

Committee: CONSTITUTION WORKING GROUP

Agenda Item

Date: 9 February 2012

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**Title: STANDARDS AFTER THE LOCALISM ACT
2011**

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Item for decision

Summary

1. This report is to inform members of the provisions of the Localism Act 2011 and to seek members' views as to what recommendations it wishes to make to the Council on a range of issues.

Recommendations

2. Members approve the suggested amendments to the Council's constitution set out in Appendix A
3. Members recommend that Full Council appoint a committee or task group to deal with the appointment of independent persons and approve the terms of reference set out in Appendix B
4. Members express a view as to whether the functions of the officer investigating complaints should be limited to collection of evidence or whether as at present the investigator should reach findings of fact and give an opinion as to whether there has been a breach of the Code
5. Members endorse the complaints procedure approved by the Standards Committee set out in Appendix C

Financial Implications

6. None arising from this report

Background Papers

7. None.

Impact

- 8.

Communication/Consultation	None
Community Safety	None
Equalities	None

Health and Safety	None
Human Rights/Legal Implications	As set out in the body of this report.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

9. On the 7 June 2011 the Constitution Working Group considered a report from me on the provisions of what was then the Localism Bill. The Standards Committee were requested to consider various issues and the Standards Committee has met on three occasions since that time for that purpose, the most recent meeting being an extraordinary meeting on the 9 January 2012 when the Committee gave further consideration to the general principles of the draft Code of Conduct, the requirement for registrations of interests, the publication of the Code of Conduct, the appointment of a Standards Committee and independent persons, dispensations, and the procedure for dealing with complaints. The views of the Standards Committee will be referred to in the body of this report.
10. The Bill received Royal Assent on 15 November 2011 and thus became the Localism Act 2011. To the surprise of most observers there were significant differences between the Act and the Bill which were introduced at the third reading stage in the Lords and accepted by the Commons. The amendments do not appear to have been the subject of any consultation and Monitoring Officers and external lawyers giving training on the Act appear to be unanimously of the opinion that the amendments have been poorly drafted. However, now that these amendments are enshrined in legislation it is unlikely that further amendments will be made in the short term.
11. As anticipated the Act includes a statutory duty on the part of all relevant authorities (which includes town and parish councils) to promote and maintain high standards of conduct by members and co-opted members. Under the Bill there was no requirement for a Code of Conduct. However, the Act now imposes a requirement that in discharging the duty to promote and maintain high standards of conduct all relevant authorities must adopt a Code. Town and parish councils may fulfil this duty by adopting a Code which has been adopted by its district council.
12. The Act imposes a statutory requirement that the Code of Conduct must be consistent with the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The Act also requires the Code to include provisions for the registration and declaration of pecuniary and non-pecuniary interests. Save for these requirements the content of a

Code of Conduct is a matter for the Council. These provisions of the Act are not yet in force. However, the Government has given an indication that it intends that they will be in force by 1 July 2012. Under section 54(2) Local Government Act 2000 it is a statutory function of the current Standards Committee to advise the authority on the adoption or revision of the Code of Conduct. The Standards Committee have approved general principles of a Code of Conduct which basically reflect the current Code subject to necessary amendments to accord with the Act. The Standards Committee have also given consideration as to what provisions should be contained in the Code for registration of interests and again these reflect the existing Code. The Standards Committee is due to meet to consider a final version of the Code of Conduct on 12 March 2012 for recommendation to Full Council. The Standards Committee has also scrutinised the Code of Conduct and satisfied itself that when viewed as a whole, the Code is consistent with the Nolan principles as required by section 28(1) Localism Act 2011.

13. Section 28(6) Localism Act 2011 provides that a relevant authority other than a parish council must have in place

- (a) arrangements under which allegations [of a breach of the Code of Conduct] can be investigated and
- (b) arrangements under which decisions on allegations can be made.

Section 28(7) requires the arrangements must include provision for the appointment of at least one independent person

- (a) whose views are to be sought and taken into account by the authority before its makes its decision on an allegation that it has decided to investigate and
- (b) whose views may be sought by the authority in relation to an allegation in other circumstances (e.g. when deciding whether or not to investigate a complaint) and whose views may also be sought by a member who is the subject of an allegation of a breach of the Code of Conduct.

14. There is no statutory power to appoint a Standards Committee. However, under section 27(8) Localism Act 2011 standards functions are not to be the responsibility of the executive of the authority. These are therefore Full Council functions which must be performed by the Council as a whole, by a committee or sub-committee of the Council or by officers. The view of the Standards Committee is that Full Council is not an appropriate forum for dealing with individual allegations of breaches of the Code of Conduct and recommends therefore that a Standards Committee should be appointed.

15. In the absence of a statutory power such a committee would need to be appointed under the provisions of the Local Government Act 1972. Committees appointed under that Act are subject to the rules of political balance. The current Standards Committee consider that a politically balanced Standards Committee would be undesirable. It therefore recommends that this group should consider proposing amendments to the

Constitution for the appointment of a Standards Committee which will acknowledge the requirement for political balance but draw attention to the exemption that political balance can be departed from if no members present at the meeting when the Committee is appointed object with a view to achieving an even balance of seats on the Committee.

16. With regard to the position of independent persons this is changing significantly from the current legislation. Under the Local Government Act 2000 the Council is required to appoint independent persons to its Standards Committee. The independent persons must form at least 25% of the membership of the Committee. An independent person must also act as Chairman of the Committee. This Council currently operates with a Standards Committee comprised of 3 independent persons, 3 town and parish representatives (one such position currently being vacant) and 4 elected members.
17. Under the 2011 Act, independent persons may not have a vote on the Standards Committee. It follows that as a chairman of a committee must at least have a casting vote the Chairman may no longer be an independent person. The Council will therefore need to decide whether it wishes to appoint independent persons as non-voting members of the Standards Committee or to appoint them merely in an advisory capacity. It is the view of the current Standards Committee that it would be preferable for the independent persons to be non-voting members of the Committee.
18. Although it is only necessary for one independent person to be appointed, I believe this would be insufficient to enable the Council to fulfil its statutory obligations. I perceive there is potential conflict of interests between the roles of advising the Council (through the Standards Committee) and advising subject members. There would need to be at least two independent persons to avoid such conflict and my view is that three would be the appropriate number so that the process of dealing with complaints is not disrupted should one of the independent persons not be available for any reason. I should draw members' attention to the fact that some commentators take a view that if more than one independent person is appointed then the views of all of them must be sought by the Council before reaching a decision on an allegation it has decided to investigate. I do not agree with that interpretation. My opinion is that only one independent person needs to be consulted in those circumstances.
19. Due to what most believe to be an accident of drafting, the current independent members may not be re-appointed to the position of independent person by this authority. This is regretted as the Council will lose out upon their experience and expertise. However, the legislation is quite clear. I understand that ACSeS have taken leading counsel's opinion on the issue which has confirmed the ineligibility of current independent members. The Council therefore needs to make new appointments.
20. The Act contains criteria for eligibility for appointment. The appointments must be made by Full Council. In practical terms it is impractical for Full Council to be engaged in the full recruitment process. I would therefore suggest that the

Council is recommended to appoint a committee or task group to undertake a selection process leading to recommendations to Full Council. In deciding whether to recommend a committee or a task group Members should bear in mind that a committee would be subject to the rules of political balance unless no member of the Council present when the committee was appointed objected.

21. In terms of other arrangements under which allegations can be investigated, the current procedure is considered unwieldy. At present all allegations of a breach of the Code of Conduct must be referred to an Assessment Sub Committee of the Standards Committee. Applying published criteria, the Sub Committee determines whether or not the allegation should be passed for investigation. In the event that the Sub Committee decides that an allegation should not be passed for investigation then the complainant has a right to seek a review from a differently constituted Sub Committee. When an allegation has been passed for investigation (whether by the initial Sub Committee or a Review Sub Committee) then either I carry out an investigation in my role as Monitoring Officer or I appoint another person to carry out the investigation on my behalf. At the end of the investigation, the investigating officer produces a report. There is currently a statutory requirement for the investigating officer to make findings of fact and based upon those findings to state whether or not in his or her opinion there has been a breach of the Code of Conduct. This report goes before a Sub Committee of the Standards Committee for preliminary consideration. If the report finds that there has not been a breach of the Code then the Sub Committee may accept the report or may nevertheless require a hearing. If the report finds that there has been a breach of the Code there must be a hearing and the function of the Committee at this stage is to determine whether that should be before the Standards Committee or whether it should be referred to the First Tier Tribunal – Local Government Standards in England. It will be seen therefore that there are potentially four hearings in the procedure.
22. The Standards Committee recommends significant changes in the procedure for dealing with complaints. Complaints will be vetted by the Monitoring Officer in consultation with an independent person. If the Monitoring Officer decides that the matter should be investigated then an investigation will be carried out. If both the Monitoring Officer and independent person agree that there should be no investigation, then the complaint will not be considered further and there will be no right of appeal against that decision. If the independent person takes a view that the matter should be investigated but the Monitoring Officer does not agree, then either the complaint will be investigated or the Monitoring Officer may refer it to the Standards Committee to take a view on whether or not the complaint should be considered further.
23. One of the recommendations of the Standards Committee was that the investigating officer should no longer be required to make findings of fact but that he or she should report on those facts which are agreed, state the facts that are not agreed and the evidence which has been collected with regard to those facts. As the investigating officer would not be making any findings of fact it follows that he or she would not be in a position to express a view as to

whether or not there has been a breach of the Code of Conduct. The intention was the determination of facts and determination as to whether or not there has been a breach of the Code of Conduct should be entirely a matter for the Standards Committee.

24. The Public Law Partnership (an association of the legal departments of all councils in Essex, some borough and district councils from Hertfordshire and Hertfordshire and Suffolk County Councils) has been working on standard documents and procedures to address the new regime. Due to delays in that process, this council has been proceeding independently but there are only minor differences between the work done by the Standards Committee here and that done by the PLP. One significant difference however, is the procedure on investigations. If the Standards Committee recommendations are adopted with regard to the contents of the investigator's report this Council will be alone in not requiring the investigator to make findings of fact and state an opinion as to whether or not there has been a breach of the Code. Under the current regime I consider the requirement on investigating officers to be unwarranted because the Standards Committee was not politically balanced and was reinforced by independent members and town and parish representatives. I do now have reservations in circumstances where the Standards Committee could be subject to the rules of political balance. Members are therefore invited to express a view as to whether the requirement for the investigating officer to make findings of fact and state whether in his or her view there has been a breach of the Code of Conduct should be carried forward.
25. The power to grant dispensations is being significantly changed. At present dispensations are granted by the Standards Committee. They can only be granted in circumstances where at least one half of the Council or a committee of the Council is prevented from taking a full part in the decision making process due to the provisions of the Code of Conduct. (There is another exemption relating to political balance which is totally unworkable in practice and to the best of my knowledge no such dispensations have ever been granted). Under the 2011 Act, dispensations are granted by the authority which means that the dispensations could be granted by Full Council, the Standards Committee or officers under the Scheme of Delegation. The circumstances in which a dispensation can be granted are expanded. These will now be:
- (a) Where the transaction of the business would be impeded (this is likely to be interpreted as meaning that the Council or Committee would be inquorate).
 - (b) Representation of different political groups would be so upset as to likely to alter the outcome of the vote.
 - (c) A dispensation is in the interest of persons living in the authority's area.
 - (d) In respect of executive functions, each member of the executive is prohibited from participating in the transaction of any business.

