

# NORTH YORKSHIRE COUNTY COUNCIL

## STANDARDS COMMITTEE

1 October 2007

### **Complaints and findings/guidance from the Standards Board**

#### **1.0 PURPOSE OF REPORT**

- 1.1 To update Members on the development of the ethical agenda and any complaints received about County Councillors.

#### **2.0 BACKGROUND**

- 2.1 Members of the Standards Committee previously agreed it would be helpful to have a standing item on each agenda, setting out developments in relation to the ethical framework and any complaints received or pending against Members of the County Council. This is to ensure that Members are up to date with developments and aware of the type of issues that are being raised.

#### **3.0 DEVELOPMENTS**

##### **Code of Conduct DVD released**

- 3.1 The Standards Board's training DVD on the new Code of Conduct, 'The Code Uncovered', was released at the beginning of September. This is the subject of a separate report to the Committee. Clips from the DVD can also be downloaded from the Training Resources section of the Board's website ([www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)).

##### **Standards Board Occasional Paper**

- 3.2 On 23 August 2007, the Standards Board published an Occasional Paper (attached as Appendix 1) to help clarify the issues of predetermination and bias. Although they are common law issues and do not form part of the Code of Conduct, they are areas which have proved to be difficult and controversial for many Members and monitoring officers.
- 3.3 The Paper is based on Advice from leading treasury counsel Philip Sales QC and aims to clarify the issues involved. It explains the kinds of circumstances in which Members are predisposed, and so can take part in a debate and vote, and where they are predetermined, and could put the validity of a decision at risk by participating in a particular matter.
- 3.4 Although there is no new information in the Paper, it is helpful to have it collated and reiterated in one document.
- 3.5 The Occasional Paper and the full Advice from Philip Sales QC can be downloaded from the "Publications" section of the Board's website.

#### **4.0 COMPLAINTS RECEIVED**

- 4.1 The Monitoring Officer periodically receives notification from the Standards Board of complaints that have been referred to them in relation to the Code of Conduct.

- 4.2 During the period since the last meeting of the Committee, the Monitoring Officer received notification from the Standards Board of two complaints made against County Councillors.
- 4.3 The first complaint alleged that the County Councillor concerned had, by virtue of his/her stated reasoning for voting in a particular way on a particular issue, and by virtue of his/her reported admission of being untruthful at a meeting, brought his/her office into disrepute. The Standards Board did not refer the complaint for investigation, on the basis that Members were entitled to vote as they wished and that the matter was not sufficiently serious to warrant a public investigation.
- 4.4 The other complaint, against another County Councillor, related to an alleged failure to amend their registration of interests form within the required timescale. The Standards Board decided not to refer the complaint for investigation as the registration of interests form had subsequently been amended and, in all the circumstances, the alleged conduct would not be serious enough to justify an investigation.

## **5.0 OTHER COMPLAINT MATTERS**

- 5.1 There are no other complaints issues to bring to Members' attention.

## **6.0 RECOMMENDATIONS**

- 6.1 Members are requested to note the contents of this report.

CAROLE DUNN  
Monitoring Officer

Presenting Officer: Moira Beighton

Author of report: Moira Beighton  
Telephone: 01609 532458  
Room 15

Background Documents:  
None

County Hall  
NORTHALLERTON

21 September 2007



## Predisposition, Predetermination or Bias, and the Code

Both predetermination and bias have proved to be difficult and controversial issues for many members and monitoring officers. Although they are judge-made, common law issues, and not part of the Code of Conduct, the Standards Board for England has agreed to publish this occasional paper to help clarify the issues.

Based on advice from leading treasury counsel Philip Sales QC, which can be found on our website, this paper aims to clarify the issues involved and includes examples of where members are predisposed, and so can take part in a debate and vote, and where they are predetermined and their participation in a decision would risk it being ruled as invalid.

**Sir Anthony Holland**  
Chair, the Standards Board  
for England

### What is predisposition?

It is not a problem for councillors to be predisposed. Predisposition is where a councillor holds a view in favour of or against an issue, for example an application for planning permission, but they have an open mind to the merits of the argument before they make the final decision at the council meeting.

This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly. They may even have been elected specifically because of their views on this particular issue.

