

A meeting of the **STANDARDS COMMITTEE** will be held in **MEETING ROOM 1, PATHFINDER HOUSE, ST MARY'S STREET, HUNTINGDON PE29 3TN** on **THURSDAY, 8 MARCH 2007** at **4:00 PM** and you are requested to attend for the transaction of the following business:-

## FOR INFORMATION

### Contact

#### APOLOGIES

1. **MINUTES** (Pages 1 - 8)

**C Deller  
388007**

To approve as a correct record the Minutes of the meetings held on 7th December 2006 and 17th January 2007.

2. **MEMBERS' INTERESTS**

To receive from Members declarations as to personal and/or prejudicial interests and the nature of those interests in relation to any Agenda item. Please see Notes 1 and 2 below.

3. **CONSULTATION ON AMENDMENTS TO THE MODEL CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS** (Pages 9 - 14)

**C Deller  
388007**

Further to Minute No. 27 of the meeting held on 9th March 2006, to consider a report by the Director of Central Services and Monitoring Officer seeking the views of the Committee on a proposed new Model Code of Conduct for Local Authority Members.  
(A copy of the Consultation Paper is appended to Members' copies only).

4. **CODE OF CONDUCT - STANDARDS BOARD NOTIFICATIONS** (Pages 15 - 16)

**C Deller  
388007**

To consider a report by the Director of Central Services and Monitoring Officer regarding notifications received from the Standards Board for England.

5. **CASE ALERT NOS. 2 AND 3** (Pages 17 - 26)

**C Deller  
388007**

Further to Minute No. 8 of the meeting held on 24th July 2006, to receive details of cases reviewed by the Standards Board for England in Case Alert Nos. 2 and 3.

6. **APPOINTMENT OF INDEPENDENT MEMBERS** (Pages 27 - 28)

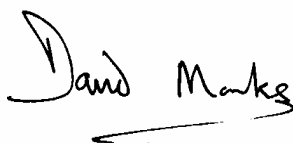
**C Deller  
388007**

To note the requirement to commence the process for the appointment of three independent Members for a four year term commencing May 2007.

7. **DATE OF NEXT MEETING**

To note that the next ordinary meeting of the Committee would be held on Thursday 5th July 2007 at 4pm.

Dated this 1 day of March 2007



Chief Executive

**Notes**

1. *A personal interest exists where a decision on a matter would affect to a greater extent than other people in the District –*
  - (a) *the well-being, financial position, employment or business of the Councillor, a partner, relatives or close friends;*
  - (b) *a body employing those persons, any firm in which they are a partner and any company of which they are directors;*
  - (c) *any corporate body in which those persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or*
  - (d) *the Councillor's registerable financial and other interests.*
2. *A personal interest becomes a prejudicial interest where a member of the public (who has knowledge of the circumstances) would reasonably regard the Member's personal interest as being so significant that it is likely to prejudice the Councillor's judgement of the public interest.*

**Please contact Ms C Deller, Democratic Services Manager, Tel No 01480 388007/e-mail: Christine.Deller@huntsdc.gov. if you have a general query on any Agenda Item, wish to tender your apologies for absence from the meeting, or would like information on any decision taken by the Panel.**

**Specific enquires with regard to items on the Agenda should be directed towards the Contact Officer.**

**Members of the public are welcome to attend this meeting as observers except during consideration of confidential or exempt items of business.**

If you would like a translation of Agenda/Minutes/Reports or would like a large text version or an audio version please contact the Democratic Services Manager and we will try to accommodate your needs.

***Emergency Procedure***

*In the event of the fire alarm being sounded and on the instruction of the Meeting Administrator, all attendees are requested to vacate the building via the closest emergency exit and to make their way to the base of the flagpole in the car park at the front of Pathfinder House.*

This page is intentionally left blank

## HUNTINGDONSHIRE DISTRICT COUNCIL

MINUTES of the meeting of the STANDARDS COMMITTEE held in the Chief Executive's Meeting Room, First Floor, Pathfinder House, St Mary's Street, Huntingdon PE29 3TN on Thursday, 7 December 2006.

PRESENT: Mr D H Bristow - Chairman

Councillors J D Ablewhite,  
Mrs B E Boddington, D H Bristow,  
P J Downes, D L Hall, D MacPherson,  
I R Muir, T D Sanderson and G Watkins

APOLOGY: An apology for absence from the meeting was submitted on behalf of Councillor R S Farrer

### 26. MINUTES

The Minutes of the meeting of the Committee held on 14th September 2006 were approved as a correct record and signed by the Chairman.

The Chairman welcomed Councillor J D Ablewhite to his first meeting of the Committee.

### 27. COUNCILLOR J TAYLOR

The Chairman paid tribute to Councillor J Taylor who had passed away in October adding, on behalf of the Committee, that he would miss him both for his contribution to meetings and also for his individuality.

### 28. MEMBERS' INTERESTS

None were declared.

### 29. LITTLE PAXTON PARISH COUNCIL - ALLEGED BREACH OF CODE OF CONDUCT

A report by the Director of Central Services and Monitoring Officer was submitted (a copy of which is appended in the Minute Book) to which was attached a copy of the final report of the Investigating Officer in response to an allegation made against a Councillor serving on Little Paxton Parish Council. An open letter received from the complainant Mrs S Dean, (a copy of which also is appended in the Minute Book) was circulated to the Committee.

