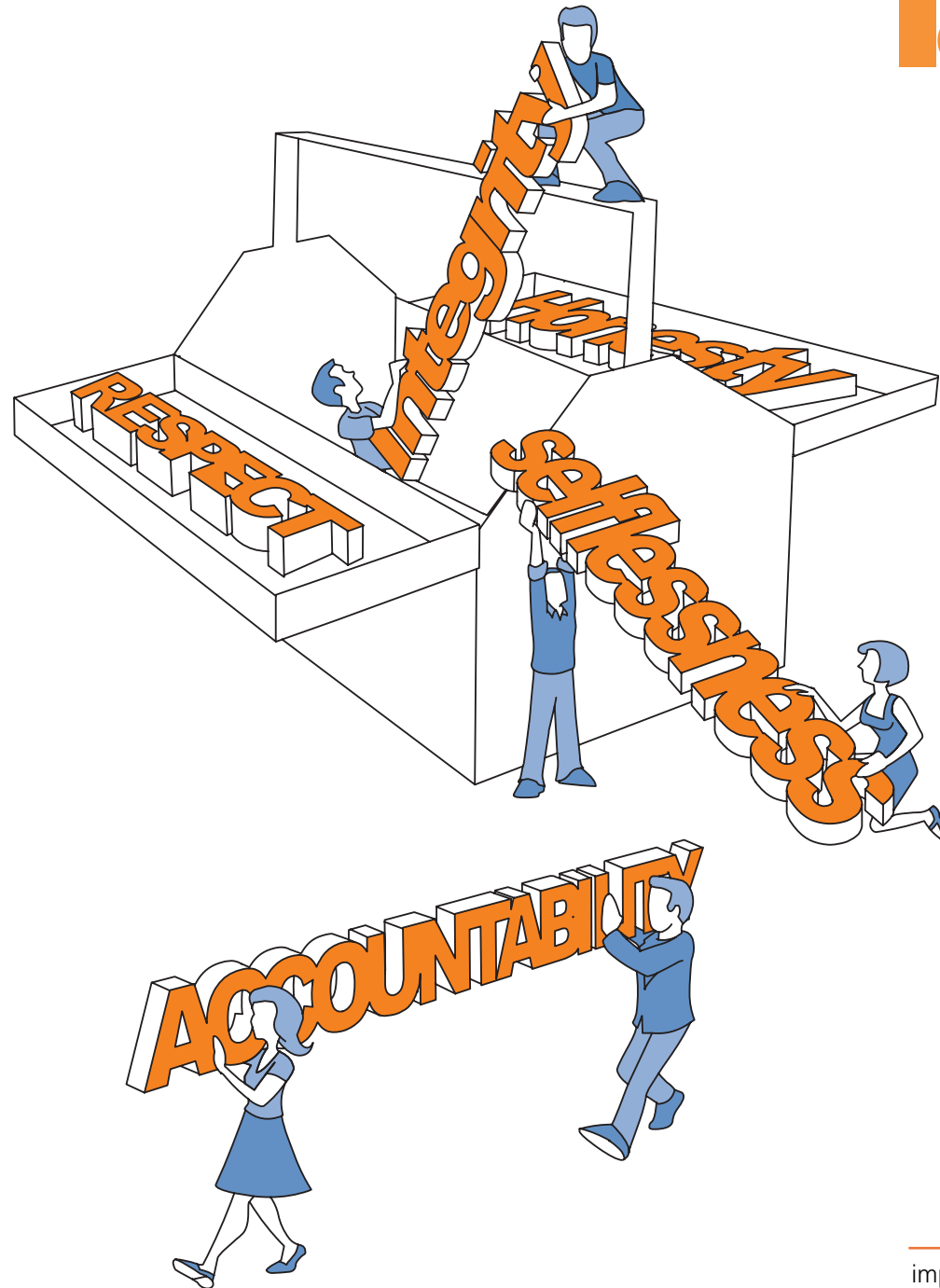
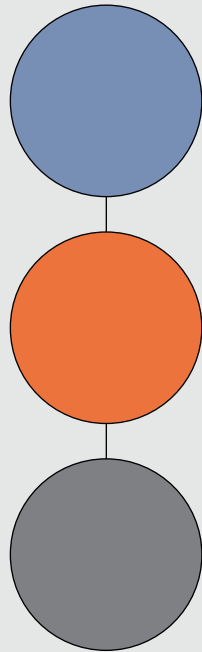


ethical governance toolkit

scenarios

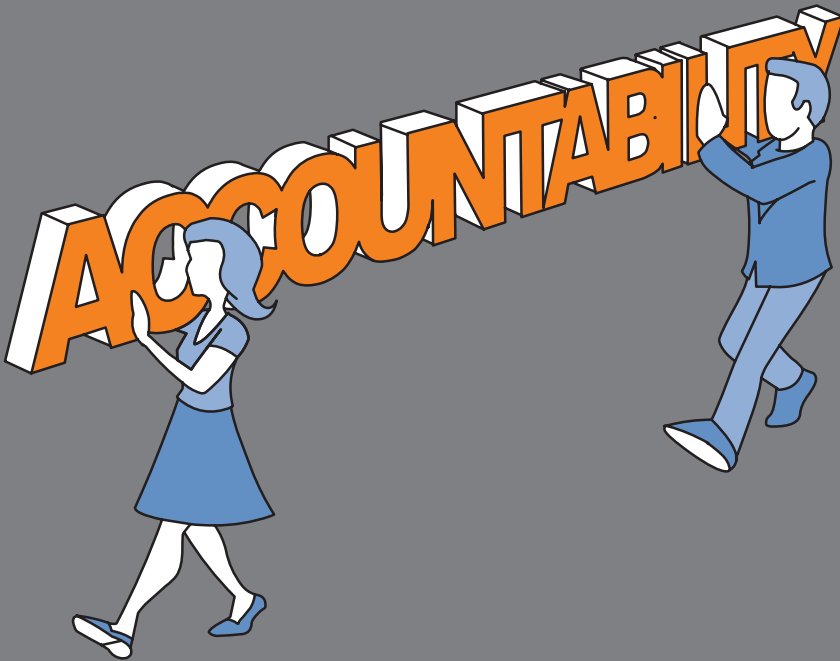




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The following is a set of scenarios that can be used in a workshop session. Facilitators should select those scenarios which best address the issues identified following Audit Commission diagnosis or IDeA light touch health check. Some of the scenarios focus on the Code of Conduct while others consider the wider ethical environment.

The scenarios and responses have been updated to reflect the revised Code of Conduct May 07.

Each scenario is set out separately, and followed by commentary. The commentary is in the form of:

- advice on the Code of Conduct
- appropriate response options.

The scenarios and commentary should be used to help generate discussion. For example, the facilitator can explore with the group:

- in what circumstances would there be/not be a breach of the code?
- what other action could be taken?
- what could the monitoring officer do?
- what could the standards committee do?
- what could the chief executive do?
- what could the political group leader(s) do?

The facilitator can look beyond the Code of Conduct and encourage the group to consider the roles to be played by the monitoring officer, standards committees, chief executive and party political leaders. Below are some examples of the types of action that could be taken by these people.

The monitoring officer should consider whether the authority should take any other action in order to preserve good administration and reputation. This could include clarifying a policy, removing facilities from a councillor (such as access to certain equipment), training, and discussions with political group leaders.

A standards committee could consider the wider ethical implications of a behaviour and recommend what action the council might take to address those issues. Where the issue being considered is the action of an officer, the appropriate senior officers could consider what measures need to be taken, following, if appropriate, the council's normal HR procedures. This may lead to amending/improving policies in the light of the issue. The standards committee may be involved in the consideration of these wider issues and in making recommendations for improvement.

The council is responsible for self regulation to ensure the smooth running of its affairs.

The chief executive should lead by example and ensure that they take an active role in promoting the ethical agenda. They could work with politicians and officers to resolve issues that have not been resolved by the political groups. The chief executive can also play a role in ensuring that adequate support is provided to the monitoring officer and other officers who might find themselves in a difficult situation.

Political group leaders should act as role models and take responsibility for the actions of their group. Other action could include taking councillors off committees or panels where their continued presence is counterproductive and ensuring that their group members receive briefings and training to develop their effectiveness as councillors.

The councils external auditor may also be interested where the issue concerns arrangements for securing economy, efficiency and effectiveness (including the role of the monitoring officer and the standards committee). They may also be interested in issues that result in unlawful expenditure or a matter on which the auditor could make a report in the public interest. Some behaviours may be subject to legal challenge and or be referred to the police.

For further information access: [Guidance on standards committees](#), [How to conduct an investigation](#), [Local investigations](#).

1. unfair advantage: disrepute

Officers have made an anonymous complaint to a Monitoring Officer against a councillor. They allege that he has been putting pressure on officers to give council housing to single parents (from whom he has allegedly been receiving sexual favours in return).

Has there been a breach of the Code?

code advice

The councillor may have been in breach of paragraph 3(2)(d) of the Code: 'You must not do anything which compromises, or is likely to compromise, the impartiality of those who work for, or on behalf of, your authority'.

In addition, there may have been a breach of paragraph 6(a) of the Code: 'You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage'.

It could also be argued that there has been a breach of paragraph 5 of the Code: 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.'

appropriate response options

Depending on the procedures in place in the authority for handling new complaints, the Monitoring Officer should pass the complaint to the Standards Committee's local assessment sub-committee for assessment. The local assessment sub-committee will then assess the anonymous complaint to determine if it should be referred for investigation or other action.

Although Standards Committees can investigate anonymous complaints, the threshold for referring such complaints for investigation is higher. The Standards Board strongly recommends that anonymous complaints should only be considered in limited circumstances. Authorities should publish a statement setting out how complaints received anonymously will be dealt with. Also, when considering whether or not an anonymous complaint should be referred for investigation, the Standards Committee must assess whether the alleged action or behaviour can be investigated without requiring any further recourse

to the complainant. Such complaints should not be referred for investigation unless they provide information that can form the basis for an investigation (for example, other witnesses or documentary evidence).

