

Standards Committee

Agenda

Date: Monday, 29th March, 2010
Time: 10.30 am
Venue: Committee Suite 1, 2 and 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 Carol Jones on 01270 686471
E-Mail: 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 25th January 2010.

5. **Pilot Compact** (Pages 7 - 12)

The Pilot Compact Working Group, which has met on several occasions, held its last meeting on 17th February 2010. The minutes of the meeting are attached, together with a draft Code of Conduct Compact.

6. **Member and Officer Protocol** (Pages 13 - 22)

At the previous meeting, during discussion of the "Dignity at Work" Policy, it was agreed that the Committee review the Member/Officer Protocol. An extract from the Council's Constitution is attached for consideration.

7. **Annual Report** (Pages 23 - 36)

To note the Annual Report for submission to full Council.

8. **Bribery Bill** (Pages 37 - 48)

The report of the Monitoring Officer informs Members of the content and impact of prospective legislation which aims to provide a more effective legal framework to combat bribery in the public and private sectors.

9. **Member Training**

To consider any training requirements.

Members will be aware that the Code of Conduct training arranged in March was postponed as a result of the delay in publishing the new Code of Conduct.

10. **Annual Assembly of Standards Committees**
(18th and 19th October 2010)

The Monitoring Officer to report that Standards for England is now taking bookings for the Annual Assembly of Standards Committees to be held on 18th and 19th October 2010 at the International Convention Centre, Birmingham.

The Committee is reminded that Mr David Sayer (Independent Member), Councillor Rhoda Bailey and Mrs Teresa Eatough (Parish Council representative) attended the 2009 Conference which was held in Birmingham on 12th and 13th October.

The Committee is invited to consider if there should be representation at the 2010 Assembly.

11. **The Bulletin (No. 47)** (Pages 49 - 58)

To receive the Standards for England Bulletin No. 47.

12. **Timetable of Meetings - 2010-2011**

At its meeting held on 25th February 2010, Council approved its Timetable of Public Meetings for 2010-2011. Meetings of the Standards Committee are to be held on the following dates -

24th May

27th September

24th January 2011

26th July

22nd November

28th March

Cabinet Member Decision meetings have been scheduled on each Monday morning throughout the year, and for this reason, Standards Committee meetings have been re-scheduled to 2.00 pm.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Standards Committee**
held on Monday, 25th January, 2010 in Committee Suite 1,2 and 3,
Westfields, Middlewich Road, Sandbach CW11 1HZ

PRESENT:

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

Councillors Rhoda Bailey, B H Dykes, J Hammond, M A Hollins, M A Martin,
M Parsons and L Smetham

Parish Council representatives: Mrs P Barnett, Mrs T Eatough and
Mr K Edwards

APOLOGIES: Councillor J Goddard, Mr M Garratt and Mr I Clark

79 DECLARATIONS OF INTEREST

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

80 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 members of the public in attendance and the Committee, therefore, proceeded to its next business.

81 MINUTES OF PREVIOUS MEETING**RESOLVED:**

That the minutes of the meeting held on 23rd November 2009 be approved as a correct record.

82 PILOT COMPACT WORKING GROUP

The Vice-Chairman reported that owing to the recent unavailability of the Chief Officer of the Cheshire Association of Local Councils, the Pilot Compact Working Group had not met since 29th October 2009. The Chief Officer had now resumed work and arrangements would be made for a meeting of the Group in the near future.

RESOLVED:

That the report be noted.

83 WEBSITE UPDATE

The Monitoring Officer had reported at the previous meeting, Members had 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 had not accepted this and had resolved that a request be submitted to ICT for this page to be included on the left-hand navigation pane of the home page.

Following the Committee's request, ICT had added the "Councillor Conduct" page to the home page listed under "I want to....." in close proximity to the left-hand navigation pane.

Members were satisfied with the changes made and received for information a copy of the home page of the Council's website.

RESOLVED:

That the position be noted.

84 "AWAY-DAY" - 11TH DECEMBER 2009

The Chairman reported on the "Away-Day" held on 11th December 2009. In addition to Members of the Standards Committee, the Vice-Chairman of Cheshire West and Chester Council was also in attendance. The following issues had arisen during the event -

(1) Terms of Reference

It was noted that there was a separate report on the agenda in respect of the Terms of Reference for the Standards Committee.

(2) Planning Training

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

In July 2009, Trevor Roberts Associates had delivered an in-house planning session to Members of Cheshire East Council. Although this had principally related to planning enforcement, the topic of general planning

had also been covered. A copy of the programme for the event was submitted for information.

It was reported that on 15th February 2010 Members would be invited to attend an in-house planning training session which would focus on conservation matters, and later in the year a session on development control was planned.

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

Each elected Member of the Council had already been provided with a "Development Management Member Pack" and copies of this were now available for non-elected Members of the Committee.

(3) Complaints Form

The complaints form, based on the toolkit provided by Standards for England, had already been up-loaded onto the website and a copy was now submitted to the Committee for consideration

The Chairman had requested the inclusion of this item for review by Members.

Discussion focused on question 3 which related to equality monitoring information. Members were of the view that the question was intrusive and likely to dissuade members of the public from completing the form. It was suggested that the question be removed from the body of the complaints form, and attached as a separate sheet to be marked "optional".

Members also commented that the explanatory notes accompanying the complaints form were couched in language which was complicated.

It was noted that local authorities were under a statutory duty to promote equality. The explanatory notes and the question on equality monitoring had been based on the toolkit provided by Standards for England.

RESOLVED:

That the following changes be made to the complaints form –

- (a) Question 3 be removed from the body of the form, and appended as a separate sheet marked to the effect that its completion was optional; and
- (b) Contact details currently provided on page 5 of the form be repeated in a prominent position on the front page.

85 TRAINING FOR MEMBERS

It was reported that two training sessions for Borough Councillors and town and parish councillors had been arranged on Wednesday, 10th February (Crewe) and Wednesday, 17th February (Macclesfield) respectively. The events would consider matters relating to the Code of Conduct.

Subsequent to these arrangements being made, it had transpired that Standards for England would be submitting its proposals for the new Code of Conduct to Communities and Local Government in the near future. The new Code was not likely to be available until March/April. In view of this development, it was suggested that the training be postponed until the new Code of Conduct had been published.

RESOLVED:

That the two training sessions on the Code of Conduct, to be held in February 2010, be postponed until the new Code of Conduct had been published.

86 TERMS OF REFERENCE - STANDARDS COMMITTEE

The Committee considered the Monitoring Officer's report in respect of the Terms of Reference for the Standards Committee.

The report had been prepared following discussion at the "Away-Day" held on 11th December 2009, at which time the issue of whistle-blowing and anti-bullying had been raised. A copy of the whistle-blowing policy and the anti-bullying policy, styled as the "Dignity at Work" policy were submitted with the report.

Members' discussion focused on the audit function which currently rested with the Governance and Constitution Committee. Members were informed that the Key Lines of Enquiry (the questions which the Audit Commission used to assess local authorities during the Corporate Performance Assessment process) required the establishment of a bespoke Audit Committee. Initial discussions had taken place at Officer level and the Monitoring Officer would be discussing this with the Chairmen of the Governance and Constitution Committee and the Standards Committee. The Democratic Services Manager had been asked to prepare a report which explored the possible division of responsibilities between the two Committees, with particular reference to the audit function.

Reference was made to the "Dignity at Work" policy. Comment was made that this related to the relationship between employees but did not take into account the relations between Members and Officers. It was

suggested that a draft Member/Officer Protocol be prepared for consideration and development.

RESOLVED:

That

- (a) The question of a Member/Officer Protocol be considered at the next meeting; and
- (b) That a report be submitted to the next meeting in respect of the possible division of responsibilities between the Governance and Constitution Committee and the Standards Committee, with particular reference to the audit function.

87 BULLETIN 46 - STANDARDS FOR ENGLAND

The Committee received for information Bulletin No. 46 issued by Standards for England.

RESOLVED:

That the contents of the bulletin be noted.

88 CONDUCTING LOCAL ASSESSMENT

Members were able to view a DVD on "Assessment Made Clear". There were some technical difficulties and it was agreed that a replacement copy be acquired from Standards for England and, if possible, a copy for each Member of the Committee, free of charge.

RESOLVED:

That the viewing of the DVD "Assessment Made Clear" be deferred to a later meeting.

The meeting commenced at 10.30 am and concluded at 11.45 am

Mr Nigel Briers (Chairman)

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**REPORT OF A MEETING OF THE PILOT MODEL COMPACT
WORKING GROUP ("the Group")**

**held in Room S1/2 Westfields, Middlewich Road, Sandbach
on Wednesday 17th February 2010 at 10.00a.m.**

Present: David Sayer (Chair for the Meeting), Nigel Briers, Teresa Eatough (Parish), Councillor John Goddard, Ken Edwards (Parish), Chris Chapman (Monitoring Officer) and Jackie Weaver (Chief Executive Officer Cheshire Association of Local Councils (ChALC))

Introduction:

The Chair welcomed Jackie Weaver (JW) on behalf of the Group and was pleased to note her restoration to good health. The Group was reminded that the history of the Pilot Model Compact Working Group and the chronology of its establishment are set out in considerable detail in the several documents comprised in the agenda bundle for today's meeting.

In response to a question from Ken Edwards the Chair indicated the procedural progression of matters after the conclusion of today's deliberations i.e. that (a) a final draft of the proposed compact would be prepared and (b) that the Chair would prepare a written report on the work of the Group to which the final draft of the compact would be annexed to be presented to the full Standards Committee when it meets on the 29th March 2010.

It was then agreed that the meeting would now move on to consider the fourth document for consideration today namely the draft compact prepared by the Chair and submitted as a discussion document, previously supplied to JW and members, upon which questions, comments and observations would be invited

Discussion:

The discussion thereafter centred upon the draft compact on a paragraph by paragraph basis and it should be noted that the paragraphs numbered 5,6,7,8,9,11,12 and 13 were approved and agreed as drawn. In terms of amendments/additions to paragraphs 1,2,3,4 and 10 these are incorporated and italicised in the revised draft annexed to this Report as Appendix A.