(e) It is otherwise appropriate to grant dispensation.

26. Dispensations must be time limited to not more than four years. They may be limited or general i.e. a member may be given a dispensation to allow him or her to speak or vote or both.

27. Members frequently wish to apply for dispensations at short notice. If dispensations are to be granted by the Standards Committee or Full Council then a meeting needs to be convened for that purpose with the appropriate period of notice being given (at least 5 clear working days). The Standards Committee recommend that the power to grant dispensations should be delegated to the Monitoring Officer with members having a right of appeal to the Standards Committee in the event that the Monitoring Officer refuses to grant a dispensation or grants it subject to limitations.

Risk Analysis

28.

Risk	Likelihood	Impact	Mitigating actions
The Council is not in a position to meet its legal obligations under the Localism Act 2011	3, Historically it has been difficult to recruit independent persons to the Standards Committee. Given the changed role of the independent person and the fact that the existing independent members are barred from being reappointed, it may not be easy to secure sufficient candidates.	3, The Council will suffer reputational damage if it were unable to deal with complaints of a breach of the Code of Conduct.	Members approve the necessary amendments to the Constitution for recommendation to Full Council and make proposals for suitable arrangements for the appointment of independent persons.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

APPENDIX A

DRAFT AMENDMENTS TO THE CONSTITUTION

CONSTITUTION

Part 1 - Summary and Explanation

The Council's Constitution

Uttlesford District Council has agreed a new constitution which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose.

The Constitution is divided into 16 articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document.

What's in the Constitution?

Article 1 of the Constitution commits the Council to acting within the law to provide clear leadership to the community and to provide services to that community in an efficient, effective and accountable manner. Articles 2 -16 explain the rights of citizens and how the key parts of the Council operate. These are:

- Members of the Council (Article 2)
- Citizens and the Council (Article 3)
- The Council meeting (Article 4)
- Chairing the Council (Article 5)
- Overview and scrutiny of decisions (Article 6)
- The executive (Article 7)
- Regulatory and other committees (Article 8)
- The Standards Committee (Article 9)
- Area forums (Article 10)
- Joint arrangements (Article 11)
- Officers (Article 12)
- Decision making (Article 13)
- Finance, contracts and legal matters (Article 14)
- Review and revision of the Constitution (Article 15)
- Suspension, interpretation and publication of the Constitution (Article 16)

How the Council operates

The Council is composed of 44 councillors elected every four years. Councillors are democratically accountable to residents of their ward. The overriding duty of councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

~~Councillors have to agree to follow~~ The Council has adopted a code of conduct to ensure high standards in the way ~~they Councillors~~ undertake their duties. The Standards Committee trains and advises ~~them~~ Councillors on the code of conduct.

CONSTITUTION PART 1 cont.

The Council's Staff

The Council has people working for it (called officers) to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A code of practice governs the relationships between officers and members of the Council.

Citizens' Rights

Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes. The local Citizens Advice Bureau can advise on an individual's legal rights.

Where members of the public use specific council services, for example as a council tenant, they have additional rights. These are not covered in this Constitution.

Citizens have the right to:

- vote at local elections if they are registered;
- contact their local councillor about any matters of concern to them;
- obtain a copy of the Constitution;
- attend meetings of the Council and its committees except where, for example, personal or confidential matters are being discussed;
- petition to request a referendum on a mayoral form of executive;
- petition the Council on any issues in accordance with Article 3 – which guarantees that petitions which meet certain conditions will be considered by the council or one of the committees;
- petition the Council pursuant to the scheme adopted under the Local Democracy, Economic Development and Construction Act 2009, details of which are contained in Article 3
- participate in the Council's question time and contribute to investigations by the overview and scrutiny committees;
- complain to the Council about any matters relating to its responsibilities with which they are dissatisfied. The Council has a complaints procedure, details of which are available on request;
- complain to the Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process;
- complain to the Information Commissioner if they believe that the Council has failed to comply with the Data Protection Act 1998, the Freedom of Information Act 2000 or the Environmental Information Regulations 2005. However, they should only do this after using the Council's own complaints process;
- complain to the ~~Standards Committee of the Council~~ Standards Committee of the Council if they have evidence which they think shows that a councillor has not followed the Council's code of conduct;

CONSTITUTION

Article 9 The Standards Committee

9.1 Standards Committee

The Council will establish a Standards Committee.

