

Standards Committee

Grand Jury Room, Town Hall
12 June 2009 at 2.00pm

The Standards Committee deals with
the local code of conduct for councillors and
complaints against individual councillors.

Information for Members of the Public

Access to information and meetings

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**COLCHESTER BOROUGH COUNCIL
STANDARDS COMMITTEE
12 June 2009 at 2:00pm**

Members

Independent Members Mr Ian Andrews
 Mr Derek Coe
 Mr Sven Farmer
 Mr Peter Fitton
 Mr Steven Roberts-Mee

Parish Representatives Mr Malcolm Bartier
 Mrs Gillian Brown
 Ms Vivienne Eden

Councillors Councillor Nigel Chapman
 Councillor Ray Gamble
 Councillor Sonia Lewis

(Chairman and Deputy Chair to be appointed at first meeting)

AGENDA - Part A
(open to the public including the media)

Members of the Public may wish to note that Agenda items 1 to 4 are normally brief

Pages

1. Election of Chairman

To elect a Chairman for the ensuing Municipal Year.

2. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to off or to silent;
- location of toilets;
- introduction of members of the meeting.

3. Election of Deputy Chairman

To elect a Deputy Chairman for the ensuing Municipal Year.

4. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Minutes

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To confirm as a correct record the minutes of the meeting held on 6 March 2009.

7. Guidance to Members on Gifts and Hospitality

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See report by the Monitoring Officer.

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8. Guidance to Officers on Gifts and Hospitality

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See report by the Monitoring Officer.

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9. Guidance to Members for Outside Bodies

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See report by the Monitoring Officer.

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10. The Standards Committee (Further Provisions)(England) Regulations 2009

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See report by the Monitoring Officer.

11. Exclusion of the Public

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

STANDARDS COMMITTEE

6 MARCH 2009

Present :- Mr D. Coe (Independent Member) Chairman
Mr Andrews (Independent Member)
Mr Bartier (Parish Council Representative)
Mrs Brown (Parish Council Representative)
Councillor Chapman
Ms Eden (Parish Council Representative)
Mr Farmer (Independent Member)
Mr Fitton (Deputy Chairman) (Independent Member)
Councillor Gamble
Councillor Spyvee

11. Minutes

The minutes of the meeting held on 5 December 2008 were confirmed as a correct record subject to the second sentence in the first bullet point in minute 9 being amended to read:-

“However, the answer to question one needed to be amended to clarify the point that the Code needed to cover any behaviour that was criminal at the time it was committed, whether it resulted in a prosecution or not.”

The Monitoring Officer reported that the Standards Board was preparing draft regulations to allow the Standards Board to suspend the initial assessment functions of an authority, enable authorities to establish joint standards committees and amend the powers of standards committee to grant dispensations to members who would otherwise be unable to take part in authority business because of a prejudicial interest. The regulations were expected to come into force in May 2009.

12. Standards Committee Annual Report 2008/2009

The Monitoring Officer presented a report proposing an Annual Report for the Standards Committee for the 2008/09 municipal year. As well as being good practice in terms of governance, an Annual Report would also help raise the profile of the Standards Committee. It was proposed that the Annual Report be submitted to Full Council in April 2009. In view of this timescale delegated authority was sought for the Monitoring Officer to make any necessary changes to the report in consultation with the Chairman to update it to the end of March 2009. The report concentrated largely on the introduction of the Local Assessment of Allegations processes.

The Monitoring Officer explained that the Annual Report would be placed on the Council's website on a new page dedicated to the Standards Committee and the local assessment process. This would again help raise the Committee's profile as well as provide a one stop shop for information about the work of the Committee and the complaints process.

The Committee endorsed the concept of the Annual Report and approved the content of the draft report, subject to the following minor amendments:-

- The second paragraph of the introduction be amended to read:-

“The Borough Council is required by law to establish a Standards Committee which has an important role to play in providing training for and maintaining ethical conduct of Councillors. Article 9 and Part 3 of the Council’s Constitution contain the requirements for and composition of the Standards Committee.”

- The first paragraph of section 5.1 be amended to read:-

“In May 2008 the responsibility for the initial assessment of allegations whether or not councillors had failed to follow the Members Code of Conduct was transferred from the Standards Board for England to local Standards Committees. “

RESOLVED that:-

(a) The Standards Committee Annual Report 2008/2009 be approved, subject to the minor amendments specified above;

(b) The Monitoring Officer, in consultation with the Chairman, be authorised to make any necessary changes to the Annual Report to give effect to the Committee’s activities up to the end of March 2009.

RECOMMENDED to Council that the Standards Committee Annual Report 2008/09 be noted.

13. Local Code of Corporate Governance

The Monitoring Officer presented a report proposing the draft Local Code of Corporate Governance. The Council had approved a Local Code of Corporate Governance several years ago. The revised Code before the Committee was drafted in accordance with guidance issued in 2007 jointly by the Chartered Institute of Public Finance and Accountancy and the Society of Local Authority Chief Executives entitled “Delivering Good Governance in Local Authorities.” It was based on six core principles.

The Committee noted in particular the work that was being done and was proposed to achieve Core Principle Three (“Promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour”) which was especially relevant to the work of the Standards Committee.

The Committee welcomed the Code and recommended to Cabinet that it be approved. The Committee noted that if Cabinet approved the Code, it would then be referred to Full Council for adoption.

RECOMMENDED to Cabinet that the Local Code of Corporate Governance be approved.

14. Revised Whistleblowing Policy

The Monitoring Officer presented a report proposing a revised whistleblowing policy. The existing Whistleblowing policy had been in place for approximately ten years, and was therefore due for review. No complaints had ever been made under the existing policy so it was difficult to assess its adequacy, but it was now good practice to include more information and widen the scope of whistleblowing policies. The most important introduction in the new policy was arrangements for whistleblowing by persons other than employees.

The Committee welcomed the updated policy and considered that if approved and adopted by Council that arrangements should be put in place for the revised policy to be disseminated and publicised to all staff and contractors. The Committee also considered that it should be drawn to the attention of Town and Parish Councils with a recommendation that they consider adopting it. The Council should also hold an exercise to test the policy.

RECOMMENDED to Council that the revised Whistleblowing policy be approved and adopted.

RESOLVED that if the revised Whistleblowing policy be approved by Council that:-

- (i) the Whistleblowing policy be circulated to all staff and contractors employed by the Council;
- (ii) the Whistleblowing policy be drawn to the attention of Town and Parish Councils with a recommendation that they consider adopting it;
- (iii) an exercise be held to test the policy.

15. Standards Committee Work Programme 2008/09 and 2009/10

The Committee received a report updating the Committee's work programme for 2008/09 and 2009/10. The Committee considered that the review of training for members on the code of conduct and local assessment should be brought forward to the meeting on 11 September 2009.

RESOLVED that the Standards Committee Work Programme 2008/09 and 2009/10 be approved, subject to the item on review of training for members being moved to the meeting on 11 September 2009.



Standards Committee

Item

7

12 June 2009

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Guidance to Members on Gifts and Hospitality		
Wards affected	Not applicable		

This report recommends that the Committee approves revised guidance to Members on Gifts and Hospitality

1. Decision(s) Required

- 1.1 To approve the Guidance to Members on Gifts and Hospitality and that it be included in the Council's Ethical Framework within the Constitution.
- 1.2 That the Monitoring Officer be requested to circulate a copy of the Guidance to all Borough Councillors.

2. Background

- 2.1 The Standards Committee approved guidance on gifts and hospitality for Councillors in 2005 and it is now appropriate for it to be reviewed. The existing guidance forms part of the Council's Ethical Framework and is included in the Constitution which is published on the Council's website.
- 2.2 The existing guidance has proved fit for purpose but requires updating. The proposed revised guidance is attached to this report. The Committee is reminded that the Members' Code of Conduct requires that all gifts and hospitality received by Members and Co-opted Members over the value of twenty five pounds must be entered on their Notice of Registerable Interest which is available for public inspection. Furthermore, the Members' Code of Conduct also requires that any gift or hospitality so received must be declared at meetings when the Member concerned is dealing with a matter that involves the provider of the gift or hospitality. This requirement to declare subsists for a period of three years from the date of receipt of the gift or hospitality.
- 2.3 The purpose of the Guidance is to provide clear practical advice to Councillors and makes it clear that if they have any doubts or concerns then must seek advice from the Monitoring Officer.

3. Strategic Plan References

- 3.1 The standards regime forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

4. Financial Considerations

- 4.1 None.

5. Equality, Diversity and Human Rights Implications

- 5.1 None.

6. Publicity Considerations

6.1 The revised Guidance will be included in the Constitution and will be placed on the Council's website.

7. Consultation Implications

7.1 None.

8. Community Safety Implications

8.1 None.

9. Health and Safety Implications

9.1 None.

10. Risk Management Implications

10.1 None.

Gifts and Hospitality - Guidance to Members

1. Introduction

- 1.1 Colchester's Members' Code of Conduct requires Members and Co-opted Members to include in their Notice of Registerable Interests details of any gift or hospitality received as part of their official duties which may be over the value of twenty five pounds. It is also a breach of the Code to act in such a way as to bring the Authority into disrepute or for a Member to use their position as a Councillor improperly to confer on or secure for themselves or any other person an advantage or disadvantage.
- 1.2 The following guidance aims to assist Members and Co-opted Members in complying with the Members' Code of Conduct but it also goes beyond these basic provisions and seeks to provide wider guidance so Members can avoid situations where their integrity may be caused to be questioned as a result of gifts and hospitality.

2. The Legal Position

- 2.1 The Public Bodies Corrupt Practices Act 1889 provides that it is an offence for any Member to corruptly receive or agree to receive any gift, loan, fee, reward or advantage for doing or not doing something in connection with the work of the Council.
- 2.2 The Prevention of Corruption Act 1916 provides that where such a gift, loan etc. is received by a Member from a person seeking a contract with the Council then the gift or loan is deemed to have been received corruptly. This would put the giver and the receiver in the position of having to prove that they did not act dishonestly.

3. General Advice

- 3.1 Members are advised to treat with extreme caution any offer or gift, favour or hospitality that is made personally to them. The person or organisation making the offer may be doing business or seeking to do business with the Council or may be applying to the Council for some sort of decision in respect of which it is imperative that the Member's independence should not be compromised e.g. planning approval.

4. Gifts

The following rules should be applied:

- 4.1 Other than the exceptions listed in 4.3 and 4.4 below a Member should refuse any gift offered to them or to an immediate relative of the Member, by any person who has or may seek to have dealings with the Council. Members must notify the

Monitoring Officer of all such refusals as soon as reasonably practicable regardless of the value of the offered gift (unless the gift falls within 4.3 or 4.4 below). The Monitoring Officer will maintain a record for this purpose.

- 4.2 Members should note the Members' Code of Conduct requires all gifts and hospitality which exceed twenty five pounds in value to be entered on the Members Notice of Registerable Interests which is available for public inspection. Any gifts or hospitality must be registered within twenty eight days of receipt.