Conclusion:

The meeting concluded at 11.15 a.m. and the Chair thanked JW for her attendance and constructive input.

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**A DRAFT CODE OF CONDUCT COMPACT WITH
CHESHIRE ASSOCIATION OF LOCAL COUNCILS (“ChALC”)
FOR USE WITHIN CHESHIRE EAST COUNCIL**

Introduction

Following the formation of the Code of Conduct Compact Working Group (“the Group”) whose terms of reference were settled by the Standards Committee on the 13th July 2009 and with the valued assistance of Jackie Weaver, Chief Executive (ChALC) certain key documents emerged which are listed below and to which reference should be made in the course of discussion (page numbers are those utilised in today’s agenda bundle):

- (1) Code of Conduct Compact developed with Standards Committee of Chester, Macclesfields and Vale Royal (“the Macclesfield Compact”) at pages 6 and 7
- (2) Issues and Ideas Paper dated 4th September 2009 – Cheshire East Standards Committee (prepared by Jackie Weaver) at pages 22,23 and 24
- (3) Report of the Group’s Meeting held on 29th October 2009 to which the Issues and Ideas Paper in (2) above is Appendix A and which contains the Group’s responses (numbered 1 – 13 inclusive) to the Issues and Ideas Paper at pages 17, 18 and 19

Today’s draft is the fourth document and comprises very simply a basic draft agreement the wording of which is by way of suggestion only and upon which it is hoped that the Group’s deliberations will be focussed. This is purely a discussion document at this stage and, for ease of reference throughout, all documents included for today’s meeting have retained the paragraph numeration i.e. 1 – 13 inclusive together with consistency of subheadings. *(It should be noted that where, in the draft, reference is made to the Standards Committee such should be read and construed as being by way of recommendation only until the full report has been considered by the Standards Committee at its meeting on the 29th March 2009)*

The Agreement

1. ‘Improving Relationships’

To improve the relationship between the Standards Committee and ChALC the Chief Officer of ChALC be included on email listings for

Agendas and Minutes of the Standards Committee and, upon proper notice to the Monitoring Officer, the Chief Officer be at liberty to attend meetings of the Standards Committee on an *ad hoc* basis when items of interest/relevance arise *and at the discretion of the Chair and subject to the Standing Orders of the Council for the time being in force to address the meeting.*

2. 'Developing Relationships'

To develop the relationship between the Standards Committee and Town and Parish Councils the Standards Committee agrees in principle to the arrangement of a Parish Conference on at least an annual basis *one of the objects* of which would be to update Parish/Town Council Clerks and Members on the work of the Standards Committee.

3. 'ChALC Annual Meeting'

The Chair *and Vice Chair* of Standards *or their duly nominated representative* will be invited to attend the Annual Meeting of ChALC and (as appropriate and upon giving due notice) address the Town and Parish Members upon matters of concern or interest to the Standards Committee

4. 'Annual Bulletin'

The Standards Committee will secure the objectives sought under this head by inclusion of ChALC in circulation of the Annual Report of the Standards Committee in preference to a commitment to provide a specific Annual Bulletin *it being understood that ChALC in turn would deliver to Parish/Town Councils*. In addition all current information and guidance leaflets to be made available to Parish/Town Council Clerks and Members.

5. 'Newly Elected Town and Parish Members'

The Monitoring Officer will write to Town and Parish Clerks to remind them of the requirements for newly elected or returned members and to advise them of the support that is provided not only by the Monitoring Officer but from outside agencies e.g. the Parish Toolkit and how to access that support.

6. 'Copy Correspondence'

The Monitoring Officer will copy in ChALC to all correspondence and information criteria as expressed in paragraph 5.

7. 'Recruitment of Parish Members'

The Standards Committee expresses a willingness to engage with ChALC in pursuance of ChALC's objective that it should be recognised as the means whereby Parish Members will be recruited and in discussions with regard to any proposed protocol for the recruitment of those members

8. 'Available Information/Access to Website'

The Standards Committee will provide available information in a format that Council Clerks and Members can access directly, either upon request or via a link on the Cheshire East website.

9. 'Training Programme'

A training programme should be developed in consultation with ChALC and the Society of Local Council Clerks and the Monitoring Officer will provide at least one training session annually for the benefit of Local Council Clerks and Members. The Standards Committee duly notes the training already undertaken by ChALC and is wholly supportive of the role played by ChALC in the training of Local Council Clerks and Members.

10. 'Training Register'

A training register should be kept by each Clerk recording the Code of Conduct training that has been accessed by Local Council Clerks and members *and ChALC will encourage Local Council Clerks in this regard.*

11. 'Hot Spot Training'

The Standards Committee agrees in principle with, and acknowledges the requirement for, hot spot training sessions in areas of Parish/Town Councils experiencing a high level of complaint or where, in the view of the Standards Committee, a special need has been identified.

12. 'Mentoring'

The Standards Committee supports the ideal and principle of mentoring and agrees that, as an initial step, a register of Local Council Clerks and Members of experience and repute who in turn would be willing to assist and advise members seeking guidance should be maintained and freely accessible to members.

13. 'Budgetary Resources'

The Monitoring Officer should seek to encourage the use of budgetary resources to facilitate ChALC in securing the objectives and recommendations contained within the Compact at the same time the Standards Committee, having careful regard to the high levels of demand on budgetary resources, supports the role and significance of ChALC in attaining and maintaining high standards of governance and recognises the important role it plays in providing an interface between the Standards Committee and Town and Parish Councils

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Member/Officer Relations Protocol

1.0 INTRODUCTION

- 1.1 The aim of this Protocol is to guide Members and Officers of Cheshire East Council in their relations. It is hoped the Protocol will help build good working relationships between Members and Officers as they work together to build the new authority.
- 1.2 A strong, constructive, and trusting relationship between Members and Officers is essential to the effective and efficient working of the Council.
- 1.3 It is recognised that relationships between Members and Officers are very varied and can often be complex. Therefore, this Protocol does not seek to be comprehensive and may not cover all situations. However, it is hoped that the framework it provides will serve as a guide to dealing with a wide range of circumstances.
- 1.4 This Protocol forms a key part of the Council's approach to corporate governance and its commitment to uphold standards in public life.

2.0 INTERPRETATION OF THE PROTOCOL

- 2.1 Members and Officers must observe this Protocol at all times.
- 2.2 The provisions of this Protocol will be interpreted having regard to the requirements of the Members' Code of Conduct, the Officers' Code of Conduct, the Council's Whistleblowing Protocol and the Council's policies, procedures and processes.
- 2.3 Where there is a conflict or discrepancy between this Protocol and the Codes and Policies referred to in 2.2 above then those Codes and Policies shall have precedence. Conventions will also be taken into account in cases of conflict or discrepancy. Any questions over interpretation will be decided by the Monitoring Officer in consultation with the Chief Executive.
- 2.4 It is recognised that, in the period preceding any Council Election or by-election, specific protocols are in place. These protocols will take precedence over this Protocol where there is again conflict or a discrepancy.
- 2.5 This Protocol does not affect or interfere with any rights or protection which a person may have in law.

3.0 THE ROLE OF MEMBERS

- 3.1 Members are accountable to the electorate who determine every four years the people they wish to represent them on the authority.

Therefore, this Protocol recognises that Members are elected to serve the people of Cheshire East.

- 3.2 Members, as politicians, may express the values and aspirations of their party political groups but they must recognise that in their role as Members they have a duty to always act in the public interest.
- 3.3 Members may have a number of roles within the Council and need to be alert to the possible conflicts of interest that may arise.
- 3.4 At all times Members should be aware that the role they are performing may impact upon the nature of their relationship with Officers and the expectations that Officers may have of them.
- 3.5 Members are mainly responsible for:
 - the political direction and leadership of the Authority
 - the determination of policies, plans and strategies
 - deciding matters to give effect to or implement those policies, plans and strategies particularly in service delivery terms
 - performing the Council's regulatory functions
 - monitoring and reviewing, primarily through the Executive and Overview and Scrutiny functions, the Council's performance in implementing its policies, plans and strategies and in delivering its services
 - participation in partnership working
 - representing the Council on national regional and local bodies and organisations
 - representing the views of their communities and individual constituents
- 3.6 Some Members will have additional responsibilities relating to their membership of the Executive, Scrutiny Boards or other committees and sub-committees. The holding of these roles will involve a different relationship with certain Officers in areas where the Member has particular roles and responsibilities.
- 3.7 Members who serve on committees and sub-committees collectively have delegated responsibilities. These responsibilities may include deciding quasi-judicial matters which by law are excluded from the remit of the Cabinet.

3.8 Officers can expect Members:

- to act within the policies, practices, processes and conventions established by the Council
- to work constructively in partnership with Officers acknowledging their separate and distinct roles and responsibilities
- to understand and support the respective roles and responsibilities of Officers and their associated workloads, pressures and reporting lines
- to give political leadership and direction and to seek to further their agreed policies and objectives with the understanding that Members have the right to take the final decision in issues based on advice
- to treat them fairly and with respect, dignity and courtesy
- to act with integrity, to give support and to respect appropriate confidentiality
- to recognise that Officers work to the instructions of their senior Officers and not to individual Members
- not to subject them to intimidation, harassment, or put them under undue pressure. Members will have regard to the seniority of Officers in determining what are reasonable requests, having regard to the relationship between the Member and Officer, and the potential vulnerability of Officers, particularly at junior levels
- not to request them to exercise discretion which involves acting outside the Council's policies and procedures
- not to authorise, initiate, or certify any financial transactions or to enter into any contract, agreement or undertaking on behalf of the Council or in their role as a Member without proper and lawful authority
- not to use their position or relationship with Officers to advance their personal interest or those of others or to influence decisions improperly
- to comply at all times with the Members Code of Conduct, the law, the Constitution and such other policies, procedures, protocols and conventions agreed by the Council.

