

Standards Committee

Agenda

Date: Monday, 25th July, 2011
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road, Sandbach
CW11 1HZ

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

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

1. **Apologies for Absence**

2. **Declarations of Interest**

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

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

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

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 wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given. It is not required to give notice of the intention to make use of public speaking provision, however, as a matter of courtesy, a period of 24 hours notice is encouraged.

Please contact
E-Mail:

Diane Moulson on 01270 686476
diane.moulson@cheshireeast.gov.uk 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 - 4)

To approve the Minutes of the meeting held on 6 April 2011.

5. **Presentation on the Work of the Standards Committee**

The Borough Solicitor will make a short presentation to inform and update Members on the work of the Committee and the current Standards Regime.

6. **Application for Dispensation for Twemlow Parish Council Members** (Pages 5 - 24)

The report of the Borough Solicitor and Monitoring Officer describes and explains the requests which have been made by six Members of Twemlow Parish Council for a dispensation to enable them to take part in debate and vote upon any matters relating to the former Oil Depot, Twemlow which is likely to come before the Parish Council for consideration.

7. **The Planning Protocol** (Pages 25 - 46)

A Planning Protocol was adopted as part of the Constitution by the Council in February 2009. Since that time, revisions to the document have been made, the previous version of which came before Standards Committee on 27 September 2010.

The Strategic Planning Board considered the amended Planning Protocol at their meeting of the 20th April 2011, and resolved that the amended version of the Planning Protocol should be recommended to the Standards Committee and the Constitution Committee for adoption by the Council and inclusion in the Constitution. The Committee is invited to consider the document.

8. **The Standards Regime - Update on the Localism Bill** (Pages 47 - 58)

The report of the Borough Solicitor and Monitoring Officer seeks to inform and update Members on developments in respect of anticipated Legislation contained within the Localism Bill which will replace the current Code of Conduct and make related changes to the Standards regime.

9. **The Bribery Act 2010** (Pages 59 - 62)

The report of the Legal Team Manager (Places, Regulatory and Compliance) outlines the implications of the Bribery Bill for Cheshire East Council.

10. **Standards Committee Membership**

Following the Local Government elections on 5 May 2011, Mr Ken Edwards one of three parish representatives appointed to the Standards Committee, was elected to serve as a Cheshire East Councillor and as a result, can no longer sit on the Committee in this capacity.

An approach has been made to the Cheshire Association for Local Councils (ChAIC) to secure a nomination for the resultant vacancy.

11. Exclusion of the Press and Public

The reports relating to the remaining item on the agenda have been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matter may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following item pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 1, 2 and 7c of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

PART 2 – MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT

12. Training on the Code of Conduct (Pages 63 - 86)

To advise Members on the action taken by the Monitoring Officer following a request to organise training as part of 'other action' directed by the Assessment Sub Committee.

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Standards Committee**
held on Wednesday, 6th April, 2011 at East Committee Room - Municipal
Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

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

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

Parish Representatives

Mrs P Barnett, Mrs T Eatough and Mr K Edwards

Independent Members

Mr M Garratt and Mr R Pomlett

OFFICERS

Caroline Elwood	Monitoring Officer
Julie Openshaw	Deputy Monitoring Officer
Paul Jones	Democratic Services Team Manager
Carol Jones	Democratic Services Officer

APOLOGIES

Councillor M A Hollins and Mr I Clark

1 DECLARATIONS OF INTEREST

No declarations of interest were made.

2 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.

There were no members of the public in attendance and the Committee proceeded to its next item of business.

3 EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED: That the press and public be excluded from the meeting during consideration of the following item pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 1, 2 and 7c of part 1 of Schedule 12A to the Local Government Act 1972 and the public interest would not be served in publishing the information.

4 COMPLAINT NO. CEC/2010/06

The Committee received a report from Standards for England following the referral of a complaint against a serving Cheshire East Councillor. The Ethical Standards Officer (ESO) appointed to carry out the investigation had concluded that under Section 59(4)(a) of the Local Government Act 2000 (as amended) the Subject Member had not failed to comply with the Code of Conduct of Cheshire East Council.

The Monitoring Officer explained the procedures which had been followed by the Council when the complaint was received and the Assessment Sub-Committee's reasons for referring it to Standards for England.

The Monitoring Officer also explained how Standards for England had carried out the investigation and the processes followed in producing the report.

The ESO had issued her final report to the Standards Committee in accordance with the powers given to her in Section 64(3)(a) of the Local Government Act 2000 which allowed her to forward her report if she considered that it would assist the Committee in the discharge of its functions under that Act. It was noted that the decision of the ESO was final.

Members discussed the report from which the felt the following lessons could be drawn:

- (1) When entering public life, elected Members, in all their dealings, need to ask themselves "how does this look to the man in the street?"
- (2) When forming friendships with individuals/organisations which in turn have business with the authority, elected Members needed to be open and transparent about such associations.
- (3) Public perception was of paramount importance. Reference was made to S.106 Agreements (planning gain) which were good faith intentions to deliver matters necessary to make a development acceptable in planning terms. These were sometimes perceived by the public as "bribes".

- (4) Councillors were never “off duty” and should be mindful of their behaviour at all times.
- (5) It was essential to ensure that Members were fully aware of the significance of public office and the expectations of their constituents and the wider community in fulfilling their role in a diligent and selfless manner.
- (6) The Subject Member was a long-standing experienced Councillor and this highlighted the need for rigorous Code of Conduct training for all Members on a regular basis. This would take place, as a matter of course, following the forthcoming elections, and in response to a suggestion, would focus on the positive and permissive elements of the Code.
- (7) The Planning Protocol, which ensured the preservation of the integrity of the planning system as open and fair to all parties, could be included as part of the Code of Conduct training.
- (8) The ease with which electronic communications could be sent inadvertently to unintended recipients, or in haste, could lead to misunderstanding. This could be a training issue.
- (9) Effective communication was significantly important to try to dispel negative public perception and perhaps the Council, or an appropriate Committee, could consider this matter.
- (10) The report raised issues about the level of openness within governance of the Council. The hope was expressed that the report would assist the Council to deal with matters which were of public concern.
- (11) The ESO had made comment that senior Officers had raised concerns about the public perception of the relationship of the Subject Member with the developer. The Committee agreed that the Officers had acted appropriately in the circumstances and endorsed the comments made by the ESO.

RESOLVED:

- (a) That the report be received;
- (b) That the comments made above at 1–11 be supported and commended as “lessons learned” to inform any appropriate training for Members; and

(c) That Council be invited to give specific consideration to the following -

- remind all Members of the significance of public office and the expectations of the public
- rigorous Code of Conduct training to be given to all Members following the forthcoming elections with particular emphasis on the positive and permissive elements of the Code

The meeting commenced at 10.00 am and concluded at 11.05 am

Nigel Briers (Chairman)

CHESHIRE EAST COUNCIL

Standards Committee

Date of Meeting: 25th July 2011
Report of: Borough Solicitor and Monitoring Officer
Subject/Title: Dispensation for Twemlow Parish Council Members

1.0 Report Summary

- 1.1 This report outlines a request from 6 of the 7 Members of Twemlow Parish Council who are seeking a Dispensation in order to discuss a forthcoming planning application which concerns the old Ministry of Defence Oil Storage Depot in Twemlow. The 6 Members consider that they have a prejudicial interest which would prevent them from speaking or voting in relation to this issue.

2.0 Recommendation

- 2.1 That Members determine whether or not to grant a Dispensation to one or more of the applicants.

3.0 Reasons for Recommendations

- 3.1 Standards Committees may grant Dispensations for Members which allows them to speak and vote at a meeting where they have a prejudicial interest.

4.0 Wards Affected

- 4.1 Not applicable.

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications including - Climate change - Health

- 6.1 None identified.

