



Standards Committee

Agenda and Reports

For consideration on

Thursday, 18th June 2009

In Committee Room 1, Town Hall, Chorley

At 2.00 pm



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11 June 2009

Dear Councillor/Colleague,

STANDARDS COMMITTEE - THURSDAY, 18TH JUNE 2009

You are invited to attend a meeting of the Standards Committee to be held in Committee Room 1, Town Hall, Chorley on Thursday, 18th June 2009 commencing at 2.00 pm.

AGENDA

1. **Welcome and Introductions**

The Chair will welcome those Members new to the Committee and confirm appointments.

2. **Apologies for absence**

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

To confirm as a correct record the minutes of the meeting of the Standards Committee held on 5 March 2009 (enclosed).

4. **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.

5. **News from the Standards Board (Pages 5 - 20)**

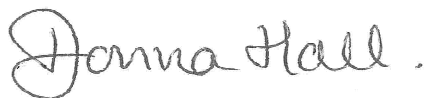
Recently issued guidance from the Standards Board for England is enclosed for discussion at the meeting.

6. **Annual return to the Standards Board for England (Pages 21 - 28)**

To consider the annual return to the Standards Board for England and to receive a verbal update from the Monitoring Officer on the current return.

7. **Cases considered by the Adjudication Panel for England (Pages 29 - 50)**
To receive the report of the Monitoring Officer.
8. **The Standards Committee (Further Provisions) (England) Regulations 2009 (Pages 51 - 54)**
To receive and consider the report of the Monitoring Officer (enclosed).
9. **Parish Council mentoring (Pages 55 - 56)**
The Committee will consider and allocate mentors to the 22 Parish Councils within Chorley for this municipal year. The mentors for last year are enclosed for reference.
10. **Work undertaken to promote the Code of Conduct**
The Monitoring Officer will present a verbal update.
11. **Update on the recruitment of additional members of the Standards Committee**
The Monitoring Officer will present a verbal update.
12. **Email, internet and telephone policy (Pages 57 - 68)**
To receive views and comments on a draft email, internet and telephone policy (enclosed).
13. **Standards Committee Work Programme (Pages 69 - 70)**
The Committee will discuss and set out the Work Programme for 2009/2010 (enclosed).
14. **Any other item(s) that the Chair decides is/are urgent**

Yours sincerely



Donna Hall
Chief Executive

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Democratic and Member Services Officer
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Distribution

1. Agenda and reports to all Members of the Standards Committee (Tony Ellwood (Chair), Councillor Mike Devaney (Vice-Chair) and Councillors Judith Boothman, Catherine Hoyle, Debra Platt, Stella Walsh, Rev John Cree (Independent Member) and Joan Geddes (Parish Council Member) for attendance.

2. Agenda and reports to Andrew Docherty (Director of Governance - Monitoring Officer), Alex Jackson (Senior Lawyer) and Ruth Rimmington (Democratic and Member Services Officer) for attendance.
3. Agenda and reports to Alan Cornwell (Reserve Parish Council Member) for attendance.

This information can be made available to you in larger print or on audio tape, or translated into your own language. Please telephone 01257 515118 to access this service.

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 آپکی اپنی زبان میں بھی کیا جاسکتا ہے۔ یہ خدمت استعمال کرنے کیلئے براہ مہربانی اس نمبر پر ٹیلیفون

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Standards Committee

Thursday, 5 March 2009

Present: Tony Ellwood (Independent Chair), Councillor Keith Iddon (Vice-Chair) and Councillors Judith Boothman, Thomas McGowan, Debra Platt, Stella Walsh and Rev John Cree (Independent Member)

Officers in attendance: Andrew Docherty (Director of Governance - Monitoring Officer), Chris Moister (Legal Services Manager) and Ruth Rimmington (Democratic and Member Services Officer)

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

09.S.68 APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Joan Geddes (Parish Council representative).

09.S.69 MINUTES

RESOLVED – That the minutes of the meeting of the Standards Committee held on 11 December 2008 be confirmed as a correct record and signed by the Chair.

09.S.70 DECLARATIONS OF ANY INTERESTS

In accordance with the provisions of the Local Government Act 2000, the Council's Constitution and Members Code of Conduct, Councillor Debra Platt declared an interest in relation to items 8: Update on the recruitment of additional members of the Standards Committee and 10: Appointment of Sub-Committee. Councillor Keith Iddon declared an interest in relation to item 10: Appointment of Sub-Committee.

09.S.71 NEWS FROM THE STANDARDS BOARD

The Monitoring Officer advised that the Local Government Chronicle had recently held some awards on standards and ethics. Examples of good practice from those commended authorities could be considered by the Committee in future.

RESOLVED – The report be noted.

09.S.72 CASES CONSIDERED BY THE ADJUDICATION PANEL FOR ENGLAND

The Committee considered the report of the Monitoring Officer advising Members of recent cases which have been considered nationally.

The Committee discussed the cases and queried several points with the Monitoring Officer.

RESOLVED - The report be noted.

09.S.73 FEEDBACK FROM VISITS TO PARISH COUNCILS

Members of the Committee gave feedback on their visits to Parish Councils. It was noted that each Parish would have received a visit from their mentor by the end of April and that visits do raise awareness of the Committee and its' role.

RESOLVED - The report be noted.

09.S.74 WORK UNDERTAKEN TO PROMOTE THE CODE OF CONDUCT

The Monitoring Officer advised that Parish Council clerks would now receive an email alert notifying when an agenda for the Committee was published.

Members would be requested to review their register of financial and other interest forms in May. The membership of Parish Councils would be confirmed in June and at this point the parish register of financial and other interest forms would also be reviewed by officers to ensure all forms had been received.

The Monitoring Officer advised that the quarterly return to the Standards Board for England had been completed and that the annual return would be reported to the next meeting.

The Committee's response to the consultation paper "Communities in Control: Real People, Real Power Codes of Conduct for Local Authority Members and Employees" had been submitted to the Department for Communities and Local Government.

RESOLVED – That the update be noted.

09.S.75 UPDATE ON THE RECRUITMENT OF ADDITIONAL MEMBERS OF THE STANDARDS COMMITTEE

Councillor Debra Platt declared a personal interest in this item.

The Monitoring Officer advised that, following an interview process, two candidates were considered to be suitable to be appointed as Parish Council representatives on the Standards Committee.

He advised that the Independent member appointment process had been discussed at All Party Leaders Liaison and a suggestion had been made to contact the Local Strategic Partnership to canvass interest. It was noted that the majority of Councils have faced difficulties in appointing Independent Members due to the voluntary nature of the post.

RESOLVED –

- 1. The Council be recommended to appoint Parish Councillors Bill Mason and Alan Platt to the Standards Committee,**
- 2. The update on Independent member vacancies be noted.**

09.S.76 DRAFT PROTOCOL ON PARISH MEMBER-EMPLOYEE RELATIONS

The Committee considered the report of the Monitoring Officer and sought Members comments on the draft protocol. Comments from Debra Platt and Joan Geddes had already been fed into the document enclosed with the agenda package.

The Committee supported the protocol as a guide for parish councillors in their role. The voluntary nature of the protocol was noted.

RESOLVED -

- 1. To make the protocol available to Parishes within Chorley to be adopted on a voluntary basis.**
- 2. To consider the Borough Member officer protocol at a future meeting.**

09.S.77 APPOINTMENT OF SUB-COMMITTEES

Councillors Debra Platt and Keith Iddon declared a personal interest in this item.

It was noted that a case involving a Lancashire County Councillor, who was also a Borough Councillor, would be dealt with by Lancashire County Council.

RESOLVED -

- 1. That the membership of the Standards Sub-Committee (Assessment) be Tony Ellwood (Independent Member), Alan Cornwell (Parish Council representative) and Stella Walsh (Borough Councillor).**
- 2. That the membership of the Standards Sub-Committee (Hearing) be Tony Ellwood (Independent Member), Thomas McGowan and Stella Walsh (Borough Councillors).**

09.S.78 USE OF RESOURCES

The Committee received a presentation from the Monitoring Officer entitled "Use of Resources Assessment – What the Standards Committee needs to know".

The Committee discussed whether the Borough and Parish Councillor financial and other interests forms should be available on the internet. It was considered that as personal information is included on the forms which are available for inspection in the Democratic Services office the forms should not be available on the internet.

The Committee considered its' effectiveness in overseeing compliance with the code of conduct. The work programme and taking the role of the Committee forward for next year would be considered at the next meeting.

RESOLVED –

- 1. The presentation be noted.**
- 2. The work programme be considered at the next meeting along with points such as:**
 - How do we demonstrate that the leadership of the Council promotes ethical standards?**
 - Being outward facing – how much do we want to encourage people to bring complaints?**
 - How do we get long standing members to training?**

09.S.79 STANDARDS COMMITTEE DRAFT ANNUAL REPORT

The Committee received and considered the draft Annual Report for the Standards Committee.

Members thanked the Monitoring Officer for the report and noted how active the Committee is, in particular regarding Parish Council mentoring.

RESOLVED –

- 1. The Annual Report be presented to Council.**
- 2. An Annual Report be produced at the end of each municipal year.**

09.S.80 STANDARDS COMMITTEE WORK PROGRAMME

The Committee discussed the work programme and noted that the dates of the meetings for the next municipal year were 18 June 2009, 17 September 2009, 10 December 2009 and 4 March 2010. The work programme would be considered at the first meeting of the new municipal year.

RESOLVED – The work programme be noted.

Chair

OTHER ACTION GUIDANCE

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introduction

- 1) This guidance on other action is aimed at members of standards committees. It is not mandatory but has been written to help describe what other action is, when it might be used, and how the process can be managed.
 - Although there is no formal route for dealing with a member who refuses to comply with other action, failure to cooperate may amount to bringing the authority into disrepute.
- 2) Advice for monitoring officers on carrying out other action is available in the Standards Board's guidance, **Local Investigations and Other Action and How to Conduct an Investigation**.
- 3) The Standards Board's key messages on other action are:
 - Complaints should not be referred for other action when an investigation is in the public interest, when an allegation challenges the member's honesty or integrity, or where if proven to be true, the alleged conduct would undoubtedly warrant a sanction.
 - A referral for other action closes the opportunity to investigate.
 - A decision to refer a complaint for other action makes no finding of fact, and the action decided on must not imply that the subject of the complaint has breached the Code of Conduct.
 - Assessment sub-committees cannot direct the subject member or any other party to take action. The direction is to the monitoring officer.

what is other action?

- 4) An assessment sub-committee has **three** options when dealing with a complaint that a member has failed or may have failed to comply with the Code of Conduct. The Local Government Act 2000, as amended, states that it can decide to refer the complaint to the monitoring officer of the authority concerned, refer it to the Standards Board, or take no action.
- 5) If the assessment sub-committee decides to refer a complaint to the monitoring officer, it can direct them to investigate the matter. Alternatively, it can direct them to take steps other than carrying out an investigation. This is known as other action.
- 6) Generally, there are **two** indicators for other action. The **first** is when there is evidence of poor understanding of the Code of Conduct and/or the authority's procedures. The **second** indicator for other action is when relationships within the authority as a whole have broken down to such an extent that it becomes very difficult to conduct the business of the council.
- 7) The Standards Committee (England) Regulations 2008 explain that the steps a standards committee can direct a monitoring officer to take are:
- arranging for the member to attend a training course
 - arranging for the member and complainant to engage in a process of conciliation
 - any other steps (not including an investigation) which appear appropriate
- 8) Suggestions as to types of training courses a member might attend, and other steps a standards committee might consider appropriate, are listed in the next section (**What might other action involve?**).

what might other action involve?

