

Standards Committee

Agenda and Reports

For consideration on

**Thursday, 17th September
2009**

In Committee Room 1, Town Hall, Chorley

At 2.00 pm



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9 September 2009

Dear Councillor/Colleague,

STANDARDS COMMITTEE - THURSDAY, 17TH SEPTEMBER 2009

You are invited to attend a meeting of the Standards Committee to be held in Committee Room 1, Town Hall, Chorley on Thursday, 17th September 2009 commencing at 2.00 pm.

AGENDA

1. **Welcome and Introductions**

The Chair will welcome the newly appointed Independent Members to the Committee.

2. **Apologies for absence**

3. **Minutes (Pages 1 - 6)**

To confirm as a correct record the minutes of the meeting of the Standards Committee held on 18 June 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 Standards for England**

The Monitoring Officer will present a verbal update.

6. **Cases update (Pages 7 - 54)**

To receive the report of the Monitoring Officer, the quarterly return to Standards for England and a verbal update on current local cases, if any.

7. **Bringing Standards into Focus 2009 Annual Assembly of Standards Committees**

To consider any issues the Committee would like the Chair and Vice-Chair to raise at the Annual Assembly in October.

8. **Granting of dispensations: the new guidance (Pages 55 - 58)**

To receive the report of the Monitoring Officer and recently issued guidance from Standards for England on granting dispensations under the new regulations (enclosed).

9. **Probity in Planning (Pages 59 - 60)**

To receive the report of the Monitoring Officer and revised guidance note on good planning practice for Councillors and officers dealing with planning matters.

10. **Feedback from visits to Parish Councils (Pages 61 - 62)**

Members of the Committee will give feedback on their visits to Parish Councils. The allocation of Committee members to Parishes is enclosed for information.

11. **Notifications to parish councils concerning complaints (Pages 63 - 64)**

To discuss the Parish Council notification procedures highlighted in the latest version of the Town and Parish Standard.

The Committee's thoughts are requested on any recommendations to make to Town and Parish Councils.

12. **Work undertaken to promote the Code of Conduct**

The Monitoring Officer will present a verbal update.

13. **Standards Sub-Committee**

To confirm the membership of the Standards Sub-Committee for the ensuing Municipal Year as Tony Ellwood (Independent Member), Mike Devaney (Borough Councillor) and Joan Geddes (Parish Council representative).

14. **Standards Committee Work Programme (Pages 65 - 66)**

The Committee will consider the Work Programme for 2009 (enclosed).

15. **Any other item(s) that the Chair decides is/are urgent**

Yours sincerely

Donna Hall

Donna Hall
Chief Executive

Ruth Rimmington
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 and Councillors Judith Boothman, Catherine Hoyle, Debra Platt, Stella Walsh, Hugh Evans (Independent Member), Gwynne Furlong (Independent Member), Joan Geddes (Parish Council representative), Mason (Parish Council representative) and Alan Platt (Parish Council representative) for attendance.
2. Agenda and reports to Andrew Docherty (Director of Governance - Monitoring Officer) and Ruth Rimmington (Democratic and Member Services Officer) 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 آپ کی 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, 18 June 2009**

Present: Tony Ellwood (Independent Chair), Councillor Mike Devaney (Vice-Chair) and Councillors Judith Boothman, Catherine Hoyle, Debra Platt, Joan Geddes (Parish Council Member), Bill Mason (Parish Council representative) and Alan Platt (Parish Council representative)

Officers in attendance: Andrew Docherty (Director of Governance - Monitoring Officer), Alex Jackson (Senior Lawyer) and Ruth Rimmington (Democratic and Member Services Officer)

09.S.81 WELCOME AND INTRODUCTIONS

The Chair welcomed everyone to the meeting, in particular the new Committee members.

09.S.82 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillor Stella Walsh and John Cree (Independent Member).

09.S.83 MINUTES

RESOLVED – That the minutes of the meeting of the Standards Committee held on 5 March 2009 be confirmed as a correct record and signed by the Chair.

09.S.84 DECLARATIONS OF ANY INTERESTS

No Members declared an interest in items under consideration on the agenda.

09.S.85 NEWS FROM THE STANDARDS BOARD

The Monitoring Officer presented recently published guidance on other action which offered information on when “other action” would be appropriate. This included systemic problems and where several members, or indeed a whole authority, could be included in action the Monitoring Officer could be asked to take.

Once an allegation had been referred to the Monitoring Officer to take steps other than investigation, those steps were limited to arranging for training, a process of conciliation or such other steps considered appropriate. There was not a power that allows the case to be referred on for investigation if these options were subsequently perceived to have failed.

The Committee discussed the possibility of an adjournment to seek information from the Member on the acceptance of training or reconciliation. It was noted that other action would only be appropriate in limited circumstances.

The Monitoring Officer also reported that recent research showed 90% of Councillors support the standards regime and nearly 90% support the move to local investigation.

RESOLVED – That the update and other action guidance be noted.

09.S.86 ANNUAL RETURN TO THE STANDARDS BOARD FOR ENGLAND

The annual return to the Standards Board was considered. The Committee noted that, along with the annual report, the information evidenced how proactive the Committee had been this year.

RESOLVED

1. The annual return be noted.
2. The annual return be added to the annual report it be reported to Council in July.
3. To enclose the annual return and annual report to the Parishes in the Chorley area.

09.S.87 CASES CONSIDERED BY THE ADJUDICATION PANEL FOR ENGLAND

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

Ten decisions of the Adjudication Panel had 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 in the first instance by Ethical Standards Officers.

The Ellistown and Westbury decisions essentially highlighted the same issue, relating to the need for investigator's reports and Standards Committee's findings to demonstrate clearly what evidence was relied upon to establish breaches of the Code.

The Middlesborough case was the most recent in a line of decisions from both the Panel and Courts dealing with the vexed question of when a Councillor was acting in his or her official capacity.

According to statistics recently published by the Standards Board only 6.2% of cases considered by Standards Committees were now being referred to the Standards Board for investigation.

RESOLVED – That the report be noted.

09.S.88 THE STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND) REGULATIONS 2009

The Monitoring Officer presented an information report advising 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 empowered 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. The Committee had considered the consultation paper in relation to these Regulations in February 2008.

Members noted that some Standards Committees in Lancashire have considered joint Committees. This would be useful for dealing with a dual hatted Members, but the Regulations don't allow this.

RESOLVED – That the report be noted.

09.S.89 PARISH COUNCIL MENTORING

The Chair outlined the background to the mentoring scheme, advising it had been in operation successfully for the previous two years. The main aim of the scheme was promoting awareness of the Code of Conduct and the Chorley Standards Committee.

The mentors acted as a contact point for queries and attend meetings of the Parish Council at least once a year. Mentors would not give advice on specific cases or deliver detailed training as these should be referred to the Monitoring Officer.

The mentoring scheme was in addition to the training offered every year for Parish Councils. Members noted that differing responses are received from each parish.

The Committee allocated mentors to the 22 Parish Councils within Chorley for this municipal year.

RESOLVED –**1. The Parish Council mentor allocation be confirmed as:**

Parish Council	Committee Mentor
Adlington	Stella Walsh
Anderton	Joan Geddes
Astley Village	Tony Ellwood
Bretherton	Bill Mason
Brindle	Debra Platt
Charnock Richard	Gwynne Furlong
Clayton-Le-Woods	Judith Boothman
Coppull	Alan Platt
Croston	Hugh Evans
Cuerden	Tony Ellwood
Eccleston	Gwynne Furlong
Euxton	Judith Boothman
Heapey	Mike Devaney
Heath Charnock	Stella Walsh
Heskin	Debra Platt
Hoghton	Cath Hoyle
Mawdesley	Joan Geddes
Rivington	Alan Platt
Ulnes Walton	Cath Hoyle
Wheelton	Bill Mason
Whittle-Le-Woods	Hugh Evans
Withnell	Mike Devaney

2. The Democratic and Member Services Officer to write to Committee members and Parish Council clerks to confirm the details.

09.S.90 WORK UNDERTAKEN TO PROMOTE THE CODE OF CONDUCT

Officers advised that all Borough Councillors had been requested to review their register of financial and other interests following the Annual Meeting. The Bulletin from the Standards for England was now forwarded to Parish Council clerks in addition to the Committee members, it also featured on intheknow (the fortnightly Members ezine).

Confirmation of the names of all Parish Councillors would be requested from each Parish Council clerk in the next few weeks, with a reminder for Parish Councillors to ensure the Monitoring Officer held a copy. The provision of training for Parishes would be considered at a later item.

The annual report of the Committee would be considered at the Council meeting in July.

RESOLVED – That the update be noted.

09.S.91 UPDATE ON THE RECRUITMENT OF ADDITIONAL MEMBERS OF THE STANDARDS COMMITTEE

The Chair, on behalf of the Committee, expressed his thanks to John Cree who had been an Independent Member of the Committee for a number of years. John had now retired as the Rector of St Laurence and also from the Committee.

The Monitoring Officer advised that the recruitment process for additional Independent Members had been ongoing since the last meeting. Members of the Local Strategic Partnership had been contacted to canvass interest. Three candidates had been interviewed on Monday, two of which were outstanding.

Gwynne Furlong was a long standing Chorley resident and was the Honorary President of the Chorley Chamber of Trade and Commerce. He had experience of Codes of Conduct, working within legal guidelines and chairing meetings.

Hugh Evans was the Deputy Chief Executive of the North and Western Lancashire Chamber of Commerce. He had experience of reviewing evidence, making unbiased decisions and working within legal guidelines.

The appointments would be considered by Council on 14 July.

RESOLVED –

- 1. The Committee write to John Cree to thank him for his contribution over the years and to wish John and his family best wishes for the future.**
- 2. The Committee support a recommendation to Council that Gwynne Furlong and Hugh Evans be appointed to the Standards Committee, bringing the Committee membership to three Independent Members in line with guidance from Standards for England.**

09.S.92 EMAIL, INTERNET AND TELEPHONE POLICY

The Monitoring Officer introduced the item and advised that the enclosed draft policy would be used by Council staff.

Comments from the Committee from an ethical point of view were requested plus any suggestions for updates required to enable it's use by Members.

It was suggested that "sexist or racist" be added to paragraph 2.6. It was noted that breaching equal opportunity policies could amount to a breach of criminal law.

It was noted that paragraph 3.10 regarding the “use of Council facilities be used in connection with...party political activities” would need to be outlined clearly here for Members. Paragraph 5.1 and 5.2 relating to the use of telephones and mobile phones would also need to be reworded for Members.

AGREED – That the policy would be ideal for staff, and for Councillors subject to some amendments.

09.S.93 STANDARDS COMMITTEE WORK PROGRAMME

It was noted that the Committee had set the work programme at this meeting for the last few years.

It was AGREED to include training in the work programme going forward and that a training session would be provided for Borough and Parish Councils once the revised Code of Conduct had been adopted. It was anticipated this would be in the autumn. Training would be given to the newly elected Borough Councillor and offered to new Parish Councillors. The Committee discussed the anticipated amendments to the Code of Conduct relating to criminal convictions.

Members noted that a training session on assessing complaint locally would be held on Thursday, 2 July commencing at 9.30 in Committee Room 1.

It was AGREED that the recently published Local Government Association Probity in Planning revised guidance and the Member/Officer relations document from the Council’s constitution be considered at the next meeting.

The Monitoring Officer updated the Committee on current cases and advised that one case had been referred to the Standards Board for England, one case was in the process of being investigated locally and two cases would be considered by an Assessment Sub-Committee on the conclusion of this meeting.

RESOLVED – That the work programme be updated as discussed at the meeting and the case update be noted.

Chair

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Report of	Meeting	Date
Monitoring Officer	Standards Committee	17 September 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

DETAILS OF CASES

3. Eight Adjudication Panel decisions and six reports of the outcome of investigations conducted by Ethical Standards Officers have been reported since the last meeting of the Committee. Copies of some of these decisions are annexed to this report.
4. The Phillips case which came before the Standards Board was the latest in the line of cases grappling with the difficulties arising after the Livingstone decision in dealing with Members' conduct in their private capacity. Councillor Phillips dropped a USB memory stick in a council meeting room. The memory stick contained a picture of a young girl in an indecent pose. The Ethical Standards Officer considered that Councillor Phillips conduct was in his private capacity and so there was no breach of the code of conduct.
5. Similar issues arose in a case reported by the BBC on the 12 August 2009. In that case a Borough Councillor in Kent posted comments on the social networking site 'Facebook' telling a British Asian man 'get back to washing dishes in a curry house'. That resulted in a complaint to his local Standards Committee. The assessment panel decided not to refer the case for investigation on the basis that the conduct was undertaken in the Councillors private life.
6. Some of the difficulties caused by the Livingstone decision will of course be overcome once the 'criminal behaviour' provisions of the code of conduct are implemented (although even then there will be considerable gaps in the kind of behaviour covered by the code). In the meantime we can expect to see more of these cases being reported.