7.0 Financial Implications

- 7.1 None identified.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Standards Committee (Further provisions) (England) Regulations 2009 set out the grounds upon which Local Authority Standards Committees may grant Dispensations to Members to allow them to speak and vote at a meeting where they have a prejudicial interest. The Committee may grant a Dispensation to a Member or co-opted Member of an Authority where more than 50% of the Members who would be entitled to vote at a meeting or prohibited from voting or where the number of Members who are unable to vote at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

9.0 Risk Management

- 9.1 Any Member who has declared a personal and prejudicial interest in a matter for which they have not obtained Dispensation but who remains in the meeting and takes part in the debate and votes on the matter will be in breach of the Model Code of Conduct.

10.0 Background and Options

- 10.1 Under the Model Code of Conduct a Member who has a personal interest which is also a prejudicial interest is required to declare the interest and withdraw from the meeting when the matter is being considered. He or she must not exercise executive functions in relation to the matter and must not seek improperly to influence a decision about the matter.
- 10.2 A prejudicial interest is a personal interest which:-
- a) does not fall into one of the exempt categories
 - b) affects the Members financial interests or relates to a licensing or regulatory matter and
 - c) is one which a member of the public, who knows the relevant facts, would reasonably think is so significant that it is likely to affect the Member's judgement of the public interest.
- 10.3 Standards Committees may grant Dispensations to Members allowing them to speak and vote at a meeting where they have a prejudicial interest if more than 50 % of Members have a prejudicial interest in an item of business to be discussed at a meeting or the political balance of a meeting would be upset enough to prejudice the outcome of the vote. Standards for England has issued guidance on the granting of Dispensation under the new 2009 Regulation and a copy is attached for Member's assistance at Appendix A.
- 10.4 6 Members of Twemlow Parish Council have made written applications to the Committee seeking Dispensation, the application and covering letter from the Chairman of the Parish Council is Attached at Annex B. Applications have been received from:-

Patsy Barnett
Graham Holborn
Andy Davies
Craig Brandreth
George Pierpoint
John Basford

- 10.5 The applications have been made to enable the Members to discuss the forthcoming planning application which will concern the old Ministry of Defence Oil Storage Depot in Twemlow. The Chairman of the Parish Council advises the site in question was purchased at the end of last year by Mr R Brown of The Orchards Farm Twemlow with the intention to convert it into an anaerobic digestion plant. This will convert slurry, food waste and compostable waste into methane which will drive a generator making electricity to be fed into the National Grid. It is understood that Mr Brown is currently addressing the relevant planning issues prior to making a formal application.
- 10.6 6 of the 7 Parish Members of Twemlow Parish Council consider that they have a prejudicial interest either because they know well and are personal friends with Mr Brown the applicant and/or live directly opposite the former oil storage depot site.
- 10.7 Twemlow Parish Council is not the Planning Authority but will be a statutory consultee to the planning process. If Dispensation is not granted Twemlow Parish Council will not achieve quorum and will be unable to perform its role as a statutory consultee by discussing the planning applications at its planning committee and responding to the Planning Authority. Normally any representations made by a Parish Council will be considered by the Planning Authority together with any other representations made.
- 10.8 The applications for Dispensation should be solely considered on the grounds for which they are made. If a Dispensation is granted and a Member has another personal and prejudicial interest for which Dispensation has not been obtained and subsequently remains in the meeting taking part in the debate and voting on the matter then he or she will be in breach of the Model Code of Conduct.
- 10.9 When considering the application for Dispensation the Committee should also determine the duration of the Dispensation. The decision of the Committee to grant a Dispensation must be recorded in writing and kept with the Register of Interest.

For further information:

Officer: Caroline Elwood Borough Solicitor/ Monitoring Officer

Tel: 01625 503250

e-mail: caroline.elwood@cheshireeast.gov.uk

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Tel No 01477 533261

E-Mail BrPatsyb@AOL.com

Bank Farm
Twemlow
Holmes Chapel
Cheshire
CW4 8BG

5th July 2011

FAO Mrs Caroline Elwood
Monitoring Officer, Cheshire East Council
Westfields
Middlewich Road
Sandbach
Cheshire CW11 1HZ

Dear Mrs Elwood

Dispensation for Twemlow Parish Council Members

With reference to recent telephone conversations and e-mails with Julie Openshaw regarding the above I can now confirm that Twemlow Parish Council members have decided to apply for a dispensation to enable 6 of the 7 members to discuss the forthcoming planning application for the old Oil Storage depot in Twemlow.

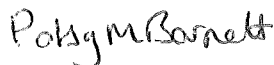
To summarize the situation, the site in question was purchased at the end of last year by Mr Ray Brown of 'The Orchards Farm' Twemlow with a view to converting it into an Anaerobic Digestion Plant. That is to convert slurry, food waste, any compostable waste etc into methane which will in turn drive a generator to make electricity to be put into the National Grid. I believe Mr Brown is currently addressing all the planning issues he needs to before making a planning application.

I now enclose letters from all the relevant councillors applying for their dispensation along with a map of the area which shows the location of the site in relation to Councillors properties.

I am also mindful of the costs incurred in this exercise which is why I have suggested to Twemlow Parish Council that we apply for the dispensation now so it can be reviewed at any forthcoming Standards Committee rather than wait until the application is received and then have to do all the paperwork in a hurry and cause the Standards Committee to call an unscheduled meeting.

Thank you for all your help in this matter.

Yours sincerely



Patsy Barnett
Chairman, Twemlow Parish Council

Bank Farm
Twemlow
Holmes Chapel
Cheshire
CW4 8BG

I, Patsy Barnett, .a member of Twemlow Parish Council wish to apply to Cheshire East Council's Standards Committee for a dispensation to discuss and vote upon any planning applications concerning The old Ministry of Defence Oil Storage Depot in Twemlow which may come before the Parish Council for consideration.

The site has recently been purchased by a local farmer, Ray Brown, and it is his intention to apply for planning permission to change the use of it to an Anaerobic Digestion Plant. (To convert slurry and compostable waste into energy.)

I believe that I would have a prejudicial interest if an application came before the Parish Council for comment, for the following reason(s).

The Oil depot is opposite and also joins land which my husband owns. Mr Brown also looks after some of our stock and he is a personal friend.

The Parish Council has 7 members in total. I understand that 5 fellow councillors would also have prejudicial interests and so without a dispensation no consideration and consultation on such matters could take place at this local level and the Parish Council would be inquorate.

It is felt that this would impair the democratic process at this first tier of local government and this request is made so that the local community should not be put at a disadvantage and we Parish Councillors denied the rights normally automatically enjoyed by our colleagues elsewhere.

Signed...*Patsy M Barnett*.....

Date 27th June

address

11, TWENLOW LANE
TWENLOW
CW4 8DT

27/6/11.

I, Graham Horbrow.....a member of Twemlow Parish Council wish to apply to Cheshire East Council's Standards Committee for a dispensation to discuss and vote upon any planning applications concerning The old Ministry of Defence Oil Storage Depot in Twemlow which may come before the Parish Council for consideration.

The site has recently been purchased by a local farmer, Ray Brown, and it is his intention to apply for planning permission to change the use of it to an Anaerobic Digestion Plant. (To convert slurry and compostable waste into energy.)

I believe that I would have a prejudicial interest if an application came before the Parish Council for comment, for the following reason(s).

~~The Oil Depot site is on the opposite side of the road to where I live.~~

The Oil Depot site is on the opposite side of the road to where I live and he is a personal friend. ✓

~~The Oil depot is opposite and also joins land which my husband owns. Mr Brown also looks after some of our stock and he is a personal friend.~~

~~Mr Brown is a personal friend and fellow farmer. My wife and I have also enjoyed his hospitality.~~

~~Mr Brown is a personal friend and my business may well benefit from the by products of an anaerobic digester.~~

The Parish Council has 7 members in total. I understand that 5 fellow councillors would also have prejudicial interests and so without a dispensation no consideration and consultation on such matters could take place at this local level and the Parish Council would be inquorate.

It is felt that this would impair the democratic process at this first tier of local government and this request is made so that the local community should not be put at a disadvantage and we Parish Councillors denied the rights normally automatically enjoyed by our colleagues elsewhere.

Signed.....