- 9) The Standards Committee (England) Regulations 2008 specifically provide that a referral for other action may consist of a direction to the monitoring officer to arrange for the member to attend a training course. Training may be in anything the assessment sub-committee deems appropriate, such as:
- chairing skills
 - working with external bodies and partnerships
 - governance issues
 - the Code of Conduct
 - council procedures and protocols
 - legal matters
 - planning and licensing
 - working with officers
 - use of council resources
- 10) In general, other action may take the form of directing the monitoring officer to arrange for the:
- redrafting of council procedures or policies
 - training of members of the council as a whole
 - mentoring of a member or members, or whole council
 - management of conflict
 - development of council protocols
 - implementation of a council complaints procedure
- 11) A referral for other action does not mean that the member has been found to have done anything wrong (see the next section '**Deciding to take other action**'). It is therefore very important that the action proposed does not imply this. Other action cannot, for example, take the form of requiring the subject member to apologise. Of course, in those cases where the member has admitted the breach and offered an apology, the assessment sub-committee may decide that no further action is necessary.
- 12) **It is particularly important to remember that an assessment sub-committee can only direct a monitoring officer to take other action. It has no power to direct anyone else to do so.**

deciding on other action

- 13) A decision to refer a complaint for other action – like all assessment decisions – does not involve making any findings of fact. All parties should understand that a decision to take other action means that no conclusion has been reached about what happened. Furthermore, no decision has been made about whether the subject member failed to comply with the Code.
- 14) Similarly, everyone involved in a decision to take other action must understand that the purpose of such a referral is not to find out whether the member breached the Code of Conduct. This is regardless of how simple it may be to establish the facts. A decision to direct the monitoring officer to take other action is an alternative to an investigation. It cannot ever result in a finding that the member has or has not failed to comply with the Code.
- 15) The assessment sub-committee needs to be satisfied that even if the specific allegation had occurred as alleged, it would not be behaviour which would necessarily require the subject member to face one of the sanctions it could impose. This excludes training, which can be other action decided on at assessment stage, and a sanction following a hearing. The assessment sub-committee should also be satisfied that other action could assist the proper functioning of the council.
- 16) Other action is not intended to be a quick and easy means of dealing with matters which the assessment sub-committee considers to be too trivial or time-consuming to investigate. Genuinely trivial cases are better dealt with by a decision to take no action. While other action can be a cost-effective way of getting a matter resolved, it is not a quick-fix. Furthermore, other action should not be seen as a routine or cheap way of disposing of an allegation, as it can sometimes be a drawn out, costly and time-consuming process.
- 17) Standards committees should take care to avoid it appearing to the complainant that deciding to take other action is sweeping matters under the carpet. The decision should demonstrate to the complainant that their complaint is being addressed and being taken seriously, although perhaps as part of a wider issue.
- 18) Importantly, if a complaint merits being investigated, then it should be referred for investigation. For example, complaints should not be referred for other action when an investigation would be in the public interest. Other action should also be avoided where the allegation fundamentally challenges the member's honesty or integrity. It should additionally be avoided where the allegation, if proven, would warrant any of the sanctions (apart

deciding on other action

from training) available to a standards committee after a hearing.

- 19) Assessment sub-committees must not refer an allegation for other action without consulting the monitoring officer, who will often be present at the assessment meeting. If the monitoring officer is not present, and has not given any indication of their views on other action, the assessment meeting may need to be adjourned.
- 20) The monitoring officer may be able to advise the assessment sub-committee how viable the proposed other action is, by providing information on the resources available to them. They may be able to tell the assessment sub-committee how much any proposed other action might cost. They might also be able to advise whether, for example, the authority has access to the facilities or resources needed to accomplish it, such as trained mediators.

when is other action appropriate?

- 21) The first stage in assessing a complaint is to determine whether it is within jurisdiction. In other words, the assessment sub-committee needs to decide whether, if what the complainant alleges were true, the Code of Conduct would apply. If the Code would not apply to the alleged conduct, the only decision an assessment sub-committee is able to make is to take no action. Other action will never be appropriate in these cases.
- 22) In general, the Standards Board believes that other action is most beneficial when used to deal with systemic problems rather than individual ones. The action proposed does not have to be limited to the subject of the complaint. Several members, or indeed a whole authority, could be included in the action the monitoring officer is asked to take.
- 23) Matters which standards committees might consider referring for other action include:
- a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the council
 - misunderstanding of procedures or protocols
 - misleading, unclear or misunderstood advice from officers
 - lack of experience or training
 - interpersonal conflict
 - allegations and retaliatory allegations from the same members
 - allegations about how formal meetings are conducted
 - allegations that may be symptomatic of governance problems within the council, which are more significant than the allegations in themselves
- 24) We advise standards committees to draw up assessment criteria which detail the matters they will take into account when deciding what action, if any, to take. Every decision to take other action – like all assessment decisions – can then be made with reference to these criteria.
- the same particular breach of the Code by many members, indicating poor understanding of the Code and the authority's procedures

adjournment

- 25) Some assessment sub-committees are reluctant to refer a complaint for other action without knowing whether the subject member and other members of the authority will cooperate with the proposed approach.
- 26) One way of dealing with this issue is by adjourning the assessment of a complaint that the assessment sub-committee considers might be suitable for other action. The standards committee can then ask the monitoring officer to find out whether the member or members will cooperate. Although this option is not specifically provided for by the legislation, we do not consider that it is prohibited. Meetings may also be adjourned to enable the monitoring officer to find out more information about the complaint.
- 27) It is up to each authority to decide whether their assessment of a particular complaint should be adjourned. They should consider the advantages and disadvantages of adjournment when making this decision. They should also bear in mind that we advise that assessment decisions should be made within an average of 20 working days, and that an adjournment may mean that that the average assessment time increases.
- 28) Advantages of adjournment are:
- Those sitting on the assessment sub-committee will know what the members think about the proposed solution, and may therefore be more confident in making their decision.
 - Members may be likely to cooperate if they are made aware of the options available.
 - When members indicate that the action would be ineffective, the sub-committee still have the option of deciding to refer the complaint for investigation.
 - Further information obtained by the monitoring officer may mean that the complaint is effectively resolved, enabling the sub-committee to decide to take no action.
- 29) Disadvantages of adjournment are:
- Finding out members' views runs the risk of putting the decision about what action to take into the hands of the member, rather than the sub-committee.
 - The authority of the standards committee may be undermined if other action is agreed through negotiations between the monitoring officer and the member or members.
 - By making further enquiries, the monitoring officer may end up starting an investigation before the assessment decision is made.

adjournment

- The member or members may try to pass on more information to the monitoring officer, to persuade the sub-committee to take no action.
- 30) As an alternative to adjourning the assessment meeting, the standards committee could agree that the monitoring officer seeks views on other action when they receive a complaint.

role of the monitoring officer

- 31) When a matter has been referred for other action, it is the monitoring officer's duty to give notice to the relevant parties. These relevant parties are:
- the subject member
 - the person who made the allegation
 - the standards committee of any other authority concerned
 - any parish council concerned
- 32) If the standards committee issues a decision notice that goes to all these parties, the Standards Board considers that the monitoring officer's responsibility is met.
- 33) Whoever notifies the parties of the decision should take care over how the decision is conveyed. It is important that the wording does not imply that the member is culpable. It is also important that members do not feel they have been found guilty without an investigation of the allegation. Note that both parties could end up potentially feeling dissatisfied. This is because complainants and subject members do not have the right to have the decision to refer a matter for other action reviewed under Section 57B of the Local Government Act 2000.
- 34) When a monitoring officer receives a referral with a direction to take other action, they must deal with it in accordance with the direction. They do not have discretion to take a different course of action and should make every attempt to ensure that the action specified is carried out successfully.
- 35) Information and advice for monitoring officers on carrying out other action is available in the Standards Board's guidance, **Local investigations and other action** and **How to conduct an investigation**.
- 36) The monitoring officer must submit a written report to the standards committee within three months of receiving the direction, or as soon as possible after that. This report must give details of the action taken or the action proposed to comply with the direction.

consideration of the monitoring officer's report

- 37) The standards committee or an appropriate sub-committee should consider the monitoring officer's report and decide whether it is satisfied with the action described. The meeting at which the report is considered is subject to the general notice and publicity requirements under regulation 8 of the Standards Committee (England) Regulations 2008.
- 38) The monitoring officer's report can be considered by the same members who initially assessed the complaint, by another sub-committee, or by the standards committee as a whole. This is a decision to be made by each authority, and will depend on the way in which the committee has been set up, what sub-committees it has and the terms of reference of each body.
- 39) The advantage of the same members considering the report is that they will be aware of the details of the original complaint. However, some authorities may consider that convening a sub-committee simply for this purpose is not a good use of time and resources. They might instead choose to include consideration of the monitoring officer's report as an item on the agenda of the regular meeting of the standards committee.
- 40) If the standards committee or sub-committee **is** satisfied with the action described in the monitoring officer's report, it should give notice of this to all of the following:
- the subject member
 - the person who made the allegation
 - the standards committee of any other authority involved
 - any parish council concerned
- The matter is then closed.
- 41) If the standards committee or sub-committee is **not** satisfied, it must give another direction to the monitoring officer, which must again be to take some kind of other action. The standards committee cannot at this stage decide that the matter should be investigated. This is discussed further in the section below.
- 42) If the report describes action which has been proposed but not yet taken, the standards committee should decide whether this is satisfactory. If it has doubts about whether the action will take place, it should consider whether or not to give a further direction to the monitoring officer. The standards committee or sub-committee may also consider making a further direction where the report indicates that the member has refused to cooperate, has done so unwillingly or inadequately, or has not engaged with the process.

what if other action does not work?

- 43) Each time a standards committee or sub-committee directs a monitoring officer to take other action, the monitoring officer must submit a written report detailing the action taken or proposed. If dissatisfied, the standards committee can direct the monitoring officer to take further other action.
- 44) In theory, if a standards committee continues to be dissatisfied, it can continue to issue directions until it is satisfied. However, standards committees should be proportionate and reasonable in their directions. We believe that the process should be drawn to a close after a limited number of attempts by the monitoring officer to bring about other action – even where this has not occurred in accordance with the direction.
- 45) There is no formal route for dealing with a member who categorically refuses to comply with other action. However, the Standards Board believes that deliberate and continued failure to cooperate with a monitoring officer who is trying to carry out the directions of a standards committee may potentially amount to conduct which brings the office of councillor into disrepute. Furthermore, an assessment sub-committee may take this into account when deciding what action to take if they are assessing a complaint about a member who has previously failed to cooperate.
- 46) If a standards committee receives a complaint that a member did not cooperate with other action in relation to a previous complaint, they should only assess the complaint about the failure to cooperate. They should not take into account the conduct which led to the original complaint.
- 47) If the complaint is accepted for investigation then it is vitally important that any investigation focuses on the lack of cooperation and not the original complaint that led to the other action. Otherwise there is a danger that the original complaint will be resurrected. This is particularly important where the member says that the lack of cooperation was because they had done nothing wrong.

why other action closes the opportunity to investigate

- 48) Once an assessment sub-committee has decided to refer a matter for other action, this becomes the way forward in that particular case. If a standards committee is not satisfied that the action taken has not achieved the aim of the direction to take other action, it cannot then decide the matter should be investigated. The assessment sub-committee needs to be clear at the outset that should other action be unsuccessful or only partially successful, that it would still then remain the preferred course of action.
- 49) The legislation is clear on this issue. Once an allegation is referred under Section 57A(2) of the Local Government Act 2000 to the monitoring officer to take steps other than investigation, those steps are the ones referred to in regulation 13(3) of the Standards Committee (England) Regulations 2008. They are limited to arranging for training, a process of conciliation or such other steps – not including investigation – which the standard committee considers to be appropriate. There is no power that allows the case to be referred on for investigation if these options under regulation 13(3) are perceived to have failed.
- 50) Regulation 14(1) of the same regulations says that regulation 14 applies only if regulation 13 is not applied. If other action has been attempted, regulation 13 has been applied.
- 51) As well as being set out in statute, there are sound reasons why complaints which have been referred for other action should not then be investigated. Firstly, there are difficulties in deciding why the action has ‘failed’; whether it has failed and if so, why an investigation is thought to be needed. This subjective judgment has the potential to increase the complainant or the subject member’s dissatisfaction with the process. In some circumstances, it may also risk deliberate non-cooperation with the action prescribed in order to secure an investigation.
- 52) An investigation should not be viewed as something that can take place after other action has been attempted and is not to the satisfaction of one of the parties. There is a risk that other action will not be taken seriously if it is seen merely as a precursor to an investigation.

why other action closes the opportunity to investigate

- 53) The issue of timeliness is also key for all parties when dealing with an allegation of misconduct. It is questionable as to how fair the process would be, for both the subject member and complainant, if it is extended for the duration of the other action taking place and the investigation that follows it. Where other action is undertaken before an investigation, there is the risk that the case will be prejudiced. Witnesses may become prejudiced, there may be problems obtaining evidence, and an investigation may be jeopardised if the issues are discussed in detail as part of a mediation process.

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Wednesday 13 May 2009



Confidence in local democracy

Annual return

Summary

show all

Section 1	Independent overview		show <input checked="" type="checkbox"/>
Section 2	Standards committee - annual report		show <input checked="" type="checkbox"/>
Section 3	Standards committee - promoting standards		show <input checked="" type="checkbox"/>
Section 4	Standards committee - training		show <input checked="" type="checkbox"/>
Section 5	Leadership		show <input checked="" type="checkbox"/>
Section 6	Complaints		show <input checked="" type="checkbox"/>
Section 7	Member officer - relations		show <input checked="" type="checkbox"/>
Section 8	Registering member interests		show <input checked="" type="checkbox"/>
Section 9	Officer conduct		show <input checked="" type="checkbox"/>
Section 10	Optional questions		show <input checked="" type="checkbox"/>

Independent overview

Does the standards committee have Terms of Reference?

Yes

What help do members receive on following the Code of Conduct?

Twice yearly training sessions take place. Ad hoc guidance notes are produced, circulated to all Members and placed on the Council's intranet. Each Member is given a flowchart for deciding whether to declare an interest. Specific guidance is proactively offered when there is an issue known to affect a number of Members. Individual advice is offered on request.

