

# Standards and Audit Committee

**Tuesday 10 February 2009 7.30pm**

**Committee Room  
Runnymede Civic Centre, Addlestone**

## Members of the Committee

Mr S Tully (Chairman) and Mrs C Spurling (Vice-Chairman),  
Councillors I O Angell, A J Davis, Mrs L M Gillham, A D Mills and A P Tollett.

In accordance with Standing Order 29.2 any non-member of the Committee who is considering attending the meeting should first request the permission of the Chairman.

## A G E N D A

### Notes:

- i) Any report on the Agenda involving confidential information (as defined by section 100A(3) of the Local Government Act 1972) must be discussed in private. Any report involving exempt information (as defined by section 100I of the Local Government Act 1972), whether it appears in Part 1 or Part 2 below, may be discussed in private but only if the Committee so resolves.
- ii) The relevant "background papers" are listed after each report in Part 1. Enquiries about any of the Agenda reports and background papers should be directed in the first instance to **Miss C Pinnock, Administration and Leisure Department, Committee Section, Civic Centre, Station Road, Addlestone (Tel: Direct Line: 01932 425627).**  
(Email: [clare.pinnock@runnymede.gov.uk](mailto:clare.pinnock@runnymede.gov.uk)).
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- iv) In the unlikely event of an alarm sounding, members of the public should leave the building immediately, either using the staircase leading from the public gallery or following other instructions as appropriate.

## **LIST OF MATTERS FOR CONSIDERATION**

### **PART I**

#### **Matters in respect of which reports have been made available for public inspection**

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### **PART II**

#### **Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection.**

- a) Exempt Items  
Exempt Appendix '1' to Item 5 'Internal Audit'
- b) Confidential Items  
(No items to be considered under this heading).

1. FIRE PRECAUTIONS

The Chairman will read the Fire Precautions, which set out the procedures to be followed in the event of fire or other emergency.

2. MINUTES

To confirm and sign the Minutes of the Meeting held on 18 December 2008 as attached at Appendix 'A'.

3. APOLOGIES FOR ABSENCE

4. DECLARATIONS OF INTEREST

If Members have an interest in an item, please record the interest on the form circulated with this Agenda and hand it to the Legal Representative or Committee Administrator at the start of the meeting. A supply of the form will also be available from the Committee Administrator at meetings.

Members who have previously declared interests, which are recorded in the Minutes to be considered at this meeting, need not repeat the declaration when attending the meeting. Members need take no further action unless the item in which they have an interest becomes the subject of debate, in which event the Member must leave the room if the interest is personal and prejudicial.

5. INTERNAL AUDIT (DF)

(Ref: Minutes of the Standards and Audit Committee, February 2008, page 763, para 521)

1. Purpose of Report

1.1 **The purpose of this report is to:**

- **provide information on the 2009/10 Internal Audit plan;**
- **update Members on the staffing provision of the Internal Audit section;**
- **update Members on the re-tendering exercise for the Internal Audit top up contract;**
- **update Members on the National Fraud Initiative Data Matching exercise; and**
- **update Members of any internal control issues arising from the first part of this year's audit coverage.**

2. Background Information

2.1 In June 2006, the former Policy and Resources Committee approved a bi-annual reporting process. Since then, Members have been provided with two reports each year:

- one presenting the annual Internal Audit plan for approval (prior to 1 April),
- another reporting actual work performed compared to that plan (following 31 March).

2.2 This report presents the 2009/10 Internal Audit plan.

2.3 The Internal Audit Section comprises the Chief Internal Auditor and an Auditor, supplemented by contract auditors currently provided by Bentley Jennison.