If the complaint is referred to the Monitoring Officer for investigation the Monitoring Officer may arrange a meeting with the complainants and the senior manager with responsibility for housing services. If there is any evidence to substantiate the allegations, the Monitoring Officer should discuss with the chief executive whether or not the matter should be put in the hands of the police.

It should also be remembered that other applicants on the Housing Register have the right to be treated fairly, and therefore this matter could give rise to a valid complaint to the Local Government Ombudsman.

The Monitoring Officer should seek to ensure that the council complies with its published policies, which cannot be altered without consulting tenants. The complainant could also invoke the council's whistle blowing policy, if they had any fear of reprisals.

2. disrepute

A pool attendant at the council's leisure centre has written a letter of complaint about a councillor. He says that last Saturday when he was at the local supermarket, a woman took the parking space that he had been waiting for. She then got out of her car and shouted at him.

The pool attendant claims the woman swore at him and bent his car aerial. Another person who witnessed the incident told him that she was a local councillor.

Has there been a breach of the Code?

code advice

The primary issue to consider is whether the councillor was acting in an official or personal capacity when the incident took place. It is unlikely on this occasion that she would have been acting in her official capacity.

However, she may have been in breach of paragraph 5 of the Code: 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.'

Until such time as there is Parliamentary approval for amendments to s.52 of the Local Government Act 2000 which reinstates the position prior to the decision in the case of Livingstone -v- Adjudication Panel for England (APE) 2006, the Code does not apply to conduct outside of a councillor's official capacity.

Only if a councillor has engaged in an act that has a link with the functions of their office will conduct in their private capacity be covered by the Code. If the legislative amendments are passed, the Code will also apply to criminal actions that lead to a conviction even if they take place in a private capacity.

appropriate response options

The monitoring officer could await the outcome of any criminal proceedings. If the councillor is convicted of a criminal offence, and the above amendment has been enacted, the monitoring officer should consider if the circumstances were such that a reasonable person may consider that the actions brought the councillor or the authority into disrepute.

appropriate response options 2 continued

If so, the monitoring officer could suggest to the employee that he is considering making a complaint to their local standards committee.

Alternatively, the matter could be dealt with by way of a local resolution (e.g. an apology, compensation and advice and training, supported by the chief executive and standards committee).

3. disrepute and conferring an advantage

The council has sold several plots of land, all of which were subject to restrictive covenants preventing building on the plots. A councillor bought one of the plots. He obtained planning permission, and started to build a house on his plot in contravention of the covenant.

A local resident has complained, alleging that the councillor has received favourable treatment and requesting that the council enforce the covenant.

Has there been a breach of the Code?

code advice

If there is evidence that the councillor brought pressure to bear on officers or used his position to obtain favourable treatment, namely, not to enforce the covenant, there may have been a breach of paragraph 6(a): 'You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage', and paragraph 3(2)(d): 'You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for, or on behalf of, your authority'.

appropriate response options

The monitoring officer should speak to the council officer responsible for the sale of its land and establish whether or not the covenant is to be enforced.

However, where planning permission has been granted, the Lands Tribunal will normally release a restrictive covenant.

In the event that the monitoring officer's investigation reveals that the councillor has put pressure on officers to delay or to not recommend enforcement, it may be on the facts that either a local resolution or a complaint by the local resident to the local standards committee is appropriate.

If the monitoring officer's investigation reveals that the council is to enforce the covenant affecting the councillor's land, the monitoring officer may write to the complainant explaining that the councillor will not be treated any differently to a local resident in relation to the covenant and any possible future enforcement action.

4. disrepute, personal or prejudicial interest

The council is involved in negotiations with a private contractor to develop a regeneration scheme involving the building of a leisure, residential and retail development in two council wards. The contractor's managing director has invited members of the regeneration scrutiny committee (some of whom are also members of the planning committee) and officers from the Regeneration Department to a presentation of his company's proposals in a corporate box at a premiership football ground. There will be a champagne reception followed by a premiership football match.

Should they accept the offer?

code advice

The scrutiny committee members should decline the offer as acceptance could potentially breach paragraph 5 of the Code: 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.'

In addition, it should be noted that any gifts or hospitality worth £25 or over that are received by members in connection with their official duties as a member must be registered. There is also a personal interest that must be declared (see paragraph 8(1)(a)(viii)). When a matter is considered that is likely to affect the contractor who gave the registered hospitality, they would have to consider whether that interest is also prejudicial.

The perception of members of the public is that by providing the hospitality, the contractor is attempting to influence the council's decision about awarding the regeneration contract. Members of the public may consider that at a future date members of the Planning Committee considering the above development will not consider the planning issues but instead be influenced by the generous hospitality; regardless of whether this is actually the case.

appropriate response options

The scrutiny committee members should decline the offer, and the planning department officers should also decline. Many councils also have a protocol that requires registration of hospitality even when it is declined.

Members should ensure that the offer made, and the fact that it was declined, are logged in the Member's Register of Gifts and Hospitality.

appropriate response options 4 continued

The Code does not cover council officers. However their contract of employment may contain similar provisions, and they should have regard to the Prevention of Corruption Act 1916, and section 117(2) Local Government Act 1972.

5. disrepute, prejudicial or personal interest

The chief executive and leader of the council are offered complementary tickets to a ballet performance at a national theatre. The theatre in question owes a substantial debt to the council (£50,000).

Should the leader accept?

code advice

The leader should decline the offer.

Acceptance would require the hospitality to be registered and under paragraph 8(1)(a)(viii) would automatically become a personal interest when the matter of the debt is considered by the council. The leader would have to declare the existence and nature of the gift, the person who gave it, and how the business under discussion (i.e. enforcement of the debt) relates to the hospitality provided.

In addition, when the matter of the debt is considered by the council, the leader would have to consider whether that interest is prejudicial. This is possible because it relates to the financial position of the theatre. The question is would a member of the public with knowledge of the relevant facts reasonably regard acceptance of the tickets as likely to prejudice the leader's judgement of the public interest?

appropriate response options

This is about the perception by members of the public that the leader would be influenced by the corporate hospitality when making a council decision concerning the theatre and/or its debt.

The monitoring officer, to whom the declaration is usually made, should advise the leader about the tests to apply.

The chief executive is not bound by the Code. He should register the offer of hospitality and consider what his council's officer code of conduct says (if the council has one) and what benefit might accrue to the council if he were to attend.

6. personal or prejudicial interest

The planning committee has received an application from a company to build a small office block. The development would be in a conservation area.

One of the councillors on the planning committee is the godfather of a senior manager in the development company.

What kind of interest, if any, does the councillor have?

code advice

The councillor should consider whether he has a personal and prejudicial interest in the planning application.

Paragraph 8(1)(b) of the Code provides that a member has a personal interest in any business of their authority where their own well-being or financial position, or that of 'a relevant person', is likely to be affected by the business of their authority more than it would affect the majority of:

- inhabitants of the ward or electoral division affected by the decision (in the case of authorities with electoral divisions or wards)
- inhabitants of the Assembly constituency affected by the decision (in the case of the Greater London Authority)
- inhabitants of the authority's area (in all other cases).

The fact that the councillor is the godfather of a senior manager employed by the applicant is not enough, by itself, to create a personal interest. The real issue in this case, which is not clear from the facts provided, is whether the nature of the relationship between the councillor and the senior manager defines the senior manager as 'a relevant person'.

Under paragraph 8(2) of the Code, 'a relevant person' includes family members, people with whom a member has a close association, any person or body who employs or has employed such persons, any firm in which they are a partner or any company of which they are directors.

code advice 6 continued

The Standards Board for England has issued guidance to help clarify this definition. The Standards Board believes a member of your family should be given a very wide meaning. It includes a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity), a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a brother or sister of your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, and the partners of any of these people.

The Standards Board believes a person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts.

If the senior manager falls into the definition of 'a relevant person', his or her employer (the applicant in this case) would automatically fall into this category also under paragraph 8(2). As a consequence, a personal interest will arise as the company will be affected to a greater extent than others as it is their own application.

The councillor would then have to consider whether they have a prejudicial interest. This depends on whether a member of the public, who knows the relevant facts, would reasonably think the personal interest is so significant that it is likely to prejudice his judgement of the public interest. Again, this would depend on the nature of the relationship between the councillor and the senior manager.

The councillor should also be advised of the general prohibition under paragraph 6 of the Code against improperly using or attempting to use their position as a member to confer on or secure for themselves or any other person an advantage or disadvantage.

appropriate response options 6

The monitoring officer should advise the councillor accordingly and refer them to any relevant planning protocol, if appropriate.

8. personal or prejudicial interests

A councillor is an active member of Greenpeace and a member of the council's planning committee. The council is supportive of the local nuclear power plant, and is engaged in discussions to develop a site to process nuclear waste from other parts of the country.

What kind of interest, if any, does the councillor have in those discussions?

code advice

This councillor is likely to have a personal interest under paragraph 8(1)(a)(ii)(cc) by virtue of the membership of Greenpeace (a body whose principal purposes includes the influence of public opinion or policy).

The councillor cannot have a prejudicial interest in a decision unless the matter affects the financial position of Greenpeace (which is unlikely) or is an application for approval, consent, licence, permission or registration submitted by Greenpeace itself (which it is not). This means that the councillor is unlikely to have a prejudicial interest and is free to take a full part in the meeting.

In any event, Greenpeace tends to have policies and views on waste disposal nationally, and Greenpeace expressing views on general waste disposal issues would not give the councillor a prejudicial interest.

appropriate response options

The monitoring officer should advise the member to register his membership of Greenpeace and declare it, when this matter is considered for decision at any meeting of the council or its committees.