Having regard to the advice of the Director of Central Services and Monitoring Officer and having concluded that the Parish Councillor had a case to answer, it was

RESOLVED

that the report now submitted be received and the Director

of Central Services and Monitoring Officer be authorised to make the necessary arrangements to convene a Determination Hearing in accordance with the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003.

### **30. APPLICATION FOR DISPENSATION**

By way of a report by the Director of Central Services and Monitoring Officer (a copy of which is appended in the Minute Book) the Committee were acquainted with an application received for dispensation to allow four Members of Broughton Parish Council to speak and to vote on matters associated with proposed changes by Cambridgeshire County Council to footpath stiles in Broughton village.

The Committee were made aware that there were seven Members serving on the Parish Council of which three represented a quorum. Of those seven, the expectation was that four Members would declare a prejudicial interest requiring them to leave the meeting. The Committee recognised that the business of the Parish Council would not be impeded by the disclosure of the prejudicial interests and therefore were reluctant to grant dispensations to speak and to vote to the four Members concerned. However, having noted the Parish Council's preference for discussion on the footpaths project to be open to all Members and in light of the advice received from the Monitoring Officer, the Committee

RESOLVED

that dispensation to speak but not to vote be granted to four Councillors serving on Broughton Parish Council for the period ending 30th April 2008 to enable them to participate in discussion on footpath/access issues associated with a scheme promoted by Cambridgeshire County Council.

### **31. USE OF RESOURCES JUDGEMENTS 2005/6**

The Committee considered a report by the Director of Central Services and Monitoring Officer (a copy of which is appended in the Minute Book) in response to a requirement highlighted by the Audit Commission in their Use of Resources Judgements 2005/06 for "an assessment of the standards of ethical conduct across the organisation".

To comply with the requirement identified in KLOE 4.3 (key line of enquiry), Members noted that an annual survey of complaints by type, locality and outcome and of training received by Councillors (both District and Parish) would need to be undertaken and the outcomes reported to the Committee. A training programme for the following year could then be designed and targets set to meet any emerging trends and needs.

In terms of the assessment for 2006, the Committee noted details of the cases considered by the Board during the year and the training activity which had been undertaken or had been planned for the

future. Following discussion, the Committee requested the Monitoring Officer to consider distributing a model agenda to Parish Councils for use when convening meetings. Other than this comment, the Committee indicated their support for the continuation of the approach adopted by the Monitoring Officer towards the training of Parish Councils, in particular, and as there did not appear to be any commonalities in the cases considered by the Board which required to be addressed specifically, it was

RESOLVED

that the content of the report be noted together with the intention to report annually on the issues referred to in paragraph 1.5 of the report now submitted.

**32. CODE OF CONDUCT - STANDARDS BOARD NOTIFICATION**

The Committee received and noted a report by the Director of Central Services and Monitoring Officer (a copy of which is appended in the Minute Book) regarding the decision of the Standards Board for England, not to take any further action in relation to an allegation made against a Councillor serving on Godmanchester Town Council.

**33. CODE OF CONDUCT - UPDATE**

By way of a report (a copy of which is appended in the Minute Book) the Director of Central Services and Monitoring Officer updated the Committee on the projected timescale for the release, for consultation, by the Department of Communities and Local Government (DCLG) of a revised Model Code of Conduct and proposed arrangements to assist Monitoring Officers and Standards Committees in its implementation. Details of the key changes envisaged in the revised Code also were presented.

The Committee expressed their doubts that the timescale indicated by the DCLG could be met given that the revised Model Code had yet to be published but commended the Monitoring Officer to take up, on their behalf, any offer of joint training on the new Code made by other district authorities locally. Whereupon, it was

RESOLVED

that the content of the report be noted together with the possibility that a special meeting of the Committee might be convened at short notice to respond to consultation on a revised Code of Conduct.

**34. DATE OF NEXT MEETING**

It was noted that the next ordinary meeting of the Committee would be held at 4pm on Thursday 8th March 2007.

Chairman



## HUNTINGDONSHIRE DISTRICT COUNCIL

MINUTES of the meeting of the STANDARDS COMMITTEE held in the Chief Executive's Meeting Room, Pathfinder House, St Mary's Street, Huntingdon, PE29 3TN on Wednesday, 17 January 2007.

PRESENT: Mr D H Bristow – Chairman.

Councillors J D Ablewhite and I R Muir and  
Messrs D L Hall and D MacPherson.

### **35. PRELIMINARY PROCEDURAL ISSUES**

The Chairman introduced Members of the Committee and stated the purpose of the proceedings.

The Deputy Monitoring Officer confirmed that the meeting was quorate.

No declarations of interest were received.

The Committee noted that although Mr Willcock had resigned as a Parish Councillor, he had been invited to attend the meeting. Having been advised that Mr Willcock had returned his papers for the hearing and indicated his intention not to co-operate further with the investigation, it was agreed that the meeting should proceed in his absence.

The Committee agreed that there was no reason to exclude the public from the meeting.

### **36. LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) REGULATIONS 2003**

The Committee noted the procedure for the hearing of cases under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003.

### **37. LITTLE PAXTON PARISH COUNCIL - ALLEGED BREACH OF CODE OF CONDUCT**

#### **Former Parish Councillor J Willcock**

(In attendance were Mrs S Dean, complainant, Mrs J Gellatly, Clerk to Little Paxton Parish Council and Ms C Deller, Investigating Officer).

