

Standards Committee

Agenda and Reports

For consideration on

**Thursday, 11th December
2008**

In Committee Room 2, Town Hall, Chorley

At 2.00 pm



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2 December 2008

Dear Councillor/Colleague,

STANDARDS COMMITTEE - THURSDAY, 11TH DECEMBER 2008

You are invited to attend a meeting of the Standards Committee to be held in Committee Room 2, Town Hall, Chorley on Thursday, 11th December 2008 commencing at 2.00 pm.

AGENDA

1. **Apologies for absence**

2. **Declarations of Any Interests**

Members are reminded of their responsibility to declare any personal interest in respect of matters contained in this agenda. If the interest arises **only** as result of your membership of another public body or one to which you have been appointed by the Council then you only need to declare it if you intend to speak.

If the personal interest is a prejudicial interest, you must withdraw from the meeting. Normally you should leave the room before the business starts to be discussed. You do, however, have the same right to speak as a member of the public and may remain in the room to enable you to exercise that right and then leave immediately. In either case you must not seek to improperly influence a decision on the matter.

3. **Minutes (Pages 1 - 4)**

To confirm as a correct record the minutes of the meeting of the Standards Committee held on 18 September 2008 (enclosed).

4. **News from the Standards Board (Pages 5 - 6)**

The Monitoring Officer will present a verbal update.

The report of the Chair on the Annual Assembly is enclosed.

5. **Cases considered by the Adjudication Panel for England (Pages 7 - 32)**

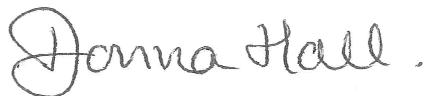
To receive the report of the Monitoring Officer.

6. **Feedback from visits to Parish Councils (Pages 33 - 34)**

Members of the Committee will give feedback on their visits to Parish Councils.

7. **Work undertaken to promote the Code of Conduct**
The Monitoring Officer will present a verbal update.
8. **Update on the recruitment of additional members of the Standards Committee (Pages 35 - 40)**
To consider the report of the Monitoring Officer.
9. **Real people, real power Codes of conduct for local authority members and employees (Pages 41 - 50)**
The Committee will consider and respond to a consultation document from the Departments of Communities and Local Government.
10. **Protocol on Member-Officer Relations (Pages 51 - 54)**
The Committee will consider the current Member Officer protocol and recommend any revisions required.
11. **Standards Committee Work Programme (Pages 55 - 56)**
The Committee will consider the Work Programme for 2008 (enclosed).
12. **Any other item(s) that the Chair decides is/are urgent**

Yours sincerely



Donna Hall
Chief Executive

Ruth Hawes
Democratic and Member Services Officer
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Distribution

1. Agenda and reports to all Members of the Standards Committee (Mr Ellwood (Chair), Councillor Keith Iddon (Vice-Chair) and Councillors Judith Boothman, Thomas McGowan, Debra Platt, Stella Walsh, Rev John Cree (Independent Member) and Mrs Joan Geddes (Parish Council Member) for attendance.
2. Agenda and reports to Andrew Docherty (Director of Governance - Monitoring Officer), Carol Russell (Head of Democratic Services) and Ruth Hawes (Assistant Democratic Services Officer) for attendance.
3. Agenda and reports to Alan Cornwell (Reserve Parish Council Member) for attendance.

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આ માહિતીનો અનુવાદ આપની પોતાની ભાષામાં કરી શકાય છે. આ સેવા સરળતાથી મેળવવા
માટે કૃપા કરી, આ નંબર પર ફોન કરો: 01257 515822

ان معلومات کا ترجمہ آپ کی اپنی زبان میں بھی کیا جاسکتا ہے۔ یہ خدمت استعمال کرنے کیلئے براہ مہربانی اس نمبر پر ٹیلیفون
کیجئے: 01257 515823

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Standards Committee

Thursday, 18 September 2008

Present: Mr Ellwood (Independent Chair) and Councillor Thomas McGowan and Rev John Cree (Independent Member)

Officers in attendance: Andrew Docherty (Director of Governance - Monitoring Officer) and Ruth Hawes (Assistant Democratic Services Officer)

Also in attendance: Alan Cornwell (Reserve Parish Council Member)

08.S.46 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors Keith Iddon, Judith Boothman, Debra Platt and Stella Walsh, also Joan Geddes (Parish Representative).

08.S.47 DECLARATIONS OF ANY INTERESTS

No Members declared an interest in respect of items on the agenda.

08.S.48 MINUTES

RESOLVED – That the minutes of the meeting of the Standards Committee held on 5 June 2008 be confirmed as a correct record and signed by the Chair.

08.S.49 NEWS FROM THE STANDARDS BOARD/ADJUDICATION PANEL

The Committee received the report of the Monitoring Officer outlining several recent cases that have been considered nationally rather than locally.

Members noted that a consultation document was due to be published regarding “codes of conduct for local authority members and employees”. This document would be presented to a future meeting for consideration and comment.

The Monitoring Officer advised that, on a quarterly basis, complaints information was required to be provided to the Standards Board for England and that the first return had been submitted.

RESOLVED –

- 1. That the report be noted,**
- 2. To have a standing agenda item to consider cases dealt with by the Adjudication Panel.**

08.S.50 FEEDBACK FROM VISITS TO PARISH COUNCILS

Members updated the Committee on their visits to Parish Councils. The feedback generally was positive and the visits achieved the aim of raising awareness of the Committee and its’ role.

RESOLVED – That the schedule recording visits to Parish Councils be updated, including visits made by Committee Members who were not present at the meeting.

08.S.51 WORK UNDERTAKEN TO PROMOTE THE CODE OF CONDUCT

The Monitoring Officer reported that a training session, on the Code of Conduct, had been held in July attended by Parish and Borough Councillors. Committee members had also undertaken the local assessment training exercise prepared by the Standards Board for England.

As agreed at the previous meeting, information on the revised process for dealing with complaints against Councillors had been published on the Council's website and forwarded to Parish Council clerks.

RESOLVED – That the update be noted.

08.S.52 RECRUITMENT OF ADDITIONAL STANDARDS COMMITTEE MEMBERS

The Monitoring Officer tabled a report updating the Committee on the recruitment of additional members.

For the Independent Member vacancy three candidates had attended an interview conducted by Mr Ellwood and Andrew Docherty. Mr Ellwood advised that the preferred candidate lives in Chorley. She has experience of following procedures, writing and presenting reports, weighing up evidence and chairing meetings. She demonstrated that she had researched the post and had the skills required.

For the Parish Council representatives vacancy a letter had been sent to all Parish and Town Councils within the Borough, requesting them to nominate a representative. It was noted that there would be more candidates than vacancies and an interview process would be undertaken later in the year to select a total of three Parish Council representatives.

RESOLVED –

- 1. The Council be recommended to appoint Susan Alty as an Independent Member of the Standards Committee.**
- 2. To present an update to the next meeting regarding the recruitment of Parish representatives on the Committee.**

08.S.53 WHISTLE BLOWING POLICY

The Committee considered the Council's current whistle blowing policy, enclosed with the agenda package.

It was suggested that the aim of the policy be highlighted at the beginning of the document and to have an additional sub-heading of "anonymous allegations". The inclusion of a time limit for a response to the complainant, e.g. within 10 days, was discussed. Members also felt that complaints should be made in writing, rather than orally.

The Committee recommended that reference be made in the policy to the revised procedure for complaints against Councillors under the Code of Conduct.

RESOLVED - That officers incorporate suggestions made by the Committee in the revised policy.

08.S.54 STANDARDS SUB-COMMITTEE**RESOLVED –**

1. That the membership of the Standards Sub-Committee be Tony Ellwood (Chair), Rev John Cree and Councillor Thomas McGowan.
2. The date of the next meeting would be 6 November 2008 at 10am.

08.S.55 STANDARDS BOARD FOR ENGLAND GUIDANCE

Committee Members received the Standards Board for England Guidance relating to the role and make-up of standards committees, local assessment of complaints, assessment and review flowcharts, local investigations and other action and standards committee determinations.

Copies of the guidance were available in the Members Room at the Town Hall.

RESOLVED - That the updated guidance be noted and a letter sent to all parish council clerks highlighting this.

08.S.56 STANDARDS COMMITTEE WORK PROGRAMME

The Committee discussed the work programme and AGREED to consider the Member Officer protocol and the “codes of conduct for local authority members and employees”, if available, at the next meeting.

Chair

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Briefing note – Standards Board Assembly held in Birmingham 13/14 October 2008.

The event was opened by Sadiq Khan MP (Parliamentary Under-Secretary of State for Communities and Local Government). He had only recently taken up office and had little to say, other than mention of an ongoing consultation being undertaken into a revision of the current Code – this relates in part to clarification of the question - when is a councillor actually acting in the role, thus subjected to the Code of Conduct. This consultation has to be completed by 24.12.08

Talks were given by the Chairman of the Standards Board Dr Robert Chilton and the new Chief Executive Glenys Stacey – again both persons were new in post and whilst providing historical facts and figures, they did not proffer new thoughts for the future.

The Standards Board put forward their list of key areas of activities under a heading 'Hot Topics'

Alternative action

Best practice

Consistency

Parishes

Sanctions

Standards in Local Partnerships

Standards Committees working together

Training

Wider role of Standard Committees.

In relation to '**Alternative action**', several matters were mentioned:-

There is no investigation and no finding of fact.

Not as a matter of routine.

Use only rarely.

Treat each case on its merits.

This is not a cheap option.

Possible indicators for use:-

A number of members failing to comply with the same breach of the Code.

Officers giving incorrect advice.

Inadequate or incomplete protocols.

Use of Code to gain political points.

Tit for tat allegations.

Ongoing employment issues.

History of member or member complaints and personal conflict between members and/or members and officers.

To remember that under alternative action there is no finding of culpability and you cannot revert back to investigation, especially if a member reneges to do an act they may have agreed to earlier.

I attended a workshop under the heading of 'Communication' – there is still a desire by the Standards Board that local authorities put a lot of effort into spreading the word of what, why, how a 'Standards Committee' – to the local community. This was not fully supported and some criticism was made to the Board of why after many years they had not pursued such an approach.

Perhaps the main item which came out was to look at and review our Chorley Council website? Is reference to the purpose, role and makeup of our Standards Committee easily accessible – can you read the Code, are you told how you can make a complaint etc.

Delivering local assessment is still in an early stage, and there is not a lot of further guidance/best practice at this time. One item mentioned and recommended was the transparency of the process and that any decision should include details of who the assessment committee was.

Having attended a session on 'Parish Councils' it is fair to say that Chorley is ahead of the field in how we support/liaise and train our members.

Overall, meeting and discussing with fellow Standards Committee members proves invaluable and does somewhat confirm that this authority is on the right track, efficient, effective and progressive to the whole aims and ideas of standards in local government.

Tony Ellwood (Independent Chairman, Chorley Council Standards Committee)

Report of	Meeting	Date
Monitoring Officer	Standards Committee	11 December 2008

NEWS FROM THE ADJUDICATION PANEL/STANDARDS BOARD

PURPOSE OF REPORT

- To advise Members of recent cases which have been considered nationally and to provide a general update on national developments.

RECOMMENDATION(S)

- That the report be noted.