The exceptions where it may be appropriate to accept a gift are:

- 4.3 The gift is of purely token, promotional advertising value given to a wide range of people, e.g. pens, key rings and other promotional items. As such promotional gifts will usually be less than twenty five pounds in value generally there will be no need to register but in cases of doubt Members should err on the side of caution and register the gift.
- 4.4 A small gift where refusal would cause needless offence and the giver is not currently seeking a decision or business from the Council. Again because such gifts would be of a small value generally there will be no need to register but in cases of doubt Members should err on the side of caution and register the gift.
- 4.5 A gift to the Council. This is particularly relevant to the Mayor or Deputy Mayor who may receive gifts on behalf of the Council. A separate record of such gifts is maintained by the Mayors Secretary.
- 4.6 Cash or monetary gifts should always be refused without exception and the refusal notified to the Monitoring Officer as set out in paragraph 4.2 above.
- 4.7 Gifts given as prizes at exhibitions, conferences, seminars etc. as part of a free raffle or draw may be accepted but they belong to the Council and should be registered with the Monitoring Officer as soon as reasonably practicable (notwithstanding that their value may be less than the twenty five pounds specified in the Members Code of Conduct). The Monitoring Officer in consultation with the Chairman of the Standards Committee will determine whether it is appropriate to retain the gift in question.
- 4.8 Whilst it may be acceptable to accept a token or small gift on one occasion Members should refuse repeated gifts, even if these are individually not of a significant value.

5. Hospitality

- 5.1 Increasingly private companies offer hospitality e.g. free drinks, tickets to shows or hotel accommodation to persons with whom they do business or with whom they hope to do business in the future. Such hospitality could convey the impression that Members' judgement would be influenced. It would however be too rigid to say that no hospitality can be accepted. Members are reminded that any hospitality which exceeds twenty five pounds is required by the Members Code of Conduct to be registered. However Members may wish to notify the Monitoring Officer of hospitality offered but refused and hospitality which is less than the twenty five pounds limit specified in the Members Code of Conduct.

5.2 Some examples of hospitality which may be acceptable follow but much may depend on the particular circumstances, for example who is providing the hospitality, why the Member is there and the nature of the dealings between the Council, the Member and the provider of the hospitality:

- A working meal provided to allow parties to discuss or to continue to discuss business.
- An invitation to attend a dinner or function of a Society, Institute or other non commercial body with whom the Authority has contact.
- Invitations to attend functions where the Member represents the Council (opening ceremonies, public speaking events, conferences).

5.3 The following are examples of unacceptable hospitality:

- Holidays, including accommodation and travel arrangements
- Offers of theatre tickets for the member and his family or free travel
- Personal invitations for evenings out with representatives from a company or firm who have dealings with the council or who are likely to have dealings in the future.
- Members are advised to err on the side of caution and if in any doubt as to the integrity of the offer / invite, the Member should consult the Monitoring Officer or refuse

6. Declaration of Gifts or Hospitality at Meetings

6.1 Members are reminded that any gift or hospitality received and recorded on their Notice of Registerable Interest must be declared by that member at any meeting for a period of three years from the date of receipt of the gift or hospitality whenever the matter under decision relates to the provider of the gift or hospitality concerned.

7. Further advice

7.1 If any Member has any concerns regarding this Guidance they must seek advice from the Monitoring Officer.



Standards Committee

Item

8

12 June 2009

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Guidance to Officers on Gifts and Hospitality		
Wards affected	Not applicable		

This report recommends that the Committee approves revised guidance to Officers on Gifts and Hospitality

1. Decision(s) Required

- 1.1 To approve the Guidance to Officers on Gifts and Hospitality and that it be included in the Council's Human Resources Policies.
- 1.2 That the Monitoring Officer be requested to circulate a copy of the Guidance to all Officers.
- 1.3 That the Monitoring Officer be requested to provide an annual report to the Committee regarding gifts and hospitality received by Officers.

2. Background

- 2.1 The Council has for many years provided guidance to officers regarding the receipt of gifts and hospitality. This forms part of the Council's employee's terms and conditions within its Human Resources policies which are published on the Council's intranet (the Hub). The guidance was last reviewed in 2007 and it is now appropriate for it to be reviewed. It has been suggested that this guidance would benefit from being scrutinised by the Standards Committee along with the guidance for Members regarding gifts and hospitality which appears elsewhere on the agenda for this meeting.
- 2.2 All Service Groups maintain a register of gifts and hospitality where officers within that Group are required to enter any gifts or hospitality of whatever value which they have received. These registers are reviewed by the Monitoring Officer annually and they are frequently audited by the Council's auditors who report onto the relevant Committee of the Council. The existing guidance has proved fit for purpose but requires updating. The proposed revised guidance is attached to this report.
- 2.3 It may be that the proposed Officers Code of Conduct which if introduced by the Government will have a similar provision along the lines of the Members Code of Conduct requiring registration of gift and hospitality. However until that time the Council as part of its own governance arrangements requires officers to register any gifts or hospitality under its own arrangements. Any Officer found to have accepted any inappropriate gifts or hospitality would be subject to disciplinary proceedings.
- 2.4 The officers' registers of gifts and hospitality are not open for public inspection. However as part of ensuring transparency and accountability it is proposed that the Monitoring Officer reports annually to the Standards Committee on gifts and hospitality received by Officers.

3. Strategic Plan References

3.1 The standards regime forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

4. Financial Considerations

4.1 None.

5. Equality, Diversity and Human Rights Implications

5.1 None.

6. Publicity Considerations

6.1 The revised Guidance will be included as part of the Council's Human Resources policies and will be placed on the Council's intranet.

