

Standards Committee

Agenda

Date: Monday, 25th January, 2010
Time: 10.30 am
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach
CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda.

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos. 11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to its work.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide three clear working days' notice, in writing, to enable an informed answer to be given.

Please contact
E-Mail:

Carol Jones on 01270 686471
carol.jones@cheshireeast.gov.uk with any apologies or requests for further information or to give notice of a question to be asked by a member of the public

4. **Minutes of Previous Meeting** (Pages 1 - 6)

To approve the Minutes of the meeting held on 23rd November 2009.

5. **Pilot Compact Working Group**

The Vice-Chairman to report that owing to the current unavailability of the Chief Officer of the Cheshire Association of Local Councils, the Pilot Compact Working Group has not met since 29th October 2009. It is expected that a meeting will be arranged in the near future with the aim of submitted the final report to the March meeting of the Committee.

6. **Website Update** (Pages 7 - 8)

At the previous meeting, Members expressed concern that the dedicated webpage "Councillor Conduct" could not be placed more prominently on the Council's website owing to both technical difficulties and the requirement to adhere to guidance on hierarchical navigation.

The Committee resolved that a request be submitted to ICT for this page to be included on the left-hand navigation page of the home page.

Members are asked to note that the "Councillor Conduct" page has now been added to the home page listed under "I want to....." in close proximity to the left-hand navigation pane. For ease of reference, a copy of the home page is attached.

7. **"Away-Day" - 11th December 2009** (Pages 9 - 24)

The Chairman to report on the "Away-Day" held on 11th December 2009.

(1) Terms of Reference

The Terms of Reference for the Standards Committee were discussed and a separate report has been included as item 9 on this agenda.

(2) Planning Training

The issue of planning training for Members was raised in the context of Members' input into policy development, for example, the Local Development Framework. The Member Training Programme is currently being developed and, if required, arrangements can be made for a session which will focus on this aspect of planning.

In July 2009, Trevor Roberts Associates delivered an in-house planning session to Members of Cheshire East Council. Although this was principally related to planning enforcement, the topic of general planning was also covered. A copy of the programme for the event is enclosed.

On 15th February 2010 Members will be invited to attend an in-house planning training session which will focus on conservation matters, and later in the year a session on development control is planned.

At the conclusion of the March meeting of the Committee, a one-hour planning training session is to be delivered to the non-elected Members.

Each elected Member of the Council has already been provided with a “Development Management Member Pack” and copies of this will be available at the meeting for non-elected Members of the Committee.

(3) Complaints Form

The complaints form, based on guidance by Standards for England, has already been up-loaded onto the website. The Chairman has requested the inclusion of this item for review by Members of the Committee. A copy of the current complaints form is attached for consideration.

8. **Training for Members**

The Committee is asked to note that two training sessions for both Borough Councillors and town and parish councillors have been arranged on Wednesday, 10th February (Crewe) and Wednesday, 17th February (Macclesfield) respectively. The events, which will start at 6.00 pm, will consider matters relating to the Code of Conduct.

9. **Terms of Reference - Standards Committee** (Pages 25 - 56)

To consider the Monitoring Officer’s report in respect of the Terms of Reference for the Standards Committee.

The report addresses the issue of whistle-blowing and anti-bullying; both policies are attached as appendices.

10. **Bulletin 46 - Standards for England** (Pages 57 - 68)

To receive for information No. 46 of The Bulletin issued by Standards for England.

11. **Conducting Local Assessment**

At the conclusion of the meeting, there will be an opportunity for Members to view a DVD issued by Standards for England. The DVD is scenario-based and shows the behaviour of councillors, which may breach the Code of Conduct, and how an Assessment Sub-Committee carries out an assessment.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Standards Committee**
held on Monday, 23rd November, 2009 in Committee Suite 1,2 & 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT

Mr N Briers (Chairman)
Mr D Sayer (Vice-Chairman)

Councillors Rhoda Bailey, J Goddard, J Hammond, M A Hollins, M A Martin,
M Parsons and L Smetham

Independent Members: Mr I Clark, Mr M Garratt and Mr R Pomlett
Parish Council representatives: Mrs P Barnett , Mrs T Eatough and
Mr K Edwards

IN ATTENDANCE

Mr T Leslie Director of Regulation – Standards for England

68 DECLARATIONS OF INTEREST

No Member made any declaration of interest in any item of business on the agenda.

69 PUBLIC SPEAKING TIME/OPEN SESSION

In accordance with Procedure Rules Nos. 11 and 35 a total period of 10 minutes was allocated for members of the public to address the Committee on any matter relevant to its work, or to ask questions.

There were no questions from members of the public and the Committee proceeded to its next business.

70 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 21st September 2009 be approved as a correct record subject to the following amendments –

ADD to the list of those present –

- Councillor M Parsons
- Mr R Pomlett (Independent Member)
- Mr M Garratt (Independent Member)

AMEND the designation of Mrs P Barnett from “Independent Member” to “Parish Council representative”.

71 FEEDBACK FROM THE ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

Mr David Sayer (Vice-Chairman), Councillor Rhoda Bailey and Mrs Teresa Eatough (Parish Council representative) had attended the Annual Assembly of Standards Committees held in Birmingham on 12th and 13th October 2009.

The Vice-Chairman’s report on the Conference was submitted for information.

A number of issues arose during discussion of the report and it was agreed that these be addressed at the Standards Committee “Away-Day” to be held on Friday, 11th December.

RESOLVED:

That the report on the Annual Assembly of Standards Committees, held on 12th and 13th October 2009 be noted.

72 PILOT COMPACT WORKING GROUP

The Committee received for information the notes of the Pilot Compact Working Group meeting held on 29th October 2009 which reported on progress on the development of the Model Compact for use within Cheshire East.

The next meeting of the Working Group would be held at the conclusion of the “Away-Day” on 11th December 2009. It was expected that the Working Group’s final report would be submitted to the Committee meeting on 25th January 2010.

RESOLVED:

That the report be noted.

73 WEBSITE UPDATE

The Council’s website had been re-branded on 1st October 2009 and the following documents had been uploaded –

- Publicity leaflet on the role of the Standards Committee, created by the Publicity Working Group
- Complaints form
- Guidance on Personal and Prejudicial interests (developed by the Publicity Working Group)

It had been reported at the previous meeting that a separate dedicated webpage, entitled "Councillors' Conduct" or similar would be created in a prominent position on the home-page to enable easy access by members of the public. The Committee was now informed that whilst the page had been added to the website, the route was circuitous and not easily accessible. ICT had advised that for technical reasons and in accordance with guidance on hierarchical navigation, the page could not be featured on the home page.

Members considered that all steps should be taken to ensure that the "Councillor Conduct" webpage received greater prominence. The Committee was reminded that it was an Audit Commission requirement for members of the public to be able to access such information with relative ease.

RESOLVED –

That

- (a) the Committee express its concern that, notwithstanding previous efforts, the Council's website did not afford easy and direct access to Standards Committee information, and to the procedure for registering a complaint against a town/parish councillor or a Borough Councillor; and
- (b) that a request be submitted to ICT for a dedicated web-page entitled "Councillor Conduct" to be included on the left-hand navigation pane of the home-page.

74 AWAY-DAY - 11TH DECEMBER 2009

The Chairman reported on arrangements for the "Away-Day" to be held on Friday, 11th December 2009 in the Council Chamber, Municipal Buildings, Crewe. The event would be held between 10.00 am and 1.00 pm.

Jackie Weaver, Chief Officer of the Cheshire Association of Local Councils was expected to be in attendance; Mr Tim Leslie, Director of Regulation, Standards for England would also attend.

The Monitoring Officer of Cheshire West and Chester Council had been invited, along with the Members of the Cheshire West and Chester Standards Committee.

An "expression of interest" form would be e-mailed to Members of the Committee who were asked to make suggestions for topics to be discussed. In addition to Members' suggestions, there were various issues which had arisen at the Annual Conference and these would also be discussed.

75 PARTNERSHIPS PROTOCOL

At the Annual Assembly, the issue of partnership working had been discussed. Standards for England was developing a series of tools which could be used locally to assess and improve local government partnership arrangements.

It had developed a protocol in partnership with Manchester City Council for use by local authorities to encourage high standards of behaviour of those that work in partnerships.

The Committee considered the report of the Monitoring Officer which outlined proposals. It was suggested that a Member and Officer working group be established, to include representation from the Partnership Team. The group would use the draft protocol as a framework for development of a local protocol for use across Cheshire East, reporting back to the Committee in due course.

RESOLVED:

That

- (a) a Working Group of Members and Officers, including the Monitoring Officer and appropriate Officers from the Partnership Team, be established to develop a Partnerships Protocol for use within Cheshire East;
- (b) Councillors M A Hollins and L Smetham, together with Mr R Pomlett be appointed to the Working Group as the Member representation; and
- (c) arrangements be made for a meeting of the Working Group to be held in January 2010 with a view to submitting a report to the Committee's March meeting.

76 STANDARDS FOR ENGLAND - BULLETIN 45 (AUGUST 2009)

The Committee received for information, the Standards for England Bulletin 45 (August 2009).

77 TRAINING FOR MEMBERS

The Committee was invited to consider training needs for Borough Council Members and town and parish councillors.

The new Code of Conduct was not expected to be available until after the Parliamentary election. Notwithstanding this, there was a need for training of both Borough Councillors and town and parish councillors on the Code of Conduct, with particular reference to the declaration of personal and

prejudicial interests which seemed to be the issue which caused the most concern to Members.

It was suggested that two separate sessions be held; one in Crewe and one in Macclesfield. It was further suggested that these should be “twilight” sessions commencing at 6.00 pm, with refreshments provided in an effort to encourage attendance from those councillors who were in employment.

RESOLVED:

That

- (a) two separate training events be arranged in February 2010 on the Code of Conduct; one in Macclesfield and one in Crewe;
- (b) each session be approximately 2 hours duration; and
- (c) at its January 2010 meeting, the Committee discuss the proposed content of the training sessions.

78 CONDUCTING LOCAL ASSESSMENT

At the conclusion of the meeting it had been expected that there would be an opportunity for Members to view a DVD issued by Standards for England. The DVD was scenario-based showing examples of Councillor behaviour which may amount to a breach the Code of Conduct and how an assessment should be carried out.

Owing to technical difficulties with the presentation equipment, it was agreed that this be shown at the next meeting.

The meeting commenced at 10.30 am and concluded at 11.45 am

Mr N Briers (Chairman)

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Cheshire East Council
Home Page of Council's Website

Cheshire East Council - Home Page - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Reload Home Search Favorites RSS Mail Print Favorites People

Address <http://www.cheshireeast.gov.uk/> Go Links >>

Council

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About Cheshire East

Business

Community and Living

Council and Democracy

Education and Learning

Environment and Planning

Health and Social Care

Housing

Jobs and Careers

Leisure, Culture and Tourism

Transport and Travel

Waste and Recycling

I want to...