7. The Adjudication Panel's decisions in the cases of Mason and Cox demonstrate that context is everything when it comes to dealing with issues of disrespect. In the Cox decision, Councillor Cox had breached the code of conduct when he referred to political opponents as being 'corrupt'. However no action was required against him as the Panel were satisfied that this was a throw away remark. In the Mason case on the other hand, Councillor Mason's reference to the Town Mayor and Deputy Clerk 'proven liars' justified a 12 month suspension from office. It is particularly interesting in that case that the Adjudication Panel specifically found that it was unnecessary to judge whether the allegation against the Mayor and Deputy Clerk were true. In this case the circumstances in which he made the remarks justified a finding that the Code had been breached.
8. Members' relations with Officers also arose in the Standards Board case of Crane and the Adjudication Panel decision in Buchanan. In the former case Councillor Crane has been forthright but not deliberately rude or offensive and had not breached the code. The Buchanan case on the other hand is a very sad reflection of what can go wrong when relationships sour in a Council and led to Councillor Buchanan being suspended from office for a period of two years.
9. The Guselli case is one where perhaps a little bit more detail would have been helpful to understand the outcome. In that case although Councillor Guselli was found to have deliberately misrepresented the performance of a Headteacher in the press and had therefore breached the code of conduct by failing to treat the Headteacher with respect, no further action was considered to be necessary.
10. Finally the Adjudication Panel decision in the Wicking case is worth considering as it is one of the relatively few cases dealing with the issue of a Councillor breaching confidentiality. In this case Councillor Wicking thought that details of a former Chief Executive's redundancy package should be made public and he released them to the press. Under the old code such a breach of confidentiality would have immediately have justified a finding of breach. However amendments made in 2007 allow for disclosures to be made if they are reasonable and in the public interest and made in good faith and in compliance with the reasonable requirements of the authority. The detail of the balancing exercise conducted by the Adjudication Panel make for interesting reading. The outcome for Councillor Wicking was a three month suspension.

ANDREW DOCHERTY
CORPORATE DIRECTOR OF GOVERNANCE

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Andrew Docherty	5102	01 September 2009	AD/JA/REPORTS/0109

Walsall Metropolitan Borough Council

Case no.	SBE04450
Member:	Councillor Jonathan Phillips
Authority:	Walsall Metropolitan Borough Council
Date received:	06 Feb 2009
Date completed:	27 Jul 2009

Allegation:

The member brought his office or authority into disrepute and misused his authority's resources.

Standards Board outcome:

The ethical standards officer found that the member did not fail to comply with the Code of Conduct.

Walsall Metropolitan Borough Council referred an allegation to Standards for England regarding the conduct of one of their then members, Councillor Jonathan Phillips.

It was alleged that Councillor Phillips attended a members' training session on 24 September 2008 and that after the session, a council officer found a USB memory stick on the floor. In order to establish whose it was, the officer looked at the material on it. The memory stick contained a letter written by Councillor Phillips, and also a picture of a young girl in an indecent pose. On 2 October 2008, Councillor Phillips resigned from the council.

Jonathan Phillips was charged by the police on 11 May 2009 with two counts of making an indecent photograph or pseudo-photograph of a child. The charges related to images on the memory stick, which was not council-owned equipment and was his personal property. Jonathan Phillips pleaded guilty on 18 May 2009 at Walsall and Aldridge Magistrates' Court and was fined £250 for each count plus costs and placed on the Sex Offender's Register for two years.

During the course of their investigation, the police seized items from his home and his council computers. No charges were brought in relation to these items.

The ethical standards officer considered that the potentially applicable paragraphs of the Code of Conduct were paragraphs 5 and 6(b)(i). Paragraph 6(b)(i) states that a member must only use the authority's resources for carrying out local authority business or other authorised activities. Paragraph 5 states that a member must not bring his office or authority into disrepute while acting in his official capacity. The ethical standards officer noted that recent amendments to section 52(1)(a) of the Local Government Act 2000 bring within its scope some conduct in a member's private capacity. However, this section is currently only in force in Wales, and does not yet apply to England. Therefore, the Code of Conduct in England does not cover members at any time in their private capacity.

The ethical standards officer also took into account the High Court ruling in *Ken Livingstone v the Adjudication Panel for England (2006)*, which determined that the Code of Conduct only applies to a member when he is "performing his functions" and this covers members acting, or appearing to act, in their official capacity. Mr Justice Collins also stated in this ruling: *"It seems to me that unlawful conduct is not necessarily covered. Thus a councillor who shoplifts or is guilty of drunken driving will not if my construction is followed be caught by the Code if the offending had nothing to do with his position as a councillor."*

The High Court decision in *Ken Livingstone v the Adjudication Panel for England* therefore limits the scope of both relevant paragraphs of the Code, and means that the ethical standards officer in Councillor Phillips' case had to be satisfied that the member was performing the functions of his authority or misusing his position as a member in order to determine whether he had failed to comply with the Code of Conduct.

The ethical standards officer considered that the evidence was clear that Councillor Phillips' conduct, which led to his criminal conviction, was carried out in his private capacity. There was no evidence that he was acting in his official capacity, performing his authority's functions or misusing his position as a councillor when he committed the offences for which he was convicted. Neither was there any link between Councillor Phillips' conduct and the council's resources. The images Councillor Phillips was convicted of making

and possessing were found on a memory stick which was his own property and not supplied or owned by the council.

Consequently, taking into account all the circumstances of the case, the ethical standards officer found no evidence that Councillor Phillips had failed to comply with the Code of Conduct.

Barrow Borough Council

Case no. SBE02573, SBE02576, SBE02578, SBE02594, SBE02595, SBE02598, SBE02599

Member: Councillor Ray Guselli

Authority: Barrow Borough Council

Date received: 06 Oct 2008

Date completed: 10 Jul 2009

Allegation:

The member failed to treat others with respect, disclosed confidential information and brought his office or authority into disrepute.

Standards Board outcome:

The ethical standards found that no further action needs to be taken.

Seven complainants alleged that in 2008 Councillor Ray Guselli had, through two letters published in a local newspaper, failed to treat the former head teacher of a local school with respect.

The letters were published as part of a debate on the newspaper's letters page involving borough and county councillors, members of the public and members of Our Schools Are Not For Sale (OSANFS), a group campaigning against school closures in Barrow and their proposed replacement with an academy. One of the participants in the debate had, until his retirement in 2003, been head teacher of a school which would be closed under Barrow Borough Council's academy proposal, and was an active member of OSANFS.

In the first of the two letters in question, Councillor Guselli stated that a particular school had failed its Ofsted inspection and was subject to special measures. He linked this with the former head teacher's performance and attacked his contribution to the academy debate, referring to this effectiveness in his head teacher's post 5 – 10 years previously. Councillor Guselli also said in his letter that he suspected the former head teacher had been "emphatically rejected" through early retirement when his school had failed.

The ethical standards officer found that Councillor Guselli's linking of the school's Ofsted failure with the former head teacher's performance was factually inaccurate. The ethical standards officer also noted that it was pointed out at the time to Councillor Guselli that the head teacher retired in 2003, after the school had passed its Ofsted inspections in 1995 and 1998, and that the school passed again in April 2004. The school did not fail its inspection until 2007.

However, in his second letter, Councillor Guselli maintained that he did not say the school had failed because of the head teacher, or while under his governance, but referred to criticisms of the school by the Local Education Authority. He quoted from a range of documents, including correspondence between the head teacher and the Local Education Authority and Ofsted, and added, "Perhaps these reminders (I have so many more) may help you understand why my assessment of success differs from yours)."

Councillor Guselli told the ethical standards officer that he had received documents anonymously through his letter box which he had used to inform his two letters to the newspaper. The ethical standards officer found no evidence that Councillor Guselli had obtained the documents improperly and considered that the information from them to which he had referred was not confidential within the meaning of the Code of Conduct.

The ethical standards officer considered whether Councillor Guselli's claim that the school had failed under the head teacher, which he had not retracted or apologised for in the second letter, was a failure to treat the head teacher with respect. He considered in particular whether Councillor Guselli's statement was defensible given his right to freedom of speech under the Human Rights Act. The ethical standards officer noted that Councillor Guselli

was engaged in a political debate of public interest with the head teacher, who was part of an organised pressure group which had successfully had members elected to Barrow Borough Council.

However, the ethical standards officer also noted that the issue in contention in 2008 was the proposed academy, and not the former head teacher's performance 5-10 years earlier. The ethical standards officer did not consider it necessary to comment on the head teacher's performance in the way Councillor Guselli had done, and concluded that by deliberately misrepresenting the head teacher's performance in the local press, Councillor Guselli had failed to treat him with respect and had breached the Code of Conduct.

The ethical standards officer also considered whether Councillor Guselli had brought his office or authority into disrepute. He noted that Councillor Guselli's two letters contained political comment and his interpretation of educational statistics. He also noted the head teacher's participation in the highly-charged and heated political debate and that Councillor Guselli's comments were made in a forum in which the head teacher and others were equally able to put forward alternative views. The ethical standards officer considered, on balance, that Councillor Guselli's comments did not bring his office or authority into disrepute.

The ethical standards officer found that in the circumstances of this case, no further action was necessary.

North Tyneside Council

Case no.	SBE04480
Member:	Councillor Glynis Barrie
Authority:	North Tyneside Council
Date received:	16 Feb 2009
Date completed:	22 Jun 2009
Allegation:	

The member brought their office or authority into disrepute.

Standards Board outcome:

The ethical standards officer found that no further action was necessary.

The complainants alleged that Councillor Glynis Barrie, a member of North Tyneside Council, invited a member of the public to a meeting on council premises when she knew that person had been barred from attending council meetings on the grounds of staff health and safety. The complainants alleged that Councillor Barrie exposed council staff to the risk of abuse, undermined the authority of officers responsible for protecting staff, and brought her office into disrepute.

Councillor Barrie is the convenor of an overview and scrutiny members' study group. The group wanted to interview a member of the public.

Councillor Barrie accepted that she asked that member of the public to attend a group meeting on council premises in November 2008. She also accepted that the council's monitoring officer had confirmed to her that this person had been banned from attending council meetings from 10 October 2008.

Councillor Barrie also knew that council officers considered the member of the public posed a health and safety risk to staff. However, her study group had doubts about the legal effectiveness of the ban and were sceptical about whether a risk really existed.

As a compromise, Councillor Barrie attempted to find an alternative venue for the meeting. At short notice, the member of the public refused to attend unless the meeting was on council premises. Councillor Barrie stated that, under considerable competing pressure from officers, fellow members and the member of the public, she decided to go ahead and invite the member of the public onto council premises. She acknowledged in hindsight that she might have made the wrong decision, but stated that she did not intend to put staff at risk or undermine officers' authority.

The ethical standards officer concluded that Councillor Barrie was acting in her official capacity when she invited the member of the public on to council premises, in breach of the ban on his attendance at council meetings. The council had exercised its general power as an occupier to revoke his licence to enter council premises for meetings, and this power was exercised further to the council's duty to protect its staff from abuse or threats. Councillor Barrie

knew why this ban was in place, and no steps had been taken to challenge it. After the meeting the member of the public wrote to the council claiming that Councillor Barrie's invitation had proved the ban worthless and that he intended to defy it again in future.

The ethical standards officer considered that councillors have a strong ethical requirement to uphold council decisions relating to significant employer responsibilities. The council has a duty to protect staff, and the decisions it takes to do so are part of its good reputation as an employer. Councillor Barrie's decision to invite the member of the public on to council premises in these circumstances would be viewed by an objective observer as undermining this reputation.

The ethical standards officer considered that Councillor Barrie's conduct would diminish public confidence in her ability to carry out her role as a councillor in supporting the council's employment responsibilities. Councillor Barrie's conduct had therefore brought her office into disrepute.