CORPORATE PRIORITIES

- This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	
Improving equality of opportunity and life chances		Develop the Character and feel of Chorley as a good place to live	
Involving people in their communities		Ensure Chorley Borough Council is a performing organization	✓

BACKGROUND

- Five decisions of the Adjudication Panel have been published since the last meetings of the Standards Committee. Three being appeals against decisions of Standards Committees and two being matters referred by Ethical Standards Officers. Copies of the decisions or summaries prepared by the Standards Board are annexed to this report.
- The decision in the Erewash Borough Council case is particularly interesting since it clearly shows the Adjudication Panel push at the boundaries of what constitutes 'official capacity'. The action taken by the Panel is clearly appropriate but perhaps not so easy to reconcile with the decision in the Livingstone case.
- A number of case summaries have been published by the Standards Board in respect of matters which they have considered. The vast majority of these cases relate to matters referred to the Board prior to the local filtering arrangements coming into place. New cases reported have all resulted in findings of no breach of the Code or no further action being required. Presumably any cases where the Standards Board has considered there might be a breach are still in the system. There is though one particularly interesting case reported which relates to Bridgham Parish Council in Norfolk. The complaint in that case was that a Councillor had failed to complete a Register of Interests as required by the Code. When the



Ethical Standards Officer investigated, she discovered that the Councillor had indeed failed to register her interests but found no breach of the Code. The reason for this was that the Ethical Standards Officer also discovered that the 'Councillor' had failed to sign her declaration of Acceptance of Office within the proper time and had therefore never taken up Office.

7. There is one further important piece of news from the Adjudication Panel which is that guidance has now been issued on circumstances in which the Panel will accept a reference from a Standards Committee. This relates to circumstances in which the Committee might feel that their own powers to deal with a complaint will be insufficient. The Panel has confirmed that either the President or Deputy President of the Panel needs to accept a reference from a Standards Committee and they are likely to do so for matters which are of a kind which would merit disqualification under guidance which the Panel had also published. The Panel has given guidance on the information to be submitted with a reference and helpfully has indicated that it would be prepared to give an indication as to whether a reference would be accepted prior to the Standards Committee considering a Monitoring Officers report. Although this indication would not bind the Standards Committee it would avoid the Standards Committee seeking to refer matters which were unsuitable.

ANDREW DOCHERTY
CORPORATE DIRECTOR (GOVERNANCE)

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Andrew Docherty	5102	28 November 2008	AD/JA./2811

THE
ADJUDICATION PANEL
 FOR ENGLAND

23 Victoria Avenue, Harrogate HG1 5RD Tel: 01423 538783: www.adjudicationpanel.co.uk

Appeals Tribunal Decision

Case Ref:	APE 0404
Date of Appeals Tribunal:	22 August 2008
Relevant Standards Committee:	Wealden District Council
Date of Standards Committee Decision:	22 May 2008
Name of member concerned: <i>(Appellant & his authority)</i>	Councillor Waller of Crowborough Town Council
Ethical Standards Officer (ESO):	Mr Steve Kingston
Monitoring Officer:	Mr Trevor Scott
Investigating Officer:	Mr Vic Scarpa

Appeals Tribunal Members

Chairman:	Mr Chris Hughes
Member:	Mr David Ritchie
Member:	Mr Richard Enderby

1. The Appeals Tribunal has considered an appeal from the Appellant about the above decision.
2. The Appeals Tribunal has considered the written submissions from the Appellant and the Standards Committee of Wealden District Council and oral submissions by the Appellant and by Mr Smith, solicitor on behalf of the Standards Committee and has heard evidence from the Appellant, Mr Paul Scott and Mr Ian McKirgan.
3. The Appellant had appealed against the Standards Committee's finding that he failed to follow paragraphs 2 and 4 of the Code of Conduct by bullying and intimidating the Clerk to Crowborough Town Council on separate occasions during his term of office as Mayor and subsequently.
4. Paragraph 2 of the Code Provides:

"A member must...
(b) treat others with respect.
(c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority."
5. Paragraph 4:

"A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute."

6. The Standards Committee found the Appellant in breach of paragraph 2 of the Code of Conduct in relation to his behaviour at council meeting of 16 May 2006 when he made reference to the Clerk to the Council which it considered disrespectful to the Clerk. It found the Appellant in breach of paragraphs 2 and 4 of the Code of Conduct in that he defied a resolution of the Council requesting him to apologise to the Clerk and that this was disrespectful of the Clerk and furthermore by refusing to comply with a Council resolution he brought the council into disrepute.
7. The facts relating to these two events were little disputed.
8. The Tribunal found that at the meeting of 16 May 2006 the Appellant asked the new mayor Councillor Hall if he still felt that "The problems with the Council are up there". At the same time he gestured. The Tribunal heard in evidence that Councillor Hall, who like the Appellant was a Conservative, had been present at a private meeting with other councillors including the Appellant in March 2006. At this meeting Councillor Hall had expressed what was interpreted by some of those present as a determination to remove the Town Clerk from office within six months. The Appellant and his colleagues were dismayed that Councillor Hall had later aligned himself with a different group on the Council which had helped him to the mayoralty. The Tribunal was satisfied that in doing so he was making a point to destabilise Councillor Hall and in the process he was making a reference to the Town Clerk. The Tribunal was satisfied that some of those present recognised this as a reference to the Town Clerk.
9. The Town Clerk raised a grievance against the Appellant in connection with his conduct during the Town Clerk's appraisal meeting. The grievance investigation was conducted by Councillor Lyon and another councillor. The Investigating Officer in his report with respect to the conduct of another councillor which was considered on the same date as the case against the Appellant stated that there was no evidence to suggest a friendship between Councillor Lyon and the Town Clerk. The Standards Committee made a finding that there was evidence to suggest a friendship between the two. The Appeals Tribunal concurred with that finding. Oral and written evidence before the Appeals Tribunal lent weight to the conclusion. The outcome of the grievance hearing was reported to the Council at a meeting of 1 August 2006 from which the Appellant absented himself on the grounds of having a prejudicial interest in the matter under discussion. The Council at that meeting passed a resolution calling upon the Appellant to apologise to the Clerk. Despite clear efforts on the part of the Appellant and other councillors there was no notification to the Appellant of the basis upon which the grievance was upheld or any specific criticism of the Appellant's conduct. The Appellant did not apologise despite requests to do so. The Appellant was suspended from membership of all committees.
10. The Appeals Tribunal has determined that the Appellant did not fail to follow the provisions of the Code because:
 - 10.1. The Appellant's conduct at the meeting of 16 May was a question or challenge to a fellow councillor and a reference to the views of that councillor. His comment was not expressed in intemperate or abusive terms about either the councillor or the Town Clerk. The Tribunal did not accept the Appellant's argument that he intended his remarks as a warning to the Town Clerk of problems she might expect from Councillor Hall in the future since there would have been other and better ways of achieving that end. However, as a remark made in the heat of the moment at a time of high political tension, it did not cross the boundaries set by the Code of Conduct. While it may have been uncomfortable for the Town Clerk to know that her position had been discussed in this way, it was not the Appellant who had used the words which may have given concern and as Town Clerk she must expect that robust debate will sometimes bring her actions and position into play. In the

circumstances it was not conduct of a nature which could fairly be seen as showing disrespect to the Town Clerk.

- 10.2. The Tribunal found that the failure of the Appellant to apologise to the Town Clerk in accordance with the resolution of the Town Council was not in itself a breach of the Code of Conduct for three reasons. First, the Standards Committee had itself upheld a finding of the Investigating Officer that the conduct of the Appellant at the appraisal was not in breach of the Code of Conduct. While the Investigating Officer criticised aspects of the Appellant's behaviour at the appraisal, since the substantial issue, conduct at the appraisal, was not a breach, finding a breach in the failure to apologise risks extending the Code of Conduct beyond its proper bounds. Secondly, in the Tribunal's view it is not appropriate to require a councillor to apologise in circumstances where he had not been notified of the reasons for requiring the apology or the specific conduct for which he should apologise. Thirdly, the argument put forward by the Standards Committee that it was the will of a democratically elected body that the Appellant should apologise and that the failure to respect that expression of will in itself brought the Appellant's office or authority into disrepute is unsustainable. It is entirely possible for a democratically elected body to fall into error and act unreasonably. In the circumstances of this case the failure to apologise cannot, in the view of the Appeals Tribunal amount to treating the Town Clerk disrespectfully or bring the Council into disrepute.
11. The Appellant, in his grounds of appeal and in oral argument criticised the Standards Committee's procedure and alleges predetermination by the Standards Committee. In view of the fact that the Appeals Tribunal is able to determine the facts and whether there has been a breach of the Code of Conduct by way of rehearing these criticisms of the original hearing must fall away; however the Appeals Tribunal did not find these criticisms as possessing substance.
12. The Appeals Tribunal has dismissed the finding of the Standards Committee.
13. A copy of this determination is being given to the Appellant, the Ethical Standards Officer, the Standards Committee and any person who made the allegation that gave rise to the investigation.
14. The decision of the Standards Committee ceases immediately to have effect.
15. This determination will be published in a newspaper circulating in the area of the relevant local authority and also published on the Adjudication Panel's website at www.adjudicationpanel.co.uk.

Chris Hughes
Chairman of the Appeals Tribunal

3 September 2008

THE
ADJUDICATION PANEL
 FOR ENGLAND

APPEALS TRIBUNAL DECISION

Case Ref No:	APE 0405
Appeals Tribunal Date:	8 September 2008
Relevant Standards Committee:	High Peak Borough Council
Date of Standards Committee Decision:	6 June 2008
Name of member concerned: (the Appellant)	Councillor Ivan Bell of High Peak Borough Council
Ethical Standards Officer:	Ms Jennifer Rogers
Monitoring Officer:	Mr Mark Trillo (Mrs Rosemary Stafford at the time of the Standards Committee's decision)
Appeals Tribunal Members:	
Chairman:	Mr Patrick Mulvenna
Member:	Mr Alex Roche
Member:	Mr Sam Jones

INTRODUCTION

1. The Appellant has appealed against a determination by the Council's Standards Committee ('the Standards Committee') to suspend him for a period of three months, commencing on 1 September 2008, for a failure to comply with the Council's Code of Conduct.
2. The Appellant was present at the hearing. The Standards Committee was represented by Mr Jonathon Evans, Deputy Monitoring Officer of Staffordshire Moorlands District Council, who advised the Standards Committee at the hearing at which the appealed determination was made. He was accompanied by Mr Mark Trillo, the Council's present Monitoring Officer. The ESO was neither present nor represented. The Appeals Tribunal heard oral evidence and submissions from the Appellant, oral evidence as to the Appellant's character from Mr Frank Ackley, Chairman of the Old Glossop Residents' Association and oral submissions from Mr Evans.

THE STANDARDS COMMITTEE'S FINDINGS OF FACT

3. The findings of fact made by the Standards Committee were as follows:

Relevant parts of the Code of Conduct

- 3.1. On 24 April 2007, effective from 3 May 2007, the council adopted a Code of Conduct in which the following paragraphs are included.

3.2. Paragraph 3 states:

"(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority."

The 12 June 2007 incident

3.3. On 12 June 2007 Councillor Bell and Ms Farraday both attended a twin-bin project group meeting. This meeting was attended by a number of officers and members.

3.4. At this meeting Councillor Bell became angry, raised his voice and responded aggressively to Ms Farraday when she provided an opinion that did not accord with his own. Ms Farraday was shocked and distressed by Councillor Bell's behaviour.

