

## STANDARDS COMMITTEE

7 APRIL 2010

### LATEST NEWS FROM STANDARDS FOR ENGLAND

Report from: Deborah Upton, Monitoring Officer

Author: Julie Keith, Head of Democratic Services

#### Summary

This report advises the Committee of the latest guidance published by Standards for England (SfE) and the current status of the revised Councillor Code of Conduct

#### 1. Budget and Policy Framework

- 1.1 This Committee has responsibility to promote and maintain high standards of conduct by all Councillors and co-opted members including the church and parent governor representatives who serve on the Children and Adults Overview and Scrutiny Committee.
- 1.2 In order to fulfil this role effectively the Committee needs to be up to date with latest SfE guidance and associated issues.

#### 2. Background

- 2.1 Standards for England's main task is to ensure that standards of ethical conduct are maintained across authorities in England. One of Standards for England's key functions is to provide guidance for authorities when implementing the Code of Conduct with the aim of helping members, monitoring officers and Standards Committees to successfully interpret the Code of Conduct.
- 2.2 A range of guidance and toolkits can be found on the Standards for England website( [www.standardsforengland.gov.uk](http://www.standardsforengland.gov.uk)). Regular information bulletins are also published on the website.

#### 3. Latest SfE guidance and news

- 3.1 **New guidance documents:** SfE has issued a number of new guidance documents in 2010 relating to:

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The Committee may wish to consider if there are any issues covered in these guidance documents which they feel need clarification or further discussion at the meeting, or which they feel the Monitoring Officer should be circulating and promoting more widely.

- 3.2 **Annual Assembly:** booking has opened for the 2010 Annual Assembly of Standards Committees on 18 and 19 October at the International Convention Centre in Birmingham. The programme for the 2010 Annual Assembly will focus on sharing good practice, developing high standards and helping authorities to manage a proportionate, cost effective and local standards framework.
- 3.3 **Adjudication Panel:** the functions of the Adjudication Panel for England have transferred to the First-tier Tribunal (Local Government Standards in England). The First-tier Tribunal remains a separate body to SfE and hears cases concerning potential breaches of the Code of Conduct which have been referred to by ethical standards officers or Standards Committees. The transfer took place as part of the transfer of a number of Tribunals into the Tribunal Service, with new rules of procedure.
- 3.4 **Assessing the Impact of Standards Committees:** Last year SfE commissioned research into effective Standards Committee work. The qualitative research was carried out between January and September 2009. Standards Committees can now access the research which is published on the SfE website under the heading "Assessing the Impact of Standards Committees 2009" and identifies nine examples of notable practice in different authorities:

Topic	Authority identified
Organisational Learning	Bristol City Council
Working with town and parish councils	Taunton Deane Borough Council
Member development	Surrey Police Authority
Working with partnerships	Newark and Sherwood District Council
Recruitment and retention	South Cambridgeshire District Council
Training and development	Herefordshire County Council
Joint Standards and Audit Committees	Runnymede Borough Council
High pressure investigations	Greater London Authority
Embedding Standards	Newcastle City Council

- 3.5 **Delay on the new Code of Conduct:** The new Code of Conduct for Members will not be laid during this Parliamentary session. The Department for Communities and Local Government have notified SfE that the Government is concentrating on financial instruments and so there will not be Parliamentary time for the Code. In practice this means that a new Code will not now be laid until after a general election.

#### 4. Risk Management

- 4.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

This report aims to ensure that the Standards Committee is kept apprised of current legislation, guidance and best practice and to minimise the risk of Medway's procedures and practice relating to the Member Code of Conduct becoming out of date.

## **5. Financial and legal implications**

- 5.1 There are no financial implications arising from this report.
- 5.2 The Standards Committee and standards system and procedures are requirements of the Local Government Act 2000, as amended by subsequent legislation, most recently by the Local Government and Public Involvement in Health Act 2007.

