

**ANNUAL REPORT : MEMBERS' CODE OF CONDUCT**

**REPORT OF THE MONITORING OFFICER**

**1.0 PURPOSE**

- 1.1. To consider the Annual Report on the operation of the Members' Code of Conduct.

**2.0 BACKGROUND**

- 2.1. On the 11<sup>th</sup> March 2002, the Council approved the Members' Code of Conduct with an implementation date of the 1<sup>st</sup> May 2002 to coincide with the introduction of the new Constitution.
- 2.2. Within its Terms of Reference, this Committee is obliged to monitor the operation of the Code of Conduct, and this report represents the second overview since the Code of Conduct was introduced.
- 2.3. In this report I will:-
- give a brief summary of the complaints that have been referred to the Standards Board for England since the first Annual Report in December 2003
  - refer to new Regulations for the local determination and investigation of complaints
  - refer to representations made by me on behalf of the Standards Committee and the Select Committee Chairmen on the Code of Conduct
  - provide details of training and guidance given to members
  - refer to new arrangements for recording the declaration of interests
  - indicate how the Code has been publicised internally and externally
  - summarise the work of the Committee on the draft Protocol for member and officer relationships
  - propose some action points for 2005/6.

## 2.4. Complaints to the Standards Board for England

2.4.1. The following two cases were referred to the Standards Board:-

**(a) Allegation - A member failed to register an interest in the property in which they lived.**

The complaint to the Standards Board was that a member had not included details of their interest in the property where they lived in the Members' Register of Interests.

The decision of the Standards Board was that, as there was no information provided to suggest that this was more than an unintentional oversight, it was not of such significance to justify an investigation. If the alleged failure to register were to continue for more than a month from the date of the notification, the complainant might wish to repeat the allegation to the Standards Board.

Having consulted with the member, I subsequently wrote to the Standards Board to point out that the member had confirmed to me that he did not own the property in question and, therefore, had no interest to register. This information was noted by the Standards Board and my letter was placed on file.

**(b) Allegation - A member failed to declare on their Register of Members' Interests that he was a director of a limited company.**

This complaint was referred by the Standards Board to an Ethical Standards Officer for investigation.

The member had first registered their interest in the company in January 2002 and the entry was repeated in May 2002. However, at the time of the next revision of the Register in August 2002 there was some confusion on the part of my staff who wrongly interpreted the notification form submitted by the member as requiring the deletion of the member's interest in the company.

The interest in the company was reinstated by the member in December 2003 when the oversight was brought to his attention.

The report of the Ethical Standards Officer was that there was no evidence to suggest that the member intended to have his interest in the company removed from the Register, and he concluded that the member had not failed to comply with the Code of Conduct.

2.4.2. Despite the fact that there was no substance to either of the complaints, both cases reinforce the need for members to:-

- remember to register an interest if they own or lease the property in which they reside

- regularly check the Register of Interests to ensure that it is both accurate and up-to-date.

2.4.3. In May 2004, I received a complaint from a Trade Union on behalf of one of their members regarding the conduct of an elected member. I advised the Trade Union that any complaint that an elected member had breached the Code of Conduct had to be referred to the Standards Board. I am not aware that the Trade Union took any further action and I certainly did not receive any further communication on this complaint from the Standards Board.

2.4.4. A further complaint has been referred to us for local investigation and local determination, and this is due to be heard by the Standards Committee at its next meeting.

## **2.5. Regulations for the local determination and investigation of complaints**

2.5.1. New Regulations have now been introduced which enable the Standards Board to refer less serious complaints of alleged breaches of the Code of Conduct for local investigation and local determination.

2.5.2. Hopefully, these new arrangements will reduce the backlog nationally in dealing with complaints and will facilitate a speedier outcome.

2.5.3. Wherever possible or appropriate, local investigations will be undertaken by Philip Tart, Deputy Monitoring Officer and Assistant Director of Legal and Democratic Services, whilst I will act as Adviser to the Standards Committee. However, there will be occasions when this would not be appropriate (e.g. when I have given advice to a member on the declaration of a prejudicial interest which is then the subject of a complaint) in which case I will call upon a Monitoring Officer or Deputy Monitoring Officer from another local authority within the region.