The ethical standards officer noted that there was no evidence that the member of the public had abused, threatened or harmed any member of staff when he attended the November 2008 meeting. The ethical standards officer took into account that Councillor Barrie was motivated by her desire to carry out the scrutiny work of the study group, which had been delayed. She had attempted to find a compromise, although she had been unable to do so, and had not been seeking a confrontation with officers. The ethical standards officer also noted that Councillor Barrie has been genuinely distressed by events, and has acknowledged that she may have made the wrong decision. Consequently the ethical standards officer concluded that Councillor Barrie failed to comply with the Code of Conduct, but that no further action is necessary

Scarcliffe Parish Council

Case no.	SBE03625
Member:	Councillor Malcolm Crane
Authority:	Scarcliffe Parish Council

Date received: 18 Dec 2008

Date completed: 26 May 2009

Allegation:

The member failed to treat others with respect, failed to disclose a personal interest, and failed to withdraw from a meeting in which they had a prejudicial interest.

Standards Board outcome:

The ethical standards officer found that no further action was necessary.

The complainant, a parish clerk, alleged that Councillor Malcolm Crane bullied and harassed her from July 2006 until November 2008. The complainant also alleged that Councillor Crane failed to declare consistently a personal and prejudicial interest in Hillstown Community Centre at council meetings, and also failed to declare consistently a personal and prejudicial interest in Hillstown Jubilee Club.

The ethical standards officer concluded that there was evidence of deterioration in the working relationship between Councillor Crane and the parish clerk from July 2006, following a change in the parish council's responsibilities for the Hillstown Community Centre. While there was some anecdotal evidence from other parish councillors that Councillor Crane could occasionally be aggressive and demanding, there was a lack of corroborated evidence relating to Councillor Crane's treatment of the clerk that could lead to a finding that she had been bullied.

Only where a member's conduct is unfair, unreasonable or demeaning can the paragraph of the Code that deals with bullying be relevant, and there was not sufficient evidence to suggest that this was the case. The Code of Conduct is not intended to constrain members' involvement in local governance, including the role they play in challenging and questioning a council's performance. Members are able to question performance provided they do so in an appropriate manner, and disagreements may involve criticism of the way an officer has handled a particular matter.

The ethical standards officer considered that Councillor Crane may have expressed himself in a forthright way, particularly in relation to the Hillstown Community Centre, to which he was very committed. The parish council's

management of the centre proved somewhat problematic and led to the deterioration of a number of working relationships. The ethical standards officer considered that, when matters relating to the community centre's facilities and the transfer of the centre's lease to the council arose at a meeting on 2 September 2008, Councillor Crane directed his anger and frustration at other members as well as the parish clerk.

Expressing oneself in a forthright manner does not necessarily amount to disrespect. A clerk may expect members to express their opinions forcefully and to disagree with the clerk and each other regarding the council's business. Only if such criticism or disagreement are offensive or amount to a personal attack is that conduct likely to be disrespectful. The ethical standards officer concluded that, on the available evidence, Councillor Crane was not being deliberately rude or offensive to the clerk, and that his manner in the meeting arose from his genuine concern for the community centre and frustration at how the council had handled the matter.

Councillor Crane listed his chairmanship of Hillstown Community Centre and Hillstown Jubilee Club in his registers of interests, but failed to include both roles in both registers. He has since corrected these omissions.

The ethical standards officer concluded that there is evidence that Councillor Crane did not consistently declare his personal and prejudicial interest in both organisations at council meetings. The ethical standards officer considered this to be at the lower end of the scale of seriousness, as he did sometimes declare his interests and his failure to do so in some meetings seemed to arise from confusion about what was required; a confusion reflected in his incomplete register of interests.

The ethical standards officer also took into account that the council had no procedural rules to set out what rights members of the public had to attend meetings and speak, which would then have informed the degree to which a member with a prejudicial interest would have been allowed to participate.

The ethical standards officer found that, beyond further training for Councillor Crane, no further action was necessary.

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THE
ADJUDICATION PANEL
 FOR ENGLAND

Appeals Tribunal Decision

Case Ref:	APE 0425
Date of Appeals Tribunal:	23 June 2009
Relevant Standards Committee:	London Borough of Hillingdon
Date of Standards Committee Decision:	3 March 2009
Name of member concerned:	Councillor Michael Cox of same authority
Monitoring Officer:	Raj Alagh
Independent Investigator:	David Lunn
<u>Appeals Tribunal Members</u>	
Chairman:	Chris Hughes
Member:	Trevor Jex
Member:	Peter Dawson

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 both parties and has heard evidence from a number of witnesses called on behalf of the parties.
3. The Appellant had appealed against the decision of the Hearing Sub-Committee of London Borough of Hillingdon's Standards Committee (the Standards Committee) that he had failed to follow paragraphs 3(1) and 5 of the Code of Conduct when he used the word 'corrupt' against Conservative members at a full council meeting on 17 January 2008.
4. Paragraph 3(1) of the Code provides:

"You must treat others with respect."
5. 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."
6. In this appeal by way of re-hearing from that decision the Appeals Tribunal has determined that the Appellant did fail to follow the provisions of the Code.
 - 6.1. The subject matter of this appeal was within a very tight focus. During a contribution to a council debate on 17th January 2008 it was alleged that Councillor Cox referred to the ruling Conservative group on the council as corrupt. The Tribunal heard evidence from councillors as well as an officer and the public.

- 6.2. In his evidence Councillor Cox stated that he was not a good public speaker and the tribunal accepted that. To make up for this deficiency it was his custom to prepare a statement and deliver it as his contribution to debate. In the written statement (which was in evidence before the Tribunal) he referred to a "corrupt system of democracy". From his evidence to the Appeals Tribunal it was clear that Councillor Cox believes that the Conservative Group acted corruptly in its approval of changes to the governance arrangements for the council. A number of witnesses gave evidence that they could not recall him using the word corrupt. Others had heard it. In particular Councillor Lewis recalled the comment "You're all corrupt" being made by Councillor Cox as a throwaway remark as he was being heckled. Mr Revell, who was at the time Interim Head of Democratic Services and responsible for keeping a record of the meeting recalled Councillor Cox describing Conservative councillors as corrupt.
- 6.3. The Appeals Tribunal was satisfied that all the witnesses who gave evidence were giving their honest recollections of a fleeting event which happened over a year ago. No one was trying to mislead the Tribunal. In considering the evidence the Tribunal has had to weigh competing recollections of the events in the light of the quality of the evidence. Like the Standards Committee it was particularly impressed by the evidence of Mr Revell which the Appeals Tribunal found impartial, credible and compelling. The Appeals Tribunal also found the evidence of Councillor Lewis particularly persuasive. The Tribunal has weighed all the evidence before it and is satisfied, on the balance of probabilities that Councillor Cox, under the pressure of barracking and his own strong feelings about the behaviour of the majority group, inadvertently referred to that group as corrupt.
- 6.4. The Appeals Tribunal was satisfied that this was a throwaway remark made without malicious intent. However it was said in a full council meeting at which councillors, council officers and members of the public were present. By making that comment Councillor Cox failed to treat his fellow councillors with respect. By making such a claim without justification he brought his own office into disrepute. By making an unjustified claim that the majority group of the Council was corrupt he brought the authority itself into disrepute.
7. The Appeals Tribunal has upheld the finding of the Standards Committee that there was a breach of the Code of Conduct.
8. The Standards Committee concluded that in all the circumstances it was appropriate to impose no sanction with respect to this conduct. The Appeals Tribunal shares that view.
9. 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.
10. 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.

Chris Hughes
Chairman of the Appeals Tribunal
4th July 2009

THE
ADJUDICATION PANEL
FOR ENGLAND

CASE REF:	APE 0417
HEARING DATE:	13, 14 & 15 July 2009
RE:	Reference in relation to a possible failure to follow the Code of Conduct
RESPONDENT:	Mr Paul Buchanan
RELEVANT AUTHORITY CONCERNED:	Somerset County Council
ESO: (Ethical Standards Officer)	Jennifer Rogers
ESO Representative	Samantha Broadfoot
<u>Case Tribunal Members:</u>	
Chairman:	Mr David Laverick
Member:	Ms Alison Lowton
Member:	Mr Peter Norris

1 Preliminary

- 1.1 The Adjudication Panel for England received a reference from an Ethical Standards Officer ('ESO') in relation to an allegation that the Respondent had failed to comply with Somerset County Council's Code of Conduct in December 2007 and January 2008 when he made written allegations of serious misconduct by Mr Jones (Chief Executive), to the Society of Local Authority Chief Executives and Senior Managers ('SOLACE'), the Association of Local Authority Chief Executives ('ALACE') and to the County Council, and in doing so:
 - 1.1.1 intimidated or attempted to intimidate Mr Jones, a complainant in a Code of Conduct investigation, contrary to paragraph 3(2)(c) of the Code.
 - 1.1.2 used his position as member improperly to confer a disadvantage on Mr Jones, contrary to paragraph 6(a) of the Code.
 - 1.1.3 brought the office of member into disrepute, contrary to paragraph 5 of the Code.
- 1.2 Prior to the listing of the matter for hearing on 6 May the Respondent had not indicated, despite requests from the Adjudication Panel whether he contested the facts or reasoning in the ESO's report, whether he intended to appear at that hearing, or whether he wished

to call witnesses. The Listing Direction for that hearing indicated that the matter was being listed on the basis that the facts were not in dispute but that there was a dispute as to whether there had been a failure to follow the provisions of the Code of Conduct. The view that there was still a dispute about the ESO's reasoning came from the President's reading of the papers submitted with the reference

- 1.3 In the event the Respondent did appear at the hearing, indicated that he was disputing "all the facts" and presented an extensive list of witnesses he felt should be heard. The Case Tribunal received submissions from Counsel from the ESO that she was concerned, in view of the way the Respondent had at various stages in the investigation made statements alluding to new alleged facts that could previously have been presented, to ensure that when the adjourned hearing took place she was not going to be faced with any similar process without being given an opportunity to seek evidence in rebuttal.
- 1.4 The Adjudication Panel's usual procedures are to require parties to submit an outline of evidence to be given by witnesses partly to meet the kind of concern expressed by Counsel and also to determine whether the proposed evidence was in fact relevant to the issues before the Case Tribunal.
- 1.5 The Adjudication Panel's pre-trial procedures are also designed to establish exactly what factual matters were in dispute. This assists in identifying what witnesses can give evidence relevant to determining that dispute. Where evidence is not contested the Adjudication Panel's usual practice is for Case Tribunals to receive such evidence in written form.
- 1.6 At its hearing on 6 May the Case Tribunal identified that there was a dispute about whether the Respondent had mentioned his concerns about the Chief Executive to various Senior Officers and Senior Councillors and thus had a reasonable expectation that those matters were being considered by the council. The Case Tribunal felt this would be relevant in the context of there having been a delay (in some cases considerable) between the time of the Chief Executive's alleged misconduct and the Respondent writing the letters in December 2007 and January 2008 which led on to the ESO's investigation and reference. The ESO was asked to consider arranging for the officers and councillors identified by the Respondent (and who were understood to have contradicted his assertions) to attend as witnesses and be cross examined as to that matter. There was also a dispute as to whether another officer had himself been critical of the Chief Executive and the ESO was also asked to invite that officer to give evidence.
- 1.7 The Respondent had presented a long list of suggested witnesses but with no indication of what evidence they would give. At its hearing on 6 May the Case Tribunal established that many of these witnesses were intended to give evidence about allegedly unacceptable behaviour of the Chief Executive which did not relate to the incidents that the Respondent had identified in his letters. When asked to

amplify his letter to the council of 17 December the Respondent had stated, in a letter of 2 January

“I have been told on many occasions where both staff and by members have felt themselves to have been bullied and intimidated by Alan’s behaviour.”

The Case Tribunal indicated that that it was willing to hear oral evidence (unless it was uncontested) from those members and officers on the Respondent’s list of suggested witnesses who had made the statements to which he referred in that letter. Questioning of him on 6 May established that the members concerned were Councillor Bakewell and Mochnacz. The written evidence from Councillor Mochnacz was uncontested and has been considered by the Case Tribunal. The written material already before the Case Tribunal suggested that Councillor Bakewell had contradicted the Respondent’s statement and she therefore gave oral evidence.