9.2 Composition

The Standards Committee will be composed of at least ~~four~~ six councillors who may not include ~~the Leader~~ any members of the Executive and three people who are not councillors or officers of the Council (the independent members) ~~who shall not be voting members of the Committee and three members of town or parish councils within the district (the town and parish representatives).~~ The Council acknowledges that the rules of political balance contained in the Local Government and Housing Act 1989 apply but providing that no one at a meeting of the Full Council appointing the Standards Committee votes against the proposal Each of the political groups represented on the Council shall have at least one member on the Standards Committee. ~~Where there are less than four political groups represented on the Council each~~ Each political group represented on the Council shall nominate up to two ~~three~~ of its members. The Council will then appoint one member from each group and such additional members as may be necessary from the nominees. In the event that there are only two political groups represented on the Council each shall have ~~two~~ three members on the Standards Committee. ~~Independent members and town and parish representatives will be entitled to vote at all meetings of the Standards Committee. At least one town and parish representative must be present when matters relating to parish councils or their members are being considered.~~

9.3 Chairing the Committee

~~An independent member of the Standards Committee must chair the committee and any sub-committee. A chairman of the Standards Committee shall be appointed in accordance with the Council's Procedure Rules.~~

9.4 Role and Function

The Standards Committee will have the following roles and functions:

- 9.4.1 promoting and maintaining high standards of conduct by councillors and any co-opted members;
- 9.4.2 assisting councillors and any co-opted to observe the Members Code of Conduct;
- 9.4.3 advising the Council on the adoption or revision of the Members

Code of Conduct;

- 9.4.4 monitoring the operation of the Members Code of Conduct;
- 9.4.5 advising, training or arranging to train councillors and any co-opted members on matters relating to the Members Code of Conduct;
- 9.4.6 granting dispensations to members from requirements relating to interests set out in the Members Code of Conduct;
- 9.4.7 determining whether complaints regarding alleged breaches of the Members Code of Conduct should be referred to the Monitoring Officer ~~or the Standards Board~~ for investigation;
- 9.4.8 dealing with any reports from an ~~ethical standards officer~~ or from the Monitoring Officer;
- 9.4.9 the exercise of the roles and functions above in relation to the town and parish councils wholly or mainly in its area and the members of those town and parish councils;
- 9.4.10 conduct reviews of petitions considered by the council's Scrutiny Committee when requested by the petition organiser to do so

9.5 Role of Independent Members

- 9.5.1 Independent members shall not be entitled to vote on any matters determined by the Standards Committee
- 9.5.2 The Standards Committee must seek and take account of the views of at least one of the independent members before it makes a decision on an allegation of a breach of the Code of Conduct which it has decided to investigate
- 9.5.3 The Council may seek the views of one or more of the independent members in other circumstances
- 9.5.4 Members of the Council and of Parish and Town Councils who are the subject of an allegation of a breach of the Code of Conduct may also seek the views of an independent member

CONSTITUTION ARTICLE 12 OFFICERS

she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

- 12.5.3 The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee and Members.
- 12.5.4 ~~The Monitoring Officer will receive and act on decisions of the case tribunals.~~
- 12.5.5 The Monitoring Officer will conduct or arrange investigations into ~~matters~~ allegations of a breach of the Code of Conduct by Members referred by the Standards Committee Assessment Sub-Committee accepted for investigation and make reports or recommendations in respect of them to the Standards Committee.
- 12.5.6 The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- 12.5.7 The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all councillors.
- 12.5.8 The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

12.6 Functions of the Chief Finance Officer

- 12.6.1 After consulting with the head of paid service and the monitoring officer, the Chief Finance Officer will report to Full Council and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
- 12.6.2 The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
- 12.6.3 The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
- 12.6.4 The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration,

CONSTITUTION PART 3
RESPONSIBILITY FOR FUNCTIONS

substances to the extent that the functions are discharged by the authority otherwise than in its capacity as an employer under Part 1 Health and Safety at Work etc Act 1974

Functions relating to smoke free premises

Power to designate a public place for the purposes of police powers relating to alcohol consumption

Power to make or revoke an alcohol disorder zone

Full Council

Duty to appoint an electoral registration officer

Power to assign officers in relation to the requisitions of the registration officer

Duty to appoint a Returning Officer for local government elections

Duty to provide assistance at European Parliamentary Elections

Power to pay expenses properly incurred by electoral

pensions etc

Power to make standing orders including standing orders as to contracts

Power to appoint staff and to determine the terms and conditions upon which they hold office

Duty make arrangements for the proper administration of financial affairs etc under s.151 Local Government Act 1972

Power to appoint "proper officers"

Duties with regard to the appointment of a Head of Paid Service and Monitoring Officer

Power to adopt a scheme permitting co-opted members of overview and scrutiny committees to vote under paragraphs 12 and 14 schedule 1 Local Government Act 2000

Power to make payments or provide benefits in cases of maladministration

Duty to adopt a Code of Conduct for members under the Localism Act 2011

Standards Committee 4-6 members of the authority other than the To promotion and maintain high

~~leader~~members of the executive and; 3 independent persons (one of whom must be chairman) and 3 ~~representatives of town and parish councils within the district~~

standards of conduct within the Council

To advise the Council on the adoption or revision of its Code of Conduct

To monitor and advise the Council about the operation of its Code of Conduct in the light of best practice, and changes in the law, ~~guidance from the Standards Board and recommendations of case tribunals under section 80 of the Local Government Act 2000~~

To give assistance to members and co-opted members of the authority.

To ensure that all members of the Council have access to training in all aspects of the member Code of Conduct, that this training is actively promoted, and that members are aware of the standards expected from local councillors under the Code

Functions relating to standards of conduct of members under any relevant provision of, or regulations made under, the Local Government Act 2000

Localism Act

2011

Considering petitions
when necessary under
the Council's petitions
scheme

3. **Functions which are not the sole responsibility of the executive**

The functions set out below are to be performed by the executive subject to the powers of the Council set out thereafter.