7. Consultation Implications

7.1 None.

8. Community Safety Implications

8.1 None.

9. Health and Safety Implications

9.1 None.

10. Risk Management Implications

10.1 None.

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Check Hub for updates

1. Introduction

- 1.1 These guidelines are here to help you decide whether or not you should accept offers of gifts or hospitality. In local government you need to be very careful to ensure that the public confidence in your own and the Council's integrity cannot be damaged in any way by your actions.
- 1.2 **If you have any doubts about an offer of gift or hospitality you must refuse and seek the advice of your manager, Head of Service or the Monitoring Officer.**

2. Gifts

- 2.1 You must be **very careful** when accepting gifts - in some circumstances you could break the law. The general rule is to politely and tactfully refuse offers of gifts from people or organisations who do or might provide work, goods or services to the Council or who seek some decision from the Council - for example in respect of planning permission.
- 2.2 Gifts of the following type **may** be accepted:-
- **modest** gifts of a promotional character such as calendars, diaries, articles for use in the office
 - a small gift on the conclusion of a courtesy visit to a factory or firm, or gifts which are presented at civic or ceremonial occasions
- 2.3 You must appreciate that these exceptions apply only to **modest gifts** and an expensive gift must not be accepted. Again, if you are **in doubt**, **refuse** the gift and **seek advice** from your manager or Head of Service.
- 2.4 Gifts which are intended for the Council as a corporate body or intended for a service area can be accepted but you **must not** retain these. Such gifts must be given to the Head of Service for the service area concerned or the Chief Executive as appropriate.

3. Hospitality

- 3.1 You must use your judgement when accepting an offer of hospitality. You should ask yourself whether members of the public, knowing the facts of the situation, could reasonably think that you might be influenced by the hospitality offered. If the answer is yes, the hospitality should be declined. You should consider:-
- the person or organisation offering the hospitality
 - the scale and nature of the hospitality
 - the timing of the hospitality in relation to decisions to be made by the Council
- 3.2 Some **examples** of situations and circumstances where hospitality might be acceptable are:-

- Routine meals at establishments used by the local business community, to discuss business or prior or following such a discussion. A useful test will often be whether you would provide similar hospitality if the situation was reversed.
- Customary lunches and dinners given at conferences where there are numerous guests and where invitations are formally received and accepted in advance of the conference.
- Courtesy invitations by major companies providing services to the Council, e.g. Bankers, Insurers etc.
- Invitations to join other company guests at sponsored cultural, sporting events or other public performances and openings of other special occasions.
- Civic and ceremonial occasions when accompanying the Mayor.

3.3 Some **examples** of situations and circumstances where hospitality is **unacceptable** are:-

- Paid or concessionary holidays or travel.
- Other concessionary rates which are not openly and as a matter of practice, available equally to other organisations.
- Offers of hotel and/or theatre tickets in London (except in circumstances described in 3.2 above).
- To the use of company flats or hotel suites.
- Extravagant meals at exclusive venues.
- Frequent hospitality from one source.

3.4 In general, it is usually more acceptable for you to accept hospitality when it is offered to a group rather than something which unique to yourself. You should take greater care if you are offered hospitality when the person or organisation has current dealings with the Council or such dealings are in prospect.

4. Recording Gifts and Hospitality

4.1 **All** gifts and hospitality which you accept **must** be recorded as soon as possible in the Gifts and Hospitality Register held by your Head of Service. These registers are inspected regularly and countersigned by your Head of Service and the Council's Monitoring Officer. They are also subject to regular audit by the Council's auditors.

It is your personal responsibility for ensuring that your acceptance of hospitality and/or gifts is entered in the record. Any inappropriate receipt of any gift or hospitality could lead to disciplinary action.

12 June 2009

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Guidance for Members on Outside Bodies		
Wards affected	Not applicable		

This report recommends that the Committee approves revised guidance for Members on Outside Bodies

1. Decision(s) Required

- 1.1 To approve the attached Guidance for Members on Outside Bodies and that it be included in the Council's Ethical Framework within the Constitution.
- 1.2 That the Monitoring Officer be makes the Guidance available to Officers of the Council who are appointed to serve on outside bodies.

2. Background

- 2.1 The Council has for several years provided guidance to Members (and officers) who are nominated by the Cabinet to serve on outside bodies. Nominations are usually for a period of one year and can be to a variety of organisations which can have differing legal status.
- 2.2 Councillors and in some circumstances officers, are initially appointed to outside bodies to represent the Council. However along with the appointment comes potential liability in other capacities. For example if a Councillor is appointed to the board of a company they become a director of that company and with that comes the responsibilities of a company director including their fiduciary duty to the company which must take priority to their responsibility back to the Council. The revised guidance attached to this report seeks to provide advice the Councillors in these situations. The existing guidance was issued several years ago and it is now appropriate to revise the guidance. The existing guidance is not published within the Council's Ethical Framework but is provided to Councillors on an ad hoc basis.
- 2.3 The revised guidance seeks to provide guidance for Members (and officers) in relation to the law and practical advice to situations that they could find themselves in having been appointed to an outside body.
- 2.4 It is suggested that the revised guidance is included as part of the Council's Ethical Framework and included in the Constitution.

3. Strategic Plan References

- 3.1 The standards regime forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

4. Financial Considerations

- 4.1 None.

5. Equality, Diversity and Human Rights Implications

5.1 None.

6. Publicity Considerations

6.1 The revised Guidance will be included as part of the Council's Ethical Framework and will be placed on the Council's website.