9. improper advantage

You are a councillor. During a dinner party conversation, you are told that another councillor is using his position to elicit free drinks from a number of local pubs. The councillor concerned does not sit on the licensing committee.

Has there been a breach of the Code?

code advice

The councillor may be in breach of paragraph 5 of the Code: 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute', and paragraph 6 (a): 'You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage'.

appropriate response options

It is likely that the councillor in this case is in breach of the Code. He is clearly not 'on duty' when eliciting free drinks but he may have given the impression that he was acting as a representative of the council. Although he may not be in a position directly to confer an advantage or disadvantage on any of the local publicans, he is conferring an advantage on himself (free drinks). In doing so, he may be bringing himself and his office into disrepute.

10. personal or prejudicial interest

You are at a party and you see your portfolio holder for environment arriving arm-in-arm with the director of environment.

What action, if any, should you take?

code advice

Of itself, having a relationship with an officer is not a breach of the Code of Conduct for a member, but it is likely to be a breach of, or against the spirit of the officer's contract of employment.

If the environment portfolio holder and the director of environment are having a relationship, conflict of interest issues could come into play. The member must be aware of this risk and seek to avoid situations where this could be a problem, e.g. where the officer's pay or grade was being discussed.

The member would have to consider whether the relationship would give rise to personal/prejudicial interests.

If it were two members arriving together, there would be no issue.

appropriate response options

Refer to the monitoring officer or chief executive – this relationship may have been disclosed under a protocol on councillor and officer relations and appropriate action taken to protect separation and independence of advice and decision-making.

It is accepted good practice that any action should not be driven by a moral stance on private lives in respect of adultery or civil partnerships. Their privacy should be protected as far as it is practical to do so as the Human Rights Act 1998 allows individuals the right to personal and family life.

11. improper influence, personal or prejudicial interests

Mrs Whiley, a councillor, is an accountant in a local practice. One of the larger building firms in the area is one of her clients. The firm is tendering for a contract to build a sheltered housing scheme for the council.

Suppose:

- a) Councillor Whiley is a councillor of the finance and contracts scrutiny committee
- b) Councillor Whiley is a councillor of the cabinet, and involved in the decision to award the contract.

In each case, what actions (if any) should she take when the item comes to be considered at committee?

code advice

In response to both scenarios (a) and (b) above, Councillor Whiley should consider:

- whether she has a personal or prejudicial interest in the tender decision
- if her involvement could be regarded as using her position improperly to confer an advantage on the client of her practice.

Paragraph 8(1)(b) of the Code provides that a member has a personal interest in any business of their authority where their own well-being or financial position, or that of 'a relevant person', is likely to be affected by the business of their authority more than it would affect the majority of:

- inhabitants of the ward or electoral division affected by the decision (in the case of authorities with electoral divisions or wards)
- inhabitants of the Assembly constituency affected by the decision (in the case of the Greater London Authority)
- inhabitants of the authority's area (in all other cases).

A personal interest may arise if the financial position of Councillor Whiley's accounting practice and the building firm were very closely linked. For example, if the accounting practice was very small and the client very valuable to the practice.

If a personal interest does arise, the interest is also likely to be prejudicial since it will affect the financial position of the practice. A member of the public with knowledge of the relevant facts is likely to reasonably regard the interest as so significant that it is likely to prejudice the councillor's judgement of the public interest.

code advice 11 *continued*

In scenario (a) above (where the tender is being considered by the finance and contracts scrutiny committee), if Councillor Whiley has a prejudicial interest in the tender, she must declare to the scrutiny committee that she has a prejudicial interest and the nature of that interest as soon as that interest becomes apparent to her. She should then leave the room and not seek to improperly influence the decision.

If her authority's constitution or standing orders allow members of the public to attend and address scrutiny committees, Councillor Whiley may be provided the same opportunity under paragraph 12(2) of the Code, despite having a prejudicial interest in the decision. Once she has finished or when the meeting decides that she has finished (if that is earlier), she must immediately leave the room. She cannot remain in the public gallery to observe the vote on the matter.

If Councillor Whiley's authority does not allow members of the public to address scrutiny committees (which is the common scenario), Councillor Whiley cannot rely on paragraph 12(2) and seek to address the meeting if she has a prejudicial interest in the tender. It should be noted that if Councillor Whiley were invited by the scrutiny committee to attend under section 21(13)(b) of the Local Government Act 2000 in order to circumvent the Code's requirements, she may still be in breach of the Code.

In scenario b), where Councillor Whiley is a cabinet member involved in the decision, Councillor Whiley must not be involved in the making of the decision if she has a prejudicial interest. Normally, with a prejudicial interest, she would be required to withdraw from the room after making representations, answering questions or giving evidence if the public have a right to do so. However, to avoid being in breach of paragraph 6(a) she should take no part in the decision-making process at all.

Paragraph 11 of the Code provides a separate category of prejudicial interests in matters before an overview and scrutiny committee. Cabinet members will have a prejudicial interest in any business before an overview and scrutiny committee of their authority where the business relates to a cabinet or executive decision or action taken and the member was involved in that decision or action.

Accordingly, as explained in scenario (a) above, Councillor Whiley will not be able to attend the meeting to give evidence or answer questions on the matter unless members of the public are allowed to attend the overview and scrutiny committee for the same purpose.

However, the Code is overridden by section 21(13) of the Local Government Act 2000. This section obliges an executive member to attend an overview and scrutiny meeting to answer questions so this overrides any Code provision that might prevent that happening. Where such a committee extends such an invitation to a member who is on a committee and was involved in making a decision which is being scrutinised, and that member is asked to attend a private session to answer questions about that decision, the Standards Board for England is not likely to be interested in any complaint made about that member having a prejudicial interest by doing so. If the member concerned sought to sit on the overview and scrutiny committee considering the decision they had been involved in making (as in scenario (a) above), that would be a different matter and the Standards Board would be likely to investigate in that situation.

appropriate response options 11

The monitoring officer should advise the councillor about her duties under the Code.

12. personal or prejudicial interests

You sit as a non-executive member on the board of the local hospital trust. The hospital is undertaking a drive to reduce the length of in-patient hospital stays for elderly patients.

You are also a member of the council's cabinet. Your council has a policy to reduce council tax and is considering funding this through the reduction of home care support and the closure of an elderly respite home.

When sitting as a council cabinet member faced with this decision, how should you behave?

code advice

Under paragraph 13 of the Code your membership of the board should be recorded on your register of interests. Therefore when discussing this matter you have a personal interest.

However, as your personal interest arises solely from your membership of a body exercising functions of a public nature, under paragraph 9(2) of the Code you only need to declare your interest if and when you speak on the matter.

Membership of the board is unlikely to give rise to a prejudicial interest as the council cabinet are not considering funding of the hospital trust.

appropriate response options

Appointment to Trust Boards is by the Secretary of State after nomination by the Appointments Commission. This form of joint working is being promoted by central government and the council should welcome this opportunity for you to promote close working with the health sector.

13. bullying, disrepute and improper advantage

Councillor Smith accompanied some constituents to the housing benefit office to help them with their claim. The Councillor was loud, swearing at staff, 'You lazy f***** b*****', demanded immediate attention, interrupted discussion in the office and made disparaging comments about the housing benefits service.

Has there been a breach of the Code?

code advice

This scenario would be likely to give rise to a failure to comply with paragraphs 3(1), 'You must treat others with respect'; 3(2)(b), 'You must not bully any person'; 5, 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'; and 6(a), 'You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage'.

appropriate response options

Immediate action: the officers who were involved in the incident should be given support in making a complaint to their local standards committee. The Adjudication Panel for England has in similar circumstances disqualified a member for 18 months. The officers should be advised to treat the benefit applicants in the same way as other applicants, so as to avoid maladministration.

The leader and chief executive could find out what the member has to say about future conduct – e.g. is he willing to apologise to staff, through correspondence to the chief executive or standards committee? If no such commitment is forthcoming, options include banning Councillor Smith from visiting the housing benefit office. This is for the protection of staff and good administration of the authority rather than for any breach of the Code. The authority must recognise its duties under employment law and powers under administrative (not disciplinary) provisions.

appropriate response options 13 *continued*

The chief executive, monitoring officer and standards committee should consider what actions the council could take to protect staff from further such incidents of verbal abuse and intimidation by a councillor (particularly if staff were in fear of violence). They could introduce, if they do not already exist, a member/officer relations protocol and a protocol on bullying. If these protocols do exist they could remind members and officers of these protocols.

The monitoring officer (or appropriate officer) could work with political parties and especially group leaders to help elected members and the community understand the role of elected members.

14. chairing the standards committee

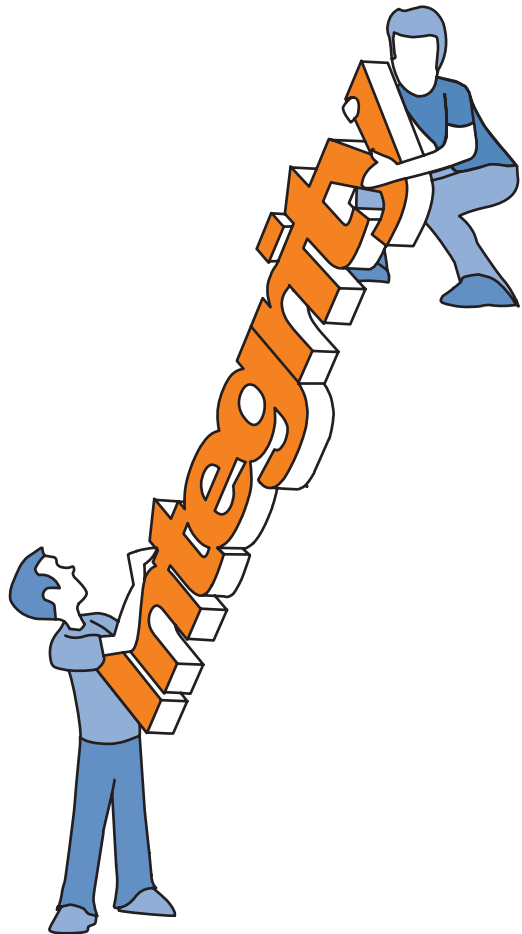
Here are two scenarios regarding standards committee chairs:

(a) The chief whip of the majority group has been chair of the standards committee for at least four years. Her vice-chair is also a councillor of the majority party. There have been no recent suggestions of inappropriate behaviour in the council but there were in the past. The chief whip of the majority group was instrumental in changing the culture of the council.

