

Standards Committee

Agenda

Date: Monday, 18th June, 2012
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 14 May 2012.

5. **Localism Act 2011: New Code of Conduct** (Pages 5 - 34)

The Standards provisions in relation to the Localism Act 2011 are due to be brought in to force with effect from 01 July 2012, at which time the nationally prescribed Model Code of Conduct for Members will be abolished.

Cheshire East Council and all Town and Parish Councils within the Borough must adopt a new Code of Conduct which sets out the conduct expected of Members when acting in their capacity as an elected Member. The report of the Borough Solicitor contains a draft Code (Appendix 4) which, it is hoped will be adopted across the Cheshire Authorities to include Town and Parish Councils and the Fire Authority.

Members are asked to approve and recommend the Code of Conduct to Council for adoption.

6. **Investigation of Complaints: Procedure** (Pages 35 - 50)

The report of the Borough Solicitor and Monitoring Officer invites the Committee to i) approve and recommend to Council the adoption of a new procedure for the investigation of complaints under the Council's new Code of Conduct as required by the Localism Act 2011; and ii) recommend to Constitution Committee additional Terms of Reference for the Audit and Governance Committee for adoption by Council on 19 July 2012.

7. **Application for Dispensation: Rostherne Parish Council** (Pages 51 - 78)

To consider an application for dispensation from seven Members of Rostherne Parish Council.

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Standards Committee**
held on Monday, 14th May, 2012 at Committee Suite 1 & 2, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

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

Councillors R Fletcher, P Groves, J Hammond, M A Martin, D Marren, H Murray and M Parsons

INDEPENDENT MEMBERS

Mr M Garratt and Mr R Pomlett

PARISH MEMBER

Mrs T Eatough

OFFICERS

Caroline Elwood Borough Solicitor and Monitoring Officer
Julie Openshaw Legal Team Leader (Places, Regulatory and
 Compliance) and Deputy Monitoring Officer
Diane Moulson Committee Officer

APOLOGIES

Councillor F Keegan, Mr I Clark (Independent Member) and Mrs P Barnett and Mrs B Lawton (Parish Representatives).

31 DECLARATIONS OF INTEREST

No declarations of interest were made in any item of business on the agenda.

32 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 matters relevant to its work.

Mrs C Peter Rock was in attendance and addressed the Committee. She spoke of what she perceived to be a failure of duty by Cheshire East Council by the manner in which it had dealt with the closure of Bexton Court, a respite care centre in Knutsford, Cheshire and the call in of the decision, discussed at a meeting of the Adult Social Care Scrutiny Committee on Friday 13 April 2012.

Mrs Peters Rock also made reference to several complaints which she had submitted to the Council, requesting information on their progress.

33 MINUTES OF PREVIOUS MEETING

RESOLVED:

That the Minutes of the meeting held on 26 March 2012 be approved as a correct record.

34 STANDARDS REGIME: DEALING WITH COMPLAINTS UNDER A FUTURE CODE OF CONDUCT

Following the enactment of the Localism Act in November 2011, the Standards Committee had met in its capacity as an Issues and Ideas Working Group on a number of occasions to consider options for the replacement of the current standards regime, the latest discussions having taken place immediately prior to the Committee's meeting.

The Working Group had considered the report of the Borough Solicitor and Monitoring Officer which highlighted a number of emerging issues for consideration. A major factor for Members was that the Regulations, which would underpin much of the new procedure, were still awaiting publication and key information was not yet available. Notwithstanding this, the Working Group had had a robust discussion on matters concerning the Code of Conduct, the draft complaints procedure and recruitment of the Independent Person.

Due to the need to have a new regime in place by 1 July 2012, the Borough Solicitor and Monitoring Officer had submitted a report to the Standards Committee which set out six recommendations to enable a number of issues to be progressed pending publication of the Regulations. Having considered the report, Members expressed the view that they were minded to accept the recommendations subject to the following amendments:

Recommendation 3: The Working Group had discussed a draft procedure for the consideration of complaints, which it had not yet agreed but which could impinge on the terms of reference suggested. Members stated that, to provide some flexibility for its future discussions, the terms of reference should also be referred to as being in draft form.

Recommendation 6: During its discussions, the Working Group had indicated that it favoured the illustrative text published by Communities and Local Government Minister, Bob Neill MP as its preferred Code of Conduct. The Borough Solicitor and Monitoring Officer reported that work was ongoing with other authorities in the Cheshire sub-region, including the Cheshire Association of Local Councils and Cheshire Fire Authority with a view to all adopting the same code. As this was an aspiration rather than a mandatory requirement, it was suggested that the following words be inserted in the second line of the recommendation so that the paragraph would now read "*conduct with a view to it being adopted* across the Cheshire Authorities which will include Town and Parish Councils and the Fire Authority".

RESOLVED:

That the Standards Committee recommends to Council that:-

- 1 The Council's existing model code of conduct for elected members and the procedure for the investigation of complaints under the code remain in force on an interim basis until the next meeting of the Council in July 2012 when further recommendations will be brought forward for the adoption of a new code of conduct;
- 2 The Audit and Governance Committee establish on an ad-hoc basis, a sub-committee with delegated powers to deal with standards issues with effect from the next meeting of the Council in July 2012;
- 3 The draft terms of reference at Appendix (i) of the report submitted be adopted in respect of the Audit and Governance sub-committee;
- 4 The Monitoring Officer be given delegated authority to undertake a recruitment process for up to three Independent Persons as required under Section 28(7) of the Localism Act 2011 once details of the transitional provisions have been received;
- 5 That, if necessary in order to comply with statutory timescales, the Council's urgency sub-committee shall approve the provisional appointment of the Independent Persons subject to formal ratification by full Council at the July meeting; and
- 6 Members note that work is ongoing to draft a new standards code of conduct with a view to it being adopted across the Cheshire authorities which will include Town and Parish Councils and the Fire Authority.

The meeting commenced at 3.30 pm and concluded at 3.45 pm

Mr N Briers (Chairman)

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CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting: 18 June 2012
Report of: Borough Solicitor / Monitoring Officer
Subject/Title: Localism Act 2011 – New Code of Conduct

1.0 Report Summary

- 1.1 The report asks Members to approve and recommend to Full Council the adoption of a new Code of Conduct as required by the provisions of the Localism Act 2011.

2.0 Decision Requested

- 2.1 That subject to consideration of those issues raised in paragraph 12, the draft Code of Conduct at Appendix 4 of the report be recommended for adoption by the Council on 19 July 2012.

3.0 Reasons for Recommendations

- 3.1 To comply with the provisions of the Localism Act 2011 which requires the Council to adopt a Code of Conduct and to have appropriate procedures in place to deal with any breaches with effect from July 2012.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 The Act places a statutory duty upon the Council to promote and maintain high standards of conduct amongst its own elected Members and any co-opted Members. Strong ethical governance is critical to the corporate governance of the Authority and also supports the Council's decision making processes across the organisation.

7.0 Financial Implications

- 7.1 Final cost of implementation of the new legislation will depend on the local arrangements approved by the Council. However it should be noted that the Act intended that the new procedure should be cheaper and more effective. Accordingly it is anticipated that costs will be met from existing resources.

8.0 Legal Implications

- 8.1 The Localism Act 2011 was enacted in November 2011 but its implementation is being phased in. The provisions in relation to the replacement of the current Standards Regime are due to be brought in to force with effect from 01 July 2012. Draft regulations are now available which define the new "Disclosable Pecuniary Interests" which in future Members will be expected to register.

9.0 Risk Management

- 9.1 It is important for the corporate governance of the Council that it expects the highest standards of conduct from Elected Members. If the Council fails to adopt a Code of Conduct which is fit for purpose then there are risks to the Council from a reputational management viewpoint and also to the integrity of the Council's corporate governance and decision making process.