Preparation of a plan under the Children and Young Person's (England) Regulations 2005

Preparation of development plan documents under s.15 Planning and Compulsory Purchase Act 2004

Preparation of the licensing authority policy statement under the Gambling Act 2005

Alterations to the development plan under s.54 Town and Country Planning Act 1990 under transitional arrangements

Preparation of the sustainable communities strategy under s.4 Local Government Act 2000

The formulation or preparation of a plan or strategy for the control of the council's borrowing, investments or capital expenditure or for determining the council's minimum revenue provision

In the above cases the following powers are reserved to the council:-

- to instruct the executive to reconsider any draft plan or strategy submitted
- to amend any draft plan or strategy
- to approve for the purposes of public consultation under the Town and Country Planning (Development Plans) (England) Regulations 1999 draft proposals for the preparation of alterations to or the replacement of a development plan
- to approve any plan or strategy (whether or not in draft form) for submission to the Secretary of State or any Minister of the Crown for approval where such submission is required
- to approve a development plan document for the purpose of its submission to the Secretary of State for independent examination under s.20 Planning and Compulsory Purchase Act 2004
- to adopt (with or without modification) any of the above mentioned

CONSTITUTION PART 4 PROCEDURE RULES

18.5 **General disturbance**

If there is a general disturbance making orderly business impossible, the Chairman may adjourn the meeting for as long as he/she thinks necessary.

RULE 19 DISTURBANCE BY PUBLIC

19.1 **Removal of member of the public**

If a member of the public interrupts proceedings, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room.

19.2 **Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared.

RULE 20 SUSPENSION AND AMENDMENT OF COUNCIL PROCEDURE RULES

20.1 **Suspension**

All of these Council Rules of Procedure except Rule 14.6 and 17 and 18.2 may be suspended by motion on notice or without notice if at least one half of the whole number of members of the Council are present. Suspension can only be for the item being discussed and may not extend beyond the duration of that meeting without further notice.

20.2 **Amendment**

Any motion to add to, vary or revoke these Council Rules of Procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

RULE 21 PARTICIPATION IN MEETINGS BY MEMBERS WITH DISCLOSABLE PECUNIARY INTERESTS

21.1 This rule applies where a member has a disclosable pecuniary interest (as defined by regulations made under s. 30 (3) Localism Act 2011) and is present at any meeting of the Council or of any committee or sub-committee of the Council or of any joint committee or sub-committee of which the Council when a matter relating to that interest is to be discussed

21.2 In the circumstances referred to in paragraph 21.1 the member shall withdraw from the meeting while any discussion or vote takes

place in relation to such matter.
21.3 This rule constitutes a standing order of the Council for the purposes of s.106 Local Government Act 1972 and s. 31 (10) Localism Act 2011

RULE 22 APPLICATION TO COMMITTEES AND SUB-COMMITTEES

All of the Council Rules of Procedure apply to meetings of Full Council. None of the rules apply to meetings of the executive. Rules 3 – 19 (except rules 17.1 and 19.2) apply to meetings of committees and sub-committees.

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CONSTITUTION PART 4

Access to Information Procedure Rules

RULE 1 SCOPE

These rules apply to all meetings of the Council, overview and scrutiny committees, Area Forums, the Standards Committee, regulatory committees and public meetings of the executive (together called meetings).

RULE 2 ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

RULE 3 RIGHT TO ATTEND MEETINGS

Members of the press and public may attend all meetings subject only to the exceptions in these rules.

RULE 4 QUESTIONS OR STATEMENTS BY THE PUBLIC

- 4.1 The Council has a period to enable the public to ask questions or make statements at the start of meetings of the Council and meetings of the executive. A period of 15 minutes is set-aside for members of the public to ask questions or make statements on any matters for which the Committee is responsible.
- 4.2 The purpose of the question time is to enable the public to express their concerns and receive a response directly from the leader, a member of the executive, the Chairman of a committee, other councillors or officers of the Council.
- 4.3 The question time is kept as informal as possible but there are guidelines in order to make the system as fair and easy to operate as possible. A time limit of three minutes is allowed for each speaker and two working days' notice to the Chief Executive is required in writing or by email.
- 4.4 Most meetings are held at the Council Offices, London Road, Saffron Walden and commence at 7.30pm, and public questions are dealt with at the start of meetings. The following meetings incorporate a question and answer session:
 - Council
 - Public meetings of the executive
 - Scrutiny Committee
 - Performance and Audit Committee
 - Licensing and Environmental Health Committee other than when dealing with individual cases

- 11.2 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.
- 11.3 Where the meeting will determine any persons civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.
- 11.4 The Licensing and Environmental Health Committee may exclude the public from all or part of a meeting where the Committee is of the opinion that the public interest in so doing outweighs the public interest in the hearing or that part of the hearing taking part in public (Licensing Act 2003 (Hearings) Regulations regulation 14). This includes parties to the hearing and those representing them. In general it is considered desirable that the part of the meeting when members debate applications before announcing a decision should take place in the absence of the public.
- 11.5 Confidential information means information given to the Council by a Government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.
- 11.6 Exempt information means information falling within the following categories:
 - 11.6.1 Information relating to any individual.
 - 11.6.2 Information which is likely to reveal the identity of an individual.
 - 11.6.3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
 - 11.6.4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a minister of the Crown and employees of, or office holders under, the authority.
 - 11.6.5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceeding.
 - 11.6.6 Information which reveals that the authority proposes
 - (a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or

(b) To make an order or direction under any enactment

11.6.7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

~~11.6.8 Information presented to the Standards Committee or a Sub Committee of the Standards Committee set up to consider a matter under regulations 13 or 16 – 20 The Standards Committee (England) Regulations 2008 or referred under s.59(1)(c) Local Government Act 2000~~

~~11.6.9 For the purposes of the Standards Committee or a Sub Committee of a Standards Committee, when considering allegations of a breach of the Members Code of Conduct only:~~

~~11.6.9.1 Information which is subject to any obligation of confidentiality.~~

~~11.6.9.2 Information which relates in any way to matters concerning national security.~~

~~11.6.9.3 The deliberations of a Standards Committee or of a sub-committee of a Standards Committee in reaching any finding on a matter relating to an alleged breach of the Members Code of Conduct.~~

11.7 Information falling with paragraph 11.6.3 above is not exempt information if it is required to be registered under an Act of Parliament.