The chair of the committee is well known in the area for promoting proper procedures. The council sees no reason to change current arrangements, which they consider are working well.

(b) The chair of the standards committee is an ex-mayor. She has been given the chair of the committee as a way of saying thank you for her loyalty and hard work. She is unaware that two members have been referred to the standards committee, doesn't know anything about the poor Comprehensive Performance Assessment rating, has little grasp of the Code and considers all is well in the council.

What are your views on the chair of the standards committee?



code advice 14

There has been no breach of the Code in either case. However, the chair of the standards committee must be an independent member so the authority will need to appoint an independent member of the standards committee as a new chair.

appropriate response options 14

The Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007, provides that the chairman of the standards committee must be an independent member. In both cases the authority will need to appoint a new chair as soon as possible to conform with the legislation.

15. role of the standards committee

Councillor behaviour and officer/councillor relations are an issue in the council. There have been articles and letters in the press, and the issues were highlighted in the council's Corporate Governance Inspection and Comprehensive Performance Assessment reports and by the Improvement and Development Agency (IDeA). The council has dismissed the findings as being factually wrong and biased against the council. At least one case has been referred to the Standards Board for England.

The standards committee has not considered any of the issues. The chair has been told by the political leadership that the issues are being dealt with elsewhere.

What could the standards committee do?

code advice

There has been no breach of the Code. However, there is guidance from the Standards Board for England, which relates to the wider role that standards committees have to play in the ethical environment of their authorities.

appropriate response options

Local residents, partners and staff should have confidence that the council is reaching decisions in an open, honest and transparent way. This view of the council cannot be left to chance, and the standards committee has a role to play in strengthening their council's ethical culture.

Under the Local Government Act 2000, standards committees have five 'statutory functions'. They must:

- give the council advice on adopting a local Code of Conduct
- monitor the effectiveness of the Code
- train members on the Code, or arrange for such training
- promote and maintain high standards of conduct for members
- help members to follow the Code of Conduct.

The Department for Communities and Local Government's guidance for English local authorities suggests that local authorities may arrange for their standards committees to exercise further functions according to local choice. These might include:

- overview of internal and external audit
- overview of the whistle-blowing policy

appropriate response options 15 *continued*

- overview of complaints handling and Local Government Ombudsman investigations
- review the constitution, making sure it is designed to reduce the opportunity for misconduct by ensuring decisions of the executive are taken after proper discussion, and making sure processes are accountable to members and the public
- making sure that relations with outside bodies are managed properly
- assessing reports from the Local Government Ombudsman and Audit Commission
- commenting on members allowances
- dealing with protocols for members and council employees
- identifying risk problems and risk factors
- developing procurement procedures.

Working with the leader, chief executive and monitoring officer, the standards committee could update and publicise the following:

- a clear articulation of council values
- complaints procedures
- whistle-blowing policy
- risk assessments
- corporate policies.

These could be communicated via posters, bulletins, websites, training, posters or meetings.

In some councils some of these functions are undertaken by an audit committee, who with the standards committee can oversee corporate governance.

In some councils the monitoring officer works closely with the chair of the standards committee to set its work plan.

The standards committee must receive notice of the decisions of the Adjudication Panel, under section 79 of the Local Government Act 2000. This might enable the committee to make recommendations to the council arising from the decisions.

16. role of the chief executive

There have been a range of issues facing the council about councillor behaviour and officer/councillor relations. The issues have been focused around one councillor. Although it is clear that all is not well, there have been no complaints to the standards committee and the problems are 'low level' but recurrent. The chief executive is reluctant to get involved, so the issues have been left to the political party to sort out.

What could the chief executive do?

code advice

There has been no breach of the Code.

appropriate response options

The Standards Board for England is encouraging chief executives to be proactive in:

- a) setting and demonstrating high standards of ethical behaviour, openness and honesty
- b) resolving issues around poor councillor behaviour, if they have not been addressed and resolved by the political parties. This could take the form of:
 - involving the standards committee in this issue
 - talking to leaders of political parties about behaviour
 - ensuring training is provided to members (and encouraging them to attend)
 - talking to individual members
 - ensuring that any guidelines on appropriate/inappropriate behaviour are circulated.

17. disrepute, conferring advantage

The community generally holds the council in low regard. Every week the local paper includes disparaging articles and letters about the council. Some residents think that the way to get things done is to invite councillors out for a meal or other form of entertainment.

What can the council do?

code advice

If councillors are accepting meals and/or entertainment in return for 'getting things done', they are in breach of paragraph 6 (a) of the Code: 'You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage'. They are also likely to be in breach of paragraph 5: 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

appropriate response options

The council may want to consider why it is held in such low regard. The standards committee could oversee a plan to change public opinion. But first it will want to ensure that the council is in good shape and residents' beliefs that the way to get things done is to offer a personal invitation to a councillor to an event are unfounded. Members may need training on the role, rights and responsibilities of elected members.

The standards committee is required under statutory guidance to arrange appropriate training for members, and this is an area where it may wish to achieve member development.

The Audit Commission relationship manager and other outside agencies can offer help and guidance to the council.

The communications team could co-ordinate a PR campaign to help get some positive stories into the newspaper.

18. register of interests – public access

The standards committee has considered on several occasions whether or not the members' Register of Interests should be available on the council's website. The political leadership is opposed to publication on the website. It considers that publication on the web site will lead to lots of problems and breach members' right to privacy.

The registers of members' interests and hospitality and gifts and the Code of Conduct are available from the monitoring officer at the town hall during office hours. The standards committee agendas and minutes are available on the council's web site.

What should the council do?

code advice

No breach of the Code. Sensitive information (e.g. shares in or employment by contentious companies, and publication of home addresses) can be retained in a separate part of the Register in certain circumstances.

Sensitive information is defined as that which, if made publicly available, creates, or is likely to create, a serious risk of violence or intimidation for the member or anyone living with the member.

appropriate response options

The usual concerns about publicity and privacy raised by members are overridden by the requirements under section 81. The council should be encouraged to be more open. Experience elsewhere suggests that open access to this type of information is not abused. The Audit Commission strongly recommends that the open part of the register of members interests required to be completed by members and maintained by the monitoring officer under section 81 of the Local Government Act 2000 should be published on the council's website.

Guidance on the Data Protection Act and the Freedom of Information Act published by the Information Commissioner may also be relevant.

19. Code of Conduct – signing by members

The standards committee has considered on several occasions whether or not members of all council panels and committees should sign the Code of Conduct. The monitoring officer has advised that there is a regular turnover of co-opted non-voting members, and so it would not be a practical proposition for these members to sign the Code. Furthermore, it is not practiced in other authorities.

What should the standards committee do?

code advice

The Code of Conduct applies to members who are elected, co-opted and appointed. Section 49 of the Local Government Act 2000 essentially defines a co-opted member as an unelected person who can vote at committee or sub-committee or joint committee or joint sub-committee meetings. Therefore non-voting co-optees are not covered by the Code unless they come under the definition of an appointed member. A non-voting co-optee may well be appointed within the ordinary meaning of the word but will not be a “member” for these purposes.

appropriate response options

Any councillor must sign up to the Code. Any member of a council, executive or committee, sub-committee, joint committee, joint sub-committee or area committee, who is there with a voting capacity, must sign the Code. Each member must sign an undertaking to comply with the Code as part of their declaration of acceptance of office under section 83 of the Local Government Act 1972 within two months of their election or co-option.

Non-voting co-optees are not required to sign up to the Code.

People appointed to the office of councillor must sign up to the Code.

Monitoring officers must provide a copy of the constitution to all councillors, and the Code is usually contained in the constitution.

20. discrimination, promoting equality

Independent members of the standards committee have heard from several sources that the leader of the council is considered to be racist by community partners. They have also heard that people living in the north of the council's area get a raw deal from the council because that area does not return any members of the majority party and that the leadership does not value the contribution of women members and officers. The asylum seeker service is housed in a temporary building in the car park, the council spends less than its neighbours on services for people with disabilities and those services have been rated as poor.

Do you consider that councillors or the council have been acting in a discriminatory manner?

code advice

Principle 7 of the Relevant Authorities (General Principles) Order 2001 states that 'members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability.' Members must have regard to this principle but it does not form part of the Code and is not an enforceable legal obligation.

With regard to the leader's allegedly racist behaviour, if this behaviour has occurred whilst the leader has been conducting the business of their authority, or acting, claiming to act or giving the impression that he is acting as a representative of his authority, this could be in breach of paragraph 3(1) of the Code, which states 'You must treat others with respect', and paragraph 3(2)(a), which states 'You must not do anything which may cause your authority to breach any of the equality enactments' (as defined in section 33 of the Equality Act 2006).

There are unlikely to be other Code breaches involved in the facts as outlined.

appropriate response options

Advice on the Code issued by the Standards Board for England underlines the positive duty on councils to promote equality, and so it would be appropriate for the standards committee to ask how the requirements of the equalities legislation have been integrated into council policies and procedures and made a reality in the council. For example, how is the council conducting and implementing equalities impact assessments?

appropriate response options 20 continued

The committee should be monitoring the implementation of the Code of Conduct, ensuring that members understand their duties under paragraph 3 of the Code and relevant anti-discrimination legislation.