3.9 It is important that Members of the Authority:

- respect the impartiality of Officers and not undermine their role in carrying out their duties

- do not ask Officers to undertake work, or act in a way, which seeks to support or benefit a particular political party or gives rise to an Officer being criticised for operating in a party political manner
 - do not ask Officers to exceed their authority where that authority is given to them in law, by the Council or by their Managers
- 3.10 The Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (section 151 Officer) and other Statutory Officers have specific responsibilities placed on them by law. These responsibilities go beyond their obligations as employees of the Council. Where an Officer is discharging his/her responsibilities under any statutory office a Member or Members shall not:
- interfere with or obstruct the Officer in exercising those responsibilities
 - victimise any Officer who is discharging or has discharged his/her responsibilities of the Statutory Office

4.0 THE ROLE OF OFFICERS

- 4.1 The primary role of Officers is to advise, inform and support all members and to implement the lawfully agreed policies of the Council.
- 4.2 Officers are responsible for day-to-day managerial and operational decisions within the Council. Members should avoid inappropriate involvement in such matters.
- 4.3 In performing their role Officers will act professionally, impartially and with political neutrality. Whilst Officers will report a Members' view on an issue, the Officer should not be influenced or pressured to make comments, or recommendations which are contrary to his professional judgement or views.
- 4.4 Officers should:
- implement decisions of the Council and its subordinate bodies which are lawful, which have been properly approved in accordance with the requirements of the law and the Council's constitution, and are duly recorded.
 - work in partnership with Members in an impartial and professional manner
 - assist and advise all parts of the Council. Officers must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.
 - respond to enquiries and complaints in accordance with the Council's standards

- be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Members, the media or other sections of the public.
 - act with honesty, respect, dignity and courtesy at all times
 - provide support and learning and development opportunities for Members to help them in performing their various roles
 - not seek to use their relationship with Members to advance their personal interests or to influence decisions improperly
 - comply, at all times, with the Officer Code of Conduct, and such other Policies or Procedures approved by the Council
- 4.5 Officers have the right not to support Members in any role other than that of Member, and not to engage in actions incompatible with this Protocol. In particular, there is a statutory limitation on Officers' involvement in political activities.
- 4.6 Some Officers may be appointed to local, regional or national bodies because of their particular skills and expertise. They may be appointed specifically to represent the Council or in their personal capacity.

5.0 THE RELATIONSHIP: GENERAL

- 5.1 Members and Officers are servants of the public. They are indispensable to one another. However, their responsibilities are distinct. Members are accountable to the Public, whereas Officers are accountable to the Council as a whole.
- 5.2 At the heart of the Codes, and this Protocol, is the importance of mutual respect. Member/Officer relationships are to be conducted in a positive and constructive way. Therefore, it is important that any dealings between Members and Officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position nor seek to exert undue influence on the other party.

6.0 THE RELATIONSHIP: OVERVIEW AND SCRUTINY BODIES

- 6.1 It is accepted that in carrying out the Council's overview and scrutiny functions Members may require an Officer to attend to answer questions or to discuss issues.
- 6.2 It is recognised by this Protocol that challenge in a constructive and non-confrontational way is important in ensuring policies and performance are meeting the Council's strategic objectives. Therefore, nothing in this Protocol is intended to stop Members holding Officers to

account for decisions made under delegated powers. Nor is it intended to affect the Council's overview and scrutiny functions

- 6.3 When deciding whether to require an Officer to attend, the body will consider the seniority of the Officer it would be appropriate to invite. There is a presumption against inviting Officers outside the senior Officers' range to attend in this capacity. Requests for Officer attendance should be made to the Director concerned. Such requests should indicate in broad terms the areas which Members will want to discuss, and should give reasonable notice of the dates when attendance is needed
- 6.4 Where an Officer attends such a body his/her contribution should be confined to matters of fact and explanation. However, an Officer may be asked to explain and justify advice which he/she has given prior to a decision having been taken, including decisions taken by him/her under delegated powers.
- 6.5 Officers should not be drawn, overtly or covertly, into discussions of a political nature which would be inconsistent with the political neutrality requirement. Any questioning of an Officer should not be reasonably interpreted as constituting harassment.
- 6.6 In overview and scrutiny proceedings the capability or competence of Officers must not be questioned. The distinction needs to be drawn between reviewing the policies, performance and decisions of the Council or its services and the appraisal of staff's individual performance. The latter is not a function of overview and scrutiny bodies.
- 6.7 The approach here is consistent with the Overview and Scrutiny Procedure Rules as set out in the Council's Constitution.
- 6.8 In applying this part of the Protocol, account will be taken of any guidance agreed by Overview and Scrutiny bodies provided that guidance is consistent with the principles of this Protocol.

7.0 POLITICAL GROUPS

- 7.1 The Chief Executive, together with Directors and Heads of Service and occasionally other employees all with the permission of the Chief Executive may at times decide that it is appropriate to attend a political group meeting with a view to briefing and advising on the formulation of policy. This may be of his/her own initiative or at the request of a political group. However, the decision on whether he/she should attend is the Chief Executive's, in either case.
- 7.2 If the Chief Executive decides that he/she or another Officer may attend a political group meeting and it concerns a proposed significant policy change which is about to be presented to a meeting of the

Council, Executive Group or committee, then he/she must offer the facility to all other political groups within the Authority, indicating the area of policy upon which he/she is offering to brief/advise. He/she will inform the leader of the political group with whom he/she is having the meeting that he/she will be offering the facility to the other political groups.

7.3 Certain points must be clearly understood by all those participating in this process, Members and Officers alike. In particular:

(a) Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if Officers are not expected to be present at meeting, or parts of meeting, when matters of party business are to be discussed;

(b) political group meetings, whilst they form part of the preliminaries to Council decision-making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and

(c) similarly, where Officers provide information and advice for a political group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the Cabinet or relevant committee when the matter in question is considered.

7.4 Special care needs to be exercised whenever Officers are involved in providing information and advice to a political group meeting which includes persons who are not Members of the Council. Such persons will not be bound by the Model Code of Local Government Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons Officers may not be able to provide the same level of information and advice as they would to a Members only meeting.

7.5 Officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussions to another political group.

8.0 ACCESS TO PREMISES

8.1 Officers have the right to enter the Council land and premises to carry out their work. Some Officers have the legal power to enter property in the ownership of others.

8.2 Members have the right of access to Council land and premises to fulfil their duties.

8.3 When making visits as individual Members, Members should:

- notify and make advance arrangement with the appropriate manager or Officer in charge (unless this is not practicable);
- comply with health and safety, security and other workplace rules;
- not interfere with the services or activities being provided at the time of the visit; and
- notify ward Members beforehand if visiting somewhere outside his/her own ward.

9.0 USE OF COUNCIL RESOURCES

9.1 All Members are provided with services such as typing, printing and photocopying and goods such as stationary and computer equipment, to assist them in discharging their roles as Members. These goods and services are paid for by public funds and should only be used for Council purposes.

9.2 Members should not ask Officers to provide resources or support which they are not permitted to give, for example support or resources

- which are to be used for business which is solely to do with a political party;
- for work in connection with a ward or constituency party political meeting or electioneering;
- for work associated with an event attended by a Member in a capacity other than as a Member of the Council;
- for private personal correspondence;
- for work in connection with another body or organisation where a Member's involvement is other than as a member of the Council; and
- which constitutes support to a Member in his/her capacity as a member of another authority.

10.0 BREACHES OF THE PROTOCOL

10.1 Where a Member is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the appropriate Director or Head of Service. Where the Officer concerned is a Director, the matter should be raised with the Chief Executive, and

in the case of a Head of Service with the appropriate Director. Where the employee concerned is the Chief Executive, the matter should be raised with the Monitoring Officer.

- 10.2 On the Members' side, where the relationship between Members and Officers breaks down or becomes strained, every effort will be made to resolve matters informally, through conciliation by an appropriate senior manager or Members. Officers will also have recourse to the Grievance Procedure or to the Council's Monitoring Officer, as appropriate, in certain circumstances. In the event of a grievance or complaint being upheld, the matter will be referred to the Chief Executive who, having advised the Leader of the Council and the other appropriate Group Leaders, will decide on the course of action to be taken, following consultation with the Standards Committee if appropriate.
- 10.3 Breaches of the protocol by a Member may also constitute a breach of the Members Code of Conduct.

11.0 STATUS OF THIS PROTOCOL

- 11.1 This Protocol was approved by Full Council on 24 February 2009. It now forms part of the Council's Constitution. As such, it is binding on all Members including co-opted and independent Members, and Officers.
- 11.2 This Protocol shall apply, as appropriate and necessary, to any person appointed individually or on behalf of a body or organisation to advise support or assist the Authority in its work.

12.0 TRANSITIONAL PERIOD

- 12.1 Prior to 1 April 2009 this Protocol will apply to relationships between Cheshire East Council Members and Officers of the following organisations:
- 12.1.1 Cheshire County Council
 - 12.1.2 Chester City Council
 - 12.1.3 Congleton Borough Council
 - 12.1.4 Crewe and Nantwich Borough Council
 - 12.1.5 Ellesmere Port and Neston Borough Council;
 - 12.1.6 Macclesfield Borough Council and
 - 12.1.7 Vale Royal Borough Council
- 12.2 Prior to 1 April 2009 reference to the 'Council' should be interpreted as to include the 'Shadow Authority'.

(Extract from the Council's Constitution)

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CHESHIRE EAST

STANDARDS COMMITTEE

Date of meeting: 29 March 2009

Report of: Monitoring Officer

Title: Standards Committee Annual Report

1.0 Purpose of the Report

- 1.1 The Annual Report attached outlines the activities undertaken by the Standards Committee over the past year.

2.0 Decision Required

- 2.1 To note the report which will be submitted to Annual Council on 13th May 2010.

3.0 Financial Implications

- 3.1 None.