Date

27/6/11

9 Twemlow Lane
Twemlow Green
Holmes Chapel
CW4 8DT

27/6/11

I...Andy Davies.....a member of Twemlow Parish Council wish to apply to Cheshire East Council's Standards Committee for a dispensation to discuss and vote upon any planning applications concerning The old Ministry of Defence Oil Storage Depot in Twemlow which may come before the Parish Council for consideration.

The site has recently been purchased by a local farmer, Ray Brown, and it is his intention to apply for planning permission to change the use of it to an Anaerobic Digestion Plant. (To convert slurry and compostable waste into energy.)

I believe that I would have a prejudicial interest if an application came before the Parish Council for comment, for the following reason(s).

The Oil Depot site is on the opposite side of the road to where I live and I know Mr and Mrs Brown.

The Parish Council has 7 members in total. I understand that 5 fellow councillors would also have prejudicial interests and so without a dispensation no consideration and consultation on such matters could take place at this local level and the Parish Council would be inquorate.

It is felt that this would impair the democratic process at this first tier of local government and this request is made so that the local community should not be put at a disadvantage and we Parish Councillors denied the rights normally automatically enjoyed by our colleagues elsewhere.

Signed..........

Date

27/6/11

I, Graig Bendreth.....a member of Twemlow Parish Council wish to apply to Cheshire East Council's Standards Committee for a dispensation to discuss and vote upon any planning applications concerning The old Ministry of Defence Oil Storage Depot in Twemlow which may come before the Parish Council for consideration.

The site has recently been purchased by a local farmer, Ray Brown, and it is his intention to apply for planning permission to change the use of it to an Anaerobic Digestion Plant. (To convert slurry and compostable waste into energy.)

I believe that I would have a prejudicial interest if an application came before the Parish Council for comment, for the following reason(s).

The Oil Depot site is on the opposite side of the road to where I live.

The Parish Council has 7 members in total. I understand that 5 fellow councillors would also have prejudicial interests and so without a dispensation no consideration and consultation on such matters could take place at this local level and the Parish Council would be inquorate.

It is felt that this would impair the democratic process at this first tier of local government and this request is made so that the local community should not be put at a disadvantage and we Parish Councillors denied the rights normally automatically enjoyed by our colleagues elsewhere.

Signed .....

Date 27/6/2011

Rowley Acres
Forty Acre Lane
Kermincham
Holmes Chapel
Cheshire
CW4 8DX

I, George Sydney Pierpoint, a member of Twemlow Parish Council wish to apply to Cheshire East Council's Standards Committee for a dispensation to discuss and vote upon any planning applications concerning The old Ministry of Defence Oil Storage Depot in Twemlow which may come before the Parish Council for consideration.

The site has recently been purchased by a local farmer, Ray Brown, and it is his intention to apply for planning permission to change the use of it to an Anaerobic Digestion Plant. (To convert slurry and compostable waste into energy.)

I believe that I would have a prejudicial interest if an application came before the Parish Council for comment, for the following reason(s).

Mr Brown is a personal friend and fellow farmer and my business may well benefit from the by products of an anaerobic digester. My wife, family and I have also enjoyed his hospitality.

The Parish Council has 7 members in total. I understand that 5 fellow councillors would also have prejudicial interests and so without a dispensation no consideration and consultation on such matters could take place at this local level and the Parish Council would be inquorate.

It is felt that this would impair the democratic process at this first tier of local government and this request is made so that the local community should not be put at a disadvantage and we Parish Councillors denied the rights normally automatically enjoyed by our colleagues elsewhere.

Signed..........

Date

Saltersford Farm
Twemlow
Cheshire
CW4 8AN

I...John Basford....a member of Twemlow Parish Council wish to apply to Cheshire East Council's Standards Committee for a dispensation to discuss and vote upon any planning applications concerning The old Ministry of Defence Oil Storage Depot in Twemlow which may come before the Parish Council for consideration.

The site has recently been purchased by a local farmer, Ray Brown, and it is his intention to apply for planning permission to change the use of it to an Anaerobic Digestion Plant. (To convert slurry and compostable waste into energy.)

I believe that I would have a prejudicial interest if an application came before the Parish Council for comment, for the following reason(

Mr Brown is a personal friend and fellow farmer. My wife and I have also enjoyed his hospitality.

The Parish Council has 7 members in total. I understand that 5 fellow councillors would also have prejudicial interests and so without a dispensation no consideration and consultation on such matters could take place at this local level and the Parish Council would be inquorate.

It is felt that this would impair the democratic process at this first tier of local government and this request is made so that the local community should not be put at a disadvantage and we Parish Councillors denied the rights normally automatically enjoyed by our colleagues elsewhere.

Signed.....

Date 27/06/2011






SITE OF PROPOSED Planning Application

for the old MOD oil Storage Depot
Twentlow Cheshire

378000

378500

Key

-  oil STORAGE DEPOT.
now owned by Mr Brown
-  land owned by the husband of
Mrs P.M. Barnett
-  property owned by Mr
Craig Brandreth
-  property owned
by Mr Graham Holbrow
-  property owned by
Mr Andrew Davis.

SJ7769 SJ7869
SJ7768 SJ7868

1721

3404

2685

4087

3482

4180

8675

9368

0161

8158

9453

7245

8345

8942

A535

Seething Lane

Twentlow Lane

2 →

DISPENSATIONS



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introduction

This guidance on dispensations is aimed at standards committees. It is not mandatory but has been written to help describe when standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest.

dispensations

Granting dispensations under the new regulations

The legislation states standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. The criteria for granting these dispensations changed in June 2009

Concerns were raised by some authorities, as well as the Standards Board for England, about the provisions of previous dispensation regulations. Due to these concerns, the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations) revoke the previous regulations. They replace them with new provisions to clarify the grounds on which standards committees may grant dispensations to local authority members.

Under Section 54A(1) of the Local Government Act 2000 an authority's standards committee can set up a sub-committee to consider requests for dispensations. Any reference in this guidance to the standards committee includes any sub-committee which has this function.

Dispensations may be granted for speaking only, or for speaking and voting. The 2007 Code of Conduct (the Code) relaxed the provisions for restricting members from speaking. Therefore, the need to request a dispensation in this respect is now limited to circumstances where the public do not have the right to speak, or to where a parish or police authority has not adopted paragraph 12(2) of the Code.

Part 4 of the regulations sets out the

circumstances in which a standards committee can grant dispensations to members of relevant authorities in England, and police authorities in Wales. If a member acts in accordance with the granting of a dispensation, taking part in business otherwise prohibited by an authority's code of conduct would not result in a failure to comply with that code.

A standards committee may grant a dispensation to a member or co-opted member of an authority in the following circumstances:

- where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting **OR**
- where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

Note: Although the Regulations are not explicit, political balance is a legal formula, set out in the Local Government and Housing Act 1989 and associated regulations. It applies only to relevant authorities and places an obligation on them to reflect the political balance of their elected members when determining who should sit on certain committees. It does not apply to parish councils.

Standards committees must ignore any dispensations that have already been given to others at the meeting to decide whether either of these criteria apply.

There are two **exceptions** to this:

- Members cannot be given a dispensation allowing them to vote in

dispensations

overview and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken.

- A dispensation cannot be given to allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

The dispensation granted may apply to just one meeting or it may be applicable on an ongoing basis. However, the dispensation cannot be used to allow participation in the business of the authority if it was granted more than four years ago.

Legal requirements for granting dispensations

- 1) Standards committees can grant a dispensation if more than 50% of members have a prejudicial interest in an item of business to be discussed at a meeting which is covered by their code of conduct. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). The list of meetings is set out in paragraph 1(4) of the Model Code of Conduct contained in the Local Authorities (Model Code of Conduct) Order 2007. These are meetings of:

- the authority
- its executive and its committees and sub-committees
- any other committees, sub-committees, joint committees, joint sub-committees or area committees of the authority.