11.8 Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.

11.9 Where information would be exempt by virtue of paragraphs 11.6.1 to 11.6.7 above and is not prevented from being exempt by virtue of paragraphs 11.7 and 11.8 above then it is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

11.10 For the purposes of paragraphs 11.6 to 11.9 above

11.10.1 "Employee" means a person employed under a contract of service.

11.10.2 "Financial or business affairs" includes contemplated, as well as past or current, activities.

CONSTITUTION PARTS CODES & PROTOCOLS

**PROCEDURES FOR DEALING WITH COMPLAINTS OF
MISCONDUCT AGAINST MEMBERS OF THE COUNCIL**

1. Receipt of complaints

- 1.1 Any complaint of misconduct against a member of the Council should be made in writing to the ~~Standards Committee of the Council c/o The Monitoring Officer, Uttlesford District Council, Council Offices, London Road, Saffron Walden, Essex, CB11 4ER or electronically to mperry@uttlesford.gov.uk. Advice regarding a potential complaint can be obtained from the Monitoring Officer.~~ The Monitoring Officer, Uttlesford District Council, Council Offices, London Road, Saffron Walden, Essex, CB11 4ER or electronically to mperry@uttlesford.gov.uk. Advice regarding a potential complaint can be obtained from the Monitoring Officer.
- 1.2 There is no restriction on who may make a complaint. Complaints may be made by councillors, officers of the Council or by members of the public.
- 1.3 For the purpose of these procedures, "misconduct" means any conduct by a member which is in breach of
 - the Councillor's Code;
 - the Member/Officer Protocol;
 - the Code of Practice: Probity in Planning; or
 - the Code of Practice: Probity in Licensing

any revisions to any such codes or protocols or any other protocols from time to time adopted by the Council.

2. Preliminary consideration

- 2.1 ~~A sub-committee of the Standards Committee~~ The Monitoring Officer will consider any complaint received in consultation with an independent person appointed by the Council under s.28 (7) Localism Act 2011 with a view to determining whether there may be a breach of the Councillor's Code which warrants a full investigation. ~~Any such meeting for this purpose is likely to be exempt from the Access to Information Rules.~~
- 2.2 If the ~~sub-committee~~ Monitoring Officer and the independent person are of the view that it does not warrant an investigation it will notify the complainant accordingly ~~and inform the complainant of his or her right to request a review of that decision by a differently constituted sub-committee of the Standards Committee.~~ There is no right to challenge a ~~second~~ decision not to refer a complaint for investigation other than by way of an application to the High Court for judicial review.
- 2.3 If after consulting the independent person the Monitoring Officer is of the view that the complaint warrants an investigation he or she will

either commence an investigation or arrange for an investigation to be carried out.

2.4 If the Monitoring Officer is of the view that the complaint does not warrant an investigation but the independent person does not agree with that view the Monitoring Officer may either commence an investigation or arrange for an investigation to be carried out or at his or her discretion the complaint may be referred to the Standards Committee or a sub-committee thereof to determine whether the complaint warrants an investigation. If the sub-committee are of the view that the complaint does merit investigation on such referral it will either refer the case to the Council's Monitoring Officer (who will carry out an investigation or to arrange for an investigation to be carried out on his or her behalf) or if it considers that its powers of sanction would not be sufficient if a breach were proved or there are other reasons why a local investigation would not be appropriate it may refer the allegation to the Standards Board for England.

2.42.5 The purpose of the preliminary consideration is to exclude complaints:

- (a) which are frivolous or unsupported by any reliable information
- (b) which do not justify the use of the resources which would be required to carry out an investigation, or
- (c) which fall outside the scope of the Standards Committee's remit

3. Full Investigation

3.1 In the event that a complaint is referred to the Monitoring Officer for investigation the investigator may:

- (a) Find that there is no evidence of a failure to comply with the Councillor's Code in which case a report will be prepared for consideration by the Standards Committee. The committee may either accept the Monitoring Officer's findings or may require a hearing before the committee or
- (b) Find that there has been a breach of the Code in which case a report will be prepared by the investigator and the Standards Committee must hold a hearing.
- (c) Prior to holding a hearing the Standards Committee or a sub-committee thereof will meet to consider what steps need to be taken to enable the hearing to proceed fairly and expeditiously. If at that meeting the committee or sub-committee are of the view that of the allegations are substantiated then the committee's powers of sanction would be insufficient it may refer the matter to the First Tier Tribunal—Local Government Standards in England.

~~The Tribunal may accept the reference and hold a hearing to determine whether there has been a breach and if so what the appropriate sanction should be or may refuse to accept the reference and refer the case back to the Standards Committee to hold a hearing.~~

- ~~3.2 The investigator will seek to interview and/or obtain information from any persons (within or without the Council) who can assist in establishing the facts of the matter. For this purpose, the investigators will have a right of access to any Council officer and member and any papers or other information held by the Council.~~
- ~~3.3 In the usual course of events the member who is the subject of the complaint will be informed once the complaint has been passed to the Monitoring Officer for investigation.~~
- ~~3.4 Where a complaint is referred to the Monitoring Officer, the conduct of the investigation is in the investigator's discretion. However, unless the circumstances of the case require otherwise, the following procedure will be adopted:~~
- ~~3.5 The member against whom the complaint has been made will be—~~
- ~~(a) provided with a full copy of the complaint;~~
 - ~~(b) invited for interview and will be afforded the opportunity to submit any material which the member considers is relevant to the investigation and to identify any persons whom the member considers should be interviewed as part of the investigation;~~
 - ~~(c) sent a copy of the report which the investigator proposes to submit to the Standards Committee at the conclusion of the investigation. The report will be sent to the member in sufficient time (at least ten working days) in advance of the committee meeting so that the member may submit any final comments for inclusion in the report; and~~
 - ~~(d) entitled to attend the meeting of the Standards Committee at which the report is considered (see below).~~