## **6. Recommendations**

- 6.1 The Committee is recommended to note and discuss the guidance summarised in the report and to identify any further action required.

### **Lead officer contact**

Julie Keith, Head of Democratic Services,  
Telephone 01634 332760 Email: [julie.keith@medway.gov.uk](mailto:julie.keith@medway.gov.uk)

### **Background papers**

Standards for England Bulletin 47 – February 2010

## Freemasons and the Code of Conduct

### What is a Freemason?

Freemasonry is one of the world's oldest secular, fraternal and charitable societies. The United Grand Lodge of England administers Lodges of Freemasons in England and Wales. When freemasons pay their annual subscription fee to their respective Lodges, part of the fee goes automatically to the Freemasons' Grand Charity. The United Grand Lodge distributes charitable grants to individuals and groups through the Grand Charity.

### Why do I need to declare my membership?

Personal and prejudicial interests are covered by paragraphs 8-13 of the Code of Conduct.

You have a personal interest in any business of your authority where either it relates to or is likely to affect any body directed to charitable purposes.

Overall, freemasons are not singled out by the Code. The Code applies to membership of any body that is directed to charitable purposes.

Under paragraph 8(1)(a) (ii) (bb) of the Code, freemasons who are members of the Grand Charity must register membership of the Grand Charity in their register of members' interests and, where appropriate, declare their membership of the Grand Charity as a personal or prejudicial interest before or during council meetings. If an individual lodge is one which has charitable status or could be described as a body directed towards charitable purposes, then membership of that lodge would also need to be registered.

Councillors who are freemasons will also need to declare membership of their lodge as a personal interest in a matter to be discussed if that matter would affect the member to a greater extent than the majority of other people in the area affected by the decision. The member will also need to consider whether that interest is prejudicial. For example, if the councillor's own lodge was making a planning application it would be necessary to declare a personal and prejudicial interest when that matter is considered.

The recent government decision that freemasons will no longer need to declare their membership when applying for positions on the judiciary does not affect the need to register membership as an interest under the Code.

### Find out more

- Please read our [Code of Conduct: Guidance for members 2007](#)
- Call our enquiries line on 0845 078 8181
- Email us at [enquiries@standardsforengland.gov.uk](mailto:enquiries@standardsforengland.gov.uk)

**Published on 4th January 2010**

## Independent members

### Who is an independent member?

Independent members are members of standards committees with no link to the authority they are overseeing. They are important in helping increase public confidence in the local standards framework. They provide a clear signal that the standards committee is acting fairly and impartially. Independent members also bring a wider perspective from their outside experiences. A person can only be an independent member if they:

- have not been a member or employee of the authority for the previous five years, or
- are not a member or officer of that or any other relevant authority, or
- are not a relative or close friend of a member or employee of your authority.

### Attributes and skills of an independent member

Coming from outside the authority gives the independent member a different perspective and gives balance to the standards committee. Some of the attributes and skills expected of an independent member are:

- a keen interest in standards in public life
- a wish to serve the local community and uphold local democracy
- high standards of personal integrity
- the ability to be objective, independent and impartial
- sound decision-making skills
- questioning skills
- leadership qualities
- the ability to chair meetings.

### The process of selecting an independent member

The position of independent member will be published in at least one local newspaper and in other similar publications or websites.

Each authority will have slightly different procedures for the recruitment of independent members but all will have an application and interview process. The appointment of an independent member has to be approved by a majority of the members of the council.

Each authority decides how to select independent members and how long an independent member should sit on the committee. This period of time should be long enough for them to gain an understanding of the committee, the authority and its workings, but not so long that independence is lost.

### Independent members on multiple standards committees

An independent member can be a member of several standards committees, for example on county and district committees. Independent members may also be temporarily appointed to another standards committee to consider a particular

assessment, review or hearing or for a particular period of time. For example, an independent member can be appointed to a neighbouring standards committee for a short period in situations where a permanent member is unwell or if there is a conflict of interest.