- 2) Standards committees can grant a dispensation for an item of business if the political balance of a meeting would be upset enough to prejudice the outcome of the vote. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). This means that due to the number of members who are prevented from voting the political balance of the committee is changed. This is similar to a provision that has been in existence in Wales for some time. As before, this does not apply to parish councils as they are not bound by the political balance rules.

[*]The requirement to ignore any members who have already been granted dispensations means that standards committees should disregard any previously granted dispensations in order to work out whether the two circumstances above apply.

So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, once two people had been granted dispensations, the remaining four would be ineligible because at that point 50% of the committee would be able to vote.

In addition it is necessary to consider if any of the exceptions set out above apply.

dispensations

Issues and criteria to consider when granting dispensations

The number of members in each political group on an authority could affect the eligibility to apply for a dispensation.

In situations where one political party has a large majority on an authority, and therefore on its committees, members of that political party will not be eligible to apply for a dispensation frequently under the criterion for political balance (see page 3). Where an authority has two or more political parties, and the number of members that each party has is fairly evenly balanced, the eligibility to apply for a dispensation will rise.

Clearly there is a difference between being eligible to apply for a dispensation and it being appropriate for that dispensation to be granted. We recommend that the standards committee considers the need for criteria to be applied to requests for dispensations. The committee will need to balance the prejudicial interest of the member seeking the dispensation to vote on an item of business, against the potential effect on the outcome of the vote if the member is unable to do so.

Considerations for dealing with dispensation requests

Q. Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?

For instance, it is unlikely that it would be appropriate to grant a dispensation

to a member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the member would probably outweigh any public interest in maintaining the political balance of the committee making the decision. This is especially where an authority has well-established processes for members on committees to be substituted by members from the same political party.

However, the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases, it is possible that any public interest in maintaining the political balance of the committee making the decision might be given greater prominence.

Q. Is the interest common to the member and a significant proportion of the general public?

For example, the member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

dispensations

Q. Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?

For instance, a member might represent the authority on another public body – such as a fire or police authority – and have particular expertise in the work of that body. Therefore it may be appropriate for that member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the member's expertise before making a decision which would benefit it financially.

Q. Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? And is the member's interest not a financial one?

In circumstances such as these, the standards committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

Practical guidance on the process for granting dispensations and recording them

The process for making requests for dispensations, the criteria that will be applied and the process that will be followed when the request is considered should all be clearly understood by those

concerned. Therefore, standards committees should set all this out and make it available to members.

A member must submit an application in writing explaining why a dispensation is desirable. Only the member can do this – they can't ask somebody else to do it on their behalf. It is sensible to send that application to the monitoring officer so that they can arrange for it to be considered by their standards committee.

A standards committee meeting must be convened to consider the application for a dispensation. Therefore, it is not possible to grant a dispensation as a matter of urgency to deal with emergency business.

The committee must consider the legal criteria set out on pages 3–4, including the exceptions. They must also consider any other relevant circumstances. These can include any local criteria they have adopted.

The committee will need to consider whether the member making the request will be allowed to make oral representations to the committee or whether the application will be dealt with only through written representations.

A standards committee has the discretion to decide the nature of any dispensation. For example, the committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

dispensations

It is our view that the regulations do not allow standards committees to issue general dispensations to cover members for any situation where a prejudicial interest may arise. The regulations refer to circumstances that arise at “a meeting”. Therefore, we would expect most dispensations to cover a specific item of business at one meeting of the authority.

The decision must be recorded in writing and must be kept with the register of interests established and maintained under Section 81 (1) of the Local Government Act 2000.

Standards committees can refuse to grant a dispensation. The regulations allow for standards committees to use their discretion rather than impose an obligation for them to grant dispensations.

CHESHIRE EAST COUNCIL

REPORT TO: Standards Committee

Date of Meeting: 25th July 2011
Report of: Monitoring Officer and Head of Planning and Housing
Subject/Title: The Planning Protocol

1.0 Report Summary

- 1.1 This report attaches as Appendix 1 an amended version of the Planning Protocol that has been developed by a sub-committee of the Constitution Committee. The Standards Committee is asked to review and comment on the revised version.

2.0 Recommendation

- 2.1 That the Strategic Planning Board review the amended version of the Planning Protocol and commend the amended Planning Protocol to the Constitution Committee for inclusion in the Constitution.

3.0 Reasons for Recommendations

- 3.1 Since the adoption of the original version of the Planning Protocol by the Council, updated versions of guidance for Planning Councillors have been published, and additionally the Planning Protocol has been reviewed by the Chairmen and Vice Chairmen of the Strategic Planning Board and Planning Committees, in conjunction with Officers. A revised version of the original Planning Protocol was presented to the Strategic Planning Board and the Standards Committee previously, however the Constitution Committee subsequently considered that the Planning Protocol should be reviewed more fully. As a result, a Sub-Committee was set up by the Constitution Committee to re-draft the Planning Protocol, and undertake a more comprehensive review of the document prior to re-consideration of the document by the relevant Committees.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All Strategic Planning Board and Planning Committee Members

**6.0 Policy Implications including - Climate change
- Health**

6.1 None

7.0 Financial Implications

7.1 None

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 There is a risk of legal challenge to the decisions made by the Strategic Planning Board and Planning Committee's if robust and consistent procedures are not in place in line with current national guidance.

8.2 There is also a greater risk of a Local Government Ombudsman complaint being upheld if the Authority does not provide clear, consistent and up to date advice to Councillors on carrying out their duties and responsibilities when determining Planning Applications and considering planning matters.

9.0 Risk Management

9.1 The Planning Protocol, in order to operate effectively, needs to be a document that is reviewed and updated regularly, and those amendments reported to the members of the relevant Committees so that members involved in the planning process are fully aware of the contents and their responsibilities.

9.2 If the reviews and updates do not take place, and members are not made aware of them, a number of risks can be identified:

- Generally, a lack of up to date advice aimed at ensuring the integrity of the planning system for those Councillors involved as Members of the Board or Committees and for those involved as Local Ward Members
- Personal and prejudicial interests and fettering of discretion not being identified and declared at the required times and the appropriate actions carried out as a result
- lack of, or inconsistent, up to date advice concerning how Councillors respond to requests for any meetings with developers, applicants, neighbours, Parish/Town Councils
- lack of, or inconsistent, advice regarding lobbying of and by Councillors and how to react to this
- lack of clarity and inconsistent procedures applied throughout Cheshire East with regard to decision making at Board/Committee meetings

- Complaints to the Local Government Ombudsman being upheld over conduct and matters that occur at Board/Committee meetings and during the conduct of planning applications.

9.3 The updated protocol provides updated guidance and requirements on these points, as well as including a contents page and summary to the document to assist Members understanding and reading of the Planning Protocol.

10.0 Background and Options

10.1 A Planning Protocol was adopted as part of the Constitution by the Council in February 2009, and was expected to be reviewed by both Officers and Members in light of any new Guidance that had been published and the operation of the Planning Protocol following the first few months of the Strategic Planning Board and Planning Committees taking decisions as the Local Planning Authority for Cheshire East.

10.2 Members of the Standards Committee may recall that a report was placed before them at their meeting on the 27th September 2010, with an amended version of the Planning Protocol attached for their comment that took into account up-dated guidance that had been issued since the adoption of the original Planning Protocol. The Planning Protocol was then to be referred, with some further minor amendments, to the Constitution Committee prior to final approval by Full Council.

10.3 At the Constitution Committee on the 30th September 2010, Members considered the Planning Protocol before them, and resolved that:

“(1) The Planning Protocol not be referred to Council for approval at this stage;

and

(2) a sub-committee be appointed, the size, proportionality and membership to be determined in consultation with the Chairman and Group Whips, to be charged with examining the Protocol and, if necessary, redrafting it as a short sensible guide with the assistance of the Officer who drafted the amendments.”

10.4 The Planning Protocol Sub Committee was set up, and met on the 6th January 2011, 8th February 2011 and 7th March 2011. As a result of these meetings, an amended Planning Protocol has now been produced and approved by the Planning Protocol Sub-Committee, and is attached as Appendix 1 to this report.