The Comprehensive Area Assessment (CAA) from 2006 onwards focuses on the positive impact of the council on its residents. Councillors would therefore be well advised to consider whether their current approach is likely to have a detrimental impact upon their CAA rating, and what actions they should take to improve the situation.

21. compromising officer impartiality, disrepute, bullying

Councillor Brown produced and distributed a leaflet. The leaflet names certain opposition members and claims that the council was investigating allegations that those members had bullied some council officers into delaying the opening of a refugee centre. The leaflet also names the officers who were allegedly bullied in this way.

Councillor Brown did not report his concerns to the monitoring officer and when asked to substantiate his claims, failed to do so. Instead, Councillor Brown invented witness statements and attempted to hamper the monitoring officer in his investigation of the matter by writing abusive emails and making threatening phone calls.

Councillor Brown also attempted to persuade the monitoring officer to mislead the council about the investigation.

Has Councillor Brown breached the Code of Conduct?

code advice

Paragraph 3(1) requires a member to 'treat others with respect'. Paragraph 3(d) states a councillor 'must not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the authority'. Paragraph 3(b) states that a member must not 'bully any person' while paragraph 5 states that a member must not bring his office or the authority into disrepute. It is likely that the councillor has breached all of these provisions of the Code.

appropriate response options

The monitoring officer and/or members should ask why Councillor Brown did not raise his concerns through the appropriate channels such as the monitoring officer, chief executive or leader.

The monitoring officer would not be investigating Councillor Brown's behaviour unless there was a complaint, and this should be addressed to the relevant standards committee.

The monitoring officer could advise Councillor Brown on legislation relating to defamation.

appropriate response options 21 continued

Consideration could be given to removing Councillor Brown's access to less senior officers. This is something the chief executive might discuss with Councillor Brown's party leader.

Depending on how threatening he had been, the police could be involved.

In taking local action, regard should be given to any potential breach of member/officer relations protocol.

22. disrepute

Councillor Henry lived near a postal depot whose workers were on strike in support of a colleague suspended for constantly losing letters. On observing a number of workers crossing the picket line he yelled 'scabs!' at them in a hostile manner and said that they should be ashamed of their actions.

One of the workers recognised him as his local councillor and reported him for his behaviour to the local council, believing that an elected councillor should not act in this way. Councillor Henry defended his actions to the council by stating that where he grew up, in the Welsh coalfields, 'people did not cross picket lines'. In any case, he argued, he was acting in a private capacity and therefore was not in breach of the Code of Conduct.

Has there been a breach of the Code?

code advice

The key question here is whether Councillor Henry was acting in a private capacity only and therefore, whether the Code applies to his behaviour in this case.

The Code applies to members when they act in their official capacity, including whenever they conduct the business of their authority or act, claim to act, or give the impression they are acting in their official capacity or as a representative of their authority. Despite the wording in paragraph 2(3) which states that certain paragraphs in the Code may apply at any time, the Code does not apply where a member is acting in a purely private capacity. Only if a member's alleged misconduct is linked to the functions of their office will any conduct in their private capacity be covered.

In this case, there is nothing to show that Councillor Henry was acting as a councillor or performing any functions of his office. Therefore, the conduct is unlikely to be within the scope of behaviour to be capable of amounting to a breach of the Code. The Local Government and Public Involvement in Health Act amends the Local Government Act 2000 to enable the Code of Conduct to cover some conduct in a private capacity. It covers conduct that has led to a criminal conviction.

This amendment seeks to address the High Court's decision in *Livingstone v. Adjudication Panel for England* in 2006. Prior to this decision, it was understood that a member could breach the Code through their conduct in a private capacity. The High Court decided that section 52 of the Act required members

code advice 22 continued

to comply with the Code in their official capacity only, and that it could not govern the private conduct of members. Until the amendment becomes law, private capacity conduct cannot be covered by the Code.

If this case arose after this amendment to the Act, Councillor Henry's conduct would still be outside the scope of the Code as it would not be criminal conduct that had received a conviction.

appropriate response options 22

What is acceptable behaviour will differ dependent upon personal and public roles and context. This was a political comment and action – the councillor did not threaten or use his position as councillor in any way.

23. misusing official position

Councillor Keane regularly parked his car illegally and has received parking fines amounting to £400 over the past two years. In order to try to avoid paying the most recent fine, Councillor Keane used official council paper and his title when writing to the parking enforcement authority to appeal against the fine. He argued, falsely, that he had a parking permit for that particular area but was waiting for its renewal.

When accused of using his position to improperly secure an advantage for himself, Councillor Keane argued that he was merely letting people know who he was and that as an elected representative he was free to use his title 'as everybody else does'.

Was there a breach of the Code?

code advice

Paragraph 6 (a) states that a member must not use or attempt to use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage. In linking the council to the parking offences by using council paper and his title when writing to the parking enforcement authority, his behaviour may also constitute bringing the authority into disrepute – a breach of paragraph 5 of the Code.

appropriate response options

The leader and monitoring officer could bring to his attention any protocol on the use of council resources.

The standards committee could ensure that a protocol on use of council resources is in place, is clear and unambiguous, and that members have received adequate training regarding the protocol.

The chief executive could write to the parking authority to disassociate the council from statements made by Councillor Keane.

The leader and chief executive could consider the removal of access to resources until the allegation to the standards committee is determined.

24. misuse of council resources

Councillor Townsend has regularly used a council laptop. He has signed the council's IT protocol for members, which includes a requirement not to use the equipment for anything other than council business, and not to lend council IT equipment or disclose his passwords to third parties.

However, Councillor Townsend allowed other people to use the laptop and when it was returned to him found that pornographic material had been downloaded onto it. He asked the council's IT department to remove this material and not to tell anyone about it.

Has Councillor Townsend breached the Code?

code advice

Paragraph 6(b) states that a councillor 'must, when using or authorising the use by others of the resources of the authority...act in accordance with the authority's requirements.'

By asking the council's IT department to remove the offending material without informing the relevant people (for example the monitoring officer) the member could be in breach of paragraph 3(2)(d) which states that a councillor 'must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority'.

appropriate response options

Any provisions of protocol on the use of resources and agreement with member on the use of IT equipment should be invoked.

Councillor Townsend could be suspended from using IT until the complaint to the Standards Board for England is determined (be aware of alternatives if this is the only way in which Councillor Townsend may access information required to carry out his basic duties as a councillor – it may be necessary to arrange for the councillor to have supervised access to IT equipment).

If there is any suggestion that any of the downloaded material was illegal (e.g. it involved children), the police must be informed immediately. The IT department officers must treat the laptop as potential evidence, and not access the laptop at all unless authorised to do so by the police.

If there is not an IT protocol in place then serious thought should be given to developing one.

25. failure to declare personal and prejudicial Interests

Councillor Lampard sat on a council disciplinary panel. The case involved an employee who had received a final written warning for disciplinary offences, but had repeated the behaviour that gave rise to the final warning. The panel convened to determine whether the employee should be dismissed.

The employee was Councillor Lampard's nephew. Councillor Lampard did not advise the other panel members of this, and helped persuade the panel not to dismiss the employee.

Has there been a breach of the Code?

code advice

Councillor Lampard should have declared a personal and prejudicial interest in this matter. He was required to disclose the fact that the employee was his nephew, as a nephew is defined by the Standards Board's guidance as being a member of the councillor's 'family' and therefore a 'relevant person' under paragraph 8(2)(a) of the Code of Conduct.

If Councillor Lampard had declared a personal and prejudicial interest, he must consider whether he can take part in the panel meeting at all. Under paragraph 10(2)(a) a member does not have a prejudicial interest in any business of the authority unless it affects the member's financial position or that of a person or body described in paragraph 8. As a decision to terminate the nephew's employment would affect the nephew's financial position, Councillor Lampard cannot rely on paragraph 10 and therefore still has a prejudicial interest.

However, under paragraph 12(2) when adopted by the council, or from 1 October 2007 – whichever is earlier, if Councillor Lampard has a prejudicial interest he can attend the meeting for the purpose of making representations, answering questions or giving evidence provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. It is most unlikely, however, that the public would have the right to attend a council disciplinary panel meeting. Therefore, Councillor Lampard would not be able to rely on paragraph 12(2) in order to speak at the meeting.

If Councillor Lampard makes representations, he could still breach paragraph 12(1)(c) if he improperly tried to influence those present with his representations.

code advice 25 continued

Councillor Lampard should declare a personal and prejudicial interest and not take part in the deliberations or voting of this panel.

appropriate response options 25

The monitoring officer should consider the legality of the panel's decision, due to the bias of the councillor involved (failure to act according to natural justice). The human resources manager should consider whether the council's disciplinary hearing procedures provide adequate protection against conflicts of interest of this type and, if necessary, address any gaps in the procedure.

It may be necessary to arrange for a re-hearing.

Separate disciplinary action against the employee could be considered for failing to disclose a conflict of interest.

26. failure to declare personal and prejudicial Interests

Councillor Campbell's husband had on a number of occasions informally advised a council employee about ways to improve her contract with the council and how she might receive better benefits. Mr Campbell also attended a council appeals panel in order to provide informal support for this employee. The employee was an acquaintance of his, not a friend.

The case was later discussed at a committee meeting, which Councillor Campbell attended. She did not declare an interest, nor did she withdraw from the meeting. It was later alleged that, due to her husband's relationship with the employee, Councillor Campbell had a personal and prejudicial interest in the matter. Some members considered that Councillor Campbell had a personal interest since her husband's relationship with the employee was relevant to her well-being, due to him being either satisfied or dissatisfied with the council's decision on the employee's contract.

