

READING BOROUGH COUNCIL
REPORT BY MONITORING OFFICER

TO:	STANDARDS COMMITTEE		
DATE:	21 JULY 2011	AGENDA ITEM:	2
TITLE:	TERMS OF REFERENCE AND ANNUAL REPORT		
CHAIRMAN:	JOHN HICKS	PORTFOLIO:	
SERVICE:	CENTRAL ADMINISTRATION	WARDS:	BOROUGH-WIDE
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1. PURPOSE AND SUMMARY OF REPORT

- 1.1 To set out the Committee's terms of reference and constitutional role for the Municipal Year 2011/12, to update the Committee on developments and complaints during the 2010/11 Municipal Year, and to look forward to the current Municipal Year.
- 1.2 The arrangements for the local assessment of complaints became operable from 8 May 2008, and the Committee agreed a new Local Assessment Procedure and a Councillor Complaints Procedure on 15 July 2008. It agreed a publicity protocol to support these procedures on 14 July 2009. It adopted an updated Local Investigation Procedure on 13 July 2010. Over the past year, the Local Determination Procedure document has been re-drafted to align with the Local Assessment and Investigation Procedures.
- 1.3 Your attention is drawn to the following relevant parts of the Council's constitution and other documents as attached:
 - A: Article 9 - The Standards Committee (terms of reference)
 - B: Part 5 - Code of Conduct for Members
 - C: Complaints about Councillors Procedure
 - D: Local Determination Procedure (revised)
 - E: Schedule of Complaints
 - F: Social Media Protocol
 - G: Maintaining High Ethical Standards in Government - Briefing Paper by the Local Government Group and the Association of Council Secretaries and Solicitors
 - H: List of Gifts / Hospitality Registered by Councillors 2010/11
- 1.4 Over the Municipal Year 2010/11 the local Assessment Sub-Committee met on eight occasions, to consider 23 complaints. Details are given in **Appendix E**. This compares with the four complaints (three meetings) received in both 2008/09 and 2009/10. The Sub-Committee found a breach of the Member Code of Conduct in five. It agreed to take no further action in 15; in the remaining 8 it asked me to take alternative action not amounting to an investigation. Over the past year, I have not been asked to

undertaken any investigations. One investigation, carried forward from 2009/19, has been concluded.

- 1.5 In one of the complaints where the Assessment Sub-Committee decided to take no further action, the complainant exercised his right to request a review of this decision. Therefore the Assessment Review Sub-Committee has met once over the past Municipal Year, to review the Assessment Sub-Committee's decision. The Review Sub-Committee also agreed to take no further action.

- 1.6 At your meeting on 14 July 2009, you considered and expressed general concern about the use being made by some Councillors of personal blog sites and news forums. This followed the receipt of advice from Standards Board for England (now known as Standards for England) in response to an enquiry from the Council on this matter. Over the past year, 14 of the 23 complaints received (61%) have concerned the use of social media and the content of blog sites or twitter pages. During the past year, at the request of the Assessment Sub-Committee, a Social Media Protocol has been developed and agreed with the Group Leaders, and was circulated to all Councillors in advance of the January 2011 Council meeting. This is attached at **Appendix F**.

- 1.7 Over the past Municipal Year there has been no change to the Committee's independent Membership (see para. 4.6 below).

- 1.8 In October 2010, the Government announced its intention to end the statutory standards regime, and the Localism Bill contains provisions to do this. The Bill is expected to be passed in the autumn. Its provisions will then be introduced by regulation, and a likely timescale for their commencement is April 2012. The Bill and regulations will also provide for transitional arrangements. A briefing note on the impact of the proposed legislative changes, by the Local Government Group (LGG) and the Association of Council Secretaries and Solicitors (ACSeS) is attached at **Appendix G**.

2. RECOMMENDED ACTION

- 2.1 That the Committee's terms of reference and constitutional role be noted;
- 2.2 That the revised Local Determination Procedure (Appendix D) be adopted;
- 2.3 That the new Social Media Protocol (Appendix F) be endorsed;
- 2.4 That the Government's proposals to abolish the statutory Standards Board regime, and the implications of this for maintaining high ethical standards in local government, as explored in the LGG / ACSeS briefing note (Appendix G), be noted;
- 2.5 That the list of gifts and hospitality registered by Members in the financial year 2009/10 be received (Appendix H).
- 2.6 That the Chair present these Minutes to the next full Council meeting (18 October 2011), and use that meeting to express to all Councillors matters of concern to the Committee, to be identified at tonight's meeting (see also para. 7.6 below).

3. POLICY CONTEXT

- 3.1 Standards and conduct are a key theme in the Modernisation agenda for local government, and are specifically addressed by Part III of the Local Government Act

- 3.2 Responsibility for enforcing compliance with the code is split between, at the national level, the Standards Board for England and the Ethical Standards Officers (ESOs) appointed by it to investigate all allegations made to it, and the First-tier Tribunal (formerly the National Adjudication Board), which hears those allegations where the Standards Board believes there is a case to answer; and at the local level the Standards Committees and Monitoring Officers (MOs) of individual authorities.
- 3.3 In 2003, the Government introduced Regulations which extended to Standards Committees the ability to adjudicate on certain allegations investigated by Ethical Standards Officers. As a result the Committee, on 10 February 2004, considered and agreed a new procedure for local hearings, under the provisions of the Local Authorities Code of Conduct (Local Determination) Regulation 2003/4. These regulations apply to situations where the ESO has investigated a complaint, and then submits his/her report to the Council for consideration.
- 3.4 In 2004 the Government introduced new Regulations which allowed the ESO to hand over the investigation of minor breaches of the Code of Conduct to the Council's Monitoring Officer (MO). During 2005 the Committee considered and endorsed a procedure for the local investigation of such referred complaints, subject to amendments, which was adopted by full Council at the Annual Meeting on 18 May 2005.
- 3.5 In 2007, Parliament passed the Local Government and Public Involvement in Health Act. This included provisions to allow the Secretary of State to issue Regulations to introduce the local assessment of allegations about the Conduct of Councillors, by the local Standards Committee.
- 3.6 In 2008 the Government issued Regulations which introduced local assessment of complaints from 8 May 2008. As a consequence, all complaints about Councillors must now be made directly to the Standards Committee of the authority on which the Councillor is a Member.
- 3.7 At your meeting on 13 July 2008, you adopted a new Local Assessment procedure into alleged breaches of the Members' Code of Conduct, and a local Complaints Procedure, *Complaints Against Councillors*, which is published on the Council's website.
- 3.8 The Government has announced its intention to end the statutory standards regime, and the Localism Bill contains provisions to do this. The Bill is expected to be passed in the autumn. Its provisions will then be introduced by regulation, and a likely timescale for their commencement is April 2012.
4. **ROLE OF STANDARDS COMMITTEE AND TERMS OF REFERENCE**
- 4.1 The terms of reference and constitutional and operational arrangements for the Committee are set out in **Appendix A**. It is important to note that the membership of the committee includes both Councillors and independent Members, and that the independent Members must make up one quarter of the committee's membership.
- 4.2 In investigating and determining complaints, the test that must be applied by the Committee is whether there has been a breach of the Code of Conduct. The Council's

4.3 Local Assessment

4.3.1 The Committee's procedure for undertaking the initial local assessment of complaints was approved in July 2008, and is set out in Part 5 of the Council's constitution. Each complaint is considered, within 28 days of receipt, by a local Assessment Sub-Committee of three Members, including (and chaired by) an independent Member. The Assessment Sub-Committee may come to four findings on any complaint:

- Direct the Monitoring Officer to investigate the complaint
- Refer the complaint to the Standards Board for England for investigation
- Direct the Monitoring Officer to take other appropriate action short of a formal investigation
- No further action

4.3.2 A promotional leaflet and application form was also approved in July 2008. They can be accessed from the Council's website, under "Complaints". See also **Appendix C**. The leaflet was designed as part of a wider exercise to review and promote the Council's complaints procedures generally. It is also available at the Civic Offices and in public libraries.

4.3.3 If complainants are dissatisfied with the Local Assessment Sub-Committee's decision, they may seek a review in writing within 30 calendar days of notification of the decision. If they do this, then their complaint will be considered by a Review Sub-Committee made up of three new Members of the Committee including (and chaired by) another independent Member. This body's decision will be final.

4.4 Local Investigation

4.4.1 If the Local Assessment Sub-Committee refers the matter to me for investigation, I will ask an independent person to conduct an investigation and to report back to me, usually within three months. I then will report the results of the investigation to a Consideration of Hearing Sub-Committee. This is also composed of three Members, including (and chaired by) an independent Member (who can be the same as on the original Local Assessment Sub-Committee). The investigation will be undertaken in line with the local investigation procedure.

4.4.2 The Consideration of Hearing Sub-Committee will decide, on the basis of the investigating officer's report, whether the investigation suggests that a breach of the Code of Conduct may have occurred that is sufficient to warrant a formal hearing. If it does so conclude, then I will convene a Hearing Sub-Committee within a further three months, to hear the complaint in line with the Council's local determination procedure. This Sub-Committee must also be chaired by an independent Member.

4.4.3 The Committee's procedure for investigating complaints referred to the Monitoring Officer for local investigation is also set out in Part 5 of the Council's constitution. This was last updated in 2009/10, and you adopted it at your meeting on 13 July 2010.

4.5 Local Determination

4.5.1 The Committee's procedure for considering cases referred to it by the Standards Committee or the Standards Board for local determination is set out in Part 5 of the Council's constitution. In such cases the Committee will set up a sub-committee to hear and determine the case, which must be chaired by an independent Member.

4.5.2 The procedure was adopted by the Standards Committee on 1 February 2005. This was before Parliament introduced local assessment, and the procedure therefore was based on a system where the Standards Board referred complaints to local authorities for investigation. I have reviewed the procedure over the past year, to align it to the Local Assessment and Local Investigation Procedures. The revised version is attached at **Appendix D**, for adoption tonight.