4.0 Legal Implications

- 4.1 None identified.

5.0 Risk Assessment

- 5.1 No risks identified.

6.0 Background

- 6.1 On 13th January 2009, the Committee agreed that the preparation of an Annual Report, outlining its activities, be presented to full Council at a meeting in April/May 2010.
- 6.2 Although there is no legal requirement to prepare a report, it is considered to be good practice to present the report to a public meeting to raise the profile of the work of the Committee.
- 6.3 The attached report has been prepared by the Chairman of the Committee and the Committee is asked to note it.

For further information:

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Standards Committee

Annual Report 2009-2010

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Foreword from the Chairman

At the heart of local democracy in Cheshire East there exists a bond of trust between the community and those who are privileged to represent that community – a bond which relies heavily on the conduct of those elected representatives. The public has a right to expect the highest standards of behaviour from such representatives and those officers responsible for the delivery of local public services. In order that local government can work effectively the public has to have complete confidence in its people and processes.

It is the role of the Standards committee to ensure that such high standards are sustained. In terms of selfless public service and ethical conduct I believe that Cheshire East Councillors and the Town and Parish Councillors have much to be proud of, however these high standards need to be consciously upheld and jealously guarded.

It was my privilege to have been selected as Chairman of the Cheshire East Standards Committee and to observe at first hand the hard work and commitment of councillors, independent members and staff. Accordingly I would like to put on record my thanks to all the committee and staff for their hard work and dedication in ensuring a smooth start during this our inaugural year.

We have focused on several issues not least the important link with Cheshire Association of Local councils and the need to ensure councillors and members of the public are informed about the work of the committee. We have produced a short introductory leaflet and improved access on the Cheshire East Website as well as a short paper on personal and prejudicial interests. Within this report will be found reports of meetings of working parties, meetings of the full and sub-committees as well as attendance at conferences.

I hope this report is of value to councillors and to members of the public. We have, I believe, made a satisfactory start upon which we can build for the future.

NIGEL BRIERS

(Independent Chairman Cheshire East Standards Committee)

Members of the Committee

In contrast with other Committees of Cheshire East Council, the Standards Committee has no less than five Independent non-political members who are appointed, and selected on merit and experience and these include the Chairman and Vice-Chairman of the Committee. This does ensure that the Committee retains independence and free from political influence. The remaining members of the Standards Committee are drawn widely from across the spectrum of the Council and the community and comprise eight elected members who reflect the political constitution of the Council as a whole and three Town/Parish Councillors.

- **Independent Members:**

Nigel Briers (Chairman of the Committee), was a Member (and Chairman) of the former Crewe and Nantwich Borough Council Standards Committee.

David Sayer (Vice-Chairman of the Committee) was appointed Chairman of the former Congleton Borough Council Standards Committee in 2000 and served for just over 9 years until the inception of Cheshire East Council.

Ian Clark was a Chairman of the former Macclesfield Borough Council Standards Committee.

Michael Garratt served for 5 years as an Independent Member on the Congleton Borough Council Standards Committee.

Roger Pomlett was an Independent Member of the former Crewe and Nantwich Borough Council Standards Committee for 5 years.

- **Parish Council Members:**

Teresa Eatough served as a Parish Council representative on the former Crewe and Nantwich Borough Council Standards Committee.

Patsy Barnett served as a Parish Council representative on the former Congleton Borough Council Standards Committee.

Ken Edwards served on Macclesfield Borough Council Standards Committee for a year as a Parish Council representative.

- **Borough Council Members:**

Rhoda Bailey (Conservative).

Brian Dykes (Conservative) was a member of the former Crewe and Nantwich Borough Council.

John Goddard (Liberal Democrat) was a member of the former Macclesfield Borough Council Standards Committee.

John Hammond (Conservative) served for 5 years as a member of the former Crewe and Nantwich Borough Council Standards Committee and was Deputy Chairman from 2006 to 2008.

Margaret Hollins (Conservative), was a member of the former Crewe and Nantwich Borough Council.

Margaret Martin (Labour), was a member of the former Crewe and Nantwich Borough Council.

Michael Parsons (Independent) was a member of the former Congleton Borough Council.

Lesley Smetham (Conservative) was a Parish Council representative on the former Macclesfield Borough Council Standards Committee for 2 years.

The Borough Solicitor and Monitoring Officer is Chris Chapman.

The Monitoring Officer has a statutory role in ensuring that the Council, its Members and Officers carry out their functions in a proper and lawful manner.

The Monitoring Officer's duties include the following –

- Maintaining the Register of Members' Interests.
- He has an important role in contributing to the promotion and maintenance of high standards of conduct throughout the organisation.
- Main legal adviser to the Standards Committee and its Sub-Committees.
- Ensuring that decisions of the Standards Committee are implemented.
- If the Standards Committee refers an allegation for investigation, the Monitoring Officer will appoint another Officer to investigate the allegation and, should there be a local determination hearing, will act as the Legal Adviser to the Sub-Committee.
- The Monitoring Officer is also the main point of contact for Standards for England and submits periodic returns on the complaints received and dealt with by the Standards Committee.

4

Introduction to the Standards Committee

The Standards Committee was set up under Article 9 of the Council's Constitution and sets out to discharge the Council's function under Part 111 of the Local Government Act 2000.

ROLE

The main roles of the Standards Committee which apply to all elected and co-opted members of the Local Authority, including Town and Parish Councillors, are:

- To promote and maintain high standards of conduct by Members
- To assist Members in observing the adopted Codes of Conduct which set out rules governing the behaviour of Councillors
- To investigate allegations that Councillors' behaviour may have fallen short of the required standards.

STRUCTURE OF THE COMMITTEE

The full Committee has met on six occasions during the 2009-2010 Council year. The Monitoring Officer and/or his deputy are in attendance at these meetings. Members of the public are welcome to attend these meetings and some time is allocated at the start of each for people to raise issues connected to the work of the Standards Committee.

In addition to the full Committee meetings, a further three Sub-Committees have been set up in accordance with the guidance from Standards for England which deals with complaints made against Councillors.

- **Assessment Sub-Committee:** This will receive complaints and make an initial assessment as to whether there is a case which warrants further action or investigation.
- **Review Sub-Committee:** If the above Sub-Committee decides there is no case to answer and the complainant is dissatisfied with this outcome, he/she can request a Review Sub-Committee to reconsider the decision.
- **Hearings Sub-Committee:** This will receive the Investigator's report of the complaint and if needed, hold a full hearing with the Subject Member and complainant and witnesses invited to attend and present their case. This Sub-Committee will decide whether or not there has been a breach and take appropriate action.

COMPLAINTS AGAINST COUNCILLORS

During the past Council year there have been four complaints against serving or former Councillors –

- On 12th May 2009, the Sub-Committee considered a complaint transferred from the former Crewe and Nantwich Borough Council (CNBC/01/08). The Assessment Sub-Committee considered the report of the Investigator, Mr Riddell Graham, and agreed with his findings that there had been no breach of the Code of Conduct by the Subject Member.
- On 12th May 2009, the Sub-Committee considered a request from a complainant for a withdrawal of his complaint. The complaint had been made against a former Cheshire County Councillor and had been transferred to Cheshire East Council under the transitional arrangements. The County Councillor is no longer a serving councillor. The Sub-Committee was satisfied with the reasons for the request and granted the withdrawal of the complaint.
- On 17th June 2009, the Sub-Committee considered a complaint transferred from the former Macclesfield Borough Council. The Assessment Sub-Committee considered the report of the Investigator, Mr Richard Dix, and agreed with his findings that there had been no breach of the Code of conduct by the Subject Member.
- On 21st December 2009, the Assessment Sub-Committee considered a complaint made against a serving Cheshire East Councillor. The Assessment Sub-Committee concluded that there was no case to answer and both complainant and Subject Member were informed of the outcome.

WORKING PARTIES

(A)

1. A Publicity Working Party was set up by the full Committee to explore ways of informing all councillors and members of the public about the work and purpose of the Standards Committee. This working party met on several occasions and with the advice of the Monitoring Officer and support of the Leader, Councillor Wesley Fitzgerald, produced a leaflet entitled 'Standards Committee'. This has been issued to Council Members and sent to all Parish Councils and made available to the public via the libraries and outlet shops etc.
2. In addition, a paper entitled 'Personal and Prejudicial Interests' was prepared and issued which was aimed at giving some further guidance on this complex issue.
3. The ability to find out about the Standards Committee and to make a complaint against a Councillor has been made easier by the inclusion of details on the Council website with a prominent access on the home page.

4. The structure of the Complaints form has been reviewed and the full Committee has recommended some changes to make it simpler to complete.

(B)

A second working party was set up to examine the relationship with the Cheshire Association of Local Councils (ChALC) and its work with parish councils

1. The Standards Committee has responsibilities towards the Parish/Town Councils within the administrative area of Cheshire East and in the course of the inaugural year has considered how best it can achieve and promote good governance within those Councils the majority of which are members of the Cheshire Association of Local Councils. To that end, the Standards Committee appointed the Pilot Model Compact Working Group to liaise and work with ChALC in respect of service provision, training and costings.
2. The Working Group comprised the Chairman and Vice Chairman, Teresa Eatough (Parish) John Goddard (Councillor) Ken Edwards (Parish) and in addition, the Monitoring Officer has usually attended its meetings. The Working Group has met on four occasions in the year and at those meetings held on the 27th August 2009 and 17th February 2010 Jackie Weaver (CEO – ChALC) was in attendance. After lengthy discussion and careful consideration of detailed documents a draft compact is now ready for submission to the Standards Committee when it meets on the 29th March 2010.
3. Detailed reports of each of the meetings of the Working Group have been submitted to the Standards Committee and in appropriate cases, key documents under discussion have been annexed to those reports including (following the meeting held on the 17th February 2010) the proposed draft Compact

ANNUAL ASSEMBLY

The Annual Assembly of Standards Committees (“the Assembly”) was held at the International Conference Centre in Birmingham on the 12th and 13th October 2009. Delegates attending were David Sayer (Vice Chair) Councillor Rhoda Bailey, Teresa Eatough (Parish) and Chris Chapman (Monitoring Officer).