It was also considered that given the amount of time her husband had spent advising and assisting the employee, that an ordinary member of the public with knowledge of all the relevant facts would also consider it to be a prejudicial interest.

What kind of interest, if any, does Councillor Campbell have?

code advice 26

It is possible that Councillor Campbell had a personal but not a prejudicial interest. If so, she should have disclosed the personal interest and its nature but she would have been allowed to remain in the room and take part in the meeting.

It should be noted that the employee is not a family member or close associate of Councillor Campbell herself and it should be considered to what extent any decision would affect her husband's well-being to a greater extent than other inhabitants in the ward affected by the decision (or authority if Councillor Campbell is a parish councillor).

Would the husband's association with the employee be significant enough to give Councillor Campbell a prejudicial interest? This is unlikely unless the decision will affect her husband's financial position.

appropriate response options 26

The monitoring officer should consider the committee's decision from the point of view of potential bias and consider whether their decision was flawed by reason of bias, or if there has been any maladministration.

27. disrespect

Councillor Percy claimed on her website that a number of named members and officers had abused their positions and mismanaged council finances.

The councillor defended her actions by arguing that she was acting in the public interest and for the benefit of open government. She also argued that the named members and officers had forfeited their right to respect by their actions. She further claimed that under the European Convention on Human Rights she was merely exercising her right to freedom of speech and in any case, was not acting in her official capacity when she made the comments.

Has there been a breach of the Code?

code advice

The duty to treat others with respect only applies to councillors when acting in their official capacity. This means when they are:

1. carrying out the business of the council – not applicable here
2. acting as a councillor – which may apply here
3. acting as a representative of the council – not applicable here.

The question that needs to be asked is whether Councillor Percy is acting as a councillor when posting her comments on her website? This may well depend on the facts. It may depend on whether it is a council provided website, and to what extent a person looking at the website would assume Councillor Percy was making the comments as a councillor and whether she is signing her name using the title 'councillor'.

If it was decided that the website is private business carried out by Councillor Percy then it could only fall under the Code if her conduct is a criminal offence for which she has been convicted – which it is not. In any case, that would be dependent on the amendments proposed in the Local Government and Public Involvement in Health Bill coming into effect (see response to scenario 22 above).

If it is a councillor website, then Councillor Percy may be in breach of the requirement in paragraph 3 (1) of the Code to treat others with respect. In determining whether a breach has occurred, much would depend on the severity of Councillor Percy's comments and the language and tone used. The seniority of the officers would also need to be taken into account since it may be considered as particularly inappropriate for more junior members of staff to be subject to such public criticism by a councillor. This may constitute bullying by

code advice 27 continued

the councillor, as the officers will be unlikely to be able to defend themselves. This would be a breach of paragraph 3(2)(b).

The allegations may also be defamatory, but this is a civil matter in respect of which those involved may seek legal advice e.g. from a Citizens Advice Bureau, or their own solicitor.

If it is decided that Councillor Percy was acting in her 'official' capacity, then it is arguable that she is also bringing herself and her authority into disrepute, contrary to paragraph 5 of the Code. This would arise if the content of the website is particularly unpleasant.

appropriate response options 27

The monitoring officer could advise Councillor Percy in relation to the law on defamation and the difference between qualified privilege or fair comment and actionable defamation. However, the monitoring officer is not insured to do so. If the website is council provided, and the content breaches the council's IT protocol, then the IT manager might take the website down, as the council would be a publisher of defamatory material.

The monitoring officer should advise Councillor Percy on any councillor and officer protocol.

The monitoring officer could advise that although Article 10 of the Human Rights Act gives rise to a right to freedom of expression, including a right to impart information, this right is qualified, requiring the protection of the reputation or rights of others, and the prevention of disclosure of information received in confidence.

If the claims made by Councillor Percy were about more junior members of staff then Councillor Percy should be advised that a more appropriate course of action would be to address these concerns with the relevant head of department.

28. officers working for other employers

The information systems manager works full time for the council. He has been assisting a firm of IT Consultants, which has been developing the council's updated tax and benefits information system.

The consultants are now moving on to develop an entirely new tax and benefits information system for the council; they have said that they were very impressed with the work of the manager. The consultancy has offered him an excellent package to undertake one week's work on developing this new system.

The manager is keen to undertake the work; the extra money will be extremely useful at this time of year.

What should the manager do?

code advice

Officers are not yet covered by a statutory code of conduct but they may have signed a code of conduct with their contract of employment.

appropriate response options

If the information systems manager wants the work, he should seek permission from the council that employs him. It may be that he could do the work through the authority (secondment or contract for services between the consultants and the council).

The information systems manager should consider section 117 (2) of the Local Government Act 1972 (offence of accepting, under the colour of one's office, any fee or reward other than proper remuneration).

The information systems manager may hold a politically restricted post and should ensure that there is nothing that he is required to do which would be in breach of those restrictions. There may be issues concerning the intellectual property rights arising from any work that he does for the consultants, on which he may wish to take advice.

29. gifts and hospitality – officers

The open spaces manager at the council is preparing the tender specification for a new contractor to re-lay and maintain the council's sports pitches. A well-known company that specialises in artificial turf and sports pitches has contacted him.

The company invites the open spaces manager to view some of their artificial surfaces in situ. The invitation is to Ascot Racecourse, where the artificial grass has been laid for several years, and receives heavy traffic. As it will receive most traffic on Royal Ascot race day, the company suggests the manager should visit on race day, when he can make use of their hospitality tent and, of course, bring his spouse.

What should the manager do?

code advice

Officers are not yet covered by a statutory code of conduct, but they may have signed a code of conduct with their contract of employment.

appropriate response options

This is beyond work requirements – the use of the hospitality tent and offer of a ticket for the officer's spouse demonstrates this.

Good practice is for officers to record not only gifts and hospitality accepted, but also those that are offered but declined.

The manager should look at what is in the council's standing orders/rules.

The manager may choose to go the day after the races, alone or with another appropriate officer, but would be expected in most councils to enter this in a hospitality register, and in some to set out the benefit to the council arising from the visit.

The officer needs to be aware of corruption acts (particularly reverse burden of proof in the Prevention of Corruption Act 1916) as well as the common law offence of misconduct in public office. In view of the fact that the tendering process is commencing the officer should be most circumspect, and it may be more appropriate for elected members to conduct a site visit at a later stage, rather than the officer accepting this offer of hospitality.

30. officers' reports and councillor briefings

During the regular chairman's briefing before papers are issued for committee, the vice-chair asks the officer present if she could amend a recommendation in one of the reports.

He explains this is because he has had years of experience in this field and does not feel the recommendation would be workable. He states that he tried to come in and see her the week before but, because she was on holiday, he took the file from her desk and read it. The contents confirmed his opinion. He also feels that her recommendation would not be politically acceptable to his fellow councillors.

Has there been a breach of the Code?

code advice

There may be a breach of paragraph 3(2)(d) of the Code of Conduct, which states 'members should not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of the authority'. In this case, it appears that the councillor is directing the officer to change her recommendation, which is likely to compromise her impartiality. On the other hand, the councillor may be raising legitimate concerns about the recommendations to an officer who is at a level of seniority where such challenges are appropriate. If that is the case, and the councillor expresses his view in an appropriate manner, it is unlikely his behaviour would constitute a breach of the Code.

Removing the file from the officer's desk and reading it may raise concerns in relation to treating others with respect, but this is not likely to be serious enough to justify the cost of investigation.

appropriate response options

Officers' reports are based on their professional opinions, although they must have regard to political realities within the council. Therefore, it would be inappropriate for a councillor to direct an officer in this manner.

It is for the officer to determine whether to amend the report or to leave it as it is (in which case councillors must not pressure or direct change). Councillors can overturn the recommendation at committee, and this occurs, where good reasons can be shown at planning committees.

appropriate response options 30 continued

Councillors' access to information must be channelled through the proper officer and in line with agreed protocols and statutory requirements. It should be pointed out that taking the file from the officer's desk without permission is not the proper way to get access to the file. The taking of files by unauthorised persons may be in breach of data protection laws.

The scenario also raises concerns about members' involvement in day to day operations rather than strategic decision making.

An appropriate response would be to use the officer/member briefing mechanism to exchange advance information and to explore political sensitivities prior to drafting of reports and recommendations.

The standards committee and monitoring officer should ensure that all members are aware of:

- policy on officer reports and rules of delegation
- legislation and protocols for access to information and in particular the additional rights of members of scrutiny committees
- guidance on the role of chairman's briefing.

31. officer/councillor relations, disrespect

An officer presented a report to the council's overview and scrutiny committee. During the meeting, a councillor stated as a loud aside to the other members and officers: 'Don't listen to her, you can't rely on her advice'.

Previously, the councillor had received advice from the officer against taking a course of action, which she believed was not good practice and should not be pursued. The councillor was unhappy with the advice.

The officer complained about the aside to her director and the chief executive, who had been present at the meeting. They said that they didn't hear the statement and, anyway, officers were there to serve the members and that sort of thing was normal.

Was there a breach of the Code?

code advice

The councillor may have breached paragraph 3(1): 'A member must treat others with respect, and paragraph 3(2)(d), which states that a member must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority'.

Officers are required to attend before scrutiny committee under the Local Government Act 2000, and many councils have protocols in place to ensure that they can give full and open evidence.