4.6 Committee Membership

4.6.1 Over the past year the Committee's independent Members have been John Hicks, and Rev. Brian Shenton, who were both appointed following a recruitment process run during the spring of 2007; and Tina Barnes, who was appointed in December 2008. Mr Hicks has been the Chairman since May 2008.

4.6.2 For the Municipal Year 2010/11, the Councillor members of the Committee were Councillors Beard, Rynn, Skeats, Tickner and Watson, with Councillors Bayes, Maskell and Pugh as the named substitutes.

4.6.3 There is no limit to the number of independent Members that can be on the Committee, with a minimum of one quarter. The following constraints, however, apply to independent members:

- Must not have been a member or employee of the Council within five years of the date of appointment
- Must not be a relative or close friend of a Member or employee of the Council

5. CODE OF CONDUCT

5.1 The Department of Communities and Local Government (DCLG) issued the Local Authorities (Model Code of Conduct) Order 2007 on 4 April 2007, following consultation. This prescribed a revised model Code of Conduct, which came into effect within three months.

5.2 At your meeting on 17 July 2007 you agreed and recommended to full Council a revised Reading Code of Conduct for Members, based on the new Model Code. This was adopted by full Council on 15 October 2007, since when all Councillors have signed to say that they will abide by it.

6. INTERESTS

6.1 Under the Code of Conduct, there are two interests that Members must declare at meetings: personal interests and prejudicial interests. To have a prejudicial interest the Member must first have a personal interest. Following the *Richardson v North Yorkshire* judgment, a Member with both a personal AND prejudicial interest must declare both and leave the meeting room at which the matter in question is being discussed. This requirement has been modified in the new Code to allow the Member to make representations, answer questions and give evidence before leaving, subject to there being equivalent public speaking rights.

6.2 It is important to separate personal interests from the common law principles of bias and predetermination. These may still apply, even if there is no personal interest

- Bias is “an attitude of mind which prevents the decision maker from making an objective determination of the issue he has to resolve”. This could include membership of a body that has lobbied for or against the issue being decided. The test of bias is whether the relevant circumstances “would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased”
- Predetermination is making up your mind in advance of taking the decision. This applies particularly to planning and licensing, where Councillors must consider on merits of individual case as presented to committee. Councillors cannot take part in decisions on individual applications if they have already made up their mind. However, predisposition is not the same as predetermination.
- Councillors who may have predetermined their position on a planning or licensing application may still attend meeting to speak on the application through meeting’s normal procedures, and need not leave the meeting. However, they cannot take part in the debate or vote on the application.

7. COMPLAINTS

7.1 Complaints to Monitoring Officer

7.1.1 Over the Municipal Year 2010/11, I received 23 formal complaints, and the Assessment Sub-Committee has met eight times to consider these. This compares unfavourably with the four complaints received and considered in 2008/09 and 2009/10.

7.1.2 Details of the complaints is set out in **Appendix E**. In terms of the subject of the complaints:

- The 23 complaints were about 13 Councillors, or 28% of the Council
- 1 Councillor was the subject of 7 complaints (30%)
- 1 Councillor was the subject of 3 complaints, and 2 were the subject of 2.
- 9 were the subject of 1 complaint
- The party group breakdown of the Councillors who were the subject of the complaints, at the time of the complaint, is as follows:
 - Lib.Dem - 3 Councillors, 9 complaints (33% of Group membership)
 - Labour - 6 Councillors, 8 complaints (32% of Group membership)
 - Cons. - 4 Councillors, 6 complaints (24% of Group membership)

7.1.3 The source of the 23 complaints was as follows:

- 10 were made by Councillors
 - 8 Councillors made the complaints - two made 2 each
 - 4 Councillors were Labour (5 complaints); 3 were Lib.Dem (4 complaints), 1 was Conservative
 - 5 of the 8 Councillors were themselves the subject of complaints
- 13 were made by members of the public
 - 8 members of the public made the complaints -
 - 1 complained about 3 Councillors

- 3 each complained about 2 Councillors
 - 4 complained about 1 Councillor
 - Of the 8 members of the public:
 - 2 represented local organisations
 - 5 stood as candidates in the 2011 local elections
- 7.1.4 Because of the volume, only 8 complaints were considered by the Local Assessment Committee within 28 days of receipt. The remainder were all considered within six weeks. In each case a Decision Notice was issued to the complainant and the Councillor complained about. A brief Minute was taken and published on the Council's website.
- 7.1.5 As mentioned above, in one complaint (010) the complainant asked for the decision to take no further action to be reviewed. Therefore 1 meeting of the Assessment Review Sub-Committee was held to do this.
- 7.1.6 This year, the Sub-Committee did not instruct me to undertake any investigation. During the year, an investigation commissioned in March 2010 was completed, and reported to a meeting of the Consideration of Hearing Sub-Committee, held on 2 November 2010. This was nearly 8 months after the investigation was commissioned. The Sub-Committee found that there was a case to hear, and a Hearing Sub-Committee was held on 13 December 2010, nine months after the commission of the investigation.
- 7.1.7 The Hearing sub-Committee found that a technical breach of the Members' Code of Conduct had occurred in relation to Articles 5 and 6a, but that these breaches had been unintentional and inadvertent consequences of actions, which were unwise on the part of a councillor but were in no way considered to be seeking to gain an advantage for the Councillor or another party. Therefore, no further formal action should be taken in respect of this technical breach. However, the Hearing Sub-Committee asked me to offer informal training to remind Councillors exercising a variety of responsibilities to be careful not to breach the Code, however inadvertently, in the discharge of these roles.
- 7.2 Other Complaints
- 7.2.1 Over the past year I have received two preliminary enquiries about complaints. One of these later emerged as complaint 022; the other had the same subject as complaint 023.
- 7.3 Themes
- 7.3.1 As can be seen from **Appendix E**, there have been some common themes to some of the complaints this year, in particular:
- Issues relating to declarations of interest, at regulatory meetings (Planning) and the Traffic Management Advisory Panel
 - Issues relating to the content of blogsites and twitter pages, and the use of social media at meetings
- 7.3.2 The breakdown of grounds for complaint is as follows:
- | | |
|----|--|
| 14 | Bringing the authority / office of Councillor into disrepute |
| 15 | Not treating others with respect |
| 5 | Failure to declare a personal / prejudicial interest |

3	Compromising the impartiality of staff
1	Breach of confidentiality
1	Breach of equalities enactments

7.3.3 Most complaints cited more than one breach. The Assessment Sub-Committee found breaches in complaints about five Councillors, in the following areas:

Para 3(1)	Treat others with respect	3
Para 3(2)(d)	Bullying	1
Para 5	Bring the office or authority into disrepute	2
Para 9(1)	Failure to declare a personal interest	2
Para 10(1)	Failure to declare a prejudicial interest	2

7.3.4 At the request of the Sub-Committee, I have taken number of courses of action to raise awareness of these issues within the authority:

- On declarations of interest, I wrote to the Group Leaders, and Cllr White, on 24 August to encourage them to disseminate to their Group members the importance of declaring personal and prejudicial interests appropriately, especially in relation to regulatory bodies such as the Planning and Licensing Committees, to ensure the public's perception of the integrity of the local authority's decision-making processes was maintained to the highest standards
- On 17 November 2010, I again wrote to the Group Leaders etc to rehearse the definition of "close associate" in relation to the Member Code of Conduct, and to ask them to disseminate to their Group members the importance of their behaving appropriately towards applicants and other members of the public at Planning and Licensing Committee meetings. At the same time, I wrote to the Chief Executive about officer behaviour at such meetings, and the need for officers to retain a professional approach to dealing with applicants and other members of the public at all times.
- Also on 17 November 2010, I also raised issues concerning the misuse of social media during Council meetings, and asking them to disseminate to their Group members the importance of behaving appropriately, particularly at meetings open to the public, to ensure that the public's perception of the integrity of the Council's decision-making processes was maintained to the highest standard.
- On 30 December 2010, I again wrote to the Group Leaders etc on dual-hatted membership, and to convey the concerns of the Standards Committee in relation to the high degree of care that councillors carrying out a variety of roles and responsibilities must exercise to ensure that they do not breach the Member Code of Conduct. I also reminded the Group Leaders of the training courses I offer on standards, the Member Code and declarations of interest, and asked them to encourage Group Members to contact me and Members' Services if interested.

7.3.5 I have also raised these issues through the Group Leaders' meetings. This has included developing the social media protocol for the authority, attached at **Appendix F**, which the Group Leaders signed off on 6 January 2011, and which was then issued to all Councillors in advance of the January 2011 Council meeting.

7.4 Local Codes of Conduct and Protocols

7.4.1 The constitution contains the following protocols of relevance to Councillors:

- Planning code of conduct
- Protocol on Member:Officer Relations
- Council Publicity and Elections
- Working with Reading's MPs

7.4.2 In addition, during 2005 the Head of Legal Services and I issued guidance to Councillors on interests in licensing matters, which we updated during 2009/10 due to legislative changes.

7.5 Standards for England

7.5.1 The new Government announced on 28 May 2010 that its planned Localism Bill will include a proposal to 'abolish the Standards Board regime'. A more detailed statement on the Conduct of Local Authority Members was issued by Bob Neill MP, the junior Minister at the Department for Communities and Local Government, on 15 October 2010. This was circulated by Standards for England to all Standards Committee Chairmen on 30 November 2010, and I circulated it to all Members of the Standards Panel on 2 December 2010.

7.5.2 The Localism Bill is currently in the House of Lords. It will remove the statutory requirement for local authorities to have a Standards Committee, revoke the Model Code of Conduct, and abolish Standards for England and the current statutory facility for disqualification through the First-Tier Tribunal. Local authorities will be able to continue to appoint Standards Committees, and have their own voluntary Members' Code, but these will not have any statutory status, and there will be no statutory basis for sanctions in cases of breach. Therefore, the Standards Committee of the future will be able to censure Members, but not suspend.