10.0 Background

- 10.1 The Localism Act 2011 was enacted on 15 November 2011. Under the Act the Council has a statutory duty to promote and maintain high standards of conduct by both its Elected Members and co-opted Members. All Town and Parish Councils within the area are under the same duty for their Town or Parish Members.
- 10.2 The Nationally prescribed Model Code of Conduct for Members is abolished however, Cheshire East Council itself and all Town and Parish Councils within the Borough must adopt a Code of Conduct which sets out the conduct expected of Members when acting in their capacity as an Elected Member.
- 10.3 Any Local Code must be consistent with the Nolan principles of
- Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

- 10.4 Authorities have been waiting for the regulations to be made by the Secretary of State which would define the new “Disclosable Pecuniary Interests”. Failure to register or disclose such interests will become a criminal offence. Once this category of interest is known the Council needs to consider what other pecuniary interests and / or non pecuniary interests they require Members to register and disclose. The register can then be finalised and any relevant provision in the Local Code confirmed.
- 10.5 On 16 May 2012 Annual Council agreed that the current Code of Conduct for Members would continue on an interim basis until the new Code is adopted under the Act. This transitional arrangement was agreed as the next Full Council meeting is scheduled on 19 July shortly after the Act’s anticipated implementation date of 1 July 2012.

11.0 Draft Code of Conduct

- 11.1 At the previous meeting of the Issues and Ideas Working Group on 14 May 2012 Members considered the two documents produced by the Department of Communities and Local Government and the Local Government Association. In addition on 17 May 2012 the National Association of Local Council’s (NALC) issued a template Code for Parish Councils. NALC is recommending that Parish Councils do not adopt the LGA Code. Copies of the various documents are attached as follows:
- illustrative text produced by DCLG (Appendix 1)
 - the Model Code of Conduct produced by the LGA (Appendix 2)
 - the NALC draft for Town and Parish Councils (Appendix 3)
- 11.2 Members will be aware that work has been ongoing to draft a new standard Code of Conduct with a view to it being adopted across the Cheshire Authorities to include Town and Parish Councils and the Fire Authority. This draft is attached at Appendix 4 and has been written to:
- Be consistent with the Nolan principles and develop these into Member obligations
 - Balance “light touch regulation” with some clearer guidance to Members as to what they may or may not do
 - Include the obligations set out in the CLG text
 - reflect an initial draft Code produced by the Cheshire Fire Authority based on the current 2007 Model Code of Conduct and the relevant Standards for England’s guidance
 - Include those behaviours that Members should seek to uphold as set out in the LGA template.
- 11.3 At the time of writing the report the regulations on “Disclosable Pecuniary Interests” are issued only in draft form but have been included as an appendix (5). This may require further amendment.

12.0 Issues to consider

- 12.1 In order to reflect requirements within the current Code of Conduct “confidential information” is referred to at paragraph 5 (openness paragraph) and a supplementary paragraph 7 “respect for others” has been included. Both these items are seen as important issues to capture within any Code which the Council could be recommended to adopt.
- 12.2 Paragraph 5 of the Council’s current Code of Conduct provides that Members must not bring their Office or the Authority into disrepute while acting in their official capacity. None of the draft Codes refer to the topic of “disrepute” and experience suggests that complaints under this heading have often been based upon wider dissatisfaction about a Council decision or action rather than necessarily specific allegations about the behaviour of a Member. This requirement has not been included in the current Cheshire Code.
- 12.3 There is no requirement in the Act for a Member to withdraw from a meeting during an item of business where they have a pecuniary interest in that item or have disclosed such an interest although participation in the discussion or voting will be a criminal offence. Under Section 31(10) of the Act the Council may agree to provide under the rules of conduct in the Constitution that Members should be excluded from meetings where they have a disclosable pecuniary interest. This would prevent any perception that Members were able to influence meetings through their continued presence. Members may wish to consider whether this is a recommendation they would wish to make.
- 12.4 The rules of conduct in the Constitution (Standing Orders) could also require Members to disclose registered interests at meetings as this is not required in all circumstances under the Localism Act. If this was the case then these requirements should be referred to in the Local Code.
- 12.5 There is also no requirement in the Act for Members to keep their Register of Members Interests up to date. At present Members must notify changes to their Register of Interests within 28 days. Again this could be included as a requirement in Standing Orders.
- 12.6 The draft regulations do not require Members to disclose any gifts or hospitality. This was a requirement of previous codes and it is recommended that this provision should be in any new code. Accordingly Paragraph 9 of the Local Code states that members should declare within 28 days any gifts or hospitality received with a value in excess of £100.
- 12.7 Subject to consideration of these issues and to receipt of the relevant regulations as referred to above, Members are requested to recommend to Full Council that the Code of Conduct at Appendix 4 of the report is recommended for adoption by Full Council.

13.0 Access to Information

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

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11 April 2012

To all Local Authority Leaders

Dear Colleague,

I am writing to let you know that my Department is today making available an illustrative text for a code of conduct for members and co-opted members of local authorities. This text provides local authorities with an example of what a local authority's code of conduct for the new standards arrangements might look like.

We have made provision in the Localism Act 2011 for the abolition of the Standards Board regime, and the Standards Board itself was abolished on 31 March. The Act also makes provision for new standards arrangements including the involvement of an independent person in allegations of misconduct, a new criminal offence for failing to declare or register interests, and the requirement for local authorities to adopt a code of conduct that is consistent with the seven 'Nolan' principles of standards in public life; selflessness, integrity, objectivity, accountability, openness, honesty and leadership, as well as making provision for the registration and disclosure of pecuniary and non-pecuniary interests.

The model code of conduct was a key part of the Standards Board regime, a top-down, centrally imposed regime that became a vehicle for vexatious complaints. Moving to new arrangements means that local authorities will be free to discard the model code and adopt their own, Nolan compliant, code. In order to give local authorities an idea of what a Nolan compliant model code featuring provisions about pecuniary and not pecuniary interests might look like, I am attaching an example. As you will see, it is very different to the model code that formed part of the Standards Board regime, while clearly requiring that members act in a manner that promotes and maintains high standards of conduct.

Together, these measures will ensure high standards in public life, prevent corruption, and put a stop to petty, vexatious complaints that consume local authority resources and damage the reputation of local government.

We have produced this example of a local code to provide certainty to local authorities who wish to adopt a lighter touch code compared to the centralist, top-down model code, and to help local authorities (especially parish councils) who might otherwise consider they need to commit valuable resource to creating a code to ensure compliance with the Localism Act. I hope you find the example code of conduct helpful.

A handwritten signature in blue ink, appearing to read "Bob Neill", with a large, sweeping flourish at the end.

BOB NEILL MP

Illustrative text for code dealing with the conduct expected of members and co-opted members of the authority when acting in that capacity

You are a member or co-opted member of the [name] council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.

You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

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Template Code of Conduct (LGA)

As a member or co-opted member of *[X authority]* I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

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 material 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 that 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.

The Act further provides for registration and disclosure of interests and in *[X authority]* this will be done as follows: *[to be completed by individual authorities]*

As a Member of [*X authority*], my conduct will in particular address the statutory principles of the code of conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the [*county*][*borough*][*Authority's area*] or the good governance of the authority in a proper manner.
- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

NALC's template code of conduct for parish councils

As explained in paragraph 13 of LTN 80 – 'Members' conduct and the registration and disclosure of their interests (England)', NALC has produced a template code of conduct for parish councils because:

- it does not recommend that parish councils adopt the LGA's template code of conduct and
- parish councils may not want to draft their own or adopt their principal authority's code of conduct.