3.5. After this meeting Ms Farraday spoke to Mrs Stafford regarding Councillor Bell's behaviour. Mrs Stafford subsequently spoke to Councillor Bell and suggested that he might like to apologise to Ms Farraday.

The 10 July incident

3.6. On 10 July 2007 Councillor Bell replied to an email he had received from a local resident. He copied his email to Ms Farraday. In his email Councillor Bell informed the local resident that he had sent Ms Farraday a copy of the email so she could provide both of them an 'excuse' as to why the council's website did not contain certain information sought by the resident.

3.7. Ms Farraday was again upset and distressed by Councillor Bell's behaviour. She considered that it constituted an unwarranted attack on her personally and professionally.

The 25 July incident

- 3.8. On 25 July 2007 Councillor Bell attended a council organised training session on media skills. Ms Farraday was due to open the training session with a short presentation on the work of the council's press office. Two employees of the local radio station attended the training session to conduct a number of mock interviews with the candidates.
- 3.9. Before the training session started, Councillor Bell apologised to Ms Farraday for his behaviour at the twin-bin meeting.
- 3.10. Once Ms Farraday started her presentation Councillor Bell informed her that he did not want to listen to 'bullshit' and had not come to listen to Ms Farraday talk about what she did. Ms Farraday gave Councillor Bell the option of leaving the room for the duration of her presentation. He declined her offer.
- 3.11. Throughout the course of Ms Farraday's short presentation, Councillor Bell interrupted her with a relentless stream of questions and comments. He continued to do so after he had been asked to hold all his questions until the end.
- 3.12. Councillor Bell was dissatisfied with Ms Farraday's answers and grew increasingly angry and confrontational.
- 3.13. Councillor Baldry sought to intervene and get Councillor Bell to moderate his behaviour so that the training session could move forward. Councillor Bell did not moderate his behaviour and continued to interrupt Ms Farraday when she tried to continue her presentation.
- 3.14. Ms Farraday grew visibly upset at Councillor Bell's behaviour towards her and eventually burst into tears and fled from the training room.

Subsequent events

- 3.15. Later that afternoon Councillor Bell sent Ms Farraday an email purporting to be an apology for his behaviour that morning.
 - 3.16. Once Councillor Bell had been notified that a complaint had been made to the Standards Board for England regarding his behaviour towards Ms Farraday he sent her a further email apology and made a public apology at a council committee meeting.
4. The Standards Committee's decision was as follows:

Breach of the Code of Conduct

- 4.1. In respect of paragraph 3(1) of the Code of Conduct, the Standards Committee considered that there was sufficient evidence of the breach of the Code of Conduct and accepted Councillor Bell's admission in respect of that particular breach.
- 4.2. In respect of the incident on 12 June 2007 at a twin-bin project meeting, the Standards Committee considered that Councillor Bell treated Ms Farraday with disrespect in that there was no justification for his angry and aggressive behaviour towards her and by his own admission he exaggerates anger, which the panel found to be

unacceptable behaviour in breach of paragraph 3(1) of the Code of Conduct.

- 4.3. In relation to Councillor Bell's email to a local resident on 10 July 2007, the Standards Committee considered that Councillor Bell had no reason to name Ms Farraday, it was belittling of her, it was an unwarranted attack on her and her professional capabilities, he was trying to expose her as an individual and in doing that it was unreasonable and demeaning and would clearly cause embarrassment. Because of this, the Standards Committee found it was both treating Ms Farraday with disrespect and bullying in breach of paragraphs 3(1) and 3(2)(b) of the Code of Conduct.
- 4.4. In respect of the incident on 25 July at the Council's media training session, the Standards Committee considered that this was unacceptable conduct by Councillor Bell as it was consistent and relentless, his language was totally unacceptable, other councillors tried to get Councillor Bell to modify his behaviour but he would not. The Standards Committee did not accept that Councillor Bell could not see that he was causing distress to Ms Farraday and that from the very outset, Councillor Bell's behaviour belittled and systematically humiliated Ms Farraday in front of all those present. For all those reasons, the Standards Committee considered that not only did Councillor Bell fail to treat an officer with respect, but that this also amounted to bullying in breach of paragraphs 3(1) and 3(2)(b) of the Code of Conduct.

Sanction

- 4.5. Taking account of all the representations received, including Councillor Bell's explanations as to hearing problems and heart problems and his assertion that he voluntarily attended an anger management course; the statements made by witnesses present at the hearing; the escalation of Councillor Bell's behaviour towards Ms Farraday over the course of the three incidents and the presence of people external to the Council at the incident on 25 July 2007 and the representations made in respect to sanctions by Ms Sharkey on behalf of the Standards Board and Councillor Bell, the Standards Committee agreed:
 - 4.5.1. That Councillor Bell's conduct was so serious as to warrant his suspension as a member for a period of 3 months, and in light of the Council's calendar, the Standards Committee further directed that this sanction should commence on 1 September 2008; and
 - 4.5.2. That Councillor Bell undertake training on a one-to-one basis with High Peak Borough Council's Monitoring Officer on the Code of Conduct at a time convenient to the Monitoring Officer and in any event no later than 1 December 2008.

THE GROUNDS OF APPEAL

5. The Appellant's appeal was on the following basis:
 - 5.1. The Appellant did not feel the Standards Committee gave full consideration to his mitigating circumstances:

- 5.1.1. The Appellant has had hearing problems which might have caused him to speak louder than a normal person (this has now been diagnosed and he is now wearing a hearing aid).
- 5.1.2. The Appellant had a heart attack and due to high blood pressure his face does become red when he is under stress.
- 5.1.3. The Monitoring Officer's letters and emails to potential hostile witnesses were very biased and leading.
- 5.1.4. The Appellant did publicly apologise to the officer concerned.
- 5.1.5. Because of his personal concern at the accusations, the Appellant did arrange an anger management course and he and his counsellor have now reached the stage where the Appellant is learning how to challenge officers in a more civilised manner.
- 5.1.6. The Appellant did admit to treating the officer with disrespect, both under the Code of Conduct and also under his own personnel code of living.
- 5.2. The Appellant was also concerned that the three months' suspension from the council was a punishment for his constituents who voted him in, more than a punishment for the error of his ways. He believed this might be open for them to challenge under the European Human Rights laws.
- 5.3. The Appellant believed a more fair and just method of punishment would be for him to put something back into the community. He would be more than willing to use his experience as a webmaster to write websites for any charitable causes that the panel chooses. However if this was considered an easy option the Appellant was quite happy to litter pick in any part of the borough.
- 5.4. The Appellant had already taken the one-to-one training with the Monitoring Officer, which he found useful and helpful. The main part of which that came across most importantly to him was that he had been accepting the officers as equals, when he should have realised that he was the 'Boss' and they were employees.
- 5.5. The Appellant hoped that his acceptance on this part of the punishment would not prejudice the Appeals Tribunal over his appeal against the rest of the sentence.
6. At the hearing, the Appellant supplemented his written submissions by oral evidence and submissions. He said that the effect of the sanction was to prevent him from representing his constituents and submitted that it should be reduced in length or amended to enable him to keep abreast of developments within the council and to enable him better to represent those who had elected him on a democratic basis.

REPRESENTATIONS BY THE STANDARDS COMMITTEE AND THE ESO

7. The Standards Committee have made the following representations in relation to the Appeal:
 - 7.1. The Council feels that the decision of the Standards Committee was a well reasoned and clearly expressed decision based on full consideration

of all the papers and having heard the verbal evidence of the councillor concerned, three witnesses and the representative from the Standards Board for England.

- 7.2. The only point that may not be clear from the papers was that the Standards Committee panel, its legal advisor and Councillor Bell were made fully aware of relevant case law and guidance issued by the Standards Board for England before the hearing commenced. It was referred to during the course of the hearing when the panel were making their decision and Councillor Bell was specifically given an opportunity to make comment at the sanctions stage of the hearing.
 - 7.3. The panel had a copy of the papers referred to in the email of Ms Freda Sharkey of the Standards Board and a copy of the Standards Board guidance entitled 'Standards Committee Determinations' with them when they retired to make their decisions.
8. These representations were supplemented by Mr Evans at the hearing.
 9. The ESO has not made any representations on the Appeal.

THE APPEALS TRIBUNAL'S FINDINGS AND DECISION

10. The Appeals Tribunal, having considered all the written representations, the oral evidence and submissions of the Appellant, the oral evidence of Mr Ackley and the oral submissions of Mr Evans, made the following findings:
 - 10.1. The Appellant agreed at the commencement of the hearing that the facts and the finding that the facts gave rise to a breach of the Code of Conduct were not disputed and that the material issue related to the sanction imposed and its effect on the Appellant and his constituents.
 - 10.2. The Appeals Tribunal has considered the several aspects of the Appellant's appeal and has reached the following conclusions.
 - 10.3. First, the Appellant did not feel the Standards Committee gave full consideration to his mitigating circumstances which he claimed to be:
 - 10.3.1. Hearing problems which might have caused him to speak louder than a normal person.
 - 10.3.2. He had a heart attack and due to high blood pressure his face does become red when he is under stress.
 - 10.3.3. The Monitoring Officer's letters and emails to potential hostile witnesses were very biased and leading.
 - 10.3.4. The Appellant did publicly apologise to the officer concerned.
 - 10.4. The Appeals Tribunal considered that there was little merit in this aspect of the appeal. The Standards Committee expressly stated in their decision (see paragraph 4.5 above) that they had taken into account 'all the representations received, including Councillor Bell's explanations as to hearing problems and heart problems and his assertion that he voluntarily attended an anger management course.'

- 10.5. In any event, the factors claimed by the Appellant to be mitigating circumstances do not stand close scrutiny. The mitigation pleaded by the Appellant in relation to his hearing difficulties or blood pressure was that his anger was merely apparent or exaggerated. That is not supported by any sustainable evidence. The clear evidence before the Standards Committee was that the Appellant actually was angry and acted in a bullying and disrespectful manner towards Ms Farraday which caused distress and humiliation. The letters from the Monitoring Officer did appear to have prejudged the issue, but there is no evidence that they influenced the witnesses or the Standards Committee. The Monitoring Officer, as complainant to the Standards Board, took no part in the proceedings before the Standards Committee. The apology appeared to be somewhat hollow as the Appellant launched a further attack on Ms Farraday at the same meeting.
- 10.6. Secondly, because of his personal concern at the accusations, the Appellant had arranged an anger management course and he and his counsellor had now reached the stage where the Appellant was learning how to challenge officers in a more civilised manner.
- 10.7. Thirdly, the Appellant did admit to treating the officer with disrespect, both under the Code of Conduct and also under his own personal code of living.
- 10.8. These factors do not excuse the Appellant's actions, but they do disclose insight, which is an appropriate factor to take into account when determining the sanction, if any. The Tribunal did find that, in the proceedings before them, the Appellant was temperate and appeared to be truly contrite for his actions.
- 10.9. Fourthly, the Appellant was concerned that the three months' suspension from the Council was a punishment for his constituents who voted him in, more than a punishment for the error of his ways. He believed this might be open for them to challenge under the European human rights laws. The Appellant believed a more fair and just method of punishment would be for him to put something back into the community. He would be more than willing to use his experience as a webmaster to write websites for any charitable causes that the panel chooses. However if that was considered an easy option the Appellant was quite happy to litter pick in any part of the borough.
- 10.10. The Appellant was unable to say which of his constituents' human rights had been breached or how they had been breached. He appeared to believe that human rights were some kind of general right rather than a codified declaration of rights set forth in the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended, given force in English law by the Human Rights Act 1998 and given flesh by the considerable jurisprudence generated by domestic and European courts. The Appeals Tribunal has examined the rights so protected and has found none on which the Appellant might predicate a sustainable case. The sanctions proposed by the Appellant are outwith the powers of the Standards Committee.
- 10.11. In relation to the representation of constituents, the Appeals Tribunal had regard to the guidance issued by the President of the Adjudication Panel pursuant to Section 75 of the Local Government Act 2000 (*the Guidance*). The Guidance is issued for Case Tribunals, but it is

considered that it is pertinent to decisions taken by local standards committees, although not in any way formally related to them. Mr Evans submitted that, in fact, the Standards Committee did have regard to the Guidance, a fact that was agreed by the Appellant. It is relevant, objective material against which decisions might be measured. The Guidance says, at paragraph 10:

'The High Court has suggested that Case Tribunals should be reluctant to interfere with the democratic will of the electorate. This comment was made in circumstances where the member concerned had been re-elected since the events giving rise to his or her appearance before the Case Tribunal and where the electorate, who could be taken to have knowledge of those events, had nevertheless re-elected the member. But in another decision the High Court has recognised that Parliament has expressly provided Case Tribunals with such a power and that such interference may be a necessary price to pay for the need to maintain public trust and confidence in the local democratic process. This may at times mean disqualifying members whose conduct has shown them to be unfit to fulfil the responsibilities which the electorate have vested in them.'