7.5.3 I attach, at **Appendix G**, a briefing paper, *Maintaining High Ethical Standards in Local Government*, issued by the Local Government Group and the Association of Council Secretaries and Solicitors, which summarises the legislative changes affecting standards in the Localism Bill, and explores future options for taking forward a non-statutory standards regime in local government.

7.6 Comments from Chairman

7.6.1 I have discussed this report with Mr Hicks. He is deeply concerned both about the volume of complaints over the past year and the nature of the actions that have been the subject of the complaints, both of which could portray the Council in a bad light.

8. OPERATIONAL ISSUES

8.1 Training

8.1.1 In May 2011, I ran an induction course on standards for all seven new Councillors.

8.1.2 The following current Committee Members and Deputies have attended training on the Member Code of Conduct and local assessment / investigation:

Member	Course	Provider	Trainer
Mrs Barnes	Misconduct & the Code	Bevan Brittan - London - 29 May 2009	Peter Keith-Lucas

Cllr Beard	Local assessment training	Wokingham, 11 September 2009	Colin Lawley (WBC)
Mr Hicks	Code of Conduct	Bevan Brittan - London - April 2008	Peter Keith-Lucas
Cllr Skeats	Local Investigation / determination	Bevan Brittan - in house course	Peter Keith-Lucas
Cllr Tickner	Local assessment	Bevan Brittan - London - April 2008	Peter Keith-Lucas
	Local investigation / determination	Bevan Brittan - Slough - 2004	Peter Keith-Lucas

- 8.1.3 Rev. Shenton, and Councillors Livingston, Rynn and Watson, have not yet received any dedicated training on aspects of the standards complaints procedure. Councillor Livingston is new to the Committee this year. Rev Shenton, and Councillor Watson, have a working knowledge of standards and disciplinary procedures through their employment.

8.2 Gifts and Hospitality

- 8.2.1 The Register of Gifts and Hospitality offered to Councillors in the financial year 2010/11 attached at **Appendix F**. Under para. 15 of the Code of Conduct, Members must give me notification of all gifts and hospitality with a value of over £25. There is an additional column showing the value of the gift. The Councillor Services team also adds all declared gifts to the Councillor's personal register of interests entry.

9. CONTRIBUTION TO STRATEGIC AIMS

- 9.1 To support the participation of Reading people in local democracy.

10. COMMUNITY ENGAGEMENT AND INFORMATION

- 10.1 None last year.

11. EQUALITY IMPACT ASSESSMENT

- 11.1 The Member Code requires Councillors not to do anything which may cause their authority to breach any of the equality enactments as defined in section 33 of the Equality Act 2006. One complaint during 2010-11 (not upheld) concerned an alleged breach of the equality enactments.

12. LEGAL IMPLICATIONS

- 12.1 Part III of the Local Government Act 2000 sets out the legal framework for conduct of local government Members and officers. The Government has implemented this framework through the issue of Regulations under Section 66 of the Act, including the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004.
- 12.2 The standards regime applies to voting Members of Council and Cabinet Committees, including both Councillors and non-elected Members (such as the independent Members of this Committee).
- 12.3 Sections 183-201 of the Local Government and Public Involvement in Health Act 2007 amended Section 58 of the Local Government Act 2000, and added new Sections 57A-

C to allow the introduction of local assessment. The Government subsequently issued the Standards Committee (England) Regulations 2008 which implemented these changes from 8 May 2008.

13. FINANCIAL IMPLICATIONS

- 13.1 Subject of course to the number of allegations made against Members of the authority, local investigation and determination have generated and will generate additional work for the Monitoring Officer and any other officer who undertakes an investigation. In addition, the Standards Committee will be required to set up hearings to hear the individual allegations (if the MO believes that there is a case to answer), which will have associated costs of administrative support. Under the Council's scheme of Member Allowances the independent Members of the Panel may claim a daily allowance to attend these sub-committees, at a level to be determined by the MO (£32.25 a day).

14. BACKGROUND PAPERS

Attached

DCLG Letter, 15 October 2010 - Conduct of Local Authority Members (Bob Neill MP)

LGG /ACSeS Briefing Paper - Maintaining High Ethical Standards in Local Government - February 2011

Article 9 - The Standards Committee

6. STANDARDS COMMITTEE

As set out in Article 9 of the Constitution, the Standards Committee will have the following roles and functions:

The general functions of a Standards Committee are to be:

- (a) promoting and maintaining high standards of conduct by the members and co-opted members of the Council, and
- (b) assisting members and co-opted members of the Council to observe the Code of Conduct, and in so doing:
 1. To receive and assess allegations about Council Members involving a breach of the Code of Conduct; and to hear appeals against such assessments.
 2. Subject to the outcome of (1) above:
 - a) to commission the investigation of allegations about the personal conduct of Council Members involving a breach of the Code of Conduct by the Monitoring Officer under the Council's Local Investigation Procedure, and to receive and consider the Monitoring Officer's investigation report; or
 - b) to refer more serious complaints to the Standards Board for England for investigation by an Ethical Standards Officer (ESO);
 - c) to ask the Monitoring Officer to take steps other than carrying out an investigation under Section 13 of the Standards Committee (England) Regulations 2008.
 3. Subject to the outcome of (2) above, to hear and determine allegations about the personal conduct of Council Members involving a breach of the Code of Conduct under the Council's local determination procedure or, where appropriate, to refer such allegations to the Standards Board for England for determination.
 4. To determine allegations of breaches of the Council's local codes of practice which have been investigated by the Monitoring Officer under the Council's Local Investigation Procedure, in particular the Planning code of conduct and the Protocol on Member/Officer Relations.
 5. To deal with any reports from a case tribunal or interim case tribunal, following the determination of an allegation about the personal conduct of a Council Member involving a breach of the Code of Conduct by the First-Tier Tribunal (Local Government Standards in England).
 6. To monitor the probity and propriety of all aspects of Council business.

7. To scrutinise the conduct of individual Councillors, political groups and informal groupings, and to issue reprimands to individual Councillors or groups of Councillors in circumstances where breaches of the law, codes of practice or other conduct considered inappropriate have been established.
8. To advise the Council on the adoption or amendment of national and local codes of conduct and to monitor their effectiveness.
9. To make recommendations to the Council on any matters or issues relating to probity, propriety and general conduct where the Panel considers it appropriate to do so in the interests of maintaining the highest standards in the carrying out of the Council's functions.
10. To refer any matter considered by the Committee for investigation by the Council's Chief Auditor (or other appropriate officer), the Council's external auditors, the Audit Commission or Standards for England as it sees appropriate; the Committee may also refer any such matter to the relevant Political Group(s) for their consideration.
11. To advise, train or arrange to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct and local codes of conduct;
12. To grant dispensations to Councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;

The Standards Committee will also consider any other matters as the Council refers to it from time to time.

Part 5 - Codes and Protocols

Members' Code of Conduct

Adopted by Council, 16 October 2007

PART 1

GENERAL PROVISIONS

Introduction and Interpretation

1. (1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State (See Part 4 below)
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code:
 - (1) "meeting" means any meeting of—
 - (a) the authority;
 - (b) the executive of the authority;
 - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;
 - (2) "member" includes co-opted members and appointed members as well as Councillors.

Scope

2. 1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority,and references to your official capacity are construed accordingly.
- 2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- 3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

- 4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- 5) Where you act as a representative of your authority—
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General Obligations

3.
 - 1) You must treat others with respect.
 - 2) You must not—
 - (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006)];
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be—
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
4. You must not—
 - (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is—
 - reasonable and in the public interest; and
 - made in good faith and in compliance with the reasonable requirements of the authority; or
 - (b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
6. You—
 - (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of your authority—
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. 1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—
 - (a) your authority's chief finance officer; or
 - (b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

PART 2

INTERESTS

Personal Interests

8. 1) You have a personal interest in any business of your authority where either—
 - (a) it relates to or is likely to affect—
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body—
 - exercising functions of a public nature;
 - directed to charitable purposes; or
 - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),
 of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;

- (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.
- 2) In sub-paragraph (1)(b), a relevant person is—
- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of Personal Interests

9. 1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- 2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or

8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

- 3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- 4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- 5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- 6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- 7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000

Prejudicial Interest Generally

10.
 - 1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
 - 2) You do not have a prejudicial interest in any business of the authority where that business—
 - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
 - (c) relates to the functions of your authority in respect of—
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;

- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial Interests arising in relation to Overview and Scrutiny Committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—
- a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
 - b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of Prejudicial Interests on Participation

12. 1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;
 - (b) you must not exercise executive functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- 2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

PART 3

REGISTRATION OF MEMBER'S INTERESTS

Registration of Members' Interests

13. 1) Subject to paragraph 14, you must, within 28 days of—
- (a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

- 2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive Information

14. 1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- 2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- 3) In this Code, "sensitive information" means information the availability of which for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Registration of Gifts and Hospitality

15. You must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's Monitoring Officer of the existence and nature of that gift or hospitality.

PART 4

THE GENERAL PRINCIPLES

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusion.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their ace, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

John Painter
May 2007



Complaints about Councillors

You can make a complaint about a Councillor if you consider that the Councillor has acted in a way that breaches the Code of Conduct for Members. The code can be found on the Council's website: here is the reference <http://www.reading.gov.uk/councilanddemocracy/General.asp?id=SX9452-A782B536>

What is the Code of Conduct?

The Code is a national document set out by the Government, which Parliament has said all Members of a local authority must observe. It sets out the standards of moral and ethical conduct that are expected from a Member.

Councillors are the elected Members of the Borough Council. The Code will also apply to any appointed members of Council Committees.