The Chairman invited the Investigating Officer to present her report. In so doing, the Investigating Officer explained that given the detailed correspondence and agreed interview notes which formed part of her report she did not intend to call any witnesses. In the light of Mr Willcock's resignation the Investigating Officer added that the first of her recommendations may no longer be considered appropriate.

Members than asked the Investigating Officer a number of questions in relation to her findings.

At the invitation of the Chairman, Mrs S Dean addressed the Committee on the reasons for her complaint and was then asked a number of questions by Members. The Committee then questioned Mrs J Gellatly, Clerk to Little Paxton Parish Council and invited her to explain her role on the Parish Council and to comment on her practice for the recording of interests declared by Members of the Parish Council.

In determining that they had sufficient information on which to make a finding, the Committee withdrew into private session.

At the conclusion of their deliberations, the Chairman announced that the Committee was satisfied that former Parish Councillor J Willcock had failed to disclose a personal interest by virtue of his property ownership at meetings of Little Paxton Parish Council held on 4th May, 2nd June and 7th July 2005 contrary to paragraphs 7(i) and 8 of Little Paxton Parish Council's Code of Conduct. The Committee ordered that former Councillor J Willcock be censured.

Details of the decision are attached at Appendix A hereto.

The Committee considered whether any further recommendations should be made arising from their preceding deliberations and following discussion and whilst there was no suggestion that the Parish Council had acted inappropriately, it was

#### RESOLVED

that Little Paxton Parish Council be offered the opportunity to receive further training from the Monitoring Officer on the Code of Conduct and ethical standards to seek to avoid further problems of the nature which had arisen as part of the complaint.

Chairman

# HUNTINGDONSHIRE DISTRICT COUNCIL

## STANDARDS COMMITTEE DECISION

<b>NAME OF AUTHORITY: HUNTINGDONSHIRE DISTRICT COUNCIL</b>	
<b>Name of Member who the allegation has been made about</b>	Former Councillor J Willcock
<b>Name of person who made the original allegation</b>	Mrs S Dean
<b>Case Reference No. Standards Board for England</b>	SBE 1533606
<b>Name of Chairman of Hearing</b>	Mr D H Bristow
<b>Names of Standards Committee members who took part in the hearing</b>	Councillors J D Ablewhite and I R Muir and D L Hall and D MacPherson
<b>Name of Monitoring Officer</b>	Mr P Watkins (Mr C Meadowcroft attended the hearing in his role as Deputy Monitoring Officer.)
<b>Name of the Ethical Standards Officer who referred the matter</b>	S Kingston (Mr Kingston was not in attendance)
<b>Name of Investigating Officer</b>	Ms C Deller
<b>Name of Clerk to the Hearing</b>	Mrs C Bulman
<b>Date, time, place of hearing</b>	Wednesday 17 <sup>th</sup> January 2007 at 9.30 am, Chief Executive's Meeting Room, Pathfinder House, St. Mary's Street, Huntingdon
<b>Summary of the allegation and relevant section(s) of the Code of Conduct</b>	<p>That former Councillor J Willcock-</p> <ul style="list-style-type: none"> <li>◆ disclosed information given to him in confidence</li> <li>◆ failed to declare a personal interest</li> <li>◆ failed to declare a prejudicial interest</li> <li>◆ failed to withdraw from a meeting of Little Paxton Parish Council when a matter in which he had a prejudicial interest was discussed and voted upon.</li> </ul> <p>Contrary to paragraphs 3(a), 7(i), 8, 9(i) and 10(a) of Little Paxton Parish Council's Code of Conduct.</p>
<b>Summary of the evidence considered and representations made</b>	<p>Report and addendum by the Investigating Officer.</p> <p>Correspondence from Mrs S Dean, Mrs J Gellatly, Mr &amp; Mrs Dring, Mr J Willcock.</p> <p>Minutes of meetings of Little Paxton Parish Council.</p>

	<p>Notes of interviews undertaken with Mrs S Dean, Councillor A Denison, former Councillor J Willcock, and Mrs J Gellatly.</p> <p>Presentation by the Investigating Officer</p> <p>Presentation by Mrs S Dean</p> <p>Responses by the Investigating Officer, Mrs S Dean and Mrs J Gellatly to questions from the Committee.</p>
<b>Findings of fact</b>	<p>As set out in the report of the Investigating Officer.</p> <p>There were no major areas of disagreement of fact.</p>
<b>Finding as to whether or not the member failed to follow the Code of Conduct</b>	<p>The Committee was satisfied that former Parish Councillor J Willcock failed to disclose a personal interest by virtue of his property ownership in breach of paragraphs 7(i) and 8 of Little Paxton Parish Council's Code of Conduct.</p>
<b>Penalties applied</b>	<p>That former Parish Councillor J Willcock be censured.</p>
<b>Further recommendation</b>	<p>The Committee also recommended that Little Paxton Parish Council be offered the opportunity to receive further training on ethical standards and the Code of Conduct from the Monitoring Officer to seek to avoid further problems of the nature which had arisen as part of the complaint.</p>
<b>Names of Witnesses</b>	<p>Mrs S Dean, Complainant Mrs J Gellatly, Clerk to Little Paxton Parish Council</p>
<b>Right to appeal</b>	<p>The President of the Adjudication Panel The Adjudication Panel for England 23 Victoria Avenue Harrogate HG1 5RD</p> <p>Tel: 01423 538783 Fax: 01423 525164 E-mail: <a href="mailto:enquiries@adjudicationpanel.co.uk">enquiries@adjudicationpanel.co.uk</a> Website: <a href="http://www.adjudicationpanel.co.uk">www.adjudicationpanel.co.uk</a></p> <p>21 days</p>

**CONSULTATION ON AMENDMENTS TO THE MODEL CODE OF  
CONDUCT FOR LOCAL AUTHORITY MEMBERS  
(Report by the Director of Central Services and Monitoring Officer)**

**1. INTRODUCTION**

- 1.1 The Code of Conduct was introduced in November 2001 and came into force for all authorities in May 2002. In September 2004, the Standards Board for England announced their intention to commence a consultation process to review the Members Code of Conduct. The Committee contributed to this review in June 2005 and towards the Government consultation paper "Standards of Conduct in English Local Government: The Future" in December 2005. This represented the Government's response to the recommendations of the Standards Board for amendments to the Model Code of Conduct.
- 1.2 Subsequently, the Local Government White Paper "Strong and Prosperous Communities" published in October 2006 announced the Government's intention to put in place a clearer, simpler and more proportionate Code of Conduct for Members of local authorities.
- 1.3 The Government has now published a consultation paper seeking views on a proposed new Model Code of Conduct for Members by 9th March 2007. A copy of the consultation paper is enclosed for Members only.

**2. CONSULTATION**

- 2.1 The Government have invited responses to the consultation paper by way of eight questions. The questions are set out in their entirety in Annex B to the consultation paper. The Government have indicated that they would also welcome other comments and suggestions on the consultation paper. For ease of presentation, suggested responses have been drafted sequentially for the Committee to consider.

**3. THE QUESTIONS**

- 3.1 **Question 1 – Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?**

Suggested response – Although a balanced approach has been achieved in the proposed text for paragraph 3(a) (iii), it should be made clear that the rules on disclosure of information cover information received by a Member in his/her official capacity or which relates to the work of the Council to overcome any opportunity to claim that information disclosed was not received by the Member in his/her capacity as a Councillor. The current draft also does not cover the case of a Member who discloses confidential information to a third party, perhaps for legitimate reasons, but places no similar obligation of confidentiality on the recipient, thus allowing that third party to publish the confidential information without redress. Perhaps an additional sub-paragraph should be drafted to cover this point.

It is noted that the Standards Board would issue guidance on how they would expect Members to interpret the nature of a “public interest”. This guidance should suggest that the Authority’s Monitoring Officer or Deputy Monitoring Officer determine the public interest case as adopted by the District Council in their Constitution in relation to exempt information under the Local Government (Access to Information) (Variation) Order, 2006.

- 3.2 **Question 2 - Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in members’ private capacity to those activities which have already been found to be unlawful by the Courts, appropriate ?**

Suggested response – Yes – the proposed text appears to be appropriate. Given the recent court judgement which suggested that the current Code of Conduct should apply even if the offending conduct had nothing specifically to do with the Members position as a Councillor, it would consequently appear appropriate that any conduct in a private capacity found to be unlawful by the courts should be subject to the code of conduct and not behaviour falling short of a criminal offence.

- 3.3 **Question 3 - Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished do consultees think some or all of its provisions should be promulgated in a different way eg. via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?**

Suggested response – Yes – The Code of Recommended Practice of Local Authority Publicity is serving a useful purpose and in the same way as the new single code of conduct will be applicable to all authorities, it would be appropriate if the Code was similarly applicable to all.

- 3.4 **Question 4 - Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?**

Suggested response – Currently the Code requires a Member to notify the Monitoring Officer should he/she receive any gift or hospitality over the value of £25. Although there is no provision for such information to be made public in the register of interests, the declarations received are maintained locally in the same way as the Register of Financial and Other Interests and it would seem reasonable to open the “gift” register to inspection by the public. After all, the Board always contend that the financial interests register protects the position of a Member. The same argument could be made for the gifts register. As a receipt of a gift or hospitality is likely to have occurred by the time an issue is under consideration, the

obligation to disclose should cease after one year following the receipt of that gift or hospitality. After that period any influence likely to be created by the offer of the gift would be meaningless and in any event, it may be that Member would not be able to recall having received such gifts after a five-year period. It is important that receipt of a gift should remain on the register.

- 3.5 **Question 5 - Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?**

Suggested response – Whilst the addition of the phrase “close personal association” will help clarify the definition of a personal interest to include matters affecting a range of personal, business and professional associates as well as people who would specifically be termed as “friends”, the omission of the definition of “family” leaves the Code much less precise than before. Would this relate to the Member’s household, irrespective of blood relationship or is it blood relatives even if living separately? Why not re-insert the word “relative”?

- 3.6 **Question 6 - Would it be appropriate for new exceptions to be included in the test as additions to the list of items which are not to be regarded as prejudicial?**

Suggested response – Yes – This provision also should be extended to cover the taking out of insurance as well as granting of an indemnity but a caveat could be added to say that this does not apply where the indemnity affects the member to a greater degree than other members. It would clearly be inappropriate for a member to grant him or herself an extensive indemnity or take out a specific insurance just for his or her own personal protection from liability. It is also considered sensible to amend the Local Authorities (Code of Conduct) (Local Determination) Regulations to allow a member to attend a hearing of a Standards Committee into his or her conduct in order to be able to defend himself or herself.