Unlike the LGA's template code of conduct, the attached NALC template code of conduct has the following features:

1. It uses concise and clear language to define members' obligations in respect of their conduct.
2. It incorporates members' mandatory obligations in respect of disclosable pecuniary interests. These are yet to be defined by regulations which are expected to be made before 1 July 2012 and will be inserted in Appendix A of the NALC template.
3. It sets out other pecuniary interests and non pecuniary interests in Appendix B of the NALC template about which members have obligations with regard to registration, disclosure, and speaking at meetings.
4. It describes the circumstances in which a parish council may grant a dispensation for members to participate and vote on a matter at a meeting.
5. It accommodates variations to be made to it except in relation to members' mandatory obligations about disclosable pecuniary interests in Appendix A. Substantive amendments to the NALC template code of conduct are not recommended because it establishes (i) the minimum standards for members' conduct which are consistent with the Nolan principles of conduct in public life and (ii) a proportionate range of pecuniary and non pecuniary interests which members are subject to.

It is likely that some of the interests presently included in Appendix B of the NALC template will constitute disclosable pecuniary interests, prescribed by regulation, and that any such interests will need to be included in Appendix A. NALC will publish the final version of its template code of conduct after regulations which define disclosable pecuniary interests have been made.

This briefing was issued by Meera Tharmarajah, Solicitor and Head of Legal Services

NALC template code of conduct for parish councils

Introduction

Pursuant to section 27 of the Localism Act 2011, X [Parish/Town/Village/Community/Neighbourhood] Council ('the Council') has adopted this Code of Conduct to promote and maintain high standards of behaviour by its members and co-opted members whenever they conduct the business of the Council including the business of the office to which they were elected or appointed or when they claim to act or give the impression of acting as a representative of the Council.

This Code of Conduct is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

Definitions

For the purposes of this Code, a 'co-opted member' is a person who is not a member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council, and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

For the purposes of this Code, a 'meeting' is a meeting of the Council, any of its committees, sub-committees, joint committees or joint sub-committees.

For the purposes of this Code, and unless otherwise expressed, a reference to a member of the Council includes a co-opted member of the Council.

Member obligations

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations.

1. He/she shall behave in such a way that a reasonable person would regard as respectful.
2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.
3. He/she shall not seek to improperly confer an advantage or disadvantage on any person.
4. He/she shall use the resources of the Council in accordance with its requirements.
5. He/she shall not disclose information which is confidential or where disclosure is prohibited by law.

Registration of interests

6. Within 28 days of this Code being adopted by the Council, or the member's election or the co-opted member's appointment (where that is later), he/she shall register all interests which fall within the categories set out in Appendices A and B.
7. Upon the re-election of a member or the re-appointment of a co-opted member, he/she shall within 28 days re-register any interests in Appendices A and B.
8. A member shall register any change to interests or new interests in Appendices A and B within 28 days of becoming aware of it.

9. A member need only declare on the public register of interests the existence but not the details of any interest which the Monitoring Officer agrees is a 'sensitive interest'. A sensitive interest is one which, if disclosed on a public register, could lead the member or a person connected with the member to be subject to violence or intimidation.

Declaration of interests

9. Where a matter arises at a meeting which relates to an interest in Appendix A the member shall not participate in a discussion or vote on the matter. He/she only has to declare what his/her interest is if it is not already entered in the member's register of interests or if he/she has not notified the Monitoring Officer of it.
10. Where a matter arises at a meeting which relates to an interest in Appendix A which is a sensitive interest, the member shall not participate in a discussion or vote on the matter. If it is a sensitive interest which has not already been disclosed to the Monitoring Officer, the member shall disclose he/she has an interest but not the nature of it.
11. Where a matter arises at a meeting which relates to an interest in Appendix B, the member shall withdraw from the meeting. He/she may speak on the matter before withdrawing only if members of the public are also allowed to speak at the meeting.
12. A member only has to declare his/her interest in Appendix B if it is not already entered in his/her register of interests or he/she has not notified the Monitoring Officer of it or if he/she speaks on the matter before withdrawing. If he/she holds an interest in Appendix B which is a sensitive interest not already disclosed to the Monitoring Officer, he/she shall declare the interest but not the nature of the interest.
13. Where a matter arises at a meeting which relates to a financial interest of a friend, relative or close associate, the member shall disclose the nature of the interest and

withdraw from the meeting. He/she may speak on the matter before withdrawing only if members of the public are also allowed to speak at the meeting. If it is a 'sensitive interest' the member shall declare the interest but not the nature of the interest.

Dispensations

14. On a written request made to the Council's proper officer, the Council may grant a member a dispensation to participate in a discussion and vote on a matter at a meeting even if he/she has an interest in Appendices A and B if the Council believes that the number of members otherwise prohibited from taking part in the meeting would impede the transaction of the business; or it is in the interests of the inhabitants in the Council's area to allow the member to take part or it is otherwise appropriate to grant a dispensation.

Appendix A

Such interests, as prescribed by regulations, are.....

Appendix B

[Unless they are interests prescribed by regulation for inclusion in Appendix A] any interest which relates to or is likely to affect:

- (i) any body of which the member is in a position of general control or management and to which he/she is appointed or nominated by the Council;
- (ii) any body—
 - (a) exercising functions of a public nature;
 - (b) directed to charitable purposes; or
 - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)of which the member of the Council is a member or in a position of general control or management;
- (iii) any employment or business carried on by the member;
- (iv) any person or body who employs or has appointed the member;
- (v) any person or body, other than the Council, who has made a payment to the member in respect of his/her election or any expenses incurred by him/her in carrying out his/her duties;
- (vi) any person or body who has a place of business or land in the Council's area, and in whom the member has a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

- (vii) any contract for goods, services or works made between the member's Council and the member or a firm in which he/she is a partner, a company of which he /she is a remunerated director, or a person or body of the description specified in paragraph (vi);
- (viii) any gifts or hospitality worth more than an estimated value of £50 which the member has received by virtue of his or her office.
- (ix) any land in the Council's area in which the member has a beneficial interest;
- (x) any land where the landlord is the Council and the member is, or a firm in which the member is a partner, a company of which the member is a remunerated director, or a person or body of the description specified in paragraph (vi), is the tenant;
- (xi) any land in the Council's area for which the member has a licence (alone or jointly with others) to occupy for 28 days or longer.

APPENDIX 4

Cheshire East Council

CODE OF CONDUCT FOR MEMBERS – DRAFT 2012

Cheshire East Council has adopted this Code of Conduct to promote and maintain high standards of conduct and underpin public confidence in the authority and its members and co-opted members.

The Code has been adopted under section 27 of the Localism Act 2011 and is based on the following core principles of public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It sets out general obligations about the standards of conduct expected of members and co-opted members of the authority, together with provisions about registering and declaring interests.

A General obligations

Whenever you are acting as a member or co-opted member of this authority you must act in accordance with the following obligations:

Selflessness

- 1 You must act solely in the public interest and must never use or attempt to use your position improperly to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, friends or close associates.

Integrity

- 2 You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

You should exercise independent judgement. Although you may take account of the views of others (including a political group), you should reach your own conclusions on the issues before you and act in accordance with those conclusions.

Objectivity

- 3 When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You should remain objective, listen to the interests of all parties appropriately and impartially and take all relevant information, including advice from the authority's officers, into consideration.

Accountability

- 4 You are accountable to the public for your decisions and you must co-operate fully with whatever scrutiny is appropriate to your office, including by local residents.

Openness

- 5 (a) You must be as open and transparent as possible about your decisions and actions and the decisions and actions of your authority. You should be prepared to give reasons for those decisions and actions. You must not prevent anyone getting information that they are entitled to by law.