All Councillors, when they are elected, sign to say that they will observe the Code as part of their declaration of acceptance of office.

The Code of Conduct says that Councillors **MUST DO** the following things:

- Follow the Code when they are representing the Council
- Declare any personal and prejudicial interests they have in the business of the authority
- Register their personal interests in the Council's Register of Members Interests, and keep their entry up-to-date. The Register can also be found on the Council's website, at <http://www.reading.gov.uk/councilanddemocracy/councillorinformation/General.asp?id=SX9452-A77FE0D0>
- Treat others with respect
- Register gifts and hospitality received in their role as a Councillor, worth more than £25

The Code of Conduct says that Councillors **MUST NOT DO** the following things:

- Bring the Council or their office into disrepute;
- Use the Council's resources for party political purposes;
- Compromise the impartiality of people who work for the Council;

- Discriminate against people on the grounds of race, gender, disability, religion or belief, sexual orientation and age;
- Bully, intimidate or attempt to intimidate others;
- Use their position improperly for personal gain or to advantage their family members, friends or close associates;
- Attend meetings or be involved in decision making where they have a prejudicial interest - except when speaking when the general public are also allowed to do so;
- Disclose confidential information, other than in exceptional circumstances;
- Prevent anyone from getting information they are entitled to.

The Code of Conduct applies to Councillors when they are:

- Carrying out Council business;
- Carrying out the business of an office to which they have been elected or appointed by the Council (eg Leader, Chair);
- Acting as a representative of the Council.

The Code does not apply to Councillors' personal life, except in the following circumstances:

- their actions are bringing their office or the authority into disrepute - in these cases it only applies to unlawful activities outside the Councillors' official duties which could damage the reputation of local government;
- they are using their position to gain an advantage for themselves or to advantage or disadvantage somebody else.

What are Interests?

Councillors will have a *Personal Interest* in any item of business:

- that affects their own well-being or finances, or the well-being or finances of their family or close associates;
- more than most other people who live in the area affected by the item of business.

A personal interest will become a *Prejudicial Interest* if it affects the Councillors, or their family or close associates in the following ways:

- it affects their finances, or
- it relates to a licensing, planning or other regulatory matter, and
- a reasonable member of the public with knowledge of the facts would believe the interest was likely to harm the Councillors' ability to judge the public interest.

How do I Complain?

If you have evidence that a Councillor has acted in a way that breaches the Code of Conduct, you can complain to the Council's Monitoring Officer, at the following address:

John Painter
Monitoring Officer
Reading Borough Council
Civic Offices
Reading RG1 7TD

Your complaint must be in writing. You can submit it in three ways:

- By letter (post to above address - or fax - 0118 939 0591)
- By e-mail - to Cttee.Services@reading.gov.uk
- By completing the proforma below.

In your complaint you must specify the following:

- Name of Councillor
- When the breach occurred
- Details of breach - ie the thing you are complaining about
- The redress you are seeking - ie what would you like the Councillor to do about it?

What will happen when I complain?

Firstly, the Council's Monitoring Officer will acknowledge receipt of your complaint. He may also contact you to clarify any aspects of the complaint.

The Monitoring Officer will then submit your complaint to an Assessment Sub-Committee of the Council's Standards Committee which will meet to consider your complaint within four weeks.

Every local authority is required by law to have a Standards Committee. In Reading, this is made up of seven Councillors and three independent Members (people who are not Councillors and who have been appointed to the Committee to be independent of the Council).

The Standards Committee will set up an assessment sub-committee to consider your complaint. This will be made up of three members of the Standards Committee, one of whom must be an independent Member, who will chair the sub-committee.

The sub-committee will meet in private. Neither you, nor the Councillor you are complaining about, will be able to attend it. Its business must remain confidential.

What will the Assessment Sub-Committee consider?

The sub-committee will have to answer two questions:

- 1) On the evidence available to it from the complaint, is it likely that a breach of the Code of Conduct may have occurred?
- 2) If so, is the likely breach sufficiently serious to warrant a formal investigation?

The complaint will have to link back to the Code of Conduct. The sub-committee will therefore check to establish that at the time of the complaint the Councillor was carrying out Council business in some way. The sub-committee will normally reject a complaint that you were making about Councillors which was about their behaviour in their private life, for example as a neighbour.

Where the Councillor was carrying out Council business, the sub-committee will also want to establish that the actions complained about involved a breach of the Code.

The sub-committee will normally reject:

- Anonymous complaints
- Complaints about actions that occurred more than 12 months before;
- Complaints about comments made in the cut and thrust of political debate;
- Minor complaints that it sees as trivial, vexatious, malicious, politically motivated or made on a tit-for-tat basis - unless these suggest a more deep-seated problem;
- Complaints that are similar to a previously investigated complaint where there is nothing further to be gained from an investigation;
- Complaints about a Councillors' private life which are unlikely to affect their fitness for office;
- Complaints where there is insufficient information to justify an investigation, or where an investigation is unlikely to be able to come to a firm conclusion on the matter

In addition, the sub-committee will consider whether a formal investigation is the right level of response to the matter complained about.

What will happen when the sub-committee has met?

After the sub-committee has met to consider your complaint, the Monitoring Officer will then write to you to let you know the outcome. The will aim to do this within five working days of the sub-committee meeting.

The Sub-Committee may come to one of four decisions:

- Do direct the Council's Monitoring Officer to have the complaint investigated formally
- In serious cases, to refer the complaint to the Standards Board for England for national investigation
- To direct the Monitoring Officer to take other appropriate action short of formal investigation
- To take no further action

If the sub-committee decides that your complaint should be investigated further, the Monitoring Officer will appoint an Investigating Officer to do this. This person is most likely to be an officer of the Council. The investigation will follow the Council's local investigation procedure. This can also be found on the Council's website, at http://www.reading.gov.uk/Documents/Committee_Services/part5localinvestigation.pdf

- The Investigating Officer will ask to interview you about the complaint. S/he will also interview the Councillor about whom you are complaining. S/he will ask both of you to identify the witnesses you would like the Investigating Officer to interview, and the evidence that both of you consider that s/he should examine.
- Depending on the complexity of the matter complained about, the Monitoring Officer will ask the Investigating Officer to report back to him with the results of the investigation within two to three months.
- The Monitoring Officer will then submit the report to a meeting of the Standards Committee, which will decide whether the report demonstrates that there has been a breach of the Code of Conduct that should be considered at a formal hearing. If the Committee decides this is the case, then the Committee will set up a hearing sub-committee, to meet within three months.

In some cases, the sub-committee may consider that your complaint could amount to a breach of the Code of Conduct, but the breach is not sufficiently serious to merit the costs of a formal investigation. It may alternatively conclude that the complaint may be a symptom of wider conflicts within the authority. In such cases it may direct the Monitoring Officer to take other appropriate action short of formal investigation. This can include:

- Providing training for Councillors
- Securing conciliation or mediation
- Reviewing procedures to reduce conflict

If the sub-committee decides that your complaint should not be investigated further, the Monitoring Officer will write to you, again within five working days, to explain why the sub-committee came to this decision.

What can I do if I am unhappy with the sub-committee's decision?

If you are dissatisfied with the decision, you may appeal against it. You must do this within 30 calendar days of receiving the Monitoring Officer's letter, in writing to the Monitoring Officer. The Monitoring Officer will then call a meeting of an appeals sub-committee of the Standards Committee. This will be made up of three different Members, including a different independent Member as chair. They will meet within a month to review your complaint and your grounds for appeal. The Monitoring Officer will write to you to let you know their decision. The appeals sub-committee's decision will be final.

Chair, Standards Committee
July 2008

READING BOROUGH COUNCIL

COMPLAINTS ABOUT COUNCILLORS

COMPLAINT FORM

NB - You should only complete the parts of this form in boxes. The remainder of the form is explanatory text.

YOUR DETAILS

1. Who are you?

Title:	
First name:	
Surname:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile phone:	
E-mail address:	

We will tell the following people that you have made this complaint:

- The Councillor(s) you are complaining about
- The Council's Monitoring Officer
- The Members of the assessment sub-committee.

We will tell them your name, but not your address. The Monitoring Officer will be given full details of your complaint. He will provide the Councillor(s) and the assessment sub-committee with a summary of your complaint, unless in his judgment it is necessary for them to have the full details in order to deal with it.

If you have serious concern about your name, or the full details, of your complaint being given to the Councillor(s) you are complaining about, and/or the assessment sub-committee, please fill in section 8 of this form, below.

2. Please tick which of the following descriptions fits you best:

- ☐ Member of the public
- ☐ Councillor or Co-opted Member of the authority
- ☐ Independent member of the Standards Committee
- ☐ MP
- ☐ Monitoring officer
- ☐ Other Council employee
- ☐ Other

YOUR COMPLAINT

4. Who are you complaining about?

Which Councillors or Members do you believe have breached the Code of Conduct?

Title	First name	Surname	Position in Council (eg Leader, Chair of Committee)

5. Which part of the Code of Conduct do you think they have breached?

Please tick - you may tick more than one box

- ☐ Not following the Code when they are representing the Council
- ☐ Not declaring any personal and prejudicial interests they have in the business of the authority
- ☐ Not registering their personal interests in the Council's Register of Members Interests, and keep their entry up-to-date.
- ☐ Not treating others with respect

- ☐ Not registering gifts and hospitality received in their role as a Councillor, worth more than £25

- ☐ Bringing the Council or their office into disrepute
 - ☐ Using the Council's resources for party political purposes
 - ☐ Compromising the impartiality of people who work for the Council
 - ☐ Discriminating against people on the grounds of race, gender, disability, religion or belief, sexual orientation and age
 - ☐ Bullying, intimidating or attempting to intimidate others
 - ☐ Using their position improperly for personal gain or to advantage their family members, friends or close associates
 - ☐ Attending meetings or being involved in decision making where they have a prejudicial interest - except when speaking when the general public are also allowed to do so
 - ☐ Disclosing confidential information, other than in exceptional circumstances
 - ☐ Preventing anyone from getting information they are entitled to.