Therefore, the officer concerned could make a complaint to the Standards Board for England. The officer may wish to make a record for future reference, should this sort of behaviour continue.

appropriate response options

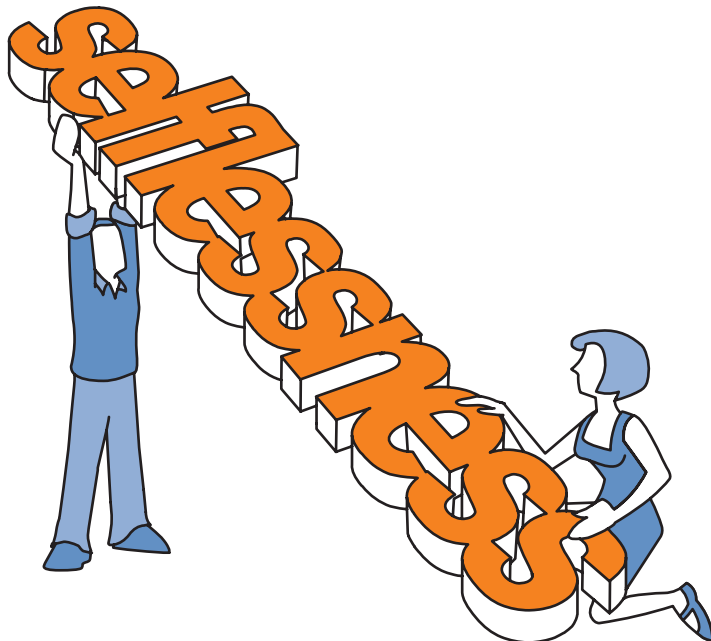
Senior officers should be supportive of officers bringing forward concerns of this nature and ensure that officers are not undermined by members. They should, if necessary, raise the matter directly with the member concerned or with the political group leader.

If the officer wishes to make a complaint to the standards committee they should be given appropriate support and not be discouraged from doing so.

The council may have a protocol on officer and councillor relations. The chief executive, monitoring officer and standards committee should ensure that roles and protocols are appropriately publicised and training given.

appropriate response options 31 continued

The constitution should be clear about the respective roles of councillors and officers and differences between them. The member/officer protocol should encourage disclosure to overview and scrutiny committees, by affording appropriate mechanisms to support officers.



32. officer impartiality, disrepute, using position to gain advantage, personal or prejudicial Interest

A constituent taxi driver who requires a renewal of his licence approaches the chair of the regulatory committee. He had forgotten to apply for a renewal, and wants his licence within the next fortnight. The councillor promises to take the matter forward.

Normally, processing licences takes more time. The councillor instructs the licensing manager to elevate the application to the top of the list and, if necessary, to call a special committee meeting.

The councillor cannot drive and always uses this taxi firm, which is based in her ward.

Has there been a breach of the Code?

code advice

There are three possible breaches of the Code:

- Paragraph 3(2)(d): A member must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority
- Paragraph 5: A member must not conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute
- Paragraph 6 (a): A member must not use or attempt to use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage.

appropriate response options

It is not acceptable for the councillor to attempt to elevate her constituent's request by seeking preferential treatment for him and possibly convening an additional meeting of the licensing committee. In addition certain statutory consultations must take place (e.g. a check at the Criminal Records Bureau), and that time cannot be reduced. It would not be a valid decision were the application to be considered without regard to that information. To fast track this application could undermine priorities agreed by council and established in council procedures. This in turn could lead to a complaint to the Local Government Ombudsman by another applicant whose application was delayed while this application was being dealt with.

The monitoring officer or the officer in charge of the licensing function could explain this to the member.

33. personal relationships, disrepute, using position to gain advantage, personal or prejudicial interest

The local media published a lurid story alleging that a councillor who is married has had an affair with a senior female council employee. The press report goes into graphic detail with quotes from the employee concerned who says she has had a child as a result of the relationship.

The councillor, who is a member of the cabinet, says that the affair is now over.

In the past, the officer's advice has been crucial in implementing a key aim of the councillor's minority coalition group, which was to overturn an existing council policy.

Has there been a breach of the Code?

code advice

There may have been breaches of the following provisions of the Code:

- Paragraph 3(2)(d): A member must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority. However, the existence of the relationship is not, in itself, a breach of this provision.
- Paragraph 5: A member must not conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. However, recent case law has drawn a distinction between a person and the office they hold. Simply having an affair with a council officer does not in itself breach this provision of the Code.
- Paragraph 6 (a): A member must not use or attempt to use his position as a member improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.

Even if the councillor argued that his relationship with the employee was a private matter it is likely that it would fall under the Code as you can link the relationship to the councillor's functions of office, particularly if the affair was ongoing while the overturning of existing council policy took place, based on her advice.

appropriate response options

Most councils have a protocol for dealing with the press, and information is generally provided through the press office.

appropriate response options 33 continued

The employee's line manager and a human resources representative could interview the officer to determine whether she has, in fact, given press interviews and what the background to the matter is. If appropriate, they could consider disciplinary action.

The officer could have disclosed the relationship (at least in confidence to the chief executive). The authority would then have been able to take steps to distance the officer from giving direct advice.

The officer and member should be made aware of any protocol on officer/councillor relations. Generally, this would require that close personal relationships between members and officers should be avoided.

The council could consider whether they wish to review the policy in question.

34. politically restricted posts

A senior officer in a politically restricted post regularly advises members of the council. He is seen on the television taking part in an anti-capitalist demonstration at a meeting of the G8. He was, in fact, arrested and charged with criminal damage to the premises of a multi-national chain of fast food restaurants. What action should the council take?

Would the council respond differently if the officer had not been in a politically restricted post?

code advice

There is no statutory code of conduct for officers. The matter should be covered by the council's code of conduct, regulations governing politically restricted posts and the officer's contract of employment

appropriate response options

The European Commission of Human Rights has held that politically restricted posts, as defined in the Local Government and Housing Act (1989) are not incompatible with the European Convention on Human Rights (now incorporated into Human Rights Act 1998).

The council could consider how this impacts on its reputation and what effect this has on the impression of impartial officer advice.

The council should consider taking disciplinary action against the officer if they are in breach of their employment contract.

Did his actions breach the regulations covering politically restricted posts? They do not appear to. Reg 6 Part 11 of the Schedule to the Local Government Officers (Political Restrictions) Regulations (SI 1990/851) provides that 'the appointee shall not speak to the public at large or to a section of the public with the apparent intention of affecting public support for a political party'.

35. officers' use of council resources

A trainee solicitor is undertaking her law society training contract at the council.

She is asked by the council's head of legal services, who is her training principal, to undertake the conveyance of a house he is buying, which he will supervise. He explains that this is because the council does little by way of buying property these days and this is a way of including the buying element of conveyance into her training. This is important for her training and for developing that required skill set within the authority.

Is this a breach of regulations?

code advice

There is no statutory code of conduct for officers. However, this is likely to represent an improper use of resources under the council's internal code of conduct.

appropriate response options

A check should be made on whether or not senior management or the executive sanctioned the use of resources in this manner. They should not do so. Disciplinary action may be taken against the head of legal services. The work of the trainee will be uninsured, under the Council's officer indemnity insurance, and in breach of Law Society regulations if she holds client monies. This would prevent a practising certificate being issued to her at the end of the training contract. This is a serious breach of the solicitors' account regulations. A complaint could also be made to the Law Society about the way this training contract is being conducted.

36. disrespect, impartiality of officers

The director with responsibility for corporate research and policy (R&P) is at a meeting of the executive. The R&P team's conclusions on a policy issue are severely criticised by members, primarily because a large quantity of information they asked for is missing.

Some members say that R&P officers are a waste of space, particularly the team leader. The lead councillor for the policy area states that he will go into the offices the next day and 'sort them out', including 'firing them if I have to' and writing the report himself.

The chief executive, who is present at the meeting, says nothing.

Has there been a breach of the Code?

code advice

The members are unlikely to have breached the Code for criticising the work of the R&P team. However, those councillors who then personally criticised the officers may have breached paragraph 3(1): 'A member must treat others with respect'. In particular, the comments made by the lead councillor are likely to breach the Code.

There may also have been a breach of paragraph 5 of the Code, which states a member must not conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

There is also an issue in relation to paragraph 3(d), which states that 'you must not do anything which compromises or is likely to compromise the impartiality of those who work for or on behalf of your authority'.

If the officers who are the authors of the report believe that the 'missing information' is not required then they should not be forced to include it. There may be good reasons for the information not being included. On the other hand, the absence of information from the report may be legitimate grounds for criticism.

The member's threats to 'sort them out' and 'firing them if I have to' should be viewed against the background of paragraph 3(2)(b), 'You must not... 'bully any person', and threats of this nature, particularly threats to an officer's employment, have been viewed by the Adjudication Panel for England as bullying.

appropriate response options 36

The director of R&P should object on behalf of staff.

There is also an issue over powers of delegation and protocol – an executive councillor would have no role in writing the report in most well run councils.

The chief executive should have objected, but different chief executives have different styles. It may be left with the monitoring officer or it may be an issue that the chief executive will deal with through the political group. However, all should be aware in advance of the chief executive's approach. It is not acceptable for the chief executive to fail to take action if no other route is being followed, since this amounts to condoning bullying, and compromises their position in the event of staff bringing a grievance or employment tribunal action about this issue.

It would be sensible for an officer of sufficient seniority to explain to the lead councillor that officer competence is an issue for senior management, and request that any dissatisfaction be dealt with through appropriate channels.

37. disregard of authority's procedures

The strategy director (an officer) and the leader of the council come to see the council's procurement manager. The director says that a tender for a major new IT system must go out the following week. The manager replies that the council had decided to keep the old system and there was no report to the council recommending that this decision should be changed. If a new tender is to go out, there is a process to follow. The director replies that a new approach has now been agreed at the group meeting of the ruling party. The old system is continually crashing and any delay could cost the council thousands.

The leader adds that 'the bureaucracy in local government makes councils a laughing stock in the private sector, so get on with it'.

When the manager tries to discuss it further the director gets very angry and tells him to 'do your job – do you want the authority to fail its audit inspection next year?'