### **Reappointment of independent members**

Standards for England recommend independent members should serve no longer than two four year terms, but this is at the discretion of each authority.

Independent members cannot be automatically reappointed, and must go through a recruitment process.

### **Find out more**

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**Published on 4th January 2010**

## Charitable Trustees and declarations of interest under the Code

### Introduction

This guide is aimed at councillors who are trustees of charitable organisations. It explains the different types of charities that you may be involved in. It also aims to provide you with a better understanding of your role so that you know when to register and declare your interest under the Code of Conduct.

Any mention of a charitable organisation in this guide refers to a registered charity or an unregistered body which is directed to charitable purposes.

### Understanding your charity

There are two main types of charities, incorporated charities and unincorporated charities.

An **incorporated charity** is a corporate body which has a legal existence that is separate from the individual persons that form it.

Most incorporated charities are limited companies registered with Companies House and the Charities Commission.

An **unincorporated charity** may be a 'trust' or 'association'.

An unincorporated charity cannot itself 'hold' the legal title to land or other forms of investment because it has no separate legal status. For this reason, its land or investments will be held on its behalf by:

- individuals or an incorporated body known as a custodian trustee
- a holding trustee or
- a nominee.

### Appointment

A charity's governing document sets out your charity's purposes and how it is to be administered. It will also, usually, set out how trustees are to be appointed which can vary according to the individual charity.

The governing document may be:

- a trust deed
- a constitution
- memorandum and articles of association **or**
- another document.

A trustee can be appointed directly by a charitable organisation or nominated by their local authority. He or she may be appointed to manage the charity or to only hold the title to the charity's land or investments. It is important to understand your role as a trustee in order to understand if you have an interest to register.

## Charity trustees

Charity trustees serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members, or they may be referred to by some other title. For example, some charity trustees are known as 'officers' and have special responsibilities such as chair, treasurer or ex-officio trustee. An 'ex-officio trustee' is a type of charity trustee who is in that position because of their office, such as the mayor of a town or the head teacher of a school.

Whatever their title the principles and main duties of a charity trustee are the same. Charity trustees have and must accept ultimate responsibility for directing the affairs of a charity. They must ensure that it is solvent, well-run, and delivers the charitable outcomes for which it has been set up, for the benefit of the public. To act outside of their powers is a breach of trust.

## Nominated trustee

Sometimes an individual is nominated by an organisation to be a charity trustee. For instance, a local authority may nominate its councillors onto the governing body of a charity that operates in its area and for which it has provided funding. Despite being appointed in a different way, nominated trustees (sometimes known as representative) have the same legal duties and responsibilities as any other charity trustee.

## Other types of Trustee

There are three types of trustees who only hold the charity's land or investment; a custodian trustee, a holding trustee and a nominee.

A **custodian trustee** is a corporation, such as the treasury solicitor, limited companies, health authorities, local authorities or other types of organisations, whose main function is to hold the legal title to all investments and property on behalf of the charity. Note that an individual can never be one.

A **holding trustee** and a **nominee** can either be an **individual** or a **corporation**. They too hold the legal title to a charity's property or investments on behalf of the charity.

## Corporate trustees

A corporate trustee is a corporation such as a local authority which has itself been appointed to act as a trustee of a charity. It may be appointed as a charity trustee or custodian trustee (holding trustee or a nominee) or both.

A local authority may act as the custodian trustee only if the charity is for the benefit of the people living in the whole or part of its area, and not an ecclesiastical charity or a local charity for the relief of poverty. For example, parish councils are often appointed custodian trustees of charitable village halls, recreation grounds and youth clubs.



If the corporation is appointed as a charity trustee it may be a “trustee for all purposes” acting on its own (a sole trustee) or one of a number on a body of charity trustees (a joint trustee). A corporation does not itself need to be charitable to be a trustee of the charity.

Many local authorities act as sole trustees of local charities – especially charities for recreational or educational purposes. This means the local authority as a corporate body both holds the property and oversees its application as a charity trustee.

