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Standards Committee – Chairman’s Statement

In the light of recent comments by elected members in the press, and in e-mails circulated to elected members, officers and others in this authority, I feel that it is important that clarification be given in relation to the Members Code of Conduct, particularly those elements of the statutory framework which deal with ‘Personal Interests’; ‘Prejudicial Interests’, ‘Pre-Determination’ and ‘Bias’.

Part of the role of the Standards Committee is to actively promote and maintain the highest standards of conduct by members and co-opted members of the authority, and, to monitor and advise the Council of the operation of the Members Code. Implicit in this obligation is the requirement placed upon us, as a Committee, to ensure that errors of interpretation are promptly corrected. References to ‘gagging orders’ and the like, which have no basis in fact or practice, are particularly unhelpful and present a distorted and inaccurate picture to colleagues and local people.

At my request, the Monitoring Officer has prepared a note which sets out the legal position, a copy of which has been given to all committee colleagues. It will also form part of the Minutes of this meeting. I would urge all elected members, and others, to read it. I draw particular attention to the final paragraph in which the Monitoring Officer confirms that he is always willing to provide advice and assistance to Members and Officers on issues related to interpretation of the Code, should such individuals be unsure of the extent to which the statutory framework applies to them.

David Gilbertson

Chairman, Standards Committee

NOTE ON THE CODE OF CONDUCT AND THE RULES OF PRE-DETERMINATION AND BIAS

Code of Conduct

1. Part III of the Local Government Act 2000 provided a new statutory framework for the conduct of Members of Local Authorities such as the South Cambridgeshire District Council. Section 49 enabled the Secretary of State to specify the principles to govern the conduct of Members of relevant Authorities, such as South Cambridgeshire.
2. Section 51 of the 2000 Act required South Cambridgeshire District Council to adopt a Code of Conduct incorporating the provisions of the Model Code, which had been issued under Section 30 of the Act. This has, of course, been done by South Cambridgeshire.
3. It ought, by way of preliminary to be noticed, that whilst changes to the Code may, from time to time, be contemplated unless and until they are put into legal effect, it is necessary to proceed on the basis of the Code as enacted and as incorporated into the Code of Conduct for South Cambridgeshire.
4. It should also be noticed that the Court of Appeal gave full consideration to the Code of Conduct, as it operated in the field of Town and Country Planning, in *R. (on the application of Richardson) v. North Yorkshire County Council* [2003] EWCA Civ 1860, [2004] 2 All ER 31.
5. The Local Government Act 1972 provides at Part I that the Councillors of an Authority (such as South Cambridgeshire) are its Members. It is those Members who are bound by the Code of Conduct (under the Local Government Act 2000) and who are thereby bound to observe it whenever they conduct the business of the Authority, or of the offices to which they have been elected or appointed or as representatives of the Authority.
6. It is, of course, a statement of the obvious that a Member of the Council (such as South Cambridgeshire) will have interests of his own as well as being concerned for the interests of the Council of which he happens to be a Member. The Code deals with this by identifying two classes of interests on the part of a Member. These are personal and prejudicial interests.
7. Personal interests are either those in respect of a notification is required to be given in the Register of Members' Interests or those matters before the Local Authority which might reasonably be regarded as affecting the Member's well being or financial position to a greater extent than other council tax payers, ratepayers, or inhabitants of the authority's area. Personal interests are required to be disclosed. It should also be noted that in terms of being affected by a matter before the Council, a personal interest will arise if the matter affects, to the extent necessary, a relative or friend of the Member.
8. The second type of interest is really a variation of the first. It is that a Member with a personal interest also has a prejudicial interest if the interest of the Member in the matter before the Council is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgment of the public interest.

9. By virtue of the Code (paragraph 12) a member with a prejudicial interest in any matter must withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the Authority's Standards Committee; and not seek improperly to influence a decision about that matter.
10. Dispensations can be granted by the Standards Committee on application to the Monitoring Officer in certain circumstances. Dispensations cannot be granted simply to allow a Member with a prejudicial interest to participate in relation to a matter.
11. Dispensations will only be granted where:-
 - more than 50% of the Members of the Council or a Committee are prevented from taking part because of a prejudicial interest; or
 - the political balance of the meeting would be disturbed.

Pre-Determination and Bias

1. A number of judicial decisions means that the law recognises and respects the role of politics in Local Government, but equally public law decisions have to be properly made and if bias or apparent bias or pre-determination can be established then the courts will find the decisions to be invalid.
2. As is now widely known, following *Porter v Magill; Weeks v Magill* [2002] LGR (per Lord Hope):

'The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.'
3. Consequently, the current test for bias (in Local Authority decision making as elsewhere) is whether:
 - a fair minded observer
 - who is suitably informed; and
 - who having considered the facts
 - would conclude (i.e. not might conclude)
 - that there was a real possibility of bias (i.e. less than a real probability of bias).
4. A leading case on Local Authority bias and pre-determination is *Georgiou v Enfield London Borough Council* [2004]. The claimant contended that participation in the decision by Members of the Planning Committee who were also Members of the Conservation Advisory Group gave rise to an appearance of bias sufficient to vitiate the decisions of the Planning Committee. Richards J took the view that "... a fair-minded and informed observer would conclude that there was a real possibility of bias, in the sense of the decisions being approached with closed minds and without impartial consideration of all the planning issues as a result of the support expressed by the CAG being carried over into support for the application in the context of the planning committee's decisions."

5. Perception is a variable animal and can often be as good as reality. It will therefore be important to check whether in the light of the particular facts and circumstances there might fairly be said to be a real possibility of bias or the appearance of bias. Bias considerations will clearly be different for different types of decision but where bias or apparent bias may be an issue, careful driving through this hazardous territory is certainly recommended.
6. It can be said that Council Members will need to place ever more reliance on their lawyers to guide them through the maze on a minefield that occupies the territory of politics and bias.

However it is extremely important to understand that the two legal regimes addressed in this paper are quite distinct and unrelated. The Code of Conduct derives from statute and is primarily enforced through the Standards Board for England. The rules on pre-determination and bias are common law rules derived from "judge made law" and are enforced through the courts. But both regimes apply to and regulate members' conduct.

As always if any Members, or indeed Officers, require further advice or assistance on these matters they should consult with the Monitoring Officer in the first instance.

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