- 3.7 **Question 7 - Is the proposed text, relaxing the rules to allow increased representation of meetings, including where members attend to make representations, answer questions or give evidence, appropriate?**

Suggested response – Yes – However, in the past difficulties have arisen in the interpretation of the Code in several areas. The drafting of a new code should seek to avoid repetition of any instances where uncertainty can arise. This is one such area. The new Code fails to provide any definition of when a matter “relates to the financial affairs of the body”. Could this be interpreted as the primary purpose of the matter affecting the financial affairs of the body or simply that the matter has some implications for the financial affairs of the Member. It also appears that reference to financial affairs would not cover cases where the proposal would affect the powers or existence of that body.

Similarly, this paragraph in the Code refers to the “determining of any approval, consent, licence or permission (in respect of Planning and Licensing) in relation to the body”. This is rather a narrow interpretation and it might be sensible, for the avoidance of doubt, to provide that determination shall also mean granting, varying, amending, attaching conditions to, revoking and withdrawing such approval. The Standards Board for England should also be encouraged to define other terms inherent in the proposed code ie. “lobbying” and “philanthropic bodies”.

New paragraph 9 (2) (b) (v) should also be extended to cover the taking out of insurance as well as granting of an indemnity with a caveat which states that this does not apply unless the indemnity affects the member to a greater degree than other members. (see also paragraph 3.6).

A question of interpretation also arises in the definition of the terms “public service interest”. It might be difficult to determine whether a lobby group is public spirited or campaigning for the private advantage of its members. A monitoring officer would have to exercise great care to ensure a member did not form his/her own lobby group, claim a public service interest exemption and vote on the matter on which he/she had a clear personal and prejudicial interest.

- 3.8 **Question 8 - Is there a better, more user-friendly way of ensuring the text is gender-neutral, for example, would consultees consider that amending the wording to say “you” instead of “he or she” or “him or her” would result in a clearer and more accessible code for members?**

Suggested response – this would seem to be a reasonable way to make the text gender-neutral and appropriately reflects the terminology used in up-to-date publications.

3.9 **General Comments**

The Committee is invited to make any other observations and may wish to highlight that it could be considered equally important for Members to declare personal and prejudicial interests and to withdraw from informal meetings such as briefings and meetings with Officers of the authority as it is for formal meetings. It could be made clear that the definition of “meeting” should mean any meeting with other members or with officers of the authority which is arranged by or on behalf of the authority. Members may also recall their previous comment that the ten general principles be incorporated as a preamble to the Code of Conduct. At that time, the Committee were of the view that the principles represented a standard to which a Member should aspire and would help to provide a context for the rules of the Code itself. The Committee might wish to reiterate its previous views that the general principles should act as a preamble to the draft code in order to identify the relationship between the general principles and the Code of Conduct.

4. **RECOMMENDATION**

- 4.1 Accordingly, the Committee is

RECOMMENDED



to approve the suggested responses to the consultation paper on behalf of the District Council adding any additional observations they may consider to be appropriate.

### **BACKGROUND INFORMATION**

A revised model code of conduct for local authority members – published by the Department for Communities and Local Government in January 2007.

**Contact Officer: Christine Deller, Democratic Services Manager -**

**Tel: (01480) 388007.**

This page is intentionally left blank

**CODE OF CONDUCT: STANDARDS BOARD NOTIFICATION  
(Report by the Director of Central Services and Monitoring Officer)**

**1. INTRODUCTION**

- 1.1 In accordance with the procedure adopted by the Standards Board for England for the investigation of allegations, the Monitoring Officer has been notified of the Board's decision in respect of an allegation made against Councillors serving on Huntingdon Town and Houghton and Wyton Parish Councils.

**2. DETAILS OF CASE 1**

- 2.1 It had been alleged that the Town Councillor had suspended a member of staff without the authority of the Council or a Committee set up to deal with such matters.
- 2.2 The reasons for the suspension were not explained to the Standards Board for England. While the Board recognised that such an approach may be at variance with the Council's procedures, they have no jurisdiction to consider issues of procedure and have advised that this was a matter for the Town Council to address in the first instance.
- 2.3 The Board has decided that the allegation should not be referred to an Ethical Standards Officer for investigation and having taken account of the information available to them do not believe that the alleged conduct disclosed a potential failure to comply with the Code of Conduct. There was no finding of fact.

**3. DETAILS OF CASE 2**

- 3.1 It had been alleged that the Parish Councillor had failed to declare a prejudicial interest and withdraw from the room when the Parish Council's Planning Committee had discussed a development application in the village. It had also been alleged that the Parish Councillor had pre-determined views on the application before it had been considered by the Parish Council.
- 3.2 As the proposed development would not have affected the Parish Councillor's financial position or well being, the Standards Board concluded that the Councillor had no personal or prejudicial interest in the application. It also was decided that there was no evidence that the Councillor had irrevocably made up her mind about the development application before the meeting. On both counts, it was concluded that there was no failure to comply with the Code of Conduct.

#### **4. CONCLUSION**

- 4.1 The Committee is invited to note that the Standards Board for England has agreed not to take any further action in relation to allegations made against Councillors serving on Huntingdon Town and Houghton and Wyton Parish Councils.

#### **BACKGROUND PAPERS**

Letters received from the Standards Board for England dated 9<sup>th</sup> and 21<sup>st</sup> February 2007.

