

REPORT TO THE STANDARDS COMMITTEE



DATE	5 February 2007
PORTFOLIO	Leadership
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**Implications for the Code of Conduct of
Livingstone v Adjudication Panel for England****PURPOSE**

1. To report the implications on the Code of Conduct of the High Court decision in Livingstone v Adjudication Panel for England and to endorse the steps taken by the Monitoring Officer.

SUMMARY OF KEY POINTS

2. Committee might recall from press reports at the time that in February 2005 the Mayor of London, Ken Livingstone, was leaving a social event when he had an altercation with a photographer. There was an exchange of views, the most memorable of which were two questions posed by Mr Livingstone to the photographer which were: '*...Were you a German war criminal?...*' and '*...you are just like a concentration camp guard...*'.
3. Subsequently, a complaint was made to the Standards Board alleging that Mr Livingstone had breached paragraph 4 of the Code of Conduct for Members. Paragraph 4 states that '*a member must not in his official capacity, or in any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute*'.
4. The complaint was considered by a Case Tribunal and they decided that Mr Livingstone should be suspended for 4 weeks. He appealed the decision to the High Court. The Court found that '*in any other circumstance*' is limited to situations where the member is performing their functions of office. This means that the Code covers a situation where the member is acting in their official capacity or appears to be so acting ie where a member misuses their position for personal advantage and will appear to the person affected by the conduct that the member has been acting in the performance of their functions.
5. The Court went on to say, however, that '*in any other circumstances*' must be

interpreted narrowly to fall within the ambit of '*in performing [the members] functions*'. The Court said that if Parliament wished to regulate the activities of members in their private life, it needed to do so explicitly. Unlawful conduct was not necessarily covered and that a member convicted of, for example shoplifting or drunken driving was not necessarily caught by the Code if the offending had nothing to do with their position as a member.

6. In relation to establishing disrepute, it now appears that private capacity conduct will rarely be capable of bringing a member's office or authority into disrepute, even if it is considered to be inappropriate, outrageous or unlawful. The Court cited the examples of conviction for theft or sexual misconduct as situations which did not necessarily bring disrepute on the individual or the authority.
7. Effectively, the judgment has damaged seriously the ability of the Code to regulate members' conduct in private. Some might regard that as a good thing in that there will be little or no intrusion into members' private lives. However, the Monitoring Officer takes the view that as a minimum, the more extreme private behaviours, for example conviction for assault or public order offences and other matters – all of which are played out in the pages of the press – must have the potential to come within the jurisdiction of the Code. Such behaviours have the effect of undermining seriously public confidence in members, the office they hold and the authority itself.
8. In light of the judgment, the Government has included proposals in the Local Government and Public Involvement in Health Bill (the Bill) to make clear that the Code is not limited to actions taken only in an official capacity. That move is to be welcomed and the Monitoring Officer has been invited by the Department of Communities and Local Government (DCLG) to comment specifically on the potential effectiveness of Clause 131 of the Bill, in light of recent decisions of the Standards Board involving a Burnley member.

RECOMMENDATION

9. The Committee notes the report and endorses the action taken by the Monitoring Officer to work with DCLG with a view to strengthening the Code as it relates to the conduct of members in their private capacity.

REASONS FOR RECOMMENDATION

10. To promote high standards of conduct in public life

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

11. None

POLICY IMPLICATIONS

12. A potential amendment to the Council's Code of Conduct

DETAILS OF CONSULTATION

13. Chief Executive
Director of Resources

BACKGROUND PAPERS

14. Livingstone v Adjudication Panel for England CO/1789/2006
Non-exempt parts of file MON/05/0001 held by the Monitoring Officer

FURTHER INFORMATION

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ALSO: