts, sometimes for extended periods, on sickness or stress-related leave.
- 14 Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, or when the behaviour by both the complainant and Member contributed equally to the breakdown in relations.

How Can Bullying Conduct be Prevented from Developing?

- 15 Ideally, a culture of honest and clear communication should be sought, with respect for the individual and for the confidentiality required when managing individual performance-related issues. The bullying of Officers might be reduced by establishing a specific protocol, which addresses issues such as Member-Officer work relations and appropriate behaviour.

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- 16 Factors that contribute to the breakdown in relations between Members and Officers at parish and town council level include the council not having a member-office protocol, proper disciplinary and grievance procedures, or contracts of employment. In addition, members are often unskilled and inexperienced in approaching employment related issues.
- 17 The protocol for parish and town councils can include such simple but important matters as acceptable times to contact the Clerk by telephone at home or call at the Clerk's home on council business.

What Constitutes Evidence of Bullying?

- 18 Although many minor acts can cumulatively amount to bullying, the subjective general view of the victim or witness needs to be supported by objective evidence of action that can amount to bullying. Anyone alleging a pattern of bullying conduct should provide some examples of the words or actions used.
- 19 In contrast, general statements such as “the Member has repeatedly intimidated and denigrated me” are not adequate. The victim or witness should describe the specific conduct they are concerned about, providing dates, times, locations and descriptions of the demeanour of the person concerned.
- 20 This is not intended as an exhaustive list but as an indication of the kind of evidence needed. A number of cases considered by the tribunal have concerned the bullying of Officers and Members. This bullying conduct has included:
 - Abusive or threatening verbal contact
 - Circulating inappropriate emails critical of Officers and fellow Members
 - Making allegations about Officers in newspapers, letters, emails or in person, both in the company of the Officer's colleagues and either in public or circulated to the public.
- 21 A case example is as follows: A Member threatened one of the Council's solicitors during a discussion with him about arrears of rent which had arisen under a lease by a community centre. The solicitor had advised him that the community centre could be repossessed if the debts were not repaid.
- 22 The solicitor was allegedly told by the member that there was a new administration in power; that under no circumstances would repossession take place and if he ever tried to do this he would “have his guts for garters”. For this and other breaches of the Code of Conduct the Member was disqualified for 15 months.

What Activities Would “Compromise the Impartiality of Those who Work for, or on Behalf of, your Authority?”

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- 23 Paragraph 3(2)(d) is directed at any activity that seeks to put pressure on Officers to carry out their duties in a way that is biased or partisan. This may include direct or indirect coercion to favour a particular person, group or organisation, whether commercial, political or voluntary. This is contrary to Officers' obligations to act independently and in the public interest.
- 24 It is important to take a firm line against any conduct that undermines the principle of political neutrality, under which all Officers operate.

What is "Disrepute"?

- 25 In general terms, disrepute can be defined as a lack of good reputation or respectability.
- 26 In the context of the Code of Conduct, a Member's behaviour in office will bring that Member's office into disrepute if the conduct could reasonably be regarded as either:
- I Reducing the public's confidence in that Member being able to fulfil their role; or
 - II Adversely affecting the reputation of Members generally, in being able to fulfil their role.
- 27 Conduct by a Member which could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties will bring the authority into disrepute.
- 28 Some case examples are as follows:
- A Councillor used council notepaper in an attempt to avoid parking penalties incurred by his son. He also dishonestly attempted to renew a parking permit for disabled drivers. He was convicted of attempting, by deception, to evade the parking penalties dishonestly. He was found to have brought his office and authority into disrepute and was disqualified from office for one year.
 - A Councillor was given information in a private briefing to Councillors about the Council's proposals to buy land and relocate its offices to another town. The information was made public swiftly after this. The Councillor did not agree with the proposals and secretly bought the land. The tribunal found that, together with the lack of openness, these actions diminished public confidence in his ability to discharge his office as a councillor and, therefore, he had brought his office or authority into disrepute. He was disqualified from office for six months.
 - A Councillor had issued threats to another Member immediately before a planning decision was taken. The threats concerned the de-selection of the Councillor if he did not vote in a particular way and were coupled with offensive language. These threats were overheard. The tribunal did not find these threats improper in the context of political life, and accepted

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that future political careers could be affected by the way a member voted. However, the tribunal found that the comments were disreputable. He was suspended from office for one month.

What is a “Close Associate”?

29 A person with whom a Member has a close association is someone that they are in either regular or irregular contact with over a period of time, who is more than an acquaintance. Standards for England would suggest that it is someone a reasonable member of the public might think they would be prepared to favour or disadvantage when discussing a matter that affects them because of their connection. It may be a friend, a colleague, a business associate or someone whom the Member knows through general social contacts. A closer relationship is implied than mere acquaintance. Members and Monitoring Officers might wish to consider the following questions when deciding whether a close association exists:

- How many time do the two people meet?
- Where do they meet?
- Do they regularly attend the same social events?
- Do they know each other’s families?
- Do they visit one another’s homes?
- Do they have regular business dealings?
- Do they work for the same organisation?
- Are they close or connected in other ways?

30 These questions should never be taken in isolation. It is the cumulative evidence of these factors and others like them that will establish a close association.

Key Implications

Financial

31 None arising from this report.

Community Impact and Outcomes

32 The community would expect the Council to operate to the highest ethical standards and be familiar with recent guidance and case law.

Legal, Human Rights etc.

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- 33 The Case Review sets out recent case law and new developments on the interpretation of the Code of Conduct. This will aid the future interpretation of cases.

Conclusions

- 34 The new Case Review provides a practical advice kit on the interpretation of the Code of Conduct. It provides useful guidance to members and monitoring officers.

Risk Assessment Statement

- 35 No specific risks identified arising directly from this report.

Sources of Information: The Standards for England – New Case Review

Contact Officer(s): Christine Nuttall – ext. 7245

Christine Nuttall

Monitoring Officer