(b) Where the law or the wider public interest requires it, you must not disclose confidential information or information to which public access is restricted.

Honesty

- 6 (a) You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests as set out in Section B below.

(b) You must only use or authorise the use of the authority's resources in accordance with the authority's requirements. You must, when using or authorising the use by others of such resources, ensure that they are used for proper purposes only. Resources must not be used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986

Respect for others

- 7 (a) You must treat others with respect. You should engage with colleagues and staff in a manner that underpins mutual respect, essential to good local government.

(b) You must not do anything which may cause your authority to breach any equality laws.

(c) You must not compromise or attempt to compromise the impartiality of anyone who works for, or on behalf of, the authority.

(d) You must not bully any person, including other councillors, officers of the authority or members of the public.

Leadership

- 8 You must promote and support high standards of conduct when serving as member or co-opted member of the authority, by leadership and example, championing the interests of the community.

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

Gifts and Hospitality

- 9 You must within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £100 which you have accepted as a member from any person or body other than the authority. The Monitoring Officer will place your notification on a public register of gifts and hospitality.

B Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then you must disclose the interest to any meeting of the authority at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

*A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

Extract from the draft Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

- The following categories are Disclosable Pecuniary Interests
- "M" denotes the relevant Elected Member

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(1).
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.

(1) 1992 c. 52.

Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

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STATUTORY INSTRUMENTS

2012 No.

LOCAL GOVERNMENT, ENGLAND
**The Relevant Authorities (Disclosable Pecuniary Interests)
Regulations 2012**

Made - - - - *****

Laid before Parliament *****

Coming into force - - *1st July 2012*

The Secretary of State, in exercise of the powers conferred by sections 30(3) and 235(2) of the Localism Act 2011(a), makes the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and shall come into force on 1st July 2012.

(2) In these regulations—

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” includes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means the person M referred to in section 30 of the Act;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000(b) and other securities of any description, other than money deposited with a building society.

(a) 2011 c.20.

(b) 2000 c. 8.

Specified pecuniary interests

2. The pecuniary interests which are specified for the purposes of section 30(3) of the Localism Act 2011 are the interests specified in the Schedule to these Regulations.

Signed by authority of the Secretary of State for Communities and Local Government

Name
Parliamentary Under Secretary of State
Department for Communities and Local Government

Date

SCHEDULE

Regulation 2

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 ^(a) .
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.

^(a) 1992 c. 52.

Securities

Any beneficial interest in securities of a body where—

(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and

(b) either—

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 30 of the Localism Act 2011 provides that a member or co-opted member of a local authority and certain other authorities, on taking office, must notify the authority's monitoring officer of any disclosable pecuniary interest which that person has at the time of notification. These Regulations specify what is a pecuniary interest. Section 30(3) sets out the circumstances in which such an interest is a disclosable interest.

A full impact assessment has not been produced for these Regulations as no impact on the private or voluntary sectors is foreseen.

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CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting: 18 June 2012
Report of: Borough Solicitor / Monitoring Officer
Subject/Title: Localism Act 2011 – Procedure for Complaints
under the new Code

1.0 Report Summary

- 1.1 The report asks Members to approve and recommend to Full Council the adoption of a new procedure for investigating complaints under the Council's new Code of Conduct as required by the Localism Act 2011.

2.0 Decision Requested: That

- 2.1 The procedure relating to the investigation of complaints under the new Code of Conduct at Appendix 1 of the report together with the criteria used to evaluate complaints at Appendix 3 is recommended for adoption by the Council on 19 July 2012.
- 2.2 Members recommend that the Constitution Committee at its meeting on the 5 July 2012 approve the Terms of Reference set out at Appendix 4 for formal adoption by the Council on 19 July 2012

3.0 Reasons for Recommendations

- 3.1 To comply with the provisions of the Localism Act 2011 which requires the Council to have in place appropriate procedures to deal with any breaches of the new Code of Conduct with effect from July 2012.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 Strong Ethical Governance, including a robust and transparent policy for investigation of alleged breaches of the Code of Conduct, is critical to the Corporate Governance of the Council and also underpins the Council's decision making processes as a whole.

7.0 Financial Implications

- 7.1 Costs of investigating breaches are dependent upon the number of complaints received which are referred for investigation, however at the moment it is anticipated that costs will be met from existing resources.

8.0 Legal Implications

- 8.1 The Localism Act 2011 is being implemented over a phased period of time. The provisions in relation to the replacement of the current Standards regime are due to be brought into force with effect from 01 July 2012. The Act requires that the Council not only adopts a Code of Conduct but has in place effective procedures to enable the investigation of any complaints or allegations that a Member has been in breach of the Code of Conduct.

9.0 Risk Management

- 9.1 If the Council fails to adopt an appropriate process for the investigation of complaints which is not only fit for purpose, but robust and transparent, then there are risks to the Council not only from a reputational management viewpoint but also to the integrity of the Council's Corporate Governance and decision making processes as a whole.

10.0 Background

- 10.1 Under the Localism Act 2011 the Council has a statutory duty to promote and maintain high standards of conduct by both its elected Members and co-opted Members. The Council must adopt a Code of Conduct which sets out the conduct which is expected of Members whenever they act in their capacity as an elected Member and must also have in place a suitable procedure at a local level to investigate complaints that a Member is in breach of the new Code of Conduct.
- 10.2 The Borough Council is also responsible for investigating any allegations that a Town or Parish Councillor is in breach of their adopted Code of Conduct.
- 10.3 A suggested draft procedure is set out at Appendix 1 which provides for:-
- An initial assessment of the complaint by 3 Members plus the Independent Person within 21 days
 - The Panel may either take no action/ refer to the Group Leader for informal action / refer to Police or other regulatory agency / refer for local resolution / refer for external investigation
 - There is no right of appeal against the decision of the Initial Assessment Panel

- Under the local resolution option the Complainant and Subject Member plus up to one witness each would attend before an ad hoc panel of 3 elected Members together with the Independent Person
- The Local Resolution Panel will attempt to resolve issues without the need for a formal investigation and Hearing
- Matters may be referred from the Local Resolution Panel for formal investigation should it become apparent that issues are more complex or serious
- Any external investigation should be concluded within 8 weeks where practicable. If the investigation finds evidence of failure to comply with the Code of Conduct the Standards Hearing sub committee will conduct a Hearing to determine the complaint

10.4 Members are requested to approve the policy set out at Appendix 1. A flow chart summarising the procedure is attached at Appendix 2 for Members assistance.

11.0 Standard Documents

11.1 Any Complainants will be asked to complete the Council's standard complaint form setting out in sufficient detail why the Complainant considers there has been failure to comply with the relevant Code of Conduct. This is the Council's current procedure and allows consistency of information to be placed before the initial assessment panel.

11.2 Complainants and Subject Members will also be asked to complete a standard form prior to the Local Resolution of any complaint. This is to allow basic information to be exchanged between the Complainant and Subject Member and for the panel itself to have sufficient information prior to the Local Resolution meeting. It should be noted that the Complainant and Subject Member may both appear before the Panel and bring one witness each.

11.3 Members are also asked to approve at Appendix 3 the criteria to be used at the initial Assessment meeting which helps determine which of the available options the panel should consider. This is based on the criteria used previously when assessing complaints under the current code.

12.0 Terms of Reference

12.1 Members are asked to approve the Terms of Reference at Appendix 4 of

- Audit and Governance Committee
- the Initial Assessment Panel
- the Local Resolution Panel
- the Hearing sub-committee

Constitution Committee at its meeting on 5 July 2012 will be asked to recommend that the Council approves their formal adoption.

- 12.2 Members are asked to note that if a Member has sat on a Local Resolution Panel which subsequently refers the matter for external investigation then he or she should not subsequently sit on any Hearings sub-committee.