Does the standards committee have a forward work plan?

Yes

If yes, who outside of the standards committee is involved in agreeing the forward work plan? Please explain below.

The Monitoring Officer.

Is the standards committee given a role in reviewing amendments to the Authority's Constitution (or Standing Orders where appropriate)?

No

Standards committee meetings.

Please use the table below to indicate how many times between 01/04/2008 and 31/03/2009 the standards committee has met and for what reasons.

Reason for meeting	Number of times met between 01/04/2008 and 31/03/2009
General meeting of whole standards committee	4
Training	1
Assessment sub-committee	3
Review sub-committee	0
Consideration meeting	0
Hearing	1
Other	1



Standards committee - annual report

Does the standards committee produce an annual report on its own work?

Yes

Is the annual report received by a meeting of the full authority?

Yes

Is the annual report sent to all members?

Yes

Is the annual report sent to all senior officers?

Yes

How is the annual report publicised to the general public?

The report is sent to all Parish Clerks and is published on the Council Meeting Agenda and is therefore available to local

public and press.



Standards committee - promoting standards

What else does the standards committee do to communicate the role of the standards committee and the importance of high standards internally within the authority to members and officers?

A Sub Committee meets annually to inspect the registers of members' interests. Members are advised before and after this happens. Committee members attend training for other Members. The Independent Chair attends each Council meeting. The Committee reviews other relevant policies such as the Whistleblowing policy and makes recommendations for improvement.

What else has the standards committee done to promote confidence in local democracy to the wider public?

The Committee has established a mentoring scheme for the Parish Councils for which it is responsible. Under this scheme each of the 22 local Parish Councils gets an annual visit from a member of the Standards Committee. The key purpose of the visit is relationship building and to keep Standards issues in the minds of Parish Councillors. Typically the Committee Member will say a few words about the work of the Committee and they will flag up any particular current issues as regards the Code and the standards regime generally. There are usually some members of the public in attendance at these meetings and Committee Members have been able to discuss the standards regime with them as well.

Has the authority, or the standards committee in particular, considered how it will monitor and ensure high standards of behaviour when the authority is working in partnership with other organisations?

Yes

Please provide examples.

We have Members who sit on both County and District Councils and have established (and used) arrangements for dealing with complaints against these dual hatted Members. Key partnerships such as the Local Strategic Partnership have adopted their own Codes of Conduct.



Standards committee - training

Between 01/04/2008 and 31/03/2009, has the authority assessed the training and development needs of members in relation to their responsibilities on standards of conduct?

Yes

What training needs were identified?

Training for Committee Members on local assessment. General Code of conduct and bias training. Introductory standards training for new Members as part of their induction. Planning training was an issue for a number of Members and, although the need was wider than the ethical issues, that was one element of the identified need.

Please provide a list of training and development opportunities that have been provided to members and officers in the period from 01/04/2008 and 31/03/2009, that are relevant to ensuring high standards. Your list should include any training that relates to the operation of the local standards framework, e.g. local assessment, hearings etc.

New member Induction. Local Assessment training. Ethical standards training (twice). Planning in practice. Standards Board ACSES or the LGG. Code of conduct training opportunities provided internally by all legal and democratic services staff. The Independent Members are members of a Lancashire wide forum which meets quarterly. A variety of training has been offered at these meetings e.g speakers from the Standards Board dealing with publicity issues, updating on progress with the proposed revisions to the Code.



Leadership

How often has the standards committee, or its chair, met the chief executive to discuss ethical issues in the last 12 months (from 01/04/2008 to 31/03/2009)?

None

Please also provide an overview of what the meetings were about.

How often has the standards committee, or its chair, met the leader of the council to discuss ethical issues in the last 12 months (from 01/04/2008 to 31/03/2009)?

None

Please also provide an overview of what the meetings were about.

How often has the standards committee, or its chair, met the other party group leaders to discuss ethical issues in the last 12 months (from 01/04/2008 to 31/03/2009)?

None

Please also provide an overview of what the meetings were about.

Does the standards committee, or its chair, have regular access to the monitoring officer? How regular?

The Chair has access whenever he wants but, on average, the chair and Monitoring Officer will either meet, have a telephone conversation or an e-mail discussion two or three times a month.

How many times in the last 12 months (from 01/04/2008 to 31/03/2009) has the standards committee chair been invited to address a full authority meeting?

None

Does the monitoring officer sit on the Corporate Management Team, or equivalent?

Yes

Has an executive member (or senior member where appropriate) been given portfolio responsibility for standards?

Yes



Complaints

Can the public access information, from the authority website, about how to make a complaint against a member?

Yes

What else has the authority done to advertise the complaint process on member conduct to the general public?

The mentoring arrangement for Parish Councils.

Has the authority sought feedback from any of those people involved in an allegation of member misconduct about their satisfaction with the member conduct complaint process (for example the complainant, witnesses or person against whom the allegation was made)? Please choose from responses below.

No, have not sought feedback

How does the authority communicate the outcome of investigations into member conduct to:

a) members

No cases under the new arrangements have been completed during the time period in question. One Parish Council case under the old arrangements was heard and the Parish Council was advised in writing of the outcome.

b) officers

In the case mentioned the Clerk attended the hearing.

c) the general public

The outcome of the case was formally advertised but was also the subject of a press story and the MO was able to give background information as to processes etc.

How does the authority communicate the outcome of allegations into member conduct which have NOT resulted in an investigation (for example those allegations which have not been referred for investigation and those allegations which have resulted in other action) to:

a) members

N/A

b) officers

N/A

c) the general public

N/A



Member officer relations

Does the authority have a protocol for relations between members and officers?

Yes

How is the protocol communicated to officers and members?

The protocol is communicated on induction. In addition it is part of the Council's Constitution and all Members are supplied with a copy.

What is the mechanism for reviewing the effectiveness of this protocol?

The Protocol was reviewed by the Standards Committee this year. A new Parish Protocol has been endorsed by the Committee. The Committee have asked that an amended Borough Council Protocol be presented to their next meeting.

Does the authority include training on the importance of high standards of behaviour in the inductions of new members and officers?

Yes

Does the authority have informal mechanisms for dealing with member/officer and member/member disputes?

Yes

Please provide details of any mechanisms and, if possible, provide an example where this has been used.

The Chief Executive and MO discuss issues from time to time with the individuals involved or through the leadership of the political groups.

Registering member interests

Is the member register of interests accessible to the public on the authority website?

No

Please briefly explain whether there is any particular reason why not.

The Information Commissioner has recently reminded Authorities that public registers still need to be managed in accordance with the Data Protection Act. There is clearly no legal difficulty in complying with the law and having a register available for inspection. Publicising the register on the website though is different. There is room for differing views on what would constitute "fair processing" under the DPA but the safest course of action is to publish only with the consent of Members. The Standards Committee has decided not to do this. They regard the availability of the Registers as being sufficient and have concerns that information could be more easily misused (e.g. for identity theft) if it received wider publicity.

Is the register of gifts and hospitality available to the public on the authority website?

No

What does the authority do to signal to members the importance of declaring interests and completing the register of interests and the register of gifts and hospitality?

In addition to training: each agenda contains a standard item for declarations. The register of interests is reviewed by a Sub Committee annually, any possible issues are raised directly with the Member concerned and all Members are notified that the review is happening. The Committee have recently requested a twice yearly reminder be sent to Members regarding the need to register gifts and hospitality.



Officer conduct

Does the authority have a code of conduct for senior officers?

Yes

Does the authority compile a register of senior officers' interests?

Yes

If yes, is the register of senior officers' interests available to the public on the authority website?

No

Does the authority compile a register of senior officers' gifts and hospitality?

Yes

If yes, is the senior officers' register of gifts and hospitality available to the public on the authority website?

No



Optional questions

The following questions are optional; you do not have to complete them if you do not wish to. However, this information would be useful to us in helping us to raise ethical standards.

On what issues, if any, would you appreciate more support or guidance on from the Standards Board for England?

The Standards Board for England, the Improvement and Development Agency and the Audit Commission have developed a toolkit that authorities can use to assess the ethical governance arrangements in their authority, and also to identify

improvements.

Has your authority used the ethical governance toolkit?

No

If no, has your authority considered using the ethical governance toolkit?

Yes

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Report of	Meeting	Date
Monitoring Officer	Standards Committee	18 th June 2009

CASE UPDATE

PURPOSE OF REPORT

1. To advise Members of recent cases which have been considered nationally.

RECOMMENDATION(S)

2. That the report be noted.

ADJUDICATION PANEL DECISIONS

3. Ten decisions of the Adjudication Panel have been published since the last meeting of the Standards Committee. Six of these related to appeals against a Standards Committee decision and the remaining four were cases investigated at first instance by Ethical Standards Officers. The Ellistown and Westbury decisions (both of which are attached) essentially highlight the same issue relating to the need for investigator's reports and Standards Committee's findings to demonstrate clearly what evidence is relied upon to establish breaches of the Code.
5. The Middlesborough case (also attached) is the most recent in a line of decisions from both the Panel and Courts dealing with the vexed question of when a Councillor is acting in his or her official capacity. In this case a Councillor was found to be giving the impression that he was acting as such when posting comments on an on line web forum under a pseudonym. The Panel indicated that the conclusion as to whether a Councillor was giving that impression was fact sensitive. Paragraphs 30 and 31 of the decision set out the evidence that the Panel considered to be relevant in the particular case.

STANDARDS BOARD CASES

6. According to statistics recently published by the Standards Board only 6.2% of cases considered by Standards Committees are now being referred to the Standards Board for investigation. These are resulting in a slow but steady stream of reported cases. The vast majority of cases have resulted in a finding of no breach of the Code. One case where a breach was found involved a Councillor from Gosport Borough Council. It was alleged that he had failed to declare a personal and prejudicial interest in an item of business relating to a local music festival. The Ethical Standards Officer found that there was a close association between the Councillor and the festival organiser and that the item of business considered could reasonably be regarded as affecting the festival organiser's wellbeing or financial position. As a result, the ethical standards officer found that the failure to declare a personal interest was a breach of the Code.

7. The ethical standards officer did not consider, however, that a reasonable member of the public, aware of the relevant facts, would be likely to think that the Councillor's interest was significant enough to prejudice his judgement of the public interest and found that no further action was necessary. This provides a useful reminder that a breach of the Code does not necessarily mean that a sanction need to be imposed.

ANDREW DOCHERTY
CORPORATE DIRECTOR OF GOVERNANCE

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Andrew Docherty	5102	12 February 2009	REPORTS/1202

THE
ADJUDICATION PANEL
 FOR ENGLAND

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

Appeals Tribunal Decision

Case Ref:	APE 0423
Date of Appeals Tribunal:	29 May 2009
Relevant Standards Committee:	North West Leicestershire District Council
Date of Standards Committee Decision:	12 February 2009
Name of member concerned: <i>(Appellant & his authority)</i>	Councillor Gamble of <i>Ellistown & Battleflat Parish Council</i>
Monitoring Officer:	Elizabeth Warhurst
Independent Investigator:	Margaret Taylor
<u>Appeals Tribunal Members</u>	
Chairman:	Simon Bird
Member:	Alex Rocke
Member:	Neil Pardoe

1. The Appeals Tribunal has considered an appeal from the Appellant about the above decision.
2. The Appeals Tribunal has considered written and oral submissions from Mr David Gill on behalf of the North West Leicestershire District Council Standards Committee and the Appellant and has heard evidence from Christopher Lawrence, Margaret Taylor, the Appellant and Penny Wakefield.
3. The Appellant has appealed against the determination by the Standards Hearing Sub-Committee of North West Leicestershire District Council that he had failed to comply with paragraphs 3(1) and 5 the Council's Code of Conduct and the sanction which was to require him (a) to send a suitably worded letter of apology to Mr C J Lawrence and (b) to undergo one to one training on the Code of Conduct.
4. The Ellistown and Battleflat Parish Council adopted the current model Code of Conduct on 4 September 2007.
5. Paragraph 2(1) of the Code provides:

"...you must comply with this Code whenever you:

(a) Conduct the business of you authority (which, in this Code, includes the business of the office to which you are elected or appointed)..."
6. Paragraph 3(1) of the Code provides:

"You must treat others with respect"

7. Paragraph 5 of the Code provides:

"You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute".
8. The Standards Committee found as a fact that during a Public Question and Answer Session of a meeting of the Parish Council on 23 July 2008 (attended by the Appellant in his capacity as a parish councillor) an exchange took place between the Appellant and Mr Lawrence which amounted to a breach of paragraphs 3(1) and 5 of the Code. In its decision, the Standards Committee made no findings of fact as to what was said by the Appellant in the exchange between himself and Mr Lawrence and nor did it provide any reasoning as to why what was said amounted to a failure to comply with those paragraphs of the Code.
9. The substance of the Appellant's grounds of appeal is that no exchange amounting to a breach of the Code in fact occurred. In the light of this and in the absence of the necessary and relevant findings of fact in the Standards Committee decision, the Appeals Tribunal has found it necessary to proceed by way of rehearing.