3. The Internal Audit Annual Plan

3.1 The annual Internal Audit Plan for 2009/10 is reproduced at Appendix 'B'.

3.2 This plan is split as set out below:

Plan	Work	Number of Days
Part 1 - systems audits	Assess controls in operational areas to manage identified risks and provide assurance. <i>e.g. Council Tax, Museum, Leisure Centre, Benefits</i>	201
Part 2 – Computer audits	Non technical <i>e.g. document scanning procedures</i> Part technical <i>e.g. IT controls within individual systems</i> Technical <i>e.g. Operating system security, system configuration, prevention of access to 'hackers'.</i>	51
Part 3 – Corporate work	Anti Fraud & Corruption work, Data Matching, external audit assistance <i>e.g. Act on fraud notifications from external bodies, co-ordinate the National Fraud Initiative within Runnymede, audit of subsidy claims to reduce external audit fees.</i>	29
Part 4 – unplanned & consultancy work	Investigations <i>e.g. Large income/cash shortage identified.</i> re possible fraud Advice on Request <i>e.g. Assistance with designing controls for new system.</i>	20
	<b>Total</b>	<b>301</b>

- 3.3 The majority of the planned work will be completed by in house staff. It is anticipated that 80 systems days (part 1) and 20 computer audit days (part 2) will be obtained from the external provider.
- 3.4 Specialist skills are required for some computer audit work. These skills are relatively expensive (current charges for computer audit days are 60% higher than systems audit days). Officers have therefore agreed with the existing contractor that where possible, elements of each computer audit will be carried out by non-technical systems auditors to keep costs down.
4. Staffing Provision of the Internal Audit Section
- 4.1 The Chief Internal Auditor has been in post for eight years. However, there have been six auditors in the Auditor post over the same time period.
- 4.2 The post became vacant again in September last year and a new auditor started at the end of November. The new auditor has been appointed on the Council's Graduate Incentive Scheme and has enrolled to study for the Certified Institute of Public Finance Accountants' (CIPFA) qualification.
- 4.3 A significant number of audit days have been lost, initially while the post was vacant and then while the Chief Internal Auditor was providing on the job training. Some of this time has been made up by allocating two more key financial audits to the external provider.
- 4.4 Although the new recruit has no previous audit (or Local Government) experience, he is picking the job up well.
- 4.5 It is hoped that the rechargeable payments made for the Graduate Incentive Scheme and professional studies will prove to be a useful retention mechanism.
- 4.6 There are issues arising from new working methods that are causing the Chief Internal Auditor some concern.
- (i) Selecting random samples for testing and carrying out simple tests used to be a relatively quick and simple task e.g. selecting every 25 page in a lever arch file or flicking through a number of pages to ensure that initials appear in a particular box on each page. Carrying out the same tasks with scanned documents is far more time consuming.

There is little scope for extending the number of days for individual audits so auditors have to choose to reduce sample sizes or restrict the scope of the audit. For some audits, the sample size is specified by the external auditors.

- (ii) A considerable quantity of audit work is now PC based. The opportunities to alternate PC based work with filing for example, to provide eye rest are very limited.

## 5. External Provision

- 5.1 Top up Internal Audit days are currently provided by Bentley Jennison, the company which took over the original winning tenderer, ACIT services. That contract was let for three years with an option to extend for a further two years, five years ago.
- 5.2 At the time of producing this report, Officers are analysing tender bids to re-let the contract from 1 April 2009. Members will be verbally updated at the meeting with details of the results of this exercise.
- 5.3 The possibility of Runnymede's Internal Audit section joining the existing partnership arrangement with Spelthorne, Elmbridge and Surrey Heath has not progressed. Although the partnership was invited to tender along with other possible contractors, a decision was taken not to submit a tender as Spelthorne managers want to give the Elmbridge acquisition time to "bed in" before expanding the partnership.
- 5.4 Spelthorne's view is that the partnership should expand gradually as Chief Internal Auditors leave neighbouring authorities. As Runnymede still has its own Chief Internal Auditor, this probably means not joining the partnership for at least six years.

## 6. National Fraud Initiative (NFI) National Data Matching Exercise

- 6.1 The section co-operates in a biennial Data Matching exercise for the purposes of identifying and investigating fraud. Information is requested by, and supplied to, the Audit Commission for matching with data held by other public bodies (e.g. other Councils and the Health Service). Results of the data matches are returned to each supplier of data for investigation.
- 6.2 It has previously been reported to this Committee that data has been requested from the Council Tax system and the Electoral Register, with the intention of identifying fraudulent claiming of discounts (e.g. for single person occupancy).
- 6.3 However, legal challenges were raised nationally as to whether the Electoral Register could be supplied. These have been addressed by the passing of the Serious Crime Act 2007 and it is anticipated that the Electoral Register will have been uploaded to the Audit Commission's secure website by the time this Committee meets. Council Tax data has already been supplied.
- 6.4 At the time of producing this report, matches from the exercise have not yet been released.

