

A meeting of the **STANDARDS COMMITTEE** will be held in **ROOM CVSO1A, CIVIC SUITE, PATHFINDER HOUSE, HUNTINGDON, CAMBS, PE29 3TN** on **THURSDAY, 2 DECEMBER 2010** at **4:00 PM** and you are requested to attend for the transaction of the following business:-

APOLOGIES

Contact

**C Deller
388007**

1. MINUTES (Pages 1 - 4)

To approve as a correct record the Minutes of the meeting held on 9th September 2010.

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 items - please see Notes 1 and 2 below.

3. REPORTS OF SUB-COMMITTEES

(a) Referrals (Assessment) Sub-Committee

The Sub-Committee met on 10th September and 22nd October 2010 and over two meetings assessed four cases relating to Members serving on Huntingdonshire District Council and Fenstanton and Holywell-cum-Needlingworth Parish Councils. No further action was recommended in all cases.

(b) Review Sub-Committee

Following a recommendation by the Referrals (Assessment) Sub-Committee of "no further action" in a case involving a Member of Huntingdonshire District Council, the complainant appealed against the decision and this appeal was heard by the Review Sub-Committee on 22nd October 2010. After detailed consideration, the Sub-Committee agreed to uphold the original decision of the Referrals (Assessment) Sub-Committee having concurred with the conclusion that there was no breach of the Code of Conduct in the case.

(c) Standards (Consideration and Hearing) Sub-Committee

The Sub-Committee met on 4th November 2010 to hear the outcome of an investigation into a complaint involving a Member of Yaxley Parish Council. The Sub-Committee concurred with the recommendations of the Investigating Officer and agreed that the

Councillor concerned be suspended for a period of two months from 25th November 2010 to 25th January 2011 or until such time as he undertakes training on the Code of Conduct. It was strongly recommended that the other Members of the Parish Council and the Parish Clerk also should receive training on the Code of Conduct and subsequently a session for this purpose has been arranged to be held on 24th November 2010.

4. STANDARDS FOR ENGLAND - LATEST? (Pages 5 - 6)

**C Meadowcroft
388021**

Update by the Head of Law, Property and Governance and Monitoring Officer on the latest developments following the Government's announcement "to abolish the Standards Board" regime.

Latest press notice published by 'Standards for England', enclosed.

5. STANDARDS UPDATE (Pages 7 - 8)

**C Deller
388007**

Further to Minute No. 21 of the meeting held on 9th September 2010 and given the indication that it is the Government's intention to legislate for the abolition of 'Standards for England', the Members Code of Conduct and local standards committees, the Chairman has agreed to postpone the process for the appointment to the Committee of an additional town and parish council representative. The Monitoring Officer has written to the six Parish Councillors who had submitted applications to thank them for the interest they had expressed in the position.

An article has been included in the December's addition of District Wide regarding the Committee's Annual Report and a copy is appended hereto.

6. CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY: CONSULTATION (Pages 9 - 24)

**C Meadowcroft
388021**

On 29th September 2010, the Government published for consultation a new Code of Recommended Practice on Local Authority Publicity. The timescale for a response was short and regrettably, the closing date for representations was 10th November which fell outside the Committee's cycle of meetings. The proposed new code will be underpinned by seven guiding principles. To give effect to the Government's commitment to stop unfair competition by local authority newspapers, the proposed new Code now contains specific guidance on the frequency, content and appearance of local authority newspapers or magazines. It also proposes to prohibit the use of lobbyists where the expenditure is intended to influence local people on political issues. Copies of the consultation document and the response to it by the Association of Council Secretaries & Solicitors are enclosed for information.

7. LOG OF CODE OF CONDUCT ENQUIRIES (Pages 25 - 28)

**C Meadowcroft
388021**

To note the Code of Conduct enquiries recorded by the Head of Law, Property and Governance and Monitoring Officer since the meeting held in September.

8. **DUAL HATTED MEMBERS AND THE CODE OF CONDUCT** (Pages 29 - 30) **C Meadowcroft 388021**

Recently published guidance by 'Standards for England'.

9. **STANDARDS FOR ENGLAND CASE REVIEW 2010** **C Meadowcroft 388021**

'Standards for England' has prepared a new edition of its Case Review which can be accessed from their website using the following link. This year, 'Standards for England' will not be distributing a printed version but it will be available to download from their website shortly. This edition of the Case Review also includes links to the decisions that have been made by the First Tier Tribunal.

<http://www.standardsforengland.gov.uk/CaseinformationReporting/OnlineCaseReview2010>

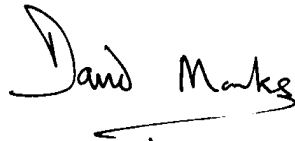
10. **SUMMARIES OF RECENTLY COMPLETED INVESTIGATIONS** (Pages 31 - 40) **C Meadowcroft 388021**

To note a case summary involving North Tynecastle Council recently published by 'Standards for England' and one which has been determined by the First Tier Tribunal General Regulatory Chamber.

11. **DATE OF NEXT MEETING**

To note that the next meeting of the Committee will be held on Thursday 3rd March 2011 at 4pm in the Civic Suite, Pathfinder House, St. Mary's Street, Huntingdon.

Dated this 24th day of November 2010



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, their family or any person with whom they had a close association;*
 - (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 £25,000; 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.uk 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 Committee.

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.

Agenda and enclosures can be viewed on the District Council's website – www.huntingdonshire.gov.uk (under Councils and Democracy).

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.

Agenda Item 1

HUNTINGDONSHIRE DISTRICT COUNCIL

MINUTES of the meeting of the STANDARDS COMMITTEE held in Meeting Room CVSO1A, Civic Suite, Pathfinder House, Huntingdon, Cambs, PE29 3TN on Thursday, 9 September 2010.

PRESENT: Mr D L Hall - Chairman
Councillors J D Ablewhite, Mrs B E Boddington, P J Downes, A Hansard, T D Sanderson and G S E Thorpe.

Messrs J Alexander, P Boothman and G Watkins.

APOLOGIES: Apologies for absence from the meeting were submitted on behalf of Mr M Lynch and Mrs S Stafford.

17. MINUTES

The Minutes of the meeting of the Committee held on 8th July 2010 were approved as a correct record and signed by the Chairman.

18. MEMBERS' INTERESTS

No declarations were received.

In response to concerns raised in respect of the alleged conduct of a Member present at the meeting, the Monitoring Officer advised that until or unless a complaint was formally submitted under the relevant Regulations there would not be any necessity for a Member to declare an interest or to leave the meeting.

19. REPORTS OF SUB-COMMITTEES

In the absence of the Chairman, the Monitoring Officer reported that the Referrals (Assessment) Sub-Committee had met on 28th July 2010 to assess a complaint received about a Member serving on Bluntisham Parish Council but that no further action had been taken as it was considered that the Member concerned was acting in his private capacity and not as a Councillor at the time of the alleged breach.

It was noted that the Review and Standards (Consideration and Hearing) Sub-Committees had not met since July.