4. Standards Committee meeting (to consider the complaint)

- ~~4.1 Following an investigation the Standards Committee will meet to consider the report of the investigator.~~
- ~~4.2 The committee should conduct its consideration of the complaint on an inquisitorial, rather than adversarial, basis.~~

4.24.3 The report of the investigator should normally provide the committee with all the available information which is relevant to consideration of the complaint. It should not normally be necessary therefore to call persons to provide information at the meeting. There may however be occasions when, in order to provide the committee with a full understanding of the matter and/or in the interests of fairness to the member against whom the complaint has been made, it will be necessary or appropriate to invite persons to provide information or give evidence at the meeting.

4.34.4 The main stages of the committee's consideration will be as below -

- (a) the committee will need to satisfy itself, by consideration of the report of the investigator and (where relevant) by questioning any persons invited to attend the meeting, that the complaint has been properly investigated and that the committee has been provided with sufficient information to allow it to make a properly informed judgement.
- (b) the committee will afford an opportunity to the member against whom the complaint has been made to address the committee on the subject matter of the complaint and, with the committee's consent, to call any witnesses to speak on his/her behalf.
- (c) the committee will then proceed to deliberate and form a judgement on the complaint of breach of the Councillor's Code and where a breach is found to have occurred, decide upon an appropriate sanction.

4.44.5 The member against whom the complaint has been made and any Council officer called to attend the committee meeting will be entitled to be accompanied by a representative of their choice.

4.54.6 The member against whom the complaint has been made will be entitled to be present at the meeting throughout the committee's consideration of the complaint until the point at which the committee is in a position to deliberate on its judgement. The committee will then deliberate in private, subject only to the attendance of the Monitoring Officer/legal advisor to the Committee (or his/her representative) and the Committee Administrative Officer.

4.64.7 Any procedural questions or issues which may arise will be determined by the committee, but within the guiding principle of ensuring fairness to the member against whom the complaint has been made.

5. Sanctions

5.1 The sanctions available to the Standards Committee include -

(a) taking no action

(b) censuring the member

~~(a) suspending the member wholly or partially (eg from one or more committees) for a specified period not exceeding six months~~

~~(b)(c) requiring recommend that the member to apologise in a form approved by the Committee~~

~~(e)(d) requiring recommend that the member to undergo mediation or training~~

~~(b) suspending the member wholly or partially (eg from one or more committees) for a specified period not exceeding six months or until the member apologises in a form approved by the committee or undergoes mediation or training as required by the committee whichever is soonest~~

~~(e) recommending that the member be removed from one or more committees of the council~~

~~(f) recommending that the member be removed from one or more outside bodies to which the member has been appointed by the council~~

~~(g) recommending that the member be removed from the executive of the council~~

~~(h) recommending that the member's use of council facilities be restricted~~

6. Announcement of the Committee's decision

The committee will announce its decision, together with reasons, in public session and the Monitoring Officer shall send written confirmation of the decision to the member concerned and to the complainant within three working days. ~~The Monitoring Officer will also report the outcome of the investigation to the Standards Board. Unless the Committee determine otherwise the findings of the Committee will also be published on the council's website. Publication will normally only be dispensed with when there has been a finding that the Code of Conduct has not been breached and the subject member has requested that the decision should not be published. Decisions of the Standards Committee are not capable of being appealed but may be challenged by way of judicial review.~~

7. ~~Hearings before the First Tier Tribunal – Local Government Standards in England~~

7.1 ~~The member concerned may appeal against a finding by the Standards Committee that there has been a breach of the Councillor's Code and/or against any sanction imposed to the First Tier Tribunal – Local Government Standards in England with the permission of the Tribunal. Written details as to how this right can be exercised will be given to the~~

~~Member concerned unless the finding of the Standards Committee is that there has been no breach of the Councillor's Code.~~

7.2 ~~In the event that the matter is referred to the First Tier Tribunal – Local Government Standards in England, the Tribunal will designate a Tribunal to hold a hearing to consider the complaint. The member concerned will be invited to attend the hearing and will have the opportunity to make written submissions prior to the hearing and/or written and/or oral submissions at the hearing. The member concerned will be entitled to be presented by a barrister, solicitor or other person of their choosing.~~

7.3 ~~The Tribunal may find that there has been no breach of the Councillor's Code. If such a breach is found, the Tribunal may take any of the steps open to the Standards Committee (save that in the case of suspension the Tribunal may suspend for up to one year) or may disqualify the member from being a member of the Council and any other relevant authority for a specified period not exceeding five years. A member who is dissatisfied with a decision of the Tribunal may appeal against its findings to the High Court on a point of law only with the permission of the High Court.~~

5.3 Complaints

Citizens have the right to complain to:

- 5.3.1 the Council itself under its complaints procedure (a copy of which can be obtained from the Council Offices during normal office hours).
- 5.3.2 the Ombudsman if not satisfied with the outcome of using the Council's own complaints scheme;
- 5.3.3 the Information Commissioner (on data protection, freedom of information or environmental information issues) if not satisfied with the outcome of using the Council's own complaints scheme;
- 5.3.4 the Council's ~~Standards Committee~~ about a breach of the Councillor's Code of Conduct.