- 1.8 The Respondent indicated that he wished to call two members of staff who had expressed concern to the Respondent before he wrote his letters of 5, 6 and 15 December 2007. Directions given on 6 May made clear that the Respondent could call those two, previously unidentified, members of staff as witnesses subject to the Case Tribunal and the ESO being provided with statements of their evidence by 1 June. At the hearing on 6 May the Respondent had indicated an intention himself to give evidence at the resumed hearing and he was also directed, as part of a timetable of action, the dates of which were agreed, to provide a statement of the evidence he was proposing to give together with any further documents that he wished to be taken into account.
- 1.9 The Case Tribunal indicated that it was not willing to receive evidence about the conduct of the Chief Executive which post-dated the letters.
- 1.10 The Respondent complied with the first stage of the actions to be taken before the resumed hearing but did not thereafter take any of the steps identified in the directions of 6 May. Further directions were issued on 16 June indicating that as no statements of evidence had been supplied, oral evidence would not be received from the two identified members of staff or from the Respondent himself.
- 1.11 Both on 6 May and throughout the resumed hearing the Case Tribunal sought to make clear that the hearing was not a forum in which the Chief Executive was on trial. With that in mind the Case Tribunal excluded potential evidence from officers who the Respondent said could give evidence as to bullying by the Chief Executive but who were not witnesses to the specific incidents he had specified and who had not expressed concerns to the Respondent before he wrote the letters which led to the complaint and the subsequent referral.
- 1.12 At the resumed hearing on 13, 14 and 15 July the Case Tribunal heard oral evidence from two members and four officers or former officers of the council. The Case Tribunal also took account of a bundle of written material amounting to more than 500 pages. The Case Tribunal heard submissions on behalf for the ESO and from the

Respondent as to what findings of fact should be made as a result of the consideration of the oral and written evidence. The Case Tribunal then adjourned on 14 July to make those findings of fact. At the resumed hearing on 15 July the Case Tribunal heard submissions from the Respondent and from Counsel for the ESO as to whether there had been failures to follow the provisions of the council's Code of Conduct and, once that had been established as to what sanction if any should be applied.

2 Material facts and reasoning in support of their adoption

The Respondent's official details

- 2.1 The Respondent was elected to office in May 2005 for a term of four years. Between May 2005 and May 2007. The Respondent was an executive member and portfolio holder for economic development. Between May 2006 and May 2007, the Respondent was deputy leader of the council. The Respondent did not stand for re-election in May 2009.
- 2.2 The Respondent gave a written undertaking to observe the Code of Conduct on 8 May 2005.
- 2.3 The Respondent attended a training session on the Code of Conduct on 23 May 2005.

The relevant legislation and protocols

- 2.4 The council adopted a Code of Conduct on 23 July 2007 in which the following paragraphs are included. The Respondent says that he received no training or instruction about the amended Code in 2007.
- 2.5 Paragraph 2 states:

“(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

- 2.6 Paragraph 3 states:

“(1) You must treat others with respect.

(2) You must not—

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

(b) bully any person;

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

(i) a complainant,

(ii) a witness, or

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

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

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

2.7 Paragraph 5 states:

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

2.8 Paragraph 6 states:

“You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage”

Background

2.9 The Respondent was acting or purporting to act as a representative of the County Council when writing to ALACE, SOLACE, and the council to make formal complaint of several alleged serious breaches of ethics and serious misconduct by Mr Jones.

2.10 In April 2007 Mr Jones had made a number of complaints about the Respondent to the Standards Board for England. In May 2007 the Respondent lost an election for the council's leadership. Two internal investigations into complaints about the Respondent by the Monitoring Officer, Mr Corry, began in the summer of 2007 and ended in October 2007

2.11 In September 2007 the Respondent made a formal complaint to the council about Mr Jones' conduct in advising Councillor Shortland that the Respondent should be removed from the Liberal Democrat group. The council decided not to investigate that complaint.

2.12 In October 2007, Mr Jones referred one report from the council's Monitoring Officer concerning the Respondent to the ESO for possible investigation as a new complaint. Subsequently the council's Liberal Democrat group asked the Respondent if he would suspend himself from the group pending the outcome of all ongoing investigations. He declined.

- 2.13 On 5 December 2007 the Respondent was notified that his membership of the Liberal Democrat group had been formally revoked.
- 2.14 The Respondent wrote letters in identical terms to, on 5 December 2007, the Honorary Secretary of the Association of Local Authority Chief Executives and, on 10 December 2007, the Director General of the Society of Local Authority Chief Executives. The letters were stated to be formal complaints about the Chief Executive of Somerset County Council.
- 2.15 The letters stated:

There are a number of issues, which if taken individually constitute a serious breach of ethics, however taken as a whole demonstrate a pattern of behaviour that is unacceptable in the role of a Chief Executive and member of Alace/Solace:

1. *Drunk and Disorderly conduct at work*
2. *Inappropriate Behaviour towards female staff*
3. *Threatening and bullying behaviour*
4. *Disclosure of confidential information*
5. *Interference in the political process.*

- 2.16 The Respondent also wrote, on 15 December 2007, a formal complaint to the council's Monitoring Officer which included

There are a number of issues, which if taken individually constitute a serious breach of ethics, however taken as a whole demonstrate a pattern of behaviour that is unacceptable in the role of Somerset County Council:

1. *Drunk and Disorderly conduct at work*
2. *Inappropriate Behaviour towards female staff*
3. *Threatening and bullying behaviour*
4. *Disclosure of confidential information*
5. *Interference in the political process*

- 2.17 He was asked by the Monitoring Officer to give specific details rather than headings of the matters about which he wished to complain. He did so in a letter dated 2 January 2008.

The Respondent's choice of audience for his allegations

- 2.18 At all relevant times the Respondent was in a position to make his complaints to the council about Mr Jones' alleged misconduct as Chief Officer and employee.

Allegations of drunk and disorderly conduct at work

- 2.19 The allegations identified in the letter of 2 January 2008 related to a party hosted by the Chief Executive at the council's offices at Christmas 2005 and at a Local Government conference in 2006. The Respondent did not voice concerns about the first event to Senior Officers, or the then leader at or shortly after Christmas 2005. The Case Tribunal has seen or heard no evidence to support Mr Buchanan's contrary assertion. He has suggested that the fact the

then Leader of the council had a discussion about the party with the Chief Executive was evidence that the Respondent had raised the issue of drunken conduct with the Leader. That is absurd reasoning: that the party had taken place was common knowledge

- 2.20 The Respondent had not voiced concern about Mr Jones being drunk and disorderly at the summer conference in 2006 to Councillor Bakewell or others, before he detailed that allegation in January 2008. The Respondent's alleged eyewitnesses did not corroborate his allegations when contacted after the allegations had been made.
- 2.21 The Case Tribunal found it difficult to accept the Respondent's assertion that at Christmas 2005 or at the summer conference in 2006 he reasonably believed that Mr Jones had behaved in a drunk and disorderly manner. Before the Tribunal, the Respondent persistently argued that because Senior Officers and the then Leader considered the party inappropriate this should be seen as substantiation of his claim that the Chief Executive was drunk and disorderly. That is a *non-sequitur*. The Respondent may have formed such a belief but there was no evidence to suggest that it was reasonable for him to have done so. Such evidence as has more recently been obtained about the summer conference from witnesses suggested by the Respondent did not substantiate the Respondent's assertion. He could have established that himself.

Allegation of inappropriate behaviour towards female staff

- 2.22 At Christmas 2005, the Respondent did not raise a concern with Senior Officers or the then leader that he had seen Mr Jones molesting a female member of staff and causing her distress. Contrary to his assertions, the Respondent did not, either on the day or at any time afterwards (before making the complaints which have resulted in the reference to the Tribunal) ask the Leader or a Senior Officer to intervene, or to investigate Mr Jones' alleged conduct towards a female member of staff. There is no corroboration of the Respondent's assertion that he raised his concern with two Senior Officers. On the contrary, the evidence seen in the papers and heard orally by the Case Tribunal contradicted such an assertion.
- 2.23 If, as claimed by the Respondent, he reasonably formed the view that Mr Jones' behaviour towards female staff was so inappropriate as to amount to misconduct, it is surprising that he failed to follow up his concerns beyond, at best, a somewhat informal conversation with one member of staff. The Case Tribunal shares the ESO's view that he did not at the time, regard the alleged incidents as seriously as he now asserts.

Allegations of threatening and bullying behaviour

- 2.24 The Respondent had mentioned to Mr Crouch, around the time that the Chief Executive had made a complaint to the Standards Board, that he had felt bullied by Mr Jones. Mr Crouch offered advice and information on how the Respondent could make a complaint. The Respondent did not pursue the matter further.

- 2.25 The Respondent believes that Mr Jones has bullied him by bringing Code of Conduct allegations against him.
- 2.26 Councillor Bakewell was adamant that she did not complain of bullying behaviour by Mr Jones. She asked the Respondent to attend her meetings with Mr Jones "to keep him in the loop" and not out of any fear of Mr Jones' possible misconduct toward her.
- 2.27 Based on the evidence before the Case Tribunal as to what the Respondent saw, or heard from Councillor Bakewell regarding her relationship with Mr Jones while she was Leader, the Respondent could not reasonably have formed the view that Mr Jones was bullying Councillor Bakewell.
- 2.28 Councillor Mochnacz felt bullied in May 2007 by Mr Jones' email to him, asking him to retract certain statements attributed to him. He did not make any formal complaint. The Case Tribunal has seen or heard no evidence of concerns being generally expressed by members of the council about Mr Jones personally bullying any individual.
- 2.29 In the course of the ESO's investigation the Respondent had given a series of changing and contradictory explanations as to how he had pursued concerns from officers that they had been bullied by the Chief Executive. The Respondent had not indicated any intention to challenge the accuracy of the ESO's report that he had not raised with Senior Officers the alleged concerns of anonymous members of staff about Mr Jones bullying them. Nevertheless the Case Tribunal formed the view from the oral evidence that at one stage in the course of conversations with Mr Crouch, the Respondent had stated that some "third parties" had concerns about being bullied by the Chief Executive. Mr Crouch gave advice about how the matter could be pursued if the third parties wished to do so. Mr Buchanan indicated to Mr Crouch that he did not wish the matters formally to be pursued.
- 2.30 At the hearing on 6 May, the Case Tribunal indicated that it was willing to receive evidence of alleged bullying from officers who had, according to the Respondent, expressed their concerns to him before he wrote the letters to which reference was made at paragraphs 2.13 and 2.9. The Case Tribunal was unwilling to hear evidence from officers, if any, who had approached the Respondent only at a later date. The Respondent identified two officers who allegedly fell into the former category and the Case Tribunal issued directions on 6 May confirming that he could call them as witnesses but required statements of such evidence to be provided by 1 June. They were not provided.
- 2.31 The evidence is that the council has not been made aware of any such concerns save for one incident which was informally resolved.

Allegations of disclosure of confidential information

- 2.32 The Respondent has produced no evidence to support his assertion that he expressed concern to Mr Corry and Mr Crouch in 2006 that Mr Jones had disclosed the content and deliberations of a confidential members' panel to him. The evidence before the Case Tribunal is that the first occasion on which the Respondent expressed concern about

this alleged disclosure was on 2 January 2008. There is no evidence at all to support the Respondent's allegation that any disclosure that may have been made to him was disclosed as part of a campaign to influence the members' panel and thus in order to preserve the Chief Executive's job.

- 2.33 Bearing in mind that the Respondent did nothing about the alleged disclosure at the time it was made, the Case Tribunal does not accept that the Respondent had reasonably formed a view at that time that there was any professional misconduct by Mr Jones in talking with him about the matter.
- 2.34 The Respondent's assertion of Mr Jones' serious misconduct in his letter of 2 January with regard to an alleged disclosure of confidential information in a procurement process is not supported by the evidence. Mr Kershaw both during the investigation process and in oral evidence to the Case Tribunal emphatically denied making the statement attributed to him by the Respondent.

Allegations of interference in the political process

- 2.35 In September 2007, the Respondent did not restrict his request for an investigation to an investigation of the facts as he was later to say. He asked for a decision from the council as to whether or not there had been misconduct by Mr Jones.
- 2.36 The council responded to the Respondent's formal complaint about Mr Jones' conduct in allegedly interfering with the political process, by carrying out an enquiry to establish whether there should be such an investigation. They communicated the conclusion of that enquiry to the Respondent.
- 2.37 The Respondent believes that there has been misconduct by Mr Jones interfering in the political process. He did not accept the outcome of the council's enquiry as 'the last word' on his complaint that there had been political interference by Mr Jones.

