

STANDARDS COMMITTEE

7 February 2005

LOBBY GROUPS, DUAL-HATTED MEMBERS AND THE CODE OF CONDUCT –  
GUIDANCE ISSUED BY THE STANDARDS BOARD

REPORT OF CITY SECRETARY AND SOLICITOR

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

The Standards Board for England has published guidance on these difficult areas where there might be a conflict of interest for a Member. It considers the balance between circumstances when it is reasonable for a Member to represent outside interests and still participate in a decision at Council – and those when it is not reasonable to do so. It provides more detailed guidance than was previously available. A copy of the booklet was circulated to all Members in December 2004. Another copy has been circulate with this agenda for Standards Committee Members only.

This report highlights some key areas and the extent to which the Council's practices already conform to this advice.

RECOMMENDATIONS:

- 1 That Members consider whether any changes are necessary to current practices in light of the new guidance.
- 2 That a report be brought to a future meeting to update the Council's Planning Protocol, as outlined in the report.

- 3 That a report be brought to a future meeting on a Local Protocol on potential issues where a conflict of interest could arise for dual-hatted Members (i.e. those who are also on other public bodies or voluntary groups).

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#### DETAIL:

#### 1 Introduction

1.1 The new guidance provides more detailed advice for Members who:

- (a) are Members of lobby groups;
- (b) are dual-hatted in that they serve on more than one Council i.e. County or parish, as well as the District;
- (c) are dual-hatted because they also sit on other public bodies e.g. primary care trust, or a charity or voluntary group.

It provides practical advice on circumstances when it is reasonable to declare a personal interest and still participate. It also indicates the general guidance when the members should declare a personal and prejudicial interest and not participate.

1.2 A copy of the new guidance has been circulated to all Members. The report highlights some key areas below and comments on the extent to which current practice at Winchester complies with the new guidance.

#### 2 Membership of Lobby Groups

2.1 Page 3 of the Guidance refers to circumstances when the issue will have a direct interest on the lobby group e.g. a planning application or request for grant aid for the lobby group. This is considered to be a personal and prejudicial interest. This accords with advice given by the Monitoring Officer locally.

2.2 Pages 3 and 4 outline how this contrasts to broad debates on policy, when a declaration of a personal – but not prejudicial - interest will still enable the Member to participate at the Council debate.

2.3 Page 4 indicates the care that has to be taken with planning and licensing decisions. Membership of a Group that campaigns against a particular application “may well constitute a prejudicial interest”. This might potentially go beyond local practice in some instances - when active participation in a committee or managing group of an organisation making the representations has been the factor where it has been deemed to be sufficient to constitute a prejudicial interest. This compares to general membership of a passive nature which usually has been considered not to be prejudicial unless there were exceptional circumstances regarding the controversial nature of the campaign, or any involvement by the Member in it. However, the national guidance does not go into this level of detail as to when a prejudicial interest definitely arises. The only example given (page 9) is a vocal Member of a lobby

group against incinerators should not sit on a Planning Committee determining the application. Page 11 also gives some general questions that a Member could ask to determine whether involvement with an outside group is prejudicial. These suggest a similar approach to that currently adopted in Winchester.

- 2.4 Page 9 of the guidance points out that having a personal and prejudicial interest is a different legal issue in relation to planning and licensing than pre-determination and bias. This aspect relates to case law (not the Code) which can rule out participation if a Member has not kept an open mind on an application. It is important to note that expressing a preliminary view does not necessarily mean that a Member has pre-determined a matter, provided they still have a genuinely open mind when the matter comes back for final decision.
- 2.5 The Winchester Planning Protocol currently allows Members who are not involved in taking the decision to still express a view, if they have been involved in campaigns, even though they could not vote on the application itself. This accorded with a model recommended by the Local Government Association at the time. However, the Protocol could be usefully updated to give the more detailed guidance that has been given by officers in practice, and which is generally in accordance with the new guidance.
- 2.6 Some Councils take the view that Members who have had any involvement with a lobby group or have campaigned for a particular outcome should not address a meeting within the Council on a planning or licensing matter, even though they are not involved as a part of the decision-making body. Some others take the Winchester approach, where representations can be made in certain circumstances, provided care is exercised. Members should be aware of these differing approaches when the detail of the Protocol is re-considered.

### 3 Dual-Hatted Members

- 3.1 This can arise where a Member is on another public body or voluntary group. When the Code was introduced it was recognised that Members are often involved in other community bodies – and this is encouraged. Cross-membership can lead to more joined-up working.
- 3.2 Initially it was suggested that personal, but not prejudicial interests should be declared in such cases – particularly in respect of other public bodies, and in the case of voluntary groups where the Member had been appointed on the outside body as a Council representative. However, this has been qualified since the second year of operation of the Code, if it could be considered that there was a conflict of interest. Examples are land negotiations, and applications for grant aid. Pages 16 and 17 confirm the Winchester approach in this respect. However, it could be useful to confirm this guidance in a local Code.

### 4 Detailed Guidance on Permissible Action – Prejudicial Interests

- 4.1 Pages 19 and 20 outline what can properly be done by a Member who has declared a personal and prejudicial interest – particularly in relation to their own planning applications.
- 4.2 This accords with advice currently given by the Monitoring Officer to Members – but the Local Planning Protocol could be usefully expanded along these lines.

OTHER CONSIDERATIONS:

5 CORPORATE STRATEGY (RELEVANCE TO):

5.1 Relevant to the aims of “encouraging open debate and discussion about the future with our residents and partners” and “to be a learning organisation, sharing best practice.

6 RESOURCE IMPLICATIONS:

6.1 The work outlined can be undertaken within existing resources.

BACKGROUND DOCUMENTS:

None

APPENDICES:

None