The Assembly was well-subscribed with some 800 delegates attending (the majority on both days) and comprising an eclectic mix of representatives. The format of previous years was adopted with plenary sessions on both days addressing the broader issues and thereafter smaller workshops looking at narrower specific questions and in both instances a high level of delegate participation was both encouraged and forthcoming.

Across the Assembly it has to be acknowledged that the quality and provenance of guest speakers was of a high order and several had spent hard years at the coalface of local governance with local authorities where standards had fallen and remedial and urgent action was required.

The smaller workshops by contrast promoted more personal and inter delegate communication often in the course of practical tests and joint working with preset situation examples.

There can be no doubt that the overriding theme of the Assembly centred on the uncertainties which presently confront Standards for England and, ultimately, Standards Committees. Dr Robert Chilton Chair of Standards for England closed his address to the Assembly with these words to Standards Committees “Just be excellent and you will have a future”.

[A fuller report on the Assembly is annexed to the Minutes of the Meeting of the Standards Committee held on the 23rd November 2009].

TRAINING

A regular item on the agenda of the committee has been to review the training needs of members.

The Committee has not undertaken any formal training during the year 2009-2010. Two Code of Conduct sessions were arranged, but have been postponed pending the publication of the new Code of Conduct which is expected after the Parliamentary Election in 2010.

AWAY DAY

In December 2009 the Committee held an informal session to examine a range of issues which has affected the work of the Committee. It was held in Crewe Municipal Buildings and attended by a representative of Chester and Cheshire West Standards Committee as well as Tim Leslie, the Director of Regulations for Standards for England. A wide range of topics were covered and there was a good attendance by members.

MAKING CONTACT

Information about the Standards Committee including details of meetings, membership and the work of the committee is available from carol.jones@cheshireeast.gov.uk or phone 01270 686471.

If anyone wishes to make a complaint, they are asked to contact the Council's Monitoring Officer at Cheshire East Council, Westfields, Middlewich Road, Sandbach, CW11 1HZ, or phone 01270 686637 or e-mail complaints.customerservices@cheshireeast.gov.uk.

Standards for England can provide members of the public with useful information about both the Code of Conduct and the work of Standards Committees.

5. Work Programme

The Standards Committee was set up in shadow form in 2008 and has carried out the following work since that time.

Month	Item
October 2008	<ul style="list-style-type: none"> • Reports on recruitment of independent members, code of Corporate Governance and training • Recruitment of Parish Council representatives (on-going) • Standards Board for England Conference • Consideration of appointment of independent members.
November	<ul style="list-style-type: none"> • Feedback from Standards Board Annual Conference • Review of Code of Conduct Induction Sessions • "Whistle-blowing" Policy/Protocol • Website presence • Recruitment of Parish Council representatives
January 2009	<ul style="list-style-type: none"> • Induction for Independent Members and Parish Council representatives • Report on appointment of Chairman and Vice-Chairman of Sub-Committees • Training DVD • Notification to Parish Councils of changes with effect from 1st April 2009.
March	<ul style="list-style-type: none"> • Relationship with Parish Councils • Finalise Work Programme 2009/2010 • Pilot Compact (trialled between Macclesfield BC and Cheshire Association of Local Councils) • Sub-Committees established
May	<ul style="list-style-type: none"> • Promotion of work of Standards Committee • Update on outstanding complaints from demised Councils • Training requirements for Members (standing item) • DVD • Pilot Compact (on-going) – Working Group established
July	<ul style="list-style-type: none"> • Pilot Compact (on-going) • Update from Publicity Working Group, including <ul style="list-style-type: none"> • User-friendly publicity leaflet for wide distribution • User-friendly guide on personal and prejudicial • Initial consideration of Complaints Form

November	<ul style="list-style-type: none">• Standards Committee dedicated web-page (update)• Pilot Compact – final report of Working Group• Feedback from the Annual Conference (including SBE evaluation of the original Pilot Compact)• Publicity Working Group Update• Issues arising out of Town and Parish Councils Conference on 13th October.
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CHESHIRE EAST STANDARDS COMMITTEE

Date of meeting: 29 March 2009

Report of: Monitoring Officer

Title: The Bribery Bill

1.0 Purpose of the Report

- 1.1 To inform members of the content and impact of prospective legislation.

2.0 Decision Required

- 2.1 To note the report.

3.0 Financial Implications

- 3.1 None.

4.0 Legal Implications

- 4.1 As outlined in the report below.

5.0 Risk Assessment

- 5.1 The presentation of this report draws the proposed change in the legislation surrounding bribery and corruption to the Committee's attention and mitigates the risk that its impact may be overlooked.

6.0 Background/Context

- 6.1 The Bribery Bill was published in draft as part of a White Paper on 25 March 2009 and passed through pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. That Committee received written and oral evidence from May 2009 and published its report on 28 July 2009. The Bill was introduced in the House of Lords on 19 November 2009, and having had its Third Reading on 8 February, it was referred to the Commons on 9 February, where it has been referred to a Public Bill Committee on a date to be confirmed. Once it has passed through this process, it then only awaits final Royal Assent which will bring it into force.
- 6.2 The aim of the prospective Act is to provide a more effective legal framework to combat bribery in the public and private sectors. It will replace the current fragmented and complex offences at common law,

as well as the body of Acts between 1889 – 1916, comprising the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts 1906 – 1916.

- 6.3 Two new general offences will be created, covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage. The formulation of these offences is designed to abandon the agent/principal relationship, in favour of a model based on intention to induce improper conduct.
- 6.4 A further separate offence of bribery of a foreign public official will also be created.
- 6.5 As well as the above, there will be an offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf. It will be a defence if the organisation has adequate procedures in place to prevent bribery.
- 6.6 The prospective Act also aims to support business by ensuring that everyone is clear about their responsibilities to do business in an open and honest way and to help to deal with the threat posed by bribery to economic progress and development around the world.
- 6.7 More information about the background to this prospective legislation can be found on the Ministry of Justice's website, at <http://www.justice.gov.uk/publications/bribery-bill.htm>. An explanatory note detailing the background to the Bill, albeit drafted in April 2009, can also be found on the Parliament website at <http://www.parliament.uk/commons/lib/research/briefings/snpc-05045.pdf>. (Attached as appendix.) The latter document provides a summary of the offences under the existing law and provides a commentary on the need for reform and an earlier attempt at revision with the abortive Corruption Bill in 2002-3.
- 6.8 The new legislation does not require any changes to be made to the existing codes of conduct to which members of the council, and employees of the council, are already subject. These are in any event the subject of ongoing Government consideration although it is understood that no changes to the Member Code will be proposed before the General Election. The prospective legislation however needs to be noted by both elected members and employees, and future conduct and ethics training will need to reflect it. As it is possible that further amendments may be made before the Bill becomes law, particularly having regard to the high profile currently being given by central government to ethical issues, a further report will be submitted to the Standards Committee at the appropriate point in time to confirm the final effect of the legislation.

7.0 Reasons for Recommendation

7.1 As outlined in part 6 above.

For further information:

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Background documents

None.

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The draft *Bribery Bill*

Standard Note: SN/PC/05045

Last updated: 14 April 2009

Author: Oonagh Gay

Section Parliament and Constitution Centre

This Note offers a brief introduction to the draft *Bribery Bill* published on 24 March 2009. For several years there has been pressure to update the UK anti corruption legislation, last amended in 1916, not least from the OECD and other international organisations who are promoting global anti corruption initiatives. The draft bill and white paper published on 25 March would implement proposals from the Law Commission in November 2008.

The Bill replaces the offences at common law and under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 with two general offences covering the offer, promise and giving of an advantage or the request, agreeing to receive or acceptance of an advantage. The formulation of these two offences abandons the agent/principal relationship in favour of a model based on an intention to induce improper conduct. The Bill also creates a discrete offence of bribery of a foreign public official and a new offence of negligent failure of commercial organisations to prevent bribery. Finally it would set aside parliamentary privilege to make evidence from proceedings in Parliament admissible in the prosecution of a Member of either of the Houses of Parliament for a bribery offence or in related proceedings

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

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1 Background

Bribery and attempted bribery are common law offences punishable by imprisonment or a fine at large, or both.

The main statutes dealing with corruption are

(1) the *Public Bodies Corrupt Practices Act 1889*;

(2) the *Prevention of Corruption Act 1906*; and

(3) the *Prevention of Corruption Act 1916*.

Section 1(1) of the *Public Bodies Corrupt Practices Act 1889* makes it an offence for any person alone, or in conjunction with others, to corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the public body is concerned. Section 1(2) of the Act creates a similar offence to that of section 1(1), in respect of anyone who gives the bribe.

Section 1 of the *Prevention of Corruption Act 1906* creates offences relating to corrupt transactions by and with agents in relation to their principal's activities. Crown servants are within the definition of agents of this Act.

In relation to offences created by the *Public Bodies Corrupt Practices Act 1889* and the *Prevention of Corruption Act 1906*, the burden of proof is shifted on to the defendant to show (on the balance of probabilities) that the money, gift, or other consideration is not received corruptly. This shift in burden of proof is provided by section 2 of the *Prevention of Corruption Act 1916*. The consent of the Attorney General is required for prosecutions under these Acts.