## 7. Adequacy of Internal Control

- 7.1 The Chief Internal Auditor is not aware of any major issues that Members need to be aware of that have not already been rehearsed elsewhere (e.g. in the Statement of Internal Control).
- 7.2 Exempt Appendix '1' lists new recommendations and progress with those previously made. An issue arising from the list of recommendations presented to this Committee in September 2008, relating to back up arrangements for electronic data, is currently being reviewed in the relevant audit. Officers will verbally update Members at the meeting with the results of this review.
- 7.3 One of the reasons this piece of work has been delayed, is that the Council suffered a major systems failure in the evening of Tuesday 13 January. Many systems were unavailable for the rest of that week and documents relating to current audits were not available again until the following Tuesday. All work carried out on Tuesday 6 January was lost.
- 7.4 Although the effects of this failure were not restricted to Internal Audit, this was unfortunate for the section as there were 4 contract auditors working that week. The Council is

contractually obliged to pay for down time, which in theory could be approximately 12 man days at a total of over £3,000.

7.5 However, contract staff did everything they could to avoid losing time and it is anticipated that the Council will only face a bill for 1-2 additional days.

8. Legal Implications

8.1 Section 32 of the Serious Crime Act 2007 gives the Audit Commission the power to require a body to provide such data as they may reasonably require for the purpose of data matching. Failure to comply with their request without reasonable excuse is a criminal offence.

8.2 Regard must be had to the Code of Data Matching Practice when participating in such data matching exercises. Processing personal data engages Article 8 of the European Convention on Human Rights, which deals with the right to respect for private and family life and the home. This means that any data processing must be in accordance with the law and proportionate.

**(FOR INFORMATION)**

Background Papers

None.

6. ANNUAL REVIEW OF THE EFFECTIVENESS OF THE SYSTEM OF INTERNAL CONTROL 2008/09 (DF)

(Ref: Minutes of Standards and Audit Committee, February 2008, page 764, para 522)

1. Purpose of Report

1.1 **The purpose of this report is to invite the Committee to consider the effectiveness of the system of internal control in the authority and to consider the issues that might be reported in the Annual Governance Statement for the 2008/09 financial year.**

2. Background Information

2.1 The Standards and Audit Committee has responsibility for considering any matters relating to control procedures, risk exposure and corporate governance generally. The consideration of the arrangements for internal control in the authority and the Annual Governance Statement falls under this duty.

2.2 The need to review arrangements for internal control and the Annual Governance Statement (AGS) is given statutory backing by the Accounts and Audit Regulations 2003 (the "2003 Regulations"), as amended. In particular, the Regulations say that the Council should:

- Ensure that the financial management and control systems are adequate and that there is effective risk management,
- Include a statement of internal control, prepared in accordance with proper practice, in its financial statements, and
- Conduct a review at least once a year of the effectiveness of its system of internal control.

The review should set out a strategy to mitigate any key risks to service delivery that are identified.

2.3 This review of the internal control framework of the Council will feed into the final version of the AGS for the 2008/09 financial year. The final version will need to be approved by the Corporate Management Committee when they approve the Statement of Accounts for 2008/09 in June. Statutory guidance requires the AGS to be signed by the most senior Officer (Chief Executive Officer) and the most senior Member of the Council (the Leader) at the same time as the Statement of Accounts is approved.