10.5 The main changes to the Planning Protocol from that previously before the Standards Committee are the form of the document and the inclusion of a Contents page, and Summary sheet.

- 10.6 The Planning Protocol Sub Committee acknowledged, and members of the Standards Committee should be aware that due to the introduction of the Localism Bill by the Government, further amendments to the Planning protocol are likely to be required in the near future.
- 10.7 The Strategic Planning Board considered the amended Planning Protocol at their meeting of the 20th April 2011, and resolved that the amended version of the Planning Protocol should be recommended to both the Standards Committee and the Constitution Committee for adoption by the Council and inclusion in the Constitution.
- 10.8 This amended version of the Planning Protocol, will be referred to the Constitution Committee, reporting the decision of the Standards Committee together with the view of the Strategic Planning Board.

11.0 Access to Information

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

None – all public documents

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PLANNING PROTOCOL OF CONDUCT IN RELATION TO THE DETERMINATION OF PLANNING MATTERS

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The aim of this Planning Protocol is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way and **applies to members of the Strategic Planning Board or Northern and Southern Committees when they are involved in the planning process.**

The Members Code of Conduct should be applied throughout the decision making process and this Planning Protocol seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not follow this Planning Protocol you may put the Council and yourself at risk of proceedings on the legality or maladministration of the related decision.

If you have any doubts about the application of this Planning Protocol to your own circumstances you should seek advice early, from the Monitoring Officer, and preferably well before any meeting takes place.

In this Planning Protocol "planning meeting" covers all meetings of the Strategic Planning Board and the Northern and Southern Planning Committees.

SUMMARY

Important things to remember –

1. apply the rules in the Members' Code of Conduct first, which should be complied with throughout the decision making process, and disclose the existence and nature of any interest at the relevant meeting
2. understand what personal and prejudicial interests are, and the consequences and differences of a declaration of either
3. don't make your mind up on how you will vote on a matter prior to the formal consideration of the matter at the meeting
4. be aware that if you do lobby or campaign on a particular issue it may remove you from the decision making process
5. as a cabinet member, don't take part in a planning meeting in a matter that you are considered to be the advocate of a proposal
6. if you are approached for technical planning advice, refer the person to Officers
7. if you attend meetings individually with developers or lobby groups be careful not to put yourself in a position where you appear to favour a person or a group over another
8. if you do attend a meeting make sure it is clear that you do not bind the authority to a particular course of action, or views, and that the meeting is noted in your diary
9. you can ask that Officers attend and/or organise meetings
10. avoid accepting gifts or hospitality from anyone involved in a planning proposal
11. it is not advisable to become a member of a group or organisation whose primary purpose is to promote or oppose specific planning proposals in your area
12. a site inspection is the opportunity to seek information and observe the site not to start the debate into the merits of the application
13. you can call-in an application to be determined by Committee that would otherwise be delegated to Officers, and can seek advice from officers over the wording

14. you can discuss applications with Officers but the Officer must be able to reach their own conclusion
15. make sure you are present at the planning meeting for the entire item, including the Officers introduction and update, otherwise you cannot vote on that item
16. not to allow members of the public to communicate with you during planning meetings
17. you may exercise your public speaking rights at a planning meeting if you cannot attend the meeting as a member of the Committee
18. make sure your decisions at a planning meeting take into account the development plan and other relevant material planning considerations
19. put your and your local community concerns forward at the planning meeting, and consider whether planning gain requirements under s106 could help make acceptable development that would otherwise be unacceptable in planning terms
20. include the content of s106 agreements in the debate at a planning meeting
21. if you are proposing or seconding a decision that is contrary to Officer recommendation that you need to identify the planning reasons with the assistance of the Officers for doing so
22. you should try to attend all training sessions arranged by the Council

This summary provides a list of the main points to remember while the body of the Protocol provides more detailed information, explanation and assistance.

1 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE MEMBERS' CODE

- 1.1 It is your responsibility to declare the existence and nature of any interest, including any perceived interest, at the relevant meeting, including informal meetings or discussions with Officers and other Councillors. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. The requirements for you to declare any interest apply whenever you are in attendance at a meeting, regardless of whether you are a member of the Committee or not.
- 1.2 Where your interest is personal and prejudicial:-
- You cannot participate in, or give the appearance of trying to participate in, the making of any decision on the matter by the planning authority, including the processing of the application. You must withdraw from the meeting room when the matter is announced unless you are exercising your public speaking rights. Please see section 10 for your right to attend and make representations under the Public Speaking Protocol.
 - You shouldn't try to represent local, Ward or Area views, get another Member to do so instead.
 - Be careful not to seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with Officers or Councillors when other members of the public would not be able to do the same.
 - Whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate Officer, in person or in writing, be aware that the Code places greater limitations on you than would apply to a normal member of the public.
- 1.3 You do need to notify the Monitoring Officer and Head of Planning and Housing in writing if you are submitting your own application, or if you are employed as an agent and:-
- The notification to the Monitoring Officer and the Head of Planning and Housing should be made no later than submission of the application;
 - the proposal will always be reported to a planning meeting and not dealt with by Officers under the scheme of delegation; and
 - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with Officers and any public speaking at the planning meeting (where appropriate) to avoid public criticism

- you can make written representations to Officers about the proposal and may address the planning meeting pursuant to the Public Speaking Protocol subject to certain additional restrictions.

2 PRE-DETERMINATION (FETTERING DISCRETION) IN THE PLANNING PROCESS

- 2.1 Councillors of the planning meetings should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, so must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's planning meetings. Not to do so puts the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 2.2 In order to avoid pre-determination and therefore your ability to participate in planning decision-making wait until the formal planning meeting to hear the Officers presentation, any public speakers and arguments on both sides before expressing your view on an application.
- 2.3 Take care in the wording of your planning reasons on a call-in that you do not suggest that you have already formed a view on the application, if you have not done so, and have therefore pre-determined the application. Seek advice on this from Officers if necessary prior to completion of your form. Wording such as "I consider that this application may raise issues of ..." will help avoid claims of pre-determination if you have not done so.
- 2.4 If the Council is the landowner, developer or applicant and you have acted as, or could be viewed as being, a chief advocate for the proposal then you are likely to have pre-determined the application. (This is more than a matter of dual membership, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- 2.5 You are always free to listen to a persons point of view about a planning proposal, give basic procedural advice and can agree to forward any comments, but beyond this you should refer the person to the appropriate planning Officer.
- 2.6 If there are other ward Councillors available that do not sit as a member of the same planning meeting then they will not be subject to

the same restrictions regarding pre-determination and can therefore be an alternative contact for members of the public or lobby groups.

- 2.7 Political group meetings prior to the planning meeting should not determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but you should not make up your mind until you have read the planning Officer's report and update and heard any further representations and the debate at the planning meeting.
- 2.8 You should not speak and vote on a proposal as a member of the planning meeting where you have pre-determined an application. You are not legally obliged to withdraw from the room but in most circumstances doing so will counter any suggestion that you influenced the remaining members by your continued presence. If in any doubt you should seek advice from the Monitoring Officer. If you do not withdraw, as a minimum you must withdraw to the public area of the meeting room for the whole of the consideration of the matter, whether or not you are also exercising your right to speak.
- 2.9 If you have pre-determined an application you should explain that you have, or could reasonably be perceived as having already made up your mind on an application so that this can be recorded in the minutes. You may then exercise separate speaking rights, where you do wish to speak:
 - advise the democratic services Officer or Chairman that you wish to speak in this capacity before the planning meeting;
 - remove yourself from the member seating area to the public gallery for all of that item and consider whether you need to leave the room; and
 - ensure that your actions are recorded in the minutes.

3 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES

- 3.1 The Members' Code of Conduct provides for a presumption that you may regard yourself as not having a personal interest in matters which relate to specific organisations and if you do not intend to speak on the matter at the planning meeting.
- 3.2 You do need to exercise your discretion in deciding whether or not to participate in each case and where you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of :`
 - (a) another local or public authority of which you are a member; or
 - (b) a body to which you have been appointed or nominated by the Council as its representative; or

(c) you are a trustee or company director of the body submitting the proposal and were appointed by the Council

you should always disclose a prejudicial as well as personal interest and withdraw from the planning meeting.

3.3 Where you do intend to speak on a matter at the planning meeting, or are unsure if you wish to do so, it is advisable to declare that interest at the start of the meeting, although you are not legally obliged to.

3.4 You can take part in the debate on a proposal when acting as part of a consultee body for a planning application (where you are a member of the Parish Council, for example), provided:

- the proposal does not substantially affect the well-being or financial standing of the consultee body;
- you make it clear to the consultee body at the time they consider the matter that:

(a) your views are expressed on the limited information before you only;

(b) you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning meetings and you hear all of the relevant information; and

(c) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the planning meeting;

and you disclose the personal interest regarding your membership or role when the planning meeting comes to consider the proposal.

4 CABINET MEMBERS

4.1 There is no Constitutional or legal reason why a Cabinet member should not also be a member of the planning meeting and take part in the decision-making processes which are not part of the executive function.

4.2 You should not speak or vote as a member of any planning meeting on any matter which you have discussed at Cabinet unless you have demonstrated there, and can do so at the relevant planning meeting, that you have not predetermined the application.

4.3 At a planning meeting on a matter in which you may have been seen as advocating a proposal as a Cabinet Member, and so pre-determined the matter, do not take part in the debate, but you can exercise separate speaking rights under the Public Speaking Protocol provided you do not have a personal and prejudicial interest. Where you do wish to speak :

- advise the democratic services Officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area to the public gallery for the duration of that item and consider leaving the room after you have spoken; and
- ensure that your actions are recorded in the minutes

5 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 If you are approached for technical planning advice you should refer the person to Officers, and can always refer a person to Officers if you are uncomfortable giving procedural or other advice.
- 5.2 Where you feel that a formal meeting would be useful in clarifying issues, you should request the Head of Planning and Housing to organise this. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action and that views expressed are provisional, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the planning meeting.
- 5.3 If you are invited to attend a meeting with applicants, developers or groups of objectors you should exercise care particularly between the submission of an application and the planning meeting where it is to be determined. You can attend meetings but need to be careful not to express views or opinions on the application if you are intending to take part in the planning meeting.
- 5.4 In addition you should consider:
- the advice on lobbying;
 - whether or not it would be prudent in the circumstances to make notes when contacted;
 - notifying the Head of Planning and Housing of any significant contact with the applicant and other interested parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file;
 - asking relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other Councillors might vote.
- 5.5 Don't attend a planning presentation unless an Officer is present and/or it has been organised by Officers, as it is a form of lobbying and you need to be careful not to express any views on the application or give the impression you have made up your mind.
- 5.6 Remember that a presentation is not part of the formal process of debate and determination of any application, this will be carried out by

the appropriate planning meeting of the planning authority, but you are able to ask relevant questions for the purposes of clarifying your understanding of the proposals.

6 PRE-APPLICATION DISCUSSIONS

- 6.1 It is recognised that pre-application discussions can be of great benefit to the planning process, however, this may create some risks for Councillors and for the integrity of the decision making process and therefore they should only take place within clear parameters and governance arrangements and always with Officers present and a written record of the discussions made and kept.
- 6.2 If you are involved by an Officer in pre-application discussions ensure that it is made clear that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional, as by their very nature not all relevant information will be available and no formal consultation will have taken place.
- 6.3 Officers should deal with any queries or give advice in pre-application discussions upon policies within the Development Plan and other material considerations that may be relevant to a particular proposal or be drawn into negotiations. This ensures a consistent and co-ordinated approach from the Council.
- 6.4 Where there is a legitimate reason justifying non-disclosure respect a request for confidentiality. Seek advice from the Officers present if you are unsure.
- 6.5 Make sure you provide information on matters of fact, local knowledge and geography to any pre-application meeting rather than dealing with the merits of any proposed application.
- 6.6 Make sure you do not use your position to improperly influence decisions in pre-application meetings.
- 6.7 You can ask an Officer for a briefing or update on the content of pre-application meetings if you are uncomfortable about attending those meetings yourself.

7 LOBBYING OF PLANNING COMMITTEE MEMBERS

- 7.1 While you can listen to those lobbying or attempting to lobby you, you should explain that it prejudices your impartiality and therefore your ability to participate in the planning meetings decision-making to declare an intention to vote one way or another or express such a firm point of view that it amounts to the same thing.

- 7.2 As a member of the planning meeting your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 7.3 You should not accept any gifts or hospitality from a person involved in or affected by a planning proposal. Where a degree of hospitality is entirely unavoidable, you must ensure it is of a minimum level, its acceptance is declared as soon as possible and remember the Code of Conduct provides that you register any gift or hospitality where its value is over £25.
- 7.4 Remember you can copy or pass on lobbying correspondence you receive to the Head of Planning and Housing, if relevant or raising new issues, or declare the receipt of lobbying information at the planning meeting.
- 7.5 If you receive any offers of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise, refer the person to the Head of Planning and Housing.
- 7.6 If you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), notify the Monitoring Officer who will in turn advise the appropriate Officers to follow the matter up.
- 7.7 Unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Protocol through:
- listening to or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Councillors or appropriate Officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

8 MEMBERSHIP OF LOBBY OR GENERAL INTEREST GROUPS

- 8.1 Avoid becoming a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals

or those within a limited geographical area, as if you do, you are likely to have fettered your discretion and have a personal and prejudicial interest and have to withdraw from the planning meeting.

- 8.2 Remember to register your membership of any lobby group and declare the existence and nature of your interest in any lobby group at planning meetings. Often this will be a personal interest and you can continue to participate but note that it can sometimes be a prejudicial interest or lead to allegations of bias or predetermination and in those circumstances you must withdraw from the meeting.
- 8.3 If a matter relates directly to the lobby group of which you are a member rather than to the views it holds, or is submitted by the group you should ordinarily consider that you have a personal and prejudicial interest and should act accordingly.
- 8.4 Where your lobby group has expressed a public view on a matter you need to consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors you should consider are:
 - the nature of the matter to be discussed
 - the nature of your involvement with the lobby group
 - the publicly expressed views of the lobby group
 - what you have said or done in relation to the particular issue
- 8.5 If the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as its Chairperson or a member of the planning meeting, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.
- 8.6 Remember that if you publicly support a particular outcome on a proposal within your Ward or actively campaign for it, you will not be able to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. There is a fine balance between a predisposition where your mind is not totally made up and a predetermination. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining any application in accordance with the law.
- 8.7 You are able to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or

a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the planning meeting that you have reserved judgement and the independence to make up your own mind on each separate proposal.

- 8.8 Don't excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken. It is difficult to define "excessively" but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.
- 8.9 You should not ever decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

9 SITE INSPECTIONS

The Council has a separate protocol that deals with Site Inspections in more detail.

- 9.1 Site Inspections can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact finding exercise. They are not to be used to determine a proposal prior to the meeting of the Planning meetings. It should be noted that this Section applies to both Councillors requests for a Site Inspection and those the Head of Planning and Housing may arrange without prior discussion where, in his professional opinion, there is a real benefit from viewing the site.
- 9.2 It is important to ensure that Councillors taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit. Attendance of Councillors at site visits will not only demonstrate that Councillors are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised. The expectation is that all planning meeting members will attend all formal site inspections and a record of attendance will be maintained and monitored.
- 9.3 You should try to attend site inspections organised by the Council.
- 9.4 You can request a site inspection if you feel it is strictly necessary because:

- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed; or
 - details of the proposed development cannot be ascertained from plans and any supporting information to Councillors satisfaction at the planning meeting; or
 - where design considerations are of the highest importance particularly in relation to the surrounding locality.
- 9.5 The site inspection is an opportunity for you to seek information and to observe the site, and therefore you can ask the Officers at the site inspection questions or seek clarification from them on matters which are relevant to the site inspection. Officers may seek clarification from the applicant or an objector on your question, but you should not do this directly.
- 9.6 Be careful not to be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind while on a site inspection by expressing opinions or views to anyone. The decision can only be made at the planning meeting and you should make this clear to any applicant or other party who approaches you and suggest that they make written representations or use of the Public Speaking arrangements and direct them to, or inform, the Officer present.
- 9.7 Information that you gain from the site inspection should be reported back to the planning meetings, so that all Councillors have the same information.
- 9.8 You should not enter a site, which is subject to a proposal other than as part of an official site inspection, even in response to an invitation, as this may give the impression of bias. If you feel it is essential for you to visit the site other than through attending the official site inspection you should speak to the Head of Planning and Housing about your intention to do so and give him the opportunity of an Officer accompanying you. If you do attend site on your own ensure you comply with these good practice rules on site inspections.

10 PUBLIC SPEAKING AT MEETINGS

The Council has a separate protocol that deals with the procedure for Public Speaking at meetings in more detail.

- 10.1 Members of the public and non-committee members should not communicate with you during the planning meeting (orally or in

writing) other than through the scheme for public speaking, as this may give the appearance of bias.

- 10.2 Make sure that you comply with the Council's Protocol for Public Speaking at planning meetings if you are attending the planning meeting other than as a member.
- 10.3 Councillors are entitled to speak at a planning meeting in accordance with the Public Speaking Protocol either as an individual, representative or ward member.
- 10.4 Where you have a personal and prejudicial interest in the application then you may attend and speak in accordance with the protocol but only for the purpose of making representations, answering questions or giving evidence relating to the matter in the same manner as would apply to a normal member of the public. Immediately after doing so you must leave the meeting room whilst the meeting considers the proposal even though members of the public may remain.
- 10.5 Planning Councillors who have pre-determined a matter may also exercise public speaking rights and should consider withdrawing from the meeting room having spoken on a matter to counter any potential suggestion that the remaining members were influenced by your continued presence.

11 OFFICERS

- 11.1 Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst Officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to Officers can only be given through a decision of the Council, the Cabinet, Board or Committee or under delegated powers and not by individual Councillors acting outside those powers.
- 11.2 You can submit views on current applications to the Head of Planning and Housing, which can be incorporated into any committee report.
- 11.3 Officers are part of a management structure and you can discuss a proposal, outside of any arranged meeting, with those Officers who are authorised by the Head of Planning and Housing to deal with the proposal at a Member level or the Head of Planning and Housing. However, you should not seek to do anything that would compromise, or is likely to compromise, the impartiality of Officers who must be free to reach their own conclusion.

- 11.4 Officers who are involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the planning meeting or its Councillors.
- 11.5 Remember the Council's Member/Officer Relations Protocol.

12 DECISION MAKING

The Strategic Planning Board has adopted a separate protocol that deals with the Call in of planning applications in more detail.

- 12.1 Ensure that the planning reasons in your request for a proposal to go before the planning meeting rather than be determined through Officer delegation are recorded and repeated correctly in the report to the planning meeting.
- 12.2 Comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless other material considerations indicate otherwise.
- 12.3 It is important that you reach your decision only after due consideration of all of the information reasonably required upon which to base a decision. You should come to meetings with an open mind and if you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information, and if necessary, defer or refuse the application.
- 12.4 It is vital that you have been present to hear the entire item, including the Officers' introduction to the matter before you vote or take part in the meeting's discussion on a proposal.
- 12.5 Check that the minutes of the meeting record correctly the reasons for the planning meeting's decision to grant, refuse or defer any proposal.
- 12.6 The planning meeting can delegate to the Head of Planning and Housing in conjunction with the Chairman, if necessary, the specific wording of conditions that the planning meeting may wish to add or amend when they are considering an application for approval. An explanation of why the change or addition is required should be given to the planning meeting.
- 12.7 Be aware that if you are proposing, seconding or supporting a decision contrary to Officer recommendations or the development plan that you

need to clearly identify and explain the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and will be recorded and Officers will be able to assist with formal wording. Be aware that you may have to assist in defending a resulting decision by giving evidence in the event of any challenge.

- 12.8 Where necessary, you can consider deferring the determination of sensitive applications that the planning meeting wish to approve against Officer recommendation to the next meeting of the planning meeting to allow Officers to formulate appropriate conditions and provide the planning meeting with any relevant further new information.
- 12.9 Where necessary, you can consider deferring the determination of an application to another meeting if there is a very strong objection from Officers on the validity of reasons for refusal against Officer recommendation, to allow the proposed reasons to be further investigated and form the basis of an updated report to a future meeting.
- 12.10 You should ensure that you are aware of, and comply with the Protocols adopted by the Strategic Planning Board.

13 TRAINING

- 13.1 You should attend the mandatory planning training prescribed by the Council before you participate in decision-making at meetings.
- 13.2 Try to attend any other specialised training sessions provided, as these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and assist you in carrying out your role properly and effectively.

14 INVOLVEMENT IN SECTION 106 AGREEMENTS

- 14.1 The guidance in respect of planning obligations is similar to that of planning conditions in that they must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities should not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by such benefits offered.
- 14.2 Remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or

compensating for loss or damage created by the development, or to mitigate a developments impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.

- 14.3 Requirements of Section 106 Agreements should be considered and discussed at pre-application stage. The Officers will provide advice on general requirements, but if you are aware of any additional potential requirements please refer these to the Head of Planning and Housing as soon as you become aware of them.
- 14.4 The content of Section 106 Agreements needs to be discussed at planning meetings, whether you are a member of the planning meeting or a visiting Member who wishes to speak on the application.
- 14.5 If you feel that a meeting would be useful to clarify issues of content of potential Section 106 agreements, you should ask the Head of Planning and Housing to arrange a meeting with relevant Officers. Participants can be made aware that the discussions will not bind the authority, and that the meeting can be properly recorded on the application file and the record of the meeting disclosed when the application is considered.
- 14.6 Do remember **that it is imperative that** a Ward Councillor's role continues after the completion of the Section 106 Agreement, by assisting Officers in ensuring that the Agreements are complied with. This includes noting when development is being undertaken and assisting Officers in ensuring triggers within Section 106 Agreements are complied with. Ward Councillors can contact Officers for any information required on completed Section 106 Agreements.

15 MONITORING AND REVIEW

- 15.1 The Head of Planning and Housing will report annually to the Portfolio Holder regarding compliance with the arrangements set out in this Planning Protocol and will identify any proposals for amendment in light of issues that have arisen, although any amendments would be required to go through the Council's formal process.
- 15.2 In particular, the Head of Planning and Housing shall monitor the following:-
 - (a) the number of complaints made about breaches of the Planning Protocol and the outcome of those complaints;
 - (b) the number of appeals upheld;
 - (c) any external inspection reports in respect of relevant issues;
 - (d) the level of awareness of the Planning Protocol among Councillors and Officers; and
 - (e) the number of Ombudsman reports finding maladministration by Councillors in the conduct of planning issues.

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CHESHIRE EAST COUNCIL

Standards Committee

Date of Meeting:	25 th July 2011
Report of:	Borough Solicitor and Monitoring Officer
Subject/Title:	Localism Bill and the Introduction of Voluntary Standards Committee and Code of Conduct for Members

1.0 Purpose of the Report

- 1.1 To inform and update Members on developments in respect of anticipated Legislation contained within the Localism Bill which will replace the current Code of Conduct and make related changes to the Standards regimes.

2.0 Decision Requested: That -

- 2.1 Members note the report.
- 2.2 Council be recommended to approve in principle the adoption of a voluntary Code of Conduct and the establishment of a voluntary Standards Committee once the Localism Bill is enacted.
- 2.3 Further reports be brought on progress to future meetings of the Committee.

3.0 Reasons for Recommendations

- 3.1 To advise Members on the progress of the Localism Bill and to make a formal recommendation to Council in respect of the future of the Standards regime within Cheshire East Council.

4.0 Wards Affected

- 4.1 Not applicable.

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications including - Climate change - Health

- 6.1 None identified.