7. Consultation Implications

7.1 None.

8. Community Safety Implications

8.1 None.

9. Health and Safety Implications

9.1 None.

10. Risk Management Implications

10.1 None.



COLCHESTER BOROUGH COUNCIL

GUIDANCE FOR MEMBERS ON OUTSIDE BODIES

GUIDANCE FOR MEMBERS ON OUTSIDE BODIES

INTRODUCTION

1. Councillors are appointed formally by the Council annually to serve on a range of outside bodies, including voluntary organisations, local government associations and other organisations.
2. In performing that role, Councillors can act as individuals, representatives of the Council, directors or trustees. There are both positive and negative aspects to the role:
 - a) **Positive**
 - acting according to the rules, constitution and framework set by the outside body;
 - making independent and personal judgements in line with their duty of care to the outside body;
 - reporting back, at least annually, to the Council or relevant committee;
 - behaving ethically and following as far as applicable the Council's Members Code of Conduct; and
 - taking an active and informed role in the management of the outside body's affairs.
 - b) **Negative**
 - not representing the political party to which Councillors owe their political loyalty;
 - not avoiding taking part in the outside body's discussions and decisions;
 - not looking at things simply from the Council's perspective; and
 - not being there in name only and merely turning up to meetings.
3. The role of Councillors on outside bodies may give rise to occasional uncertainty and perhaps to conflicts of interest. This Guidance offers a simple legal guide on the responsibilities of Councillors and officers. Councillors are asked to read this guidance and if there are issues arising from their particular situation at any time, to contact the Monitoring Officer for advice.
4. Councillors (and officers) are under a specific obligation as a result of the Local Authorities (Companies) Order 1995 to report back to the Council on their involvement in outside companies to which they have been nominated by the Council. That obligation is best met by an annual report to the relevant Portfolio

Holder. While the law now makes this a requirement for involvement in outside companies, it is self-evident that the requirement to report back should apply to involvement in all outside bodies.

5. This guidance and the Council's Members Code of Conduct addresses some of the issues around the possibility of conflicts and interest. **In essence, if the outside body comes into conflict with the Council and the Councillor is a director or on the management committee of the outside body, it is likely that the Councillor's prime duty would be to the outside body in the conduct of the outside body's affairs.** The Councillor is however also given specific dispensation in the Council's Members Code of Conduct to participate in the Council decision-making process in relation to the outside body to which he or he has been appointed.
6. If there is a major dispute between the Council and the outside body, then the Councillor may be placed in an untenable situation. Before taking precipitate action, the Councillor is advised to seek advice from either the Chief Executive or the Monitoring Officer.
7. In certain circumstances, it is possible that the Councillor may find he/she is unable adequately to carry out their responsibilities properly, both as a Member of the Council and as a member or director of the outside body. It is suggested that this would be an exception, and should not deflect Councillors generally from being prepared to participate in the management and running of outside organisations.

A GUIDE TO THE LAW FOR MEMBERS AND OFFICERS ON OUTSIDE BODIES

This advice is for Councillors and officers who represent the Council on organisations outside the Council, whether as a company director, the trustee of a charity or a representative on a management committee. It simply sets out some of the most important responsibilities. It is not meant to be a comprehensive guide. If Councillors or officers have queries then they must contact the Monitoring Officer for advice.

1. General

- 1.1 There are some general provisions which apply to Councillors and officers who act in the role of company director, trustee or member of an incorporated body, such as the committee of management of an unincorporated voluntary organisation.
- 1.2 Councillors are under a duty to exercise independent judgment in the interest of the organisation in which they are involved. Whilst it is recognised that Councillors and officers may have a commitment to representing the Council on the outside organisation, they must be aware that it is their responsibility to decide what view to take on any question before that organisation. Where a Councillor or officer is partaking in an outside organisation in a representative capacity, he/she must declare that fact to the organisation. There will be a fine line to tread between his/her duty to the organisation and to the Council.
- 1.3 The bottom line is that in the end, the Councillor or officer in acting as a director/trustee or member of a management committee of an organisation, must act in accordance with the interests of that organisation. A mandate from the Council to vote one way or the other would put the Councillor or officer in breach of the duty to the organisation. It is permissible to take account of the Council's wishes, but not to vote simply in accordance with them. **The overriding duty in considering an item before the outside organisation is to vote in accordance with the interests of that organisation.**
- 1.4 Councillors and officers must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid this responsibility by not reading the papers or failing to ask for appropriate reports. They will be expected to seek professional advice where appropriate.

2. Companies

- 2.1 On incorporation a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The company is distinct from its shareholders and members. In the case of a limited liability company, the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £1.
- 2.2 Companies limited by shares are those which have share capital (e.g. 1000 shares of £1 each). Each member holds shares and receives a share in the profits made by

the company according to the value of the shares held. Shares can be sold. Companies limited by guarantee are those where there is no shareholding. Instead each member agrees that in the event of the company being wound up they will agree to pay a certain amount. This may also be as little as £1. This form of company is the most usual in the public and voluntary sector particularly where charitable status is sought.

2.3 The management of a company is generally the responsibility of a board of directors. The powers of the directors are usually set out in the company's Articles of Association (the rules each company has to govern its internal management). Sometimes even though a company has been incorporated the directors may be referred to as members of the committee of management, governors or even trustees. However this does not change their status as directors. Conversely, sometimes officials are called directors but they are not members of the board. Again their status will not be affected. Directors are those who are appointed by the company to act in that capacity.