If a local authority is itself the charity trustee, it decides within the scope of local government law, what structures should be used to reach decisions in its name as a charity trustee. For example, it may decide all the decisions are to be reached by the council or it may decide to delegate the decisions to a separate management committee. Whatever the structure employed, the individual councillors concerned are not themselves charity trustees and are not required to register their role in relation to the charity in their register of interests. When making charity decisions at the council or management committee meetings, they must only act in the best interests of the charity and independently of their local authority interests.

### **What personal interests should I register?**

The Code of Conduct says you have a personal interest in any business of your authority where it relates to or is likely to affect an interest that you must register. You must register your membership or position of control or management in:

- any body to which you are appointed or nominated by your authority
- any body directed to charitable purposes

If you are a charity trustee, you must always register your interest in the charity whether you are appointed directly by the charity or nominated by your local authority. This is because you are a member and in a position of management over the charity.

An example of this would be paying the charity’s employees or making decisions on the organisation direction.

### **Are there circumstances when I do not have to register a personal interest?**

Yes there are. A holding trustee or nominee who only holds the charity’s land or investment will not have a personal interest and will not need to register an interest. This is because he or she will not be a member of the charity nor in a position of general control or management. This type of trustee can only act on the lawful instructions of the charity trustees and in accordance with any provisions contained in the governing document.

**Please note:** Holding the legal title to a charity’s property is usually all that holding trustees do. However, occasionally a charity’s governing document may confer additional powers and responsibilities on a holding trustee. If you are a holding trustee who has any decision-making powers in the way the affairs of the charity are managed – either solely or together with other trustees you will be acting as a charity trustee and must register your interest as explained above.

If you do not have any of these decision-making powers, then you will not need to register your interest as an individual holding trustee.

### **Personal interests that affect your well-being or financial position**

It is important to remember that even when your role does not give rise to an interest that needs to be registered it may still be a personal interest that you need to declare. This is because a decision in relation to the business of your authority which relates or affects the charity might reasonably be regarded as affecting your well-being or financial position more than it would affect the majority of inhabitants of the ward or electoral division or authority's area affected by the decision.

For example, you might have a personal interest if you are on a local authority's management committee, a trustee of a non-charitable trust, or a holding trustee or nominee.

### **Case Example**

Haven Parish Council ("council") is the custodian trustee of Haven Village Hall. Councillor Jones is a parish council member and has been appointed by the Council to the governing body of the Village Hall Trust ("Charity Trustee"). The village hall is in need of repairs and the Charity Trustee applies for a council grant for the repairs. The council meets to consider the surveyors report and agree the funding. Does Councillor Jones need to declare any interest at the meeting?

- As a custodian trustee the council holds the legal title to the Haven Village Hall. The council will be able to act as a custodian trustee if the charity is for the benefit of the people living in the whole or part of its area. However the council can only act on the lawful instructions of the charity trustees of the Village Hall Trust. The council itself is not a charity trustee.
- Councillor Jones has been nominated on to the governing body of the Village Hall Trust by the council. Whether appointed directly by the trust or nominated by the council, Councillor Jones is a charity trustee. He must register this interest because he is a member and in a position of general control or management of a body to which he has been nominated by the council and also as it is a body which is directed to charitable purposes.
- When the matter relating to the grant application comes before the council, Councillor Jones will have a personal interest which he has registered and he must declare this interest at the meeting.
- As the matter affects the financial position of the trust, Councillor Jones may also need to declare a prejudicial interest and withdraw from the room if in his view an objective person would consider his interest as so significant that it is likely to prejudice his judgment of the public interest.

**Find out more**

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**Published on 4th January 2010**

## Blogging Quick Guide

Blogging and social networking are effective methods for councillors to interact with constituents and support local democracy. Used effectively, they can engage those who would not normally have access to local councillors and politics.

Standards for England support the use of such media and encourage councillors to get online. You should think about what you say and how you say it, in just the same way as you would when making statements in person or in writing.