13.0 Independent Person

- 13.1 The Act requires that the Authority appoints 1 or more Independent Persons whose:

- Views must be sought and taken into account by the Authority before it makes a finding that any Member has failed to comply with its Code of Conduct or impose any sanction
- Views may be sought on whether to investigate a complaint and how to deal with a particular allegation
- In addition any Member against whom an allegation has been made (including a Town and Parish Councillor) may consult him or her regarding the allegation

- 13.2 The Act itself prevents any person who has been a Member or a co-opted Member of Cheshire East Council in the last 5 years from being appointed as an Independent Person. Accordingly current or past Independent Members of the Council's Standards Committee are prevented from being Independent Persons for the same Council under the 2011 Act. However draft regulations are now available setting out transitional arrangements which will enable the Council to have the option to appoint persons who have previously been Independent Members as the new Independent Persons in view of the loss of skill and expertise which would otherwise occur.

- 13.3 At the May Council meeting the Monitoring Officer was given delegated authority to undertake a recruitment process for up to 3 Independent Persons as required under Section 28(7) of the Localism Act 2011 once details of the transitional provisions had been received.

- 13.4 Accordingly a job description and person specification has been drafted in order to recruit up to 3 Independent Persons. The closing date is for applications is 25 June 2012 with interviews scheduled for the week commencing 2 July 2012.

- 13.5 Full Council must approve the appointment of the new Independent Persons. At Annual Council on 16 May 2012 Council indicated that if necessary in order to comply with statutory timescales the Council's Urgency sub-committee should approve the provisional appointment of Independent Persons subject to formal ratification by Full Council at the July meeting. Given the lateness of the regulations being made this may not be necessary.

14.0 Summary

- 14.1 Members are asked to note and approve the proposed procedure for the investigation of complaints under the new Code of Conduct and note that this procedure will apply to any complaints against Town and Parish Councillors as well as Cheshire East Councillors.

15.0 Access to Information

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

Name: Caroline Elwood
Designation: Borough Solicitor
Tel No: 01270 685882
Email: caroline.elwood@cheshireeast.gov.uk

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Complaints under the New Code – Procedure

Making a Complaint

1. Complaints must be submitted to the Councils Monitoring Officer using the Councils standard Complaint Form setting out in sufficient detail why the Complainant considers there has been a failure to comply with the relevant Code of Conduct.
2. The Monitoring Officer will acknowledge receipt within 5 working days
3. The Subject Member will not normally be told there has been a complaint until an initial assessment of the complaint has been undertaken.

Initial Assessment / Gateway Procedure

4. The Monitoring Officer will refer the complaint to the Audit and Governance Initial Standards Assessment Panel within 21 days of receipt for an initial assessment
5. After consulting the Independent Person the Panel will determine whether to;
 - **Take no action**
 - **Refer the matter to the relevant Group Leader for informal action** (NB for complaints against Cheshire East Councillors only and not generally an appropriate option if the complaint is from a member of the public)
 - **Refer the matter for Local Resolution**
 - **Refer the matter for formal investigation by an external investigator**
 - **Refer the matter to the Police or other relevant Regulatory Agency**
6. The Initial Assessment Decision on what action to take on a complaint is final. There is no right to have the decision reviewed.
7. The Complainant and Subject Member will be informed of the outcome of the decision.
8. Meetings of the Panel will not be open to the public.

Local Resolution

9. The Complainant and Subject Member will be advised that the Initial assessment panel have concluded that the complaint is suitable for Local Resolution without the need for a formal investigation and full hearing and will be invited to submit written representations outlining the nature of the dispute using a standard template to ensure consistency.
10. Both the Complainant and Subject Member will be able to bring one witness to accompany them before an ad hoc panel of three elected members together with the Independent Person.
11. The Panel will consider the written representations and hear any relevant evidence before reaching a determination and considering whether any sanction is appropriate.
12. The Panel may refer the matter for a formal investigation should it become apparent that the issues are more complex or serious than was originally anticipated.
13. Local Resolution Panels will normally meet in public and will be convened within 28 days of the decision of the Initial Assessment Panel subject to availability of the relevant parties.
14. Both the Complainant and Subject Member will receive copies of each others written statements and details of any witness to be called 5 working days before the Panel meets. Copies will be made available to three Panel members and Independent Person at the same time.
15. There is no right of Appeal from the decision of the Local Resolution Panel which is intended to resolve less serious complaints speedily and cost effectively.

External Investigation

16. The matter will be referred for an independent investigation by a suitably experienced investigative officer. In most cases the investigation is expected to be completed within 8 weeks of the referral.
17. The report of the independent investigator should incorporate the following:-
 - **Executive Summary** - An outline of the allegation, who made it, the relevant provisions of the Code and whether there has been a breach.
 - **Member's official details** - A brief outline of when the Member was elected, term of office, details of committees served on and any relevant training.

- **Complainants details and any relevant background**
- **Summary of facts and evidence gathered-** A summary of the facts and evidence gathered highlighting facts which are in dispute and setting out the investigating officer's conclusions based on the balance of probabilities
- **Reasoning as to whether there has been a failure to comply with the Code and investigator's findings –** Dealing with each allegation in turn an outline of whether the investigating officer considers there has been a breach and any aggravating or mitigating facts.
- **Schedule -** a list of witnesses interviewed and copies of relevant documents

18. A copy of the draft report will be circulated to the subject member and complainant to check for factual accuracy.

19. The Investigating Officer will take into account any comments received before sending the final report to the Monitoring Officer.

External Investigation – No Evidence of Failure to comply

20. Where the report concludes that there is no evidence of failure to comply with the Code of Conduct the Monitoring Officer will review the report in consultation with the Independent Person.
21. If satisfied with the conclusions the Complainant, Subject Member and the Town or Parish Clerk (if appropriate) will be notified within 15 working days that no further action will be taken and will be given a copy of the final report.
22. If after consultation with the Independent Person the Monitoring Officer is not satisfied that the investigation has been concluded properly she may ask the Independent Investigator to reconsider the report and / or refer the matter to the Standards Hearings sub committee for a formal hearing of the issues.

External Investigation – Evidence of Failure to comply

23. Where the report concludes that there has been a failure to comply with the provisions of the Code of Conduct the matter will be referred to the Standards Hearings sub committee who will conduct a hearing to determine if the subject member has failed to comply with the provisions of the Code and if so what sanction is appropriate.

24. The Hearings sub committee will consider the matter afresh having regard to the Investigators findings and all relevant evidence presented by the Complainant and subject member.
25. The Independent Person will be present at the hearing and will be consulted and his/ her views taken into account before any decision is reached.
26. The Hearings sub committee will announce their decision at the end of the hearing and a formal Decision Notice will be prepared and sent to all relevant parties within 5 working days. The Decision Notice will be published on the Councils website and reported to the next meeting of the Audit and Governance Committee.
27. Meetings of the Hearings sub committee will be subject to the normal rules for publication of agendas and access to information.
28. There is no right of appeal from the decision of the Standards Hearings sub committee.