2.4 Directors' Duties

A director is an agent of the company. His/her prime duties are as follows:-

- (1) **A fiduciary duty** to the company (not individual shareholders) to act honestly and in good faith and in the best interests of the company as a whole. Directors are therefore in the position of "quasi trustees" who must take proper care of the assets of the company. The fiduciary duty of the director towards the company is very similar to the fiduciary duty of Councillors to the council tax payers of the Borough.
- (2) **A general duty of care and skill** to the company, but a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.
- (3) Like a Councillor in respect of Council decisions, the director is under a duty **to exercise independent judgment**, though it is permissible for him/her to take account of the interests of a third party which he/she represents. In such a case the director must disclose that position and tread a fine line between the interests of the company and the party represented (in this case the Council). The director cannot vote simply in accordance with the Council mandate. To do so would be a breach of duty.
- (4) **No conflict.** There may be actual or potential conflicts between the interests of the Council and the interests of the company. In such circumstances the only proper way for the conflict to be resolved is for the Councillor to resign either from the company or from the Council.
- (5) Directors are **not allowed to make a private profit** from their position. They must therefore disclose any interests they or their family may have in relation

to the company's contracts. Whether they are then allowed to vote will depend on the Articles of Association.

- (6) Directors must **ensure compliance with the Companies Acts** in relation to the keeping of accounts, and that the relevant returns are made to the Registrar of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director.

2.5 Directors' Liabilities

- (1) The company's identity must clearly be shown on its stationery. The company number, place of registration, registered office address and if any of the directors' names are shown then they must all appear. Non-compliance is an offence and the directors and company officers can be fined.
- (2) A company can only act within the scope set out in its Memorandum of Association (the document which sets out the objects of the company). Those directors knowingly causing the company to act beyond the activities set out in the Memorandum will be liable personally. In very limited circumstances it is possible for the actions of the directors to be ratified by the members of the company.
- (3) A director may also be liable for breach of trust, if he/she misapplies the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a co-director of which they are aware.
- (4) In the event of failure to act in accordance with the best interests of the company, or if a director uses his/her powers improperly or makes a personal profit from his/her position as director, then the director may be personally liable for loss to the company and may be required to give the company the personal profit made.
- (5) If the level of skill and care shown by a director falls below that which could be reasonably expected and the company suffers loss, the director will be liable for the loss incurred. However if it believes the director acted honestly and reasonably, a Court may excuse the director the liability.
- (6) If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. If a director has concerns about the company's financial position he/she could be well advised to inform the other directors and seek advice from the company auditors. He/she should try to ensure that further debts are not incurred.
- (7) A director will also be liable if to his/her knowledge the company carries on business with intent to defraud creditors or any other person, or for any other

fraudulent purpose. Fraudulent trading can also lead to disqualification from action as a director.

- (8) All cheques and similar documents which purport to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may also be liable to the payee if the company fails to honour the cheque. It is therefore wise for directors to make sure that all documents they sign on behalf of the company state very clearly that they act as agent for the company (e.g. Director, for and on behalf of ...).
- (9) A third party who enters into a contract on the assumption that a director has power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power. Directors would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.
- (10) Though company liability ceases on dissolution the liability of the directors (if any) may still be enforced after dissolution.

2.6 Indemnities

- (1) Directors cannot be indemnified against liability arising out of negligence, default or breach of duty or trust. However the company's Articles of Association may allow for directors to be indemnified by the company in respect of the cost of defending such proceedings if the director is granted relief by the Court or acquitted. **It is lawful for companies to purchase insurance to protect its directors against claims of negligence, breach of duty, trust, default. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.**
- (2) It is not possible for the Council to provide indemnities or insurance for Councillors acting as directors, except in a few circumstances outlined in Section 5 below.

2.7 Local Authorities (Companies) Order 1995

- (1) This Order, made under the Secretary of State's powers contained in Part V Local Government and Housing Act 1989, sets out rules concerning local authorities' involvement in "regulated companies" which are subject to extensive controls, and their involvement in other companies where a number of rules apply.
- (2) "Regulated companies" are so defined if they are controlled or influenced by the local authority. "Influenced companies", under the effective control of the local authority, will be subject to capital finance regime and special propriety controls. In broad terms, the test as to whether companies are local authority influenced is whether the local authority has the right to or in fact does exercise a dominant influence over the company in question.

- (3) The original concept of controlled, influenced and minority interests in companies was introduced by the 1989 Act. "Influenced" means at least 20% local authority interest plus a business relationship with the company accounting for over 50% of the company's turnover and/or the company was located on local authority land leased or sold for less than best consideration. "Controlled" means over 50% local authority interests, and "minority" less than 20% interest. The concept in the 1989 Act stands, but the Order introduces the term "regulated".
- (4) Councillors who are directors of outside companies to which they have been nominated by the Council are under the following obligations:-
- (a) that the remuneration they receive from the company should not exceed that received from the local authority, and should be declared;
 - (b) to give information to Councillors about their activities as required by the local authority (save for confidential information); and
 - (c) to cease to be a director immediately upon disqualification as a Councillor.

3. Charities

3.1 To be a charity an organisation must operate for a charitable purpose; i.e.:

- the relief of poverty and human suffering
- the advancement of education
- the advancement of religion
- another purpose for the benefit of the community

It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.

3.2 To register as a charity the organisation must submit its Trust Deed (usually the Memorandum and Articles of Association of a company limited by guarantee) to the Charity Commission for approval. If they are satisfied that the organisation is charitable, it will be registered as such.

3.3 Those who are responsible for the control and administration of a charity are referred to as its trustees, even where the organisation is a company limited by guarantee even though they are not strictly trustees. Trustees of a charity retain personal liability, and can only delegate if the trust deed authorises them so to do.

3.4 Trustees' Duties

- (1) Trustees must take care to act in accordance with the Trust Deed and to protect the charity's assets. They are also responsible for compliance with the Charities Acts.
- (2) Trustees must not make a private profit from their position. They must also perform their duty with the standard of care which an ordinary, prudent

business person would show. Higher standards are required of professionals, and in relation to investment matters.