You will also need to think about whether you are seen to be, or give the impression that you are acting in your official capacity as a councillor. To make sure you comply with the Code of Conduct (the Code) and to ensure your use of online media is well received we suggest the following general hints.

### Do

- set appropriate privacy settings for your blog or networking site – especially if you have a private, non-political blog
- keep an eye out for defamatory or obscene posts from others on your blog or page and remove them as soon as possible to avoid the perception that you condone such views
- be aware that the higher your profile as a councillor, the more likely it is you will be seen as acting in your official capacity when you blog or network
- ensure you use council facilities appropriately; if you use a council provided blog site or social networking area, any posts you make will be viewed as made in your official capacity
- be aware that by publishing information that you could not have accessed without your position as a councillor you will be seen as acting in your official capacity
- make political points, but be careful about being too specific or personal if referring to individuals. An attack on individuals may be seen as disrespectful, whereas general comments about another party or genuine political expression is less likely to be viewed as disrespect.

### Don't

- blog in haste.
- post comments that you would not be prepared to make in writing or face to face
- use council facilities for personal or political blogs.

### When the Code may apply

Bear in mind the Code when you blog or use social networking sites. You should pay particular attention to the following paragraphs of the Code:

- Disrespect
- Bullying
- Disclosure of confidential information
- Disrepute
- Misuse of authority resources

However, it is difficult to give definitive advice on the application of the Code as each blog and social networking page is different. The content of a blog or other social networking tool and the circumstances surrounding its creation will determine whether or not it might be covered by the Code.

Ethical use of online social media is not limited to what is covered in the Code. We encourage members to respect the [Ten General Principles of Public Life](#). While your conduct may not be a breach of the Code it may still be viewed as less than exemplary and attract adverse publicity for your office and authority.

### **Find out more**

- Please read our [Code of Conduct: Guidance for members 2007](#)
- Call our enquiries line on 0845 078 8181
- Email us at [enquiries@standardsforengland.gov.uk](mailto:enquiries@standardsforengland.gov.uk)

**Published on 25th February 2010**

## **Notifications to parish and town councils concerning complaints about their members and the Standards Committee (England) Regulations 2008 (the 2008 Regulations)**

The 2008 Regulations make it clear that parish and town councils must be given notification that a complaint concerning one of their members has been assessed. After that, unless the initial assessment sub-committee decides to take no action on the complaint, the parish or town council must then be informed of certain significant subsequent steps taken in dealing with that complaint.

### **What information should be received?**

Where a sub-committee of a standards committee meets to assess an allegation or to review a decision it must send in writing to the parish or town council concerned the main points considered, its conclusions, the reasons for its decision and may name the member unless to do so is not in the public interest or would prejudice an investigation. The decisions are whether to investigate the allegation, or whether to take some other action in relation to the alleged behaviour.

A parish or town council should also receive notification after a standards committee meets to consider the report into an investigation and whether to accept a finding about whether a councillor has breached the code of conduct or not. They should also receive notification of the outcome of a hearing and reasons for it, if one is held.

### **When should notifications be sent?**

The duty to give notifications has no specific time frame. The general rule is that notification should be given as soon as is reasonably practicable. However, Standards for England recommend that notification be sent out within five working days of the decision being made for most decisions and within two weeks of any hearing being concluded.

### **The purpose of notifications**

As a parish or town council you will be given these notifications to inform you of a case against one of your members and to keep you informed of significant events as the case progresses. This is important so that you have time to prepare or preserve evidence relevant to the complaint. You will also be able to make appropriate arrangements between the member and an employee where the complaint has been made by the employee. The rationale of the notification is to facilitate the standards committee's action, not to start new action within the parish or town council.

### **What to do when you get a notification**

Each council needs to consider what it can lawfully do with the notifications it receives. Parish or town councils should consider putting in place protocols that deal with:

- access to information
- sharing of information
- how various legal obligations are met including those under the general law of confidentiality, the Freedom of Information Act and the Data Protection Act.