7.0 Financial Implications

- 7.1 None identified.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Localism Bill was published on the 13th December 2010. It is an extensive document covering a wide range of issues and only those which concern the Standards / Conduct area are examined for the purposes of this report. Clauses 15-21 and schedule 4 deal with Standards and Conduct of Local Government Members.

9.0 Risk Management

- 9.1 Under the proposed Legislation the Council will still have a duty to promote and maintain high standards of conduct by both Members and co-opted Members of the Authority. The development of an alternative voluntary Code of Conduct will strengthen governance arrangements and ensure the Authority can demonstrate compliance with the new duty as set out in the Bill.

10.0 Background and Options

- 10.1 The Localism Bill was published on the 13th December 2010. Amongst other matters it proposes the abolition of the Standards regime and sets out new proposals on how Local Authorities will deal with Member conduct and ethical standards issues in the future. Standards for England has confirmed through their website that it is anticipated that they will cease to investigate complaints referred to them in late 2011 and will be formally abolished in early 2012. The Bill is currently going through the committee stage at the House of Lords and is timetabled to reach the report stage in September 2011 and it is anticipated that the Bill will receive Royal Assent in late 2011.
- 10.2 Schedule 4 of the Bill abolishes Standards for England and the first tier tribunal's jurisdiction to hear appeals concerning the conduct of Local Authority Councillors. In future the Secretary of State will not have the power to issue a Model Code of Conduct and there will be no requirement for Local Authorities to establish a Standards Committee.
- 10.3 Local Authorities will still however have a duty to promote and maintain high standards of conduct by Members and co-opted Members of the Authority. The Bill provides that Authorities may adopt a voluntary Code of Conduct for their Members should they wish to do so. Although it is not yet clear how all Authorities will respond it does appear likely that many Authorities will choose to do so. Recently Andrew Stunell (Under Secretary of State for CLG) has stated "the Government therefore believe that if a Local Authority wants to adopt its own Code of Conduct, it should be free to do so. It is almost inconceivable that Authorities will not adopt one, as has been found in the case of a policy for employees".

10.4 The Secretary of State will have power to make regulations which require the Monitoring Officer to establish and maintain a Register of Interest for Members and co-opted Members. The regulations may provide for:-

- Registration of financial or other interests
- Disclosure of relevant interest before taking part in the business of the Authority
- The prevention/ restriction of participation in the business of the Authority if the Member has a relevant interest in the subject matter
- The granting of Dispensations
- Sanctions which the Authority may impose for failing to comply with the regulations

10.5 It is important to note that the Council will not be able to suspend or partially suspend or disqualify an Elected Member.

10.6 A Member or co-opted Member will have committed an offence if he or she fails to register or fails to disclose a financial or other interest as required or takes part in the business of the Authority where the regulations have restricted or prohibited his or her participation. Such an offence will be triable in the Magistrates Court and the maximum fine available will be at Level 5 (currently £5,000). In addition disqualification for up to 5 years from being or becoming a Member or co-opted Member of a relevant Authority will be available to the court as a further sanction. Only the Director of Public Prosecutions will be able to bring a prosecution.

10.7 Transitional provisions will deal with those cases which are still to be determined once the Bill is enacted.

11.0 Local Government Group and ACSeS Paper

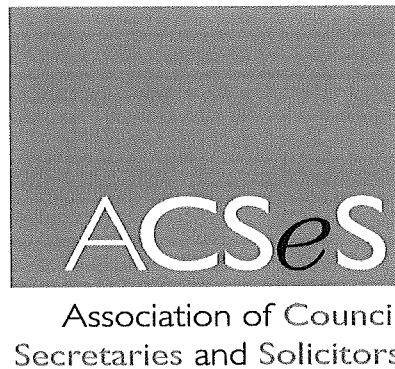
11.1 In February 2011 the Local Government Association (LGA) and Association of Council Secretaries and Solicitors (ACSeS) jointly published a paper on maintaining high ethical standards in Local Government. The paper sets out the methods that will be still be available to Local Authorities to deal with Member conduct following the abolition of the Standards Board regime which include:-

- Fiduciary duties of Councillors
- The requirement for Councillors to continue to register any relevant interests or withdraw for a personal interest
- Civil law remedies (e.g. libel, slander and misfeasance in public office)
- Existing equalities and discrimination law
- Electoral offences (such as undue influence, bribery, postal and proxy voting)
- Criminal law remedies (such as those under the Fraud Act 2006)
- Powers of the Local Government Ombudsman
- Common law remedies (such as findings of bias, predisposition or predetermination)
- Voluntary local Codes of Conduct agreed by Local Authorities

11.2 A copy of the paper is enclosed at Appendix 1

12.0 Improvements and Issues Working Group

- 12.1 On the 22nd February 2011 the Standards Committee held a meeting of the Improvements and Issues Working Group which was set up as an informal group of Members of the Standards Committee in 2009/2010 to look in detail at a variety of issues. It has no formal decision making powers and reports back to the full committee with any findings as appropriate.
- 12.2 At the meeting of the committee on 28th March 2010 Members considered the recommendations of the working group and requested that officers liaise with the Cheshire Association of Local Councils (CHALC) with a view to preparing a draft voluntary Code of Conduct for consultation purposes. In order to facilitate the preparation of a voluntary Code of Conduct Members are requested to formally recommend to full Council that the Authority should adopt a voluntary Code of Conduct and should continue to establish and appoint Members to a Standards Committee which would have overall responsibility for Member conduct issues and with specific responsibility for the new duty placed on all Local Authorities to promote and maintain high standards of conduct by Members and co-opted Members of the Authority.



MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT

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

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

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

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

SUMMARY OF CHANGES PROPOSED IN THE BILL

The proposals outlined in the Bill are as follows:

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

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

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

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

THE NOLAN PRINCIPLES

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

The Seven Principles of Public Life are:-

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

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

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

FIDUCIARY DUTY OF COUNCILLORS

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

REGISTERING INTERESTS

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

CIVIL LAW

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

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

EQUALITIES AND DISCRIMINATION LAW

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

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

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

CRIMINAL LAW

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

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

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

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

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

ELECTORAL OFFENCES

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

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

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

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

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

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

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

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

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

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

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

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

Supplying false information to the Electoral Registration Officer, and

Making fraudulent application for a postal vote

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

AUDIT COMMISSION FOR LOCAL AUTHORITIES

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

LOCAL GOVERNMENT OMBUDSMAN

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

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

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

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

BIAS, PREDISPOSITION AND PREDETERMINATION

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

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

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

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

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

MISCELLANEOUS

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

FURTHER CONTACT

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CHESHIRE EAST

STANDARDS COMMITTEE

Date of meeting: 25 July 2011

Report of: Monitoring Officer

Title: The Bribery Act 2010

1.0 Purpose of the Report

- 1.1 To inform Members of the passage of the Bribery Bill into legislation, its coming into force, content and impact.

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 This report highlights the change in the legislation surrounding bribery and corruption and mitigates the risk that its impact may be overlooked.

6.0 Background/Context

- 6.1 Members will recall that a report was presented to Standards Committee in March 2010 outlining the forthcoming legislation, which was at that formative stage, known as the Bribery Bill. It had been 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 Parliamentary 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 had its Third Reading in the Lords on 8 February 2010. It was then referred to the Commons to a Public Bill Committee and finally received Royal Assent on 8 April 2010. It came into force on 1 July 2011.

6.2 The Act is aimed at providing a more effective legal framework to combat bribery in the public and private sectors. It replaces the former 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. The Act is also aimed at 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.

6.3 The following new offences have been created:

- Two new general offences 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.
- A further separate offence of bribery of a foreign public official.
- A new 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.

6.4 As reported earlier, 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, and since the March 2010 report, separate measures have been introduced in the Localism Bill to reform the Standards regime, which have been reported in other reports. The Bribery Act nonetheless needs to be noted by both elected Members and employees, and future conduct and ethics training, and updates to contract documentation and financial regulations will need to reflect it, as will the separate changes to the Standards regime.

6.5 The Ministry of Justice has published guidance on the new Act at <http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf>

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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