Background

10. The Appellant is an elected parish councillor of the Ellistown and Battleflat Parish Council ("the Parish Council") and signed his Declaration of Acceptance of Office on 6 May 2008.
11. The Appellant gave a written undertaking to observe the Code of Conduct on 6 May 2008.
12. The Parish Council adopted the current model Code of Conduct on 4 September 2007.
13. A meeting of the Parish Council was held at The Methodist Church Hall, Whitehill Road, Ellistown on 23 July 2008. The Appellant attended that meeting in his capacity as a Parish Councillor and throughout its duration he was acting in his official capacity for the purposes of the Code.
14. Mr Lawrence, the Managing Director of T P Lawrence & Son Ltd a company which runs a vehicle repair and petrol fuel forecourt in the centre of Ellistown ("the Garage"), attended the meeting as a member of the public.
15. The Appellant had concerns about the operations at the Garage and in particular, the alleged refuelling of Heavy Goods Vehicles of a weight exceeding the limit imposed by a Road Traffic Regulation Order which sought to prevent such vehicles entering the centre of the village.
16. A Public Questions and Answer session was held as the third item on the agenda for the meeting. During this item the minutes record the following:

"The issue of the current weight restriction was raised. Cllr Gamble stated that he had been in contact with Ian Drummond from County Council in relation to introducing a traffic regulation order. Cllr Pollard informed those present that a meeting was due to take place to discuss this matter. Mr Lawrence was very concerned about this issue and stated that if a traffic regulation order was put into place, prohibiting lorries using the garage, he would [lose] his business and livelihood."
17. There was a dispute of fact as to whether during this part of the meeting, the Appellant questioned Mr Lawrence's right to be present and the Appeals Tribunal heard evidence in relation to this dispute.

Summary of the Evidence

18. Mr Lawrence's evidence was that he had been made aware of the meeting by a leaflet put through his letter box and had attended because he was interested in two development proposals; one for an incinerator, the other a proposal by UK Coal and also in knowing what stage had been reached in attempts to enforce the lorry weight restriction which would affect his business. There were at least 50 parishioners in the meeting.
19. In the Public Question and Answer session, Mr Lawrence asked where he stood with lorries coming into the garage forecourt and the Appellant had stood up and replied "It will be finished in the autumn". Mr Lawrence recalled the Appellant holding up an email and referring to it. At the end of saying this, the Appellant had said "What are you doing here?" The Appellant had been quite calm. Mr Lawrence replied "the same as everyone else". Mr Lawrence was upset and embarrassed by the question and the more he thought about it, the more he considered that he should not have been asked it. It was the fact that he had been asked the question rather than the tone of it which angered him. This was a public meeting and it should not have mattered why he had gone. He had complained because he felt angry. The Appellant had said nothing else to him. Mr Lawrence did not recall any interruption to this part of the meeting occasioned by the arrival of and/or conduct of Mr Smith. When the UK Coal application was discussed the meeting became disorderly because the Chairman failed to say whether he was for or against the proposal.
20. Mrs Taylor had undertaken the investigation on behalf of the Monitoring Officer. In her evidence she said that she had asked the Parish Clerk for the minutes of the meeting of 23 July 2008 and also whether the Clerk could add anything about the exchange between the Appellant and Mr Lawrence. The Clerk stated that she could not add to the minutes. Councillor Burton had been interviewed on 1 October 2008 in a pre-arranged telephone interview because Councillor Burton had her own complaint about the Appellant. This had been made in a letter received by the District Council on 25 July 2008 which alleged that the Appellant "was very rude & abrupt to me & the residence (sic) of Ellistown at the meeting". During the course of the telephone interview Councillor Burton volunteered evidence that there was altercation between the Appellant and Mr Lawrence about Mr Lawrence's garage business. Mr Lawrence had sought to speak and the Appellant was rude and would not allow him to make his point and speak. Mr Lawrence had been cut off. Councillor Burton had been "gobsmacked" by the Appellant's behaviour towards Mr Lawrence and others were shocked by it. Mrs Taylor confirmed that no other members of the public present at the meeting had complained about this alleged behaviour.
21. The Appellant gave evidence that, in response to Mr Lawrence's question, he had moved down the hall to where Mr Lawrence was sitting to show him an email which had had received from Ian Drummond, the Assistant Director of Transportation of Leicestershire County Council addressing the refuelling of lorries at the garage. He had also shown this to the County Councillor who was present at the meeting. He had said in response to Mr Lawrence's question and in reliance on this email, words to the effect of "it will all be over by the autumn". He had not said "What are you doing here?" and it would have been illogical for him to have done so given that he and Councillor Truman had been responsible for the summoning of what was an Extraordinary General Meeting and he had personally delivered over 1000 leaflets advertising it. Mr Lawrence had not been happy about the Appellant's response to his question. The Appellant was calm throughout the exchange. It was at this stage that Mr Smith's entrance briefly interrupted the meeting.
22. Penny Wakefield's evidence was that she had attended the meeting throughout and, given the size of the hall would have heard all that had been said. At the time she

knew of the Appellant from her recently commenced attendance of parish council meetings but did not know him. She recalled quite a heated exchange about lorries using the garage with feelings running high on both sides and extending beyond the Appellant and Mr Lawrence however, given the passage of time she did not recall a lot of detail. She did not recall the Appellant moving from his seat to approach Mr Lawrence but did recall an exchange of views. She was hard pushed to say at this juncture what was said but she did not recall the Appellant being abusive or swearing. She did not recall the Appellant questioning the Appellant's right to be present. She did recall an elderly resident (whose name she did not know) coming in and disrupting the meeting quite early on.

Findings of Fact

23. In making its findings of fact the Appeals Tribunal has applied the civil standard of proof, the onus being on the Standards Committee to prove that it is more likely than not that the Appellant uttered the words in dispute.
24. The Tribunal find the following facts:
 - 24.1. The meeting of 23 July 2008 was a well attended meeting of the parish council attended by approximately 50 members of the public;
 - 24.2. The meeting, an Extraordinary Meeting of the Parish Council, had been called at the Appellant's and Councillor Truman's request and the Appellant had advertised the meeting by leafleting;
 - 24.3. The progress of the meeting followed the published agenda and had two principal items of business (a) a Public Question and Answer Session limited to 15 minutes which enabled the public present to ask questions generally on matters of local interest and (b) discussion of the UK Coal planning application for which the Council's standing orders were suspended to allow the public to address the Council;
 - 24.4. Although there were some strong feelings on some issues, the mood of the meeting remained calm during the Public Question and Answer Session, whilst during the debate of the UK Coal application it became disorderly;
 - 24.5. During the Public Question and Answer Session Mr Lawrence asked a question about the likely effect on his business of the weight restriction on lorries with Ellistown;
 - 24.6. The Appellant responded by (a) saying that the business of refuelling lorries would be over by the autumn; (b) making Mr Lawrence aware of the content of an email from Leicestershire County Council's Assistant Director of Transportation (Ian Drummond). Whilst there is a dispute as to whether the Appellant moved down the hall to show Mr Lawrence the email or whether he simply waved it and referred to it, the Appeals Tribunal sees no need to resolve that dispute as it has no material bearing on the key issue in dispute which was what was said between the Appellant and Mr Lawrence. The difference in recollection is likely to reflect the passage of time since the meeting and the short duration of the exchange;
 - 24.7. The Appeals Tribunal is not satisfied that it is more likely than not that the Appellant did utter the words "What are you doing here". The Appeals Tribunal consider that it is inherently unlikely that he would have done so given the context in which the meeting was called and the efforts the Appellant had taken to advertise it. It would also be surprising that if the words had been said, they were not recalled by Ms Wakefield given her evidence that she

would have heard all that was said at the meeting. The Appeals Tribunal does not for a moment doubt that Mr Lawrence believed he heard what he said he had heard the Appellant say but the Tribunal consider that it is more likely than not that this belief arose from a misunderstanding as to what was said in the context of a brief encounter in a difficult meeting.

Whilst the evidence of Councillor Burton provides some support for the words being used by the Appellant, the Appeals Tribunal attaches little weight to that evidence. It notes that there is no reference in her original letter of complaint to the alleged words being uttered and although there is reference to them in her interview of 1 October 2008, her version, as explained by Mrs Taylor is not consistent with Mr Lawrence's recollection. Councillor Burton claimed that the Appellant had sought to cut Mr Lawrence off and thereby to restrict his contribution to the meeting but Mr Lawrence's evidence was that the Appellant's comment came at the end of the exchange and he made no complaint that any attempt was made to prevent him speaking. The Appeals Tribunal also considers that had the exchange been as shocking as Councillor Burton contends, it is surprising that the Clerk had no recollection of it when asked during the course of the investigation and that there was no other public reaction to it;

- 24.8. The Appeals Tribunal is satisfied that it is more likely than not that there was an interruption of the meeting at an early stage by the arrival of Mr Smith, but it does not find that this had any bearing on the exchange between the Appellant and Mr Lawrence.

Findings as to whether the Appellant failed to follow the Code

25. Because the Appeals Tribunal is not satisfied on the balance of probabilities that the conduct which the Standards Committee determined amounted to a failure to follow the Code did in fact occur and because there is no other aspect of the Appellant's conduct towards Mr Lawrence complained about, there is no factual basis to support the finding of a breach of the Council's Code of Conduct. The Appeals Tribunal therefore finds that the Appellant did not breach the Code of Conduct at the meeting of 23 July 2008.
26. In consequence the Appeals Tribunal has rejected the finding of the Standards Committee.
27. The decision of the Standards Committee ceases immediately to have effect.
28. A copy of this determination is being given to the Appellant, the Standards Board, the Standards Committee, any parish council concerned and any person who made the allegation that gave rise to the investigation.
29. 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.tribunals.gov.uk.

Simon Bird
Chair of the Appeals Tribunal

29 May 2009

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THE
ADJUDICATION PANEL
 FOR ENGLAND

APPEALS TRIBUNAL DECISION

Case Ref:	APE 0416
Appeals Tribunal Date:	11 March 2009
Relevant Standards Committee:	West Wiltshire District Council
Date of Standards Committee decision:	24 December 2008
Name of Member concerned: (Appellant and authority)	Mr Russell Hawker Westbury Town Council
Ethical Standards Officer (ESO):	Jennifer Rogers
Monitoring Officer:	Tim Darsley
Investigating Officer:	Maria Memoli
<u>Appeals Tribunal Members</u>	
Chairman	Mr David Laverick
Member:	Mr Neil Pardoe
Member:	Mr Brian McCaughey

1. Councillor Hawker appealed against a finding by the Hearings Sub-committee of the Standards Committee that he had failed to follow the provisions of the Code of Conduct adopted by Westbury Town Council but that no further action need be taken.
2. The decision of the Sub-committee referred to a breach of Paragraph 7(1) of the Code. That sub paragraph defines when a member of the Town Council had a personal interest. It is not of itself a paragraph which can be breached: the breach would come if the member failed to follow the provisions of Paragraph 8 of the Code which requires the member to declare an interest of the kind defined in paragraph 7(1).
3. Paragraph 9 of the Code defines a personal interest as also being a prejudicial interest if a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice the member's judgement of the public interest. Paragraph 11 of the council's Code required a member with a prejudicial interest to withdraw from the room and not to seek improperly to influence a decision in the matter.
4. The Notice of Decision issued by the Hearings Sub-committee indicated that the Sub-committee did consider that the matter under discussion at the Town Council (a traffic management scheme for Westbury) could reasonably be regarded as affecting the financial

position of Councillor Hawker's brother to a greater extent than other council tax payers and inhabitants. Assuming that the facts supported such a conclusion there would be a breach of paragraph 8 of the Code as Councillor Hawker had not declared the interest at the relevant meeting. The Notice of Decision did not go on to reflect any consideration of whether the particular interest should also have been regarded as a prejudicial interest which, if in existence, would have meant that Councillor Hawker would not have been able to participate in the relevant meeting.