The Respondent's additional preamble allegations

- 2.38 Issues were raised with Mr Jones through his appraisal process that related to his style at meetings and to his relationships with District Council Chief Executives and others while the unitary bid process was underway.
- 2.39 Contrary to the Respondent's assertions, Mr Jones was not required to attend anger management coaching. He was not set a target of moderating his aggressive personal behaviour from 2006 to 2007, which he then failed to meet, leading to concerns escalating about his behaviour.
- 2.40 The Case Tribunal heard evidence that concern had been expressed by representatives of South Somerset District Council about Mr Jones' behaviour. This arose out of a public meeting as part of the unitary process. Although the then Leader had become involved and secured a halt to an exchange of emails between the respective Chief Executives, the matter was not treated as a formal complaint. Other

than that, the Case Tribunal has seen no evidence to support the Respondent's assertion of 'a number of concerns' having been allegedly raised about Mr Jones' behaviour, both by members and partner organisations, in 2006 and 2007.

- 2.41 The Respondent was aware in January 2008 that the issues that had been raised with Mr Jones through the appraisal process in 2006 and 2007 were not issues about aggressive personal behaviour.
- 2.42 The Respondent has knowingly exaggerated the facts about issues of style and performance in order to strengthen his allegations of serious misconduct against Mr Jones.

The Respondent's use of language in his letter of 2 January 2008

- 2.43 The Respondent does not dispute that he imitated the language and content of Mr Jones' letter to the Standards Board setting out concerns about the Respondent. He reflected back almost identical alleged behaviours by Mr Jones to those alleged about him in April 2007.
- 2.44 The ESO suggests that the Respondent was reckless as to whether he could or could not substantiate the allegations he was making when he set out his preamble allegations. The Respondent suggests that he acted only with careful consideration. That may be so, but in the Case Tribunal's view such consideration was still reckless

The Respondent's argument for cumulated misconduct in December 2007

- 2.45 In 2005, 2006 and 2007 the Respondent did not repeatedly raise concerns about Mr Jones' conduct, nor were repeated concerns raised by others.
- 2.46 From the facts previously established, the Respondent could not reasonably have believed in December 2007 that there was evidence of a pattern of drunk and disorderly behaviour, a pattern of inappropriate behaviour towards female members of staff, a pattern of disclosure of confidential information, or a pattern of threatening and bullying behaviour by Mr Jones towards staff members and others.
- 2.47 Nor could the Respondent reasonably have believed that there had been a pattern of bullying by complaint and of political interference by Mr Jones, regarding himself.
- 2.48 The Respondent's assertion that he made his complaints in December 2007 because cumulative incidents of misconduct by Mr Jones had become so serious is not credible.

Intimidation of Mr Jones

- 2.49 The Respondent made his allegations in December 2007 when investigations were ongoing into two separate Code of Conduct complaints by Mr Jones about the Respondent. The Respondent has stated to the Tribunal that had he been told that the making of a complaint could be construed as a breach of the Code of Conduct he

would have delayed its submission until the existing matters had been determined.

- 2.50 On 21 December in a meeting with council officers the Respondent raised the possibility that he would withdraw some of his conduct allegations against Mr Jones as part of a negotiated solution, and made reference to the Standards Board investigations.
- 2.51 When the Respondent made his complaints of serious officer misconduct against Mr Jones, he knew Mr Jones was the complainant and a potential witness in ongoing Code of Conduct investigations.

3 Oral Submissions as to whether there was a failure to follow the provisions of the Code of Conduct (account was also taken of the written submissions as set out in the Appendix to the Listing Direction)

3.1 Intimidation

3.1.1 The Respondent submitted that intimidation was defined as to strike fear into or to seek to influence by threats or violence. He noted that the Chief Executive who could have been expected to give first hand testimony as to being intimidated had not been put forward as a witness.

3.1.2 For the ESO, Counsel indicated that the Code of Conduct distinguished between intimidation and an attempt to intimidate and that it was the latter contention that was made by the ESO.

3.1.3 At the invitation of the Case Tribunal, Counsel was asked to respond to the suggested definition of intimidation from the Respondent and particularly whether any relevant caselaw existed. She was also asked to make submissions as to whether the wording of paragraph 3(c) of the Code of Conduct constituted an interference with the freedom of expression guaranteed by Article 10 of the European Convention on Human Rights.

3.1.4 On the latter point, she agreed that the provision did constitute interference but argued that it was an interference which was justified in order to protect the rights of others.

3.1.5 On the former point Counsel helpfully drew attention to:

3.1.5.1 The Shorter Oxford Dictionary definition of intimidate as meaning terrify, overawe, cow. The dictionary suggested the word was now used especially in order to mean to force to or to deter from some act by threats of violence. A final modern usage is said to be the act of intimidating especially in order to interfere with the free expression of political or social rights.

3.1.5.2 Clerk & Lindsell on torts which suggested that the tort of intimidation is committed if A delivers a threat to B that he will commit an Act or use means, unlawful as

against B as a result of which B does or refrains from doing some act which he is entitled to do, thereby causing damage either to himself or C

3.1.5.3 *R v Patresca [2004] EWCA Crim 2437.*

This concerned an offence under Section 51 of the Criminal Justice and Public Order Act 1994 which provides that a person commits an offence if (a) he does an act which intimidates and is intended to intimidate another person (the victim) (b) knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness...and (c) does it intending thereby to cause the investigation or the course of justice to be obstructed perverted or interfered with.

A separate section of that Act made it an offence to harm or threaten to harm a person who has assisted in an investigation.

The Court of Appeal noted that the Criminal Justice and Public Order Act provided that "an intimidatory act which consists of threats may threaten financial as well as physical harm."

In the course of the judgement, May LJ stated

"Intimidation" and "to intimidate" are ordinary English words with a normally understood primary meaning of putting someone in fear....As with most words there are shades of possible meaning, such that to attempt a definition which is intended to be comprehensive is unnecessary and undesirable....

We accept, however that that the Oxford English Dictionary's modern usage of "to intimidate" as "to force or deter from such action by threats or violence" is capable of embracing a shade of meaning whereby the intimidator does not in fact succeed in putting the victim in fear. For this meaning some element of threat or violence is necessary

In our judgement, a person does an act which intimidates another person within section 51 (1) (a) of the 1944 Act if he puts the victim in fear. He also does it if he seeks to deter the victim from some relevant action by threat or violence. A threat unaccompanied by violence may be sufficient and the threat need not necessarily be a threat of violence. The act must be intended to intimidate. The person doing the act has to know that the victim is a ...witness or potential witness..., He has to do the act intending thereby for the cause of justice to be obstructed, perverted or interfered with. A person may intimidate another person without

the victim being intimidated...An act may amount to intimidation even though the victim is sufficiently steadfast not to be intimidated.

In our judgement pressure to change evidence alone is insufficient, Pressure alone might be unexceptional and entirely proper at least if applied in an honest belief, for instance that what was sought was evidence which would be truthful. Alternatively pressure might be improper but lack any element of intimidation, for example a bribe. For a person to intimidate another person the pressure must put the victim in some fear, or if not there must nevertheless be an element of threat or violence such that the pressure is improper pressure.

- 3.1.6 Counsel noted that the legislation was in different context and not expressed in the same terms as the Code but agreed that it could be read as persuasive authority in seeking to determine what is meant by the use of the word 'intimidate' in the Code.
- 3.1.7 She pointed out that the Code specifically referred to attempts to intimidate and that there was thus no need to prove that the Chief Executive was in fact intimidated. There was evidence in the document to the effect that he was upset. The Chief Executive was certainly a complainant and a potential witness either of which brought the matter within the circumstances specified in the Code.
- 3.1.8 Counsel acknowledged that there was no express threat in the letters but suggested that taken together the three letters to Alace , Solace and the council together with reference to the possibility in the meeting on 21 December, of some of the complaints being dropped as part of a negotiated settlement could be seen as an implied threat to proceed unless the Chief Executive sought to withdraw the complaints which the Standards Board were already investigating or agreed not to mount new complaints about the Respondent. The threat lay in pursuing a course of action which could foreseeably have the consequence of putting the Chief Executive's employment under threat. The allegations if proved could lead to the Chief Executive's immediate dismissal. The complaints were of an extremely serious and embarrassing nature
- 3.1.9 The Respondent claimed that the facts of the present case nowhere met the required test and indicated that his mention at the meeting on 21 December of seeking mediation of his dispute with the Chief Executive was consistent with earlier requests he said he had made. The suggestion of an implied threat was supposition
- 3.1.10 He insisted that he had not made any threat and certainly not to the Chief Executive. In his view for him to intimidate he would have had to have said something directly to the Chief Executive. At one stage in his submissions he expressed

surprise that his letters had been passed to the Chief Executive but later accepted that this was foreseeable.

- 3.2 Using his position to secure an advantage
 - 3.2.1 The Respondent submitted that it was blatantly ridiculous and contrary to principles of democratic responsibility and roles of an elected member to regard his making justified complaints about the Chief Executive as seeking to secure an advantage for himself or a disadvantage for the Chief Executive.
 - 3.2.2 He further submitted that it cannot be right to inhibit a member, a senior member, from following laid down procedures by his making complaints in confidence.
 - 3.2.3 Counsel for the ESO submitted that the Respondent had not sought to contest the ESO's finding that in making his complaint he was acting as councillor. He was using his position as a councillor in pursuing the complaint. The complaint was intended to confer a disadvantage on the Chief Executive. It could also be said that it was used to secure for himself an advantage, to give himself a better negotiating position namely to bring about the dropping of complaints against himself or avoiding further such complaints.
 - 3.2.4 She argued that it was an improper use of the Respondent's position for him to make a greatly exaggerated complaint and improper for him to make complaints that he knew to be untrue and did not honestly or reasonably believe.
 - 3.2.5 It was not true that the Respondent had followed proper procedures: he had begun by making the complaints externally before making his complaint to the council.
 - 3.2.6 The Respondent says that the proper procedures he followed were those he read on the websites of the two external bodies.
 - 3.2.7 He disputed that his complaints had been greatly exaggerated or were malicious. The use of the word 'malicious' suggests a conspiratorial attitude. To say that he had bad faith or intent was a very serious matter and required a higher standard of evidence than obtained in this case. Civil Courts are reluctant to find damage because of the damage to reputation that could ensue.
- 3.3 Conduct bringing office into disrepute
 - 3.3.1 The Respondent did not make submissions specifically on this point other than to say he had not given publicity to his letters and to repeat his assertion that there could be nothing wrong in a democratically elected councillor making complaints about the unacceptable behaviour of the Chief Executive.
 - 3.3.2 Counsel for the ESO drew attention to the open letter which the Respondent had written within a day or two of sending his

first letter and which referred to his having requested a formal investigation of the behaviour and conduct of the Chief Executive.

- 3.3.3 Counsel drew attention to the judgement of Collins J in Livingstone on the need to separate the effect on the reputation of the office from the effect on the reputation of the man. She argued that in this case the reputation of the office was clearly affected as witnessed by the close connection of the complainant, the way the Respondent brought the complaint, the subject of the complaint and the nature of the complaint.
- 3.3.4 The Respondent insisted that the timing of his complaint was unconnected with his expulsion from the group, the day before his letter of 5 December to ALACE, and took exception to the suggestion that his complaints resulted from a desire for revenge. Revenge in his view was a hot-headed reaction whereas his had been a carefully considered decision to fulfil his responsibilities as a councillor. He had delayed making such complaints in isolation but felt bound to do so when it became apparent that there was a pattern of misbehaviour on the part of the Chief Executive. His expulsion from his political group was a blessing in disguise rather than a recent raw experience.
- 3.3.5 The Respondent submitted that for him to have made the complaints in the form he did using very similar wording as had been used in the Chief Executive's complaint about him was a perfectly reasonable procedure.

4 The Case Tribunal's decision as to whether there has been a failure to follow the provisions of the Code of Conduct

- 4.1 The Case Tribunal has no doubt that in writing the letters to ALACE and SOLACE and later to the council, the Respondent was motivated by a desire to cause harm to the Chief Executive whom he saw as responsible for the collapse of his political career. The Case Tribunal can accept that the Respondent could feel resentment toward the Chief Executive who had instituted complaints against him and who, according to the evidence from Councillor Shortland had advised that the Respondent should be expelled from the Liberal Democrat Group.
- 4.2 The Respondent submits that there was no such personal motivation and that he was instead fulfilling his duties as an elected representative. That response begs the question as to why the Respondent had not sought to bring a complaint at a much earlier stage. His claims to have been pursuing those matters through proper channels simply do not withstand even cursory examination let alone the detailed scrutiny which the Case Tribunal afforded over three days. Nor does his claim to have perceived a pattern of misbehaviour. With the exception of the two complaints involving drinking, the allegations made by the Respondent were essentially unconnected.