There are other specific statutory offences involving corruption, including the *Honours (Prevention of Abuses) Act 1925*.¹

¹ For background on other statutes, see the Law Commission Legislating the Criminal Code: Corruption (1997) Consultation Paper No 145, para 1.2 (1997) and *Corruption and Misuse of Public Office* Colin Nicholls et al (2006)

There are relatively few prosecutions under the Acts. Christopher Sallon QC commented in an Annex to the Public Administration Committee report:

45. On average, 21 people were prosecuted in each year between 1993 and 2003 under the Prevention of Corruption Acts referred to above. By comparison on average, some 23,000 defendants were prosecuted each year for fraud between 1997 and 2001[170]. Though these figures may not be entirely accurate, it is clear that there is a considerable difference between those prosecuted for public sector corruption and those prosecuted for private sector fraud.²

1.1 The need for reform

There has been long standing interest in overhauling the antiquated legislation against corruption, dating at least since the Salmon Commission of 1976³ and the Nolan Committee of 1995.⁴ The need for reform and rationalisation of the UK's corruption law has been in large part driven by the International obligations incurred in agreements with the OECD, the European Union, the Council of Europe, and the United Nations which have attempted to develop common standards for anti-corruption measures internationally.

The OECD Convention on combating bribery of foreign public officials in international business transactions was implemented in the UK by Part 12 of the *Anti-Terrorism, Crime and Security Act 2001*. Research Paper 01/92 *The Anti-Terrorism, Crime and Security Bill, Part XII: Anti-corruption legislation* contains background.⁵

The Law Commission reviewed the UK's corruption laws in its 1998 report *Legislating the criminal code: corruption* (LC 248) which can be found, together with the Commission's draft bill, via the following link: http://www.lawcom.gov.uk/lc_reports.htm#1998. The main conclusions of the report were

- (1) the lack of consistency and comprehensiveness of the existing law on corruption,
- (2) the lack of a statutory definition of the term "corruptly", which was open to different interpretations, and
- (3) the dependence of the existing law on the distinction between public and non-public bodies.

The report called for a modern statute to replace all or parts of the existing relevant legal provisions on corruption and to incorporate the common law offence of bribery.

The Government responded to the report in a White Paper – *Raising standards and upholding integrity: the prevention of corruption* (Cm 4759, June 2000). This can be found at: <http://www.archive.official-documents.co.uk/document/cm47/4759/4759.htm>.

1.2 Draft Corruption Bill 2002-3

A draft *Corruption Bill* was presented to Parliament following the 2002 Queen's Speech, but this legislative approach was rejected by the Joint Committee which examined the draft bill, under the chairmanship of Lord Slynn of Hadley. There was particular criticism of the

² *Propriety and Peerages* HC 153 2007-08Annex
<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/153/15313.htm>

³ Royal Commission on Standards in Public Life (the Salmon Commission) 1976 Cmnd 6524

⁴ Committee on Standards in Public Life First Report May 1995 Cm 2850

⁵ <http://www.parliament.uk/commons/lib/research/rp2001/rp01-092.pdf>

retention of the agent/principal relationship as the basis for the offence. Library Standard Note no 2059 *Corruption: Draft Legislation* gives a detailed overview of the proposed legislation and the alternative approached preferred by the Joint Committee.

This Committee also considered in some depth the problems of reconciling the right of free speech for Members in Article IX of the Bill of Rights 1688 and the difficulties of prosecuting a Member for bribery. It reported in July 2003.⁶ The Joint Committee's report is archived at <http://www.publications.parliament.uk/pa/jt200203/jtselect/jtcorr/157/15702.htm>

The Government response of December 2003,⁷ did not support the Joint Committee proposals for legislation. However it did accept a recommendation that the DPP should continue to authorise prosecutions against MPs to guard against frivolous accusations. The draft bill had proposed the consent of the Attorney General in clause 17. In an effort to achieve consensus, the Home Office issued a consultation paper in December 2005 at <http://www.homeoffice.gov.uk/documents/450272/2005-cons-bribery?view=Binary>⁸

The Law Commission Annual Report for 2006-7 noted as follows:

3.57 In March 2007 the Government announced that the outcome of the consultation process was that there was broad support for reform of the current law but no consensus as to how it could be best achieved. As a result, the Government has asked the Law Commission to undertake a thorough review of the bribery law of England and Wales. See paragraphs 5.18 to 5.21 of this report for further information on that review.⁹

The Law Commission proposals were published in a consultation paper *Reforming Bribery* in November 2007.¹⁰ This paper acknowledged that the Commission's earlier proposals were no longer the most desirable options for reform. The report was a comprehensive review of the options for legislation which also looks at the perceived failings of the 2001 legislation on foreign officials. It proposed broadening the offence of bribery to avoid the need for an agent to betray a principal as in current legislation. The offence would be committed by someone who offers an advantage to another as a reward for breaching a trust, or breaching a duty to act impartially or in the best interests of another person. The person soliciting or taking the advantage would also be guilty and agreeing to use one's influence to persuade someone else to breach a duty would also be an offence of bribery. The paper argued that the distinction between bribery in the public sector and bribery in the private sector should be abolished. The Commission also proposed a new offence of bribing a foreign public official. Consultation closed in March 2008.

In 2008 the OECD continued to press for more action by the UK to update its law and undertake more prosecutions, particularly against multi-nationals operating abroad. The OECD Working Group on Bribery issued a report in 2008.¹¹ The accompanying press release stated:

Current UK legislation makes it very difficult for prosecutors to bring an effective case against a company for alleged bribery offences. Although the UK ratified the OECD

⁶ HL 157/HC 705 2002-3

⁷ HL Paper 157, HC 705 2002-03 Cm 6086

⁸ *Reform of the Prevention of Corruption Acts and SFO Powers in cases of bribery against foreign officials* Home Office December 2005.

⁹ <http://www.official-documents.gov.uk/document/hc0607/hc05/0552/0552.pdf>

¹⁰ Law Commission Consultation Paper no 185

¹¹ <http://www.oecd.org/dataoecd/23/20/41515077.pdf>

Anti-Bribery Convention 10 years ago, it has so far failed to successfully prosecute any bribery case against a company.¹²

Allegations about BAE arms deals in Saudi Arabia have caused particular concern, given the decision by the Senior Fraud Office in December 2006 not to continue with a prosecution for reasons of national security. This decision was controversial, given the personal involvement of the then Prime Minister, Tony Blair.¹³

1.3 Law Commission draft bill

The Law Commission published its draft bill on 20 November 2008.¹⁴ An extract from the summary of the report set out the main proposals:

1 Bribery has been contrary to the law at least since Magna Carta declared, “We will sell to no man...either justice or right”. Most people have an intuitive sense of what “bribery” is. However, it has proved hard to define in law. The current law is both out-dated and in some instances unfit for purpose.

2 We propose repeal of the common law offence of bribery, the whole of the 1889, 1906 and 1916 Acts, and all or part of a number of other statutory provisions.

3 These offences will be replaced by two general offences of bribery, and with one specific offence of bribing a foreign public official. In addition, there will be a new corporate offence of negligently failing to prevent bribery by an employee or agent.¹⁵

2 The draft *Bribery Bill*

The Government published a white paper on 25 March 2009 which set out its proposals to legislate.¹⁶ The legislation was modelled on the Law Commission proposals of November 2008. In his foreword, the Lord Chancellor, Jack Straw, noted that in his role as anti-corruption champion, he was co-ordinating the development of the UK’s strategy against foreign bribery. Mr Straw also made a written ministerial statement on 25 March.¹⁷

The summary noted:

9. The purpose of the Bill is to reform the criminal law of bribery to provide for a new consolidated scheme of bribery offences to cover bribery both in this country and abroad.

10. The Bill replaces the offences at common law and under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 (known collectively as the Prevention of Corruption Acts 1889 to 1916 and which would be repealed: see Schedule 2) with two general offences covering the offer, promise and giving of an advantage or the request, agreeing to receive or acceptance of an advantage. The formulation of these two offences abandons the agent/principal relationship in favour of a model based on an intention to induce improper conduct. The Bill also creates a discrete offence of bribery of a foreign

¹² “OECD’s Group demands rapid UK action to enact adequate anti-bribery laws” 16 October 2008 OECD http://www.oecd.org/document/8/0,3343,en_2649_34855_41515464_1_1_1_37447,00.html

¹³ “OECD hits out at lack of action on corruption” 18 August 2008 *Financial Times*; “Blair: I pushed for end to Saudi arms inquiry”, *The Times*, 15 Dec 2006. The alleged sequence of events in December 2006 is set out in a witness statement at http://www.controlbae.org/background/CAAT_witness_statement.pdf

¹⁴ *Reforming Bribery Law* Com no 313 HC 928 2007-08 <http://www.lawcom.gov.uk/docs/lc313.pdf>

¹⁵ http://www.lawcom.gov.uk/docs/lc313_summary.pdf

¹⁶ *Bribery: Draft Legislation* Cm 7570

¹⁷ HC Deb 25 March 2009 c20WS

public official and a new offence of negligent failure of commercial organisations to prevent bribery.

11. The other main provisions of the Bill are:

- extra-territorial jurisdiction to prosecute bribery committed abroad by persons ordinarily resident in the UK as well as UK nationals, and UK corporate bodies;
- replacing the existing requirement for the Attorney General's consent to prosecute a bribery offence so that proceedings for the offences in the Bill may only be instituted by, or with the consent of, the Director of the relevant prosecuting authority;
- a maximum penalty of 10 years imprisonment for all new offences, save the corporate offence, which will carry an unlimited fine.
- provision for Secretary of State authorisation of conduct that would constitute a bribery offence by the intelligence agencies;
- setting aside Parliamentary Privilege to make evidence from proceedings in Parliament admissible in the prosecution of a member of either of the Houses of Parliament for a bribery offence or in related proceedings.

The substantive provisions of the bill apply to England and Wales and Northern Ireland. In Scotland, the criminal law is a devolved matter. *The Prevention of Corruption Acts 1889-1916* would remain in force in Scotland.

2.1 The detail of the Bill

The *Explanatory Notes* examine each clause in detail. A brief summary is provided below:

Clause 1 defines the offence of bribery as it applies to the person who offers, promises or gives a financial or other advantage to another.

Clause 2 defines the offence of bribery as it applies to the recipient or potential recipient of the bribe.

Clause 3 defines the fields within which bribery can take place, that is, the types of function or activity that can be improperly performed for the purposes of the first two clauses.