**Contact Officer: Christine Deller, Democratic Services Manager -  
Tel: (01480) 388007.**

**CASE ALERT NOS. 2 AND 3**  
**(Report by the Director of Central Services and Monitoring Officer)**

**1. INTRODUCTION**

- 1.1 Members may recall their wish to receive the editions of “Case Alert” published by the Standards Board for England (Minute No. 8 of their meeting held on 24th July 2006 refers). This initiative was launched by the Board as a way to develop their role as strategic regulator and adviser.
- 1.2 It was the intention that the “Case Alert” would provide regular indepth analysis of significant cases and best practice guidance drawing upon decisions by Standards Committees, the Adjudication Panel for England and the High Court. The “Case Alert” focuses on those cases which set important legal precedents and which help to interpret the Code of Conduct and existing case law.

**2. THE CASE ALERTS**

- 2.1 The first “Case Alert” was submitted to the Committee in July 2006. Reproduced as Appendices to this report are Case Alert Nos. 2 and 3 published in December 2006 and January 2007. The first case helps to clarify the distinction between legitimate criticism of Council Officers and inappropriate conduct. More significant is the second case (Case Alert No. 3). The judgement in this case suggests that a more restrictive view should be taken of that part of the Code of Conduct relating to the actions of a Member in his/her private life.
- 2.2 In receiving these two cases, the Committee may wish to consider whether the issues they highlight should be drawn to the attention of the town and parish councils.

**3. CONCLUSION**

- 3.1 The Committee is requested to note the content of Case Alert Nos. 2 and 3.

**BACKGROUND PAPERS**

Standards Board for England – Case Alert Nos. 2 and 3.

**Contact Officer: Christine Deller, Democratic Services Manager -  
Tel: (01480) 388007.**

This page is intentionally left blank

[Home](#) > [Case studies](#) > [The Case Alert](#) > [Case alerts](#) > [Case alert 2](#)  
**The Case Alert 2, December 2006**

### **Former Mayor disqualified for improper conduct toward clerk**

**Councillor Anthony Prior, the former Mayor of Chard Town Council and a member of South Somerset District Council, was disqualified for nine months, following a hearing of the Adjudication Panel for England on 21 June 2006.**

The panel's tribunal found that Councillor Prior had breached the Code of Conduct by inappropriately asking the town clerk, for whom he had line management responsibilities, to go on holiday with him and offering her £500 as a present if she declined. The tribunal found that that by this conduct Councillor Prior brought his office into disrepute.

Councillor Prior later issued the clerk with a written warning when he found out she had sent a copy of a grievance letter to the Standards Board for England. Councillor Prior also issued a press release in which he made an unjustified public attack on the clerk and published her home phone number. The tribunal found that this behaviour was disrespectful to the clerk, and brought Councillor Prior's office into disrepute.

Not all of the complaints about Councillor Prior were upheld at the hearing. The tribunal found that on a number of occasions Councillor Prior's conduct was motivated by genuine concerns over the clerk's performance or the efficient running of the council.

The decision in the case helps to clarify the distinction between legitimate criticism of council officers and inappropriate conduct. Members should, of course, be able to exercise their right to challenge officers, and the Code of Conduct was not meant to constrain members from doing this. The decision indicates that members retain that right to challenge or criticise officers even where, as in this case, the relationship between the individuals is for any reason strained or has broken down.

However, members should always deal with performance issues in accordance with the authority's procedures, in an appropriate way and in the proper forum. It is inappropriate to discipline an employee in retaliation for a grievance, and to publicly criticise them in a press release.

### **Holiday invitation**

Councillor Prior asked the clerk about the holiday in March 2005, after a meeting to discuss council business. He said he would like to take her on holiday, and said he would pay and buy her anything she needed. When the clerk did not respond to the proposal, Councillor Prior handed her an envelope with a cheque for £500 if she declined the holiday, which she did not accept.

The Adjudication Panel decided that Councillor Prior brought his office into disrepute by making this proposal. The tribunal considered that it was inappropriate for an elected member to extend such an invitation to a council employee when there was such a power imbalance in their working relationship, and when there was not the slightest encouragement from the employee. This was particularly the case in this instance, where the councillor held two senior posts in the council and was the employee's line manager.

The tribunal noted, however, that this was a highly personal conduct that did not reflect badly on the council as a whole. The only relevance for the council was that the proposal had been made during a meeting between a member and an employee to discuss council business. The tribunal therefore found that the councillor had not brought his authority into disrepute.

The tribunal also considered that this proposal would not, by itself, have justified disqualifying the councillor, especially as Councillor Prior and the clerk agreed to put the incident behind them and not to take any further action at the time.

### **Criticism of the clerk**

There were a number of other allegations about Councillor Prior's behaviour toward the clerk which were not upheld at the hearing. These allegations concerned individual incidents between the holiday proposal and the written warning, as well as Councillor Prior's overall pattern of behaviour during this period.

In relation to these other allegations, the tribunal found that there was insufficient evidence that Councillor Prior had been improperly motivated in his behaviour towards the clerk. The tribunal found that Councillor Prior had genuine concerns about the clerk's performance, and that a number of comments he made about the clerk's work were not disrespectful.

The tribunal also found that Councillor Prior's conduct toward the clerk between the holiday invitation and the written warning was motivated by concern about the efficient running of the council, and so did not bring his office or authority into disrepute. The tribunal did not consider that the individual incidents constituted an improper pattern of behaviour.

### **Warning letter in response to grievance**

The tribunal regarded Councillor Prior's warning letter to the clerk as inappropriate and disrespectful. Councillor Prior gave the clerk the written warning after she confirmed she had sent a copy of a grievance letter to the Standards Board. This followed an earlier meeting arranged by Councillor Prior to discuss concerns about her conduct.

The tribunal found that the decision to issue the written warning was a direct response to the clerk's grievance to the Standards Board, and this was not relevant to how he should have addressed performance issues. As the tribunal noted:

"[The clerk's] action of sending her grievance to the Standards Board had no bearing on the merits of any concerns the Respondent had about [her] performance as Town Clerk and yet it was the reason the Respondent issued the warning letter..."

The tribunal decided that Councillor Prior failed to treat the clerk with respect, and so failed to comply with the Code of Conduct, "as he was influenced in his decision to issue a written warning ... by the fact that she had sent a copy of the grievance to the Standards Board".

### **The press release**

Councillor Prior also acted inappropriately when he issued a press release in December 2005. The press release related to his resignation as the Mayor of the town council, but made a number of comments about the clerk.

The press release inferred that the clerk concealed two letters from him, which had "proved expensive". He inferred that the clerk's actions were improper and led to financial losses for the council. He also implied that the clerk was misleading the council over her sickness. The press release also contained the clerk's ex-directory home phone number.



The tribunal found that these were unjustified attacks on the clerk, and regarded it as serious matter that Councillor Prior had publicly criticised the clerk's professional performance and impugned her integrity. The tribunal accordingly regarded the press release as a failure to treat the clerk with respect.

The tribunal also decided that Councillor Prior failed to comply with the Code of Conduct by disclosing confidential information. The clerk's home phone number was given in the press release without her permission, when she was off work sick and despite the fact that Councillor Prior was involved in a public conflict with her at the time.

#### **The tribunal's decision**

The tribunal took account of Councillor Prior's long record of public service, deep commitment to work as elected member, and the expressions of public support he had received, as well as the fact that his actions were not dishonest, his motivation after the holiday invitation was the efficient running of the town council, and he was open in dealing with the Standards Board.

The tribunal considered that issuing the warning letter to the clerk as a deliberate reaction to the grievance being sent to the Standards Board was a serious matter and strongly indicated that disqualification was appropriate. In addition, the tribunal noted that Councillor Prior saw the issuing of the warning letter as a technical failing rather than as a fundamentally flawed action.

The tribunal unanimously decided to disqualify Councillor Prior for nine months to adequately recognise the seriousness of his actions on the three separate occasions when he breached the Code, and to allow him to stand in the May 2007 elections.

A summary of this case is available on our site.

The full decision is available on the Adjudication Panel for England's website.

This page is intentionally left blank

[Home](#) > [Case studies](#) > [The Case Alert](#) > [Case alerts](#) > [Case alert 3](#)

**Case Alert 3, January 2007**

### **Implications of the judgment in the Mayor Livingstone case**

The High Court judgment in the case concerning Mr Ken Livingstone, the Mayor of London, has significant implications for the interpretation of the Code of Conduct.

In particular, the judgment suggests that a member can only breach the Code of Conduct if they are performing their functions as a member, and that the Code of Conduct only applies to private conduct in limited cases. The Code covers members who misbehave when performing their duties, or who misuse their status while acting in a private capacity.

The judgment also established that the Code of Conduct cannot interfere with a member's right to freedom of speech in their private life.

### **The incident**

Mr Livingstone had allegedly made offensive comments to a journalist on the evening of 8 February 2005, likening him to a concentration camp guard. Mr Livingstone was leaving a reception at City Hall when he was confronted by the reporter. During their exchange, Mr Livingstone asked the reporter whether he was "a German war criminal". The reporter pointed out that he was Jewish, and was offended by the remark, to which Mr Livingstone said: "Well you might be, but you're just like a concentration camp guard. You're just doing it 'cause you're paid to, aren't you?"

The Ethical Standards Officer investigating the case would ordinarily have referred this matter to the Greater London Authority's Standards Committee, but believed this was not appropriate because the London Assembly had already taken a view on Mr Livingstone's conduct. The Ethical Standards Officer therefore referred the matter to the Adjudication Panel for England.

The Adjudication Panel's case tribunal decided that Mr Livingstone had failed to comply with the Code of Conduct by bringing his office as Mayor into disrepute. The tribunal decided to suspend Mr Livingstone for four weeks from 1 March 2006.

Mr Livingstone appealed to the High Court against the decision, and the suspension was stayed pending the appeal.

### **Private capacity and disrepute**

Mr Justice Collins, the judge presiding in the case, decided that Mr Livingstone had not been acting in his official capacity when he spoke to the reporter or performing his functions as Mayor. As a result, the requirement under paragraph 2(b) of the Code of Conduct, to "treat others with respect" while carrying out official duties, did not apply.

This still left the question of whether Mr Livingstone's conduct was covered by the duty to avoid behaviour which

could bring his office or authority into disrepute. This duty, under paragraph 4 of the Code of Conduct, applies when a member is acting in an official capacity, or in “any other circumstance”:

*A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.*

Mr Justice Collins found that the “any other circumstance” is limited to situations where a member is *performing his functions* as a member of the authority. This is in accordance with the commitment a member makes on assuming office, to:

*...give to the authority a written undertaking that in performing his functions he will observe the authority's code of conduct...*

(Section 52(1)(a) of the *Local Government Act 2000*)

In this case, Mr Justice Collins found that Mr Livingstone was off-duty and not performing his functions as Mayor, and so paragraph 4 of the Code of Conduct did not apply to his behaviour.