- 4.3 There is no dispute that in writing his letters to ALACE, SOLACE and the council, the Respondent was using his position as a member. The Case Tribunal is in no doubt that in writing those letters the Respondent intended to cause the Chief Executive a disadvantage both in terms of the Chief Executive's future employment with the council or more widely. Because those letters were submitted for an improper purpose, essentially as an act of revenge, the Respondent did use his position improperly and thus failed to follow the provisions of paragraph 6 (a) of the council's Code of Conduct.
- 4.4 There is no evidence that the Chief Executive was intimidated. That does not of itself mean that the allegation of a breach of paragraph 3 (c) fails. There would still be such a breach if the Respondent had attempted such intimidation. In the Case Tribunal's view, for that claim to succeed the Case Tribunal would have to accept that in writing the letters to ALACE, SOLACE and the council, the Respondent intended to intimidate the Chief Executive into refraining from making further complaints about him or in tempering such evidence (if any) that the Chief Executive was called upon to give in relation to complaints already made and under investigation. That is not an intention that the Case Tribunal draws from the evidence. On that evidence the Respondent was seeking revenge for the Chief Executive's past actions rather than seeking to intimidate him. Thus the Case Tribunal considers there has been no breach of paragraph 3 (c) of the Council's Code.
- 4.5 The dicta in the Livingstone case about the need to separate the bringing into disrepute of the office rather than the person holding the office has caused the Case Tribunal some difficulty. An illustration from outside local government may be useful. The Case Tribunal is aware of the recent controversy about claims for large expenses submitted by some Members of Parliament. That has had the unfortunate consequence of bringing the office of Member of Parliament into disrepute, in the eyes of the public, a disrepute which the public attaches even to those Members of whom no personal criticism has been made. The public in the Case Tribunal's view is very likely to see the failures of one or more individuals as damaging the reputation of all similar office holders.
- 4.6 As Counsel for the ESO put it, if the Respondent's is not a case where the office as well as the person has been brought into disrepute it is hard to envisage what could bring the office of councillor into disrepute. The particular actions of the Respondent which this Case Tribunal has been considering, even when seen in the context of an ongoing breakdown of relations with a Chief Executive and regardless of where fault lies for that breakdown, cannot do other than bring the office of councillor into disrepute. The Case Tribunal finds that there has been a failure to follow the provisions of paragraph 5 of the Code of Conduct.

5 Action to be taken

- 5.1 After hearing submissions from Counsel for the ESO and from the Respondent, who felt that only the mildest sanction should be imposed in recognition of the fact that he had already lost his position as a councillor as a result of being de-selected by his political party, the Case Tribunal decided that this was a case where some action needed to be taken.
- 5.2 The Case Tribunal sees the Respondent's submission as an indication of his ongoing failure to recognise how inappropriate it is for an elected representative to have acted in the way he has. Throughout the investigation, and before the Case Tribunal, there has been no indication of any remorse or contrition on his part. No mitigation can be pleaded on this account.
- 5.3 In the Case Tribunal's view the Respondent, in allowing his actions to be motivated by his desire for revenge, has shown himself to be unfitted to be a councillor and local authorities should be protected from his membership. This is a case where if the Respondent had still been serving as a councillor the Case Tribunal would have disqualified him. That is still the view of the Tribunal.
- 5.4 The Case Tribunal has decided to disqualify him from membership of any relevant authority for a period of two years.

6 Recommendation

A majority of the Case Tribunal has some reservations about the procedures used by Somerset County Council in considering the Respondent's complaints about the Chief Executive of the County Council. Public confidence in the council's procedures in such cases would in the majority's view be enhanced if there were an independent element involved in participating in or reviewing the early stages of that process. By a majority, the Case Tribunal makes that recommendation to Somerset County Council.

David Laverick

Chairman of the Case Tribunal

23 July 2009

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FULL DECISION

CASE REF: APE 0420

HEARING DATE: 3 June 2009

RE: Reference in relation to a possible failure to follow the Code of Conduct

RESPONDENT: Councillor Mitchel Wicking

RELEVANT AUTHORITY CONCERNED: West Somerset District Council

ESO: (Ethical Standards Officer) Hazel Salisbury

ESO REPRESENTATIVE: Gylan Murphy

Case Tribunal Members:

Chairwoman: Beverley Primhak
Member: Sam Jones
Member: Keith Stevens

1 Preliminary Documents

- 1.1 In a letter dated 12 February 2009, the Adjudication Panel for England received a reference from an Ethical Standards Officer ('ESO') in relation to an allegation that Councillor Wicking had failed to comply with Paragraph 4(a) of West Somerset District Council's Code of Conduct in that he disclosed information of a confidential nature given to members in confidence about a proposed redundancy agreement with the council's Chief Executive without the disclosure being reasonable and in the public interest.

2 Procedural Matters

- 2.1 A letter was received from the former Chief Executive prior to the hearing stating that the terms of the redundancy agreement were subject to a confidentiality agreement and requesting that the hearing should not be held in public.

- 2.2 The Respondent in response stated that he believed the hearing should be in public.
- 2.3 The ESO submitted that the interests of both the Respondent and the Chief Executive could be served by excluding the public and press from the hearing when any confidential information relating to the Chief Executive might be disclosed but conducting the hearing in public. There did not appear at the time to be a dispute as to the facts and therefore it appeared possible to conduct the hearing that way. However this may not be practicable. The Chair of the Tribunal made a direction that this issue should be dealt with as a preliminary matter at the hearing.
- 2.4 The Respondent did not attend the hearing and was not represented.
- 2.5 Article 6 of the European Convention on Human Rights provides that everyone in determination of his civil rights and obligations is entitled to a fair and public hearing. However, this is a qualified right and the press and public may be excluded under certain circumstances. This was a case dealing with an allegation of breach of the Code of Conduct on the basis that confidential information had been wrongly released. The Case Tribunal considered that it would be pre-judging the case and potentially unfair to persons affected by the disclosure of that confidential information to allow it to be aired in a public forum while dealing with the matter.
- 2.6 The ESO had referred to the decision in *Thomas (APE 149)* where it was considered that the fact that information given in confidence had been improperly made public did not mean that it could thereafter be recited in public with impunity. The Case Tribunal considered this to also be applicable in this case and decided to hear the case in public but that in the circumstances the alleged confidential information should not be divulged.

3 Findings

The following material facts were not disputed:

Councillor Wicking's official details

- 3.1 Councillor Wicking was elected to office on 3 May 2007 for a term of four years. Following his election, Councillor Wicking served on the Performance Committee, Policy Development Committee and the Local Development Panel, but currently serves on the Local Development Panel only.
- 3.2 Councillor Wicking gave a written undertaking to observe the Code of Conduct on 8 May 2007.
- 3.3 Councillor Wicking received training on the Code of Conduct from the Council's Monitoring Officer on 8 August 2007. This lasted about 90 minutes and covered confidentiality.

The relevant legislation and protocols

- 3.4 On 16 May 2007 the Council adopted a Code of Conduct under the Local Authorities Model Code of Conduct Order 2007. Paragraph 4 of the Code states:

“You must not –

(a) Disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to have been aware, is of a confidential nature, except where-

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is-

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority.”

The allegation

- 3.5 On 12 December 2007 West Somerset District Council considered a report relating to the potential redundancy of an identified individual. A resolution had been passed, without dissent or discussion from any member (including Councillor Wicking), to exclude the press and public while the report was considered.
- 3.6 The minutes record that the leader of the council told all members present that information in the report was confidential “and must remain so. Any leaking of the information could lead to formal proceedings being taken against the authority”.
- 3.7 The report contained information about a redundancy settlement for the Chief Executive, setting out the various financial elements of the arrangement as well as some personal information relating to the Chief Executive.
- 3.8 Following the meeting Councillor Wicking communicated with the press and based on the confidential report disclosed the details of the Chief Executive’s redundancy package.
- 3.9 At the time that Councillor Wicking communicated with the press, he did not know whether the agreement with the Chief Executive had been concluded.
- 3.10 The information was published in the local newspaper and correctly attributed to Councillor Wicking on 28 December 2007.

4 Whether the material facts disclose a failure to comply with the Code of Conduct

- 4.1 Councillor Wicking has made the following submissions:

- 4.2 He had deliberately breached confidentiality by sending his press release to the media as *"an act of protest at what I considered to be a serious public injustice"*. He felt that his disclosure was in the public interest.
- 4.3 The disclosure related to his view about officer accountability and argued that a significant part of the blame for the council's financial difficulties was the responsibility of the Chief Executive who, he considered, should have resigned or been dismissed.
- 4.4 The redundancy arrangements had been made inappropriately, in secrecy, and without input from back-benchers. Revealing the information was *"an act of protest against the culture of secrecy [within the council] that had enveloped the negotiations between Councillor Ross and [the Chief Executive and Deputy Chief Executive]"*
- 4.5 The *"taxpayer had a right to know"* about the payment given that the council was *"basically [financially] crippled"*.

"To my mind (and every single member of the public who has contacted me over this issue) there should be no secrecy when it comes to the salaries of senior officials within local authorities or public bodies in general".

- 4.6 Councillor Wicking quoted part of Article 1 of the council's constitution which states:

"The purpose of the Constitution is to ...create a powerful and effective means of holding decision-makers to public account"

- 4.7 Councillor Wicking quoted from a decision notice by the Information Commissioner concerning a complaint that Corby Borough Council had inappropriately withheld information relating to the employment of a temporary finance officer (reference FS50062124) which states:

"The Commissioner recognises that ultimately all public sector employees are accountable to the public. However the Commissioner is satisfied that in general, occupants of senior posts within public authorities have for some time understood that they are more likely to be exposed to greater levels of scrutiny and accountability than staff in more junior positions. Senior staff ... are responsible for policy decisions affecting the public and for the expenditure of public funds. Greater levels of scrutiny help to ensure that they are fully accountable for their actions when carrying out their professional duties, which is in the public interest."

"The Commissioner is satisfied that, in the circumstances, there is a public interest in the total amount of money paid to [Corby Borough Council's former temporary finance officer] being made publicly available. This should inform the ongoing debate on this issue and should help to ensure that the Council is held to account for the performance issues identified by the Audit Commission. This additional public scrutiny should increase the likelihood that procedures are put in place to avoid a recurrence of similar problems in the future".

- 4.8 On 12 December 2007 the council was presented with what was in effect a 'done deal' with no proper opportunity for debate and decision, and insufficient information on which to base an informed decision.
- 4.9 The information he had disclosed was "wrongly classified confidential" because the salaries of the Chief Executive and his deputy within £10,000 bands were already public knowledge through the council's published accounts for 2005-6 and 2006-7. Because the Chief Executive's settlement was based on his annual salary, it could not be seen as confidential.
- 4.10 He did not "really weigh the pros and cons" of disclosure:

"If it meant additional cost to the council and taxpayer, then so be it. I felt the people would rather know the truth and bear the cost, than not know. Besides I also felt the council was in such a mess that any further expense would be almost irrelevant.

"I did spare a thought for the families of the CEO and Deputy and the public wrath they might possibly face in the aftermath of my disclosure, but after all we are talking about the mismanagement of public funds which effects us all and not just a few so again the public interest I felt outweighed the consequences of my actions.

" ... whilst compiling my protest for the press, the possible repercussions to the council financially did not enter my mind as I felt that the council was in such financial difficulty anyway that one more item of expenditure would not make much difference as the authority was virtually bankrupt.

"I also felt that it would have been rich of them to file any lawsuit in light of the fact that the council had no money which was down to them, so in some ways I was calling their bluff so to speak".

- 4.11 The ESO made detailed submissions both prior to and at the hearing to support her view that Councillor Wicking failed to comply with paragraph 4(a) of the Code of Conduct.
- 4.12 **Case Tribunal decision**
- 4.13 Councillor Wicking breached paragraph 4(a) of West Somerset District Council's Code of Conduct.
- 4.14 Paragraph 2 of the Code of Conduct states that (subject to exceptions that do not apply in this case) the Code does not have effect in relation to a councillor's conduct other than where it is in his official capacity. The information that the Respondent had released had been obtained by him at a meeting of the council. His press release was headed: ' "Rebel Councillor Blows Whistle on District Farce" a Statement by Independent Councillor Mitch Wicking December 19th 2007'. From his detailed statement it is very clear that the Respondent was writing as a councillor, not as a member of the

public. The Case Tribunal concluded that he was acting in his official capacity when he released the statement.