6. How has the Code of Conduct been breached?

Please set out in the box below what the Councillor or Member has done which you believe has breached the Code of Conduct.

Where you are complaining about more than one Councillor or Member, you should make clear what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information that you want the assessment sub-committee to take into account when considering your complaint. You should, where possible:

- Be specific about what exactly you are alleging the Councillor said or did
 - eg - If you are complaining that the Councillor insulted you, you should state what the Councillor said.
- Provide details of the dates and times of the alleged incidents
 - If you cannot give precise dates, then give a general timeframe
- Confirm whether there were any witnesses - and if so, give their names and contact details if known
- Provide all relevant background information

Details of Complaint

Please continue on another sheet if you need more space

7. Redress

How would you like the Councillor(s) you are complaining about, to remedy your complaint?

8. Disclosure of Personal Information

In the interests of fairness and natural justice, we believe that any Councillor(s) who is/are complained about have a right to know:

- that a complaint has been made about them
- who has made the complaint
- what the complaint is

We will not withhold your identify or the details of your complaint unless you specifically ask us to do so, and then only in the following circumstances:

- to preserve the evidence
- to protect you or other witnesses from intimidation or bullying
- where there is a legal requirement not to disclose
- where the information you are providing in your complaint would be exempt or confidential under the Freedom of Information Act 2000 or Data Protection Act 1998, and the public interest would not be best served by disclosing it

Please provide details of why you believe we should not disclose your name or details of your complaint

9. Additional Help

Complaints must be made in writing - including fax or electronic submissions.

If you have a disability that prevents you from making your complaint in writing, please ring the Monitoring Officer on (0118) 939 0797 to discuss other ways for you to make your complaint.

If English is not your first language, please contact the Council's translation and interpretation service on 0118 939 0033.

If you would like this note printed in large print and double space, please ring the Monitoring Officer on 939 0744.

Chair, Standards Committee
July 2008

Local Determination

Procedure for local determination of allegations about the personal conduct of Council members

A. THE STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008

APPROVED BY STANDARDS COMMITTEE -

Introduction

1. Where an investigation has been completed by an Investigating Officer appointed by the Council's Monitoring Officer and it has been referred to the Council's Monitoring Officer in accordance with Section 6 of the Council's Procedure for Local Investigation and Regulation 17 of the 2008 Regulations, the determination of the complaint by the Council's Standards Committee or a Hearing Sub-Committee of the Standards Committee, will be governed by this procedure. It applies to complaints about the conduct of elected members and co-opted members with voting rights.
2. The Chair of the Standards Committee or a Sub-Committee may agree to vary this procedure in any particular instance where s/he is of the opinion that such a variation is necessary in the interests of fairness.
3. Upon receipt of the Investigating Officer's report, the Monitoring Officer will take conduct of the matter and arrange for a Consideration of Hearing Sub-Committee of the Standards Committee to consider the report under the Local Investigation Procedure. This procedure will come into play if, having considered the report, the Sub-Committee finds that there appears to have been a failure to comply with the Member Code of Conduct, and agrees that the matter should be considered at a hearing of the Standards Committee.
4. If for any reason the Monitoring Officer is of the view that a possible conflict of interest may arise of a kind that would make it difficult for him/her to give independent advice to the hearing, s/he will arrange for another suitable officer to take conduct of the matter.

Notifying the Member

5. Within 10 working days of the Consideration of Hearing Sub-Committee agreeing that the matter should be considered at a hearing, the Monitoring Officer shall notify the Member of the decision to hold a Hearing Sub-Committee to hear the matter; and provide details of the procedure to be followed at the hearing. This will include details of the pre-hearing process.
6. The Democratic Services Manager will convene a meeting of the Hearing Sub-Committee to be held within three months of the Consideration of

Hearing Sub-Committee. S/he will notify the Member of this date. At this stage s/he will also institute the pre-hearing process, by asking for a written response from the Member, within 15 working days, stating whether or not e/she:

- disagrees with any of the findings of fact in the Investigating Officer's report, including the reasons for any disagreements and their relevance to the Hearing
- wants to be represented, at his/her own expense, at the hearing by a solicitor, barrister or any other person
- wants to give evidence to the Standards Committee about the disagreements, either verbally or in writing
- wants to call relevant witnesses to give evidence to the Standards Committee about the disagreements
- wants any part of the hearing to be held in private
- wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public on the grounds that they contain exempt information

The Democratic Services Manager will also inform the Member that if, at the Hearing, he/she seeks to dispute any matter contained in the Investigating Officer's report, without having previously notified the Monitoring Officer of his/her intention to do so, the Sub-Committee may either adjourn the meeting to enable the Monitoring Officer to seek a response from the Investigating Officer, or refuse to allow the disputed matter to be raised.

7. If the Member's response significantly challenges any part of the Investigating Officer's report, the Democratic Services Manager shall forward the response to the Monitoring Officer to enable him/her to say whether s/he:
 - Wants to be represented at the hearing
 - Wants to call relevant witnesses to give evidence
 - Wants any part of the hearing to be held in private
 - Wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public
8. The Member and the Monitoring Officer are entitled to request that any witnesses they want should be called. However, the Chair of the Sub-Committee may limit the number of witnesses, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Sub-Committee to reach its decision.

9. Nothing in this procedure shall limit the Chair of the Sub-Committee from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Sub-Committee to reach its decision.
10. The Chair of the Sub-Committee, in consultation with the Democratic Services Manager, will then
 - confirm a date, time and place for the hearing, which must be within three months from the date that the Investigating Officer's report was received by the Monitoring Officer.
 - confirm the main facts of the case that are agreed
 - confirm the main facts that are not agreed
 - confirm which witnesses will give evidence
 - outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private, and
 - request the Monitoring Officer to provide this information, with the Agenda, to the Members of the Sub-Committee and the Member at least two weeks before the proposed date of the hearing.

The Sub-Committee

11. The Sub-Committee shall be chaired by an independent member.
12. The Sub-Committee shall be composed of members of the Standards Committee chosen by the Monitoring Officer in consultation with the Chair of the Standards Committee. Formally approved substitute Members of the Standards Committee may sit on a Sub-Committee if that is necessary to ensure that the hearing takes place within the statutory time limit. Membership of the Sub-Committee shall be chosen with a view to ensuring fairness, independence and organising the hearing within the statutory time-limits.
13. The Sub-Committee will be composed of four members in total with a minimum of one independent member and three elected members, one from each political group represented on the Standards Committee; and the quorum for the Sub-Committee shall be three members.
14. Where a member of the Sub-Committee is unable at the last minute to attend a meeting of the Panel the Democratic Services Manager shall arrange for an approved substitute member of the Standards Committee to attend the meeting. The Democratic Services Manager shall brief the substitute member about the complaint under consideration.
15. Each Sub-Committee member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast, with the Chair having a casting vote. Abstentions shall not be permitted.

16. The Committee Service shall carry out administration for the hearing.
17. The meeting of the Sub-Committee will be open to the public and press unless the Sub-Committee considers that confidential information or exempt information under Schedule 12A of the Local Government Act 1972 is likely to be disclosed or that it is appropriate to exclude the press and public having considered relevant Articles of the European Convention on Human Rights.

Procedure at the Hearing

18. The initial order of business at the hearing shall be as follows:
- establish that a quorum exists.
 - declarations of interest
 - consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present .
19. Any representation from the Monitoring Officer and/or the Member as to reasons why the Sub-Committee should exclude the press and public and determination as to whether to exclude the press and public. Where the Sub-Committee decides that it will not exclude press and public, the Monitoring Officer shall at this point provide copies of the agenda and reports to any members of the press and public who are present.
20. The purpose of the hearing is to test the robustness of the report of the investigation produced by the Investigating Officer, by examining the reasoning contained within the report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Sub-Committee based on seeking information in order to identify potential flaws in the report and to clarify issues. The Chair of the Sub-Committee will control the procedure and evidence presented at the hearing, including the questioning of witnesses.
21. The procedure at the hearing will be as follows, subject to the Chair of the Sub-Committee being able to make changes as he or she thinks fit in order to ensure a fair and efficient meeting:
- (1) The Monitoring Officer will summarise the nature of the complaint, the contents of the Investigating Officer's report and any further information relevant to the complaint.
 - (2) The Monitoring Officer will then call any witnesses, which may include the complainant(s), and ask them to give their evidence. Wherever possible, evidence shall have been put into writing before the hearing and copies circulated with the Agenda. Where evidence has been put into written form, the Chair may dispense with verbal evidence if the Member about whom the complaint has been made (or his/her representative) and the Monitoring Officer agree to do so.