This judgment means there are large areas of members' private lives, when they are not 'performing their functions' as members, which are not covered by the Code of Conduct. Even unlawful conduct, such as convictions for shoplifting, drink-driving, or sexual offences, would not be covered by the Code, if the offences have nothing to do with the person's position as a member (although members who are convicted of a criminal offence and sentenced to more than three months' imprisonment are automatically disqualified from public office for five years).

Mr Justice Collins also found that the Adjudication Panel had applied the wrong test in relation to the issue of disrepute. His view was that damage to the reputation of the member as a person did not necessarily affect the reputation of his or her office or authority. He stated that there was a “real distinction between the man and the office”. There was a distinction between “misuse of office”, which can bring disrepute on the office, and “personal misconduct”, which is unlikely to do so. So, a politician may tarnish their own personal reputation by making offensive or insulting comments, but not necessarily that of their office.

Mr Justice Collins expressed the view that private capacity conduct will rarely be capable of bringing a member's office or authority into disrepute. The Code of Conduct will only cover a member's private behaviour where there is a direct link between the conduct and the office – for example, where a member uses their status as a member in a private dispute.

### **Freedom of speech**

The right to freedom of expression, under Article 10 of the *European Convention on Human Rights*, is not an absolute one, but is:

*...subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others...*

An earlier High Court judgment had already stressed the need for a high level of protection to be given to political views (*Sanders v Kingston [2005] EWHC 1145*) but made it clear that because of the Code of Conduct members acting in their official capacity were not free to abuse people.

However, Mr Justice Collins found that when a member is not acting in an official capacity or performing their functions as a member the right to freedom of speech includes the right to abuse people:

*Anyone is entitled to say what he likes of another provided he does not act unlawfully and so commits an*

*offence under, for example, the Public Order Act ... Surprising as it may perhaps appear to some, the right of freedom of speech does extend to abuse.*

Mr Justice Collins judged that it was disproportionate to apply the Code of Conduct to Mr Livingstone's remarks, as such a restraint on freedom of expression was not shown to be "necessary in a democratic society", even if the remarks were not political views.

The Code of Conduct cannot therefore interfere with a member's right to express inappropriate, intemperate or offensive views in their private life. This is in spite of what anyone might think of the views in question, and whether they are political opinions or personal abuse.

While Mr Justice Collins found that the statements were made in a private capacity and not covered by the Code, he nonetheless saw fit to criticise Mr Livingstone's comments to the journalist as "unnecessarily offensive", "intemperate", and "inappropriate", and suggested that he could have resolved the matter by making an apology.

#### **The High Court's decision**

The High Court allowed the appeal, set aside the finding that Mr Livingstone had failed to comply with the Code of Conduct, and quashed the suspension.

A summary of the case is available on our site

A copy of the High Court's decision is available via the Adjudication Panel for England's website.

This page is intentionally left blank

**APPOINTMENT OF INDEPENDENT MEMBERS  
(Report by the Director of Central Services and Monitoring Officer)**

**1. INTRODUCTION**

- 1.1 The Local Government Act 2000 and the Relevant Authorities (Standards Committee) Regulations 2001 determine the minimum size and the composition of Standards Committees. These Regulations state that when a Standards Committee has more than three Members, at least 25% of the total membership must be Independent Members.
- 1.2 At its meeting on 14th May 2003, the Council re-appointed Mr D Pattison as an Independent Member of the Standards Committee and invited Mr D H Bristow and Mr D L Hall to serve as Independent Members.
- 1.3 Article 9 of the District Council's Constitution states that Independent Members shall be appointed to serve on the (Standards) Committee for a term of four years from the date of their appointment.
- 1.4 In July 2006, Mr D Pattison, former Chief Executive of Hinchingsbrooke Healthcare Trust tendered his resignation as an Independent Member.
- 1.5 Given the term of office of the remaining two Independent Members is coming to a close and the requirement to fill the outstanding vacancy, it is necessary to consider arrangements for commencing the process for the appointment of three Independent Members to the Committee to take effect from May 2007.

**2. APPOINTMENT PROCESS**

- 2.1 Members are reminded that under the Regulations, a person may serve as an independent representative only if –
- ◆ he or she has not been a Member or employee of the Council within the five years before the date of appointment;
  - ◆ he or she is not a relative or close friend of the Member or employee of the council;
  - ◆ he or she has filled in an application for the position;
  - ◆ he or she has been approved by the majority of Members; and
  - ◆ the position has been advertised in at least one local newspaper.

- 2.2 For the purposes of the selection process, Members may wish to consider whether they consider it appropriate to recommend to full Council the establishment of a Panel, perhaps comprising three Members of the Committee, to short-list, interview and then recommend to Council candidates for appointment as Independent Members.

### 3. **CONCLUSION AND RECOMMENDATION**

- 3.1 Given the nature of the process required to be undertaken to appoint Independent Members and the time needed to advertise and seek the submission of formal applications, the Committee is recommended to –

- (a) authorise the Director of Central Services and Monitoring Officer to commence the process for the appointment of independent persons to serve on the Standards Committee with effect from commencement of the Municipal Year 2007/08; and
- (b) request full Council to appoint a Members' Panel to short-list, interview and recommend candidates for appointment as Independent Members of the Standards Committee for the Municipal Year commencing 16th May 2007.

### **BACKGROUND PAPERS**

The Relevant Authorities (Standards Committee) Regulations 2001.

**Contact Officer: Christine Deller, Democratic Services Manager -  
Tel: (01480) 388007.**