- 4.15 The Case Tribunal had next to consider whether there had been a breach of paragraph 4 of the Code. The first issue was whether Councillor Wicking had disclosed information of a confidential nature. If not, there would be no breach.
- 4.16 Just because information was received in confidential session did not necessarily mean that it had the necessary "quality of confidence". A key element in this is that the information must not be readily available by other means. The Respondent argued that the information he disclosed was wrongly classified as confidential because the Chief Executive's salary was already public knowledge within £10,000 bands within the council's published accounts for earlier years. He says that because the Chief Executive's settlement was based on his annual salary it could not be seen as confidential.
- 4.17 The Case Tribunal does not accept this. As submitted by the ESO, to work out from a broad knowledge of the Chief Executive's salary what his redundancy pay was you would need more information than was readily in the public domain, such as years of service and age. In addition there were other elements in the settlement that had never been in the public domain as well as personal biographical details.
- 4.18 The Respondent received the information at an "exempt" session of the council, the minutes of which show that the council considered the public interest test in deciding whether the information should be kept confidential. At the meeting it was impressed upon Councillor Wicking and the other councillors by the leader of the council that the information was confidential. The Case Tribunal considered that the information that was disclosed was given to the Respondent in confidence and was of a confidential nature.
- 4.19 The Respondent relies on the decision of the Information Commissioner dated 25 August 2005 relating to Corby Borough Council (reference FS50062124). In that decision the Information Commissioner ruled that Corby Borough Council should disclose the exact total amount paid to an Interim Head of Finance, following a critical report from the Audit Commission. The short-term post attracted a higher salary to compensate for a lack of employment rights, but the Chief Executive subsequently renewed the contract at the same rate with the addition of holiday and pension contributions. The Commissioner decided this justified "additional public scrutiny".
- 4.20 The Case Tribunal considered that there were clear differences between the circumstances in the *Corby* case and the case before it. For instance:
- 4.20.1 In this case, unlike the *Corby* case, the Chief Executive negotiated on the basis of and was led to believe that the redundancy package would be kept confidential;
- 4.20.2 In the *Corby* case the Information Commissioner directed the release of the "total" sums, in this case detailed sums were disclosed, not just the total.

- 4.20.3 In this case the decision to agree to the voluntary redundancy package with a confidentiality clause was agreed to unanimously by the full council following a proper report, unlike the *Corby* case where there was a critical audit report from the Audit Commission about procedures.
- 4.21 The Case Tribunal was referred to the Information Commissioner's guidance "*When should salaries be disclosed?*". As part of the overview this indicates inter alia:
- 4.21.1 Salary scales should usually be published as a matter of routine. Disclosure should only be to the extent necessary to fulfil a legitimate public interest. This may involve narrowing down advertised scales, for example to the nearest £5000. Only in exceptional circumstances is disclosure of exact pay likely to be justified.
- 4.21.2 The exceptional circumstances cited include for instance where there "are current controversies or credible allegations" and "normal procedures have not been followed". The Case Tribunal did not consider that this was the case here.
- 4.22 Although this guidance related to salaries rather than redundancy payments, the Case Tribunal considered that the principles were relevant and provided support for the argument that the Chief Executive's detailed redundancy arrangements could legitimately be considered to be confidential.
- 4.23 In conclusion the Case Tribunal took the view that Councillor Wicking had disclosed information given to him in confidence and which he believed or ought reasonably to have been aware was of a confidential nature, contrary to Paragraph 4(a) of the Code of Conduct.
- 4.24 Having reached this conclusion the Case Tribunal then had to consider whether any of the exceptions in paragraph 4 applied.

Para 4(a)(i): Did the Respondent have the consent of a person authorised to give it?

- 4.25 The Respondent did not have consent to disclose the information.

Para 4(a)(ii): Was the Respondent required by law to disclose the information?

- 4.26 The Respondent was not required by law to disclose the information.

Para 4(a)(iii): Was the disclosure made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person?

- 4.27 The information was not disclosed for this purpose.

Para 4(a)(iv): Was the disclosure (aa) reasonable and in the public interest; and (bb) made in good faith and in compliance with the reasonable requirements of the authority?

(aa) Was the disclosure reasonable and in the public interest?

- 4.28 This is a case where both Article 10 (right to freedom of expression) and Article 8 (right to respect for private and family life, home and correspondence) of the European Convention on Human Rights was engaged. The House of Lords in the case of *Campbell v MGN Ltd [2004] 2 AC 457* considered the competing rights of free speech and privacy. Lord Hope of Craighead stated at paragraph 113: "*Any interference with the public interest in disclosure has to be balanced against the interference with the right of the individual to respect for their private life. The decisions that are then taken are open to review by the court. The tests which the court must apply are the familiar ones. They are whether publication of the material pursues a legitimate aim and whether the benefits that will be achieved by its publication are proportionate to the harm that may be done by the interference with the right to privacy. ... Any restriction of the right to freedom of expression must be subjected to very close scrutiny. But so too must any restriction of the right to respect for private life. Neither article 8 nor article 10 has any pre-eminence over the other in the conduct of this exercise.*"
- 4.29 The Case Tribunal undertook a balancing exercise in determining the public interest in disclosure of the information against the public and private interests in maintaining confidentiality of the agreement between the Chief Executive and the council.
- 4.30 The factors that the Case Tribunal took into account in favour of disclosure were:
- 4.30.1 The right to, and value of, freedom of expression.
- 4.30.2 The right of the public to know about decisions made by their elected representatives.
- 4.30.3 Openness and transparency in relation to the use of public money.
- 4.30.4 The fact that the council had not indicated at or soon after the council meeting on 12 December 2007 that it had any intention to disclose by way of a press release a general statement that it had agreed to the departure of the Chief Executive on mutually accepted terms. On the evidence available there had been no attempt to agree that a press release be issued or its content. There was a clear public interest in disclosure of the fact that the Chief Executive had been made redundant. It was not sufficient that a brief minute had been produced and that the public could discover the fact of the redundancy from the council's offices or a detailed examination of the council's accounts.
- 4.31 The factors which weighed against disclosure were:
- 4.31.1 The disclosure intruded on the Chief Executive's privacy.

- 4.31.2 Because of the timing the press release could have hindered the conclusion of the agreement that had been agreed by the full council.
- 4.31.3 The council had determined that the matter should be considered as 'exempt' business.
- 4.31.4 The council and the chief executive were negotiating a confidentiality clause in the termination agreement which could well have been a significant factor for either party in deciding whether to complete the agreement. Councillor Wicking's disclosure might well have rendered such a clause nugatory.
- 4.31.5 Councillor Wicking voted both for the matter to be considered as 'exempt' business and also for the redundancy arrangements. Councillor Wicking knew that it was about to be a legally binding agreement that all the councillors had agreed to and was subsequently prepared to knowingly breach the terms of that agreement.
- 4.31.6 The disclosure would be likely to reduce the confidence of employees in the authority's ability to protect their right to privacy.
- 4.31.7 The disclosure would be likely to reduce the ability to negotiate in confidence with employees in relation to employment disputes in the future making it difficult to settle employment disputes in a cost effective way.
- 4.31.8 Some of the information released was still subject to the agreement of the Audit Commission. The Respondent had not given a full, accurate or definite picture of the redundancy settlement in the details he had released.
- 4.32 The Case Tribunal considered that there should have been some transparency in relation to the Chief Executive's redundancy arrangements. The fact that he had been made redundant should have been in the public domain (and was referred to in the minute of the meeting on 12 December 2007). However the Chief Executive was entitled to some privacy in his financial arrangements and the details of his redundancy package should not have been disclosed by Councillor Wicking, particularly as they had been subject to confidential negotiations.
- 4.33 The Case Tribunal, having weighed up the different issues, considered that it was not in the public interest to disclose the detailed information of the Chief Executive's redundancy package. They put particular weight on the fact that the decision to treat the information as exempt had been agreed unanimously by the full council after considering the public interest and that the Respondent had not put forward any objections. The full council had unanimously agreed to the redundancy package. They also considered that as a matter of good governance there was a public interest in councils being able to rely on confidential information remaining so where the proper process had been followed.

- 4.34 The Chief Executive had been led to believe and had a legitimate expectation that the agreement would be formally recorded in a legally binding document with a confidentiality clause which was due to be signed shortly after the meeting. It was unreasonable in the circumstances to release that information.
- 4.35 The Case Tribunal considered the Respondent's submissions that the redundancy arrangements had been made inappropriately and in secrecy and that instead of receiving a redundancy pay the Chief Executive should have been disciplined; it was therefore in the public interest for the arrangements to be disclosed. However, the Case Tribunal did not accept this as a justification for his actions. It was clear that the Audit Commission were aware of what was taking place and were being consulted about the settlement. Also, the council had chosen to agree a redundancy package for the Chief Executive when, if there were grounds for so doing, it could have used statutory procedures to investigate his actions.

(bb) Was the disclosure made in good faith and in compliance with the reasonable requirements of the authority?

- 4.36 The Case Tribunal did not consider that the Respondent could rely on this exemption. He had not acted in good faith as he had not sought advice as to how the public could be told about the redundancy package. He could, for instance, have sought advice from the Monitoring Officer or his own lawyer, who could have assisted him to make a formal application for some or all of the information to be made public. He clearly did not comply with the reasonable requirements of the authority: it was made very clear to him that the Chief Executive's redundancy package was confidential but he then without any warning disclosed the details of it to the press.
- 4.37 The Case Tribunal therefore concluded that the Respondent had breached paragraph 4 of the Code of Conduct.

5 Submissions as to the action to be taken

The ESO's Submissions

- 5.1 The ESO's representative said that it was not the ESO's policy to advocate a sanction.
- 5.2 She pointed out that the Adjudication Panel for England's guidance on sanctions indicates that the Code is in place to endorse standards of conduct and to discourage similar behaviour. The Case Tribunal was informed that there has been some controversy in the council recently in connection with the leaking of confidential information and that the Monitoring Officer has sought not to publish all papers.

The Respondent's submissions

- 5.3 The Respondent stood for election as an independent, offering people a choice as to what had gone before. He campaigned to bring local democracy back to the people. The trouble was that when he crossed the threshold from the outside world into the council he became aware of a very imposing barrier called bureaucracy and

officialdom. As soon as you are elected the Code of Conduct prevents you from being fully able to represent your constituents.

- 5.4 He has always admitted that he knew what he was doing when making a disclosure to the press about confidential payments and knew he would be breaking the Code of Conduct.
- 5.5 The council had been mismanaged and to allow those responsible to be fast-tracked out of the authority without proper accountability was plainly wrong. To allow them to leave with healthy pay cheques was equally galling.
- 5.6 He was representing himself and his constituents to the best of his ability.

6 Case Tribunal decision

- 6.1 The Case Tribunal has taken into account the current Guidance on decisions available to a Case Tribunal.
- 6.2 The Case Tribunal notes the Respondent's relative inexperience as a councillor and his desire to do the best by his constituents. However this was a case where he had released information which was clearly provided to him in confidence and where harm could have been caused.
- 6.3 The Case Tribunal understood the Respondent's concern that the fact of the Chief Executive's redundancy should be made public and noted that it appeared that the council had failed to indicate that it was intending to publicise this. The Case Tribunal considered that this would have been the normal practice in most local authorities on the grounds that it was in the public interest and might have meant that the Respondent was deterred from disclosing the information as he did.
- 6.4 However, the Case Tribunal considered it was a serious matter to disclose confidential information in breach of the Code.
- 6.5 Councillor Wicking had himself voted for the agreement with the Chief Executive. When he subsequently had had concerns about it he could have raised this in a proper way, rather than releasing private information which was bound to cause upset to the Chief Executive and the Council. He could also have released the fact that the arrangement had been made but without disclosing detailed financial information.
- 6.6 The Case Tribunal noted that, although the Respondent had accepted that he had breached the Code, he had not expressed contrition. The Tribunal noted also that he had considered the Code of Conduct to provide unwelcome restraints on what he could do as a councillor.
- 6.7 The Guidance states that the action taken by the Case Tribunal should be designed both to discourage or prevent the Respondent from any future non-compliance and also to discourage similar action by others. The Case Tribunal considered that as a matter of good governance the council and council employees should be entitled to be able to rely

on councillors to keep confidential information that was properly provided to them during "exempt" business.