Independent Person

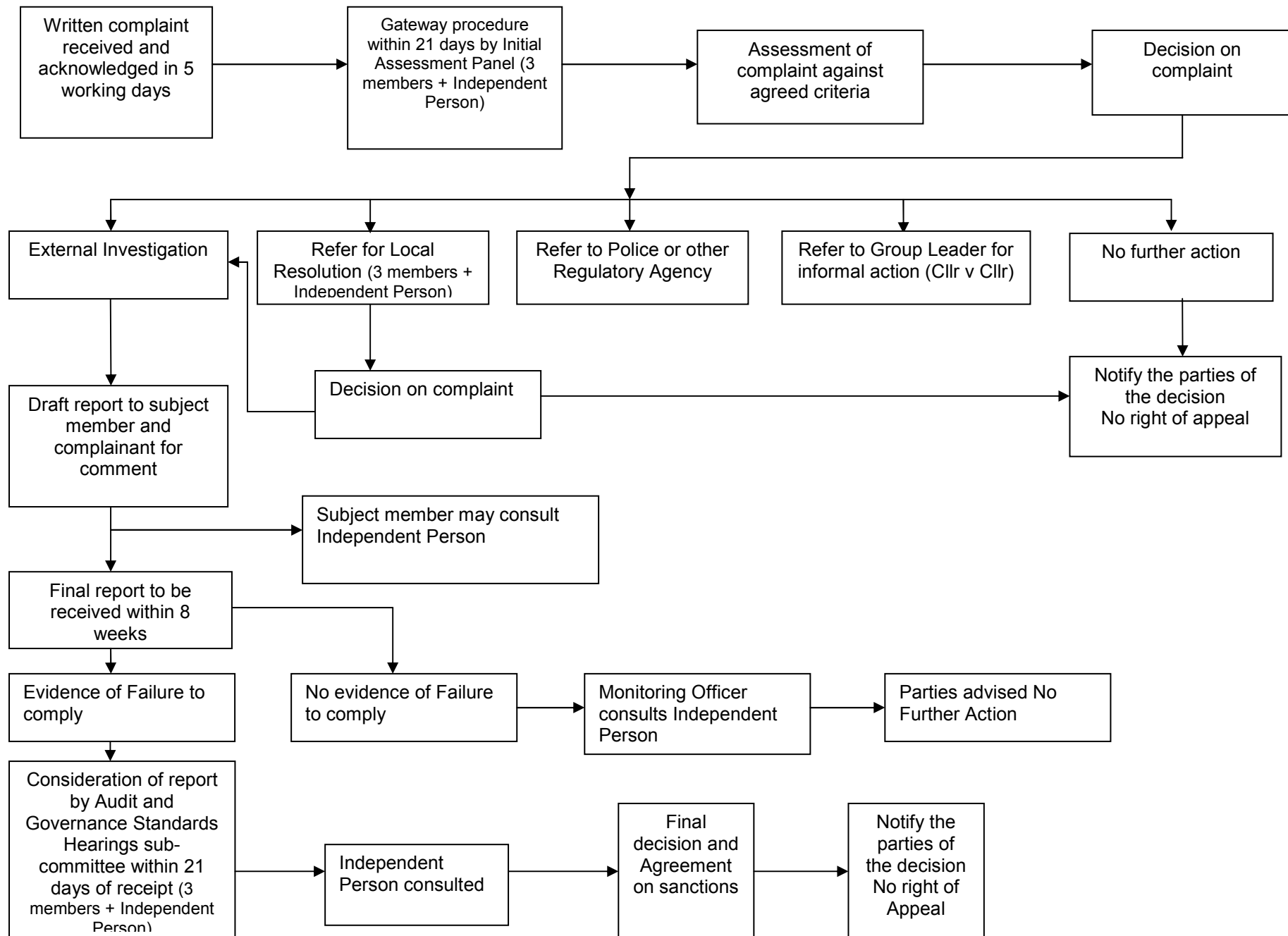
29. The Subject Member has the opportunity to consult the Independent Person at any stage in the investigation process and prior to the final determination.

Membership of Panels / sub committees

30. If a Member has sat on a Local Resolution Panel which refers a matter for external investigation then he or she may not subsequently sit on any hearings sub committee.

June 2012

Procedure for Complaints



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ASSESSMENT CRITERIA**Initial Tests**

Before any assessment of a complaint begins, the Initial Assessment Panel must be satisfied that the complaint meets the following tests:

- It is a complaint against one or more named Members of Cheshire East Council or a Town or Parish Council within Cheshire East Borough;
- The named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- The complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

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

If the above tests are met the Panel will have regard to the following criteria:

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

The Panel has the option to make the following decisions on any complaint ;

- **That No Further Action be Taken in respect of the matter**
- **That the Matter be Referred to the Group Leader for Informal Action** – this will normally be only where the complaint relates to Cheshire East Councillors and will not generally be appropriate if the complaint is from a member of the public
- **That the Matter is Referred for Local Resolution** – this enables less serious complaints to be resolved speedily and cost effectively. The matter may subsequently be referred for formal investigation should it become apparent that the issues are more serious than was originally anticipated
- **That the Matter is Referred for Formal Investigation by an External Investigator-** this enables the most serious allegations to be thoroughly investigated. In most cases the Investigator will be expected to complete his investigation and produce a written report within 8 weeks of the referral.
- **That the Matter is Referred to the Police or other relevant Regulatory Agency** – this would be appropriate where it appears a criminal offence or breach of regulations may have taken place and in particular any failure to declare a Pecuniary Interest under s 30 -31 of the Localism act 2011

Cheshire East Council
June 2012

TERMS OF REFERENCE
AUDIT AND GOVERNANCE COMMITTEE

The Committee is responsible for:

- Promoting high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council (including co-opted Members and other persons acting in a similar capacity)
- Ensuring that Members receive advice and training as appropriate on the Members Code of Conduct
- Granting dispensations under the provisions of the Localism Act 2011 to enable a member or co-opted Member to participate in a meeting of the Authority

The Committee has appointed three ad-hoc sub committees / panels as follows:

Initial Assessment Panel

3 Members plus Independent Person. The panel is responsible for:

- Receiving and determining whether to refer for investigation or other appropriate action, any written complaints regarding alleged mis-conduct and breach of the Code of Conduct by any Borough Councillor or Town or Parish Councillor within Cheshire East.

Local Resolution Panel

3 Members plus Independent Person. The panel is responsible for:

- The hearing and determination of complaints referred to it by the Initial Assessment Panel that there has been a breach of the Code of Conduct by any Borough Councillor or any Town or Parish Councillor within Cheshire East. The panel will act in consultation with the Independent Person.
- Matters may be referred for external investigation should the panel consider it appropriate due to the complexity of the matter or if serious issues emerge.

Hearing Sub Committee

3 Members plus Independent Person. The sub committee is responsible for:

- Consideration of the written report of the external investigator in relation to a complaint that a Borough Councillor or Town or Parish Council Member has broken the Code of Conduct and the determination of any appropriate action in consultation with the Independent Person.

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CHESHIRE EAST COUNCIL

Standards Committee

Date of Meeting: 18 June 2012
Report of: Borough Solicitor and Monitoring Officer
Subject/Title: Dispensation for Rostherne Parish Council Members

1.0 Report Summary

- 1.1 This report outlines a request from 7 of the 8 Members of Rostherne Parish Council who are seeking a dispensation in order to be able to vote or comment on any matters concerning the Tatton Estate. The 7 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 and, if granted, the duration of the dispensation.

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

- 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 are 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 issued guidance on the granting of dispensation under the 2009 Regulations and a copy is attached for Member's assistance at Appendix A.
- 10.4 7 Members of Rostherne Parish Council have made written applications to the Committee seeking dispensation, the application and covering letter from the Clerk to the Parish Council is attached at Appendix B.

10.5 Applications have been received from:-

Edward Ernest Wakefield
Thelma Horobin
Julie Owen
Edward Blockley
Dominic M Fenton
Akhim Eugene Fahey
Joseph Gate

10.6 Whilst each member must apply separately and each application must be the subject of an individual decision, it will be noted that the circumstances outlined are the same for each application.