### Notification procedures

Standards for England recommend that each parish or town council adopt procedures about how to deal with notifications. The clerk should then notify the monitoring officer of these procedures once they have been implemented so that the monitoring officer knows who to send the notifications to. The rules should clearly set out the limits on what information each member, employee and the public are able to receive about each complaint.

They should:

- Ensure that if the council is to be informed of a notification it is normally done by sending out an information item for members, rather than including the notification on the agenda of a council meeting.
- Choose a nominated employee (usually the clerk) and select a council committee to deal with and be informed of such notifications when they are received.
- The nominated employee and the committee should, if required to discuss the notification at a council meeting:
  - draft the summonses and agendas so the identity and subject matter of the complaint are not disclosed
  - ensure that any background papers are not made public
  - ensure that the public and press are excluded from meetings where appropriate
  - ensure that the minutes of meetings are written so as to preserve confidentiality
  - make appropriate arrangements, where the complainant is an employee, between the employee and the subject member.
- Take into account who will deal with providing further evidence or information needed by the standards committee about a complaint, be it the nominated employee or a member of the selected council committee.

By having appropriate arrangements in place your parish or town council will ensure that the rights of all concerned in a complaint will be considered. They will also ensure that complaints are dealt with lawfully, effectively and fairly, and will identify only those who need to know or are entitled to know certain information at the various stages of a complaint.

### Find out more

- Please read our [Code of Conduct: Guidance for members 2007](#)
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**Published on 4th January 2010**

## **The role and appointment of parish and town council representatives to the standards committee and the Standards Committee (England) Regulations 2008 (the 2008 Regulations)**

Paragraph 4(2) of the 2008 Regulations states that, 'where an authority is a responsible authority, it must ensure that at least two members of the standards committee are members of parish councils for which it is responsible, who are not also members of the responsible authority.'

Paragraph 7(4) of the 2008 Regulations states that, 'where a meeting of a standards committee, or sub-committee of a standards committee, is convened to discharge any function specified... relating to a member or former member of a parish council, no decision may be taken unless at least one member of a parish council for which the authority is the responsible authority, is present when such matters are being considered.'

### **The role of parish representatives**

Parish representatives can be involved in any case being considered by the standards committee. However, the 2008 Regulations make it a requirement that any sub-committee or standards committee meeting that makes any decision on a case concerning a parish councillor has to have a parish representative.

Having a parish representative on cases about parish or town councillors ensures that the standards committee has a member with experience and understanding of local councils. They also bring with them knowledge about local issues which is helpful when assessing parish cases.

### **The best structure for a responsible authority's standards committee**

Although the legislation states that a standards committee of a responsible authority must have at least two members that are parish councillors, Standards for England recommends they have three and that at least two are from different parish councils.

### **Why is it important to have three parish representatives?**

Having three parish representatives on the standards committee of an authority will ensure that cases concerning parishes can be considered and dealt with in a timely manner. It ensures there are sufficient parish representatives to hear a case at all stages; even in the instance where one of the representatives is conflicted out, sick, on leave or otherwise unavailable.

In cases where a standards committee only has one parish representative who is conflicted out of dealing with a case, the authority will have to appoint a new parish representative before continuing with the case. The 2008 Regulations do not make it possible to borrow a parish representative in the way they do independent members.



Your authority must decide how to recruit and appoint parish or town council representatives. Your parish and town council representative should have the trust of town and parish councils in your area, so you should involve them in the selection procedure.

If you are finding it difficult to find a parish or town council representative, your local county association of local councils may be able to help you. For example, the county association may be able to give you a list of possible candidates. They may also be prepared to conduct an election process for you.

This process should receive the support of the parish and town councils in the area and show that you want to appoint standards committee members in a fair and open way.

**Note:** Not every parish or town council in a district area has to have an appointed standards committee member.

### **Find out more**

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