### What is predetermination or bias?

Predetermination or bias can lead to problems. It is where a councillor is closed to the merits of any arguments relating to a particular issue, such as an application for planning permission, and makes a decision on the issue without taking them into account.

Councillors must not even appear to have already decided how they will vote at the meeting, so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.

Rarely will membership of an organisation, such as a national charity, amount to predetermination or bias on its own unless it has a particular vested interest in the outcome of a specific decision that a councillor is involved in making.

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## Making the decision

There is an important difference between those councillors who are involved in making a decision and those councillors who are seeking to influence it. This is because councillors who are not involved with making a decision are generally free to speak about how they want that decision to go.

When considering whether there is an appearance of predetermination or bias, councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?

However, when applying this test, they should remember that it is legitimate for a councillor to be predisposed towards a particular outcome on the basis of their support of a general policy. This is as long as they are prepared to be open-minded and consider the arguments and points made about the specific issue under consideration.

## How can predetermination or bias arise?

The following are some of the potential situations in which predetermination or bias could arise.

### Connection with someone affected by a decision

This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.

#### example

a) A district councillor also belongs to a parish council that has complained about the conduct of an officer of the district council. As a result of the complaint the officer has been disciplined. The officer has appealed to a member panel and the councillor seeks to sit on the panel hearing the appeal. The councillor should not participate.

Contrast this with:

b) The complaint about the officer described above is made by the local office of a national charity of which the councillor is an **ordinary** member and has no involvement with the local office. The councillor should be able to participate in this situation **because the matter is not concerned with the promotion of the interests of the charity.**

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## **Improper involvement of someone with an interest in the outcome**

This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.

### **example**

A local authority receives an application to modify the Definitive Map of public rights of way. A panel of members is given delegated authority to make the statutory Order. They have a private meeting with local representatives of a footpath organisation and other interest groups before deciding whether the Order should be made. However, they do not give the same opportunity to people with opposing interests.

## **Prior involvement**

This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.

### **example**

A councillor of a local highway authority who is also a member of a parish council that has been consulted about a road closure could take part in the discussion at both councils. The important thing is that the councillor must be prepared to reconsider the matter at county level in the light of the information and evidence presented there.

## **Commenting before a decision is made**

Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. However, if the councillor has made comments which suggest that they have already made up their mind, they may not take part in the decision. If the councillor is merely seeking to lobby the meeting at which the decision is taking place, they are not prevented by the principles of predetermination or bias from doing so. There is no particular reason why the fact that councillors can do this, in the same way as the public, should lead to successful legal challenges.

### **example 1**

A council appoints a barrister to hold a public inquiry into an application to register a village green. The barrister produces a report where he recommends that the application is rejected. A councillor attends a meeting in one of the affected wards and says publicly: "speaking for myself I am inclined to go along with the barrister's recommendation". He later participates in the council's decision to accept the barrister's recommendation. At the meeting the supporters of the application are given an opportunity to argue that the recommendation should not be accepted.

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This is unlikely to give rise to a successful claim of predetermination or bias. The statement made by the councillor only suggests a predisposition to follow the recommendation of the barrister's report, and not that he has closed his mind to all possibilities. The subsequent conduct of the meeting, where supporters of the application could try and persuade councillors to disagree with the recommendation, would confirm this.

### **example 2**

A developer has entered into negotiations to acquire some surplus local authority land for an incinerator. Planning permission for the incinerator has already been granted. Following local elections there is a change in the composition and political control of the council. After pressure from new members who have campaigned against the incinerator and a full debate, the council's executive decides to end the negotiations. This is on the grounds that the land is needed for housing and employment uses.

The council's decision is unlikely to be found to be biased, so long as the eventual decision was taken on proper grounds and after a full consideration of all the relevant issues.

## **Conclusion**

Councillors are entitled to have and express their own views, as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.

**For more information on the issue of predetermination or bias, councillors should talk to their monitoring officers or their political group.**

The Standards Board for England  
Fourth Floor  
Griffin House  
40 Lever Street  
Manchester M1 1BB

Enquiries line: 0845 078 8181  
Minicom: 0161 817 5449  
[enquiries@standardsboard.gov.uk](mailto:enquiries@standardsboard.gov.uk)

[www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)



**the  
Standards Board**  
for England

Confidence in local democracy

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