- 2.4 Corporate governance extends beyond financial probity to include all aspects of the conduct of an authority's business. It is not just a finance issue and covers the governance aspects of accountability, effectiveness, openness and integrity. However, governance issues relating to internal controls are particularly pertinent to the preparation and publication of the Statement of Accounts, hence the requirement to publish the AGS with the accounts. Demonstrating that the Council has effective internal control is an important part of our corporate governance framework. Most of the documents that set out our internal control framework are published in the Constitution.
- 2.5 The Audit Commission is keen that the annual review of internal controls should not be seen as an add-on end of year activity simply to comply with legislation. In the CPA process, internal control is one of the 5 key lines of enquiry (KLOE) that make up the current *Use of Resources Assessment* system. For the 2008 exercise, Runnymede was again awarded a score of 3 ("consistently above minimum requirements - performing well") for the internal control part of the KLOE.
- 2.6 The Audit Commission's *Code of Audit Practice 2005* (which covers the Commission's strategic aims and objectives for five years) states that the statement on internal control and underlying process forms a key piece of evidence for auditors' work on the authority's arrangements to secure economy, efficiency and effectiveness. The Audit Commission fully supports the requirement for an AGS. In the Commission's view, the arrangements required for gathering assurances for the preparation of the AGS provide an opportunity for authorities to consider the robustness of their governance arrangements. In doing so, authorities need to recognise that this is a corporate issue, affecting everyone in the organisation. It is also important to recognise that the purpose of the AGS is not just to be 'compliant', but also to provide an accurate representation of the arrangements in place during the year and to highlight those areas where improvement is required. As part of their use of resources assessments auditors will consider the arrangements in place to enable the preparation of the AGS, including the degree to which the authority recognises the corporate ownership of its governance arrangements.
3. Corporate governance – the 'SOLACE/CIPFA Delivering Good Governance in Local Government: Framework'
- 3.1 In June 2007, the Society of Local Authority Chief Executive Officers (SOLACE) and the Chartered Institute of Public Finance and Accountancy (CIPFA) published '*Delivering Good Governance in Local Government: Framework*'
- 3.2 The updated SOLACE/CIPFA Framework takes account of the changes affecting local authority governance since the original framework '*Corporate Governance in Local Government: A Keystone for Community Governance*' was published in 2001. Runnymede did not adopt the 2001 Code and has not yet decided whether to adopt the 2007 Framework.
- 3.3 Local authorities remain free to choose whether to adopt the new SOLACE/CIPFA Framework. The publication of an AGS is a statutory duty. However, it is not necessary for a local authority to adopt the Framework in order to prepare the AGS.
- 3.4 The Framework defines the principles that should underpin the governance of each local government body. It outlines six core principles of good governance focusing on the systems and processes for the direction and control of the organisation and its activities through which it accounts to, engages with and leads the community. The degree to which the authority follows these principles should be declared in the AGS. The six core principles are:
1. Focusing on the purpose of the authority and on outcomes for the community and creating and implementing a vision for the local area
  2. Members and Officers working together to achieve a common purpose with clearly defined functions and roles
  3. Promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour

4. Taking informed and transparent decisions which are subject to effective scrutiny and managing risk
  5. Developing the capacity and capability of Members and Officers to be effective
  6. Engaging with local people and other stakeholders to ensure robust accountability
- 3.5 The SOLACE/CIPFA Framework requires authorities to undertake regular (at least annual) reviews of their governance arrangements. The preparation and publication of an AGS in accordance with the Framework is necessary to meet the statutory requirements of the Accounts and Audit Regulations.
4. Annual Governance Statement (AGS)
- 4.1 The AGS set out the extent to which governance arrangements are complied with, how the effectiveness of governance arrangements are monitored, and any planned changes in the coming year.
  - 4.2 The SOLACE/CIPFA Framework sets out in detail the items that need to be included in the AGS. The CIPFA Finance Advisory Network has published a guide (the FAN Guide) for practitioners on preparing an AGS. This guide has been extensively used in preparing this report.
  - 4.3 The FAN Guide contains a useful flowchart that sets out some of the typical dynamics that an authority should consider and shows how they can be brought together and evidenced. This is set out in the diagram in Appendix 'C'. Not all the elements will apply to Runnymede and a proportionate approach has been taken to the exercise, but it serves as a useful guide to the overall process. For instance, the role of the "corporate group" referred to in the centre of the flowchart is carried out through a consultation process involving all Directors, other senior Officers, and the Chief Internal Auditor.
  - 4.4 The FAN Guide identifies the need for a review body in this process to examine critically the AGS and supporting documentation. This is the role of this Committee.
  - 4.5 The AGS is to relate to the system of internal financial control as it applied during the financial year – in this case the review is for the 2008/09 financial year. Any significant developments between now and the date that the Statement of Accounts are signed by the Director of Finance will be incorporated into the AGS. The AGS will then be presented to the meeting of the Corporate Management Committee on 25 June 2009 as part of the approval process for the Statement of Accounts.
5. Reviewing the effectiveness of the system of internal control: The assurance gathering process
- 5.1 The assurance gathering process is the well-established and structured link between the strategic objectives and statutory requirements of the authority and how these objectives are to be delivered. It requires the identification of key controls that are deemed critical to the delivery of these objectives and expects a formal review and risk assessment for the management and delivery of these key controls.
  - 5.2 The FAN Guide sets out an **assurance gathering process** framework that helps identify relevant and reliable evidence to support the AGS. This framework comprises the following stages:
    1. Establish principal statutory obligations and organisational objectives and apply the six SOLACE/CIPFA Core Principles (see paragraph 5.8)
    2. Identify principal risks to achievement of objectives
    3. Identify and evaluate key controls to manage principal risks
    4. Obtain assurances on the effectiveness of key controls
    5. Evaluate and identify gaps in controls and assurances