- (3) The Chair will allow the Member (or his/her representative) to ask questions of each witness after they have given their evidence. Any such questions shall be asked through the Chair. The Member should make no statements at this stage.
 - (4) After the Member has asked questions, Members of the Sub-Committee will have the opportunity to ask questions of each witness.
 - (5) The Member will then be asked to present his/her response to the complaint, referring to any documentation previously made available to the Sub-Committee and anything said by the witnesses.
 - (6) The Member may call witnesses (subject to any limit on the number of witnesses the Member may call imposed by virtue of paragraph 8 above) and ask them to give their evidence. Wherever possible, evidence shall have been put into writing before the hearing and copies circulated with the Agenda. Where evidence has been put into written form, the Chair may dispense with verbal evidence if the Member about whom the complaint has been made (or his/her representative) and the Monitoring Officer agree.
 - (7) After each witness has given their evidence, the Monitoring Officer and Members of the Committee will have the opportunity to ask questions of each witness through the Chair.
 - (8) The Chair of the Committee will then allow the Monitoring Officer and Members of the Committee to ask questions of the Member.
 - (9) The Chair will then ask the Monitoring Officer, followed by the Member, to sum up their respective positions. There should be no interruptions during this stage.
22. Where the Member seeks to dispute any matter in the Investigating Officer's report which he/she had not given notice of intention to dispute in his/her written statement in response, the Monitoring Officer shall draw this to the attention of the Sub-Committee. The Sub-Committee may then decide:
- not to admit such dispute but to proceed to a decision
 - to admit the dispute, but to invite the Monitoring Officer to respond
 - to adjourn the meeting to enable the Monitoring Officer to investigate and report on the dispute or to invite the Investigating Officer to attend

Decision by the Sub-Committee

23. The Sub-Committee will consider the representations and evidence in private and conclude which of the following findings to adopt:

- That there is no evidence of any failure to comply with the Code of Conduct
- That the Member has failed to comply with the Code of Conduct, but that no action needs to be taken
- That the Member has failed to comply with the Code of Conduct and should be subject to one or a combination of the following sanctions:
 - censured
 - restricted access to the premises and resources of authority for a maximum period of six months (subject to such restrictions being both reasonable and proportionate to the nature of the breach and not unnecessarily restricting the Member's ability to carry out his/her functions as an elected or co-opted member
 - suspended for a period next exceeding six months
 - required to submit a written apology in a form specified by the Standards Committee
 - required to undertake training and/or conciliation as specified by the Standards Committee
 - partially suspended for a maximum period not exceeding six months or until such time as he/she submits a written apology in a form specified by the Standards Committee or undertakes any training or conciliation specified by the Sub-Committee

The Sub-Committee will be advised and supported by the Democratic Services Manager or representative during this process.

24. In deciding what penalty to set, the Sub-Committee will consider all relevant circumstances including those covered in the Guidance produced by Standards for England. If it considers it appropriate to do so, the Sub-Committee may return to the hearing to announce its finding and to seek any further comments from the Monitoring Officer, the Investigating Officer or the Member before making any decision with regard to sanction.
25. The Sub-Committee will then return and the Chair will announce in open session the decision of the Panel and the reasons for that decision.
26. If the matter is a complicated one, where the complaint has a number of aspects, the Sub-Committee can decide to consider the evidence and reach a finding on each aspect separately.
27. The Sub-Committee will then consider in open session whether there are any recommendations which it should make to the Standards Committee and/or Council arising from consideration of the allegation. For example,

providing recompense to any person who has suffered detriment as a result of the breach of the Code of Conduct or related matters; for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct, for rectifying any deficiency in the authority's decision making procedures or for preventing or deterring any further breaches of the Code of Conduct.

Appeal

28. Where the Sub-Committee determines that the Member has failed to comply with the Code of Conduct the Monitoring Officer shall inform the Member of his/her right to appeal and the procedure for that.

Notice of findings

29. The Democratic Services Manager will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared by the following day.

30. Within two weeks of the end of the hearing the Democratic Services Manager will circulate a notice of the full written decision, in the format recommended by Standards for England, to the Member, the Complainant (where possible), the Standards Committee and any other authority concerned.

31. At the same time the Democratic Services Manager shall arrange for a summary of the findings to be published in one newspaper circulating in the area of the Authority and on the Council's web site.

32. Where the Sub-Committee determines that there has not been a breach of the Code of Conduct, the notice specified in paragraph 30 shall state that the Sub-Committee found that the Member had not failed to comply with the code of conduct and shall give its reasons for reaching that finding. The notice shall not be published in local newspapers if the Member so requests.

33. Where the Sub-Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice specified in paragraph 30 shall:

- (i) state that the Sub-Committee found that the Member had failed to comply with code of conduct but that no action needs to be taken in respect of that failure;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached;
- (iv) state that Member concerned may apply for permission to appeal against the determination.

34. Where the Sub-Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice specified in paragraph 30 shall:

- (i) state that the Sub-Committee found that the Member had failed to comply with code of conduct but that no action needs to be taken in respect of that failure;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached;
- (iv) specify the sanction imposed, and
- (v) state that Member concerned may apply for permission to appeal against the determination.

Confidentiality and disclosure of information

35. Where the Chair of the Sub-Committee considers that the Investigating Officer's report and/or any of the written statements in response is likely to disclose "exempt information" (as defined in Schedule 12A to the LGA 1972 and regulations), and in consequence that it is likely that the Sub-Committee will, during consideration of these papers, not be open to the public, he/she shall instruct the Democratic Services Manager not to provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.
36. The Hearing will be held in public apart from the following three situations:
- Where 'confidential information' is to be revealed, the Sub-Committee must hold such parts of a meeting in private. Confidential information is information provided by a government department under the condition that it must not be revealed, and information that cannot be revealed under any legislation or by a court order.
 - Where 'exempt information' is to be revealed the Sub-Committee may exercise their discretion in deciding whether or not to exclude the public. The categories of exempt information are set out in Schedule 12A to the LGA 1972 and regulations and include information relating to the personal circumstances of any person.
 - It is considered that the public should be excluded by reason of the provisions of the European Convention on Human Rights.

JGP
November 2010

APPENDIX E

Ref 10/ 11	Received	Date of Assessment Sub-Committee (ASC)	Complainant	Description of complaint	Subject	Decision of ASC	Further developments
001	27 May 2010	16 June 2010	Councillor	<ul style="list-style-type: none"> Disrespect Disrepute 	Consideration of a planning application at PAC	Alternative action not amounting to investigation	<p>MO wrote to Cllr</p> <p>MO wrote to Group Leaders to remind Members to treat fellow Cllrs with respect</p>
002	27 May	16 June	Councillor	<ul style="list-style-type: none"> Disrespect Disrepute 	Consideration of a planning application at PAC	No further action	
003 004	27 June	17 August	Councillor	<ul style="list-style-type: none"> Failure to declare interest 	Consideration of a planning application at PAC	Alternative action not amounting to investigation	<p>MO wrote to both Cllrs</p> <p>MO wrote to Group Leaders on declaring interests on regulatory bodies</p>
005 006	21 Sept	2 Nov	Member of public (candidate)	<ul style="list-style-type: none"> Failure to declare interest Disrepute 	Consideration of a planning application at PAC	Breach of paras 9(1) and 10(1) of member Code4 Alternative action not amounting to investigation	<p>MO wrote to Group Leaders on avoiding a "close association" with applicants and members of public</p> <p>MO wrote to CEX to remind officers to maintain a professional approach in dealing with applicants and members of public</p>
007 008	20/21 Oct	2 Nov	2 Members of public (1 candidate) =	<ul style="list-style-type: none"> Disrespect Disrepute 	Use of social media	Breach of paras 3(1) and 5 of Member Code Alternative action not amounting to investigation	<p>MO wrote to Cllr on misuse of social media and obligation to treat others with respect and not bring authority into disrepute</p> <p>MO wrote to Group Leaders about misuse of social media during Council</p>

Ref 10/ 11	Received	Date of Assessment Sub-Committee (ASC)	Complainant	Description of complaint	Subject	Decision of ASC	Further developments
							meetings and appropriate behaviour in this regard Request to CE / MO to produce social media protocol
009	21 Oct	2 Nov	Member of public (candidate)	<ul style="list-style-type: none"> Disrespect Disrepute 	Use of social media	No further action	
010	27 Oct	2 Nov	Councillor	<ul style="list-style-type: none"> Disrespect Disrepute 	Use of social media	No further action	REVIEW - 16 December Decision upheld
011 012	8 Nov	13 Dec	Member of public (candidate)	<ul style="list-style-type: none"> Failure to declare interest Disrepute 	Considering objections at TMAP	No further action	
013	17 Nov	13 Dec	Councillor	<ul style="list-style-type: none"> Disrespect Disrepute 	Use of social media	No further action	MO wrote to Cllr - remarks immature, offensive and wholly unnecessary - damaging to his own reputation - could give negative impression of Council and Cllrs - request to refrain from such behaviour in future
014	23 Nov	13 Dec	Councillor	<ul style="list-style-type: none"> Intimidation (disrespect) Disrepute Breach of confidentiality 	Use of social media	No further action	MO wrote to Cllr - remarks immature, offensive and wholly unnecessary - damaging to his own reputation - could give negative impression of Council and Cllrs - request to refrain from such behaviour in future
015	12 Dec	18 Jan 2011	Councillor	<ul style="list-style-type: none"> Disrespect Disrepute 	Use of social media	No further action	MO wrote to Cllr - remarks immature, offensive and wholly unnecessary - damaging to his own reputation - could

Ref 10/ 11	Received	Date of Assessment Sub-Committee (ASC)	Complainant	Description of complaint	Subject	Decision of ASC	Further developments
							<p>give negative impression of Council and Cllrs - request to refrain from such behaviour in future</p> <p>Request Cllr to apologise for use of term "quisling" and to remove from blogsite</p>
016	1 Feb 2011	3 March	Member of public (UNISON) Councillor	<ul style="list-style-type: none"> Disrespect Disrepute Compromising impartiality of staff 	Use of social media	<p>Breach of Paras 3(1), 3(2)(d) and 5 of Member Code</p> <p>Alternative action not amounting to investigation</p>	<p>MO wrote to Cllr - remarks immature, offensive and wholly unnecessary - damaging to his own reputation - could give negative impression of Council and Cllrs - desist from such behaviour - remove offending comment from blogsite</p> <p>MO to write to Standards for England</p>
017	1 Feb 2011	3 March	Member of public (UNISON) Councillor	<ul style="list-style-type: none"> Disrespect Disrepute Compromising impartiality of staff 	Use of social media	No further action	MO wrote to Cllr - blogsite comments misleading and inaccurate - remove from blogsite
018	1 Feb 2011	3 March	Member of public (UNISON)	<ul style="list-style-type: none"> Disrespect Disrepute Compromising impartiality of staff 	Use of social media	No further action	
019 020	1 Feb 2011	3 March	Councillor	<ul style="list-style-type: none"> Disrespect Disrepute 	Use of social media	No further action	MO wrote to 1 Cllr about use of emotive language and to ask other Cllr to remove from blogsite