20. STANDARDS FOR ENGLAND - LATEST ?

Having regard to a report by the Head of Law, Property and Governance and Monitoring Officer (a copy of which is appended in the Minute Book) the Committee was reminded that the Government had announced its intention to abolish the Standards Board regime, a statement about which had been included in Section 4 of the

document "The Coalition: Our Plan for Governance" published in May 2010.

Members noted that although very little further information had emerged since that announcement, indications had suggested that the De-centralisation and Localism Bill to be published in the Autumn, would provide for the abolition of not just "Standards for England", but of the Code of Conduct for Members and of the Standards Committee. Notwithstanding the nature of the announcement, the Committee noted that, in all likelihood, a draft Bill might not be enacted before Summer 2011 which could mean that the Council retained the duty to continue the ethical standards regime until early 2012.

Against this background of uncertainty, the Committee noted the conclusions published in the Annual Review and Report of the Committee on Standards in Public Life which appeared to suggest that an effective local standards framework should comprise all the elements inherent within the current code of conduct and standards regime.

Whereupon, it was

RESOLVED

that the report now submitted be noted.

21. STANDARDS UPDATE

The Committee received and noted a report by the Head of Law, Property and Governance and Monitoring Officer (a copy of which is appended in the Minute Book) regarding progress made on various issues contained in the Committee's 2010/2011 work programme.

The Monitoring Officer confirmed that the financial information contained in the "time and costs section" of the annual report had been enhanced prior to its distribution electronically to Members of the Council and Town and Parish Councillors.

In terms of the "frequently asked questions" prepared by the Monitoring Officer, the Committee requested that these be sent to Town and Parish Councils and Parish Clerks asked to draw the attention of their Members to the information contained in the document as a form of training aid.

In noting that the deadline for the receipt of applications for the vacant post of parish council representative on the Committee was 20th September, the Committee suggested, for the future, that it would be more conducive to the selection of Independent Members and parish council representatives if their terms of office did not run concurrently so as to avoid the possibility of a complete change of membership and loss of knowledge and experience at the same time.

Referring to the training activity to be undertaken by the Monitoring Officer in the Autumn and mindful of the uncertainty over the future of the standards regime, the Committee considered it imprudent currently to make arrangements for training sessions which might

involve expenditure and resources which ultimately could prove to be unnecessary.

However, and whilst deciding to await the publication of the De-centralisation and Localism Bill, the Committee asked the Monitoring Officer to respond positively to any requests for training received from individual parish councils and to reconsider the question of training at the next meeting in the light of the Government's proposals for "standards".

22. LOG OF CODE OF CONDUCT ENQUIRIES

The Committee received and noted the Code of Conduct enquiries which had been recorded by the Head of Law, Property and Governance and the Monitoring Officer since the last meeting in July 2010 (an extract of the log is appended in the Minute Book).

23. SUMMARIES OF RECENTLY COMPLETED INVESTIGATIONS

For training purposes, the Committee noted the content of cases recently published by "Standards for England" following complaints considered by Hyndburn Borough Council.

24. DATE OF NEXT MEETING

It was noted that the next meeting of the Committee would be held at 4pm on Thursday 2nd December 2010.

Chairman

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Corrupt councillors will go to court not Standards committees

Published 20 September 2010

Serious misconduct for personal gain will be a criminal act, while petty local vendettas will no longer get a hearing as the unpopular standards board regime is axed, Communities Minister Andrew Stunell announced today.

Mr Stunell said the top-down regime set up by central government to monitor council conduct had become a vehicle for malicious and frivolous complaints. For example, one authority had to fork out £160,000 after receiving over 170 complaints from the same person. Each one had to be examined, but only three were considered worth investigating and after investigation all were dismissed.

Local Standards Committees investigated 6000 complaints in the first two years - of which over half were judged not worthy of any further action. The Government is axing the entire Standards regime including the central board, which costs over £6 million a year; with investigations of complaints costing thousands of pounds each.

Genuine corruption in local government needs to be rooted out and the new Government is legislating to make serious misconduct a criminal offence dealt with by the courts not committees. Councillors will have to register certain personal interests in a publicly available register.

Ministers believe these changes will give voters the confidence that councillors who misuse their office will be effectively dealt with. While councillors themselves will have the confidence to get on with their job knowing they won't be plagued by petty allegations.

Public will decide councillors' fates

Under new plans the public will also have greater confidence to challenge poor local services. The Government intends to give the Local Government Ombudsman, the established body for investigating public complaints over the way they have been treated by their council, reel teeth. For the first time local authorities will be legally compelled to implement the Ombudsman's findings.

Andrew Stunell said:

"The Standards Board regime ended up fuelling petty complaints and malicious vendettas. Nearly every council had investigations hanging over them - most of which would be dismissed but not before reputations were damaged and taxpayer money was wasted. Frivolous allegations undermined local democracy and discouraged people from running for public office.

"That's why we are axing the unpopular and unelected standards board regime. Instead we will legislate to ensure that if a councillor is corrupt and abuses their office for personal gain they will be dealt with in the criminal courts. If a councillor behaves

ineffectively or irresponsibly then it's a matter for the electorate not an unelected quango.

"This Government is freeing councillors from central prescription and top down bureaucracy so they can get on with their job. In the future councillors must expect to be judged at the ballot box by an electorate with real access to their accounts and personal interests in a new transparent era."

Communities Secretary Eric Pickles added:

"The standards board regime became the problem, not the solution. Unsubstantiated and petty allegations, often a storm in a teacup, damaged the reputation and standing of local government, as well as wasting taxpayers' money.

"But by abolishing the failed standards committees we're not letting councillors off the hook. Failure to register or declare an interest, or deliberately seeking to mislead the public about an interest, will become a criminal offence while a newly empowered Local Government Ombudsman will investigate incompetence on behalf local people."

The Government will also legislate to make it clear that councillors can campaign and vote freely on their issues. Councillors who have been prevented from speaking on the very issues they had been elected on, such as planning matters, will now have the freedom to express their views.

But councillors will have to register certain personal interests in a publicly available register; this could include anything that could reasonably be regarded as likely to influence or affect their actions, conduct when on business for the authority or voting.

The whole Standards Board regime consisting of a centrally prescribed code of conduct, standards committees with the power to suspend councillors and an unelected central body will be axed in the upcoming Localism Bill.

However councillors will have to conform to the highest standards of conduct. At present if a councillor abuses their position for personal gain it may result in a complaint to the local authority's standards committee with the councillor simply having to apologise. New legislation will make failing to register an interest, or deliberately seeking to mislead the public about an interest a criminal offence.

A strong, local economy

Keeping up standards

One of the council's roles is to make sure that district, town and parish councillors comply with the councillor's code of conduct. This code sets a number of obligations on the way councillors work which include treating others with respect, not bringing their office or the council into disrepute, and not using their position improperly.

It also requires councillors to declare any interest they might have in council matters which may mean they cannot vote or speak on that issue.

It is the council's standards committee which is responsible for checking that councillors follow the code when they are carrying out their official duties. The committee deals with any complaints about councillors and arranges for investigations to be carried out where necessary.