- View a planning application
- Apply for a school place
- Make a payment to the Council
- Renew, reserve or find library books
- Submit a complaint, suggestion or compliment
- Pay a penalty charge notice
- Complain about a Councillor's Conduct
- Calculate my benefits entitlement
- Report a highway fault
- Apply for a job at the Council

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Popular pages

- Gritting
- Jobs & Careers
- Shaping Our Services Feedback
- Leisure Facilities
- Libraries
- Bus Timetables
- Viewing Planning Applications
- Refuse & Recycling Collections
- Car Parks & Parking
- Council Tax
- Applying for Planning Permission
- Public Transport
- Agendas, Minutes & Reports

In focus



Winter Weather: Social Care

Winter Weather: Transport and Roads

Winter Weather: Schools and Leisure

Winter Weather: Waste Collection

Contact Us

Cheshire East Council
Telephone: 0300 123 55 00

[Emergency Contact Information](#)

News

- Mayor Opens New Sensory Nursery – Nominated for Award
- Foreign Nationals Celebrate British Citizenship
- Sandbach Roadworks Update - Snow Start to Pipeline

What's on

< January 2010 >

M	T	W	T	F	S	S
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

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CHESHIRE EAST COUNCIL

**DELIVERING COMPLIANCE - A GUIDE TO PLANNING ENFORCEMENT
A BRIEFING FOR MEMBERS**

Monday 27 July 2009 2.00pm – 5.00pm

Organised and presented for the Council by

**Trevor Roberts Associates
1 Atlas House
St George's Square
Bolton BL1 2HB**

**Tel: (01204) 385678
Fax: (01204) 386376**

**Email: mail@tra-ltd.co.uk
Website: www.tra-ltd.co.uk**

TREVOR ROBERTS ASSOCIATES / CHESHIRE EAST COUNCIL

DELIVERING COMPLIANCE - A GUIDE TO PLANNING ENFORCEMENT

Introduction

This "in-house" bespoke training session has been specifically arranged for the authority by Trevor Roberts Associates for the benefit of members who are involved or interested in this critical element of the Development Management process. At the end of the day, the community will not judge the authority on its processes but on the outcomes i.e. what gets built is what was approved, that developments comply with the conditions imposed on them etc.

Specific aspects covered during the session will include:

- the place of monitoring, compliance and enforcement within the Development Management process
- why do you have to apply for planning permission?
- what is and is not development?
- what is a breach of planning control (briefly considering how this differs from other control regimes e.g. listed building control)
- handling complaints
- scenario for action, particularly the concepts of “expediency” and harm”
- how can you engender a “Compliance Culture”?

Some of these questions will be posed for group discussion and feedback. General questions and discussion on all these matters will be encouraged throughout the session.

Pre-course questionnaires

This pre-course pack includes two simple questionnaires/profiles:

- a personal profile, and
- a specific questions profile.

Please complete this material and bring it along to be collected at the outset of the session.

Presenter

Vivien Green BSc MRTPI, Chartered Town Planner and Senior Associate with TRA. Vivien worked for various planning authorities (Salford City, Burnley BC, Hyndburn BC, Cumberland County) for many years before establishing as a freelance Planning Consultant. She has a wide spectrum of clients, and engages in a variety of planning work, including extensive experience in Inquiries as well as undertaking training assignments with Trevor Roberts Associates. A specialist on development planning, development control and enforcement, she is one of TRA's most experienced presenters, has been involved in many Councillor training assignments, and is the key Course Tutor on TRA's certificated course in planning enforcement.

Methods

Methods include inputs by the Course Presenter, supported by visual aids and simple course documentation. Within a broad presentational structure, the intention is to make the session participatory and informal.

Evaluation

We are pleased to receive feedback on our training events, whether positive or critical, as this assists with our Quality Control processes. During the session you will be given an evaluation slip. Please complete this slip and hand it to Vivien Green at the end of the training, or send it on to us afterwards.

Venue

The venue has been arranged directly by the authority. Details will be provided.

Further information about Trevor Roberts Associates

Established in 1984, Trevor Roberts Associates (TRA) is celebrating its 25th Anniversary in 2009.

TRA provides a range of management and professional training and procedural consultancy services to local government and the local government professions. These include a series of inter-authority and in-house events throughout the UK for people involved in the planning/development field. TRA is the leading provider of continuing professional development of this type in the country.

For the past 15 years, TRA has run training sessions for Councillors involved in planning, and has built up an expert team of presenters, the most experienced such group in the UK.

Anyone interested in learning more about our training and related services should visit our website at **www.tra-ltd.co.uk**.

Workshops for Key Councillors on Planning/Development Control Committees

TRA offers a series of workshops run on an inter-authority basis for key Councillors involved in planning (such as Chairs, Vice Chairs, Portfolio Holders). These are run over one and a half days in either York or Cambridge.

The topics currently being offered include:

- *Good Practice for Planning/Development Control Committees*
- *Securing Community and Infrastructure Funding through Planning Agreements and related mechanisms*
- *Effective Planning Enforcement and Compliance*
- *The Interface between Cabinet/Executive, the Planning Committee and the Planning System.*

Please see our website - <http://www.tra-ltd.co.uk/training/programmes/22> - for further details.

TREVOR ROBERTS ASSOCIATES / CHESHIRE EAST COUNCIL

**BRIEFING FOR MEMBERS
DELIVERING COMPLIANCE - A GUIDE TO PLANNING ENFORCEMENT**

Monday 27 July 2009: 2pm – 5pm

Programme

2.00pm

Introduction

The key components of Development Management

Some crucial questions to be considered initially in breakout groups

- why do you have to apply for planning permission?
- what is development?
- what does not constitute development?
- what is a breach of planning control?

Other control regimes operated alongside Development Management (e.g. listed building control)

Why does the Council get complaints about breaches of planning control?

- the Council's Policy for dealing with these complaints
- permitted Development
- the role of negotiation

Context for deciding whether to take Enforcement Action

- the discretionary nature of enforcement work
- time limits for action
- the legal "tests" for deciding whether or not it is "expedient" to take action
- what are material considerations?
- government advice
- scenarios for action

3.15pm

Tea

A question to be considered in breakout groups and then discussed: If enforcement is too little too late, how do you engender a "Compliance Culture"?

Monitoring and compliance: the hard realities of Development Management

- who are the "customers"?
- how will they measure the success of Development management?
- what messages do you want to send to the community?
- what changes are necessary to deliver "Development management"?
- how do you start making these changes?

5.00pm

End of briefing

TREVOR ROBERTS ASSOCIATES

DELIVERING COMPLIANCE – A GUIDE TO PLANNING ENFORCEMENT

PERSONAL PROFILE

The purpose of this is to provide the Course Presenter with a brief pen picture of participants.

NAME.....

HOW LONG ON THE COUNCIL(OR PREVIOUS COUNCIL).....

**COMMITTEES/SUB COMMITTEES OF THE AUTHORITY ON WHICH YOU SERVE
(INDICATE ANY PARTICULAR ROLE E.G. CHAIR, VICE CHAIR, OPPOSITION
SPOKESPERSON ETC.)**

**ARE YOU INVOLVED IN ANY "PLANNING RELATED" ORGANISATIONS, COMMITTEES,
PRESSURE GROUPS ETC. OUTSIDE/OVER AND ABOVE YOUR COUNCIL INVOLVEMENT -
IF SO GIVE DETAILS**

TREVOR ROBERTS ASSOCIATES

DELIVERING COMPLIANCE – A GUIDE TO PLANNING ENFORCEMENT

QUESTIONS PROFILE

This is an opportunity to jot down any questions you want to ask about planning enforcement. The Course Presenter will do her best to answer these questions within the limited time available. It will be easier to do this if the questions are submitted in advance.

Don't worry about being detailed or accurate - as long as it is possible to get an idea of what you want to know, this is good enough.

Name:

LOCAL CODE OF CONDUCT – COMPLAINTS PROCESS

1) Introduction

These notes have been prepared to enable you to make a complaint about the conduct of a Member(s) (Councillor) of the Local Authority or a Town and Parish Council. Attached is a complaint form, together with a copy of the Model Code of Conduct.

2) Changes to the complaints procedure

On 8th May 2008, the responsibility for considering complaints that a Member(s) of a Local Authority or a Town or Parish Council may have breached the Code of Conduct transferred to the Standards Committees of Local Authorities.

3) What this means to you

From now on, if you want to complain about the conduct of a Member(s) of Cheshire East Council or a Member(s) of one of our Parish or Town Councils, you must submit your complaint to the Monitoring Officer, Westfields, Middlewich Road, Sandbach, CW11 1HZ. The complaint must be in writing and a complaint form is attached to help you but you do not need to use it.

Complaints can only be dealt with where they relate to the behaviour of a Member(s) and it will be the Assessment Sub-Committee which will be asked to hear the complaint. It will not deal with complaints about matters which are not covered by the Member(s)s Code of Conduct. If you make a complaint, it must be about why you think a Member(s) has not followed the Code of Conduct.

3) Are you using the correct complaints procedure?

It is important to note that not every complaint will fall within the jurisdiction of the Standards Committee. Complaints about dissatisfaction with a decision or action of the Authority or one of its Committees, a service provided by the Authority or the Authority's procedures do not fall within the jurisdiction of the Standards Committee. Complaints of this nature should be made under the Council's separate Complaints Scheme.

Attachments:

- **Complaint Form**
- **The Local Authorities Model Code of Conduct 2007**

COMPLAINT FORM

Code of Conduct – Borough, Parish/Town Councillors and Co-opted Member(s).
Please see attached explanatory notes.

Your details-

1. Please provide us with your name and contact details. *(See Explanatory Notes attached)*

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

2. Please tell us which complainant type best describes you:

- ☐ Member of the public
☐ An elected or co-opted Member(s) of an Authority
☐ An independent Member(s) of the standards committee
☐ Member(s) of Parliament
☐ Local Authority Monitoring Officer
☐ Other Council Officer or employee of the Council
☐ Other - please specify ()

3. Equality monitoring questions

The information below will be used only for monitoring purposes only. Please tick correct boxes:

Gender: Male ☐ Female ☐

Marital Status: Married ☐ Civil Partnership ☐ Single ☐

Date of Birth: _____

Age: _____

Please indicate your ethnic origin

White:**Mixed:****Asian:**

White British	<input type="checkbox"/>	Mixed White/Black Caribbean	<input type="checkbox"/>	Indian	<input type="checkbox"/>
White Irish	<input type="checkbox"/>	Mixed White/Black African	<input type="checkbox"/>	Pakistani	<input type="checkbox"/>
Any other white	<input type="checkbox"/>	Mixed White/Asian	<input type="checkbox"/>	Bangladeshi	<input type="checkbox"/>
		Other Mixed	<input type="checkbox"/>	Other Asian	<input type="checkbox"/>

Black or Black British: Other

Black Caribbean	<input type="checkbox"/>	Chinese	<input type="checkbox"/>
Black African	<input type="checkbox"/>	Gypsy/Traveller	<input type="checkbox"/>
Other Black	<input type="checkbox"/>	Other	<input type="checkbox"/>

Nationality (Please State) _____

How would you define your sexual orientation?

Bisexual ☐ Gay ☐ Heterosexual ☐ Lesbian ☐ Prefer not to say ☐

What is your religious belief?

Buddhist ☐ Christian ☐ Hindu ☐ Jewish ☐ Muslim ☐ Sikh ☐No religion ☐Other (please specify) _____ Prefer not to say ☐**Do you consider yourself to have a disability?** Yes ☐ No ☐**4. Making your complaint** (See Explanatory Notes attached.)