10.12. In the present case, the Appeals Tribunal is conscious that the Appellant represents a ward which has another elected member and that the constituents will not be prejudiced by any sanction taken against the Appellant by being denied representation altogether. Moreover, it is to be observed that each member, although elected for a ward, represents the interests of all the inhabitants of the council's area, not merely those who voted for him or comprise the electorate of which those voters form part. The sanction of suspension has been conferred by Parliament and its potential effects were known at the time of the enactment of the relevant provisions. There is no evidence that the effects of the Appellant's suspension would be any different from those of any other councillor in any other council. The Tribunal did not find any merit in the argument advanced by the Appellant in this respect.

10.13. There is no evidence of bad faith on the part of the Standards Committee or of failure to take account of all material factors and to ignore immaterial factors. They reached an honest decision on the facts as found on the evidence before them. On the evidence before them, the Appeals Tribunal would find the same facts and sees no reason to disturb the findings of the Standards Committee.

10.14. In relation to the sanction, the Appeals Tribunal has had regard to the Guidance, on which both the appellant and Mr Evans were invited to make submissions, and the decision of Sullivan J in **Sanders -v- Kingston [2005] EWHC 2132 (Admin)**. The Guidance, at paragraphs 11 and 12 provides:

'In deciding what action to take, the Case Tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Case Tribunal should be designed both to discourage or prevent the

particular Respondent from any future non-compliance and also to discourage similar action by others.

Case Tribunals should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.'

- 10.15. In relation to suspension, the Guidance provides, at paragraphs 20 and 21:

'Suspension is appropriate where the circumstances are not so serious as to merit disqualification but sufficiently grave to give rise to the need to impress upon the Respondent the severity of the matter and the need to avoid repetition. A suspension of less than a month is not likely to have such an effect.

Suspension is likely to be appropriate where the Respondent has been found to have brought his or her office or authority into disrepute without either being found in breach of any other paragraph of the Code, or being found to have committed a criminal offence punishable by at least three months imprisonment.'

- 10.16. The Guidance also provides, at paragraph 27, that a decision not to impose disqualification, suspension or partial suspension might be appropriate in circumstances which might include

- (a) An inadvertent failure to abide by the Code of Conduct.
- (b) An acceptance that despite the lack of suspension or partial suspension, there is not likely to be any further failure to comply on the part of the Respondent.
- (c) The absence of any harm having been caused or the potential for such harm as a result of the failure to comply with the Code of Conduct.

- 10.17. Having regard to this Guidance, but bearing in mind that its primary purpose was for Case Tribunals, the Appeals Tribunal considered that there had been a breach of the Code of Conduct which caused harm to an officer who was bullied and felt humiliated by the Appellant and consequently suffered distress. The breach was initially sustained but there has been a subsequent acknowledgement by the Appellant that his actions were unacceptable, thereby, albeit belatedly, showing insight and contrition. The Appellant's actions fall short of the threshold on which disqualification was upheld in **Hathaway -v- Ethical Standards Officer [2004] EWHC 1200 (Admin)** and **Sloam -v- Standards Board for England [2005] EWHC 124 (Admin)** in which there were offences of violence and dishonesty, respectively. The Appellant's actions do, however, correspond, to those of the Appellant in **Sanders** (above) in which the sanction was commuted from disqualification to suspension for six months. In all these circumstances, the Appeals Tribunal considers that the decision of the Standards Committee was reasonable, proportionate and sustainable.

- 10.18. The Appeals Tribunal has, therefore, dismissed the Appellant's appeal. The decision was unanimous.
11. A copy of this determination is being sent to the Appellant, the Ethical Standards Officer, the Standards Committee and the Council's monitoring officer who made the allegation that gave rise to the investigation.
 12. This determination will be published in one or more newspapers circulating in the area of the local authority and will also be published on the Adjudication Panel's website at www.adjudicationpanel.co.uk.

P J Mulvenna
Chairman of the Appeals Tribunal

8 September 2008

THE
ADJUDICATION PANEL
 FOR ENGLAND

23 Victoria Avenue, Harrogate HG1 5RD Tel: 01423 538783: www.adjudicationpanel.co.uk

Appeals Tribunal Decision

Case Ref:	APE 0407
Date of Appeal Tribunal Hearing:	10 October 2008
Relevant Standards Committee:	West Sussex County Council
Date of Standards Committee Decision:	17 July 2008
Name of member concerned: <i>(Appellant & his authority)</i>	Councillor Roberts of West Sussex County Council
Monitoring Officer:	Mr Tony Kershaw
<u>Appeals Tribunal Members:</u>	
Chairwoman:	Ms Sally Lister
Member:	Mr Narendra Makanji
Member:	Mr David Billing

1. The Appeals Tribunal has considered an appeal from the Appellant, Councillor Roberts against the sanction imposed by the Standards Committee of West Sussex County Council ("the Standards Committee"), following their findings that Councillor Roberts had failed to follow the provisions of paragraph 3(1) and 5 of the County Council's Code of Conduct.
2. The sanctions imposed on the Appellant by the Standards Committee were to:
 - censure the Appellant;
 - suspend the Appellant from the office of cabinet member for a period of one month;
 - require the Appellant to submit a written apology to the complainant;
 - require the appellant to undertake appropriate training; and
 - subject to his agreement and that of the complainant, the Appellant should participate in conciliation.
3. The Appellant had agreed to the appeal being considered by way of written representations. The Appeals Tribunal, having considered all of the papers before it, was of the view that the appeal could be determined on that basis.

Findings of fact of the Standards Committee

4. In Councillor Roberts' application to appeal to the Appeals Tribunal he stated that he did not dispute that he failed to comply with the provisions of the Code of Conduct as determined by Standards Committee but wished to appeal against the sanction imposed. It was therefore not necessary to consider the findings of fact or whether

those findings amounted to a breach of the Code of Conduct. However, in order to put into context this appeal the determination made by the Standards Committee can be summarised as follows:

- 4.1. A complaint had been made by a member of staff of West Sussex County Council that the Appellant had behaved inappropriately towards her at a training session on 9 June 2008.
- 4.2. There was no real dispute about the facts of the case. The issue between the parties was the interpretation of the Appellant's behaviour.
- 4.3. Two others present at the training session had given statements which showed they had shared the complainant's view of the Appellant's behaviour.

The Standards Committee's decision

5. The Standards Committee was of the view that what had occurred were errors of judgement on the Appellant's part. It was of the view that county councillors, especially those of cabinet rank, risked damaging the reputation of their office and the interests of the county council in ensuring good working relationships with staff members, when behaving in the way the Appellant had, on this occasion.
6. The Standards Committee also found that the impact on the complainant had been considerable.
7. The Standards Committee concluded that the Appellant had failed to follow paragraph 3(1) of the Code of Conduct in that he had failed to treat the complainant with respect, and that he had failed to follow paragraph 5 of the Code of Conduct in that he had, while on official business, conducted himself in a manner which could reasonably be regarded as bringing his office as a cabinet member into disrepute.
8. In reaching its decision as to sanction, the Standards Committee took into account the informal nature of the event; the Appellant's remorse; his willingness to apologise and that he had spared the complainant further distress by not disputing the facts making her attendance unnecessary. The Standards Committee nevertheless concluded that the Appellant's failures were such that a sanction should be considered.
9. The Standards Committee had noted that the Appellant sought for his self-imposed suspension from his councillor and cabinet office role to be taken into account. However the Standards Committee believed the Appellant's action, while commendable, did not equate to a formal suspension by the Standards Committee, which was a public act that also involves the withdrawal of a financial allowance for the period.
10. In considering sanctions, the Standards Committee took into account:
 - this was a first offence.
 - the Appellant was willing to apologise as soon as the complaint came to his attention.
 - the Appellant had not disputed the facts and had saved the complainant from giving evidence.
 - the Appellant's conduct amounted to a series of incidents rather than a single one. However it was not a case where the same sort of behaviour was repeated on further occasions or after being told the behaviour was unacceptable.
11. The Standards Committee looked at the range of sanctions, including the option of giving no sanction and concluded that in view of the position held by the Appellant,

the impact on the complainant, as well as the behaviour itself, censure was necessary. An apology was also appropriate and necessary.

12. In the Standards Committee's view the Appellant's interpretation of events showed a lack of insight into proper conduct in a work situation even at an informal event or of the effects his actions might have on others. Therefore the Appellant should undertake some training.
13. In addition, as the complainant and the Appellant would have to work together in the future, the Standards Committee considered that if both parties were willing conciliation via a third party would be essential.
14. The Standards Committee also took the view that cabinet members needed to conduct themselves properly, taking into account the vulnerability some junior or middle ranking staff may feel in their presence. It was of the view that the council could not function properly or enjoy public confidence if these values are not respected. To bring home the point in this case the Standards Committee considered a period of suspension as a cabinet member, but not as a councillor, was required.
15. After taking account of the mitigating factors put forward by Councillor Roberts, the Standards Committee concluded that a suspension of less than a month would not reflect the gravity of the offence caused or signal the importance the Standards Committee attached to these issues.
16. The Standards Committee therefore determined that the following sanctions be imposed:
 - censure;
 - suspension from the office of cabinet member for a period of one month;
 - a written apology to the complainant should be given;
 - appropriate training should be undertaken; and
 - subject to his agreement and that of the complainant, the Appellant should participate in conciliation.

Summary of the Appellant's Grounds of Appeal

17. The Appellant accepted that his action was unacceptable to the complainant, but stated that it was done innocently with no hidden agenda (as were all his actions on the day, they were all subsequently negatively interpreted after the event) purely to congratulate her on her performance in the live interview.
18. Whilst he was deeply sorry that his actions were misinterpreted and effected the complainant in the way in which they did, the Appellant too had also suffered mental anguish, loss of confidence and self esteem.
19. On the day in question the Appellant was "flying on a cloud of adrenaline and totally at peace with the world" because of a series of events that had occurred to him and was happy to pass on his feelings of goodwill to anyone in his company.
20. When the complainant first greeted the Appellant she appeared very nervous and the Appellant endeavoured to make her feel at ease, unfortunately his endeavours were misinterpreted. The Appellant believed the video footage taken on the training session demonstrates this clearly.