If you would like to see details of the number of complaints that the committee has dealt with, see a copy of the Annual Report 2009/10, available online at www.huntingdonshire.gov.uk/standardsandconduct

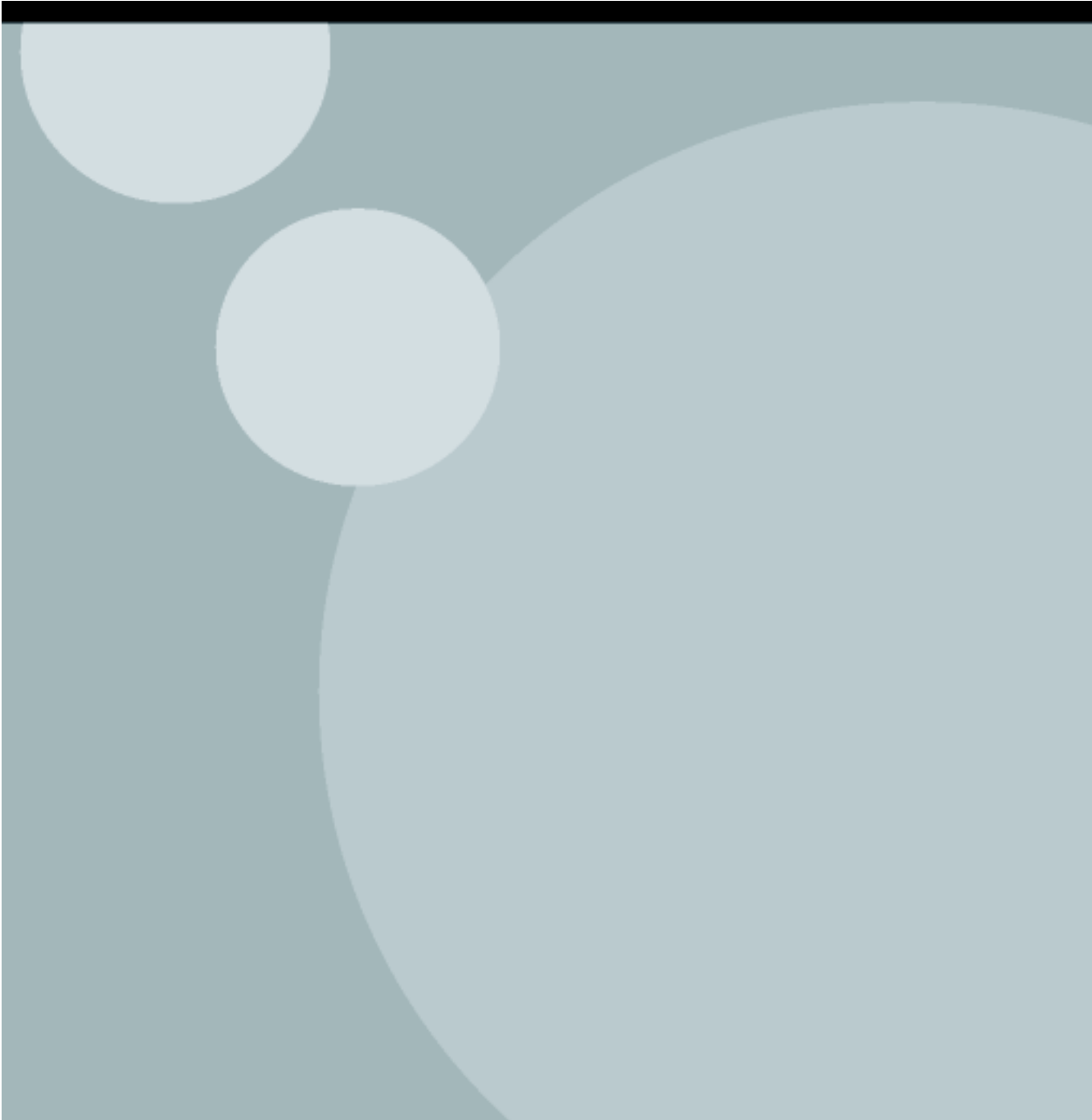
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Code of Recommended Practice on Local Authority Publicity

Consultation



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Introduction

1. The Government is consulting on a new Code of Recommended Practice on Local Authority Publicity ('the proposed Code'), intended to replace the existing Codes for local authorities in England. A draft of the proposed Code is attached and your comments would be welcomed.

Why we are consulting

2. The Coalition Agreement, *Our Programme for Government*, contains the commitment that the Government 'will impose tougher rules to stop unfair competition by local authority newspapers'. The Secretary of State for Communities and Local Government has made it clear that the existing rules on local authority publicity have resulted in taxpayers' money being wasted and the free press being undermined. He would like to see less local authority resource being expended on local authority newspapers, with it being focused on frontline services instead.
3. The Secretary of State considers that, over time, commercial newspapers should expect less state advertising as more information is syndicated online for free, but at the same time the free press should not face competition from a local authority publication passing itself off as a newspaper.
4. In addition, the Secretary of State is concerned at the use of lobbyists by local authorities. The Secretary of State is clear that local authorities do not need lobbyists to get their point across to Government. If local politicians want to change the way Government operates, they can write or pick up the phone. In addition, councillors can campaign for change at a personal or party political level. There is no need for lobbyists.
5. Councillors lobbying Members of Parliament or Government Ministers is wholly legitimate. Meetings between politicians are matters of public record and where public bodies engage with Government there is transparency as these matters are subject to Freedom of Information Act requests. Lobbyists, as private organisations, are subject to none of these rules. Taxpayers' money should not be spent on lobbyists with no public accountability.
6. By the same measure, local authorities should not have stalls at party conferences with the aim of lobbying Government. It may be legitimate for a local authority to have a stall promoting a particular service, such as a conference centre, just as it would at a trade show. However, the Government considers that it is not an appropriate use of public funds for a council to have a stall at a conference with the aim of lobbying for, for instance, extra resource from central Government.

Local authority publicity

7. Effective communication is key to developing understanding of issues at a local level and in recent years local authorities have used local publicity not just to inform the public about council services but also to encourage greater participation. Good, effective publicity, aimed at improving public awareness of the councils' activities is quite acceptable.
8. However, publicity is a sensitive matter because of the impact it can have and because of the costs associated with it, which can be considerable. It is essential, therefore, to ensure that decisions about local authority publicity are properly made. The stated underlying objective of the proposed Code is to ensure the proper use of public funds for publicity but it also provides guidance on content, dissemination and timing.

What we are proposing

9. The Code of Recommended Practice on Local Authority Publicity is currently contained in two separate circulars, the original one from 1988 (Department of the Environment: Circular 20/88) being revised in 2001 (Department of the Environment, Transport and the Regions: Circular 06/2001) to update the rules for county councils, district councils and London borough councils in England.
10. The proposed new Code is a significant restructuring of the existing Codes, which are to be replaced. The guidance is now grouped into seven principles that require local authority publicity to be lawful, cost effective, objective, even-handed, appropriate, to have regard to equality and diversity, and be issued with care during periods of heightened sensitivity. The proposed Code is also a single instrument rather than two circulars each addressing different tiers of local government.
11. To give effect to the Government's commitment to stop unfair competition by local authority newspapers, the proposed Code will contain specific guidance on the frequency, content and appearance of local authority newspapers or magazines. They must not appear more frequently than once a quarter, must only include material that is directly related to the business, services or amenities of the authority or other local service providers and should be clearly marked as being published by the local authority. These provisions also extend to web-based editions of publications.
12. The provision relating to the prohibition on the use of lobbyists appears in the proposed Code as a consideration that the use of lobbyists is related to the use of publicity, in that it is one of the methods by which authorities might spend taxpayers' money to influence people one way or another in relation to political issues. It is therefore within the general ambit of the code of practice.