- (3) Charitable trustees must ensure that the information relating to the trust and trustees is registered with the Charity Commission and that annual accounts and returns are completed and sent.
- (4) If charitable income exceeds £5,000, the letters, adverts, cheques etc must bear a statement that the organisation is a registered charity.
- (5) Trustees are under a duty to ensure compliance with all relevant legislation (e.g. in relation to tax matters).

3.5 Trustees' Personal Liability

- (1) If in doubt, always consult the Charity Commission. A trustee who does so will avoid personal liability for breach of trust if he/she acts in accordance with the advice given.
- (2) Generally, though, a trustee incurs personal liability if he/she:-
 - acts outside the scope of the trust deed
 - falls below the required standard of care
 - makes a personal profit from the trust assets
- (3) In such circumstances the trustee will incur personal liability for losses incurred.
- (4) Trustees can be liable personally to third parties because unlike a company, a trust has no separate identity from the trustees. Trustees are, however, entitled to an indemnity from the trust assets, provided they act properly in incurring the liability. Trustees remain personally liable once they retire (e.g. if they have entered into a contract on behalf of the trust) and should therefore seek an indemnity from their successors. If the charity is a company however the trustees for the time being will be responsible.
- (5) Trustees may be liable to fines if they do not comply with the duty to make returns etc.

3.6 Indemnities

An indemnity can be given from the trust fund provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud, etc. There will be no problem if the trustees themselves pay the premiums but if they are paid out of the charitable funds the trustees will need the consent of the Charity Commission unless the trust deed allows it.

4. Management Committees

4.1 Unincorporated Associations

Groups which are not charitable trusts or limited companies are "unincorporated associations" and have no separate legal identity from their members. The rules governing the members' duties and liability will be set out in constitution, which is simply an agreement between the members as to how the organisation will operate. Usually the constitution will provide for a Management Committee to be responsible for the everyday running of the organisation. An unincorporated organisation may be charitable and may register as a charity.

4.2 Property will have to be held by individuals as the organisation has no existence of its own.

4.3 Duties

Broadly, Management Committee members must act within the constitution, and must take reasonable care in exercising their powers.

4.4 Liabilities

(1) Generally, the Management Committee members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee members are personally liable for the shortfall.

(2) If one person is appointed by the constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the members, who have joint liability for the agent's actions.

(3) Members of the Committee of Management will have personal liability if they act outside the authority given to them or if they do not comply with statute e.g. the payment of employees' tax etc.

4.5 Indemnities

Members will be entitled to an indemnity if they act in accordance with the constitution and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium it must be permitted by the constitution.

5. Insurance Indemnity provided by the Council

5.1 The Council's insurance cover only operates when Councillors are pursuing their Council duties. Generally, whilst the Council appoints Councillors to outside bodies, once appointed they act as members of the body rather than as Councillors.

5.2 In most cases where a Councillor is acting as a Director or as a Trustee, or indeed as a member of a Management Committee, he or she will be exercising judgement

on behalf of the organisation and will therefore need to ensure indemnity is obtained from the organisation.

- 5.3 However, where the organisation is a joint committee of two or more local authorities, the Borough Council can provide indemnity.
- 5.4 Further, where the Councillor is clearly representing the Authority's interests as an observer or as an advisor, then the Borough Council can again provide indemnity.
- 5.5 If in doubt Councillors should seek advice from the Monitoring Officer.

12 June 2009

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	The Standards Committee (Further Provisions)(England) Regulations 2009		
Wards affected	Not applicable		

This report recommends that the Committee notes the implications of the Standards Committee (Further Provisions) (England) Regulations 2009

1. Decision(s) Required

- 1.1 To note the implications of the Standards Committee (Further Provisions) (England) Regulations 2009 which come into force on 15 June 2009
- 1.2 To request the Monitoring Officer to write to all Borough Councillors informing them of the new dispensation provisions.
- 1.3 To request the Monitoring Officer to write to all Town and Parish Clerks within the Borough of Colchester informing them of the new dispensation provisions.
- 1.4 That the record of dispensations granted by the Committee be maintained by the Monitoring Officer on behalf of the Committee.
- 1.5 The Monitoring Officer prepares a guide for Members on dispensations and that it be included as part of the Councils Ethical Framework and be included in the Constitution.

2. Background

- 2.1 The new local assessment regime which came into force in May 2008 has now been supplemented by the Standards Committee (Further Provisions) (England) Regulations 2009 ("the 2009 Regulations") which come into force on 15 June 2009.
- 2.2 The 2009 Regulations deal with the following matters:
 - suspension of initial assessment functions;
 - joint standards committees; and
 - dispensations.

3. Suspension of initial assessment functions

- 3.1 The Local Government Act 2000 (as amended) enables the Standards Board to give a direction which has the effect of suspending the initial assessment functions of a Standards Committee (i.e. assessing whether a Councillor may have breached the Members' Code of Conduct).
- 3.2 The 2009 Regulations specify the circumstances when the Standards Board may exercise this power which are as follows:

- a Standards Committee has failed to have regard to guidance issued by the Standards Board;
- a Standards Committee has failed to comply with a direction issued by the Standards Board:
- a Standards Committee or Monitoring Officer has failed to carry out functions in relation to the conduct of members within a reasonable time or in a reasonable manner; or
- the Authority or its Standards Committee has invited the Standards Board to give a direction.

3.3 The 2009 Regulations provide that the Standards Board may revoke the direction if it feels that the circumstances mentioned in paragraph 3.2 above are no longer relevant. The 2009 Regulations also specify what steps the Standards Board must follow before it issues a direction. Broadly, the direction must be in writing and specify the reasons for its issue. Prior to the issue of a direction to a Standards Committee, the Standards Board is obliged to give the Standards Committee an opportunity of making representations and it must take account of those representations before issuing a direction.