5. The Investigating Officer whose report was being considered by the Sub-committee had concluded that the interest was not of a kind defined as prejudicial. That view was no doubt one for the Sub-committee to take into account but is not of itself determinant of the matter.
6. Thus the key substantive issues before the Appeals Tribunal in deciding whether to endorse the finding of the Sub-committee are whether the interest was of a kind defined in paragraph 7(1) and whether the interest was also of a kind defined by paragraph 9.
7. Councillor Hawker himself referred the matter to the Standards Board for England saying he had inadvertently forgot to declare a personal interest arising from his brother's part-ownership of a shop business in Westbury High Street.
8. The Appeals Tribunal noted that the exact nature of that interest was not established: the Investigating Officer's report uses both the terms Chantry TV and Chantry TV Ltd apparently interchangeably. No company search appears to have been undertaken. No enquiries were made directly of Councillor Hawker's brother. No attempt seems to have been made to see who was paying business rates on the property. To be fair to the Investigating Officer she could perhaps be surprised to find that Councillor Hawker is now seeking, at least to some extent, to resile from the statement which he himself had made. The need for more and clearer information should perhaps have been picked up by the Sub-committee which, according to its own minutes of the meeting, had experienced difficulty in obtaining confirmation from Councillor Hawker as to whether his original statement was correct.
9. What is clear to the Appeals Tribunal is that Councillor Hawker undoubtedly had made a statement to the effect that his brother had an interest arising from part-ownership of a shop in Westbury High Street. Ownership can reasonably be regarded as encompassing a leasehold as well as a freehold interest.
10. The Investigator stated in her report that she had taken it in the round that Councillor Hawker's brother had a legal interest in Chantry TV Limited which has an interest in a lease and runs a business from the shop. There is no evidence in the papers before the Appeals Tribunal (which include the papers before the Sub-committee) of the lease or the parties to it.
11. However, it is common knowledge that a business with the name of Chantry TV operates from a shop in Westbury High Street. And, however much Councillor Hawker may quibble about a lack of direct evidence in the Investigator's report, he has not sought to dispute that his brother has an interest in that business. That being so it was reasonable for the Sub-committee to conclude that there was a personal interest of the kind identified by paragraph 7(1)(a) of the Code of Conduct. There may also have been interests of the kind described in paragraphs 7(1)(b) and (c) but the evidence is not clear about this. Those further possible reasons for finding there was a personal interest need not be explored.
12. Councillor Hawker has argued that the particular shop would not be affected by his proposals to any greater extent than other nearby shops. That argument is based on a

mistaken understanding of the Code of Conduct. The relevant test was whether the Council's decision on the matter under consideration (a proposal to reverse the traffic flow in High Street) would affect his brother to a greater extent than other council tax payers, ratepayers or other inhabitants of the council's area, i.e. the whole area of Westbury Town Council. It is self-evident that a proposal to reverse the traffic flow in a particular street would have a greater effect on properties within that street, and those living or conducting business in them, than on other properties and residences in the whole town.

13. Any councillor who has a personal interest needs also to go on to consider whether that interest is also of a kind which is prejudicial. So too a body reviewing whether an interest has been properly declared needs also to move on to that further consideration:
 - 13.1. Councillor Hawker has submitted that as his original complaint to the Standards Board was limited to a complaint of a failure to declare a personal interest, there is no scope for the Investigator, the Sub-committee or the Appeals Tribunal to consider whether there was also a failure to act on a prejudicial interest.
 - 13.2. Councillor Hawker's original complaint began by stating that he "took part in a discussion" at a meeting on 19 February 2007. His complaint went on to include a statement that he had inadvertently forgotten to declare a personal interest. In the Appeal Tribunal's view the matter that was referred for investigation was the whole complaint, including Councillor Hawker's presence, declarations (or lack of) and participation in the discussion.
 - 13.3. It would be absurd for a councillor whose conduct is under review himself to determine the extent to which his conduct should be reviewed.
 - 13.4. Councillor Hawker also seeks to argue that the Appeals Tribunal can deal only with the Sub-committee's finding that there was a breach of paragraph 7 of the Code and cannot go on to consider whether there was also a breach of later paragraphs which refer to a prejudicial interest. Councillor Hawker's right of appeal is to be found in Regulation 9 of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 as amended. This provides that, with permission, a councillor may appeal against a finding under Regulation 7(1) of those Regulations. Regulation 7(1) sets out three possible findings:
 - I. That the member has not failed to comply with the Code of Conduct.
 - II. That the member has failed to comply with the Code of Conduct but that no further action need be taken.
 - III. That the member has failed to comply with the Code of Conduct and that a sanction should be imposed.
 - 13.5. The decision by the Sub-committee fell within the second category listed above. The Appeals Tribunal is charged with upholding or dismissing the finding under Regulation 7(1). In so doing the Appeals Tribunal is not confined to adopting the same reasoning, or considering only the particular paragraphs of the Code of Conduct quoted by the Sub-committee.
 - 13.6. Councillor Hawker has also argued that both the Sub-committee and the Appeals Tribunal should have dealt with the matter in accordance with the Standards Committee (England) Regulations 2008. Those Regulations came into force on 8

May 2008. Reading the Regulations as a whole it is clear to the Appeals Tribunal that they refer to complaints which were received on or after that date and that therefore complaints which were already in process of consideration and investigation continued to be dealt with under the old Regulations.

14. The minutes of the meeting of the Town Council's Highways, Planning and Development Committee on 19 February 2007 record under the heading of Westbury Town Centre Measures Concept Plan that the Committee should respond to the County Council's Principal Highways Engineer "as per Councillor Hawker's report as follows". There follows a quotation of a document apparently produced by Councillor Hawker. This begins:

"Reversing the traffic flow along the section of High Street between the 60s parade will achieve the quickest, most significant, most easily implemented, most cost-effective, most easily understood improvement to the commercial viability of the town centre shopping system because."

There followed a list of five numbered reasons which included

2. The High Street is currently disconnected from the key Town Centre anchor store to car users. Cars leaving Coopers should be able to reach the High Street directly to encourage follow-on shopping in the High Street. The reverse effect at present puts High Street traders at a disadvantage.
 4. Car-borne shoppers passing along the reversed flow section will see the maximum range of shops on their way to the car park from Edward Street. This increased visibility will improve trade.
 5. The greatest untapped potential for improved trade will come from car-borne shoppers being enticed to shop more in Westbury..."
15. Although it does not appear from its decision that the Sub-committee addressed its mind to the issue of whether Councillor Hawker had a prejudicial as well as a personal interest, it is clear that the Investigating Officer had given the matter some consideration. Her executive summary states her conclusion that:

"Councillor Hawker did have a personal interest but not a prejudicial interest in matters relating to the reversal of traffic flow in a one-way section of the High Street, Westbury. I concluded that neither Councillor Hawker's well-being or his financial position or that of his brother was likely to be affected by the proposal to reverse the traffic flow for the purposes of the Code of Conduct."

The report contains no reasoning to explain her conclusion that the wellbeing or financial position of Councillor Hawker's brother would not be affected by the changes which Councillor Hawker was proposing. She quite properly set out the test as to whether a member of the public with knowledge of the relevant facts would reasonably regard Councillor Hawker's personal interest as being as so significant as likely to prejudice his judgement of the public interest. But her statement that there was no such prejudice is coloured by her own prior conclusion that the wellbeing or financial position of Councillor Hawker's brother was not affected because it was through the brother that Councillor Hawker's interest arose. The Appeals Tribunal finds that prior conclusion difficult to reconcile with Councillor Hawker's own assessment of the advantage of his proposals for shops in the High Street. Although not referred to in her reasoning, her report did contain a statement from the County Council's Principal Highways Engineer that although he did not know what the effect of the reversal of the traffic flow would be on Chantry TV, in his

opinion any impact would be negligible. If the Engineer did not know what the effect would be, the Appeals Tribunal is puzzled as to how he could express a view about its impact.

16. The Appeals Tribunal is of the view that had Councillor Hawker's brother still been a councillor (as he had formerly been) the brother would have had a prejudicial interest and thus would have been precluded from participating in the discussion. Although possibly of no great impact on the brother's overall business interests, the evidence from Councillor Hawker's own statements is that his proposal was likely to be to the financial advantage of shops, including that in which the brother had an interest. Nevertheless, it does not automatically follow that Councillor Hawker who, as far as the Appeals Tribunal knows, had no direct financial interest, should have been precluded from such participation.
17. The key question is whether a member of the public with knowledge of the relevant facts would reasonably regard Councillor Hawker's interest (arising from his brother's involvement with Chantry TV and thus with a shop on the affected street) as likely to prejudice his own judgement of the public interest. In addressing that question the Investigating Officer stated:

"There is no indication that the response (to Wiltshire County Council) in relation to the reversal of traffic flow was likely to prejudice Councillor Hawker's judgement of the matter, despite the brother having a legal interest in the shop on the High Street."
18. That seems to be dealing with the question the wrong way round. The Committee discussion was about formulating the response (to Wiltshire County Council) so the question is whether the brother's interest could be seen as prejudicing Councillor Hawker in participating in the decision as to how to frame such a response.
19. There is some evidence (in the form of a statement attributed to the Appellant) that in the past the Appellant has supported proposals (about the proposed Westbury by-pass) which were opposed by his brother. Thus, assuming the facts referred to in that statement are accurate, there would be some basis for a member of the public to recognise that Councillor Hawker was capable in putting to one side any effect on his brother when considering what was in the public interest.
20. Bearing that in mind, and (in the absence of hard factual evidence) the Appeals Tribunal's impression that the proposal, however meritorious, was not likely to have a major impact on the fortunes of Chantry TV, the Appeals Tribunal has concluded that while a cynical member of the public might have suspicions, on a reasonable view Councillor Hawker should not be regarded as having a prejudicial interest.
21. As the only part of the Code which has not been followed is that involving the failure to declare a personal interest, the Appeals Tribunal concurs with the view that no further action needs to be taken.
22. The Appeals Tribunal has received a substantial number of submissions from Councillor Hawker about essentially procedural matters. Many of those are not strictly relevant to the Appeals Tribunal's task of deciding whether to uphold or dismiss the finding and are thus not matters on which the Tribunal is commenting. Any procedural defects in the process before or at the Sub-committee's hearing are effectively overreached by the Appeals Tribunal's own consideration.
23. Councillor Hawker has suggested that account should not be taken of statements made to the Investigating Officer. It is not entirely clear whether the sentence he quotes from a judgement of Wilkie J in *Sanders v Kingston*, to the effect that a statement taken from an

appellant pursuant to a power which had compulsion as a backdrop could amount to unfairness in the trial, is a reflection of the Judge's own view or is the Judge's summary of a submission being made to him. But in any event the statements on which the Appeals Tribunal have relied are those set out in documents which have not been produced under any compulsion. The Appeals Tribunal has however taken account of a statement in the Appellant's favour made in the course of the Investigating Officer's enquiries.

David Laverick
Chairman of the Tribunal

11 March 2009

THE
ADJUDICATION PANEL
 FOR ENGLAND

Appeals Tribunal Decision

Case Ref:	APE 0421
Appeals Tribunal Date:	29 April 2009
Relevant Standards Committee:	Middlesbrough Council
Date of Standards Committee decision:	22 January 2009
Name of member concerned: <i>(Appellant)</i>	Councillor McTigue
Monitoring Officer:	Mr Richard Long
Independent Investigator:	Mrs Katharine Metcalfe
<u>Appeals Tribunal Members</u>	
Chairwoman:	Mrs Beverley Primhak
Member:	Mr Richard Enderby
Member:	Mr Chris Perrett

1. The Appeals Tribunal has considered an appeal from the Appellant about the above decision.
2. The Appeals Tribunal has considered written and oral submissions from Councillor McTigue and Mr Richard Long and has heard evidence from Mr Anthony Warren.

The decision appealed against

3. The Appellant had appealed against the Standards Committee's finding that she had failed to comply with paragraphs 3(1), 5 and 6(b)(i) of the Council's Code of Conduct.
4. The complaint against the Appellant arose from an earlier complaint by the Complainant, Ms Sharon Bawden, in relation to waste collection services at her home. That complaint was heard at a meeting of the Council's Complaints and Appeals Committee on 18 June 2008, at which both the Complainant and the Appellant were present. Subsequently the Complainant submitted a complaint in relation to the Appellant's conduct at that meeting and in the days following that meeting in respect of a series of postings by the Appellant on the forum of the Middlesbrough Evening Gazette. It is the allegations in the subsequent complaint that have led to these proceedings.
5. The Council's Standards Committee Hearings Subcommittee considered the matter on 22 January 2009. They concluded:

- 5.1. that the Appellant had failed to treat the Complainant with respect in relation to the posts on the Evening Gazette forum contrary to paragraph 3 of the Code of Conduct.
 - 5.2. that the Appellant's actions were likely to have diminished public confidence in, and harmed the reputation of, the member: consequently she had brought her office into disrepute contrary to paragraph 5 of the Code of Conduct.
 - 5.3. that the Appellant failed to use the Council's resources in accordance with its reasonable requirements; however they considered that this was merely a technical breach contrary to paragraph 6(b)(i) of the Code of Conduct.
 - 5.4. They also concluded that, in respect of the complaints relating to the Appellant's conduct at the Complaints and Appeals Committee meeting, the Appellant was not acting in an official capacity, and thus was not subject to the Code of Conduct at that meeting. In relation to allegations of bullying, intimidation and breach of confidentiality there was no case to answer. These matters are not the subject of these appeal proceedings.
6. The Appellant has also appealed against the action which the Standards Committee decided to take in the light of their decision that she had failed to follow the provisions of the Code of Conduct. That action was to suspend Councillor McTigue for two months.