Clause 4 creates a separate offence of bribery of a foreign public official. It closely follows the requirements of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Clause 5 creates an offence of negligently failing to prevent bribery that can only be committed by a relevant commercial organisation.

Clause 6 ensures that whether a person is performing services for or on behalf of the commercial organisation relates to the actual activities undertaken at the time rather than the person's general position.

Clause 7 provides that even though actions in question take place abroad, they still constitute an offence if the person performing them is a British national or resident, a national of a British overseas territory or a body incorporated in the UK.

Clause 8 is aimed at individuals who consent or connive at bribery, contrary to clauses 1,2 or 4, committed by a body corporate of any kind.

Clause 9 deals with proceedings for an offence against partnerships.

Clause 10 provides that a consent to prosecution under the Bill in England and Wales can only be brought with the consent or one of the three senior prosecuting authorities; that is, the DPP, the Director of the Serious Fraud Office and the Director of Revenue and Customs Prosecutions. There are separate provisions for Northern Ireland.

Clause 11 provides that offences under the Bill committed by an individual is punishable by fine or imprisonment of up to 10 years. An offence committed by a body is punishable by a fine; the fine is unlimited in both cases if it is on indictment.

Clause 12 applies the Bill to individuals in the public service of the Crown.

Clauses 13 and 14 provide that acts or omissions carried out by persons on behalf of the Security Service, the Secret Intelligence Service or GCHQ do not constitute a bribery offence under the Bill, if they are authorised by the Secretary of State. This authorisation is closely modelled on section 7 of the Intelligence Services Act 1994.

Clause 15 makes the word or conduct of an MP or peer admissible in proceedings for a bribery offence under the Bill where the MP or peer is a defendant or co-defendant notwithstanding any enactment or rule of law including Article 9 of the Bill of Rights 1689. This follows the recommendations of both the Joint Committee on Parliamentary Privilege of 1998-99¹⁸ and the Joint Committee on the draft Corruption Bill.¹⁹

Clause 16 abolishes the common law offences of bribery and embracery (bribery of jurors). Schedules 1 and 2 amend or repeal a series of acts, including sections 108-110 of the *Anti Terrorism, Crime and Security Act 2001*.

Clause 17 defines the extent of the Bill, which is largely confined to England, Wales and Northern Ireland.

Clauses 18 and 19 deal with commencement and short title of the Bill.

The financial effects of the bill were estimated at £2.18m, based on an estimate of a small number of new offences, given the new corporate offence. In its commentary on ECHR provisions, the white paper acknowledges that the Law Commission expressed concerns in 1998 that the presumption of corruption in certain cases contained in section 2 of the *Prevention of Corruption Act 1906* might be incompatible with Article 6(2) of ECHR. The Bill would repeal the whole of the 1906 Act

2.2 Reaction to the draft bill

Jonathan Djanogly, Shadow Solicitor General, welcomed the draft bill, but asked for a definite timetable of implementation.²⁰ More specialised reaction has been sparse. The bill is due to be subject to pre legislative scrutiny, but a committee has not yet been set up.

¹⁸ HL Paper 43 and HC 214 1998-99 para 167

¹⁹ HL Paper 157 and HC 705 2002-03 para 134

²⁰ "UK shapes up tough on corruption with draft bribery bill" *Ethical Corporation*
<http://www.ethicalcorp.com/content.asp?contentid=6403>

3 *Honours (Prevention of Abuses) Act 1925*

There was a long-running police investigation in 2006-7 into the so-called ‘cash for honours affair’ where the question of a possible prosecution under the *Honours (Prevention of Abuses) Act 1925*. Details are set out in Library Standard Note no 3960 *Loans to Political Parties*.²¹

The affair began once it was revealed in the media that three nominations for membership of the upper House had been rejected by the House of Lords Appointments Commission, because they were alleged to have made loans to the Labour Party which had not been revealed to the Electoral Commission. Allegations were made to the police that a criminal offence had been committed. The Crown Prosecution Service announced on 24 July 2007 that no charges would be brought. It issued an explanatory memorandum, which stressed the independence of the CPS.²² The Public Administration Select Committee subsequently announced its plans to resume its inquiry into honours and propriety which was postponed by the police investigation²³ PASC reported in December 2007. In relation to the 1925 legislation, the summary in the report noted:

The Honours (Prevention of Abuses) Act was severely tested by the police investigation. In our view, its scope remains appropriate, even if the behaviour it criminalises is inherently difficult to prove to the necessary standard. In the longer term, we hope that these offences can be incorporated into a more general law on public sector corruption, a modern version of which is long overdue.²⁴

The draft bill does not amend or repeal the 1925 Act and the white paper does not comment on the honours aspect at all.

²¹ <http://www.parliament.uk/commons/lib/research/notes/snpc-03960.pdf>

²² “CPS decision: “Cash for Honours” case – explanatory document” 24 July 2007 *Crown Prosecution Service* at http://www.cps.gov.uk/news/pressreleases/146_07_document.html

²³ “PASC statement on propriety and honours” 24 July 2007 at http://www.parliament.uk/parliamentary_committees/public_administration_select_committee/pasc0607pn47.cfm

²⁴ HC 153 2007-8



2010 Annual Assembly of Standards Committees ‘A place for standards’

Following the success of last year’s fully booked Annual Assembly, we are well on the way to finalising the programme for this year’s event, which takes place on 18 and 19 October at the ICC in Birmingham.

We are already working with a panel of standards committee members and monitoring officers to develop a range of sessions focused on sharing notable practice, developing high standards and building confidence in managing the local standards framework.

The cost of attending both days of the Assembly has been held at £430 (plus VAT) for the fourth year running, while a one-day place is £230 (plus VAT).

Online booking is now open on our website. We will also be sending out hard copy booking forms to all authorities from mid-March. Further information about the programme and speakers will be added to the website so keep checking back for the most up-to-date information.

Stakeholder Tracker 2009 – ‘A qualitative assessment of advice and guidance’

Every two years Standards for England (SfE) conducts a ‘stakeholder tracker’ in two parts: a quantitative survey, and a qualitative investigation. This research assesses the levels of satisfaction of members and officers in local government with the performance of SfE and their attitudes to the ethical environment. As some of you may recall, the survey was completed last summer. We are now happy to report that the qualitative section of the research, which provides a more in-depth analysis of some of the issues that emerged from the quantitative research, has been completed and is available on our website. **We would like to thank those of you who participated in the research. It is only through your continued support that we are able to track our progress, and identify areas for improvement.**

BMG research carried out this research by holding a number of focus groups with monitoring officers, standards committee members and parish councillors.

Some of the findings:

- The research found that monitoring officers and standards committee members are very positive about the local standards framework. They feel it has 'bedded in' well, and welcome the chance to take ownership of the process of investigating complaints.
- SfE's monitoring officer helpline received positive feedback, and some stakeholders suggested that the service callers receive has improved over the past 12 months.
- Monitoring officers welcome the development of peer and local/regional networks – however, there is some suggestion that a number of authorities may already have some form of networking in place. They would like SfE to provide content for delivery at networking events.
- The research identified several topics on which stakeholders think SfE could provide further guidance such as more information on other standards committee practices, sanctions and proportionality, mediation, guidance specifically for parish councillors, and more advice on the overlap with Freedom of Information and Data Protection legislation.

A copy of the full report can be [downloaded here](#).

For further information, please contact:

Tom Bandenburg (Research Assistant) on 0161 817 5427 or email tom.bandenburg@standardsforengland.gov.uk

A REMINDER: Please send us your hearing decision notices

As you may already be aware, authorities are required to send Standards for England (SfE) copies of their hearing decision notices. The legal basis for this can be found in the Standards Committee (England) Regulations 2008 under regulation 20(1)(a). However, not all authorities have complied with this requirement.

Hearing decision notices provide a valuable source of information from which SfE can draw conclusions about how the local standards framework is functioning. We have decided to give greater emphasis to our analysis of the notices and we will share our conclusions with you.

What you need to do

Please send us a copy of the full decision notice for any determinations made by your Standards Committee. At the end of each quarter (from 1 April 2010) we will check whether we have received a decision notice for all the hearings completed that quarter and then contact authorities for any that are missing.

We prefer to receive decision notices as an email attachment in Word or PDF format if possible.

You can send them to authorityreturns@standardsforengland.gov.uk.

If you are unable to send them electronically, please post your decision notices to:

The Monitoring Team, Standards for England, 4th floor, Griffin House

40 Lever Street, Manchester M1 1BB

When writing the decision notices, please ensure that you include all the legal requirements set out in paragraph 20 of the Standards Committee (England) Regulations 2008. We also recommend that you refer to our guidance, which you can find in your local standards framework guide or online at

<http://www.standardsforengland.gov.uk/determinations>

Note: Please do not send us decision notices for any other type of decision such as initial assessments, reviews or consideration meetings. This is not a legal requirement and we will not be using them in our analysis.

What we will do

We will use the notices to help widen our knowledge of how the local standards framework is operating and provide some context to the quarterly returns data. The notices may also highlight areas where we can produce new guidance or improve on what we have already published.

Thank you for your co-operation. We will keep you informed of how the decision notices help us to support the local standards framework.

Adjudication Panel for England becomes known as First-tier Tribunal (Local Government Standards in England)

On the 18th January the functions of the Adjudication Panel for England were transferred to the First-tier Tribunal (Local Government Standards in England) and the Adjudication Panel for England was abolished. The First-tier Tribunal sits in the General Regulatory Chamber with Charity, Gambling, Information, Estate Agents, Claims Management, Consumer Credit and Transport Tribunals.

The role of the First-tier Tribunal is to hear cases referred to it by an Ethical Standards Officer or a Standards Committee following an investigation. The Tribunal will also hear appeals by a subject member against the decision of a Standards Committee.

There have been changes to the powers and procedures of the Tribunal.