21. The Appellant was of the view that the complainant was very knowledgeable on the subject to which he had a portfolio brief which is why he focussed his attention on the complainant as he wanted her to brief him.
22. It was an informal meeting in private with only 6 people present which included the Appellant and one other member who was unaware that anything was wrong; indeed nobody questioned the Appellant's behaviour on the day. He did not believe he brought his office into disrepute.
23. Nobody commented on the Appellant's behaviour at the time, it was only after the "kiss" (which the Appellant considered was a "peck") that the witnesses collectively judged his behaviour as "inappropriate".
24. The Appellant absented himself from county hall immediately so as not to risk further distress to the complainant and by the time the case was heard he had been away for 6 weeks, but the suspension was not backdated.
25. Furthermore it was the first time the Standards Committee had considered a Code of Conduct case and their inexperience was probably similar to the Appellant's as cabinet member as he had only been in the post some 7 weeks or so.
26. Had the Appellant been aware of the severity of the sanctions being considered he would have insisted on addressing the Committee personally and he felt also they should have insisted on a statement from the other member who was present and for both these reasons they should have adjourned.
27. The Committee could have also had regard to previous decisions from the Standards Board for England for similar cases.
28. Looking at all of the sanctions:
 - 28.1. The censure was acceptable, with hindsight the Appellant accepted that the complainant hadn't met him previously and that he should have acted less informally.
 - 28.2. Suspension was harsh and at least should have been backdated.
 - 28.3. The Appellant has offered to apologise since day one and indeed the complainant said she was happy to accept one without fuss and this whole process could have been avoided.
 - 28.4. Training was unacceptable. What happened was a 'foolish moment' at an informal meeting that was as much about team building and getting to know each other as it was training for television.
 - 28.5. The Appellant was prepared to undertake conciliation, if the complainant was happy to do so. However having been (subsequent to the decision) removed from his cabinet post it was unlikely she would have to work with the Appellant so there was perhaps less need.

Summary of the Standards Committee's submissions on the Appellant's grounds of Appeal

Did not bring his office into disrepute

29. The Appellant has indicated that he did not dispute the findings of the Committee as to the failure to comply with the Code and yet contested the finding of bringing his office into disrepute when giving his reasons for his appeal against the sanctions.

30. The Standards Committee confirmed that it did take account of the fact that only a limited number of people were present and none were just ordinary members of the public or people who would be expected to bring the matters to wider public attention such as a journalist. Whether what the Appellant did brought his office into disrepute did not in the Standards Committee's opinion depend on how many people were there or in what capacity they attended.
31. Although it is true none of the participants voiced their concerns to the Appellant on the day, three did so to one another on the same day as their statements confirmed. In saying that his behaviour did not bring his office into disrepute, the Appellant is drawing the distinction referred to in the Livingstone case between private and official actions. The Standards Committee agreed that some bad behaviour may reflect poorly on the individual but not on the office he holds but the Standards Committee did not accept that this was such a case. The Appellant was attending an official event, interacting with a member of staff with whom he would be working on a regular basis, and so it was a working not personal relationship – a failure to act properly in that role would inevitably reflect on his role in that office as well as on him as a private individual.

Absented himself from County Hall

32. The Standards Committee understood that the Appellant was saying by way of mitigation that he had served a period of de facto suspension. This tended to confirm he had understood that one of the sanctions available was a period of suspension. The Standard Committee fully considered the options for a shorter period of suspension or to treat the voluntary removal from responsibilities as a self imposed sanction. For the reasons given in the decision it considered that the Appellant's voluntary withdrawal from his duties, while commendable did not equate to a suspension by the Standards Committee.

The Standards Sub-Committee was as inexperienced as him

33. The Standards Committee was made up of three very senior county councillors, an independent chairman with twenty years experience in local government as well as the leadership of other major bodies, and another lawyer independent member formerly the senior partner of a major Sussex law firm.

His wish in view of what happened that he had attended etc.

34. The Chairman of the Sub-Committee was aware of a considerable amount of case law about proceedings in disciplinary cases continuing in the absence of the defendant. This aspect took up some time in the Standards Committee's deliberations. The Sub-Committee only decided it was safe and right to proceed after being satisfied:
 - 34.1. it was what the Appellant wanted.
 - 34.2. he understood what sanctions were available to the Committee.
 - 34.3. there was no apparent dispute on the facts.
 - 34.4. the Committee appreciated what the Appellant wanted to say by way of mitigation and explanation.
35. Although the Appellant was due back from holiday shortly afterwards it would not have been possible to hold a hearing on another date before the council meeting on 25 July which the Appellant would normally be expected to attend as a cabinet member. Although it was desirable to deal with his case by then it was not a material

factor in the Standards Committee's decision to proceed, as the Appellant requested, in his absence but with the benefit of his statement.

36. The Appellant now questions why no statement was obtained from the other elected member present at the training event. This was indeed a question put by the Standards Committee to the Monitoring Officer. His answer was that according to the other witnesses this member was in such a position in the room where the event was held that he was unlikely to have observed all or much of what they had seen that day. The Monitoring Officer would have interviewed the other member after interviewing the Appellant had there been any dispute as to the facts.
37. The Standards Committee considered this point carefully. It concluded that since the Appellant and the witnesses were not in real dispute about the facts there was no need to seek this statement. If there had been a dispute on the facts the Standards Committee would have adjourned the hearing in order to hear at a later date the witnesses including the Appellant. Instead there was a difference between the witnesses and the Appellant about the interpretation of his actions on the day.
38. In reaching a view, the Standards Committee was prepared, in order to give the Appellant the benefit of the doubt, to assume that the other member might have supported his interpretation. However it was the Sub-Committee's job to determine on the facts, whether, in its judgment those facts amounted to behaviour that was in breach of the Code of Conduct. In doing so the Sub-Committee drew on the experience of its membership.
39. The unanimous view of the Standards Committee was that the behaviour fell well below what was expected of a cabinet member, involving as it did the treatment of a relatively junior female member of staff over the course of the day in a way they would regard as uncalled for, objectionable, and embarrassing. It showed a lack of respect for her and let down himself and his office.
40. The Sub-Committee also considered it was not reasonable to expect the member of staff to deal with it purely by raising her concerns with the Appellant whom she had never met before and who was in a significantly more powerful role.

The Sub-Committee should have had regard to previous Standards Board cases

41. The Sub-Committee had regard to the Code of Conduct, relevant cases, as well as paying particular attention to the Livingstone decision in the High Court. The deputy Monitoring Officer, who advised the panel, had researched previous Standards Board cases on similar matters but had found no directly comparable precedents.

The Appellant's comments on sanctions

42. Suspension was a sanction frequently used in professional disciplinary cases. It helps to strengthen public confidence in professions, by allowing the professional disciplinary tribunal to demonstrate the unacceptability of certain conduct by excluding a member from it for a limited time. It goes further than censure or monetary penalty. In professions a period of suspension may be regarded as a period for a member to reflect on their shortcomings, and put themselves in better shape before resuming their career.
43. It was with these considerations in mind that the Standards Committee looked at the possibility of suspension as well as the nature of the offence and the important position held by the Appellant. Being a cabinet member was something to which many councillors aspire. It is a leadership role. In the Standards Committee's view, the relevant General Principle stated they should act in a way that secures or preserves public confidence.

44. The Standards Committee concluded that the Appellant's failures should, because of his position, attract more than censure. The Standards Committee considered a shorter period of suspension, but was persuaded by the elected members, that although periods shorter than a month, even as little as one day had been used elsewhere in not comparable cases, to drive home the message about the need for proper relations between staff and members, anything less than a month, would not convey the seriousness of the issue. Staff need to be able to deal with cabinet members in the knowledge that inappropriate behaviour will not be tolerated.
45. In the Standards Committee's view an apology was not enough and additional sanctions were required.
46. Training was considered necessary by the Standards Committee because, in its view dealing with staff where as a member, even a cabinet member, the member in question has no managerial function is not easy. Neither is assimilating to a culture different from anything experienced before.
47. The training the Standards Committee proposed was informal and would have acquainted the Appellant with county council policies relating to staff and member conduct and helped him in his work as a councillor also.
48. The Standards Committee had no further comments about conciliation other than to note it was acceptable to the Appellant.
49. The Standards Sub-Committee pointed out that the Appellant ceased to be a cabinet member eight days after its decision as a result of a decision of the full council and although it was unlikely he would work with the complainant again he might hold some other office in the future and will continue as a councillor. Thus, in its view the training proposed was still relevant.

The Appeal Tribunal's decision

50. The Appeals Tribunal considered all the papers before it, including the detailed submissions of the Appellant, witness statements of Mr Bob Lisney and Ms Susan Gibbons, the papers that were before the Standards Committee which led to its determination and the Standards Committee's detailed submissions to the Appeals Tribunal.
51. Whilst the Appeals Tribunal noted all the comments made by the Appellant in his application to appeal, the facts and the finding that the facts gave rise to a breach of West Sussex County Council's Code of Conduct were not disputed by him and the Appellant had agreed for the appeal to be dealt with by way of written representations. The appeal was, therefore, only concerned with the issue of sanction.
52. Although the Appellant stated that he did not believe he had brought his office into disrepute in his application to appeal, he was not disputing the facts as found and the Appeals Tribunal took this comment to mean that the Appellant was seeking to mitigate against the sanction imposed.
53. The Appeals Tribunal considered the sanctions imposed by the Standards Committee and concluded that all of the sanctions imposed should be upheld.
54. The Appeals Tribunal found, and the Appellant accepted, that censure was appropriate. The Appellant had acted wholly inappropriately towards a newly appointed female member of staff, both in terms of the conduct itself and in the light of the position of authority he held as a member of the County Council. This conduct

had been very upsetting to the complainant and had caused concern to two other people who had witnessed it.

55. The Appeals Tribunal noted that the Appellant was prepared to give, and the complainant was prepared to accept an apology from Councillor Roberts for his conduct. The Appeals Tribunal found that this was an appropriate sanction and agreed that it should be given in a form prepared by the Monitoring Officer in consultation with the Chair of the Standard's Committee.
56. The Appeals Tribunal also found that the requirement for the Appellant to undertake appropriate training (to be determined by the Monitoring Officer in consultation with the Chair of the Standards Committee) should be upheld even though he was no longer a cabinet member of the county council. The Appeals Tribunal was of the view that the Appellant's conduct showed a lack of insight into the delicate relationship between councillors generally and council staff. It did not matter that he was no longer a cabinet member because he was still a councillor. What the Appellant regarded as informality, was particularly inappropriate in the work place as he was likely to be perceived by a member of staff as having considerable power and influence over them. This would have made any inappropriate conduct intimidating and upsetting.
57. With regard to the Appellant's suspension for one month from the office of cabinet member, the Appeals Tribunal considered the nature of the Appellant's breach in the context of a councillor with authority over the complainant and the impact of that breach on the complainant. The Appeals Tribunal found, after having regard to the guidance to monitoring officers and standards committees issued by the Standards Board for England that it was appropriate for the Appellant's breach to attract more than just a censure.
58. The Appeals Tribunal noted that the Standards Committee had taken into account the fact that the Appellant had absented himself from the council offices so as not to risk further distress to the complainant, when concluding that a partial suspension of one month should be given. The Appeals Tribunal also took this into account and like the Standards Committee did not feel this action, whilst commendable, was sufficient to impress on the Appellant the serious nature of the matter or the severity of the breach. Standards Committees, like Appeals Tribunals must balance the need to uphold and improve the standard of conduct expected of members with a reluctance to interfere with the democratic will of the electorate who had elected the councillor. Therefore, the Appeals Tribunal concluded that a suspension from the office of cabinet member, but not councillor, for one month was reasonable and proportionate in this case.
59. The Appeals Tribunal noted that the Appellant was no longer a cabinet member as a result of a decision of the full council. Nevertheless, the Appeals Tribunal was of the view that it was conceivable that the Appellant could become a cabinet member again in the near future and therefore this sanction was still appropriate.
60. The Appeals Tribunal was also of the view that it was possible that the Appellant would come into contact and even work with the complainant some time in the near future and therefore also upheld the sanction imposed by the Standards committee that subject to the agreement of the complainant and the Appellant, he should participate in conciliation in a manner determined by the Monitoring Officer and the Chair of the Standards Committee.
61. The decision of the Appeals Tribunal was unanimous.
62. The Appeals Tribunal directs that the sanctions originally imposed by the Standards Committee will take effect as of 10 October 2008.