Ref 10/ 11	Received	Date of Assessment Sub-Committee (ASC)	Complainant	Description of complaint	Subject	Decision of ASC	Further developments
021	1 Feb 2011	3 March	Member of public (candidate)	<ul style="list-style-type: none"> Disrespect Disrepute 	Use of social media	No further action	MO wrote to Cllr - remarks immature, offensive and wholly unnecessary - damaging to his own reputation - could give negative impression of Council and Cllrs - request to refrain from such behaviour in future
022	1 Feb 2011	3 March	Member of public (candidate)	<ul style="list-style-type: none"> Disrespect 	Content of letter to local paper	No further action	
023	11 Feb	22 March	Member of public (RCRE)	<ul style="list-style-type: none"> Disrepute Breach of equality enactments 	Use of social media	No further action	

USE OF SOCIAL MEDIA AT COUNCIL, CABINET AND COMMITTEE MEETINGS

1. At its meeting on 2 November 2010, the Assessment Sub-Committee of the Council's Standards Committee considered two complaints involving Councillors using their mobile phones during a Council meeting to access Facebook and to and post live content onto a twitter site. As part of the action arising, the sub-Committee asked the Chief Executive and Monitoring Officer to produce a protocol on the use of social media to provide guidance on what was deemed appropriate use during formal meetings.
2. Both the Council Chamber itself, and its public gallery, have wall signs clearly stating "Please turn off all mobile phones during meetings".
3. Council, on 30 March 2010, approved a motion on Opensource Software. This included "integrating Council activities and services with social media to provide a better and more responsive service for residents".
4. The Assessment Sub-Committee made a specific finding relating to the use by a Councillor of a live feed to post comments on the twitter site from the Council meeting about the proceedings of the meeting and members of the public in attendance at the meeting. In doing so, the Sub-Committee found:
 - The Councillor was acting in his role as a Member at the time of the action complained about
 - The action of the Councillor in accessing the live feed during the Council meeting brought the authority and the role of Councillor into disrepute
 - The comment itself was disrespectful of a member of the public
5. The Sub-Committee expressed to the Group Leaders the importance of all Councillors behaving appropriately, particularly at meetings open to the public, to ensure the public's perception of the integrity of the local authority's decision-making processes was maintained to the highest standard possible.

Use of Mobile Devices

6. Mobile devices are pervasive, and offer a wide range of uses, including:
 - Phone calls
 - Texting
 - Reading and sending e-mails
 - Accessing Twitter, Facebook and other Social Media sites
 - Reading meeting papers and background information
 - Taking and sending electronic images (photos)
 - iPhone applications - Apps
7. In the context of the Opensource Software motion, they can offer electronic access to meeting papers, and assist debate by facilitating contemporaneous research into relevant matters to inform contribution to the debate. There may also be occasions when texting between Councillors on matters relevant to the debate at hand may be of assistance (on the same basis as circulating paper notes to other Councillors).

8. Alongside the proceedings of a long evening meeting, they also enable Councillors to manage their busy lives when time is at a premium, by sending messages to and receiving them from home and friends to check on domestic situations, including the care of children or dependent relatives.

9. However, they need to be used with care and common sense. In particular their use should not give the impression to observers that the Councillor is not paying due attention to the meeting. This could be cited as grounds for challenging a contentious decision by aggrieved applicants or interested parties, in particular in the context of the Planning or Licensing Applications Committee, where Councillors are required to come to a decision on the merits of the case as presented to them at the meeting.

10. This point also applies to other perceived distractions, such as reading books or magazines, allocating sweets, or sleeping during the meeting. For Council meetings in particular the public gallery is above Councillors, who may not appreciate that they are being observed, or the impression they may be giving to members of the public who may not be familiar with the ways of the Council, but feel strongly about the subject under debate.

11. It is in such circumstances that Councillors may find themselves the subject of complaints of breaching the Member Code of Conduct, or of bias and predetermination, or both.

Use of Social Media

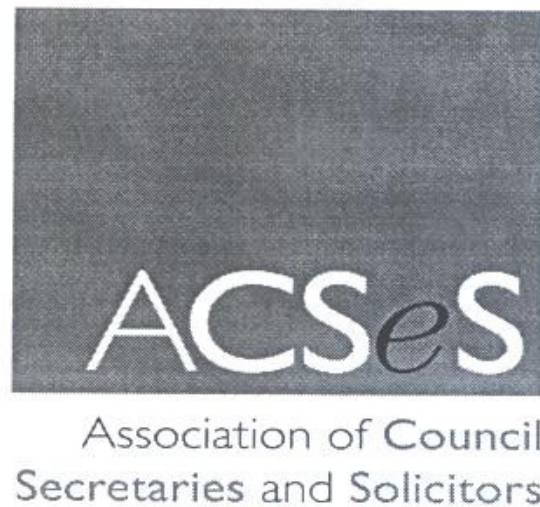
12. The following rules of good practice are therefore suggested to avoid such complaints:

- 1) Use mobile devices sparingly, discreetly and with common sense. Do not appear to spend the meeting glued to your mobile phone or media device. Consider the impression you are giving to others, in particular members of the public attending the meeting to hear the debate on a matter about which they may feel strongly.
- 2) The following uses are acceptable during meetings:
 - Reading meeting papers and accessing relevant background information
 - Checking iPhone applications relevant to the decision (eg maps of sites)
 - Sending and receiving restricted texts to/from home to keep on top of domestic circumstances - within reason and with common sense

These uses should be subject to a reasonableness test, which in practice is what the Standards Committee would apply if it received a complaint. The test is how an average person, knowing the facts, would perceive the action being taken in the context of the Member Code of Conduct.

Particular care should be taken in using social media during Planning and Licensing committee meetings

- 3) The following should normally be avoided:
 - Checking e-mails not related to the meeting
 - Subject to (2) above, sending texts (unless restricted to the debate and to other Councillors)
 - Accessing social media sites through a live feed to make contemporaneous personal comment on other individuals
 - Taking and sending electronic images
 - Extended and unreasonable periods of use that suggest that insufficient attention is being paid to the meeting



MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT

The Localism Bill published on 13th December contains proposals to abolish the Standards for England regime. Whilst subject to Parliament approving the necessary legislation, the changes can be summarised as Standards for England (formally the Standards Board for England) ceasing to operate, councils no longer being required to have a local standards committee, the national code of conduct for elected members being dispensed with and council's being allowed to adopt voluntary codes of conduct.

Following the abolition of the standards regime, councils will no longer have a single body of law to refer to for dealing with elected member conduct but will, instead, be able to call upon a range of remedies, including existing criminal and civil law provisions and those provisions contained in the Localism Bill. This paper seeks to summarise the proposals contained within the Bill and outline those provisions available to authorities to call upon. The paper covers the following:

- Summary of changes proposed in the Bill
- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences
- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

The Local Government Group acknowledges the valuable contributions of the senior members of the Association of Council Secretaries and Solicitors (ACSeS) in helping to produce this paper.

SUMMARY OF CHANGES PROPOSED IN THE BILL

The proposals outlined in the Bill are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities will be revoked
- The requirement for local authorities to have standards committees will be abolished
- Standards for England will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.
- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members
- Elected members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The government intends that wilful failure to comply with these requirements will constitute a criminal offence.
- The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.
- The requirement for councils to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

It is anticipated that the Bill will receive Royal Assent in late 2011. The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.

This means that until the appointed day, an allegation of misconduct can be made but that after the appointed day no further allegations of misconduct can be made under the Standards for England regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures are to be put in place to address this and the way in which they will operate is detailed in the following paragraphs:

- Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that these would be properly dealt with. It also provides an elected member who has had an allegation made against them with the opportunity to clear their name.
- The government proposes that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.
- Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date. The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).
- The government proposes that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do, for instance, is to issue a councillor with a censure or a request that they undergo training.

THE NOLAN PRINCIPLES

The **Committee on Standards in Public Life** is an advisory non-departmental public body established in 1994. The Committee's landmark First Report published in 1995 established ***The Seven Principles of Public Life*** often described as the Nolan Principles.

The Seven Principles of Public Life are:-

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** – Holders of public office should promote and support these principles by leadership and example.

Whilst it is anticipated that the statutory principles will be repealed, they have the potential to continue to be utilised more informally by people looking to develop their understanding of the standards expected of those in public office.

FIDUCIARY DUTY OF COUNCILLORS

A councillor is treated as a trustee of council assets, with a fiduciary duty to apply those assets in the public interest. Where a councillor abuses that trust, for example by disposing of those assets for personal gain, he/she can be held liable for the resulting loss - as with the House of Lords landmark ruling against Dame Shirley Porter in her capacity as Leader of Westminster City Council.

REGISTERING INTERESTS

The Local Government Act 2000 requires each councillor to make a declaration of his or her interests and to ensure that any addition or amendment to that declaration is made within 28 days of any change occurring in relation to his or her interests. The Bill intends to strengthen this by making it a criminal offence for a councillor to fail to register a relevant interest or withdraw for a personal interest, although the scope of this offence awaits Regulations.

CIVIL LAW

As councillors do not enjoy legal privilege they are subject to the same laws of **libel and slander** as the rest of the population. However, a council cannot itself be libelled so this remedy would only be available for the individual claiming they have been libelled or defamed rather than the authority itself.

Misfeasance in public office is a cause of action in the civil courts. It is an action against the holder of a public office, alleging in essence that the office-holder has misused or abused his power. There are two types of misfeasance in public office. One, known as 'targeted malice', occurs when a public office holder intentionally abuses his or her position with the motive of inflicting damage upon the claimant. The second is termed 'untargeted malice' and is committed by a public office holder who acts knowing that he/she has no power to undertake the act complained of.