Powers and Procedures

The First-tier Tribunal now has additional powers and procedures. It has the power to summon witnesses or require witnesses to produce documents relating to its hearings.

All Tribunal hearings can now be conducted either orally or by written representations with the consent of all parties.

Hearings can be conducted by less than 3 Tribunal members.

The President of the Adjudication Panel for England has been appointed as a Principle Judge of the First-tier Tribunal, legal members are now Judges and lay members are members.

Appeals

Previously any appeal from the Adjudication Panel was heard at the High Court. This process has now changed. Appeals will now be heard by the Upper Tribunal. The Upper Tribunal is an appellate tribunal created by the Tribunals, Courts and Enforcement Act 2007. The Administrative Appeals Chamber is the part of the Upper Tribunal which hears and decides appeals from decisions of the General Regulatory Chamber of the First-tier Tribunal.

Who can appeal to the Upper Tribunal?

Any party may appeal to the Administrative Appeals Chamber of the Upper Tribunal if they can show that the First-tier Tribunal made an error of law.

Additionally, the subject member has the right to appeal findings of fact, if their appeal is against

- (a) a decision that they failed to comply with a code of conduct,
- (b) a decision imposing suspension or another sanction

Appeals by other parties

A further change to the appeals process is that if a subject member is successful at the First-tier Tribunal, it is still possible for an Ethical Standards Officer or Standards Committee to appeal on a point of law to the Upper Tribunal. The First-tier Tribunal will notify the subject member if any of these parties wish to appeal.

Costs

The First-tier Tribunal now has the power to make an order for costs if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings. It may make an order for costs following an application or on its own initiative.

This will mean that the Tribunal can award costs against a standards committee, Ethical Standards Officer or subject member if they have acted unreasonably in the conduct of their investigations or hearings. The First-tier Tribunal may also make an award for wasted costs incurred by any legal or other representative where the Tribunal considers that they have acted negligently, improperly or unreasonably in bringing, defending or conducting proceedings.

For more information and detailed guidance please see www.adjudicationpanel.tribunals.gov.uk

Our Risk Based Approach

One of the best practice requirements of a regulator is that they take a risk -based approach to their work: that is they are able to assess risks in their area of regulation and apply their own resources accordingly to keep risks low.

For Standards for England there are three types of risk which concern us.

- Systemic risk – risk which could lead to a widespread failing in the work of the framework or in standards across all authorities
- Sectoral risk – risk which could lead to a failing in standards in a number of similar authorities
- Entity risk – risk of a serious standards failure affecting one of the authorities covered by the local standards framework

Assessing entity, systemic or sectoral risks to standards or the success of the framework allows us to target our effort at those activities, situations or authorities that pose the biggest risk helping ensure we provide value for money.

The Success of the local standards framework relies in part on our ability to see potential pitfalls or risks to standards in advance. For example, the emergence of new technologies such as internet social networking, blogs and Twitter, have presented their own unique challenges to standards. During 2009-10 we were able to produce guidance, place articles in the local government press and give a presentation at a national members' conference on this subject.

Spotting such challenges allows us to provide early advice and guidance to the standards community to help prevent problems arising. We will be developing our approach to systemic and sectoral risk, closely linked to our research programme, to help us identify trends or potential problems, and so offer appropriate advice at the earliest opportunity.

We work closely with authorities where challenging standards issues emerge. Based on our increasing experience supporting these authorities we are developing our plans for managing entity risk.

We intend to prioritise the way we interact with authorities on the basis of our risk assessment of the likelihood and impact of any failure of standards in that authority. Working through our relationship managers we will take a differential approach based on this assessment to satisfy ourselves that authorities are working to minimise risks. We envisage working with 30-40 authorities at our highest level of contact and a further 100-120 at an intermediate level, at any one time.

Typically authorities at the lowest level of risk will be in contact with us only as they go about their routine business in operating the standards framework and sending back the required monitoring data, whereas authorities at the intermediate level might be contacted by relationship managers on a six monthly basis, and those at the highest level contacted or visited more frequently as deemed appropriate.

We will be testing our planned approach and consulting with the regulated community about it over the next six months.

Social networking: an effective medium of communication but not without risk

When it comes to reaching certain groups quickly, cheaply and maintaining control over your message, many councillors find online methods hard to beat.

At the recent Cllr' 10 event, Standards for England and the IDeA ran an interactive session which looked at how councillors can use social networking effectively and ethically to engage with their local communities.

This article highlights some of the key messages from the session for councillors.

- If you use blogs, Facebook or Twitter to help you to carry out your political work, rather than in your private capacity, your obligation to meet certain standards of conduct still applies. You can still be involved in robust political debate and state your opinions strongly – the Code does not exist to gag you or fellow councillors or stop you expressing political views. It does, however, prohibit treating others with disrespect, bullying and bringing one's office or authority into disrepute. It is important if you are blogging or tweeting personally and not in your role as councillor, that you do not act, claim to act, or give the impression that you are acting as a representative of your Authority. It is worth noting that web links to official council websites may give or reinforce the impression that you are representing the council.

- You may use a blog to draw attention to a particular local issue and call the council to account, as you would in a public meeting. However, blog entries ridiculing or attacking particular officers, or making serious accusations about their personal competence or integrity, could amount to disrespect, even bullying, in some circumstances.
- It is worth considering that while the immediacy of social media can be a great benefit, it also has a downside. For example, it is possible for you to Tweet on a matter seconds after leaving the council chamber – long before your opponents have issued press statements. This can result in broadcasting spontaneous remarks that may quickly seem unwise. By the time you have reconsidered and deleted them, they may have been seen by thousands, Facebook-shared, re-Tweeted, linked to, and committed to local headlines. That is fine, if you have got this message across just how you wanted to; less so if your post was an outburst in the heat of the moment. Such remarks are easily withdrawn, apologised for and forgotten when made in person, but posting them on the internet means that they have been published, and in a way that cannot be contained.
- It is important to note that good ethical standards are not limited to the Code of Conduct. While you may not be investigated for using online media, your conduct can still attract adverse publicity, even where the Code does not apply. For example, a regional newspaper recently called a councillor's blog post against a rival party a "toilet-mouthed tirade" saying:

"A [Code] breach it may not have been; childish, crude and demeaning to all who vote or follow politics it certainly was."

It is clear that social networking sites can enhance political debate and add positively to local politics when used correctly. [Click here](#) to see our online guide to blogging.

New Online Guides on Our Website

The Guidance and Information team has produced several new online guides at the end of 2009. They are now available on our website. Here are the titles and links to the guides:

- [Charitable Trustees and declarations of interest under the Code](#)
- [Freemasons and the Code](#)
- [Independent members](#)
- [Notifications to parish and town councils concerning complaints about their members and the Standards](#)
- [Role and appointment of parish and town council reps to the standards committee](#)
- [Blogging quick guide](#)

We hope you find these new pieces of guidance helpful. Please e-mail any feedback you have on our guidance to enquiries@standardsforengland.gov.uk

Standards Committees can take a lead from ‘notable practice’

Research into ‘notable practice’, was carried out jointly by Hull University and the University of Teesside and was finalised in October 2009. It is called ‘notable practice’ to highlight the fact that the tips for success are examples of where particular approaches have worked in certain authorities, rather than ‘set-in-stone’ rules about what should be done.

Bristol City Council standards committee was identified as being particularly effective at facilitating organisational learning, sharing learning with the local government community and acting as hub for other authorities and independent members in the South West. The focus of the case study in South Cambridgeshire was on the standards committee’s proactive approach to the recruitment and retention of independent members.

The research identified nine examples of notable practice in different authorities. Below is the list of the notable practice examples and the case study authorities.

Notable practice	Case study authority
Organisational learning	Bristol City Council
Working with town and parish councils	Taunton Deane Borough Council
Member development	Surrey Police Authority
Working with partnerships	Newark and Sherwood District Council
Recruitment and retention	South Cambridgeshire District Council
Training and development	Herefordshire County Council
Joint standards and audit committees	Runnymede Borough Council
High pressure investigations	Greater London Author
Embedding standards	Newcastle City Coun

Standards committees can now access these case studies, examine details of the notable practice, and benefit from key learning points. The research, 'Assessing the Impact of Standards Committees 2009', can be found at

www.standardsforengland.gov.uk/Resources/Research/2009reports/

Further information

For further information on this paper or any other work undertaken by the Research Team, please contact **Hannah Pearson (Research and Projects Adviser)**, email: hannah.pearson@standardsforengland.gov.uk , ext: 5417

Impartial and Objective Investigators

Standards committees must ensure that they appoint investigators who have the necessary impartiality to conduct investigations with no perception of bias. This principle of impartiality should be applied to external and internal investigators alike. It is important that any external investigators are and appear to be impartial; a characteristic which should form part of any selection criteria applied when choosing one.

One of the key benefits of reciprocal arrangements with other authorities is that they enable authorities to pass investigations involving their own employees to another council. It is the monitoring officer's responsibility to ensure they select an impartial investigator.

Have your say

Has your authority or standards committee developed an innovative way of promoting ethical behaviour or delivering the standards framework? Why not share your ideas with over 1,000 other council officers and standards committee members on the Standards Forum?

You can use the Forum to discuss anything you find topical in this Bulletin with fellow council officers or standards committee members. It provides a place to network, ask questions, share good practice and make recommendations.

There are currently over 100 posts on more than 40 different topics. Popular topics include:

- Dealing with vexatious complaints
- Developing protocols for informing members
- Promoting ethical behaviour

To have your say, visit:

www.standardsforengland.gov.uk/resources/TheStandardsForum/

If you are a member of a standards committee, a monitoring officer or a relevant officer and you are not currently registered for the forum or have any questions please email: forum@standardsforengland.gov.uk

Delay on the New Code of Conduct

As you may be aware a new Code of Conduct for Members will not be laid during this Parliamentary session. Communities and Local Government have notified us that the Government is concentrating on financial instruments and so there will not be Parliamentary time available for the Code.

In practice this means that a new Code will not now be laid until after a general election.