6. Produce an action plan to address gaps and ensure continuous improvement in corporate governance
7. Produce the Annual Governance Statement
8. Report to Committee

It is obtaining **assurance** that is the most challenging part of the process.

- 5.3 The FAN Guide reflects the current and further challenges, pressures and expectations now placed on authorities. Perhaps the most notable examples of this are the assurance and evidence relating to joint working arrangements and partnerships that have become much more prevalent and high profile for local authorities. These arrangements are likely to become even more prevalent as Local Area Agreements develop further and we move towards the new performance assessment of authorities in Comprehensive Area Assessment.
- 5.4 The sources of assurance include:
  - Published documents (e.g. Constitution)
  - Directors and managers throughout the organisation assigned with the ownership of risks and delivery of services
  - The Monitoring Officer
  - The Responsible Financial Officer
  - Members
  - Chief Internal Auditor
  - External Audit and other review agencies and inspectorates
- 5.5 The input of Members, and specifically this Committee, forms an important part of the assurance gathering process.
- 5.6 The schedule in Appendix 'D' sets out the sources and examples of controls and procedures that are available to provide the evidence that is needed to support the AGS. The headings used in the Schedule follow those used in the FAN Guide.
- 5.7 The FAN Guide places a great deal of emphasis on the first stage of the assurance gathering process - establishing principal obligations and objectives and apply the six SOLACE/CIPFA Core Principles – as the other stages follow on from this. There are four steps to the establishing principal obligations and objectives stage:
  1. There is a mechanism to identify the principal statutory obligations of the Council.
  2. There is a mechanism to establish that corporate objectives exist and that it works, i.e. that the Council has decided what it **wants** to do.
  3. Corporate governance arrangements are embedded in the authority – so that the Council runs properly and has a fair chance of doing what it wants to do
  4. Effective performance management (not just performance reporting) so the authority finds out what it is doing and can correct drift.
- 5.8 The FAN guide also sets out a framework for collecting evidence about the six steps in applying the six SOLACE/CIPFA Core Principles (set out in paragraph 3.4). Runnymede has not adopted the SOLACE/CIPFA Code and therefore does not have the required "local code of governance". However, there is a great deal of similarity between the Council's current governance practices and the requirements of the SOLACE/CIPFA Code. Therefore, the schedule at Appendix 'D' sets out relevant evidence that links Runnymede governance practices to the six SOLACE/CIPFA Core Principles.
- 5.9 Members are invited to review the schedules at Appendices 'C' and 'D' and to satisfy themselves that the evidence is consistent with their own experience. Members are also invited to question the Officers at this meeting and to request further evidence as is considered necessary in order to obtain satisfaction about the Council's overall control framework.

- 5.10 Previously, Members of this Committee had expressed concern that this review appeared to require a degree of technical knowledge that some Members did not possess. However, the Committee was assured that Members were not expected to be expert in technical areas or have extensive knowledge of the Authority's management. Indeed, the lay member is able to take an overview and provide a perspective that might be missed by experts.
- 5.11 This process will form part of the basis on which the AGS for 2008/09 will be prepared. As a guide only, a draft AGS for 2008/09 is set out in Appendix 'E'.
- 5.12 In the draft AGS there are a number of references to documents that can be found on the Council's website, such as the CPA report of 2004/05. This can be accessed from the home page by: clicking 'A-Z', clicking 'p', clicking 'performance inspections and assessment' and the CPA report appears under 'external assessments'.
6. Significant governance issues
- 6.1 The AGS is to conclude with a section that identifies the actions taken (or proposed) to deal with significant governance issues.
- 6.2 Nationally, the feedback from external auditors is that highly rated (through CPA) authorities have tended to report more issues than poorly performing authorities. The issues raised by authorities tend to focus on areas that are very difficult to claim total control over (e.g. risk management, business continuity, performance management, partnership working), or which have a local bias (e.g. responding to challenges raised in CPA reports).
- 6.3 The AGS for Runnymede in 2007/08 identified no significant internal control issues, but instead identified areas where improvement would be useful or where significant risk was apparent. The areas identified that required further action were:
1. Risk Management
  2. Revenue saving targets and efficiency savings
  3. Partnership working
  4. Business continuity planning
  5. The internal control risks of moving into the new Civic Centre
  6. Establish appropriate internal controls surrounding new ways of working, in particular the desire to minimise use of paper records
- 6.4 The action plan for these issues is included in the draft AGS for 2008/09 (Appendix 'E'). Good progress has been made on the governance issues that might have surfaced following the move to the new Civic Centre. However, further work is required to deliver improvements in business continuity planning and partnership working arrangements. Improvement has been made in recent years in the management of corporate risks, but risk management is not yet at a stage where it is fully embedded into the service planning process.
- 6.5 The achievement of revenue efficiency targets and efficiency savings has been a feature of the Action Plan for a number of years. However, it is considered that this is more in the nature of a business risk of the Council and the governance arrangements for this process are well established and working effectively. Therefore, it is suggested that this issue – albeit it remains critically important – can be removed from the Action Plan as a governance issue.
- 6.6 Members are asked to review the assurance gathering exercise (Appendices 'C' and 'D'), the draft AGS and Action Plan and other sources (e.g. auditor or management concern) and identify any further areas for improvement.
- 6.7 Other internal control issues may be identified up until the Statement of Accounts is produced in June.
7. Legal Implications

7.1 Regulation 4 of the Accounts and Audit Regulations 2003 requires a statement of internal control to be published with the Statement of Accounts. Regulation 4(2) requires the Council to carry out an annual review of the effectiveness of its system of internal control. Statutory guidance sets out the required contents of this Statement (the 'Annual Governance Statement') and the process for establishing and maintaining a system of internal control and the annual review process. The guidance requires the Statement to be signed by the Chief Executive Officer and the most senior Member of the Council (the Leader).

7.2 Regulation 4 was updated by the Accounts and Audit (Amendment) (England) Regulations 2006 to require the review of the effectiveness of internal control to be considered by a committee or full council meeting. The guidance on this change supports the use of an audit committee as an appropriate means through which to consider the findings of the review.

## 8. Conclusions

8.1 Corporate governance remains a developing area in both public and private sectors. The approach taken in this report is to identify and provide evidence of the systems that already exist in the Council and actions taken.

8.2 There are areas that can be usefully developed, for example, in the development of good governance arrangements in partnership working. However, care will need to be taken to ensure that procedures remain proportionate to the risk and scale of activities in an authority the size of Runnymede.

### **MEMBERS ARE REQUESTED to -**

- i) review the Schedule of evidence set out in Appendices 'C' and 'D' and to satisfy themselves that the evidence is consistent with their own experience;**
- ii) review progress on issues identified in the AGS for 2007/08 as set out in the Action Plan in Appendix 'E' and identify any further areas for improvement; and**
- iii) review the content of the draft AGS set out in Appendix 'E' for 2008/09 generally.**

### **(TO RESOLVE)**

#### Background Papers

1. "Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice: Guidance Notes for Practitioners", published by CIPFA (updated annually).
2. Accounts and Audit Regulations 2003 – Statutory Instrument and Guidance Circular; ODPM Circular 04/2003.
3. "The Annual Governance Statement - Meeting the requirements of the Accounts and Audit Regulations 2003; Rough guide for practitioners with effect from 2007-08", published by CIPFA Finance Advisory Network.
4. DCLG Circular 03/2006: Guidance on the Accounts and Audit Regulations 2003", published by DCLG on 18 August 2006.