63. A copy of this determination is being given to the Appellant, the Standards Board, the Standards Committee and any person who made the allegation that gave rise to the investigation.
64. This determination will be published in a newspaper circulating in the area of the local authority and will also be published on the Adjudication Panel's website at www.adjudicationpanel.co.uk.

Sally Lister
Chairwoman of the Appeals Tribunal

21 October 2008

Erewash Borough Council

A former member of Erewash Borough Council, who has been convicted of making and possessing indecent images of a child, has been disqualified from office for five years.

The Standards Board for England investigated allegations that Mr Dockerill brought his office or authority into disrepute by being convicted on several counts of making and possessing indecent images of a child. One of these counts referred to thirteen images found on a computer that had been provided to Mr Dockerill by the council in his capacity as a councillor.

The Standards Board referred the case to the Adjudication Panel for England. At a hearing on Friday (14 November) the panel imposed the most serious sanction at its disposal.

Mr Dockerill was found guilty at Birmingham Crown Court on 5 April 2007 of three counts of making indecent images of a child and four counts of possessing indecent images of a child and was later sentenced to a three-year rehabilitation order, a five-year sexual offences prevention order and registered as a sex offender for seven years. He was also ordered to pay £10,000 costs. His term of office ended in May 2007 and he did not stand for re-election.

The convictions related to child pornography found on four computers, one of which he owned privately. The others belonged to the Erewash Conservative Association, of which he was a member, the grammar school at which he taught and lastly, Erewash Borough Council, which lent him a laptop to assist him in his work as a councillor.

The Standards Board's investigation opened in January 2005 after Mr Dockerill was charged, but was postponed until December 2007 when his trial, sentencing and appeal processes were over.

The Adjudication Panel agreed with the ethical standards officer's conclusion that Mr Dockerill had breached the Code of Conduct by bringing his office and authority into disrepute.

Dr Robert Chilton, chair of the Standards Board for England, said: "By using a council computer to possess this material, Mr Dockerill brought his conduct out of his private capacity and linked it with his office as councillor. The public elect councillors to positions of trust, and when that trust is abused, they rightly expect council members to be brought to account.

"Although Mr Dockerill did not receive a custodial sentence upon conviction, he used publicly-funded council resources to commit serious offences involving the exploitation of children and which are seen by the public as particularly repugnant. Such behaviour is not only criminal, but also seriously undermines the electorate's confidence in local democracy and the suitability of such an individual to hold office."

Tresmere Parish Council

A husband and wife who were members of a Cornwall parish council have been disqualified from office for a year after their 'aggressive' behaviour saw the parish clerk and their three fellow councillors resign.

The ban, imposed at a hearing of the independent Adjudication Panel for England on 24 July, follows an investigation by the Standards Board for England into allegations that Peter and Sheila Montague failed to treat others with respect and brought their office into disrepute.

It was alleged that Peter and Sheila Montague behaved in an aggressive, intimidating and disrespectful way to fellow parish councillors and a member of the public in council meetings between May and June 2007. It was also alleged they made verbal and written attacks on the character and integrity of the ex-clerk to the council.

The Adjudication Panel for England concluded that the language in emails written by Mr Montague and approved by Mrs Montague was rude and unjustified. The Adjudication Panel found that Mr Montague was aggressive when speaking to another councillor, had suggested that the clerk had acted without authority for his own purposes and that his conduct was unacceptable for a council meeting.

The Adjudication Panel also found that Mrs Montague's shouting when other councillors disagreed with her was also unacceptable, as was the Montagues' behaviour at a meeting on 29 June 2007. They shouted at, talked over and interrupted other councillors, were aggressive, overbearing and rude, and without justification, questioned the clerk's integrity. The Adjudication Panel was satisfied that Mr and Mrs Montague's conduct brought their office into disrepute because their behaviour seriously affected the wellbeing of several individuals and damaged the normal running of the council by prompting the clerk and the other three members to resign.

Dr Robert Chilton, chair of the Standards Board for England said:

"To maintain public confidence in local government, it is essential that councillors' conduct meets the high ethical standards which the electorate has every right to expect from them. Mr and Mrs Montague's behaviour fell far short of those standards.

"Their conduct led to the resignation of the council's clerk and three other councillors, depriving the parish council of representation for nearly a year. The disqualification for a year recognises the seriousness of the behaviour and its consequences."

Parish Councils divided between Standards Committee Members

Parish Council	Standards Member	Visited
Adlington	Cllr Stella Walsh	
Anderton	Cllr Judith Boothman	
Astley Village	Cllr Stella Walsh	
Bretherton	Rev John Cree	Yes
Brindle	Cllr Debra Platt	Yes
Charnock Richard	Cllr Debra Platt	Yes
Clayton-Le-Woods	Cllr Judith Boothman	
Coppull	Cllr Thomas McGowan	Yes
Croston	Cllr Judith Boothman	
Cuerden	Tony Ellwood	
Eccleston	Cllr Keith Iddon	
Euxton	Joan Geddes	
Heapey	Rev John Cree	Yes
Heath Charnock	Tony Ellwood	
Heskin	Joan Geddes	Yes
Hoghton	Cllr Thomas McGowan	Yes
Mawdesley	Cllr Keith Iddon	
Rivington	Tony Ellwood	
Ulnes Walton	Joan Geddes	
Wheelton	Stella Walsh	
Whittle-Le-Woods	Cllr Keith Iddon	
Withnell	Rev John Cree	Yes

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Report of	Meeting	Date
Monitoring Officer	Standards Committee	11 December 2008

APPOINTMENT OF PARISH MEMBERS

PURPOSE OF REPORT

1. To seek Members support to a process for appointing new Parish Council Members to the Standards Committee.

RECOMMENDATION(S)

- a. That a panel be appointed to interview prospective Members and the recruitment pack and process be approved.
- b. That the Standards Committee recommend to Council that there should be three Parish Council Members on the Committee.
- c. That the Committee should give recommendations as to the term of office of Parish Councillors.

CORPORATE PRIORITIES

2. This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	
Improving equality of opportunity and life chances		Develop the Character and feel of Chorley as a good place to live	
Involving people in their communities		Ensure Chorley Borough Council is a performing organization	✓

BACKGROUND

3. Some time ago the Standards Committee recommended to Council that there should be an increase in the number of Parish Councillors on the Standards Committee in order to ensure that the Committee could fulfil its local filtering obligations. Council agreed that there should be two Parish Councillors on the Standards Committee. However, since that time guidance has emerged from the Standards Board recommending that a Committee should have three Parish Council representatives in order to ensure that sufficient Members are available to deal with local filtering decisions and reviews against those decisions and to provide some capacity in the event of Members being unavailable. The Committee therefore may wish to make a recommendation to Council along these lines.
4. The appointment of Parish Members to the Standards Committee has to be made in consultation with the Parishes. Accordingly, the Parish Councils have been invited to



submit nominations. Heapey Parish Council have confirmed that they would wish the present Parish Council representative on the Standards Committee, Parish Councillor Joan Geddes, to continue in office. Given the implications of implementing the new Standards arrangements there is much to be said for retaining some of the existing experience on the Standards Committee and my recommendation would be that Mrs Geddes should be invited to continue as a Parish Councillor as a Standards Committee representative at least until May 2010. The Standards Committee may though wish to take the opportunity to consider whether it would be wise to fix terms of office for Members.

5. In addition to Mrs Geddes five other nominations have been made and a process therefore needs to be agreed for making a recommendation to Council. It is suggested that an appointment panel should be established from within the membership of the Committee to make that recommendation. It will be necessary to have some criteria upon which to base the appointment recommendation and some suggested criteria are contained in the recruitment pack which is annexed to this report. It is suggested that each of the nominated Councillors should be invited to submit a written application setting out how they consider they meet the criteria and that this should be explored further during an interview.

ANDREW DOCHERTY
CORPORATE DIRECTOR (GOVERNANCE)

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Andrew Docherty	5102	01 December 2008	AD/JA/0112

Dear

APPOINTMENT OF PARISH REPRESENTATIVES TO THE STANDARDS COMMITTEE

Chorley Council Standards Committee has consulted the local Parish Councils about the recruitment of additional Parish Council members for the Standards Committee. Your Parish Council has nominated you as a potential representative. I am very pleased that you have expressed an interest in the position.

I am enclosing application form, some additional information about the role and details of the criteria that will be used in the selection process.

If you are still interested I should be grateful if you would return the application form by [DATE]

Your application will then be considered and a shortlist of candidates for interview will be produced. You will be notified if you have been short listed and invited for interview. Interviews will be held [DATE] and will take place at the Town Hall, Market Street, Chorley.

The interview will take the traditional form of questions and answers. There will not be any other tests or activities.

I look forward to receiving your application.

Additional Information

Chorley Council Standards Committee acts as the Standards Committee to the Borough Council and the Parish Councils in the area. The Standards Committee (and its Sub Committees) can only consider business relating to Parishes if a Parish member is present. Recent changes to the role of the Standards Committee means that there is a need to add capacity and increase the number of Parish Members.

The Standards Committee's key role is to promote high standards of ethical conduct within the Councils for which it is responsible and in particular to promote compliance with the Code of Conduct. It does this in a number of ways. The Committee meets collectively roughly four times a year during the day and considers training and other development activity which is to take place, support the development of good practice tools and generally supports the work of the Monitoring Officer. The Committee also gives advice in relation to matters connected with ethics but which might not directly relate to the Code of Conduct. For example the Committee has recently been consulted on revisions to Chorley Council's Whistle blowing policy.

Members of the Standards Committee are also expected to receive training themselves and to support the training which is offered to Councillors. On average this may involve attendance at two or three sessions a year although other training opportunities may be available. Most training which is directed at Standards Committee Members specifically takes place both during the day but more general training is arranged for the evenings

In order to develop good relations between the Standards Committee and the Parishes each Member of the Standards Committee is allocated two to three Parish Councils to whom they act as a mentor. Parish members mentor Parishes other than their own. This role is one which Members have some flexibility to develop but essentially requires attendance at one meeting of the mentored Parish each year to give some basic information about developments with the Code and the Standards regime. The Monitoring Officer and his staff provide support in terms of the information to be offered.