Please submit to -

The Monitoring Officer, Cheshire East Council, Westfields, Middlewich Road, Sandbach, CW11 1HZ.

How to make a complaint

You must make your complaint in writing (either typed or hand-written). This complaint form has been produced in order to help you make your complaint but you do not have to use it. Once you have made your complaint, you will be told in writing what will happen to it.

Timeframe

Unless there are exceptional circumstances, events which took place more than 12 months prior to the complaint being submitted, will not normally be investigated.

5. Please provide us with the name of the Member(s) you believe have breached the Code of Conduct and the name of their Authority:

Title	First name	Last name	Council or Authority name

6. Please explain in this section (or on separate sheets) what the Member(s) has done that you believe breaches the Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done which you believe breaches the Code of Conduct. (See *Explanatory Notes attached.*)

Please provide us with details of your complaint. Continue on a separate sheet if there is not enough space on this form.

7. **Only complete this section if you are requesting that your identity is kept confidential**

In the interests of fairness and natural justice, the Council believes that Member(s) who are complained about have a right to know who has made the complaint. The Council also believes they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or

the details of your complaint unless you have good reason. (See *Explanatory Notes attached.*)

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

8. Additional Help

As noted in paragraph 3 above (Making Your Complaint), complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please contact Carol Jones (Tel: 01270 529952).

APPENDIX**EXPLANATORY NOTES**

The following additional notes are numbered to correspond with those on the Complaints Form.

1. The following people will be informed that you have made this complaint.

- the Member(s) you are complaining about
- the parish or town clerk (if applicable)

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete section 6 of this form.

Anonymous complaints will only be referred for investigation or some other action if accompanied by independent evidence to substantiate them or they indicate the exceptionally serious or significant nature of the complaint.

4. Making Your Complaint

What happens once you submit your complaint?

Pre-assessment of the complaint

The Monitoring Officer will determine whether the complaint should be directed to the Assessment Sub-Committee or whether another course of action is appropriate. If your complaint is not referred to the Standards Assessment Sub-Committee you will be informed of this and given the reason.

Assessment of the Complaint

The following initial tests and criteria will be applied to assess new complaints and decide what action, if any, to take. Each complaint will be judged on its own merits.

- Before assessment of the complaint

The complaint will be considered by The Assessment Sub-Committee which must be satisfied that:

1. The complaint is against one or more named Member(s) of Cheshire East Council or a parish or town council within the Cheshire East Borough;

2. The named Member(s) was in office at the time of the alleged conduct; and
3. The complaint, if proven, would be a breach of the Code under which the Member(s) was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant will be informed that no further action will be taken in respect of the complaint.

○ Assessment of the Complaint

If the above tests are met the Assessment Sub-Committee will have regard to the following criteria:

1. Adequate information – The Sub-Committee will want to be satisfied that it has sufficient information to decide whether the complaint should be referred for investigation or other action;
2. Timescale – The Sub-Committee will take into account when the events. the subject of the complaint, took place and will not normally investigate or pursue other action if the event occurred more than 12 months prior to the complaint being submitted (except if it decides there are exceptional circumstances);
3. Seriousness of the complaint – The Sub-Committee will not normally refer a matter for investigation or other action if it is considered trivial, malicious, politically motivated or “tit-for-tat”.
4. Public Interest - If the complaint relates to an ex-Member(s) of Cheshire East or one of its Town/Parish Councils, who is now a Member(s) of another Authority, the Sub-Committee may refer the matter to the Standards Committee of that Authority for consideration. If the Member(s) has resigned, is seriously ill or has died, the Sub-Committee will only refer the matter for investigation or other action if it considers that the public interest will be served by so doing. If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or has been investigated by other regulatory authorities, it is unlikely to be referred for investigation or other action unless it is evident that public interest will be served by further action being taken.

○ Decisions the Committee can make

If we decide that the Standards Committee will deal with your complaint, a meeting of the Standards Assessment Sub-Committee will be arranged within an average of 20 working days in order to decide what should happen next. The Sub-Committee can decide to -

- refer the complaint to the Monitoring Officer for investigation
- refer the complaint to the Monitoring Officer for other action

- refer the complaint to the Standards Board for England
- decide no action should be taken

When and how the complainant and others will be notified

Once the Standards Assessment Sub-Committee has reached a decision you will be informed of it and of the reasons for it within 5 working days. If the decision is to take no action, you can ask for a review. You must do this in writing within 30 days of receiving the decision. Your request must be considered within 3 months by a differently constituted Sub-Committee which may uphold the original decision or overturn it. You will receive written notification of its decision.

Where to direct enquiries

If you have any queries about any part of the complaint process you should contact the Monitoring Officer, Chris Chapman, at Westfields, Middlewich Road, Sandbach, CW11 1HZ: Tel. 01270 529922 or e-mail:

chris.chapman@cheshireeast.gov.uk.

6. It is important that you provide all the information you wish to have taken into account by the Assessment Sub-Committee when it decides whether to take any action on your complaint. For example:
 - You should be specific, wherever possible, about exactly what you are alleging the Member(s) said or did. For instance, instead of writing that the Member(s) insulted you, you should state what it was they said.
 - You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
 - You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible
 - You should provide any relevant background information.
7. Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted; the Assessment Sub-Committee will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Requests for confidentiality will be considered using the following criteria -

- The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- The complainant is an officer who works closely with the subject Member(s) and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed;
- The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. Medical evidence may be requested in support of this criterion;
- Whether the complaint can be investigated without revealing the complainant's identity.

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CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting:	25 January 2009
Report of:	Monitoring Officer
Subject/Title:	Review of Terms of Reference of the Standards Committee

1.0 Report Summary

- 1.1 This report is aimed at enabling members to consider, review, and better understand the role and terms of reference of the Committee.

2.0 Recommendations

- 2.1 That the report be noted and a decision made as to whether or not any further research or action is necessary as a result of consideration of this report.

3.0 Reasons for Recommendations

- 3.1 To fulfil the purpose stated in the report summary above.

4.0 Wards Affected

- 4.1 All.

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications including

- 6.1 None.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

- 7.1 None.

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 8.1 None.

9.0 Legal Implications (Authorised by the Borough Solicitor)

9.1 As outlined in the report.

10.0 Risk Management

10.1 Whilst the Council's constitutional arrangements already meet legal requirements, there are various ways in which the committee structures of councils can be set up to fulfil such legal requirements. If any alternative arrangement were to be pursued, it would ultimately require a decision of full Council, and prior to that the view of Governance and Constitution Committee would need to be sought. Legal advice would also be necessary on whether such alternative arrangements were legally compliant and workable.

11.0 Background and Options

11.1 At the Standards Committee's recent informal session, it was agreed that the committee should give further consideration to its terms of reference and its general function with regard to the promotion of good conduct and standards issues in the wider context. In particular, the relationship between the Standards Committee and the Governance and Constitution Committee, and the Council's arrangements for whistle-blowing and anti-bullying were raised.

11.2 Some Members of the Committee will recall that on 8 July 2008 the Committee considered a report relating to its role, responsibilities and work programme at that point in its development, and as part of that report, its terms of reference at that time were appended.

11.3 At that time, the committee existed in its shadow format only, and Independent members and town/parish council members were yet to be selected and appointed. Also, at that time, the shadow committee had yet to gain its current full statutory functions. Since then, the Council's Constitution, adopted by full Council in February 2009, has updated the terms of reference of the Standards Committee, and a copy of the current Terms of Reference, lifted direct from the Constitution, is shown at Appendix 1.

11.4 In March 2009, the committee considered a report on promoting its work, although this exercise was mainly centred around awareness and publicity, rather than scope. Since then, the committee has been keen to work to raise its profile. It is therefore now a suitable time for the Standards Committee reflect upon its functions and give consideration to their breadth and effectiveness.

- 11.5 Cheshire East Borough Council has arranged for the discharge of its functions by the creation of a number of regulatory and other committees, of which the Standards Committee (which it is statutorily required to have) is one. Another of its committees is the Governance and Constitution Committee. This is not a statutory necessity, but was set up having regard to the emergence of the two unitary authorities in Cheshire from the former seven authorities, and the consequent need to have a robust mechanism for development of the Constitution and other governance issues. A copy of its terms of reference, again lifted direct from the Constitution, is shown at Appendix 2.
- 11.6 Some authorities which do not have a Governance and Constitution Committee or its equivalent have some of the functions included within the terms of reference of their Standards Committees, such as, for example, the statutory approval of the annual Statement of Accounts, and receipt of the Annual Audit report. However, as these functions cannot legally be discharged by individuals who are not elected members of the principal authority (such as independent members, or town or parish members) their Standards Committees have to be organised in such a way that these particular functions are discharged by only the elected members of the principal authority for these specific purposes. Some authorities have Standards and Audit Committee, which undertakes both Standards and Audit functions, although again, only elected members of the authority can discharge some of the audit functions. Alternatively, such authorities may have a separate Audit Committee to undertake audit work. A further key function often undertaken by an Audit Committee is the development of a Code of Corporate Governance and approval of the Annual Governance Statement. Cheshire East does not currently have an Audit Committee because all the functions that could be undertaken by one are covered by the Governance and Constitution Committee. From the officer viewpoint, the Council also has an officer working group called the Corporate Governance Group which includes the Monitoring Officer, Head of Internal Audit, and other officers, and provides advice and guidance on corporate governance issues. The Audit Commission, as the Council's external auditor, has suggested that the Council may wish to consider the formation of a separate Audit Committee. The Chartered Institute of Public Finance and Accountancy (CIPFA) has also published guidance on the role and functions of audit committees, to encourage putting them in place and to make established committees more effective.
- 11.7 At the Standards Committee's informal session, it was requested that this report should also include reference to the Council's policies for dealing with bullying and whistle-blowing. The Constitution includes, in its section on codes and protocols, a "Whistle-blowing Protocol. This is commensurate with those commonly found in the Constitutions of similar authorities, and it sets out the procedures to be followed in the event of concerns being raised, and the legal safeguards contained in

the Public Disclosure Act 1998 for people raising whistle-blowing issues. Although reference is made to the Member Code of Conduct in relation to the disclosure of information, the protocol covers situations which are potentially much wider than the Standards Committee's core function, which is in relation to elected Member behaviour. At present, the committee to which headline details of whistle-blowing issues would be reported is the Governance and Constitution Committee, under the auspices of the Internal Audit Update and Plan, and, specifically, the section of those reports which relate to instances of potential fraud and irregularities. Clearly, the very nature of whistle-blowing issues, the sensitivity of such matters and the statutory protection for those who raise such matters precludes any obviously identifiable details being reported by this method, but the number of cases, if any, the stages they have reached, and whether or not they remain live are examples of details that may be capable of inclusion. Whilst this function is presently exercised by the Governance and Constitution Committee, the Standards Committee also has a role to advise the Council on the adoption and revision of the Codes of Conduct for Members and Officers, and whilst the Whistle-blowing protocol is not strictly either of those, the breadth of this role and the potential of a whistle-blowing protocol to impact on both members and officers if an issue is raised indicates that the Committee should be able to put forward observations on the Whistle-blowing protocol if it desires to do so.

- 11.8 The Council has chosen to style its anti bullying document as its "Dignity at Work" policy and this is attached at Appendix 3. This document was approved by the shadow Cabinet in March 2009. This document is not part of the Constitution and there is no requirement for it to be so. The committee may wish to offer observations on the Council's current arrangements in this regard.

12.0 Overview of Year One and Term One Issues

- 12.1 As the Standards Committee approaches the end of its first full year of operation, now is an appropriate time for it to review the breadth of its functions and the part it plays in promoting good conduct and governance within the Council.

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Julie Openshaw
Designation: Legal Team Manager (Places Regulatory and Compliance)
(Deputy Monitoring Officer)

Tel No: 01625 504250
Email: Julie.openshaw@cheshireeast.gov.uk

STANDARDS COMMITTEE
(extract from Cheshire East Council's Constitution
Pages 103-104)

4. Composition

4.1 The Standards Committee will be composed of:

8 Councillors

5 Statutory Independent Members, who will be entitled to vote at meetings, but who are not Councillors or officers of the Council

3 Parish Members. At least one Parish Member must be present when matters relating to Parish Councils or their Members are being considered

5. Powers

The Committee will be responsible for

- By itself or by sub-committee, to discharge the Council's functions under Part III of the Local Government Act 2000, including:
 - Assessment of new complaints (discharge of any functions under S57A of the Act).
 - Reviewing decisions to take no action over a complaint (S57B of the Act)
 - Consider final investigation reports and conduct determination hearings.
- considering and granting, or otherwise, dispensations in respect of Members' Interests when so enabled under Part III of the Local Government Act 2000;
- promoting high standards of ethical behaviour by developing, maintaining and monitoring codes of Conduct for Members of the Council (including Co-opted Members and other persons acting in a similar capacity) and for employees in accordance with best practice and Government guidance;
- advising the Council on the adoption or revision of the Codes of Conduct for Members and Officers;
- ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct;
- issuing advice to Members on the treatment of personal interests and on conduct matters generally;

- ensuring that the Council maintains appropriate links with the Standards Board for England and the Commission for Local Administration in England (Ombudsman);
- referring issues, which impinge on staff conduct, performance, terms of employment, training and development to the appropriate and responsible Executive Member and/or Manager;
- promoting high standards of responsiveness by the Council to its clients and contacts
- advising other persons/bodies on probity and ethics as appropriate, particularly where that person or body is exercising functions on behalf of the Council;
- supporting the Council's statutory officers as appropriate or their authorised deputies, in the performance of their duties;
- the local determination of complaints following any allegations of misconduct by Members;
- the determination of applications for exemption in respect of politically restricted posts.

GOVERNANCE AND CONSTITUTION COMMITTEE
(extract from Cheshire East Council's Constitution
Pages 101-102)

14 Members: 10:2:1:1

The Governance and Constitution Committee is responsible for:

1. overseeing, monitoring, co-ordinating and implementing the Council's administrative and political business, including electoral matters; administrative boundaries; support for and facilities for Members, including Members' learning and development and party groups for the purpose of their duties as councillors; and administrative arrangements for and the conduct of the Council and other meetings;
2. determining policies and conventions in relation to the political management of the Council, including statutory requirements concerning political balance and rights to information;
3. reviewing the Council's Constitution and recommending any changes to the Council;
4. advising the Council on, and overseeing the promotion of private legislation on behalf of the Council;
5. recommending to the Council, as appropriate, the appointment of Members to Committees and Sub-Committees (including any co-opted members other than in respect of Scrutiny Committees);
6. appointing representatives to serve on outside bodies and organisations (including education bodies and establishments) not falling to the Cabinet to appoint;
7. overseeing and monitoring the Members' Allowance budget, including pensions, and keeping under review the scheme for the payment of allowances to Members through the appointment of an Independent Remuneration Panel to advise Council on the adoption of the scheme and on any proposed amendments;
8. approving annual conference and seminar attendance;
9. recommending to the Council any issues relating to the Honorary Aldermen;
10. approving reasons for absence for Members;

11. approving the overall seating plan for Council meetings;
12. overseeing and agreeing the arrangements for Members to be indemnified for and insured against risks and liabilities arising from the performance of their duties as Members of the Council, and as the Council's representatives on outside bodies.
13. overseeing the Council's role and responsibilities in respect of Corporate Governance;
14. developing a Code of Corporate Governance and to undertake as appropriate an assessment of wider governance issues;
15. supporting the Council's audit function, both internal and external;
16. ensuring the Council has in place appropriate policies and mechanisms to safeguard the Council's resources;
17. supporting the Chief Financial Officer in relation to the performance of their duties;
18. approving any Council Statement of Accounts as may be required by the relevant Account and Audit Regulations;
19. ensuring any Council's Risk Management process is operating effectively.
20. undertaking work, and making recommendations, upon the Council's political management structure.
21. receiving the Annual Audit Report.
22. monitoring performance against the Audit Plan.
23. reviewing and making recommendations upon the Statement of Internal Control.



HUMAN RESOURCES POLICY

Document Ref: HR 8	Version No 1	Issue date: April 2009 Review date:	Responsibility / Owner: Human Resources Policy Team
Title: DIGNITY AT WORK POLICY			

CONTENTS	
1	SCOPE
2	AIMS
3	PRINCIPLES
4	WHO TO CONTACT FOR MORE INFORMATION
5	PURPOSE AND INTENT
6	ACCEPTABLE BEHAVIOUR
7	UNACCEPTABLE BEHAVIOUR
8	PRINCIPLES
9	STANDARDS
10	COMPLAINTS
11	DIGNITY AT WORK: COMPLAINTS PROCEDURE
	APPENDIX 1: Complaints Procedure- Examples of Behaviour Which May Offend Against The Dignity Of Men And Women At Work

Prepared by: HR Policy and Strategy Team	Approved for issue by:
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REVISION TABLE

Version No	Date issued	Reason for revision

HUMAN RESOURCES

Title of policy or procedure:

<p>1 SCOPE</p> <p>.</p>	<p>This policy is applicable to all employees of Cheshire East including employees who have TUPE transferred into the Authority. It is not applicable to school based staff. There are specific policies for schools staff which can be accessed via the Schools Intranet Site (link below).</p> <p>http://www/Services/Corporate/Personnel/Education/CSPIS/index.htm</p>
<p>2 AIMS</p> <p>.</p>	<p>To ensure all staff are aware of their responsibilities towards other staff and understand the impact their behaviour may have on other people</p> <p>To enable an employee to raise a complaint where they feel that they are being treated to harassment or bullying in the workplace.</p> <p>To enable managers to deal effectively with any complaints about unacceptable behaviour in the workplace.</p>
<p>3 PRINCIPLES</p> <p>.</p>	<p>To deal fairly and effectively with employees should they complain about the behaviour of another employee, or if they are complained about.</p> <p>Each individual has to respect and personal dignity within the workplace. Individual employees have a responsibility to recognise and preserve this right, to uphold the personal dignity of others, and to recognise and that other people's beliefs and culture differ.</p>
<p>4 WHO TO CONTACT FOR MORE INFORMATION</p>	<p>Human Resources Policy and Strategy Team.</p>

5 PURPOSE AND INTENT

5.1 The Council recognises the complex personal and interpersonal relationships that exist amongst a large and diverse workforce. It also recognises that organisational culture and tensions can contribute to an atmosphere in which unacceptable forms of behaviour are tolerated. The Council believes that all men and women at work are entitled to be treated with dignity and respect at all times. It understands the need for acceptable standards of behaviour in the workplace to enable all employees to fulfil their maximum potential and to protect their health, safety and welfare. These standards of behaviour should apply in all relationships involving Members, Managers, employees and others e.g. Service Users, Consultants, contractors

and volunteers.

5.2 The Council regards any form of bullying and harassment as unacceptable and will deal seriously with instances of such behaviour should they arise. The Council will give effect to its position on dignity at work by:-

- adopting this Policy statement;
- providing a clear process for dealing with complaints;
- setting standards of behaviour for employees through induction and appraisal;
- providing training for managers and investigating officers involved in handling complaints;
- providing access to support and counselling to individuals who consider that their dignity at work is compromised by the behaviour of others.

5.3 In formulating this policy account has been taken of other relevant legislation and policies including the Human Rights Act and the Council's Whistleblowing Procedure (When agreed).

6 ACCEPTABLE BEHAVIOUR

6.1 The fundamental principle underpinning this policy is the right that each individual has to respect and personal dignity within the workplace. Individual employees have a responsibility to recognise and preserve this right, to uphold the personal dignity of others, and to recognise and that other people's beliefs and culture differ.

7 UNACCEPTABLE BEHAVIOUR

7.1 The most common descriptions of unacceptable behaviour in the workplace are harassment and bullying, although the lack of a label should not deter an employee from asserting their right to be treated in an acceptable manner. The terms bullying and harassment are used in this Policy to describe any form of behaviour that offends against an individual's dignity.

7.2 Bullying and harassment are complex and sensitive issues because they can take so many different forms. They can be isolated or repetitive behaviour and can be directed at individuals or groups. Standards of behaviour are inevitably very personal things and what is acceptable to one person may be deemed harassment or bullying by another. It is often, although not always, the case that the alleged harasser or bully is in a position of power which enables them to undermine another individual. Whatever judgements are made about the validity of one individual's perception of another's behaviour, the Council's underlying principle is that the feelings of all individuals should be respected and solutions sought which maintain personal dignity.

7.3 There are a number of definitions of harassment and bullying which could be adopted. None of these is definitive nor will they provide prescriptive descriptions of what constitutes unacceptable behaviour. They do however

describe in general terms the types of behaviour which the Council believes to be unacceptable.

Harassment is defined as:

Any unwanted attention or behaviour that a person finds objectionable or offensive and which makes him or her feel threatened or uncomfortable leading to a loss of dignity and self-respect.

Bullying is a distinct and specific form of harassment which has been recognised in employment law under Health and Safety and other legislation. It is defined as:

Offensive, abusive, intimidating, malicious or insulting behaviour, abuse of power or use of unfair sanctions, which is persistent and makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines their self confidence and which may cause them to suffer stress.

7.4 The Council accepts that the key to feelings of harassment and bullying are that the behaviours encountered by the individual are unwanted and /or unwarranted, viewed as demeaning by, and unacceptable to, them as individuals. However it also recognises that in a large and diverse organisation, behaviours which one individual finds unacceptable may be considered justified and acceptable by others. In some circumstances the Council may apply the test of reasonableness in determining the acceptability of particular behaviours. However in responding to and managing complaints under this procedure, the Council will seek to promote outcomes which recognise the feelings and respect the dignity of all those involved.

7.5 Some of the reasons why harassment and bullying takes place and examples of behaviours which offend against peoples' personal dignity are given in Annex 1 of the Complaints Procedure. This list is not exhaustive.

8 PRINCIPLES

8.1 The Council expects all its Members and employees, whatever their position, to respect each individual's entitlement to dignity at work. The Council will maintain a safe and healthy working environment and will ensure that any allegation of bullying or harassment is taken seriously, is properly investigated and dealt with effectively.

8.2 This procedure incorporates and supports the rights of an employee to be accompanied at meetings, have access to relevant information, have an opportunity to explain their position, and have a right of appeal if they are not satisfied with the outcome. Managers are provided with guidance on the relevant legislation and a clear understanding of their roles and responsibilities.

8.3 Complaints will be investigated swiftly and confidentially, while ensuring that the rights of individuals are protected. Matters can often be handled without the need for a formal investigation and this procedure recognises and

provides for both formal and informal channels of resolution. It is preferable for complaints to be handled internally and informally as solutions can often be reached speedily with minimum embarrassment and risk to confidentiality. Such an approach is likely to be less stressful for all parties and result in outcomes with a high degree of mutual acceptability. In cases where there is a need for formal proceedings these will be kept confidential and any witness statements and records will be kept confidential to those proceedings.

8.4 Any incident that is perceived to be racist will be recorded and investigated.

8.5 The Council also recognises that employees subject to Grievance, Disciplinary and Workforce Performance Management procedures will be under great pressure. It recognises the potential for such staff to interpret the actions of their managers as bullying or harassing. The Council expects all its managers to apply these procedures appropriately and adopt sensitive and professional behaviours towards staff subject to proceedings. It also expects employees to take responsibility for contributing to the resolution of performance and conduct issues and to reflect on the causes of the stress they will be feeling.

If an employee is being taken through Disciplinary or Workforce Performance Management procedures, the Dignity at Work Procedure cannot be used to register concerns about action under those procedures. Any concerns must be made formally, in writing, and will then be appropriately dealt with as part of those procedures. Where appropriate, consideration may be given to the suspension of proceedings whilst such concerns are addressed.

9 STANDARDS

9.1 Managers are expected to:-

- Demonstrate respect for staff as individuals in all managerial/supervisory matters;
- Reflect on their own approach and style, recognising the inherent power their position bestows;
- Undertake relevant training in people management skills (appraisal, performance management, recruitment and selection) as part of their management /supervisory development;
- Ensure that all employees are aware of the Council's policies on Valuing Diversity and Dignity at Work and that they know how to complain if they become victims of harassment and bullying;
- Deal with complaints of harassment and bullying promptly, sensitively, confidentially and in accordance with the Procedure;
- Invite and encourage constructive feedback from subordinates and within

teams about standards and styles of behaviour to promote an open and honest culture of respect for diverse opinions;

- Ensure that matters of conduct and performance are dealt with sensitively and professionally, recognising the stress experienced by employees in these situations and the potential for feelings of victimisation to emerge;
- Give sensitive consideration to external and domestic influences which might be affecting an employee's performance or behaviour at work e.g. caring responsibilities, health or bereavement, relationship difficulties or domestic violence.

9.2 Employees are expected to:-

- Behave towards each other and their managers with respect at all times;
- Help prevent harassment and bullying by challenging and reporting Colleagues whose behaviour appears to be causing distress to others;
- Encourage colleagues to be open with each other and to resolve differences informally and at an early stage to avoid excessive stress being experienced;
- Recognise that managers often have a difficult job to do which will sometimes involve making decisions and giving instructions and feedback which are not always popular but which cannot necessarily be construed as harassment or bullying;
- Avoid making judgements and taking sides in the course of a complaint being investigated.

9.3 Members are expected to:-

- Promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They will respect the impartiality and integrity of the authority's statutory officers, and its other employees;
- Uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them;
- Not to do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority;
- Promote and support these principles by leadership and by example and will act in a way that secures or preserves public confidence.

These obligations are in accordance with the Members Code of Conduct and regulations made under the Local Government Act 2000.

10 COMPLAINTS

10.1 The Council has adopted a specific Dignity at Work: Complaints Procedure to recognise the particular nature of complaints of bullying or harassment or other forms of unacceptable behaviour. This Procedure provides for both formal and informal resolution of complaints. While every employee has the right to ask for a formal investigation to be undertaken, the Council recognises the considerable strain such investigations can in themselves generate and would wish to promote and facilitate informal resolution as much as possible.

10.2 A Modified Dignity at Work: Complaints Procedure has been developed for use in limited circumstances.

10.3 Allegations involving employees having acted contrary to this Policy will be dealt with under the Dignity at Work: Complaints Procedure.

10.4 Allegations involving Members will not be channelled through the Council's formal Complaints Procedure but will be dealt with in accordance with the Council's Code of Conduct for Members and in accordance with the relevant provisions of Part III of the Local Government Act 2000.

10.5 Allegations involving Service Users, Consultants, contractors or volunteers will be dealt with under the Council's Complaints Procedure or any Service specific arrangements agreed for this purpose.

Relevant policies and procedures are under development and include:

Valuing Diversity (Under development)
Disciplinary Procedure (Policy number HR6)
Grievance Procedure (Policy number HR7)
Dignity at Work: Complaints Procedure (Policy number HR8)
Managing Attendance (Policy number HR4)
Workforce Performance Management (policy number 11)
Code of Conduct for Employees (Under development)
Code of Conduct for Members (Under development)

Whistle blowing policy (under development)

11 DIGNITY AT WORK: COMPLAINTS PROCEDURE

11.1 OBJECTIVE

To enable an employee to raise a complaint and receive a timely and appropriate response from management, with a view to reaching a satisfactory outcome. Complaints which do not relate to bullying or harassment are dealt with under the Grievance Procedure.

11.2 ADVICE AND SUPPORT

The Council recognises that making and dealing with such complaints can be distressing in itself and the Council will ensure that all employees involved are supported throughout the process. Employees may seek support from HR who can give informed advice in confidence* and without pressure. The objective of this is to help an employee to decide which course of action to take, and to support employees during both informal and formal action.

11.3 Employees who are the subject of allegations may also seek advice from HR.

11.4 Employees may also seek advice from their line manager or trade union representative.

* It should be noted that complete confidentiality cannot always be guaranteed as the Council has an obligation to investigate serious concerns/allegations.

11.5 TIMESCALES

11.6 It is appreciated that employees who consider that they are subject to any form of bullying, harassment or intimidating behaviour may feel anxious, distressed and potentially reluctant to raise a complaint at the time that it occurs for a variety of reasons.

11.7 It is important that complaints are raised on a timely basis in order that they can be investigated and resolved swiftly, avoiding unnecessary stress and anxiety for all involved. Not doing so may affect the weight that it is given or even the ability to consider it.

11.8 Whilst employees are encouraged to raise complaints within 3 months of the event occurring, or final event where there is a sequence of events, this should not deter them from highlighting issues which occurred prior to this timescale which form a sequence or pattern of events and give substance to the complaint.

11.9 Time limits are specified for each stage of the procedure. These are intended to ensure the speedy resolution of complaints and to avoid delays. There is a specific requirement for managers to provide a written response to a complaint within a timescale of up to 28 days from initial receipt of the complaint. Such timescales should be followed unless both management and the employee (or their representative), mutually and exceptionally agree that speed is not essential. This may be necessary in cases where further investigation is required.

11.10 If a complaint is not dealt with by an appropriate manager within a specified time limit, the employee shall have the right to proceed to the next stage of the procedure. Where an employee fails to comply with a time limit the procedure will cease and the complaint will be considered settled or withdrawn,

unless it is agreed that the failure was not the fault of the employee. (NOTE: there may be some cases where action is required by management even if the employee decides not to proceed with their complaint). This will not apply if the Head of Service and the employee agree that the time limits should be extended.

11.11 The timing and location of meetings should be reasonable and the employee must take all reasonable steps to attend. If the person accompanying the employee cannot attend on a proposed date, the employee can suggest a suitable alternative date/location. This must not be more than 5 days after the date originally proposed by the Head of Service.

11.12 Any complaint that is perceived to be racist by the employee, their colleagues or management, must be recorded as a racist incident under that procedure. The Head of Service will then use this procedure to investigate the matter.

11.13 VICTIMISATION

11.14 Action will be taken to protect employees from intimidation, victimisation or discrimination for filing a complaint or assisting an investigation. Retaliating against an employee for complaining under this Procedure or assisting in an investigation is a disciplinary offence

11.15 ABUSE OF THE PROCEDURE

11.16 Employees found to have knowingly made false allegations may themselves be subject to disciplinary proceedings. This will be for the Head of Service to decide. Care will be taken in this respect particularly in relation to complaints arising in the course of disciplinary or workforce performance management proceedings.

11.17 INFORMAL ACTION

11.18 If possible, an employee who believes he or she has been the subject of bullying or harassment should, in the first instance, ask the person to stop the bullying or harassing behaviour and make it clear what aspect of their behaviour is offensive, intimidating or in any other way unacceptable and explain the effect it is having on them. It is recognised that this is in itself a difficult thing to do and if the employee feels unable to make this approach on their own, it can be made with the support of a Trade Union representative or work colleague employed by the Council.

11.19 If an employee feels unable to adopt the above approach they may contact HR, who will advise them on the options available to them.

11.20 An employee may report any incident of unacceptable behaviour to their line manager, or if the behaviour involves their line manager, to the next tier of management. Complaints concerning Members of the Council should be reported to the Council's Monitoring Officer. Employees may also approach a

HR Officer or a manager of their own gender if preferred. A group of employees with the same or similar complaints may be represented by a member of the group or through their trade union.

11.21 Employees should identify at this stage the outcome they are seeking. They should also be advised of the options for both formal and informal resolution.

11.22 The manager will undertake some initial enquiries including discussing the complaint with the employee against whom the allegation has been made.

11.23 The manager will consider the following options for informal resolution:-

i) Arrange a meeting with all the people involved with the aim of establishing understanding, recognition and acceptance of:

- the alleged unacceptable nature of the behaviour.
- the impact on the employee to whom the behaviour is directed.
- the feelings of the complainant and the person against whom the allegation is made.
- the motivation or lack of it of the alleged bully/harasser.
- the expected standards of behaviour.
- how the employees involved will work together following the meeting
- what steps the manager will put in place to monitor and review the situation

(A confidential written record of the meeting and outcomes should be kept.)

ii) Act as mediator or appoint an independent mediator to conduct further discussions with the complainant and the person against whom the complaint has been made individually, with the aim of improving understanding and establishing common ground from which to agree a practical resolution.

iii) Consider whether it is practical or desirable for either party to voluntarily move to another job or location.

11.24 Acknowledgement, recognition and agreement on a resolution strategy between the parties at this stage will preclude the need for further investigation.

11.25 FORMAL PROCEDURE

11.26 Formal Action under the Procedure will be taken where:-

- informal action does not result in the offending behaviour ceasing.
- either employee is dissatisfied with the informal action taken.
- an employee wishes to make a formal complaint in the first instance.
- the complaint is so serious that informal action is inappropriate.

11.27 The complainant or the person against whom the allegation has been made (in the case that they are dissatisfied with the outcome of informal action), will need to outline in a written statement to the appropriate Head of

Service the following details:-

- that they are not satisfied with the informal action/that they wish to move directly to the formal procedure;
- the name of the alleged bully/harasser(s);
- the nature of the unacceptable behaviour;
- where possible details of specific incidents;
- names of witnesses to any incidents;
- any action already taken by the complainant to stop the behaviour;
- what would be an acceptable outcome to the complainant.

NB: The employee must provide this information in full to enable the manager to respond within the 28 day timescale.

11.28 The Head of Service will immediately acknowledge receipt of the letter confirming that an investigation will take place, the name of the Investigating Officer and reminding the employee of the support available to them. If the Investigating Officer determines, either at the outset or during the investigation, that the investigation is likely to take longer than the 28 day timescale, this should be communicated to the employee and any extension should be mutually agreed with them.

11.29 A Complaint Monitoring Form should be completed by the manager and sent to the HR Delivery Manager.

11.30 Where no informal action has been undertaken, the Investigating Officer will interview separately both the complainant and the person against whom the complaint has been made in order to establish the issues, the seriousness of the complaint and whether informal resolution is still possible.

11.31 The Investigating Officer will conduct a full formal investigation. If at any time the Head of Service considers that the circumstances constitute gross misconduct they should move to the Disciplinary Procedure. The employee against whom the allegation has been made may be suspended for the duration of the investigation if their continued presence at work is likely to impede the investigation, or where it is deemed necessary for the protection of other employees. In accordance with the Disciplinary Procedure they will be notified in writing of the reasons for the suspension and the conditions attached to it. The employee must be advised that any breach of the conditions of their suspension may of itself be a disciplinary matter and pay may be stopped.

11.32 Alternatively it may be necessary to consider relocation of either employee for the duration of the investigation.

11.33 The Investigating Officer will prepare a report of their findings including notes of interviews with any witnesses. The report should include a summary of the issues, the evidence available, where appropriate an assessment of the alleged unacceptable behaviour, and the impact on the complainant.

11.34 RESOLUTION

11.35 The Head of Service will consider the report and make it available to both employees and their representatives.

11.36 The Head of Service will arrange a hearing and invite the complainant and the person against whom the complaint has been made to attend in order to consider the contents of the Investigating Officer's report. The employees will be advised of their right to be represented at the hearing. At the meeting the complainant will be given an opportunity to explain their complaint and how it should be settled.

11.37 The Head of Service may decide that:

i) there is sufficient evidence of unacceptable behaviour of a serious nature to require that a disciplinary hearing be held in accordance with the Disciplinary Procedure. The Disciplinary Hearing will be chaired by another Head of Service.

ii) unacceptable behaviour has occurred but that in all the circumstances it is not considered serious enough to warrant disciplinary action. In this case an action plan and monitoring arrangements should be agreed to ensure the behaviour stops. A record should be kept of these arrangements.

iii) there is no evidence of unacceptable behaviour. The Head of Service Manager will discuss this outcome with all parties and ensure that continued personal support is available to them.

11.38 The Head of Service will confirm his/her decision in writing to both parties within 28 days of the initial receipt of the complaint, or within the mutually agreed extended timescale.

11.39 APPEAL RIGHTS

The following appeal rights apply:

11.40 If the Head of Service's decision is to convene a disciplinary hearing, the employee against whom the complaint has been made will be entitled to exercise rights of appeal as set out in the Disciplinary Procedure. The employee making a complaint has no rights of appeal against the outcome of a formal disciplinary process.

11.41 If the Head of Service's decision is that unacceptable behaviour has occurred but that no disciplinary action should be taken, either employee can appeal against this. The complainant may appeal against the lack of disciplinary action, the employee against whom the complaint has been made may appeal against the decisions that unacceptable behaviour has occurred.

11.42 If the Head of Service's decision is that there is no evidence of

unacceptable behaviour, the employee who made the complaint may appeal against this finding.

11.43 APPEALS PROCEDURE

11.44 In appeals under either 9.2 or 9.3, the employee may appeal to the Staffing Appeals Special Sub-Committee. The employee should set out their decision to appeal in writing to their Director stating why they are dissatisfied, detailing any aspect of the process they feel has been defective, why they feel the evidence does not support the decision made and what outcome they are hoping to achieve. The appeal should be lodged within 10 working days of the outcome being advised in writing to both parties

11.45 The procedure for the conduct of these appeals will be that determined for appeals under the Grievance Procedure, and the decision of the Sub-Committee will be final; there are no further appeal rights.

11.46 MODIFIED DIGNITY AT WORK: COMPLAINTS PROCEDURE

11.47 This procedure will be followed in limited circumstances when the complainant is no longer employed by the Council or where it is not reasonably practical to apply the full procedure.

11.48 The complainant must outline in writing the nature of the alleged grievance, the evidence to support it, and the outcome which they are seeking in a written statement to the Head of Service.

11.49 The Head of Service must respond in writing within 28 days of receipt of the complaint.

11.50 MONITORING ARRANGEMENTS

11.51 All formal complaints will be recorded on a Complaint Monitoring form and sent to the HR Delivery Manager.

11.52 The Head of Service responsible for the work area will hold a meeting with both the complainant and the employee against whom the allegation was made, 3 months (or other period as agreed) after the outcome to review the situation and determine whether further action is necessary.

APPENDIX 1

DIGNITY AT WORK : COMPLAINTS PROCEDURE

EXAMPLES OF BEHAVIOUR WHICH MAY OFFEND AGAINST THE

DIGNITY OF MEN AND WOMEN AT WORK

- unwelcome physical contact or invading a person's personal space
- suggestive comments or innuendo
- persistent unwelcome attention
- singling out or victimisation
- consistently undermining someone and their ability to do their job
- inappropriate detailed checking of work, times of coming and going or excessive supervision
- unreasonably withholding information, resources or training
- setting impossible objectives
- changing priorities or objectives unreasonably
- shouting at an individual to get things done
- humiliating an individual in front of their colleagues
- belittling or patronising comments
- display or issue of offensive, sexist or racist literature and images
- practical jokes or initiations
- behaviour which is intimidating, physically abusive or threatening
- isolation or non-cooperation
- intrusion by pestering, spying or stalking
- other forms of harassment can include the use of e-mails, the sending of faxes or making telephone calls within the working environment or to a person's home invading their privacy.

HARASSMENT OR BULLYING MAY OCCUR BECAUSE OF A PERSON'S

- Race, nationality, skin colour or ethnic background
- Gender
- Disability
- Age
- Social background
- Sexuality
- Religious or political convictions
- Suspected or actual HIV/AIDS status
- Trade union membership or activity
- Assertion of contractual rights as an employee
- Status as an ex offender
- Willingness to challenge harassment or bullying, and therefore being victimised themselves.
- Reporting of a breach of the Standards of Conduct of the Council and suffering victimisation

NOTE: These lists are not exhaustive.

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Whistleblowing Protocol

CONTENTS

- 1.0 INTRODUCTION
- 2.0 PURPOSE AND SCOPE
- 3.0 LEGISLATION
- 4.0 SAFEGUARDS
 - 4.1 Harassment or victimisation
 - 4.2 Confidentiality
 - 4.3 Anonymous allegations
 - 4.4 Untrue allegations
- 5.0 PROCEDURES
 - 5.1 Raising a concern
 - 5.2 How the Council will respond
 - 5.3 The Responsible Officer
 - 5.4 If you are not satisfied with the Council's response

1.0 INTRODUCTION

- 1.1.1 As an employee, Member or contractor, supplier to or consultant with, the Council you may, from time to time, witness practices that seem suspicious. However, you may be deterred from expressing your concerns because you fear harassment or victimisation. You may feel that it may be easier to ignore the concern rather than to report your suspicions.
- 1.1.2 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we encourage employees and others with serious concerns about any aspect of the Council's work to come forward and voice those concerns without fear of reprisals. This policy document makes it clear that you can do so, without the fear of victimisation, subsequent discrimination or disadvantage.
- 1.1.3 These procedures are intended to encourage and enable you to raise serious concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside. Premature or unnecessary publicity may damage the Council's reputation, impede proper investigations, or hurt individuals unnecessarily.
- 1.1.4 A Member shall not disclose confidential information, using the public interest exemption in the Council's Member Code of Conduct without first considering using the procedure in this Whistle Blowing Protocol to raise concerns about an issue, unless it is necessary for the disclosure to be made to the Police or a Regulatory Body.

2.0 PURPOSE & SCOPE

- 2.1.1 These procedures have been introduced to provide employees, Members and contractors, suppliers or consultants with a secure basis for reporting suspicions of impropriety, in the knowledge that the matter will be treated confidentially.
- 2.1.2 This policy covers the reporting of a malpractice, the information that will need to be recorded and the steps that need to be followed to ensure that you do not suffer any recriminations or victimisation.
- 2.1.3 These procedures are intended to supplement, rather than replace, existing Council policies and procedures (for example the Council's grievance procedures and the policies dealing with harassment) whereby employees of the Council may already raise complaints or matters of genuine concern with the Council. They are therefore designed to provide for those instances where the person reporting the matter feels that, for any reason, they cannot make use of other procedures.

2.1.4 This policy has been designed to take into account Human Rights considerations.

2.2 CONTRACTORS, SUPPLIERS AND CONSULTANTS

2.2.1 In your dealings with the Council you will often work very closely with Council employees and Councillors. You will also operate under the Council's procedures and policies. The Council is fully aware that if you notice anything suspicious, or come across malpractice, you may be concerned about your relationship or future relationship with the Council if you raise this. As with employees and Councillors, the Council wants to encourage you to voice any concerns you may have, secure in the knowledge that the matter will be taken seriously and investigated, and that you and your organisation will not suffer any disadvantage.

3.0 LEGISLATION

3.1.1 The Public Interest Disclosure Act 1998 has been introduced to protect employees who expose serious wrongdoing in the workplace. It applies where a malpractice is disclosed involving:-

- a crime or breach of regulatory, administrative and common law;
- a miscarriage of justice;
- danger to health and safety;
- damage to the environment;
- unauthorised use of public funds;
- possible fraud and corruption; and
- sexual, physical or financial abuse of clients

3.1.2 The Act protects you from victimisation where you reasonably believe the information, and are acting in good faith.

3.1.3 A disclosure is protected if you have an honest and reasonable suspicion that a malpractice has occurred, is occurring or is likely to occur. As an employee you can raise the matter with your line manager who will refer it to one of the named below, or if you prefer direct to:-

- Head of Paid Service;
- Monitoring Officer;
- [Relevant Director];
- [Audit Manager].

3.1.4 Councillors can report suspicions to:-

- Head of Paid Service
- Monitoring Officer
- [Relevant Director];

- [Audit Manager]

A confidential record will be maintained by the [Audit Manager] of all concerns raised (except if the complaint is against the [Audit Manager's] Team).

- 3.1.5 It is important to note that in response to concerns raised with any of the above, they will initially act independently of each other when making investigations, except for the Audit Manager who may be asked to carry out the investigation.

4.0 SAFEGUARDS

4.1 HARASSMENT OR VICTIMISATION

- 4.1.1 The Council is committed to good practice and high standards, and wants to be supportive of employees.

- 4.1.2 The Council recognises that the decision to report a concern can be a difficult one to make. It will not tolerate any harassment or victimisation and will protect you if you raised a concern in good faith.

- 4.1.3 If you happen to be involved in any disciplinary or redundancy procedures these will be kept separate from the investigation of your complaint.

4.2 CONFIDENTIALITY

- 4.2.1 The Council will protect the confidentiality of all matters raised by concerned employees and Councillors.

- 4.2.2 If there is any breach of confidentiality by any of the four named officers in paragraph 3.1.3, the employee raising the concern can take the appropriate action under the grievance procedures.

4.2.3 ANONYMOUS ALLEGATIONS

- 4.3.1 This policy encourages you to put your name to your allegation whenever possible.

- 4.3.2 This is because concerns expressed anonymously are much less powerful than those raised by an identified individual. Anonymous allegations will, however, be considered at the discretion of the Council.

- 4.3.3 In exercising this discretion the factors to be taken into account would include:-

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

4.4 UNTRUE ALLEGATIONS

- 4.4.1 If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If, however, as an employee you make an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken against you. In the case of Members, the Standards Committee will consider the matter and make recommendations to the Council.

5.0 PROCEDURES

5.1 RAISING A CONCERN

- 5.1.1 You can raise your concern orally, (i.e. face to face or over the phone) or in writing. If you write, mark the envelope 'personal, private and confidential' and if the concern is of a serious nature, hand deliver the envelope to the person you wish to report the matter to.
- 5.1.2 Whichever way you choose, please give as much information as you can. Remember also to give your name, job and say if you do not want to be contacted at work (if so, give your home address and phone number).
- 5.1.3 You should include the following:-
- background information;
 - information as to why you are concerned;
 - details of any other procedures which you have already used, and what happened;
 - the names of the employee/Members involved and where they work (if applicable);
 - dates or periods of time relating to the matter;
 - the names and jobs of any other employees/Members who may support your concern.
- 5.1.4 The earlier you express your concern, the easier it will be to take action.
- 5.1.5 Although you will not be expected to prove beyond doubt the truth of an allegation, you will need to demonstrate that there are reasonable grounds for the concern.
- 5.1.6 You may find it easier to raise the matter jointly if there is another employee/Member who has the same concern, and will support your allegation.
- 5.1.7 You would be advised to invite your trade union representative, or another person, to be present during any meetings or interviews in connection with the concern raised. In this case you can remain anonymous when the concern is first raised, but you may have to be involved personally if the matter goes further.

5.2 HOW THE COUNCIL WILL RESPOND

5.2.1 One of those named in paragraphs 3.1.3 will firstly decide whether to carry out an investigation and determine which Council procedure it is appropriate to use.

5.2.2 If it is decided that the matter should be taken further under Whistleblowing procedures, the concern raised will be:-

- investigated by the Monitoring Officer, Management or [Internal Audit];
- referred to the police;
- referred to the external auditor;
- considered to become the subject of an independent inquiry;
- considered under the Council's Member Code of Conduct.

You may be interviewed by the person investigating the matter.

5.2.3 In order to protect individuals accused of a possible malpractice, enquiries will be made to decide whether an investigation is appropriate. Some concerns may be resolved by agreed action without the need for an investigation. If urgent action is required, this will take place before an investigation is undertaken.

What You Will be Told

5.2.4 The person to whom you have raised your concern will contact you in writing within 10 working days detailing the following:

- acknowledging that the concern has been received;
- indicating how the Council intends to deal with the matter;
- giving an estimate of how long it will take to provide a final response;
- detailing any initial enquiries that have been made; and
- informing you whether further investigations will take place (and if not, why not).

5.2.5 The amount of contact you have with the people considering the matter will depend on the type of concern, the potential difficulties of the investigation and the availability of information. Wherever possible, you will be told the final outcome of any investigation.

5.2.6 The Council will take steps to minimise any difficulties you may experience as a result of raising a concern. For example, if required to give evidence in criminal or disciplinary proceedings, the Council will arrange for you to receive advice about the procedure.

5.3 THE RESPONSIBLE OFFICER

- 5.3.1 The Council's Monitoring Officer has overall responsibility for the maintenance and operation of this policy.

5.4 IF YOU ARE NOT SATISFIED WITH THE COUNCIL'S RESPONSE

- 5.4.1 This procedure is meant to give everyone an effective way to raise a concern within the Council (and if possible resolve it internally). However, if you are still unhappy after using the procedure (and getting a final written response) you are entitled to consider taking your concern elsewhere. If you do this, these are some of the contacts that are available:

- the Council's external auditors [insert link/contact details]
- UNISON Whistle blowing Hotline – 0800 597 9750
- Audit Commission Anti Fraud and Corruption Unit – 020 7630 1019
- The independent charity Public Concern at Work – 020 7404 6609
- a Citizens Advice Bureau
- the Standards Board for England – 0845 0788181
- a relevant professional or regulatory body
- a relevant voluntary organisation
- the police

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Standards and Ethics Award

The closing date for entries to the 2010 Local Government Chronicle (LGC) awards was Friday 20 November. Around 20 authorities entered the Standards and Ethics Award, which is supported by Standards for England. Our judges, Dr Robert Chilton, Dr Michael Macaulay and Nick Raynsford MP have reviewed the entries and shortlisted six authorities who will be announced on 17 December. The judges will then meet in London to choose a winner which will be announced on 24 March 2010.

More information on the shortlisted authorities will be available on our website in January.

Bias, Predetermination and the Code

At this year's Annual Assembly we ran a session called 'Understanding Predetermination and Bias'. It looked at the relationship between bias, predetermination and the Code of Conduct (the Code). The session proved to be hugely successful in providing information that all standards committees and monitoring officers should be aware of, particularly as it drew on recent and relevant case law in this area. This article attempts to draw out some of the key messages from the session that make understanding predetermination and the Code easier.

Predetermination is a more accurate term than 'bias' used to describe a state of mind which is capable of breaching both the law and the Code. This is not to be confused with predisposition where a councillor holds a view in favour of or against an issue, for example an application for planning permission, but they have an open mind to the merits of the argument before they make the final decision at the council meeting. This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly.

There are two types of predetermination; actual and apparent:

- **Actual predetermination** is when a person has closed their mind to all considerations other than an already held view.
- **Apparent predetermination** is where the fair minded and well-informed observer, looking objectively at all the circumstances, considers that there is a real risk that one or more of the decision makers has refused even to consider a relevant argument or would refuse to consider a new argument.

Recent case law has provided some clarity on how to establish whether predetermination might have occurred by using a two stage test:

- **Stage one** - all the circumstances which have a bearing on the suggestion that the decision was undermined by actual or apparent predetermination must be established.
- **Stage two** - the questions to be asked are:
 - a) was there actual predetermination or
 - b) were the circumstances such as would lead a fair minded and informed observer to conclude that there was 'real risk' that one of the decision makers had predetermined the outcome?

It is important to note that apparent predetermination is to be assessed having regard to all the circumstances which are apparent upon investigation. This extends beyond the circumstances available to the 'hypothetical observer.'

This could include information on any other relevant facts affecting the decision, for example, council procedures. It does not include evidence from the member concerned as to their state of mind or evidence from the complainant as to why they believed the subject member's mind was closed.

The test is objectively looking at what view the facts give rise to. The courts have decided that the fair minded and informed observer has: access to all the facts, is neither complacent nor unduly sensitive or suspicious when looking at the facts, is able to decide between the relevant and irrelevant and on the weight to be given to the facts and is aware of the practicalities of local government.

The courts have accepted that these practicalities mean that the **fair minded and informed observer** accepts that:

- a) Manifesto commitments and policy statements which are consistent with a preparedness to consider and weigh relevant factors when reaching the final decision, are examples of legitimate predisposition not predetermination.
- b) The fact that the member concerned has received relevant training and has agreed to be bound by a Code of Conduct is a consideration to which some weight can properly be attached when determining an issue of apparent predetermination.
- c) Previously expressed views on matters which arise for decision in the ordinary run of events are routine and councillors can be trusted, whatever their previously expressed views, to approach decision making with an open mind.

d) To suspect predetermination because all members of a single political group have voted for it is an unwarranted interference with the democratic process.

e) Councillors are likely to have and are entitled to have, a disposition in favour of particular decisions. An open mind is not an empty mind but it is ajar.

What has become evident is that **the threshold**, in the context of administrative decisions, on the test of apparent predetermination is an extremely difficult test to satisfy. Unless there is positive evidence that there was indeed a closed mind, prior observations or apparent favouring of a particular decision is unlikely to be sufficient to establish predetermination.

The Adjudication Panel for England (APE) in case reference 0352 has also looked at the relationship between the Code and predetermination and gave an indication that where such issues arise there is a potential paragraph 5 Code breach. The outcome is likely to depend on the individual circumstances of a case and any other Code issues and breaches. This is because a councillor who renders the decision of a council unlawful due to predetermination could reasonably be regarded as bringing that authority or his office into disrepute.

An important issue for members is that by and large predetermination will not amount to a personal or prejudicial interest. Therefore there is no specific requirement to declare an interest and leave the room under paragraph 8 to 10 of the Code. Members may however find themselves the subject of a complaint under paragraph 5 on disrepute. This paragraph of the Code has no provision for declaring interests or leaving meetings.

For more information on the relationship between predetermination and the Code, what the practicalities of local government have been held to be and case details please see [Day One](#) on the events page of our Annual Assembly website.

For further information on determination please see our [Online Guide on Predetermination and Bias](#).

Local Assessment: sharing lessons learnt

One of the breakout sessions at our Annual Assembly in October was entitled *Local Assessment, sharing lessons learnt*. This session took the form of a discussion forum giving delegates the opportunity to share their experiences of the local assessment process since its introduction in May 2008.

Sessions were held in tandem for monitoring officers and standards committee members respectively. This gave each group the opportunity to share with their peers the challenges that had arisen in their authority and the solutions they had developed to meet these challenges. In addition, delegates

suggested a number of changes to the local standards framework. We value these suggestions but, clearly, many need further evaluation before a decision could be taken whether to make any changes.

A full breakdown of feedback from the sessions can be found on our dedicated [Assembly website](#), but we thought you might be interested in hearing what some of the main issues discussed were.

Top five issues discussed

1. Vexatious or Persistent Complainants

This topic was raised in all four sessions that took place. Potential solutions suggested by delegates included:

- asking for further Standards for England guidance on the definition of what a vexatious complaint is
- change legislation to allow monitoring officers to filter out such complaints and allow committees to refuse complaints from vexatious complainants
- having robust assessment criteria to filter out such complaints at assessment
- to write warning letters to complainants deemed vexatious by the council procedures
- to deliver targeted training
- to publish the average cost of assessing and investigating a complaint.

We are aware that persistent vexatious complainants are causing problems for a number of authorities. This is one area where we intend to provide further guidance for standards committees early in 2010, although we recognise that guidance alone is unlikely to solve this issue.

2. The role of the monitoring officer

Delegates questioned what role, if any, a monitoring officer should have in filtering out complaints before formal assessment by the standards committee. A variety of suggestions were made including that:

- Standards for England should produce further guidance on what steps monitoring officers can take before assessment
- monitoring officers should be given the power to filter complaints before assessment in consultation with the standards committee chair
- monitoring officers should make the initial assessment decision with any review undertaken by the assessment sub-committee

- monitoring officers should make the initial assessment decision for parish complaints
- there should be discretion to halt the formal process if a local solution is reached.

3. Informing the subject member that a complaint has been made

Currently monitoring officers can take the administrative step of informing a member that a complaint has been made about them. However, the current regulations do not allow them to disclose any details of the complaint. Many delegates felt that this puts monitoring officers in a difficult position, especially in circumstances where the complainant has spoken to the press.

Delegates suggested a number of solutions and changes that they would like to see including:

- asking members in advance whether they would like to be told if a complaint is made about them, and make them aware they cannot be told any details until after the assessment
- giving monitoring officers the discretion to reveal some details of a complaint to the subject member depending on the circumstances, in consultation with the standards committee chair
- requesting guidance from Standards for England on what the subject member should be told prior to assessment
- requesting guidance from Standards for England on what the subject member should be told prior to an investigation.

4. Resources

A number of delegates highlighted problems with finding resources to deal with processing complaints. There were some suggestions that monitoring officers could use the Local Government and Housing Act 1989 to ensure they had adequate resources to perform their functions.

Another suggestion was that parishes should either be asked to contribute or alternatively they should be charged for processing complaints about parish members. Currently parish councils cannot be charged for any costs incurred during the assessment or investigation of a complaint about a parish member.

5. Quality of complaint information

Delegates stated that poorly written complaints and lack of information from the complainant could make it difficult to make an assessment decision.

Delegates suggested that:

- a model complaint form from Standards for England would be helpful (we have already published a complaints form – [click here to download](#)).
- complainants should be encouraged to use, or that it should be mandatory to complete, an official form
- monitoring officers should request further information from the complainant if there is insufficient information to make an assessment decision
- the complainant should be asked what they would like the outcome of the process to be.

We are currently undertaking a review of the local standards framework and information gathered from the sessions will feed into this review process. However, some of the changes to the standards framework suggested would be difficult to implement as they would require primary legislation to be amended.

A number of requests were made during the sessions for further guidance from Standards for England. We will consider these requests and use the feedback to inform future guidance updates.

Annual return 2010

In April 2009 we collected annual information returns from the 438 local authorities that we work with, covering the period 8 May 2008 to 30 March 2009.

It is important for us to collect information from monitoring officers and standards committees on how they are helping to maintain high standards of ethical conduct in their authorities. This assists us in ensuring the effectiveness of local standards arrangements.

Last year's return was an opportunity for monitoring officers and standards committees to tell us in detail about the particular achievements, successes and difficulties they had in supporting and promoting the ethical framework. We used the returns to build up a bank of notable practice examples to share across the standards community. Many of these can be found on a dedicated [notable practice](#) section of our website and in our [annual review of 2008-9](#).

We will be continuing to collect examples of notable practice in the annual return 2009-10. The information we gather will allow us to cultivate a national overview of the local operation of the standards framework. We will use this to identify strengths and weaknesses of the framework, prompting where we should be producing guidance or seeking policy changes in response to emerging national trends.

The questions in the annual return are currently being developed. Some will stay the same as last year so that we can report on progress, but many of them will change.

Our reasons

We are aiming to have a shorter questionnaire which will use tick boxes where possible to capture practices that are common across many authorities. This should mean that less time is required completing responses; unless there are exceptional circumstances or innovative activities to tell us about. We only expect authorities to provide lengthy responses where they think that a narrative will help others in the standards community who may find themselves in a similar position.

We appreciate that the timing of the annual return is not ideal. April marks the start of the new financial year and is inevitably a busy time for all concerned. However, we want to be able to relay the messages from the year as soon as possible. Therefore, like last year, we will be asking for annual returns to be completed during April and May.

To help authorities complete this task during a busy time, we will be publishing the questions earlier. We hope to communicate the questions to monitoring officers in January 2010. This is so authorities have more time to plan and consult with their standards committee and other key figures, such as the council leader and chief executive, when preparing their responses.

Governance Toolkit for Parish and Town Councils

The second edition of the Governance Toolkit for Parish and Town Councils was well-regarded, winning a *Municipal Journal* Legal Achievement of the Year Award in 2007. The third edition of this valuable resource was finalised in April and is now available to download.

This edition has been revised, updated and produced in partnership between the National Association of Local Councils, the Society of Local Council Clerks, Standards for England and the Association of Council Secretaries and Solicitors. It is also endorsed by the Local Government Association. Milton Keynes Council, a fully parished part urban and part rural authority, is recognised as having been at the forefront of parish council initiatives for many years, and undertook the editing and production of this edition of the toolkit.

This new edition toolkit is a comprehensive, practical reference guide. The topics covered include governing documents, public engagement and managing information, creation of new town and parish councils and elections.

The toolkit will be most useful for

- town/parish clerks and councillors
- those interested in becoming a parish councillor

- principal councils wanting to establish parish councils in their areas
- monitoring officers.

If you would like to download a copy, you can find it in the [Resource Library](#) on our website under 'toolkits'.

Assessment Made Clear DVD

Copies of our new DVD – '*Assessment Made Clear*' have now been distributed to local authorities. We are keen to hear your feedback and so with each DVD there is a freepost feedback postcard, which should be quick and easy to complete and return to us. If you prefer to provide feedback online there is now an [online form](#) on our website.

So far we have been pleased with the response you've given to its approach in dealing with different assessment scenarios. However, some monitoring officers have expressed disappointment that it is not possible to freely copy the DVD as was the case with our previous DVD.

We have not envisaged a need for authorities to consider widespread distribution of this particular DVD. Our view is that this DVD is targeted at standards committee members serving on assessment sub committees and is best watched in a training situation, where group discussion supports the learning points set out in the DVD.

While it may be considered informative for a wider community of local councillors and appropriate officers, for such audiences we believe the context of the DVD, and discussion around it, are best moderated within a group training setting.

We do appreciate there may be cases where exceptions are to be made - so we have taken the decision to make further copies of the DVD available from us for £12.50.

Using the DVD

Alongside the usual features, the DVD includes 'pause and discuss' slides to allow you to pause after each case study and, as a group or as individuals, discuss or think through what you would do in that situation.

Subtitles are provided as an extra and scene selection allows you to revisit easily the sections that are of most interest to you. A pdf of the learning points is also available when viewing the DVD on your PC.

You can [view a trailer](#) of the DVD on Standards for England's website.

To order further copies please contact publications@standardsforengland.gov.uk or call our reception number – 0161 817 5300.

Police authorities and joint standards committees

In the *Joint standards committee guidance* we state that a police authority is unable to enter into joint arrangements with another police authority because Section 107(2) of the Local Government Act 1972 prevents them from having any of their functions carried out by other police authorities.

After receiving a large number of queries about this from police authorities we consulted again with Communities and Local Government. As a result of this liaison we now believe that our original interpretation of the legislation was incorrect. It is now understood that the 1972 Act does not prevent police authorities from forming joint standards committees with each other in line with the [Standards Committee \(Further Provision\) \(England\) Regulations 2009](#).

We would like to take this opportunity to apologise for the confusion. Our guidance will be modified shortly to reflect our updated position.

Review of the standards framework

We have all been operating the new standards framework for 18 months. As such, now is a good time for Standards for England, as the strategic regulator responsible for making sure it works effectively, to carry out a review of its effectiveness and proportionality. Where necessary we want to make recommendations to Communities and Local Government (CLG) for improvement.

We already have much of the information we need gathered from our research among various stakeholder groups (to which many of you have contributed - thank you), and from our own experience of monitoring and working with the standards framework. Soon we will be consulting with various bodies representing key local government and standards interests on what they think and about any recommendations we want to make. Our intention is to send these recommendations to CLG in March of next year.

We will keep you informed on the progress of the review through future bulletins and on our website. If, in the meantime, you have any queries then please contact Dr Gary Hickey on 0161 8175416 or gary.hickey@standardsforengland.gov.uk

Share your experiences of local standards

You can discuss anything you find topical in this Bulletin with fellow monitoring officers or standards committee members by using our new online forum. The Standards Forum, launched in October, provides a place for you to network, ask questions, share good practice, make recommendations and discuss any topics relating to the local standards framework.

All monitoring officers were automatically registered for the Forum and asked to send us the details of any members of their standards committees who wanted to join along with one other nominated officer. We have had a positive response and registered an additional 300 users, with more requests for membership being received daily. We intend to open membership up further by granting a further two officer registrations for each authority once we have registered this first wave of users. This is likely to happen early in the new year.

There are currently over 30 different subjects being discussed on the Forum. Popular topics include recommendations for external investigators and trainers; debates about protocols including the notification of subject members and the publication of decision summaries; and advice on the recruitment of parish members.

To find out more please access the [forum](#).

If you have any questions please contact forum@standardsforengland.gov.uk

Reminder: the importance of completing information returns

Within part 10 (Ethical Standards) of the Local Government and Public Involvement in Health Act 2007 it states that local authorities must send a periodic information return to us when we request one.

The periods we have specified, in the interest of not placing an unnecessary burden on local authorities, are the financial year quarters. In addition, we request a further return on an annual basis, meaning that there are five information returns required per year.

The information returns are extremely important. We need them to keep us up-to-date with how the local framework is functioning. They allow us to identify individual authorities that are not complying with the local standards framework or who are facing difficulties in implementing it.

So far authorities have been responsive in providing us with information on their experience, and the average percentage of returns completed for each quarter of the year is 99%. Over the 6 quarters for which we have requested returns, there have been just **13** instances where authorities have not provided a response. This is not bad when you consider there are over 400 authorities that we send requests to.

However, it often takes a significant effort to collect all of the returns. Roughly 75% of authorities complete their return by our deadline which is 10 working days after the close of each quarter. But the remaining authorities, who number more than 100, require multiple e-mail reminders and telephone calls before they complete their return. This is unacceptable, as it means it takes us longer than we would like to pull together all of the data and report on our findings.

Ultimately, we expect the authority's monitoring officer to complete our information returns. However, they can delegate this task to a colleague if they wish. For consistency we will always send our email correspondence directly to the monitoring officer, but if they know that they are not going to be available when a return is due they should delegate the task to somebody who is.

For more information on Standards for England's information returns please contact our monitoring team on 0161 817 5300.

Update on the transfer of the Adjudication Panel for England into the unified Tribunal structure

On 1 September, the General Regulatory Chamber (GRC) was launched as part of the First-tier Tribunal. The work of the Adjudication Panel for England will be transferred into the GRC in January 2010.

Legislative process

A 'Transfer of Tribunal Functions Order', transferring the functions of the Adjudication Panel into the GRC, has now been laid in Parliament. The order requires Parliamentary approval. Debates on the order will take place before the end of the year. The order contains amendments to the Local Government Act 2000, to the Standards Committee Regulations and to the Case Tribunal Regulations. Once Parliamentary approval has been obtained an amended version of each of those provisions will be available on the [Tribunals Service website](#).

The Order abolishes the Adjudication Panel for England, whose functions will then be undertaken by the First-tier Tribunal and will be known as the First-tier Tribunal (Local Government Standards, England). The President and members of the Adjudication Panel will be transferring as either judges or members of the First-tier Tribunal assigned to work in the General Regulatory Chamber of that Tribunal. The President will also be a deputy judge in the Upper Tribunal.

Impact on users

References and appeals made to the President of the Adjudication Panel are determined by Case Tribunals and Appeals Tribunals. The people who sit on those Tribunals will be the same people who determine these kinds of matters in the name of the First-tier Tribunal (Local Government Standards, England). The associated administrative work will also be undertaken by the same people as currently do this. Such work will continue to be based at the Tribunals Services offices in Leeds.

Since it was established, the Adjudication Panel has operated without any formal rules. That situation will change as a result of the transfer of work into the First-tier Tribunal. The procedure rules give more explicit powers of

direction to the First-tier Tribunal than were available to the Adjudication Panel, including power to summon witnesses.

All proceedings taking place after the transfer order comes into effect will be conducted in accordance with the rules of the First-tier Tribunal unless, in the case of proceedings which have already started, it would be unfair to apply particular provisions of those rules.

You can view regular updates on the [GRC page](#) of the Tribunals Service website.