Has there been a breach of the Code?

code advice

The leader may be breaching:

Paragraph 3 (1): A member must treat others with respect; and 3(2)(d): A member must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority

Paragraph 5: A member must not conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute

Paragraph 6 (b) (i): A member must, when using or authorising the use by others of the resources of the authority, act in accordance with the authority's reasonable requirements

Paragraph 7 (2): A member must give the reasons for those decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.

Officers are not bound by the Code. Therefore, the above does not relate to the strategy director.

appropriate response options

The procurement manager is right to question the instruction. The instruction may be unlawful and an employee is employed to carry out only lawful instructions. However, putting a specification out to tender, while a major job in itself, does not require the council to actually proceed with the procurement, and generally the right not to proceed is reserved in tender documents.

appropriate response options 37 continued

If the contract is a large one, the EU procurement regime will apply, and failing to comply with its requirements will mean that the council is acting unlawfully, something of concern to the monitoring officer. The expenditure outside budget is something the section 151 officer will be concerned about. A proposal for expenditure of this nature, outside budget, should normally be included in the next forward plan, and may be subject to the scrutiny process. The council would be required to approve this exceptional expenditure, and it could be subject to scrutiny call in. A procedure for special urgency may be contained in the constitution, and the procurement officer could ask for a decision to be taken under such a procedure.

Due process and lawful delegation are needed to ensure transparency of decision making and accountability, provide an audit trail and avoid corruption.

The director acted improperly and may well have been bullying. The procurement manager should be supported in invoking the council's anti-bullying procedures.

The leader should be advised not to intervene further. Refer to any protocol on the role of members and role of officers.

Acting in consultation means just that – it remains an officer decision based on professional judgement. It is appropriate to take a sounding from councillors and an audit trail may be needed to demonstrate evidence of the decision-making process.

If procedures are holding things up then the chief executive should consider how best to address this issue.

The standards committee should ensure that the council's constitution contains proper and appropriate procedures for delegation, including procedures governing exceptional decisions outside the usual decision making processes, where such decisions are absolutely necessary for the proper conduct of the authority's business.

38. chief executive role

The chief executive is highly regarded by staff, members and partners. He is having a major and positive impact on the council.

One councillor consistently behaves inappropriately, but the behaviour would usually be considered to be inappropriate at a minor level only. He has already been referred twice to the Standards Board for England following minor incidents. However, taking into account all aspects of the issues, the Standards Board for England decided to take no further action.

The councillor's party whip is inexperienced and the group's leader doesn't see that there is an issue that needs addressing. The chief executive considers that the behaviour of members is for the individual political parties to sort out.

What can be done?

code advice

There is no breach of the Code, but consistent low level problems should give the council cause for concern.

appropriate response options

The Standards Board for England is encouraging chief executives to be more assertive if poor behaviour by members has not been resolved by the political groups and is continuing to bring the council into disrepute. The Standards Board is also encouraging chief executives to be strong and positive role models in relation to ethical standards, as many are. Options might include:

- involving the standards committee in this issue
- talking to leaders of political parties about behaviour
- ensuring training is provided to members (and encouraging them to attend)
- talking to individual members
- ensuring that any guidelines on appropriate/inappropriate behaviour are circulated
- an ethical health check could highlight any on-going minor councillor behavioural issues, which may in turn be undermining the corporate governance of the authority.

39. monitoring officer role

The monitoring officer has been in post for two years and lacks confidence. The standards committee is discouraged from doing more than the required minimum. Ethical issues are not high on the agenda in the council. Some standards committee members are worried that they are not ready for local investigations but the monitoring officer says there is plenty of time to sort things out if and when a complaint is made.

What could standards committee members do?

code advice

There is no breach of the Code.

appropriate response options

The monitoring officer plays a key role in helping the standards committee to carry out its functions. The monitoring officer should have the necessary knowledge, skills and experience to carry out this role. It is principally the role of the monitoring officer to help standards committees carry out their role. One of the key functions of the standards committee is to ensure that ethical issues inform every aspect of their work and that of the council. The monitoring officer needs to help and support the standards committee to carry out this function.

The council must provide the monitoring officer with training in this important area of their work.

The Standards Board has produced guidance for standards committees that includes information about the role of the monitoring officer.

40. using resources for political purposes

The council has been in the control of the majority party for many years. Some ex-councillors of the majority party are employed in the council, indeed the lead officer for scrutiny is the ex-chief whip of the council.

The leader of the council is developing his name in his party and is often asked to speak at regional and national conferences. The lead officer for scrutiny often drafts the leader's national party political speeches for him.

Has there been a breach of the Code?

code advice

The leader may be in breach of several paragraphs of the Code:

- Paragraph 3 (2) (d): A member must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority
- Paragraph 5: A member must not conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute
- Paragraph 6 (b) (ii) A member must, when using or authorising the use by others of the resources of the authority ensure that such resources are not used improperly for political purposes (including party political purposes).

appropriate response options

Although the ex-councillors who are now employed as officers are no longer covered by the Code, it is evident that the situation in this authority gives rise to serious concerns about the council's ethical culture.

The post of lead officer for scrutiny is almost certainly politically restricted. For this reason, their actions will give rise to a termination of employment on grounds of purported resignation. If the holder of a politically restricted post engages in party political behaviour as defined under the Local Government and Housing Act 1989 this amounts to resignation, not dismissal.

appropriate response options 40 continued

The monitoring officer should investigate whether the authority complies with proper employment practice under the Local Government and Housing Act 1989, by employing persons only on grounds of merit – if not appointments may be ultra vires.

Members should not be involved in the appointment of officers other than at the level of director or chief executive.

41. delegation of powers, officers' advice, transparency

The council is not performing well. A small group of majority party councillors has therefore decided to make all the decisions and to delegate as little as possible to officers, other than the statutory minimum. They keep a record of the actions agreed, but there is no other record. These members consider that this is the best way to turn the council around quickly. They frequently disregard the advice of the monitoring officer and the treasurer, because they consider these officers to be over-cautious in their approach to turning the council around.

Officers know that they do not always serve members well; they don't always deliver on councillor priorities in the agreed timescale and to the required quality and they sometimes make very public mistakes.

Has there been a breach of the Code?

code advice

There may have been a breach of paragraph 7(1)(a) and (b): A member must when reaching decisions have regard to any relevant advice provided to him by the authority's chief finance officer and the authority's monitoring officer.

There may also have been a breach of Paragraph 7(2): A member must give the reasons for those decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.

appropriate response options

If the councillors wish to amend the scheme of delegations contained in the constitution, to undertake decision-making themselves, then this generally requires the approval of the full council.

Key decisions of a council must be published in the forward plan. These decisions may be taken under a scheme of delegation, and that scheme can delegate to individual members. A record of the decision must be retained, and where appropriate published, and the decision must make clear the considerations e.g. financial and legal, taken into account.

If members do not have confidence in their senior officers then they could consider putting appropriate training arrangements in place, and take on some activities to develop appropriate relationships between members and officers. Members are getting very involved in operational issues usually appropriate for officers.

appropriate response options 41 continued

The council could consider options for obtaining impartial external advice e.g. peer reviews, the Chartered Institute of Public Finance and Accountancy (CIPFA), Society of Local Authority Chief Executives and Senior Managers (SOLACE), secondment opportunities from other authorities, consultancy, mentoring for the chief executive and other key officers.

Decisions should be made in accordance with the council's constitution. If not they may be unlawful in which case there is a duty on the monitoring officer to issue a report under section 5 of the Local Government and Housing Act 1989, and the s151 officer, in relation to financial matters, under section 114 Local Government Finance Act 1988. The decisions of the Council could be subject to judicial review.

Finally, there may be sufficient evidence for the external auditor to consider issuing a public interest report, e.g. unlawful recording of decisions, ultra vires (unlawful) decisions.

42. councillor/officer relations, misuse of delegated authority

Members of the cabinet asked to see details of the job evaluation process. As a result, the leader of the majority group insisted that three posts were incorrectly graded. The members regularly deal with the post holders involved. After a meeting of the majority group at which the posts were discussed, the leader told the human resources (HR) manager that two of the jobs were under graded and one significantly over graded.

The HR manager sought advice from the monitoring officer who advised that members were entitled to express a view as to what an officer should be paid provided that was not calculated to influence the outcome of a grading dispute. The HR manager then exercised her 'delegated power' on the basis of the leader's wishes.

When challenged, the HR manager explained that the leader was passing on the views of the majority group. The HR manager considered it acceptable to act directly on the leader's wishes because the majority group could, if necessary, vote through any decision or policy.

Has there been a breach of the Code?

code advice 42

To interfere in delegated matters, and in particular staff matters, in this way is a breach of the Code. It seeks to compromise the impartiality of those who work for, or on behalf of, the authority (paragraph 3(2)(d)) and seeking to improperly confer on or secure for any other person, an advantage or disadvantage (paragraph 6 (a)), as well as potentially breaching paragraph 5 (bringing the Authority into disrepute).

appropriate response options 42

Appointment and terms and conditions of staff are non-executive functions. This means decisions should be taken by the council, or a committee of the council and not the executive or cabinet of the council. This power can be delegated to the head of the paid service who, under section 4(3)(b) of the Local Government and Housing Act 1989, reports to the council on the number and grades of staff required for the discharge of the authority's functions.

This responsibility must be carried out independently, and it is unlawful to exercise delegated authority other than in an independent manner.

The council should ensure that all officers have training in their responsibilities and the statutory requirements of their job. Job evaluation and grading has become particularly significant in councils due to the national agreement to introduce single status arrangements by 1 April 2007.

Many councils have been evaluating posts under nationally agreed criteria, and to upset those evaluations would undermine the whole evaluation process. Equal pay claims have been a major concern of councils, and to adequately defend them councils must show that jobs have been appropriately evaluated. For the leader to intervene would be particularly unwise in these circumstances.