- 6.8 Taking all these factors into consideration the Case Tribunal decided to suspend the Respondent from being a member of the West Somerset District Council for a period of three months.
- 6.9 The decision of the Case Tribunal was unanimous.
- 6.10 The Respondent may seek leave from the High Court to appeal against the decision of the Case Tribunal that there has been a failure to comply with the Code of Conduct and/or the decision as to sanction. The President of the Adjudication Panel for England may suspend the effect of the sanction if requested to do so by a Respondent who intends to seek leave to appeal to the High Court against the decision of the Case Tribunal. Applications for leave to Appeal must be made to the High Court within 21 days of this decision. The Respondent is directed to the provisions of Part 52 of the Civil Procedure Rules.

Beverley Primhak

Chairwoman of the Case Tribunal

10th June 2009

Report of	Meeting	Date
Monitoring Officer	Standards Committee	17 September 2009

QUARTERLY RETURN

PURPOSE OF REPORT

- To advise Members of progress in relation to cases before the Committee.

RECOMMENDATION(S)

- That the report be noted and Members determine whether this report should be a regular item.

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	

STANDARD BOARD QUARTERLY RETURN

- Each quarter the Monitoring Officer is required to submit a report to the Standards Board detailing new allegations which have been received and the progress of existing cases through the assessment consideration and determination processes. A summary report is then available of the cases which have been reported.
- A copy of the latest summary report is annexed to this report. This report actually details each case which the Committee has considered from the inception of the new arrangements up until the 30 June. The Monitoring Officer will report verbally at the Committee on any new cases which have been received.

ANDREW DOCHERTY
CORPORATE DIRECTOR OF GOVERNANCE

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Andrew Docherty	5102	01 September 2009	AD/JA/REPORTS/0109a

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Print summary

Authority Details

Quarter	April 1st - June 30th
Report year (yyyy e.g. 2008)	2009
Nil return	no
Authority type	District Council
Authority return status	Final
How many members are on the standards committee, excluding vacancies and substitutes?	11
Does this authority have parish or town councils?	yes
How many parish or town councils are in this authority?	22
Number of parish representatives	3
Number of independent members	3
Authority has independent chair?	yes
Is this authority part of a joint arrangement?	no

Cases

Case reference no.	Case status	Received - (dd/mm/yyyy)
AVPC030609	Open	10/06/2009
CC130509	Open	01/06/2009
AVPC220409	Open	11/05/2009
AVPC040209	Closed	31/03/2009

AVPC220209	Open	22/02/2009
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CC14102008a	Closed	22/10/2008
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CC14102008b	Closed	22/10/2008
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Report of	Meeting	Date
Deputy Monitoring Officer	Standards Committee	17 September 2009

GRANTING OF DISPENSATIONS: THE NEW GUIDANCE

PURPOSE OF REPORT

1. To update the Standards Committee on the new guidance provided by the Standards Board for England relating to the granting of dispensations.

RECOMMENDATION(S)

2. To note the content of the report.

NEW GUIDANCE ON GRANTING DISPENSATIONS

3. Following confusion over the operation of the Relevant Authorities (Standards Committee) Dispensation Regulations 2002 relating to the granting of dispensations, the existing regulations were revoked and new ones adopted.
4. On 15 June 2009 the Standards Committee (Further Provisions)(England) Regulations 2009 came into force. Part 4 of these Regulations specifically deals with the granting of dispensations. The purpose of the new Regulations is to clarify the grounds on which Standards Committees may grant dispensations to local authority members.
5. The earlier Regulations of 2002 were designed to ensure that the exclusion of members with a prejudicial interest in an item of business would not necessarily affect the ability of a majority political group to maintain control of decision making. Unfortunately there was considerable doubt as to whether the wording of the Regulations achieved that end.
6. The 2002 regulations were also ambiguous as to whether earlier granted dispensations should be a relevant factor when considering a new request for a dispensation from a different member. This could lead to a situation where 2 members with the same prejudicial interest who sought a dispensation could be treated differently; the granting of the first request meant that either the 50% or the political balance requirements are no longer met.
7. The new Regulations have amended the wording of the "political balance" criterion and also now specifically exclude earlier granted dispensations from consideration ie the Committee should consider the position as if there were no dispensations granted.
8. To assist Standards Committees in the understanding of the operation of the new Regulations the Standards Board for England issued a guidance document. This is appended to the back of this report.

When may a Dispensation be Sought?

9. A member may seek a dispensation where they have a prejudicial interest in a matter that is before a committee on which they sit. The request should be made in writing to the relevant Standards Committee and should confirm the nature of the prejudicial interest and why it is desirable to grant the dispensation.

The Granting of Dispensations

10. The Code of Conduct provides that the dispensation granted can be to speak at a meeting or to speak and vote. However, where the meeting is one where the public have a right to speak, dispensations to speak only should not be granted.
11. The phrasing of the Regulations maintains that the granting of dispensations is at the discretion of the relevant Standards Committee (for the purpose of this report the Committee is to include any Sub-Committee convened to consider dispensations). There is no obligation to grant a dispensation, although the Committee should bear in mind that the business of the Authority may be impeded by their refusal to do so.
12. A dispensation can only be granted in one of 2 situations:-
 - where more than 50% of the members who would be entitled to vote at a meeting are prohibited from doing so; or
 - where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.
13. Political Balance is no longer defined within the Regulations although it is calculated by reference to the formula in the Local Government and Housing Act 1989.

Exemptions

14. The Regulations provide the following exceptions to the granting of exemptions:-
 - Members cannot be given a dispensation allowing them to vote in an overview and scrutiny committee about decisions made by any body they were a member of at the time the decision were taken; or
 - A dispensation cannot be given to allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

Period of the Dispensation

15. The Committee may grant an exemption for a particular meeting or series of meetings but cannot grant the dispensation for a period of more than 4 years.

Specific Considerations

16. The Guidance provides a non-exhaustive list of matters that the Standards Committee may have to consider along with suggestions as to the approach. Without reciting the full content of the Guidance these are:-
17. Standards Committees should be cautious of granting a dispensation where the Interest arises as a result of an effect on the members personal financial position as this would undermine public confidence and perception.

- 18. Where the Interest is common to a significant proportion of the general public eg the member is a pensioner and the decision affects the well-being of pensioners generally a dispensation may be appropriate.
- 19. Would the committee concerned benefit from the members particular expertise? A dispensation to address the committee may be appropriate.

The Procedure – Practicalities

- 20. The Guidance suggests that Authorities should set out the process to be followed in applying for a dispensation and the criteria that will be applied by the Committee and ensure this is available to all members affected.
- 21. It is proposed that the Monitoring Officer be tasked with the preparation of a guidance document.

ANDREW DOCHERTY
CORPORATE DIRECTOR GOVERNANCE / MONITORING OFFICER

Background Papers			
Document	Date	File	Place of Inspection
Dispensations Guidance Document - authored by Standards Board for England	June 2009	http://www.standardsforengland.gov.uk/TheCodeofConduct/Guidance/Standardscommittees/Dispensations%20FINAL.pdf	n/a
The Standards Committee (Further Provisions) (England) Regulations 2009	June 2009	http://www.opsi.gov.uk/si/si2009/uksi_20091255_en_1	n/a

Report Author	Ext	Date	Doc ID
Chris Moister	5160	28/08/09	2009 08 28 Dispensations Guidance – Report

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Report of	Meeting	Date
Corporate Director Governance/ Monitoring Officer	Standards Committee	17 September 2009

PROBITY IN PLANNING: REVISED GUIDANCE NOTE

PURPOSE OF REPORT

1. To notify the Standards Committee of a recently published document by the Local Government Association entitled “probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters”.

RECOMMENDATION(S)

2. The guidance be noted.
3. The Committee’s views are requested on any relevant points that should be incorporated into the local code of conduct in planning matters.

BACKGROUND

4. The Council adopted a local code of conduct in planning matters a number of years ago and this Committee expressed a wish to review of this local code when officers reported this guidance note would be produced by the Local Government Association.

CONTENTS OF THE GUIDANCE NOTE

5. Planning decisions involve balancing:
 - the needs and interests of individual constituents and the community, with
 - the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.
6. Achieving the balance between these two roles is a challenge and the guidance update provides refreshed advice on achieving this balance in the light of changes. It also better reflects local authorities’ roles as place shapers and the enhanced role for councillors as champions of their local communities.
7. It recognises councillors’ ability to participate in discussions prior to the receipt of a planning application on behalf of their communities, and engaging in spatial planning policy formulation. It provides advice on this following the Killian Pretty review’s recommendations. It also advises on how to avoid predetermination or bias in decision making.

ANDREW DOCHERTY
CORPORATE DIRECTOR (GOVERNANCE) / MONITORING OFFICER

Background Papers			
Document	Date	File	Place of Inspection
probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters	May 2009	n/a	http://www.lga.gov.uk/lga/aio/1940404

Report Author	Ext	Date	Doc ID
Ruth Rimmington	5118	1 September 2009	ProbityInPlanning



Parish Council Mentoring 2009/2010

Parish Council	Committee Mentor	Date visited
Adlington	Stella Walsh	
Anderton	Joan Geddes	
Astley Village	Tony Ellwood	
Bretherton	Bill Mason	
Brindle	Debra Platt	
Charnock Richard	Gwynne Furlong	
Clayton-Le-Woods	Judith Boothman	
Coppull	Alan Platt	
Croston	Hugh Evans	
Cuerden	Tony Ellwood	
Eccleston	Gwynne Furlong	
Euxton	Judith Boothman	
Heapey	Mike Devaney	
Heath Charnock	Stella Walsh	
Heskin	Debra Platt	
Hoghton	Cath Hoyle	
Mawdesley	Joan Geddes	
Rivington	Alan Platt	
Ulnes Walton	Cath Hoyle	
Wheelton	Bill Mason	
Whittle-Le-Woods	Hugh Evans	
Withnell	Mike Devaney	

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Report of	Meeting	Date
Corporate Director Governance/ Monitoring Officer	Standards Committee	17 September 2009

PARISH NOTIFICATION REQUIREMENTS

PURPOSE OF REPORT

1. To notify the Standards Committee of a recent recommendation from Standards for England to Parish and Town Councils relating to how they should respond to notification from the Standards Committee that a complaint has been received in respect of a Parish Councillor.

RECOMMENDATION(S)

2. The Committee's views are requested on any advice that could be offered to Parish and Town Councils on notification requirements.
3. The views are requested on any protocols needed for the Committee.

BACKGROUND

4. Standards for England publish a bulletin entitled "Town and Parish Standard". This is a newsletter for parish and town councillors. It is designed to support members in performing their duties under the Code of Conduct and keep them informed of ethical issues in the local government sector. The Town and Parish Standard is published twice a year.

NOTIFICATION PROCEDURES AND LIAISON

5. In the latest "Town and Parish Standard" Standards for England have recommended that Parish and Town Councils adopt procedures for notifications and have advised that clerks should notify Monitoring Officers of the notification procedures which have been implemented.
6. The Monitoring Officer has not received details of any such procedures.

7. Standards for England have also recommended recommend that Standards Committees consider putting protocols or arrangements in place which deal with:
 - access to information
 - sharing of information
 - how various legal obligations are met including those under the Freedom of Information Act or
 - Data Protection Act

8. Standards for England state “having appropriate arrangements in place will ensure that the rights of all concerned in a complaint will be considered. They will also ensure that complaints are dealt with lawfully, effectively and fairly, and will identify only those who need to know or are entitled to know certain information at the various stages of a complaint”.

ANDREW DOCHERTY
 CORPORATE DIRECTOR (GOVERNANCE) / MONITORING OFFICER

Background Papers			
Document	Date	File	Place of Inspection
Town and Parish Standard Issue 4	February 2009	n/a	http://www.standardsforengland.gov.uk/Publications/TownandParishStandard/TPStandard%20issue%204%20FINAL.pdf

Report Author	Ext	Date	Doc ID
Ruth Rimmington	5118	2 September 2009	ParishNotificationRequirements



Standards Committee Work Programme 2009

17 September 2009

News from Standards for England

Cases update

Bringing Standards into Focus 2009 Annual Assembly of Standards Committees

Granting of dispensations: the new guidance

Probity in Planning

Feedback from visits to Parish Councils

Notifications to parish councils concerning complaints

Work undertaken to promote the Code of Conduct

Standards Sub-Committee

Standards Committee Work Programme

10 December 2009

Consideration of the Officer code of conduct (good governance)

Chorley Council's Protocol on Member-Officer Relations

Update from the Annual Assembly of Standards Committees

04 March 2010

Guidance on information accessible, disclosed and disposed of by members

Other topics

Consideration of the current Local Code of Conduct on Planning issues

Consider the need for a Licensing Code of Conduct

Training

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