EQUALITIES AND DISCRIMINATION LAW

Other civil law remedies would be available to individuals, but not councils, in the area of **equalities and discrimination law** for unlawful discrimination.

Discrimination law governs the right of individuals not be treated less favourably than others on grounds that include sex, race, religion, sexual orientation, age and disability. It also deals with the duty of public bodies to promote equality although the coalition government have announced that they are to repeal the social-economic duty on council's enacted in the Equalities Act 2010.

Councillors may, of course, be specifically named as a party to proceedings by claimants in discrimination proceedings.

CRIMINAL LAW

A councillor sentenced to a term of imprisonment of not less than 3 months is disqualified from office by virtue of **Section 80 of the Local Government Act 1972**.

A councillor using their position to support or influence a planning application for a project or venture that they have a financial interest in or otherwise using their position for self financial gain would be committing an offence under the **Fraud Act 2006**. Conviction under this Act carries a maximum penalty of 10 years imprisonment or an unlimited fine or both

The **Bribery Act 2010** provides a legal framework to combat bribery in the public (or private) sectors. It replaces the fragmented and complex offences at common law and those previously contained in the Prevention of Corruption Acts 1889-1916

The new Act creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage in a public office. Again, the maximum penalty for individuals is 10 years' imprisonment or a fine, or both

The Crown Prosecution Service, rather than councils, would decide whether there was sufficient evidence to prosecute for criminal offences.

ELECTORAL OFFENCES

The relevant legislation relating to electoral offences can be found in the:

- The Representation of the People Act 1983 (the Act)
- The Representation of the People Act 1985
- The Political Parties, Elections and Referendums Act 2000
- The Electoral Administration Act 2006 ("EAA")

There are a number of electoral offences specified in the Representation of the People Act 1983 and 1985, with the key ones being:

Undue influence: Where an individual, directly or indirectly, makes use of or threatens to make use of force, violence or restraint; or inflicts or threatens to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. This offence has been modified by the Electoral Administration Act to extend the effect of it to include intention and not just where an act has taken place. A

person may be guilty of undue influence if they impede or prevent, or intend to impede or prevent, the free exercise of the franchise of an elector.

Bribery: Where any individual, directly or indirectly, gives any money to any voter, in order to induce any voter to vote or not to vote for a particular candidate, or to vote or refrain from voting.

Treating: Where either before, during or after an election, any person, directly or indirectly, gives or provides (or pays wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence corruptly any voter to vote or refrain from voting.

Personation: Where any individual votes as someone else (whether that other person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or proxy. Further, the individual voting can be deemed guilty of personation if they vote on behalf of a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force.

Postal and proxy voting: Where an individual applies for a postal or proxy vote as some other person, otherwise makes a false statement in connection with an application for a postal or proxy vote, requests an Electoral Registration Officer or a Returning Officer to send a postal vote or associated communication to an address which has not been agreed by the person entitled to vote, or causes a postal or proxy voting communication not to be delivered to the intended recipient.

False information in nomination papers: Where a person gives false information in a nomination paper or in their consent to nomination, they are guilty of a corrupt practice.

False information in relation to registration: Where an individual, for any purpose in connection with the registration of electors, provides false information to the Electoral Registration Officer in connection with the registration of electors, that person is guilty of offence.

The Electoral Administration Act 2006 created two new offences which are:

Supplying false information to the Electoral Registration Officer, and

Making fraudulent application for a postal vote

The majority of electoral offences carry a maximum penalty of 1 or 2 years imprisonment or an unlimited fine.

AUDIT COMMISSION FOR LOCAL AUTHORITIES

Whilst powers of surcharge were abolished under the **Local Government Act 2000** an auditor appointed by the Audit Commission under the **Audit Commission Act 1998** will continue to play their role in investigating financial impropriety in local government and can recover financial losses from individuals councillors on the basis that he or she is responsible for the authority incurring unlawful expenditure. It is yet to be seen whether this power will be transferred to another body given the government's announced abolition of the Audit Commission.

LOCAL GOVERNMENT OMBUDSMAN

The Local Government Ombudsman was set up to investigate maladministration causing injustice. The law does not define maladministration but the Local Government Ombudsman currently defines its' mandate as follows:

"We can consider complaints about things that have gone wrong in the way a service has been given or the way a decision has been made, if this has caused problems for you"

Individual or collective actions or failings of councillors may amount to maladministration.

The government has announced that it intends to give the Local Government Ombudsman, the established body for investigating public complaints over the way they have been treated by their council, greater influence. For the first time local authorities will be legally compelled to implement the Ombudsman's findings.

BIAS, PREDISPOSITION AND PREDETERMINATION

This is a complex area of common law (i.e. judge-made law) that has implications for councillors individually and councils. It is wrong, therefore, to associate such matters exclusively as having been caused by Standards for England or as a direct result of the introduction of the standards regime under the Local Government Act 2000.

The long established legal position is that a councillor may not be party to decisions in relation to which he/she either is actually biased (in the sense that he/she has a closed mind and has pre-determined the outcome of the matter to be decided irrespective of the merits of any representations or arguments which may be put to him/her) or gives an appearance of being biased, as judged by a reasonable observer.

A finding of bias and/or predetermination can make a decision unlawful with costs and reputational implications for councils and the First-tier Tribunal (Local Government Standards, England (formerly the Adjudication Panel for England) has held that such a finding could be a breach of Paragraph 5 of the current code of conduct which could lead to the disqualification of a councillor.

The Localism Bill aims to clarify the rules on pre-determination and bias: the Bill provides that an indication by a councillor that he takes a particular view on a matter is not to be taken as evidence of a closed mind. The intention is that the normal activities of a councillor, such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge. The government claims that that this will give councillors the assurance that they can campaign, discuss and vote on issues with confidence and so encourage more people to stand in local elections. In practice, the Court of Appeal has already asserted that such activities will not preclude participation in decision-making, unless the councillor is so committed that they are not even prepared to listen to the evidence, but courts may fret that, where a councillor says that he has a closed mind on a matter, the court cannot take this assertion into evidence;

The government previously announced that a power of electoral recall of councillors is also being proposed to allow for the removal of councillors mid term for cases of 'serious misconduct'; although this has also not been included in the Localism Bill.

MISCELLANEOUS

It will remain open to councils to agree local arrangements whereby councillors could be censured for breaching local codes of conduct and other local protocols; including other activity regarded as inappropriate and to remove councillors from committees, outside bodies and other appointments, when appropriate. Whilst there will be a need for local authorities to reflect constitutional changes as a result of abolition of the current standards regime, other local protocols covering, for example, member/officer relations and guidelines regarding use of council resources, will continue to have effect and be subject to any local sanctions adopted by individual councils, though there will be no statutory sanctions against an offending member and therefore no powers to suspend or disqualify councillors.

FURTHER CONTACT

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**List of Gifts to Councillors
2010/11**

Date	Description	Cllr Name	Offered by	Accepted or Declined
16/7/10	2 tickets for Jazz Festival	Cllr Cumpsty	Reading Hockey Club	Accepted
3/7/10	11 scarves	Cllr Steele	Ghurkha Community	Accepted
18/7/10	1 ticket for Jazz Festival	Cllr Bayes	Mr Jukes	Accepted
6/8/10	Hospitality for £50 at Reading Retail Awards	Cllr Bayes	Reading Retail Awards	Accepted
10/8/10	Bag of vegetables from allotment	Cllr White	Resident, Mr Fred Taylor, 87 Crescent Rd	Accepted
4/10/10	Parker pen & pencil set (approx £20-£25)	Cllr Goodall	AWE	Accepted
4/10/10	Boxed steel pen set (approx £20-£25)	Cllr Willis	AWE	Accepted
21/10/10	3 tickets to Hexagon to see Royal Philharmonic Orchestra (approx £90)	Cllr Skeats	Amar Dave	Accepted
31/12/10	4 Panto tickets (2 adult & 2 child) £73.80	Cllr Hoskin	Rdg Arts & Leisure	Accepted
26/1/11	Reading FC lunch & Box to watch game (£100)	Cllr Bayes	Chair Reading FC	Accepted
5/4/11	Gift of Kebabs (£7.50)	Cllr Tickner	Mrs Lama	Accepted
Aug 2010	2 Reading Festival tickets	Cllr Benson		
Aug 2010	2 Reading Festival tickets	Cllr Edwards		
Aug 2010	2 Reading Festival tickets	Cllr Ennis		
Aug 2010	2 Reading Festival tickets	Cllr Epps		
Aug 2010	2 Reading Festival tickets	Cllr Gittings		
Aug 2010	2 Reading Festival tickets	Cllr Goodall		

Aug 2010	2 Reading Festival tickets	Cllr Chris Harris		
Aug 2010	2 Reading Festival tickets	Cllr Tim Harris		
Aug 2010	2 Reading Festival tickets	Cllr Hartley		
Aug 2010	2 Reading Festival tickets	Cllr Hoskin		
Aug 2010	2 Reading Festival tickets	Cllr Khan		
Aug 2010	2 Reading Festival tickets	Cllr Livingston		
Aug 2010	2 Reading Festival tickets	Cllr Lockett		
Aug 2010	2 Reading Festival tickets	Cllr Maskell		
Aug 2010	2 Reading Festival tickets	Cllr Ralph		
Aug 2010	2 Reading Festival tickets	Cllr Skeats		
Aug 2010	2 Reading Festival tickets	Cllr Swaine		
Aug 2010	2 Reading Festival tickets	Cllr Tickner		
Aug 2010	2 Reading Festival tickets	Cllr Townend		
Aug 2010	2 Reading Festival tickets	Cllr Warman		
Aug 2010	2 Reading Festival tickets	Cllr Watson		