2.5.4. The procedure for local determinations has been approved by the Standards Committee, and a training event for members of the Standards Committee was held in February 2005.

## **2.6. Representations made by the Standards Committee and the Select Committee Chairmen on the Code of Conduct**

2.6.1 My professional Association, the Association of Council Secretaries and Solicitors (ACSeS) has a regular dialogue with the Standards Board and is working with the Standards Board on revisions to the Code of Conduct for consideration by the Office of the Deputy Prime Minister.

2.6.2 At the request of the Select Committee Chairmen, I wrote to ACSeS in December 2004 regarding the whistleblowing provision in paragraph 7 of the Code. This requires an elected member to report another elected member to the Standards Board if they reasonably believe the member has failed to comply with the Code of Conduct. There are many concerns about the operation of paragraph 7, which has been used for overt party-political

purposes in a significant number of complaints that have been referred to the Standards Board.

- 2.6.3 I have recommended to ACSeS that if paragraph 7 survives the current review of the Code of Conduct, our Select Committee Chairmen and I propose that no member should make a referral until they have taken the matter up directly with the member who is the subject of the proposed complaint. If the member is satisfied with the explanation given, there will be no need to report to the Standards Board but, if otherwise, there will be a report and the member would be obliged to say why they are not satisfied with the explanation provided. This process would ensure that the member has reasonable grounds for the complaint and should help to weed out trivial issues and complaints which are based on a misunderstanding of the facts.
- 2.6.4 Also in December 2004, at the request of the Standards Committee, I wrote to ACSeS to suggest that, if paragraph 7 survives the review, there should be an embargo on publicising the fact that a complaint has been made or is under investigation. I advised that this is a particular concern when a complaint is politically motivated and it is disclosed to the Press to gain some party-political advantage especially in the run-up to a local election.
- 2.6.5 Furthermore, if a member whistleblows without reasonable cause, e.g. a complaint is spurious, vexatious or malicious, not only should the complaint be dismissed but the member making the complaint should be deemed to be in breach of the Code of Conduct for contravening paragraph 7 itself, and paragraph 4 (bringing their office or authority into disrepute). I explained that it was the view of the Standards Committee that this would provide an effective sanction against the misuse of the whistleblowing requirement.
- 2.6.6 ACSeS have agreed to pursue these points with the Standards Board, and I will report the outcome in due course when the review of the Code of Conduct has been completed.

## 2.7. **Guidance and training given to members**

- 2.7.1 There have been several occasions this year when guidance has been given to members regarding the Code of Conduct.
- 2.7.2 In February 2004, I circulated guidance from the Standards Board on the Register of Interests with regard to membership of the Freemasons and political-party councillor associations. In summary, members were advised that Freemasons are obliged under the Code of Conduct to register their membership of the Freemason Grand Charity, and to declare this interest where appropriate. In addition, members should register their membership of any councillor association under paragraph 15(d) of the Code of Conduct.
- 2.7.3 In March 2004, I circulated guidance from the Standards Board summarising the procedure for requesting a review of a decision made by the Standards Board **not** to refer a complaint to an Ethical Standards Officer for investigation. In essence, such a request must be addressed to the Chief Executive of the

Standards Board who will review the original allegation to see whether the proper procedure had been followed and whether the decision not to refer for investigation was a reasonable decision in the light of the evidence.