#### 7. ADJUDICATION PANEL FOR ENGLAND AND STANDARDS BOARD FOR ENGLAND – RECENT CASES (DAL)

(Ref: Minutes of the Standards and Audit Committee, September 2008, page 184, para 180)

1. A member of High Peak Borough Council appealed against a decision of the Council's Standards Committee to suspend him for three months for aggressive behaviour towards the complainant, a Council Officer. The Committee concluded that the behaviour amounted to a

failure to treat others with respect, and indeed bullying, under the Code. There had been three main incidents – first anger and aggressiveness shown towards the Officer at a project meeting when she offered an opinion that did not accord with the Councillor's; second a derogatory email sent to a local resident and copied to the Officer, and thirdly excessively angry and confrontational behaviour during a Council organised session on media skills during which the Officer in question gave a short presentation. The last event culminated in the Officer leaving the room in tears before her presentation was finished. Other Councillors had tried to intervene during the meeting and persuade him to moderate his behaviour.

The Councillor appealed on the grounds that the Standards Committee had not given proper consideration to mitigating circumstances, namely hearing problems which caused him to speak loudly, high blood pressure which made him red in the face, his own admission of disrespect, and voluntary attendance at an anger management course. He had also apologised before the hearing and felt that the Monitoring Officer had showed bias in correspondence with witnesses. The Appeal Panel felt that his subsequent action had disclosed some insight into his situation, but considered that the Standards Committee had taken account of all relevant circumstances. He had agreed that residents of his Ward would be disadvantaged during his suspension, but the panel did not consider that the electorate's rights would be breached, especially as the Ward had more than one Member. The Standards Committee's decision was reasonable, proportionate and sensible, and the appeal was unanimously dismissed.

The case demonstrates how a pattern of behaviour might amount to a breach when an isolated incident might be forgotten; and also illustrates the kind of behaviour which can constitute bullying under the Code. It also illustrates that it is difficult to make out a case for avoiding suspension or disqualification on the grounds that the electorate will be disadvantaged.

2. A Cabinet Member of West Sussex County Council was adjudged to have behaved inappropriately towards a relatively newly appointed female member of staff at a training session, when he had kissed her. A complaint was not made until after the event. The Authority's Standards Committee had concluded that he had failed to treat the complainant with respect and that he had conducted himself in such a manner as could reasonably be regarded as bringing his Office as a Cabinet Member into disrepute. He had shown a lack of insight into proper conduct in a work situation, and the effect of his actions on others. The Committee decided that he should be censured, suspended from the Office of Cabinet Member for one month, give a written apology to the complainant, undertake appropriate training, and participate in conciliation (by mutual agreement).

The appellant stated that his actions, though unacceptable, were innocent, that he had stayed away from County Hall for six weeks, and in view of this the suspension was harsh, training was unnecessary, and there may not be the need for conciliation as he had since been removed from his Cabinet post.

The Appeals Tribunal decided that all the sanctions should be upheld. The Member's actions had been wholly inappropriate towards a newly appointed female member of staff and witnesses other than the complainant had been concerned about it. Having regard to Standard's Board guidance, and to all surrounding circumstances, none of the sanctions imposed were excessive or unreasonable.

In this case there was no evidence of any malice or deviousness by the Member involved according to his evidence he simply felt a sense of goodwill to everybody on the day in question. However, it illustrates that unwelcome touching or over-friendly conduct, particularly by a person in authority towards a junior individual, can be regarded as just as inappropriate as hostile conduct.

3. A member of Erewash Borough Council was convicted on three counts of making indecent images of a child, and four of possessing indecent images of a child. One of these counts referred to thirteen images found on a computer provided to the Member by the local authority to facilitate his duties as a Member.