13. Comments are invited on the draft code. In particular:
- Do the seven principles of local authority publicity as laid down in the Code encompass the full scope of the guidance required by local authorities?
 - Do you believe that the proposed revised Code will impose sufficiently tough rules to stop unfair competition by local authority newspapers?
 - Does the proposed Code enable local authorities to provide their communities with the information local people need at any time?
 - Is the proposed Code sufficiently clear to ensure that any inappropriate use of lobbyists, or stalls at party conferences, is clearly ruled out?

Who we are consulting

14. We are consulting the Local Government Association and the National Association of Local Councils. This document is also available on the Communities and Local Government website (www.communities.gov.uk) and we will be drawing it to the attention of all principal councils in England. It is open to all to make representations on the proposed code, which will carefully be considered.

How to respond

15. Your response must be received by 10 November and may be sent by email to: publicitycode@communities.gsi.gov.uk

Responses may also be returned to:

Rosalind Kendler
Communities and Local Government
Zone 3/J1
Eland House
Bressenden Place
London SW1E 5DU

16. Please title your response 'Response to Publicity Code consultation'.
17. It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

What will happen to the responses

18. The Department will take account of the responses received to this consultation before decisions are taken on possible changes to the Publicity Code.

Publication of responses – confidentiality and data protection

19. Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. (These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.)
20. If you want any of the information that you provide to be treated as confidential you should be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
21. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
22. The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

XX 2010

Code of Recommended Practice on Local Authority Publicity

1. I am directed by the Secretary of State to draw the attention of your authority to the annexed Code of Recommended Practice on Local Authority Publicity which the Secretary of State has issued under section 4 of the Local Government Act 1986 and which comes into force on 1st January 2011.
2. The Code has been prepared following a consultation [insert details and link to consultation document and response]. A draft of the code has been laid before and approved by a resolution of each House of Parliament.
3. From 1st January 2011, the Secretary of State withdraws, in relation to local authorities in England, the codes previously issued under section 4 of the 1986 Act contained in DoE Circular 20/88 and DETR Circular 06/2001.

P ROWSELL

a Senior Civil Servant in the Department for Communities and Local Government

THE CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY

Introduction

1. This code applies to all local authorities in England specified in section 6 of the Local Government Act 1986 and to authorities which have that provision applied to them by other legislation. Where the term “local authorities” is used in this code it should be taken as referring to those categories of authority. References to “the Act” should be taken as meaning the Local Government Act 1986.
2. Local authorities are required by section 4(1) of the Act to have regard to the contents of this code in coming to any decision on publicity. Section 6 of the Act defines publicity as “any communication in whatever form, addressed to the public at large or a section of the public”. The code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newsheets and maintenance of websites – including the hosting of material which is created by third parties.

3. Nothing in this code overrides the prohibition by section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

Principles

4. Publicity by local authorities should:-
 - be lawful
 - be cost effective
 - be objective
 - be even-handed
 - be appropriate
 - have regard to equality and diversity
 - be issued with care during periods of heightened sensitivity

Lawfulness

5. Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority's Advertising Codes.
6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.
7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.
8. Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 (S.I. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority.
9. Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) (England) Regulations 2000 (S.I. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.

Cost effectiveness

10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved.
11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is most appropriate.
12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be achieved if locally produced publicity gives a local context to national issues.
13. The purchase of advertising space should not be used as a disguised method of subsidising voluntary, public or commercial organisations.
14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

Objectivity

15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views, but should avoid being perceived by readers as constituting a political statement.
16. Local authorities should ensure that publicity relating to their own policies and proposals are not designed to be (or are not likely to be interpreted as) aimed at influencing the public's opinions about the policies of the authority. It is acceptable for local authority publicity to correct erroneous material which has been published by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.
17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.
18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to

section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

Even-handedness

19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.
20. Other than in the circumstances described in paragraph 34 of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present their views on local issues. This might be appropriate, for example, when one councillor has been the “face” of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear. Local authorities should ensure that publicity of the work done by individual members of the authority does not publicise solely the work of councillors holding executive positions, or who belong to the political group which controls the authority.
21. It is acceptable for local authorities to host publicity prepared by third parties – for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.
22. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.
23. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.
24. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as a directly elected mayor, or leader of the authority. Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.

25. Where local authorities provide assistance to third parties to issue publicity they should ensure that the principles in this code are adhered to by the recipients of that assistance.

Appropriate use of publicity

26. Local authorities should not incur any expenditure in retaining the services of private specialists, contractors or consultants (“lobbyists”) with the intention of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.
27. Local authorities should not incur expenditure to have stands or displays at conferences of political parties to issue publicity designed to influence members of political parties to take a particular view on any issue.
28. Local authorities should not publish newsletters, newsheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsheets, they should not issue them more frequently than quarterly. They should not include material other than information for the public about the business, services and amenities of the council or other local service providers.
29. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or any particular group for which services are provided.
30. Local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newspapers published by the local authority, should do this on the front page of the publication.

Equality and diversity

31. Publicity by local authorities may seek to influence (positively and in accordance with the relevant law) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.
32. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

Care during periods of heightened sensitivity

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this Code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.
34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.
35. Subject to any express provision in any enactment authorising the incurring of expenditure on the publication of any material designed to influence the public whether to support or oppose a question put at a referendum, local authorities should not issue any publicity which seeks to influence voters. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.



Association of Council
Secretaries and Solicitors

Tony Kilner – Policy & Development Officer
Association of Council Secretaries and Solicitors

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10 November 2010

By email
To publicitycode@communities.gsi.gov.uk
Communities and Local Government
Zone 3/J1
Eland House
London
SWE1 5DU

Dear Rosalind Kendler

Response to Publicity Code Consultation

I am responding on behalf of the Association of Council Secretaries and Solicitors to the above consultation. The Association (ACSeS) represents most directors/chief legal officers and monitoring officers in English local authorities, who are personally responsible for advising their authorities and councillors on the law applicable to local authority publicity and the application of the current Code of Recommended Practice on Local Authority Publicity.

ACSeS welcomes the approach of the Government in the revised draft towards simplification of the principles and content of the Code, and also towards giving recognition to the changes in communication methods due mainly to new technology.

Subject to specific points below, we accept the seven principles as representing the main relevant considerations for decisions relating to publicity.

Lawfulness

Whilst Section 2 of the Act is referred to in the introduction, it would bear repetition within the paragraphs of this principle, as it is the primary legal constraint applying to local authority publicity decisions.

Cost effectiveness

It would be more appropriate for the principle to refer to the cost being reasonable. Cost effectiveness implies measuring the cost with the outcome. The outcome of advertising cannot often be readily measured in a non commercial environment. The only practicable measurement is relating cost to the intended outcome. By way of example, the placing of statutory adverts (as frequently required by law) in local newspapers is often at exorbitant cost that cannot possibly be said to be cost effective. However, it would be seen as being reasonable as a means of meeting a statutory obligation.