- 2.7.4 During October 2004, I sent to each member of the Council a guidance document from the Standards Board entitled "Lobby Groups – Dual-Hatted Members and Code of Conduct". This booklet essentially deals with conflict of interest situations and what a member should do if they are approached by a lobby group or the member has a dual role, e.g. they are an elected member and a school governor. These are not straightforward issues and members often seek advice from me.
- 2.7.5 I have issued two further letters of general advice to members in February 2005. The first deals with declarations of interest under the Licensing Act 2003, and gives guidance to both members and non-members of the Licensing Committee on the declaration of personal or prejudicial interests. For example, I have pointed out that if a member is an applicant or objects to a particular application on the grounds that it will interfere with the quiet enjoyment of their home adjacent to the premises, this would be deemed to be a prejudicial interest and, unlike other applicants or objectors, they would not be permitted to be present when the application was being dealt with by the Licensing Sub-Committee.
- 2.7.6 Secondly, I have written to every member to remind them of the requirements of paragraph 2.8 of the Code of Practice for Members and Officers dealing with Planning matters. Paragraph 2.8 makes it clear that any member who submits a planning application on their own behalf must notify me as the Monitoring Officer about the submission to enable me to advise the Director of the Urban Environment whose staff process planning applications. Such applications will always be reported to, and determined by, the Development Control Committee and will not be dealt with by officers under delegated powers. Paragraph 2.8 applies whether the application is submitted by the member personally or by a third party or agent acting on their behalf. Any breach of paragraph 2.8 will be reported to the Standards Committee and, if it also amounts to a breach of the Code of Conduct, the matter will be reported to the Standards Board.
- 2.7.7 Two member training events on the Code of Conduct have taken place since the last review. A Seminar available to all members was held in February 2004 and induction training for new members was arranged in June 2004 after the local elections. The feedback from both events was very positive and I have no doubt that members pay high regard to ethical standards of behaviour.

## **2.8. New arrangements for Declarations of Interest**

- 2.8.1 The public declaration of interests at a meeting by elected members is extremely important. However, our experience over the last two years or so is that the process of declarations can be time-consuming, particularly at meetings of the full Council, and it is not always easy for the Committee Administrator to accurately record all the details of each declaration.

- 2.8.2 Accordingly, following consultation with the Group Leaders, I wrote to every member of the Council in October 2004 with a revised procedure for members to give advance notice of personal interests a few days before the meeting of full Council. These interests are then collated by my staff and a written copy is circulated around the Council Chamber, including the press and public gallery. There is no need, therefore, for any further public declaration of these interests but any additional personal interests and all **prejudicial** interests must be verbally declared at the meeting.
- 2.8.3 At Committee meetings, members are asked to complete a declaration form at the meeting to enable the Committee Administrator to have an accurate record of the interest but the member is still required to declare personal or prejudicial interests verbally at the meeting.
- 2.8.4 These new arrangements have bedded down well without in any way interfering with the need for openness and accountability.

## **2.9. Publicising the Code of Conduct internally**

- 2.9.1 It is essential that the Code of Conduct is publicised and that the public, Council employees and our partners are aware of the Code and how they should pursue a complaint.
- 2.9.2 Responsibility for promulgating the Code of Conduct nationally rests with the Standards Board and, judging by the several thousand complaints that they have received, I do not believe that there is any lack of awareness or information about ethical standards or how to make a complaint.
- 2.9.3 The Code of Conduct is a part of the Council's Constitution and can be accessed via the internet. Alternatively, a hard copy is available for public access in Democratic Services in the Council House.
- 2.9.4 In January/February 2004, we published a half-page article on the Code of Conduct within "Dudley Matters" which is our in-house magazine that is sent to all employees. Furthermore, in March 2004, I did a presentation of the Code to the Management Forum which is attended by about 200 of the senior managers within the Council.
- 2.9.5 In March 2004, I was invited to submit a report on the Code to a meeting of the Dudley Community Strategic Partnership which is attended by our key partners in the public, private and voluntary sectors. I attended the meeting personally and was asked a number of questions about the operation of the Code.
- 2.9.6 During the course of 2005, I will take the opportunity to publicise further updates regarding the ethical framework, principally focusing upon the arrangements for local investigations and determinations. Presumably, the media will express some interest in the first local determination which is due to be dealt with in your next meeting, and this will help to heighten the profile of the Code of Conduct.

## **2.10 Draft Protocol for Relationships between Members and Officers**

- 2.10.1 Elsewhere on this agenda is my report on the draft Protocol. The draft has been produced following extensive consultation with Select Committee Chairmen and their lead officers, each Select Committee and Corporate Board.
- 2.10.2 When the draft has been approved by the full Council, it will be included in the Constitution and we will arrange training events for members and officers.
- 2.10.3 I am confident that the Protocol will assist the Standards Committee with its overall remit of promoting and maintaining high standards of conduct by members.