Although the Member was not acting in an official capacity when he accessed the images, the case tribunal found that the fact that he did so on a Council computer provided a sufficient link to the Code of Conduct. He could therefore reasonably be regarded as bringing his Office or Authority into disrepute. The Tribunal did not accept the respondent's

submission that he could not have breached the Code because the Council did not have an IT policy in place at the time. This was a matter of common sense.

Bearing in mind the seriousness of the criminal offence, and the potential for damage to the standing of the Council and the Office of Councillor, the case tribunal disqualified the Member from membership of any local authority for five years.

Whilst the downloading of child pornography represents an extreme example of computer misuse, it is worth noting the principle that the Member did not escape sanction simply because he could not be said to be acting in an official capacity, bearing in mind that he used a Council computer.

4. A Member of Liverpool City Council distributed a number of election leaflets purporting to be on behalf of a party to which he did not belong, containing a number of abusive comments about a local Councillor of a different party (and to which he did not belong either). Following a police investigation he was found guilty of an offence under the Representation of the People Act and fined £500.

The Ethical Standards Officer who investigated the matter on behalf of the Standards Board concluded that the conduct fell outside the Code of Conduct, because the Member was not acting in his official capacity or performing the functions of his authority (note: the Code and Legislation has since been modified to allow certain sorts of criminal conduct to constitute a breach of the Code. It is possible though not certain that the outcome might be different today).

This is an interesting illustration of the care that must be taken to decide whether the conduct complained of, though unquestionably wrong, actually falls within the Code.

**(FOR INFORMATION)**

Background Papers

Published cases on websites of Adjudication Panel for England and Standards Board for England.

8. LOCAL GOVERNMENT OMBUDSMAN INVESTIGATIONS (DAL)  
(Ref: Minutes of the Standards and Audit Committee, September 2008, page 184, para 183)

The following matters have progressed with the Commissioner for Local Administration since the last meeting of this Committee.

<u>Matter</u>	<u>Date Notified</u>	<u>Outcome</u>
Alleged inadequate handling of Planning breaches at Padd Farm, Hurst Lane, Egham	5 September 2007	No change since last meeting – the Ombudsman has declined to pursue either complaint at present but may review the case once the position on enforcement is clearer following appeal outcomes and/or Court action.

<b>Matter</b>	<b>Date Notified</b>	<b>Outcome</b>
Alleged improper granting of planning permission for premises at Woodham.	28 March 2008	No change – decision awaited.
Alleged failure to deal adequately with tenant complaint of anti social behaviour from neighbour.	7 November 2008	Not pursued – decision not to take formal action did not amount to administrative fault where Council's response had complied with its anti social behaviour policy, and it had acted reasonably.
Allegation that property was in wrong Council tax band, resulting in too much Council tax being paid.	31 October 2008	Not pursued – the Council is not responsible for banding properties for Council tax.
Alleged unreasonable failure to ensure that neighbour's garden was tidied up, and failure to keep complainant informed of investigation.	22 September 2008	Not pursued – action taken by the Council was within its reasonable discretion and practice. Ombudsman did suggest procedures be reviewed to ensure that Officers are aware of response targets, and also suggested that alleged dumping of fridge/freezer be investigated for legality.

**(FOR INFORMATION)**

Background Papers:

Relevant papers on Director of Administration and Leisure's Ombudsman file series 61.21

9. EXCLUSION OF PRESS AND PUBLIC

**OFFICERS' RECOMMENDATION that –**

**the press and public be excluded from the meeting during discussion of the following report under Section 100A(4) of the Local Government Act 1972 on the grounds that the report in question would be likely to involve disclosure of exempt information of the description specified in paragraphs 1, 3 and 7 of Part 1 of Schedule 12A of the Act.**

**(TO RESOLVE)**

**Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection.**

- |    |   |              |
|----|---|--------------|
| a) | <u>Exempt Items</u>                             | <b>Paras</b> |
|    | Exempt Appendix '1' to Item 5 'Internal Audit'  | 1, 3 and 7   |
| b) | <u>Confidential Items</u>                       |              |
|    | (No items to be considered under this heading). |              |