The Committee also has a role in dealing with cases of alleged misconduct and this role has changed recently. The Committee now has to establish Sub Committees to consider and filter allegations made, to consider whether they require investigation or some other action, to deal with reviews of decisions not to refer for investigation and to consider cases which have been investigated. It is very difficult to predict the workload which this will generate but standards of conduct in Chorley have generally been good and few cases have been referred. In the last year before the new arrangements came into place six allegations were made against Chorley Borough and Parish Councillors of which two were referred for investigation and one resulted in a full hearing. Our experience so far both in training for the new arrangements and in practice suggests that the initial "filtering" decision can be made fairly quickly with meetings lasting less than an hour but hearings take substantially longer and Members need to expect to have to be able to give up at least a full day of their time. A key issue though is flexibility since "filtering" and "review" decisions need to be taken quickly and, while we understand that nobody can commit to being available at a drop of the hat, the role is unlikely to suit somebody

The role is a voluntary one and no allowances are paid but travel and subsistence expenses are payable.

PARISH REPRESENTATIVES ON THE STANDARDS COMMITTEE

Selection Criteria

The ideal candidate for the position of parish representative on the Standards Committee will:-

1. Be a member of a Parish/Town Council within the area of Chorley.
2. Be willing and able to advocate for and act as ambassador for the Standards Committee to Town and Parish Councils within the area
3. Have independence of mind, objectivity and impartiality.
4. Have the Ability to understand documents, identify and comprehend relevant facts, and follow evidence and arguments
5. Have a commitment to the general principles governing the conduct of Councillors generally and matters of probity and integrity in particular.
6. Have good interpersonal skills, including good communication skills and the ability to co-operate with others in a committee setting with tact and diplomacy in handling sensitive matters.
7. Be able to offer sufficient flexibility to attend meetings at short notice
8. Not have conflicts of interest which would seriously limit their ability to play a full role in the work of the Standards Committee
9. Be of good character with no issues which might bring them or the Standards Committee into disrepute
10. Show respect for people from different ethnic, cultural or social backgrounds -
11. Possess sound judgment, an ability to weigh arguments and reach a balanced decision
12. Be committed to their own personal development in the field of Standards
13. Have sufficient flexibility to give the commitment which the role of a Standards Committee Member requires.

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Report of	Meeting	Date
Monitoring Officer	Standards Committee	11 December 2008

COMMUNITIES IN CONTROL: REAL PEOPLE, REAL POWER CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES – A CONSULTATION

PURPOSE OF REPORT

1. To update the Standards Committee on the content of the Consultation Paper Communities in Control: Real People, Real Power Codes of Conduct for Local Authority Members and Employees received from the Department for Communities and Local Government.

RECOMMENDATION(S)

2. To consider the proposed responses to the consultation questions and approve their submission in their present or an amended form.

MONITORING OFFICER SUMMARY OF REPORT

3. On 2 October 2008 the Department for Communities and Local Government commenced consultation with Local Authorities on the Consultation paper Communities in Control: Real People, Real Power Codes of Conduct for Local Authority Members and Employees. The consultation ends on 24 December. The consultation paper can be found at <http://www.communities.gov.uk/publications/localgovernment/codesconductconsultation>
4. The Consultation paper proposes
 - a. A revised Code of Conduct for Members to replace the Code adopted in May of last year; and
 - b. A new Code of Conduct for Local Authority Officers.
5. The consultation paper details the proposed amendments to the Code of Conduct and asks a total of 22 questions to obtain the views of Local Authorities on them. A list of the questions is at Annex A to the Consultation Paper.
6. This report will consider the proposals and outline proposed responses.

CONSULTATION - GENERALLY

7. Chapter 2 of the Consultation paper starts by considering the general effect and application of the Code. It confirms that the public expect high standards of conduct from their elected and co-opted members and that it is an appropriate time to review the Code that was introduced last year to incorporate the experiences of the Standards Board as to its effectiveness.

8. The first general consideration is the application of the Code of Conduct to Members when not acting in their official capacity. The Consultation paper makes it clear that it was always the intention that the Code would apply to members conduct in a non-official capacity in limited circumstances. The current view is that those circumstances should be where they there is misconduct that constitutes a criminal act.
11. There is no intention to alter the existing legal provision concerning automatic disqualification for a conviction resulting in a custodial sentence of more than 3 months.
12. The Consultation paper proposes;

“Members must not bring their office or authority into disrepute by conduct which is a criminal offence.”

The question asked however is somewhat different.

“Q.1 Do you agree that the members’ Code should apply to a member’s conduct when acting in their non-official capacity?”

It is proposed to respond as follows

“A.1 The Standards Committee agree that the Code should apply when members are acting in a non-official capacity in certain circumstances. The Standards Committee agree that a member’s conviction for a criminal offence when they are not acting in an official capacity should be a circumstance where the Code of Conduct should apply.

“The Standards Committee’s understanding of the amendments made to the primary legislation by the 2007 Act is that they enable the Code to apply to criminal behaviour even where there is no conviction. The Standards Committee consider that the Code should cover this wider range of misconduct. There are many reasons why a case may not result in conviction e.g. public interest decisions by the CPS not to prosecute, evidence only being capable of proving a case to the civil and not criminal standard, perverse Jury decisions etc. There may even be cases where serious findings of fact are made against a Councillor in civil proceedings (perhaps brought by his own Authority) which, under the current proposals, would be ignored for the purposes of the Code. This would surely bring the ethical regime into disrepute.

13. The second consideration is the definition of what constitutes a criminal offence and official capacity. The Consultation paper seeks to define this for the purpose of the operation of the Code as a conviction for any offence for which the member does not have the opportunity of paying a fixed penalty notice rather than face a conviction.

“Q.2 Do you agree with this definition of “criminal offence” for the purposes of the members code? If not, what other definition would you support, for instance should it include police cautions? Please give details.”

It is proposed to respond as follows

“A.2 The Standards Committee do not accept the definition of “criminal offence” as proposed. Instead the Standards Committee would propose the following definition-

“A criminal offence for the purpose of the Code of Conduct **will include** all criminal acts for which the member has been or could be convicted by a court; it **will not include** criminal acts resulting in a fixed penalty notice, **unless** the criminal act is one that is usually prosecuted by a local authority.”

The Standards Committee believe that a criminal act that relates to dishonesty or places the member in conflict with their local authority should always be treated as a breach of the Code of Conduct.”

14. The Consultation paper defines official capacity as being engaged in the business of your authority, including the business of the office to which you have been appointed/elected or where you are acting/claiming to act/giving the impression you are acting as a representative of that authority.

“Q.3 Do you agree with this definition of “official capacity” for the purpose of the member’s code? If not what other definition would you support? Please give details.”

It is proposed to respond as follows –

“A.3 The Standards Committee agree with the proposed definition of official capacity save to include the following “where a member of the public would reasonably believe the member is holding themselves out to be acting in their official capacity”.”

15. The Consultation paper also proposes that a criminal offence, as defined above, committed abroad would constitute a breach of the code.

“Q.4 Do you agree that the members’ code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?”

It is proposed to respond as follows –

“A.4 Subject to the amended definition of criminal offence as detailed at A.2, the Standards Committee agree with the application of the Code to convictions received by a member abroad.”

16. **“Q.5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?”**

It is proposed to respond as follows –

“A.5 The Standards Committee recognise that there would be difficulties in investigating this type of breach of the code prior to the resolution of the criminal process and, if a criminal conviction is required before a breach is established, then it is difficult to see what merit there could be in undertaking an early investigation. However, this does highlight a pitfall of using the “criminal conviction” criteria to deal with behaviour outside a Member’s Official Capacity. If there is a long gap between the complaint and conviction there is a risk of the system being brought into disrepute if no action is taken in the intervening period.

THE CODE

17. The Consultation paper then details additional proposed revisions to the members’ code.

Parish Councils

It is proposed to make the adoption of paragraph 12(2) of the model code of conduct mandatory for parish councils. At present adoption of this paragraph, which allows members to have the same rights to speak as a member of the public where they have a prejudicial interest in an item, is optional.

Membership of other Bodies

It is proposed to clarify that paragraph 8(1)(a)(i) and (ii) of the code be amended to make it clear that these provisions do not apply to the authority itself.

Personal Interests

It is proposed to amend the wording of paragraph 8(1)(a) to clarify that members must register a gift or hospitality with an estimated value of £25 in their register of interests and not the interests of those who have offered the gift or hospitality .

Prejudicial Interests

It is proposed –

- That the wording of paragraph 10(2) be improved by removing the current double negative.
- That “determining” in paragraph 10(2)(b) be further defined to include “variation, attaching, removing or amending conditions, waiving or revoking applications”.
- That paragraph 10(2)(c) be amended to clarify that no prejudicial interest exists where the Member is giving of evidence before a standards committee relating to a allegation that he or she has failed to comply with the code of conduct.

Registration of Members’ Interests

It is proposed that interests registered pursuant to the 2007 code will not need to be re-registered if the new code is adopted.

“Q.6 Do you think that the amendments to the members’ code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?”

It is proposed to respond as follows –

“A.6 The Standards Committee agree with the proposals.

“Q.7 Are there any aspects of conduct currently in the members’ code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?”

It is proposed to respond as follows –

“A.7 Paragraph 9(2) of the Code has no obvious value and should be deleted.”

“Q.8 Are there any aspects of conduct in a member’s official capacity not specified in the members’ code that should be included? Please give details.”

It is proposed to respond as follows –

“A.8 No comments.”

18. Other than its adoption by the Council the current code of conduct does not require members to specifically confirm that they will abide by its terms. It is proposed that members will have to give an undertaking in writing that they will observe its terms. Failure to do so will mean that the member will cease to be a member of the authority.

“Q.9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members’ code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?”

It is proposed to respond as follows –

“A.9 The Standards Committee accept that it is desirable for members to provide such an undertaking as it will ensure that members have read and appreciate their obligations under the code. The Standards Committee also agree that 2 months should be sufficient time to provide such an undertaking.

However, the Standards Committee feel that the sanction of ceasing to be a member of the authority is too severe. Such a sanction, the immediate removal as a member, will mean that the authority will be obliged to have a by-election. This will be an onerous burden financially and in terms of resources. It is thought by the Standards Committee that it would be more appropriate for failure to supply the undertaking to be dealt with by the Standards Committee or Standards Board for England.”

THE GENERAL PRINCIPLES

19. The Consultation paper restates the 10 General Principles which govern the conduct of members contained in the Local Authorities (Model Code of Conduct) Order 2007 and proposes an additional General Principle, not to commit a criminal offence. This new Principle would apply when the member is acting in a non-official capacity. This additional General Principle states

“Duty to abide by the law

Members should not engage in conduct which constitutes a criminal offence.”

It is proposed that criminal offence be defined as any conduct that has resulted in a criminal conviction, and that official capacity be defined as being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority.

“Q.10 Do you agree with the addition of this new general principle, applied specifically to conduct in a members non-official capacity?”

It is proposed to respond as follows –

“A.10 The Standards Committee consider that this is an unnecessary amendment and the duties to act with honesty and integrity and to uphold the law contained in the current general principles clearly already cover the situation.“

“Q.11 Do you agree with this broad definition of criminal offence for the purpose of the General Principles Order? Or do you consider that criminal offence should be defined differently?”