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We would urge the wording of this principle be modified in order to ensure it can be of practical effect and to reduce the potential for conflict with the other principles. In paragraph 13 the inclusion of the word ‘disguised’ would seem to be unnecessary. Its inclusion implies that an overt method of subsidy would be permissible.

Objectivity

It is difficult to see what is being added in paragraph 15 by the words ‘but should avoid being perceived by readers as constituting a political statement.’ Provided the publicity complies with Section 2, these words are unnecessary and are likely to give rise to added difficulty, particularly as the words ‘political statement’ are not defined and probably cannot be defined with any simple clarity.

The first sentence of paragraph 16 is unworkable. Any information about a local authority’s own policies is likely to influence public opinion, however expressed. A national park authority may well promote the need for affordable housing. For it to explain why, in whatever language it uses, is likely to be in breach of this wording. The wording of the current code expresses the intention of this principle in unambiguous terms. *‘Any publicity describing the council’s policies and aims should be as objective as possible, concentrating on facts or explanation or both. ‘Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy,*

Even-handedness

It is not entirely clear in relation to paragraph 21, for example, that not only the party logo may be used by a member, but also the name of the political party to which the member belongs.

It would seem to be reasonable and sensible for any publicity referring to a councillor individually, to identify the political party of which they are a member, and for the Code to state this expressly.

Paragraph 25 would seem to be expressed in such wide terms as to be impracticable. For example, grants to many organisations may be used indirectly to issue publicity. The word ‘specifically’ might be included after ‘authorities’.

Appropriate use of publicity

Paragraph 26 may be drafted in too wide terms. Local authorities have no control over their contractors who might be disposed to lobby using their profits incurred from public contracts. The word ‘direct’ might be included before ‘expenditure’.

In paragraph 28, the quarterly limitation to newssheets does not appear to specifically exclude information provided in newssheet form for specific purposes, for example, to a community affected by flooding (when such newssheets might be provided daily or weekly.). A reasonable approach would be that such activity is not seeking to emulate a commercial newspaper, but there is scope for ambiguity. Presumably the intention is not to exclude the possibility of local authorities commissioning newssheets within a commercial newspaper, but again the wording creates ambiguity.

The wording *‘information for the public about the business, services and amenities of the Council or other local service providers’* is too restrictive. It would seem to prevent, for example, discussing future proposals with which the local authority might become involved which are not currently part of the authority’s business. The wording might also prevent publicity material about community activities (and individuals involved in community activity), or the ecology or geography or geology of the area, which would otherwise fit comfortably with the Big Society agenda. These concerns are expressed particularly by colleagues in national park authorities where such information is key to promoting understanding of the national park in the context of its geographical etc features.

The word ‘council’ in the last line of paragraph 28 should read ‘local authority’.

Care during periods of heightened sensitivity

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This heading is ambiguous as the intention is limited to pre election/referendum periods only. Could not the principle simply read 'be issued with care during pre election/referendum periods'? We are concerned that paragraph 34 does not clarify the position of consultations (which generally involve publicity that is integral or additional to the consultation process) during the pre-election period. The position is covered in central government guidance in the case of a Parliamentary General Election.

In paragraph 35, it may be appropriate to make it clearer that the example in the last sentence is limited to a referendum. It would not be appropriate for this example to be applied to an election.

I hope these comments are of assistance in finalising the Code.

Yours Sincerely

Tony Kilner
Policy and Development Officer
ACSeS

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**EXTRACT FROM LOG OF CODE OF CONDUCT ENQUIRIES:
3rd SEPTEMBER 2010 ONWARDS**

Case No.	Date of Enquiry	District/Town/Parish Council	Nature of Enquiry (Brief Details)	Advice Given (Brief Details)	Code of Conduct Reference (Para No.)
74.	03.09.10		Enquiry regarding interests arising from a planning application being considered by the Parish Council. One of the Parish Councillors was a neighbour to the application property.	Advised Parish Councillor that she would have to declare personal and prejudicial interests and as the Council had no session for the public to address meetings, the Councillor had no opportunity to address the Council and would need to leave the room whilst the application was being discussed and voted on. (CM)	8, 9, 10, 12(2)
75.	09.09.10		Enquiry regarding the interests a Town Councillor should declare in a situation where he would be considering an application for grant from an organisation of which his wife is a Director.	Advised the Clerk that the Member should declare a personal and prejudicial interest as the matter under consideration affected the financial position of a person or body through whom he had a personal interest. (CD)	8, 9, 10

Case No.	Date of Enquiry	District/Town/Parish Council	Nature of Enquiry (Brief Details)	Advice Given (Brief Details)	Code of Conduct Reference (Para No.)
76.	09/09/10		Enquiry from a newly elected Parish Councillor as to the interests he would need to declare when the Council discusses a planning application on which he had already submitted a written objection as a member of the public.	Advised Parish Councillor that he should declare a personal and prejudicial interest as he had already formed a view on the planning application. Also explained the provisions of paragraph 12 (2) which allows a Member with a prejudicial interest to speak in the same way as a Member of the public but then to leave the room and not take part in the vote. (CD)	8, 9, 10, 12(2)
77.	27.09.10		Enquiry regarding charitable trustees and declarations of interest.	Advised that where a Council is a managing or charity trustee, individual councillors do not have to declare this interest on their register of interests. There might still be a "personal" interest if the business being considered might reasonably be regarded as affecting the councillor's well-being or financial position more than it would affect the majority of inhabitants of the parish. Where the matter also affects the financial position of a trust or relates to a regulatory matter, the interest might also be prejudicial if an objective person would consider the interest as so significant that it is likely to prejudice judgement of the public interest. Advice regarding dispensation given and copy of advice note from Standards for England sent to Clerk. (CM)	8, 9, 10

Case No.	Date of Enquiry	District/Town/Parish Council	Nature of Enquiry (Brief Details)	Advice Given (Brief Details)	Code of Conduct Reference (Para No.)
78.	11.10.10		Enquiry from a dual hatted District Councillor regarding interests to declare at a meeting at which a jointly funded Leisure Centre would be discussed.	Advised that if business to be considered involves another public body of which the Councillor is a member, he/she should declare a personal interest. If discussions involved implications for that other body (ie the District Council) then he/she would be required to declare a prejudicial interest and to leave the room. (CM).	8, 9, 10
79.	19.10.10		Enquiry from a Parish Clerk regarding the interests a Parish Councillor should declare in connection with a planning application.	As the Parish Councillor lived in a property opposite the proposed development site, advised that he/she held a personal and prejudicial interest but that if the Parish Council had adopted paragraph 12(2) of the Code of Conduct that Councillor after declaring the interest would be entitled to speak in the same way as a member of the public but then would need to leave the room until the matter was concluded. (VS)	8, 9, 10, 12(2)

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Dual-hatted members and the Code of Conduct

What is a dual-hatted member?

Dual-hatted members are members who serve on two or more relevant authorities; for instance, a member who is both a district and parish council member.

When should a dual-hatted member declare an interest?