10.7 The applications have been made to enable the Members to take part in debates and vote upon any matters relating to the Tatton Estate which come before the Parish Council for consideration, to include planning applications and any matters concerning Tatton Estate land and property. 7 of the 8 Parish Members of Rostherne Parish Council consider that they have a prejudicial interest as they are tenants of the Tatton Estate.

10.8 This is not the first application for dispensation which has been submitted by Members of the Parish Council. In April 2006, on receipt of applications, the Standards Committee of Macclesfield Borough Council granted a dispensation to all of the Members at that time of Rostherne Parish Council on the basis that each of them was a tenant of the Tatton Estate. The dispensations were expressed to be in place for a period of 4 years, or whenever the existing term of office of the Members expired, whichever was the shorter.

10.9 On 21 September 2009, an application for a dispensation came before the Standards Committee of Cheshire East Council for consideration, the original grant having expired in May 2008. A copy of the report is attached for information at Appendix C. On that occasion, the decision of the Committee was:-

RESOLVED: *That the Standards Committee grant dispensations for all eight current Members of Rostherne Parish Council, namely Edward Blockley, Akhim Eugene Fahey, Dominic M Fenton, Joseph Gate, Thelma Horobin, Julie Owen, Frances M Woodbine and Edward Ernest Wakefield, whose applications were attached to the report submitted, to allow them to speak and vote on any business coming before Rostherne Parish Council concerning the Tatton Estate, such dispensations to last until the next elections which were due to take place on 5th May 2011.*

10.10 As no further dispensation request was received or granted prior to the expiry of those dispensations, there is currently no dispensation in force for any of the members of Rostherne Parish Council.

- 10.11 The applications for dispensation before the Committee today 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.
- 10.12 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.

11.0 Background Information

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

Name: Caroline Elwood
Designation: Borough Solicitor
Tel No: 01270 685882
Email: caroline.elwood@cheshireeast.gov.uk

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.

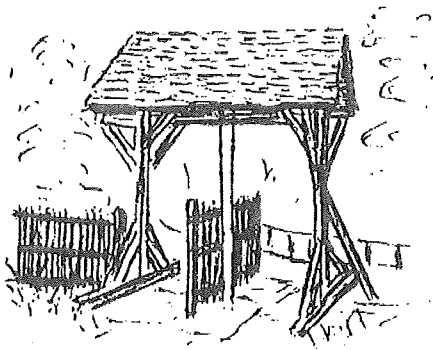
A standards committee has the discretion to decide the nature of any dispensation. For example, the committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should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



Rostherne Parish Council

*Clerk: Mrs. J Gate
Magnolia Cottage, New Road
Rostherne, Knutsford
Cheshire, W.A16 6RU
janet.gate86@btinternet.com Tel. 01565 830389*

1st June 2012

Diane Moulson
Snr Member Development Officer
Cheshire East Council
Democratic Services
Ground Floor
Westfields
Middlewich Road
Sandbach
CW11 1HZ

Dear Diane

Please find enclosed, as discussed, the letters of application requesting dispensation with regard to being able to vote or comment upon any matters concerning Tatton Estate which all but one of our councillors are tenants.

The following councillors have requested dispensation:

Joseph Gate (Chairman)
Edward Ernest Wakefield (Vice Chairman)
Edward Blockley
Akhim Eugene Fahey
Dominic M Fenton
Thelma Horobin
Julie Owen

I hope the enclosed is in order and look forward to hearing from you soon.

Yours sincerely

Janet Gate
Clerk to Rostherne Parish Council

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Cllr. E E Wakefield
2 Old Hall Cottages
Rostherne Lane
Rostherne
Cheshire
WA16 6RT
01565 830127

I **Edward Ernest Wakefield** a member of Rostherne Parish Council, wish to apply to Cheshire East council's Monitoring committee for a dispensation to cover and vote upon any matters concerning Tatton Estate which come before the Parish council for consideration. This would include planning applications referred by Cheshire East Council and any matters concerning Tatton Estate land and property – such as the proposed A556 bypass.

Along with all but one of my colleagues on the Parish Council, I am a tenant of Tatton Estate which owns all the property in the civil Parish of Rostherne apart from the Church, Vicarage and Swan Hotel.

This means that we all have a personal and prejudicial interest in matters connected with Tatton Estate and, without a dispensation, no consideration and consultation on such matters could take place at this local level.

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 

Dated: 31st May 2012

Cllr. Mrs T Horobin
2 Marsh Cottages
Marsh Lane
Rostherne
Cheshire
WA16 6SF
01565 830594

I Thelma Horobin a member of Rostherne Parish Council, wish to apply to Cheshire East council's Monitoring committee for a dispensation to cover and vote upon any matters concerning Tatton Estate which come before the Parish council for consideration. This would include planning applications referred by Cheshire East Council and any matters concerning Tatton Estate land and property – such as the proposed A556 bypass.

Along with all but one of my colleagues on the Parish Council, I am a tenant of Tatton Estate which owns all the property in the civil Parish of Rostherne apart from the Church, Vicarage and Swan Hotel.

This means that we all have a personal and prejudicial interest in matters connected with Tatton Estate and, without a dispensation, no consideration and consultation on such matters could take place at this local level.

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 Y. Horobin.....

Dated: 31st May 2012

Cllr Mrs J Owen
2 Higher Marsh Cottages
Marsh Lane
Rostherne
Cheshire
WA16 6SF
01565 830509

I **Julie Owen** a member of Rostherne Parish Council, wish to apply to Cheshire East council's Monitoring committee for a dispensation to cover and vote upon any matters concerning Tatton Estate which come before the Parish council for consideration. This would include planning applications referred by Cheshire East Council and any matters concerning Tatton Estate land and property – such as the proposed A556 bypass.

Along with all but one of my colleagues on the Parish Council, I am a tenant of Tatton Estate which owns all the property in the civil Parish of Rostherne apart from the Church, Vicarage and Swan Hotel.

This means that we all have a personal and prejudicial interest in matters connected with Tatton Estate and, without a dispensation, no consideration and consultation on such matters could take place at this local level.

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

Dated: 31st May 2012

Cllr. E Blockley
Denfield hall Farm
Chester Road
Rostherne
Cheshire
WA16 5SP
01565 830197

I **Edward Blockley** a member of Rostherne Parish Council, wish to apply to Cheshire East council's Monitoring committee for a dispensation to cover and vote upon any matters concerning Tatton Estate which come before the Parish council for consideration. This would include planning applications referred by Cheshire East Council and any matters concerning Tatton Estate land and property – such as the proposed A556 bypass.

Along with all but one of my colleagues on the Parish Council, I am a tenant of Tatton Estate which owns all the property in the civil Parish of Rostherne apart from the Church, Vicarage and Swan Hotel.

This means that we all have a personal and prejudicial interest in matters connected with Tatton Estate and, without a dispensation, no consideration and consultation on such matters could take place at this local level.

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 Edward Blockley

Dated: 31st May 2012

Cllr. D Fenton
1 Higher Marsh Cottages
Marsh Lane
Rostherne
Cheshire
WA16 6SF
01565 830065

I **Dominic M Fenton** a member of Rostherne Parish Council, wish to apply to Cheshire East council's Monitoring committee for a dispensation to cover and vote upon any matters concerning Tatton Estate which come before the Parish council for consideration. This would include planning applications referred by Cheshire East Council and any matters concerning Tatton Estate land and property – such as the proposed A556 bypass.

Along with all but one of my colleagues on the Parish Council, I am a tenant of Tatton Estate which owns all the property in the civil Parish of Rostherne apart from the Church, Vicarage and Swan Hotel.

This means that we all have a personal and prejudicial interest in matters connected with Tatton Estate and, without a dispensation, no consideration and consultation on such matters could take place at this local level.

