

	
STANDARDS COMMITTEE	20 January 2012
Report of the Monitoring Officer	

Predetermination and bias

1. Summary

- 1.1 The report draws Members' attention to the coming into force of provisions in the Localism Act.

2. Background

- 2.1 The issue of whether a Member could participate in Council meetings having had previous involvement in an issue or previously expressed opinions on a matter was a legal bugbear for many years. The issue came before the Courts many times and decisions were reached which were not always easily reconciled with each other. As a result quite defensive legal advice was often given recommending Members not to participate whenever they had previously expressed a view.
- 2.2 In more recent years the Courts have taken a more flexible approach acknowledging that local government decision making is different from judicial decision making. The position reached was that a Member was entitled to have a preliminary view and entitled to express that view and still participate in a decision so long as they had not absolutely closed their mind to making a different decision. The Government has sought to enshrine the position that the common law has now reached in legislation.
- 2.3 What the Act says is that a decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter.

- 2.4 In the House of Lords it was pointed out that if a Councillor announces to the television news cameras outside the Council meeting that he is not interested in what is going to be said at the debate and then says nothing in the meeting, it appears that the decision could not be challenged on the basis of the Councillor's closed mind. This goes substantially further than the existing law. It seems likely that there will be cases brought which will test exactly how far this provision goes.
- 2.5 It remains the case that local authority decision making is bound by other principles including only acting within powers available, principles of reasonableness etc.
- 2.6 Members of the City Council have been alerted to this provision coming into force and have been advised that the right approach is not to participate in a decision if they know that they have an absolutely fixed view on the issue.

3. Recommendations

- 3.1 That the Standards Committee note this report.

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	Report Approved	✓	Date 9 January 2012

Background papers

None