If a dual-hatted member is taking part in a council meeting and an issue is under discussion which affects that member's other authority, then provided that they do not have a prejudicial interest, under paragraph 9(2) of the Code of Conduct the dual-hatted member only needs to declare a personal interest if they intend to speak on the matter involving the other authority. If the member does speak on the matter then they must declare a personal interest, but they are still able to vote.

Members must consider carefully, however, if the nature of the matter under discussion means that their membership of another authority may also give rise to a prejudicial interest.

For dual-hatted members who would not otherwise have a prejudicial interest for any other reason, a prejudicial interest will arise as a result of membership of the other authority if all of the following conditions are met:

- the matter affects the other authority's financial position or is about a licensing or regulatory matter applied for by the other authority
- the matter does not fall within one of the exempt categories of decisions under paragraph 10(2)(c) of the Code
- a reasonable member of the public with knowledge of the relevant facts would believe that the member's ability to judge the public interest would be impaired

Standards for England takes the view that where a regulatory application, including a matter of consent or approval, is made by a body on a member's register of interests, or a matter is discussed that would impact upon the financial interests of a body on a member's register of interests, then a prejudicial interest will arise. For example if a parish council planning application was being considered at a district council meeting, a member of the planning committee who is also a parish council member would need to declare a personal and prejudicial interest when that matter is considered, leave the chamber and not vote.

Predetermination and dual-hatted members

A dual-hatted member does not automatically have an interest in an item just by virtue of having considered the issue at the meeting of a different authority. If the issue does not meet the normal criteria for needing to declare a personal interest, then an interest does not need to be declared. However, the issue of predetermination or bias may need to be considered where members sit on different bodies determining matters. Further information on this can be found here.

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Agenda Item 10

Case Summary - North Tyneside Council

Case no. SBE04480
Member(s): Councillor Glynis Barrie

Allegation:

The member brought their office or authority into disrepute.

Standards Board outcome:

The ethical standards officer found that no further action was necessary.

The complainants alleged that Councillor Glynis Barrie, a member of North Tyneside Council, invited a member of the public to a meeting on council premises when she knew that person had been barred from attending council meetings on the grounds of staff health and safety. The complainants alleged that Councillor Barrie exposed council staff to the risk of abuse, undermined the authority of officers responsible for protecting staff, and brought her office into disrepute.

Councillor Barrie is the convenor of an overview and scrutiny members' study group. The group wanted to interview a member of the public.

Councillor Barrie accepted that she asked that member of the public to attend a group meeting on council premises in November 2008. She also accepted that the council's monitoring officer had confirmed to her that this person had been banned from attending council meetings from 10 October 2008. Councillor Barrie also knew that council officers considered the member of the public posed a health and safety risk to staff. However, her study group had doubts about the legal effectiveness of the ban and were sceptical about whether a risk really existed.

As a compromise, Councillor Barrie attempted to find an alternative venue for the meeting. At short notice, the member of the public refused to attend unless the meeting was on council premises. Councillor Barrie stated that, under considerable competing pressure from officers, fellow members and the member of the public, she decided to go ahead and invite the member of the public onto council premises. She acknowledged in hindsight that she might have made the wrong decision, but stated that she did not intend to put staff at risk or undermine officers' authority.

The ethical standards officer concluded that Councillor Barrie was acting in her official capacity when she invited the member of the public on to council premises, in breach of the ban on his attendance at council meetings. The council had exercised its general power as an occupier to revoke his licence to enter council premises for meetings, and this power was exercised further to the council's duty to protect its staff from abuse or threats. Councillor Barrie knew why this ban was in place, and no steps had been taken to challenge it. After the meeting the member of the public wrote to the council claiming that Councillor Barrie's invitation had proved the ban worthless and that he intended to defy it again in future.

The ethical standards officer considered that councillors have a strong ethical requirement to uphold council decisions relating to significant employer responsibilities. The council has a duty to protect staff, and the decisions it takes to do so are part of its good reputation as an employer. Councillor Barrie's decision to invite the member of the public on to council premises in these circumstances would be viewed by an objective observer as undermining this reputation.

The ethical standards officer considered that Councillor Barrie's conduct would diminish public confidence in her ability to carry out her role as a councillor in supporting the council's employment responsibilities. Councillor Barrie's conduct had therefore brought her office into disrepute.

The ethical standards officer noted that there was no evidence that the member of the public had abused, threatened or harmed any member of staff when he attended the November 2008 meeting. The ethical standards officer took into account that Councillor Barrie was motivated by her desire to carry out the scrutiny work of the study group, which had been delayed. She had attempted to find a compromise, although she had been unable to do so, and had not been seeking a confrontation with officers. The ethical standards officer also noted that Councillor Barrie has been genuinely distressed by events, and has acknowledged that she may have made the wrong decision. Consequently the ethical standards officer concluded that Councillor Barrie failed to comply with the Code of Conduct, but that no further action is necessary.

Relevant paragraphs of the Code of Conduct

The allegation in this case relates to paragraph 5 of the Code of Conduct.

Paragraph 5 states that members must not "bring their office or authority into disrepute".

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**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(Local Government Standards in England)**

CASE NO: LGS/2010/0503

ON APPLICATION FROM:

Ethical Standards Officer (ESO) of Standards for England

Application reference No: SBE 07701-O6Y7R

Dated: 19 April 2010

APPLICANT: Jennifer Rogers, ESO, Standards for England

RESPONDENT: Councillor Ahmed Khan
of South Tyneside Council

DATE OF HEARING: 8 September 2010

VENUE: George Washington Hotel, Washington

DATE OF DECISION: 17 September 2010

BEFORE

Judge: David Laverick

Member: David Billing

Member: David Ritchie

Attendances:

For the Applicant (ESO): Mr Mark Jones

The Respondent appeared in person

Subject matter: Reference about possible failure to follow the Code of Conduct

DECISION OF THE FIRST-TIER TRIBUNAL

The Respondent has been found to have failed to follow the provisions of the Code of Conduct and has been censured

REASONS FOR DECISION

1 The Tribunal has determined an application from an Ethical Standards Officer (“ESO”) in relation to allegations that the Respondent had breached South Tyneside Borough Council’s Code of Conduct by making statements about the Monitoring Officer of the Council and the Standards Committee of the Council.

2 The Respondent was elected to office in May 2008 for a term of four years. He represents the Beacon and Bents ward. He currently serves on the following committees Riverside Community Area Forum, Licensing Committee, Regulatory Committee, Overview and Scrutiny Co-ordinating Committee, Select Committee for Jobs and Enterprise, Regeneration and Resources and Culture and Well-being Committee, and the Common Land Town and Village Greens Committee. He is also a member of the Ocean Road Community Association Management Committee.

3 The Council has adopted a Code of Conduct

3.1 Paragraph 2(1) of the Code states:

*“... you must comply with this Code whenever you—
conduct the business of your authority (which, in this Code, includes the
business of the office to which you are elected or appointed); or
act, claim to act or give the impression you are acting as a representative of
your authority,
and references to your official capacity are construed accordingly”*

3.2 Paragraph 3 of the Code states:

*“(1) You must treat others with respect.
(2) You must not...
b) bully any person*

3.3 Paragraph 5 of the code states:

*“You must not conduct yourself in a manner which could reasonably be
regarded as bringing your office or authority into disrepute.”*

3.4 The media protocol (on p.249 of the council’s constitution) states:

*“1.1 This Protocol guides all Members of the Council when dealing with the
media in respect of complaints against Members and their investigations*

whether dealt with by the Standards Board for England, the Monitoring Officer or the Standards Committee ("Committee").

1.2 Individual Members should not initiate press comment on complaints and investigations. The only exceptions are comments made by: -

1.2.1 a Member against whom the complaint has been made; or

1.2.1 [sic] a Member who has made a complaint

either of whom may respond factually when approached by the media."

4 Relevant Facts

4.1 The Respondent requested Mr Scott, who was then the Council's Monitoring Officer, to issue a press release stating he had been cleared of all wrongdoing following a meeting of an Assessment Sub-Committee which had decided to take no further action in relation to a complaint about the Respondent which had been referred to it. The Respondent quoted a section of the Council's constitution in his request saying that this entitled him to a press release. Mr Scott refused the Respondent's request, because he believed that the Respondent's interpretation of the constitution was incorrect.

4.2 The Respondent had established, before his election what he describes as a community newsletter entitled *The Beacon*. The summer 2009 edition of that newsletter began with a paragraph, alongside a photograph of the Respondent, which read:

Please accept my apologies for the delay in producing this edition of the Beacon. This is due partly to the volume of work I do on your behalf and the fact that I wanted to produce and deliver my first annual report to every household in the ward

There followed a reference to his being the first councillor to produce such a report.

4.3 The newsletter contained an article, written in the first person and highlighted details of how the Respondent could be called or contacted. This included an allegation of partisan conduct on the part of the Council's Monitoring Officer who it was stated "*wriggles like a maggot on the end of a hook in an effort to get out of issuing a press release in case it upsets the ruling group.*"

4.4 The article stated that the Council's Standards Committee takes a secretive approach to public standards, never reports its findings publicly and will not issue a press release reporting a finding that a councillor has been cleared of misconduct. The article described allegations said to have been made against Labour Councillors about which the Standards Committee were said to have done "Absolutely nothing". The article contrasted that lack of action with decisions by the committee to investigate allegations made against Independent Alliance councillors.

4.5 On Page 3 of the newsletter is a box headed "join me on TWITTER" under which the text read:

Back in March I became the first councillor in South Tyneside to use Twitter in an effort to engage with local residents and to provide people with regular updates about my work as a councillor, upcoming meetings,

personal opinions and a few snippets about what else I get up to. You can find me on Twitter at [www.twitter.com|councillor_khan....](http://www.twitter.com/councillor_khan)

A box on the final page of the newsletter gave information about "my" (Councillor Khan's) advice surgeries.

At the end of the page was a highlighted box which read:

YOU CAN CALL COUNCILLOR KHAN ON (mobile number) or (landline number).
E-MAIL HIM AT (e-mail address).

- 4.6 Before the Tribunal the Respondent asserted that he was not the author of the articles in the Beacon Newsletter. He was supported in this claim by Mr Peter Shaw who said in evidence to the Tribunal that he was the editor of the newsletter.
- 4.7 The newsletter (consisting of four pages) was overwhelmingly written in the first person as if by the Respondent. The only reference to the Respondent in the third person seems to be in the highlighted box at the bottom of page 4. The newsletter, in the view of the Tribunal, gave a clear impression to readers that it was written by, and to promote, the Respondent. Neither at the time the newsletter was distributed - such distribution being partly by the Respondent - or in the period prior to the complaint being made, did the Respondent seek to dissociate himself from anything said in his name in the newsletter.
- 4.8 The newsletter made no mention whatsoever of Mr Shaw and the Tribunal does not accept that he, rather than the Respondent, was the person referred to when the words 'I', 'me' or 'my' were used in the newsletter. From the content, the inference that is inescapably drawn is that the references are to the Respondent.
- 4.9 Even if, which the Tribunal finds hard to believe, the publication was written by Mr Shaw, the wording about a maggot wriggling on the end of a hook, bias on the part of the Monitoring Officer and criticisms of the Standards Committee appeared in the written notes which the Respondent says were passed to Mr Shaw as part of the preparation of the newsletter.
- 4.10 The reference from the ESO included information as to the effect that two of the allegations described had never been to the Standards Committee and offered explanations as to why some others had not been dealt with. Prior to the hearing the Tribunal had asked for a schedule to be prepared showing all allegations that had been considered. This detailed 83 complaints, some of which are related, but showed that there was a marked disparity in the proportion of complaints being passed by the Assessment Committee for investigation. About 70% of complaints against councillors who formed the Independent Alliance to which the Respondent belongs had been passed for investigation compared with about 10% of complaints against councillors belonging to the majority Labour Group, the ESO's representative conceded that it was not an attractive line of argument for him to criticise the Respondent for making a statement which was shown by analysis of the schedule requested by the Tribunal to have had some substance.
- 4.11 The Standards Committee is not a party to the proceedings before the Tribunal which has not sought to review the merits of each of the decisions made by the Standards Committee. But the Tribunal was concerned by the delay in dealing with some complaints against members of the majority group and by the quality

of some of the committee's decisions which were drawn to the Tribunal's attention.

- 4.12 As noted above, the Respondent operates a 'Twitter' site in which he is referred to as Councillor Khan and where he regularly discusses council issues. He also operates a separate site, using his name followed by a number, where the title 'Councillor' does not appear.
- 4.13 In August 2009 the Respondent posted a message on his "councillor khan" Twitter site referring to the possibility that a letter of resignation had been mislaid.
- 4.14 In September 2009 the Respondent posted messages on this site.
- 4.14.1 One stated: *"Remember the local Labour Party & South Tyneside Council have a bit of previous when it comes to influencing the result of elections"*
- 4.14.2 Another stated *"Less than 48 hours to go until the ballot boxes from the Westoe by-election are opened assuming the Returning Officer does not lose them"*
- 4.15 The Respondent had, prior to the election stood unsuccessfully in a previous poll. He lost by 32 votes in an election where 87 votes had been rejected. When he sought to contest that result, he found that the rejected votes had been lost.

5 **Whether the material facts disclose a failure to comply with the Code of Conduct.**

- 5.1 The Respondent submitted that his involvement with the newsletter was not part of the business of his office as a councillor. He pointed out that the first two editions of *The Beacon* were issued by the Respondent and his wife and were issued before he was elected. He submitted that in the newsletter he does not prefix his name with "Councillor". He submitted that the newsletter is funded by the Respondent and his wife (with no financial contribution from the Council) and is designed, printed and distributed entirely independently of the Council.
- 5.2 As noted in paragraph 4.5 the newsletter ends with a message where his name is prefixed by councillor and there are also references to his Twitter site in the name of Councillor Khan.
- 5.3 The Respondent argued that the business of his office as a councillor did not extend beyond attending and speaking at meetings of the Council or its committees or acting on behalf of his constituents. The Tribunal did not accept that argument. It is clear from the copy of the newsletter with which the Tribunal has been particularly concerned that he himself interprets his role as a councillor more widely than that and sees it as part of his role to report back to his constituents on what he has been doing and what issues he is involved with. That may not be a role which all councillors undertake but where they do then, in the Tribunal's view, the Code does apply.
- 5.4 The Tribunal accepted his contention that in his dealings with the newsletter he was not acting as a representative of the authority.
- 5.5 The Respondent also argued that in commenting on his Twitter site he was not conducting the business of the office to which he had been elected. He had

explained to the ESO that he had chosen the name Councillor Khan because Ahmed Khan was a name already in use. He further argued that the Code was written before social networking sites were common and that Standards for England only issued guidance relating to the use of social media in February 2010. He submitted that South Tyneside Council did not have a Twitter site and barred full time officers and councillors from using or accessing Twitter on council owned computers. Therefore, he submitted, it cannot be argued that comments made by members from privately owned equipment made in their own time site are official.