3.4 Whilst a direction is in force, all initial allegations in relation to the Authority concerned are made direct to the Standards Board for the duration of the direction. The Standards Board also has the power to issue a direction that another Authority's Standards Committee deals with allegations relating to another Authority. In this instance the 2009 Regulations refer to the Standards Committee whose functions are being undertaken by another Authority as the "suspended Standards Committee".

3.5 The suspension of a Standards Committee's initial assessment functions would be an action of last resort by the Standards Board as this would indicate that the Authority concerned had poor performance.

4. Joint Standards Committee

4.1 The 2009 Regulations enable two or more Authorities to establish a joint Standards Committee to perform any of the standards committee functions under the Local Government Act 2000 or any regulations made under that Act or the function of the grant and supervision of exemptions from politically restricted posts under the Local Government and Housing Act 1989.

4.2 The 2009 Regulations permit Authorities to decide which functions they wish to be exercised by a joint Standards Committee and require terms of reference to be agreed and sent to the Standards Board specifying which functions are to be exercised by the joint Standards Committee. The 2009 Regulations also specify that when considering an allegation a member from the Authority concerned (or a parish member from within the area of the Authority) must be present at the joint Standards Committee

4.4 The 2009 Regulations also enable the Authorities to specify the numbers of members to serve on the joint Standards Committee and the creation of sub-committees etc. The expenses incurred by a joint Standards Committee are required to be defrayed by the Authorities concerned in proportions that they may agree or in the absence of agreement by a single arbiter agreed by the Authorities.

5. Dispensations

- 5.1 The Local Government Act 2000 requires Members and Co-opted Members of an Authority to register their interests in a register of interests maintained by the Monitoring Officer. The Local Government Act 2000 enables a Member or Co-opted Member to participate in the business of the Authority in circumstances where they would otherwise be precluded due to an interest recorded on the register of interests if they act in accordance with a dispensation granted by the Standards Committee of the Authority. The Secretary of State has power under the 2000 Act to issue regulations which prescribe the circumstances in which dispensations may be granted.
- 5.2 The 2009 Regulations revoke The Relevant Authorities (Standards Committees) (Dispensations) Regulations 2000 which have governed the granting of dispensations to Councillors by Standards Committees. The 2009 Regulations prescribe the circumstances in which Standards Committees may now grant dispensations to Members and Co-opted Members who would otherwise be prohibited from engaging in the business of the Authority (including Town and Parish Councils).
- 5.3 If a Member or Co-opted member acts in accordance with a dispensation granted to him/her, any participation in business of the Authority that would otherwise be prohibited by the mandatory provisions in the Members Code of Conduct (i.e. the Member has a personal and prejudicial interest), is not treated as a failure to comply with the Members Code of Conduct.
- 5.4 A Standards Committee may grant a dispensation to a Member or Co-opted Member in the following circumstances-
- (a) where the transaction of business of the authority would, but for the grant of any other dispensation in relation to that business, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions in the Members Code of Conduct because-
 - (i) the number of members of the authority prohibited from voting on the business of the authority at a meeting exceeds 50% of those members that, but for the granting of any dispensations relating to that business, would otherwise be entitled to vote on that business; or
 - (ii) the number of members prohibited from voting on the business of the authority at a meeting would, but for the granting of any dispensations relating to that business, upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting; and
 - (b) the member has submitted a written request to the Standards Committee for a dispensation explaining why it is desirable.
- 5.5 When determining a request, the Standards Committee must have due regard to the matters mentioned in paragraph (a) above, the members' written request, and to any other relevant circumstances of the case as to whether it is appropriate to grant the dispensation. The 2009 Regulations do not mention any timescales within which this process is to be conducted however, the Committee would require reasonable notice as it would have to comply with the statutory notice provisions regarding meetings etc.
- 5.6 A dispensation once granted can only be relied upon by the Member for a period of 4 years from the date on which it was granted.

- 5.7 The 2009 Regulations provide that a Standards Committee cannot grant a dispensation to-
- (a) allow a member of an overview and scrutiny committee to participate in the scrutiny of a decision made by any body of which that person was a member at the time the decision was taken; or
 - (b) allow an individual member of an Authority's Executive to exercise executive functions solely; i.e. where a portfolio holder makes a decision pursuant to the Cabinet Scheme of Delegation.
- 5.8 The 2009 Regulations require the Standards Committee to keep a written record of the existence, duration and nature if any dispensations granted and for the record to be kept with the Members' Registers of Interests maintained under the Local Government Act 2000.
- 5.9 The Members Notices of Registerable Interests are maintained by the Monitoring Officer and it is suggested that the record of dispensations granted is also kept by Monitoring Officer on behalf of the Committee with the Members Register of Interests.
- 5.10 The Committee has not, to date, been requested to grant a dispensation. However the new regime will apply both to Borough Councillors and all Town and Parish Councillors in the Borough. It is suggested that the Monitoring Officer writes to all Borough Councillors to inform them of the new dispensation regulations and for a simple guide to be included as part of the Council's Ethical Framework within the Constitution. It is also suggested that the Monitoring Officer writes to all Town and Parish Clerks in the Borough to inform them of the new dispensation regulations.

6. Strategic Plan References

- 6.1 The standards regime forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

7. Financial Considerations

- 7.1 None.

8. Equality, Diversity and Human Rights Implications

- 8.1 None.

9. Publicity Considerations

- 9.1 The proposed Guidance will be included as part of the Council's Ethical Framework and will be placed on the Council's website.

10. Consultation Implications

- 10.1 None.

11. Community Safety Implications

- 11.1 None.

12. Health and Safety Implications

- 12.1 None.

13. Risk Management Implications

13.1 None.