Preliminary Issues

7. In her application to appeal the Appellant expressed some criticism of the way the decision of the Standards Committee was notified to her. However, even if valid, those criticisms would not affect the issue of whether the conduct which gave rise to the investigation was a breach of the Code of Conduct nor be relevant to the question of sanction. The matter was therefore not considered by the Appeals Tribunal.
8. The Appellant indicated in her appeal papers, both in her initial appeal documents and a supplementary bundle that she considered the Standards Committee process had been flawed. However, again this was not an issue that affected whether there had been a breach of the Code of Conduct and any real or apparent bias would be overreached by the appeal being heard before the Appeals Tribunal. The Chair explained that the Appeals Tribunal would be reaching its own decision on the merits and would not be considering the detail of the proceedings before the Standards Committee.

Findings of Fact

9. Councillor McTigue has been an elected Middlesbrough Borough Councillor since May 2003. She was re-elected in 2007 and currently sits on the Licensing Committee, the Community Safety and Leisure Scrutiny Panel and the Corporate Parenting Board.
10. Paragraph 3 (1) of the Code provides:

“You must treat others with respect.”
11. Paragraph 5 of the Code provides:

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”

12. Paragraph 6(b)(i) of the Code provides:

“You must, when using or authorising the use by others of the resources of your authority— (i) act in accordance with your authority’s reasonable requirements;”
13. The hearing on 18 June 2008 arose from a complaint that the Complainant had raised about the standard of the wheelie bin collection from her home (the wheelie bin complaint). The complaint had been long-standing and the hearing was part of a process of trying to bring the wheelie bin complaint to resolution.
14. It was alleged by the Complainant that Councillor McTigue’s behaviour at the Complaints and Appeals Committee meeting was inappropriate. Councillor McTigue denies this.
15. On 19 June 2008 the Complainant sent an email to Councillor McTigue at her Middlesbrough Council email address expressing her views on Councillor McTigue’s actions at the Complaints hearing and including the phrase, “*Think on at the next meeting and behave like the Councillor you should be, rather than the “low life” you were yesterday. Don’t bother to reply*”. Councillor McTigue replied on 20 June 2008 acknowledging receipt of that email. She said she would not be entering into further discussions and that she had arranged for any further emails from the complainant to go directly to her junk folder, for deletion before they were opened.
16. On 20 June 2008 the first of a series of forum postings making reference to the Council’s hearing of the wheelie bin complaint was posted on forums.gazettelive.co.uk. This was an on-line forum hosted by The Evening Gazette. There followed a series of postings by different contributors on the issue until 7 July 2008. In all there were nearly 130 postings on the topic within the eighteen day period.
17. Councillor McTigue initiated the topic on the forum using the pseudonym “Indie”. She has been a contributor to the ‘gazettelive’ forum in the past under the same pseudonym.
18. The forum postings by Indie (35 of the 127) can be grouped into 3 types:
 - 18.1. General postings – not directed to any particular individual.
 - 18.2. Those directed to the complainant (after she entered the forum under the pseudonym cynic2008).
 - 18.3. Those directed to other individual forum participants (as replies to their entries). The other users are identified only by their usernames and generally no further details are known about them. Mr Warren in evidence identified himself as “Tosha”.
19. In the forum exchanges between Councillor McTigue (as Indie) and the Complainant (as cynic2008) each was aware of the other’s true identity.
20. The first posting on the topic of the wheelie bin complaint was posted by Councillor McTigue under the pseudonym “Indie” and was headed: “*The Marton woman and her wheelie bin!*”. It then went on to say: “*I attended the hearing and this woman stated that having her wheelie bin place on her drive had almost brought on a nervous breakdown and had almost brought her to her knees*”.
21. There followed a series of postings by various people, with differing views on the subject of the wheelie bin complaint, councillors, rubbish collection etc. There are

several blogs by people who were clearly concerned about the way that the public site had been used by Councillor McTigue in relation to the wheelie bin complaint.

22. Mr Warren in evidence said that he was a regular blogger and had not connected "Indie" with being a councillor. However he accepted that he became aware at one point in the series of postings that she was in fact a councillor.
23. It is clear from the postings that it was well-known that "Indie" was Councillor McTigue's pseudonym. On 25 June 2008, in the 11th posting of the forum series relating to the wheelie bin complaint, Ms Bawden posting as cynic2008 stated: *"Hey "INDIE" you obviously have not made it clear that you are actually Councillor Joan McTigue"*. The Appellant responded on the same day: *"Everyone on this site knows who I am"*.
24. The Appellant referred to the Council, other councillors and specifically her role as councillor in various ways in her postings on the forum.
25. Councillor McTigue's postings continued well after it had been made clear to her by the Complainant and other bloggers that her postings were inappropriate.

Findings as to whether the Appellant failed to follow the Code

26. The first matter to be determined is whether the Appellant was acting in her official capacity when she was engaged in the series of posts on the Evening Gazette forum. If she was not, then she would not have been in breach of the Code of Conduct in respect of these matters.
27. If it is concluded that she was acting in her official capacity, it then has to be determined whether by her actions she
 - 27.1. failed to treat Ms Bawden with respect and/or
 - 27.2. could reasonably be regarded as bringing her office into disrepute and/or
 - 27.3. when using the Council computer failed to act in accordance with the Council's reasonable requirements.

Official capacity

28. The Appellant argued that she was not acting in her official capacity as all her comments on the forum were made in her private time and all using the pseudonym of "Indie".
29. The Appeals Tribunal accepted that even if it became clear from the forum that an individual who was posting on the forum was a councillor, the Code of Conduct would not automatically be engaged. The question was whether in the postings on the forum the councillor was deemed to be, or gave the impression that he or she was, "acting in the role of councillor". This was fact-sensitive and would very much depend on the content of the postings.
30. It was noted that Councillor McTigue had used a pseudonym, and that she states in at least one of the postings that she is on the forum as a resident who just happens to be a councillor. However, taking the contents of the postings on the Evening Gazette forum as a whole the Appeals Tribunal concluded that the Appellant did give the impression that she was acting in the role of councillor and thus representing the council. Postings by "Indie" (Councillor McTigue) that resulted in this conclusion include:

- 30.1. 25/6/08: *"I was sitting next to Cllr McPartland (who gave me a sweet!) and other Labour cllrs & I assure you, if my behaviour was even in the least not acceptable I would have been reported to the S Board before my feet touched the ground".*
- 30.2. 25.6.08: *"cynic – you claimed that the council agreed with your complaint – who agreed – name them please so that I can verify it ..."*
- 30.3. 26/6/08: *"BillygangI have suggested that since the council is targeted by the Government on recycling, that we pay people as an incentive – I don't make the decisions though – those above me do & they are appointed by the Labour Group. If you are not happy about your litter situation etc – complain to the right people why don't you – you cannot blame me. Which cllrs do you know who are childish – let's have some real evidence and examples here please – I for one agree but I would be interested in your experience of this. ..."*
- 30.4. 26/6/08: *"I am a councillor as most people know I have no political banner ..."*
- 30.5. 26/6/08: *"As you can appreciate I am limited as to how I can describe what happened – if you see what I mean.*
- 30.6. 27/6/08: *"... do you know who your ward councillors are by any chance? Get to know them and then you can judge them."*
- 30.7. 27/6/08: *"Mon – the residents in my ward are not just a number – I assure you of that. When one of them comes to me with a problem, the first thing I ask them is, how long it's been going on. If they reply – months or ages, I chide them for not contacting me sooner. ..."*
- 30.8. 28/6/08: *"Every single person who uses this site could take their questions/complaints/questions and ask them in person at a full council meeting which is held every 6 weeks where they will be answered – providing the question is accepted by the Head of Legal Services. If they prefer to use this site instead – there is a chance I can answer them or perhaps the other cllrs on here who are anon.What's the difference between this and a public meeting where anything is discussed and aired, apart from the fact that you would see cllrs".*
- 30.9. 28/6/08: *"..before I put anything up here for discussion I have the sense to check first with the legal dept in the Town Hall".*
- 30.10. 29/6/08: *"...my phone is in perfect working order so anyone here can contact me day or night and I have no objections whatsoever to people calling at my home which they do on a daily basis – it helps to live on the ward in some respects.We do our cllr work when it needs doing – there are no set hours – I thought everyone knew that."*
- 30.11. 29/6/08: *"..during this hearing/tribunal/appeal whatever you wish to call it I asked the cllr sitting next to me Cllr McPartland what he thought the costs would be and he rolled his eyes heavenwards. Would you like me to find out the approx cost for you & how many man hours have been spent on this?"*
- 30.12. 29/6/08: *" ...as a councillor I cannot deal with them in the same manner. ..."*

31. This conclusion is further supported by the impression that was clearly received by other posts on the blog.

Failure to treat with respect

32. Failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour occurred is relevant to assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.
33. The Appeals Tribunal accepted that the Appellant had felt wrongly accused by the complainant of bad behaviour at the Council's Appeals Committee and that she had received a strongly-worded email from the complainant which she had taken exception to. However this did not provide a justification for what she did, which was, instead of dealing with the matter privately, to choose to take the issue to a very public blog-site, run by the local newspaper. It was inappropriate for someone with a valid and accepted complaint, which had been taken seriously by the Council, to be subjected to public ridicule and demeaning statements on a public website by a member of that council. The tone of the Appellant's postings was derogatory and disparaging to Ms Bawden, including references to her as *"the wheelie bin woman"*. In addition, the Appellant's postings triggered off abusive responses directed at Ms Bawden from other people, such as: *"Do you think there might be a 'Compo case' in the offing???"*, to which the Appellant replied that he must be a mind-reader. In fact the Claimant was claiming out-of-pocket expenses.
34. The Appeals Tribunal concluded that the Appellant had not treated the complainant with respect in breach of paragraph 3(1) of the Code of Conduct.

Disrepute

35. The Oxford English dictionary defines disrepute as "lack of good reputation or respectability". A member will have failed to comply with the Code if his or her conduct could "reasonably be regarded" by an objective observer as bringing the member's office or authority into disrepute. Anything which diminishes the member's office or their authority, or which harms or could harm the reputation of an authority, will bring that office or authority into disrepute.
36. The Appeals Tribunal considered that the way that the Respondent had behaved was not that expected of a councillor and would diminish the office of councillor. It considered therefore that the Appellant had brought the office of councillor into disrepute in breach of paragraph 5 of the Code of Conduct.

Misuse of Council Property

37. The Appeals Tribunal felt that by implication using a Council computer for such purposes would constitute a breach of paragraph 6(b)(1) of the Code of Conduct. However, this was a technical breach and in itself not significant.

Human Rights

38. In considering whether Councillor McTigue breached the Code of Conduct the Appeals Tribunal has had regard to Article 10 of the European Convention on Human Rights which provides:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of ..the protection of the reputation or rights of others,..”.

39. In the recent case of *Mullaney v The Adjudication Panel for England [2009] EWHC 72* (Admin) Charles J considered how the code fitted with Article 10. He stated at paragraph 101: *“I agree with Collins J in Livingstone at paragraph 34 and Wilkie J in Sanders (accepting the stance there of the Councillor) that in principle the Code satisfies Article 10(2). Also as so indicated I agree that it is important that the restraints should not extend beyond what is necessary to maintain proper standards in public life and that political expression attracts a higher level of protection.”*
40. This is a case where proper standards in public life have not been maintained. It is not a case where there is a need to protect political expression. The disrespect shown was not to a councillor or other politician but to a member of the public in a public arena. The Appellant continued with the postings even after there were clear objections to the series of postings from other bloggers on the grounds that they were inappropriate. Most importantly there was nothing to stop the Appellant from raising the issue of wheelie bins on the forum in a proper manner to elicit views without, as she did, vilifying the complainant personally.
41. The Appeals Tribunal considered therefore that Article 10 did not assist the Appellant in this case.

Sanction

42. The Standards Committee in considering a sanction took into account the mitigating circumstances of the Complainant’s behaviour towards the Appellant and the Appellant’s previous history of breaches of the Code of Conduct. It then resolved to suspend the Appellant for a period of two months, with immediate effect.
43. The Appeals Tribunal made it clear to the Appellant what the possible sanctions were and received submissions and evidence from both parties. Mr Long submitted documents relating to previous breaches of the Code of Conduct by Councillor McTigue, namely:
- 43.1. A finding of the Adjudication Panel for England (APE 329) in 2006 that the Appellant had breached the Code by not declaring a personal interest at two meetings. No penalty was imposed, although the Tribunal stated that *“the Respondent should be left in no doubt that the Tribunal deprecated her behaviour”*.
- 43.2. A finding by Middlesbrough Council Standards Committee on 22 May 2006 that she had not treated Council officers with respect. Councillor McTigue was required to write a letter of apology.
- 43.3. A finding of Middlesbrough Council Standards Committee on 18 September 2007 that she had not treated a person with respect. The sanction was one month’s suspension.

Councillor McTigue had not appealed against any of these findings, although she indicated that this was because she had no faith in the appeal system.

44. Mr Long submitted that in his view the two month suspension imposed by the Standards Committee was in fact too lenient in the circumstances. Councillor McTigue made submissions as to why the previous breaches were not as serious as might have been considered; including providing a letter from a witness in one of the cases to the effect that he had been coerced to give evidence.
45. The Appeals Tribunal took all these matters into account. From the evidence before it the Appeals Tribunal was satisfied that Councillor McTigue is a committed and zealous councillor. However it was felt that this was a case where there was a fairly serious breach of the Code of Conduct, based as it was on an unwarranted personal attack against a member of the public in a series of postings on a public website. In that respect they felt that the circumstances were clearly different from the *Livingstone* case which had been referred to by the Appellant.
46. It was clear that Councillor McTigue had a significant history of involvement in proceedings for breaching the Code of Conduct. The Appeals Tribunal considered that it might be expected that she would have learnt from this and adjusted her behaviour accordingly. However this had not happened and the Appeals Tribunal considered that the two month suspension imposed by the Standards Committee was appropriate.
47. The Appeals Tribunal was not convinced that the Appellant fully appreciates the requirements of the Code of Conduct. It appears that, although training on the Code has been offered by the Council, the Appellant has not participated in it for some time. The Appeals Tribunal therefore decided to impose an additional sanction of the requirement for training on the Code of Conduct within three months of the date of the hearing, with a recommendation that this be one-to-one training if possible, to ensure that the Appellant fully understands the Code and so that any misconceptions she currently has are addressed.
48. The Appeals Tribunal has upheld the finding of the Standards Committee.
49. The decision of the Appeals Tribunal was unanimous.
50. The Standards Committee is required to impose the penalties specified at paragraph 44 and 45 above.
51. 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.
52. 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.tribunals.gov.uk

Beverley Primhak
Chairwoman of the Appeals Tribunal
10 May 2009

Report of	Meeting	Date
Monitoring Officer	Standards Committee	18 June 2009

THE STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND) REGULATIONS 2009

PURPOSE OF REPORT

1. To advise members of new regulations which allow the Standards Board for England to suspend the initial assessment functions of local authorities and enable authorities to set up joint standards committees. The regulations also empower standards committees to grant dispensations to members who would otherwise not be able to participate in authority business because of a prejudicial interest. The regulations came into force on 15 June 2009.

RECOMMENDATION(S)

2. To note the report.

CORPORATE PRIORITIES

3. 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	Y

BACKGROUND

4. The Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007 ("the Act") provides that regulations may be made to prescribe the circumstances and procedure whereby the Standards Board for England may suspend the power of a standards committee to carry out initial assessments of misconduct allegations. The Board may direct that the allegations are referred to itself to assess or are referred to the standards committee of another authority.
5. The Act also provides for the setting up of joint standards committees and for regulations to be made setting out the circumstances in which dispensations may be made.

THE STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND) REGULATIONS 2009

6. The above Regulations came into force on 15 June 2009. They set out the circumstances and procedure when the above provisions in the Act are to be used. Members were made aware of the proposed changes in a report to this Committee on 8 February 2008 in relation to a consultation document issued by the Department for Communities and Local Government.

SUSPENSION OF INITIAL ASSESSMENT FUNCTIONS

7. The Regulations set out the circumstances in which the Standards Board may give a direction the effect of which is to suspend the initial assessment functions of local authorities. The events which may give rise to intervention by the Standards Board are as follows:
- Failure of the standards committee to have regard to Guidance issued by the Standards Board
 - Failure of the standards committee to comply with a direction issued by the Standards Board
 - Failure of the standards committee or the Monitoring Officer to perform their functions properly or within a reasonable time
 - Invitation by the authority or its standards committee to the Standards Board to intervene

When the Standards Board intends to give a direction to suspend the initial assessment functions of an authority it must serve notice on the authority setting out its reasons and specifying a date within six months on which a direction may be given. The authority then has 28 days to submit observations to the Standards Board which the Board must take into account before giving a direction. This procedure does not apply if the authority or its standards committee has invited the Standards Board to intervene.

Once a direction is made the authority must arrange for it to be published in at least one newspaper and, if the Standards Board consider it appropriate, on the authority's website and in any other publication.

The Standards Board may revoke a direction if it considers that the circumstances giving rise to the direction no longer apply.

JOINT STANDARDS COMMITTEES

8. Joint standards committees of two or more authorities can exercise all of the functions of a standards committee but cannot operate concurrently with another standards committee of any of the authorities which set it up.

The terms of reference of joint standards committees must include the following:

- The functions which they are to discharge
- Their administrative arrangements
- Which committee is the standards committee to which written allegations should be sent
- The number of members on the committee and their terms of office
- Provision for appointment of members to sub-committees of the joint standards committee
- Payment of allowances
- Procedure for an authority to withdraw from the joint standards committee on service of notice

The authorities should agree how to allocate the costs of the joint committee between themselves or if they cannot agree should appoint a single arbitrator to decide.

The Standards Board has indicated that it will issue guidance on joint standards committees which will include a draft terms of reference which will include a template for the information required by the regulations.

DISPENSATIONS

- 9. At present dispensations can be granted by the standards committee of an authority where the number of members prevented from participating in the business of the authority exceeds 50% due to them having a prejudicial interest. The Regulations provide that members may seek a dispensation where the political balance of a meeting would be affected to such an extent to prejudice the outcome of voting.

Members should submit a request in writing for a dispensation giving reasons. A dispensation is not valid if the business to be conducted is more than four years since the dispensation was granted.

IMPLICATIONS OF REPORT

- 10. This report has implications in the following areas.

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

Establishment of joint standards committees may lead to costs savings. However if this option were considered a full assessment would need to be conducted.

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Alex Jackson	5166		***

There are no background papers to this report.

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Parish Council Mentoring 2009/2010

Parish Council	Committee Mentor	Date visited
Adlington		
Anderton		
Astley Village		
Bretherton		
Brindle		
Charnock Richard		
Clayton-Le-Woods		
Coppull		
Croston		
Cuerden		
Eccleston		
Euxton		
Heapey		
Heath Charnock		
Heskin		
Hoghton		
Mawdesley		
Rivington		
Ulnes Walton		
Wheelton		
Whittle-Le-Woods		
Withnell		

Tony Ellwood (Independent Chair)
Cllr Mike Devaney
Cllr Judith Boothman
Cllr Cath Hoyle
Cllr Debra Platt
Cllr Stella Walsh
P Cllr Joan Geddes
P Cllr Alan Platt
P Cllr Bill Mason
Vacancy (Independent Member)
Vacancy (Independent Member)

Parish Council Mentoring 2008/2009 (for information)

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

Report of	Meeting	Date
Monitoring Officer	Standards Committee	18 th June 2009

EMAIL, INTERNET AND TELEPHONE POLICY.

PURPOSE OF REPORT

- To seek views and comments from the Committee on the enclosed email, internet and telephone policy.

RECOMMENDATION(S)

- To consider the email, internet and telephone policy.

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	x

EMAIL, INTERNET AND TELEPHONE POLICY

- Then enclosed draft policy will be signed and used by officers of the Council. The document will be amended for use by Councillors to reflect their role.
- Views and comments are requested from the Committee on the policy with respect to its use by Councillors.

IMPLICATIONS OF REPORT

- This report has implications in the following area and my comments are included:

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

ANDREW DOCHERTY
CORPORATE DIRECTOR OF GOVERNANCE

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Andrew Docherty	5102	11 June 2009	Email, internet and telephone policy



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E MAIL, INTERNET AND TELEPHONE POLICY

This is an important policy. It aims to protect the Council and protect us. Please take time to read it.

The policy:

- Sets out general rules for the acceptable use of the system
- Points out that the way we use the facilities made available to us reflects on the Council and can commit the Council legally
- Reminds us of our responsibilities to handle personal and sensitive information properly and that customers' e-mail addresses themselves may be personal information
- Requires staff to contact IT services before sending confidential or sensitive information via email
- Describes how and when personal use of e-mail, internet and telephones is permissible
- Requires us to remove personal e-mail from the Council's systems
- Applies the same principles to the use of personal mobile phones in work time as it does to use of the Council's e-mail, internet and telephone landlines
- Prohibits private use of Council provided mobile phones (where the facility to have a private Line 2 is available)
- Prohibits the use of Council e-mail addresses on public websites for non business purposes
- Sets out requirements for any content we publish privately on the internet e.g. blogs, or pages on social networking websites where we could be identified as working for the Council

The policy also sets out the circumstances in which the Council may monitor our communications.

There can be serious consequences for failing to follow this policy but we do not want to catch anyone out. If you need any clarification of anything in this policy please ask your line manager.

Donna Hall
Chief Executive

E-MAIL, INTERNET AND TELEPHONE POLICY

1. OVERVIEW

Introduction

- 1.1 Communication plays an essential role in the conduct of the Council's business. How you communicate with people not only reflects on you as an individual but also on the Council as a whole. In some cases the Council will be legally liable for statements made or actions taken through its communication facilities.
- 1.2 We value our ability to communicate with colleagues, customers, Councillors and partners and the Council invests substantially in information technology and communications systems which enable you to do so more efficiently. We rely on you to use those resources responsibly and this policy sets out the Council's requirements. Please read it carefully.

Who does this policy apply to?

- 1.3 This Policy applies to all employees, temporary and contract staff (including agency staff) of Chorley Council.

What facilities does this policy cover?

- 1.4 The facilities covered by this document includes access to all communication facilities provided by the Council including internet and e-mail services, telephones, fax machines, copiers and scanners.

Personal use of facilities

- 1.5 The Council's communications facilities are provided for the purposes of Council business. A certain amount of limited and responsible personal use by users is also permitted.

What happens if the policy is breached?

- 1.6 If our rules and procedures are not followed, then use of the Council's facilities may be curtailed or withdrawn. Serious breaches of this policy may lead to disciplinary action being taken against you and could lead to summary dismissal. Less serious breaches may result in formal or informal action being taken dependent upon the nature of the breach.
- 1.7 Some aspects of this policy also deal with matters which amount to criminal offences under the Computer Misuse Act.

2. GENERAL PRINCIPLES

- 2.1 You must use the Council's information technology and communications facilities sensibly, professionally, lawfully, and consistently with your duties. You must use them with respect for your colleagues and for the Council and its Members and in accordance with this policy and any other relevant rules and procedures.

- 2.2 We regularly deal with personal information or with our own or partners' confidential or sensitive information. While the Council strives for openness in its dealings you must treat information which we hold with utmost care.
- 2.3 Modern communication facilities and particularly the internet allow for easy copying of material. Please remember that most material on the internet belongs to someone and reusing it may breach their copyright.
- 2.4 Particular care must be taken when using email. E-mail can be produced in court in the same way as other kinds of written statements. You can enter contracts, bind the Council to certain action or defame a third party by e-mail in just the same way as you can by letter and so create liabilities both for the Council and for you personally.
- 2.5 All messages sent externally using Council systems should demonstrate the same professionalism as that which would be taken when writing a letter. For some internal purposes the Council accepts that the style of correspondence may be less formal. However, you should remember that e-mail may have to be disclosed in legal proceedings or in response to a request under the Data Protection Act or Freedom of Information Act. The golden rule is therefore never to send a message which would embarrass you or the Council if it became public.
- 2.6 Under no circumstances should users communicate material (either internally or externally), which is, defamatory, obscene, or breaches the Council's equal opportunity policies. Any user who is unclear about the appropriateness of any material, should consult their line manager, before sending it.

3. USE OF ELECTRONIC MAIL

Generally

- 3.1 Users should note that the following disclaimer is added automatically to all external e-mail sent by the Council:

This e-mail and any attached files are confidential and may also be legally privileged. They are intended solely for the intended addressee. If they have come to you in error you must not use, copy or communicate them to anyone. Please advise the sender and permanently delete the e-mail and attachments.

Please note that while Chorley Council has policies in place requiring its staff to use e-mail in an appropriate manner, any views expressed in this message are those of the individual sender and may not necessarily reflect the views of Chorley Council.

Chorley Council may monitor e-mails sent or received.

- 3.2 Do not amend any messages received and, except where specifically authorised by the other person, do not access any other person's in-box or other email folders nor send any email purporting to come from another person.

- 3.3 External e-mail is not a secure form of communication. It is easy to send e-mail to the wrong person. In addition once e-mail has left the Council's systems it is susceptible to interception. For that reason, if you need to send confidential information or personal information which could cause distress if disclosed you should contact IT Services and ask for the email to be encrypted. It is, in any event, good practice to re-read and check an email before sending and to confirm that you are sending the e-mail to the right person.
- 3.4 If you copy an email to others, it may breach the Data Protection Act if it reveals all the recipients' email addresses to each recipient. This is most likely to apply in the case of mailing lists and similar sent to external parties. It could though apply if internal e-mail is being sent relating to personal rather than work matters.
- 3.5 In these cases it may be appropriate to use the 'Bcc' (blind carbon copy) field instead of the 'Cc' (carbon copy) field when addressing an email to more than one recipient. If in doubt, seek advice from your line manager.

Business use

- 3.6 If the email message or attachment contains information which is time-critical, bear in mind that an email is not necessarily an instant communication and consider whether it is the most appropriate means of communication.
- 3.7 If you have sent an important document, always telephone to confirm that the email has been received and read.
- 3.8 In light of the security risks inherent in some web-based email accounts, you must not email business documents to your personal web-based accounts. You may send documents to a customer's web-based account if they have asked you to do so.

Personal Use

- 3.9 Although the Council's email facilities are provided for the purposes of Council business, you may occasionally want to use them for your own personal purposes. This is permitted on the condition that all the procedures and rules set out in this policy are complied with. Be aware, however, that if you choose to make use of our facilities for personal correspondence, you can expect very little privacy because the Council may need to monitor communications.
- 3.10 Under no circumstances may the Council's facilities be used in connection with the operation or management of any other business or for commercial or party political activity.
- 3.11 You must also ensure that your personal email use:
- does not interfere with the performance of your duties;
 - does not take priority over your work responsibilities;
 - is minimal and limited to taking place substantially outside of normal working hours

- does not cause unwarranted expense or liability to be incurred by the Council
- does not have a negative impact on the Council in any way; and
- is lawful and complies with this policy.

3.12 The Council has limited storage space on its servers. You should therefore not store e-mail on the Council's systems unless it is work related. Personal email should either be deleted after being read or forwarded to a personal email account and then deleted. You should note though that email is backed up on a regular basis and deleting it from the live system will not necessarily result in it being deleted for good.

3.13 If you make personal use of our facilities for sending and receiving email you will be treated as having agreed to abide by the conditions imposed for their use, and consented to the Council monitoring your personal email in accordance with this policy. If you do not agree or consent to this then you must not use the system to send or receive personal e-mail.

4. USE OF INTERNET, INTRANET AND OTHER COUNCIL NETWORKS

4.1 We trust you to use the internet sensibly. Bear in mind at all times that, when visiting a website, information identifying your PC may be logged. Therefore any activity you engage in via the internet may affect the Council.

4.2 We recognise that individuals may have to carry out some personal tasks during working hours, e.g. for internet banking or online shopping, and this is permitted subject to the same rules as are set out for personal email use in item 3.11 of this policy. However, any personal use is entirely at your own risk. The Council accepts no responsibility for any losses you may suffer.

4.3 You must not use your work email address when using public websites for non-business purposes, such as online shopping. Doing so results in you and the Council receiving substantial amounts of unwanted email.

4.4 Access to certain websites is blocked. If you have a particular business need to access such sites, please contact the IT help desk. Access will only be permitted for work purposes.

4.5 You must not:

- seek to gain access to restricted areas of the Council's network;
- access or try to access data which you know or ought to know is confidential;
- introduce any unauthorised software to the Council's systems. In particular you should not open any attachments with an .exe extension or open any attachments which appear to be programs, or download any browser "plug-ins" or programs except under the guidance of IT Services.
- intentionally or recklessly introduce any form of spyware, computer virus or similar malware.
- carry out any hacking activities

- use personal e-mail accounts on Council equipment (this does not prevent you using personal e-mail addresses as an identifier when using external websites).

5. USE OF TELEPHONES AND MOBILE PHONES

- 5.1 The Council accepts that individuals may need to make or receive the occasional personal call. This is subject to the same rules as for personal e-mail set out in paragraph 3.11. These requirements also apply to an individual using their own mobile phone in work time.
- 5.2 The Council's mobile phone arrangements allow for a Line 2 to be available. Calls made on Line 2 are charged directly to the individual whereas the cost of calls on Line 1 is borne by the Council. Consequently no personal calls should be made on Line 1.

6. MISUSE OF THE COUNCILS FACILITIES AND SYSTEMS

- 6.1 Misuse of the Council's facilities and systems, including its telephone, email and internet systems, in breach of this policy will be treated seriously and dealt with in accordance with the Council's disciplinary procedure. In particular, viewing, accessing, transmitting, posting, downloading or uploading any of the following materials in the following ways, will amount to gross misconduct capable of resulting in summary dismissal (this list is not exhaustive):
- material which is sexist, racist, homophobic, xenophobic, pornographic, paedophilic or similarly discriminatory and/or offensive;
 - offensive, obscene, derogatory or criminal material or material which is liable to bring the reputation of the Council and any of its staff or its Members into disrepute;
 - any defamatory material about any person or organisation or material which includes statements which are untrue or of a deceptive nature;
 - any material which, by intent or otherwise, harasses the recipient;
 - any other statement which is designed to cause annoyance, inconvenience or anxiety to anyone;
 - any material which violates the privacy of others or unfairly criticises or misrepresents others;
 - confidential information about the Council and any of its staff or Members ;
 - any other statement which is likely to create any liability (whether criminal or civil, and whether for you or the Council);
 - material in breach of copyright and/or other intellectual property rights;
 - material which appears to be designed to affect support for a particular political party or candidate for election;
 - online gambling; or
 - chain letters or other junk mail of any kind.

7. WORKING REMOTELY

- 7.1 The Council has a Mobile Working Policy which applies to your use of our laptops and other mobile computer equipment (including smartphones and PDA's), and also to your use of your own computer equipment or other computer equipment whenever you are working on Council business away from our offices (working remotely). If you work remotely or take equipment off the Council's premises you must ensure that you are familiar with that policy.

8. PERSONAL BLOGS AND WEBSITES

- 8.1 This part of the policy and procedures in it apply to content that you publish on the internet (e.g. your contributions to blogs, message boards and social networking or content-sharing sites) even if created, updated, modified or contributed to outside of working hours or when using personal IT systems.
- 8.2 The Council recognises that in your own private time you may wish to publish content on the internet.
- 8.3 If you post any content to the internet, written, vocal or visual, which identifies, or could identify, you as a member of the Council's staff and/or you discuss your work or anything related to the Council or its business, customers or staff, the Council expects you, at all times, to conduct yourself appropriately and in a manner which is consistent with your contract of employment and with the Council's policies and procedures. It should be noted that simply revealing your name or a visual image of yourself could be sufficient to identify you as an individual who works for the Council.
- 8.4 If you already have or intend to create a personal blog or website which indicates in any way that you work for Council you should report this to your Director.
- 8.5 If a blog posting clearly identifies that you work for the Council and you express any idea or opinion then you should add a disclaimer such as "these are my own personal views and not those of Chorley Council".
- 8.6 The following matters will be treated as gross misconduct capable of resulting in summary dismissal (this list is not exhaustive):
- Revealing confidential information about the Council in a personal online posting.
 - Criticising or embarrassing the Council, its customers, staff or Members in a public forum (including any website). You should respect the reputation of the Council and the privacy and feelings of others at all times. If you have a genuine complaint to make about a colleague or workplace matter the correct procedure is to raise a grievance using the Council's grievance procedure.
 - If you think that something on a blog or a website could give rise to a conflict of interest and in particular concerns issues of impartiality or confidentiality required by your role then this must be discussed with your Director.

- If someone from the media or press contacts you about your online publications that relate to the Council you should talk to your Director before responding and the Council's press office must be consulted.
- Online publications which do not identify the author as a member of the Council's staff and do not mention the Council and are purely concerned with personal matters will normally fall outside the scope of the policy.

9. MONITORING OF COMMUNICATIONS BY THE COUNCIL

9.1 The Council is ultimately responsible for all business communications but subject to that will, so far as possible and appropriate, respect your privacy and autonomy while working. The Council may monitor your business communications for reasons which include:

- providing evidence of business transactions;
- ensuring that the Council's business procedures, policies and contracts with staff are adhered to;
- complying with any legal obligations;
- monitoring standards of service, staff performance, and for staff training;
- preventing or detecting unauthorised use of the Council's communications systems or criminal activities; and
- maintaining the effective operation of the Council's communications systems.

9.2 The Council will monitor telephone, email and internet traffic data (i.e. sender, receiver, subject; non-business attachments to email, numbers called, the time and duration of calls; domain names of websites visited, the time and duration of visits, and files downloaded from the internet) at a network level (but covering both personal and business communications) for the purposes specified in this policy. For the purposes of your maintenance of your own personal privacy, you need to be aware that such monitoring might reveal sensitive personal data about you. By carrying out such activities using the Council's facilities you consent to our processing any sensitive personal data about you which may be revealed by such monitoring.

9.3 Sometimes it is necessary for the Council to access your business communications during your absence, such as when you are away because you are ill or while you are on holiday. It may also be necessary to monitor the inboxes of staff who have left the organization for a short time after their departure. Unless your mailbox settings are such that the individuals who need to do this already have permission to view your inbox, access will be granted only with the permission of your Director, the Corporate Director ICT or the Chief Executive.

9.4 All incoming email are scanned by Messagelabs on behalf of the Council, using virus-checking software. The software will also block unsolicited marketing email (spam) and email which have potentially inappropriate attachments. If there is a suspected virus in an email which has been sent to you, the sender will automatically be notified and you will receive notice that the email is not going to be delivered to you because it may contain a virus.

10. DATA PROTECTION AND FREEDOM OF INFORMATION

- 10.1 As a member of the Council who uses our communications facilities, you will inevitably be involved in processing personal data for the Council as part of your job. Data protection is about the privacy of individuals, and is governed by the Data Protection Act 1998. This Act defines, among others, terms as follows:
- 10.1.1 "data" generally means information which is computerised or in a structured hard copy form;
 - 10.1.2 "personal data" is data which can identify someone, such as a name, a job title, a photograph;
 - 10.1.3 "processing" is anything you do with data – just having data amounts to processing; and
 - 10.1.4 "data controller" is the person who controls the purposes and manner of processing of personal data – this will be the Council, in the case of personal data processed for the business.
- 10.2 Whenever and wherever you are processing personal data for the Council you must keep it secret, confidential and secure, and you must take particular care not to disclose them to any other person (whether inside or outside the Council) unless authorised to do so. Do not use any such personal data except as authorised by the Council for the purposes of your job. If in doubt get help from your line manager.
- 10.3 For your information, section 55 of the Data Protection Act provides that it is a criminal offence to obtain or disclose personal data without the consent of the data controller. "Obtaining" here includes the gathering of personal data by employees at work without the authorisation of the employer. You may be committing this offence if without authority of the Council: you exceed your authority in collecting personal data; you access personal data held by the Council; to control it or you pass them on to someone else (whether inside or outside the Council).
- 10.4 While the Council is a data controller of all personal data processed for the purposes of our business, you will be a data controller of all personal data processed in any personal email which you send or receive. Use for social, recreational or domestic purposes attracts a wide exemption under the Data Protection Act, but if, in breach of this policy, you are using our communications facilities for the purpose of a business which is not the Council's business, then you will take on extensive personal liability under the Data Protection Act.
- 10.5 The Data Protection Act gives every individual the right to see all the information which any data controller holds about them. The Freedom of Information Act gives general rights to access most other information which the Council holds. It is another reason why personal remarks and opinions must be made or given

responsibly, and they must be relevant and appropriate as well as accurate and justified.

- 10.6 To help you understand and comply with the Council's obligations Data Protection and Freedom of Information Acts you may be offered, and you may also request, training. Whenever you are unsure of what is required or you otherwise need guidance in data protection, you should consult our **Information Manager**. Information about our data protection policies can be found on theloop.

11. USE OF GOVERNMENT SECURE INTERNET

- 11.1 A small number of staff are required to exchange information with other government agencies such as the Department of Work and Pensions via a connection to the Government Secure Intranet (GSI). Given the secure nature of this network, those using it will be required to agree to additional security checks and sign a declaration relating to use of the connection.

12. COMPLIANCE WITH THIS POLICY

- 12.1 Failure to comply with this policy may result in disciplinary action being taken against you under the Council's disciplinary procedures, which may include summary dismissal, and/or in the withdrawal of permission to use the Council's equipment for personal purposes. If there is anything in this policy that you do not understand, please discuss it with your line manager.
- 12.2 Please note that the procedures and policies outlined in this policy, and in any related policy, may be reviewed or changed at any time. You will be alerted to important changes. The most up to date copy of the policy will be published on theloop.

13. SYSTEM SECURITY

- 13.1 The Council has an Information Security Framework which you should also ensure that you are familiar with.



Standards Committee Work Programme 2009

19 June 2009

News from the Standards Board for England
Annual return to the Standards Board for England
Cases considered by the Adjudication Panel for England
The Standards Committee (Further Provisions) (England) Regulations 2009
Parish Council mentoring
Work undertaken to promote the Code of Conduct
Update on the recruitment of additional members of the Standards Committee
Email, internet and telephone policy
Standards Committee Work Programme

17 September 2009

10 December 2009

04 March 2010

Other topics

Consideration of the Officer code of conduct (good governance)
Guidance on information accessible by members and disclosed by members
Consideration of the current Local Code of Conduct on Planning issues
Consider the need for a Licensing Code of Conduct
Chorley Council's Protocol on Member-Officer Relations
Training

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