It is proposed to respond as follows –

“A.11 If the amendment is to be made then the Standards Committee believe that the same definition of “criminal offence” should be used for the purpose of the General Principles as for the Code.

“Q.12 Do you agree with this definition of “official capacity” for the purpose of the General Principles Order?”

It is proposed to respond as follows –

“A.12 The Standards Committee believe that the same definition should apply for the purpose of the General Principles as for the Code.

MODEL CODE OF CONDUCT FOR LOCAL GOVERNMENT EMPLOYEES

22. It is difficult to consider the consultation on this issue as no model code is provided. The Consultation paper is also quite short on detail, being unclear as to who it is intended should be bound by such a code and the nature of the obligations. Neither does it state how it is to be enforced ie by reporting to the Standards Committee or by Employment Tribunal.

What the consultation does query is whether a code should apply to employees who already have their own code of conduct.

“Q.13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees terms and conditions of employment is needed.”

It is proposed to respond as follows –

“A.13 The Standards Committee sees little need for a national Code of Conduct for employees. The conduct of employees is governed by their contracts of employment which provide ample opportunity to deal with any conduct which might bring their employer into disrepute. Indeed the obligations, in some respects, go further than the Code in their application to an employee’s private life. Chorley Council, as with many other Councils has had its own Code of Conduct in place for many years. ”

“Q.14 Should we apply the employees’ code to firefighters, teachers, community support officers and solicitors?” (*employees who already have a code of conduct*)

It is proposed to respond as follows –

“A.14 If the code of conduct does not apply to all staff then it may divide the workforce. Any issues which arise where an employee is bound by a conflicting professional code could be dealt with by making the national Code subject to any other Codes – as is presently the case to some extent for elected Members”

“Q.15 Are there any other categories of employees in respect of whom it is not necessary to apply the code?”

It is proposed to respond as follows –

“A.15 None of which the Standards Committee are aware.”

PROPOSED CORE VALUES

23. The Consultation paper outlines 11 core values which are the equivalent to members General Principles. They are as follows:-

General principles

The public is entitled to expect the highest standards of conduct from all local government employees. The role of such employees is to serve their employing authority in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Accountability

Employees are accountable, and owe a duty to, their employing authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

Political neutrality

Employees, excluding political assistants, must follow every lawfully expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities.

Relations with members, the public and other employees

Mutual respect between employees and members is essential to good local government and working relationships should be kept on a professional basis. Employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently and without bias.

Equality

Employees must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

Stewardship

Employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner and must not utilize property, vehicles or other facilities of the authority for personal use unless authorized to do so.

Personal interests

An employee must not allow their private interests or beliefs to conflict with their professional duty. They must not misuse their official position or information acquired in the course of their employment to further their private interest or the interests of others.

Employees should abide by the rules of their authority about the declaration of gifts offered to or received by them from any person or body seeking to do business with the authority or which would benefit from a relationship with that authority. Employees should not accept benefits from a third party unless authorised to do so by their authority.

Whistleblowing

Where an employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with the model code of conduct for employees, the employee should report the matter, acting in accordance with the employees rights under the Public Interest Disclosure Act 1998 and with the authority's confidential reporting procedure or any other procedure designed for this purpose.

Treatment of Information

Openness in the dissemination of information and decision making should be the norm in authorities. However, certain information may be confidential or sensitive and therefore not appropriate to a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

Appointment of staff

Employees of the authority, when involved in the recruitment and appointment of staff, must ensure that appointments are made on the basis of merit. In order to avoid any accusation of bias, those employees must not be involved in any appointment, or any other decision relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

Investigations by monitoring officers

Where a monitoring officer is undertaking an investigation in accordance with Part III of the Local Government Act 2000 and associated regulations, employees must comply with any requirement made by that monitoring officer in connection with such an investigation.

It is interesting to note that there are more core value obligations placed on employees who are already bound by a contract of employment than there are general principle obligations placed on members.

“Q.16 Does the employees’ code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?”

It is proposed to respond as follows –

“A.16 If it is appropriate to have a code of conduct for employees then the proposed core values are a correct reflection.”

QUALIFYING EMPLOYEES

24. Qualifying Employees are those to which in addition to the core values some of the restrictions of the members code should apply. The Consultation paper proposes two bases in which Qualifying Employees should be defined. The first approach is to use employees in posts which are politically restricted under section 3 of the Local Government and Housing Act 1989; the second is a delegation model which considers what functions have been delegated to the employee by elected members.

“Q. 17 Should the selection of “qualifying employees” be made on the basis of a “political restriction” style of model or should qualifying employees be selected using the delegation model?”

It is proposed to respond as follows –

“A.17 The Standards Committee submit that neither model is wholly adequate. Schemes of delegation differ markedly between Councils and any model based on this would therefore lead to inconsistency across the Country. The “political restriction” model is better but the definition of “Deputy Chief Officer” within that model is far too wide since, depending on the structures in place within a Council, it can cover very junior members of staff.”

QUALIFYING EMPLOYEES – ADDITIONAL VALUES

25. The Consultation paper sets out values which will apply to Qualifying Employees in addition to the core values. These are –

- Compromising the impartiality of officers; This includes not forcing employees to take action or change advice if this would prejudice their professional integrity.
- Using your position improperly; to either your own or anybody else’s advantage or disadvantage.
- Considering advice provided to you and giving reasons; If advice is received requested or otherwise, on the operation of the employees code then regard must be had to this advice.
- Personal Interest; Qualifying Employees will be required to register in writing with the monitoring officer any interests falling in certain defined categories.

“Q.18 Should the code contain a requirement for qualifying employees to publicly register any interests?”

It is proposed to respond as follows –

“A.18 No. A public register is an unnecessary interference in employee’s privacy. In general any register should be accessible only to the manager of the Member of Staff. There may be an arguable case to go further than this for the most senior employees but this should still not be a public document. Access should be restricted - perhaps to auditors and Members.

This question also highlights the interesting issue of what standards should be applied to those providing services for Councils on an outsourced basis. Is there any good reason to treat these employees any differently from those engaged on an in house basis?”

“Q.19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?”

It is proposed to respond as follows –

“A.19 If such criteria were adopted then they should be limited to financial matters only.”

PREJUDICIAL INTERESTS

26. The Consultation paper recognises that Employees with a prejudicial interest in a matter may still be required to participate in the decision making process. It suggests that the ideal is that the employee should pay no part in such a decision, however where it is unavoidable they can continue to participate provided that the existence of the prejudicial interest is clear.

“Q.20 Does the section of the employees’ code which will apply to qualifying employees capture all pertinent aspects of the members’ code. Have any been omitted?”

It is proposed to respond as follows –

“A.20 It seems difficult in principle to reconcile the prohibition on members participating in decision making where they have a prejudicial interest with the more flexible approach for Officers. Equally though officers should not be hampered in making day to day decisions, sometimes urgently by seeking to apply a rule book. The simple question should be: “Will this action bring my Authority into disrepute? The answer should reflect local circumstances”

“Q.21 Does the section of the employees’ code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?”

It is proposed to respond as follows –

“A.21 It is not accepted that an employees code of conduct is necessary. Neither is it accepted that a separate code is required for qualifying employees.”

PARISH COUNCILS

27. **Q22 – Should the employees’ code extend to employees of parish councils?**

“A22. As the Standards Committee doubts the need for a Code for employees at all the answer is no. However, if there is to be a national Code then logically it should extend to Parish Clerks. Although these Officers are relatively lowly paid they often have substantially more influence with their Councils than the majority of the Officers of Principal Authorities who would be covered by any new Code.

IMPLICATIONS OF REPORT

28. This report has implications in the following areas and the relevant Corporate Directors’ comments are included:

Finance		Customer Services	X
Human Resources		Equality and Diversity	
Legal	X	No significant implications in this area	

Background Papers

The Consultation paper Communities in Control: Real People, Real Power, Codes of Conduct for Local Authority Members and Employees.

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Appendix 8 Protocol on Member-Officer Relations

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1. Introduction

- 1.1 The purpose of this Protocol is to guide members and officers of the Council in their relations with one another. Both members and officers are servants of the public, and they are indispensable to one another.
- 1.2 Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It simply seeks to offer guidance on some of the issues which most commonly arise. It is hoped however that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 1.3 The object of this Protocol, in conjunction with Codes of Conduct for members and officers, is to enhance and maintain the integrity (real and perceived) of Local Government. Very high standards of personal conduct are therefore required.
- 1.4 Attention is drawn in this context to the Local Code of Conduct for Members adopted by the Council on 26 February 2002.
- 1.5 It is important that any dealings between members and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.

2. General Principles

- 2.1 **Members and officers must treat each other with courtesy and respect at all times.**

The relationship between members and officers should be a professional one and close personal familiarity between members and officers should be avoided, as it prejudices the impartiality of decision making and can be embarrassing to other members and officers. For example, officers should not accept gifts or hospitality from members. Similarly, officers should not undertake work for members in a personal or private capacity.

- 2.2 **Neither members nor officers must try to take advantage of their position and their behaviour towards each other should never be bullying or threatening.**

Members must be aware of their position of influence and must not seek to abuse this, particularly with junior employees. For example, the role of officers is to implement Council policy. Members must never seek to persuade or bully officers to “bend the rules” in favour of them or anybody they are representing.

- 2.3 **Whether or not officers are in politically restricted posts, they must maintain political impartiality and seek to serve the needs of the Council as a whole.**

In particular, officers must treat members with courtesy and respect regardless of the member's political affiliation. Both members and officers must recognise the fundamental need for officers to be politically neutral in their work and both must ensure that officers are not placed in a situation where they are drawn into political disputes, either between different political groups or within a political group.

2.4 Members and officers must comply with the Council’s Equal Opportunities Policy at all times in their dealings with each other.

The working relationship between members and officers must not be influenced by gender, sexual orientation, marital status, race, nationality, colour, religion, age or disability. For example, members and officers must not make sexual or racial remarks to each other, even if the remarks are meant as a “joke”. Such behaviour can cause upset and offence and may leave the Council open to legal action, including claims of unfair dismissal and discrimination.

2.5 Members must be aware of their role as employer of the Council’s staff and must respect the Council’s disciplinary procedures and the Council’s management structure.

If a member has a concern or complaint about an officer they must raise it privately with the officer’s line manager or their chief officer. The concern or complaint should not be raised directly with the officer concerned. In particular, no member has any right to appoint, dismiss or discipline officers other than through membership of an appropriate panel or committee established under the Council’s recruitment or disciplinary procedures and members must not become involved in individual staffing matters except at the request of the Chief Executive.

Additionally, officers are responsible to the Council as their employer and that responsibility is implemented through the management structure. Officers are accountable to their chief officers, and whilst officers must always seek to assist members, they must not in doing so, exceed any authority they have been delegated by their chief officer.

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Standards Committee Work Programme 2008

Dec-08

News from the Standards Board for England

Cases considered by the Adjudication Panel for England

Feedback from visits to Parish Councils

Work undertaken to promote the Code of Conduct

Update on the recruitment of additional members of the Standards Committee

Real people, real power Codes of conduct for local authority members and employees

Protocol on Member-Officer Relations

Codes of Conduct for local authority members and employees

Standards Committee Work Programme

Other topics

ICT Acceptable user policy

Consideration of the Officer code of conduct (good governance)

Guidance on information accessible by members and disclosed by members

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Consider the need for a Licensing Code of Conduct

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