## **2.11 Action points for 2005/6**

- 2.11.1 Maintaining awareness of the Code of Conduct will continue to be a priority for the next 12 months. Accordingly, I will use internal means of communication for updating Council employees on issues such as the arrangements for local investigation and determination complaints, and I will produce a brief note for our strategic partners. The Area Committees are also a valuable way of engaging the public and, with the support of the Area Committee Chairmen, I will circulate a report on the Code to each Committee.
- 2.11.2 Our first local investigation and determination will help us to reinforce the need for members to be particularly vigilant in complying with the Code, following which I will organise another training event for all members. The three Group Leaders, the Chairman of the Standards Committee and the Chief Executive will be invited to contribute to this training seminar to reinforce the principle of leadership in promoting high standards of behaviour.
- 2.11.3 It is recognised good practice for the Leader of the Council and the Chief Executive to have clearly defined roles in promoting the importance of the ethical framework and be seen to lead by example. Accordingly, it is proposed that the Council be recommended to amend the Constitution as follows:-

### **(a) Article 7 - The Cabinet**

The following new Article 7.08 should be included at page B16:-

#### **7.08 Ethical Behaviour**

As the Council's senior elected member, the Leader will set an example to all members and employees of the Council in their conduct and the performance of their function. The Leader will take particular care in promoting the Codes of Conduct and the Protocol for Member and Officer Relationships, and will encourage attendance at training seminars organised by the Standards Committee.

Similarly the leaders of the opposition groups should set an example to the members of their respective group by encouraging compliance with the

Codes of Conduct and the Protocol for Member and Officer Relationships, and attendance of training seminars organised by the Standards Committee.

**(b) Article 12 - Officers**

The following should be inserted in Article 12.01(b) on page B28 under the functions and areas of responsibility for the Chief Executive:-

Together with the Leader, promoting high ethical standards for members and officers, particularly through training, and setting an example in their conduct and performance of their functions.

2.11.4 The Register of Members' Interests is currently only available in hard copy, but my aim is to have it accessible by the public on the internet by the 1<sup>st</sup> October 2005. The Register is a visible way of demonstrating high standards of probity and making it more readily accessible via the internet will reinforce this.

**2.12 Conclusion**

2.12.1 My overall assessment is that members are continuing to comply with the Code of Conduct. This is reflected in the low number of referrals to the Standards Board. It is further underlined by the fact that, since the introduction of the Code in May 2002, only one member has been found to be in breach of the Code and, in that particular case, it was regarded as a relatively minor breach for which no further action was required.

2.12.2 Against that background, we must continue to be proactive in ensuring that high ethical standards are maintained by members and officers, and that the perception of the public and our partners is that the Council as a whole is committed to these standards.

**2.13 Standards Committee**

2.13.1 This report was considered by the Standards Committee at its meeting on the 4<sup>th</sup> April 2005 who recommended it to the Cabinet and Council for approval.

**3. PROPOSAL**

3.1. It is proposed that this report and the action points set out in paragraph 2.11 be considered by the Cabinet and referred to the Council for approval.

**4. FINANCE**

4.1. Any financial implications arising from the promotion and maintenance of high ethical standards are met from within existing budgets.

**5. LAW**

- 5.1. The relevant provisions regarding the Members' Code of Conduct are contained in Sections 49-52 of the Local Government Act 2000 and Regulations made by the Secretary of State.
- 5.2. As Monitoring Officer, I am satisfied that both the Standards Committee and I have sufficient resources to undertake our statutory functions.

**6. EQUAL OPPORTUNITIES**

- 6.1. This report complies fully with the Council's policies on equal opportunities and diversity.

**7. RECOMMENDATION**

- 7.1. It is recommended that this report and the action points set out in paragraph 2.11 be considered by the Cabinet and referred to the Council for approval.



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J. POLYCHRONAKIS  
Monitoring Officer

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**LIST OF BACKGROUND PAPERS**

- 1. Correspondence with the Standards Board for England and with Ethical Standards Officers.
- 2. Guidance issued by the Standards Board for England on Freemasonry.
- 3. Letter sent to every member of the Council regarding Declarations of Interest and compliance with paragraph 2.8 of the Planning Code of Practice.