- 5.6 The Tribunal gave little weight to the explanation as to why the Respondent had chosen to use his title in a Twitter site. By establishing such a site the Respondent clearly ran the risk that this, like *The Beacon* newsletter, was part of the way he conducted the business of being a councillor and the Tribunal's examination of the content of the site does nothing to cast doubt on that view. The fact that he had his other Twitter site, in which he did not use his official designation, lent strength to the view that the site now in question was used by him for the conduct of his business as a councillor. In the view of the Tribunal, when posting entries on the Councillor Khan Twitter site the Respondent was subject to the provisions of the Code of Conduct.
- 5.7 The application of the Code may involve an interference with the right to freedom of expression. That right enshrined in Article 10 of the European Convention on Human Rights is subject to some exceptions and the High Court has accepted that in a democratic Society the Code if properly applied could constitute such an exception.
- 5.8 In applying the Code the Tribunal is conscious that expressions of political opinion are entitled to a high degree of protection. Bearing that in mind and the right to make objectionable comments, the Tribunal was of the view that comments he made on Twitter even if they were not justified, fell within the area for which there was that high degree of protection. The Tribunal determined that the comments on Twitter did not involve a breach of the Code of Conduct.
- 5.9 The same reasoning applied to the article in *The Beacon* about the work of the Standards Committee in South Tyneside. The Respondent was certainly entitled to make political comment about such work and, as was acknowledged by the ESO in the course of the hearing there appears to be some justification for his comments. They certainly did not constitute a breach of the Code of Conduct.
- 5.10 The Respondent does not consider that the language used in the article about the Monitoring Officer's view that a press release should not be issued following a decision not to pursue a complaint about him to "constitute a personal abuse". The Respondent says he did not call the Monitoring Officer a maggot but rather that he was like a maggot. The Tribunal does not share the Respondent's view that the distinction is critical as to whether there was a breach of the Code of Conduct. The particular reference could not be fairly regarded as the expression of a political opinion. Rather, it constituted vulgar abuse and did show a lack of respect toward the Monitoring Officer who was the subject of the analogy. The Tribunal found that by using that expression the Respondent was in breach of paragraph 3(1) of the Code of Conduct.
- 5.11 The particular article suggested that the Monitoring Officer's reluctance to issue a press release arose from a reluctance on his part to upset the ruling group on

the Council. The ESO suggested that this suggested political bias on the part of a senior officer and was a further reason for finding a breach of paragraph 3(1) of the Code of Conduct. The Tribunal regarded the statement as being more an expression of political opinion about the operation of South Tyneside Council as a whole and this was to some extent borne out by a disparity in the handling of complaints, as noted above. As such the Respondent in making such a statement was entitled to a high degree of protection from interference with his right to freedom of expression and should not be regarded as being in breach of the Code of Conduct. The Tribunal has not sought to form a view on whether the Monitoring Officer was right in his interpretation of the Council's Constitution or was motivated in the way the Respondent suggested.

Action to be taken

- 6 The Tribunal heard submissions from the ESO and the Respondent.
 - 6.1 The former commented that the Respondent appeared to show little contrition for his actions and has given little indication that he would be likely to behave differently in the future or indeed that he accepts that he has in any way breached the Code of Conduct. On the other hand, the Respondent was a relatively new councillor and the Tribunal did not need to take account of any continuing relationship with the Monitoring Officer who had retired.
 - 6.2 The Respondent had submitted prior to the hearing that ultimately he is accountable to the electorate for his actions as a councillor. He was put into office with a mandate to propagate openness, accountability and transparency. From the onset of his decision to stand as a councillor to the day he was elected, he has repeatedly promised to keep the ward members of Beacon and Bents informed of issues which affect them. Any actions taken by the Respondent have been an acknowledgement and reflection of this promise.
 - 6.3 After the Tribunal announced its decision that he had failed to treat the Monitoring Officer with respect, the Respondent asked the Tribunal to take into account that he is the only councillor not to have missed a meeting during his period of office, that he works very hard in his role and recognises that he is a very vocal councillor. The finding that he has breached the Code is a harsh lesson. If he to some degree caused hurt to Mr Scott then he can only apologise to him. He also commented, as he had done earlier in the hearing that training in South Tyneside for new councillors about the Code is virtually non-existent and it is important that new members receive appropriate and relevant training.
 - 6.4 The Tribunal also took into account that whilst the Respondent's comments about the Monitoring Officer were wrongful and insulting, they were not entirely without provocation. In asking for a press release to be issued when the Assessment Committee decided that no further action should be taken on complaints made against him, the Respondent's interpretation of the Council's Constitution, namely that he was entitled to such a press release, was not unreasonable. The Monitoring Officer's emailed refusal to issue a press release stated that the Respondent had not been cleared of the allegations but it would be equally true to say that he had not been found to have breached the Code of Conduct. The wording of any press release could have made the position clear. His frustration was understandable.
- 7 Taking all these considerations into account, the Tribunal decided that this was not a case where any period of suspension was appropriate but that the particular language

which the Respondent had used about a Monitoring officer should not be condoned. It therefore determined that the Respondent should be censured.

- 8 The decision of the Tribunal was unanimous both in finding that there had been a breach of paragraph 3(1) of the Code of Conduct and that the Respondent should be censured.

Recommendations

- 9 The Tribunal makes the following recommendations to South Tyneside Council

9.1 The Tribunal has avoided being led into detailed examination of the way the standards regime is working in South Tyneside. But examination of such papers as have been before the Tribunal has given some rise to some unease both in terms of the time being taken to bring some matters to a conclusion and in the quality of some of the decisions being taken.

9.2 The Tribunal also has a concern that the Council's media protocol as quoted in paragraph 3.5 of the ESO's reference might be seen as an unjustified interference with a councillor's rights to freedom of speech.

9.3 The Tribunal recommends the Council to commission a review of the operation of the standards regime in South Tyneside and of its media protocol and to consider the outcome of that review with a view to achieving greater confidence in the working of the regime in South Tyneside and promoting a culture which substantially reduces the number of complaints from councillors about each other.

Right of Appeal

- 10 Any request for permission to appeal to the Upper Tribunal against this determination needs usually to be made to the First-tier Tribunal within 28 days of receipt of the Tribunal's reasoned decision. Such applications need to be in writing.

David Laverick

Judge

17 September 2010