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 

Dated: 31st May 2012

Cllr. A E Fahey
Manor Lodge
Rostherne Lane
Rostherne
Cheshire
WA16 6RS
01565830439

I **Akhim Eugene Fahey** a member of Rostherne Parish Council, wish to apply to Cheshire East council's Monitoring committee for a dispensation to cover and vote upon any matters concerning Tatton Estate which come before the Parish council for consideration. This would include planning applications referred by Cheshire East Council and any matters concerning Tatton Estate land and property – such as the proposed A556 bypass.

Along with all but one of my colleagues on the Parish Council, I am a tenant of Tatton Estate which owns all the property in the civil Parish of Rostherne apart from the Church, Vicarage and Swan Hotel.

This means that we all have a personal and prejudicial interest in matters connected with Tatton Estate and, without a dispensation, no consideration and consultation on such matters could take place at this local level.

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



Dated: 31st May 2012

Cllr. J Gate
Cicely Mill Farm
Ciceley Mill Lane
Rostherne
Cheshire
WA16 6RB
01565 830134

I **Joseph Gate** a member of Rostherne Parish Council, wish to apply to Cheshire East council's Monitoring committee for a dispensation to cover and vote upon any matters concerning Tatton Estate which come before the Parish council for consideration. This would include planning applications referred by Cheshire East Council and any matters concerning Tatton Estate land and property – such as the proposed A556 bypass.

Along with all but one of my colleagues on the Parish Council, I am a tenant of Tatton Estate which owns all the property in the civil Parish of Rostherne apart from the Church, Vicarage and Swan Hotel.

This means that we all have a personal and prejudicial interest in matters connected with Tatton Estate and, without a dispensation, no consideration and consultation on such matters could take place at this local level.

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 

Dated: 31st May 2012

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CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting:	21 st September 2009
Report of:	Deputy Monitoring Officer
Subject/Title:	Rostherne Parish Council – Request for Dispensations

1.0 Report Summary

- 1.1 The report describes and explains the requests which have been made by each Member of Rostherne Parish Council for a dispensation to enable them to take part in debate and vote upon any matters relating to the Tatton Estate which come before the Parish Council for consideration. The applications explain that all Members of the Parish Council are tenants of Tatton Estate which owns all property in the parish of Rostherne, with the exception of the Church, the Vicarage and the Swan Hotel.

2.0 Recommendations

- 2.1 The Committee is asked to consider whether or not to grant each of the dispensations applied for.

3.0 Reasons for Recommendations

- 3.1 The Regulations described in this report oblige the Standards Committee to make decisions on whether or not to grant dispensations, when applications are received.

4.0 Wards Affected

- 4.1 Not applicable.

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications including

- 6.1 None. There is no policy on the consideration of whether to grant dispensations; the legal provisions described in this report set out the criteria to be taken into account.

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

7.1 None identified.

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

8.1 None identified.

9.0 Legal Implications (Authorised by the Borough Solicitor)

9.1 These applications must be determined in accordance with the Standards Committee (Further Provisions) (England) Order 2009 which are outlined in this report.

10.0 Risk Management

10.1 Not applicable.

11.0 Background and Options

11.1 In April 2006, on receipt of applications, the Standards Committee of Macclesfield Borough Council granted a dispensation to all of the Members at that time of Rostherne Parish Council on the basis that each of them was a tenant of the Tatton Estate which owns all property within the parish, with the exception of the Church, the Vicarage and Swan Hotel. The dispensation allowed those members to speak and vote at meetings when matters pertaining to Planning Applications for the Tatton Estate were discussed. Had it not been for the dispensations, they would all have had prejudicial interests which would have precluded them from doing so under the Code of Conduct for Members. The dispensations were expressed to be in place for a period of 4 years, or whenever the existing term of office of the Members expired, whichever was the shorter.

11.2 The term of office of those members came to an end in May 2008, and as no further dispensation request was received or granted prior to the expiry of those dispensations, there is currently no dispensation in force for any of the members of Rostherne Parish Council.

11.3 There are eight parish councillors on Rostherne Parish Council and requests for dispensations to be granted in the terms described in the respective applications have now been received from each Member). These are reproduced at Appendix 1. Whilst each member must apply separately and each application must be the subject of an individual decision, it will be noted that the circumstances outlined are the same for each application.

- 11.4 The Relevant Authorities (Standards Committee) Dispensations) Regulations 2002 were in force in 2006; these have since been revoked and replaced by Part 4 of the Standards Committee (Further Provisions) (England) Order 2009.
- 11.5 The reason for the current requests put forward in the applications is to enable the Parish Council to conduct its business in relation to matters concerning the Tatton Park estate, because without a dispensation, the Parish Council would be unable to consider any matter concerning Tatton Estate land and property. It is claimed in the applications that this would impair the democratic process. For example, if a planning application in respect of land owned by Tatton Estate, was to be submitted to the Parish Council, all of its Members would be precluded by the Code of Conduct from taking part in debate or a decision on whether or not the application should receive the Parish Council's support, and the Parish Council would consequently be unable to comment at all on the application. This is felt by the applicants to be an unsatisfactory situation.
- 11.6 S54A(1) of the Local Government Act 2000 allows the function of determining dispensation requests to be dealt with by a Sub-Committee of the Standards Committee. However, this is not a matter which has so far been delegated to any of the existing Sub-Committees of the Standards Committee. If the Committee so wished, this function could be delegated. This is the subject of a separate report to the Committee. Irrespective of any decision on that report as to how future dispensation requests should be dealt with, these current applications should now be determined by the full Committee.
- 11.7 The Standards Committee can grant dispensations if it is satisfied that –
- (a) where the transaction of business of the Authority would, but for the grant of any other dispensation in relation to that business, on each occasion on which the dispensation would apply, otherwise be impeded by, or as a result of, the mandatory provisions because –
 - (i) the number of Members of the Authority prohibited from voting on the business of the Authority at a meeting exceeds 50% of those Members that, but for the granting of any dispensations relating to that business, would otherwise be entitled to vote on that business; or
 - (ii) the number of Members prohibited from voting on the business of the Authority at a meeting would, but for the granting of any dispensations relating to that business, upset the political balance of that meeting to such an extent as to prejudice the outcome of voting in that meeting.

- 11.8 The Standards Committee must decide whether it agrees that this situation applies to Rostherne Parish Council. Standards for England (formerly the Standards Board for England) Guidance gives more detail about how applications should be considered and determined.
- 11.9 The Guidance explains that the Standards Committee should ignore any dispensations already granted to other Members, and apply the above criteria, disregarding any other dispensations already allowed. (There are two exceptions to the power to grant dispensations, in that dispensations cannot be allowed for a member to review a decision they have made themselves, or to allow an Executive member with a prejudicial interest to take an executive decision about it on their own, neither of which applies to the Rostherne case).
- 11.10 The Guidance also recommends that the following questions are considered:
- 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?
 - Is the interest common to the member and a significant proportion of the general public?
 - Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?
 - 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? Ans is the member's interest not a financial one?
- 11.11 The maximum time a dispensation can last for is 4 years. In practice, if the Standards Committee is minded to grant dispensations in these circumstances, the Committee could consider making the time limit 4 years or until the next elections, whichever is the shorter, as the Macclesfield Borough Council Standards Committee did in 2006.

12.0 Overview of Year One and Term One Issues

- 12.1 This is the first occasion on which the Standards Committee has been required to determine a dispensation request. Arrangements for future cases are dealt with in a separate report.

13.0 Access to Information

Background papers:

Standards Committee (Further Provisions) (England) Order 2009
Standards for England Guidance document "Dispensations"

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

Name: Julie Openshaw
Designation: Deputy Monitoring Officer
Tel No: 01625 504250
Email: julie.openshaw@cheshireeast.gov.uk

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