6. Independent Review

6.1 Internal Audit

- 6.1.1 The Council's internal audit team is charged with independently monitoring the Council's activities; to review and report on compliance with policies, plans and procedures; to ensure good standards of financial management; the soundness of accounting and other internal controls; the safeguarding of the Council's assets; and the prevention and detection of fraud.
- 6.1.2 The audit team is responsible to The Performance and Audit Committee. The Internal Audit Manager reports to the Assistant Chief Executive: Legal. Copies of audit reports are issued to relevant Officers and Members for action and information.
- 6.1.3 External audit (see below) reports annually on the adequacy of internal audit arrangements.

6.2 External Audit

- 6.2.1 The Council's activities are also monitored by external auditors. Their responsibilities are set out in the Statement of Responsibilities of Auditors and of Audited Bodies published by the Audit Commission (www.audit-commission.gov.uk)
- 6.2.2 The External Auditors monitor the effectiveness of the Council's service and financial planning and performance management processes and practices.

- 6.2.3 They annually review the Council's financial standing, legality of financial transactions, systems of internal financial control, standards of financial conduct and the prevention and detection of fraud and corruption. They also audit and give an opinion on the Council's financial statements, and certify grant claims to Government.
- 6.2.4 They also issue periodic reports on matters which they have considered, and publish an annual Audit Letter which is issued to all members of the Council and discussed at a meeting of the Performance and Audit Committee and is posted on the Council's website.
- 6.2.5 All external audit findings are drawn to the attention of and recommendations agreed with, relevant staff, and, where appropriate, members. The implementation of agreed recommendations is monitored during the following audit.

6.3 Inspection

- 6.3.1 The Department of Work and Pensions carry out periodic reviews of the accuracy of the Council's Housing and Council Tax Benefit processing, and the effectiveness of measures in place to prevent and detect benefit fraud. Major inspection reports will be publicly available.
- 6.3.2 The Food Standards Agency undertakes inspections of local authority food enforcement services.
- 6.3.3 The Food and Veterinary Office of the European Commission carries out regular inspections on the control of imported animal products at Stansted Airport. It has a programme of inspections on the control of imported food of non-animal origin.

7. ETHICS AND PROBITY

- 7.1 The Council's Standards Committee, which comprises members of the Council, and independent persons who are non-voting members of the Committee (legislation prevents independent persons from being voting members), and ~~representatives of parish councils in the district~~, has overall responsibility for promoting high standards of ethics and probity in the Council.
- 7.2 It does so by promoting awareness and understanding of codes of conduct for both district and parish/town councillors.
- 7.3 The Council also has in place a Fraud and Corruption Policy aimed at ensuring adherence to the highest standards of ethics and probity, and

CONSTITUTION PART 6 MEMBERS ALLOWANCES

1.4 Carers Allowance

Carers allowance is payable where expenditure is exclusively incurred in arranging for care of children or dependant relatives. Appropriate receipts must be provided before a claim can be approved.

2. Remuneration Panel

Since April 2002 the Council has been required to establish and maintain an Independent Remuneration Panel to make annual recommendations as to the level of the Basic Allowance and the type and level of Special Responsibility Allowance. Since 31 December 2003 the role of the Panel has been extended to make recommendations on travelling and subsistence.

Before voting on the level of allowance, the Council must consider the recommendations of the Panel.

3. Submission of Claims

Members are asked to claim on a monthly basis (required for forwarding to Bedford Borough Council by the 3rd of the month) and to submit them to the Committee and Electoral Services Manager on behalf of the Chief Executive.

4. Option to Forgo

A councillor may elect to forgo any part of his or her entitlement to an allowance under the scheme by giving notice in writing to the Chief Executive.

5. Part-Year Entitlement

If the term of office or duties undertaken by a councillor begin or end part-way through a municipal year, or if amendment of the scheme during a municipal year changes the amount to which a councillor is entitled, then calculation of the allowance payable shall be on a pro-rata basis.

6. Suspension of a Member

~~Where a member is suspended by the Standards Committee or the First Tier Tribunal – Local Government Standards in England in whole or part, the member's allowance, or in the case of a partial suspension a proportion thereof, shall be suspended.~~

7. Absence of Committee Chairmen

*SCHEMA OF DELEGATION OF
COUNCIL FUNCTIONS*

under Part 1 Health and Safety at Work etc Act 1974

3. Functions relating to smoke free premises
4. Power to designate a public place for the purposes of police powers relating to alcohol consumption
5. Power to make or revoke an alcohol disorder zone
6. Power to pass a resolution that Schedule 2 Noise and Statutory Nuisance Act 1993 should apply within the Authority's area

THE STANDARDS COMMITTEE

1. The function of advising the Council on the adoption or variation of a Code of Conduct
2. Promoting high standards of conduct by members and co-opted members
3. Assisting members and co-opted members to observe the Code of Conduct
4. Monitoring the operation of the Code of Conduct
5. Providing training to members and co-opted members on the Code of Conduct
6. Granting dispensations to members under s. 33 Localism Act 2011
7. Determining whether complaints of a breach of the Code of Conduct should be referred for investigation
8. Receiving reports from the Monitoring Officer or investigators appointed by the Monitoring Officer into complaints of a breach of the Code of Conduct; determining such complaints and deciding what action to take with regard to any breaches found to have been proved
9. With regard to Parish and Town Councils within the District:-
 - a. the functions referred to in paragraph 7 above
 - b. receiving reports from the Monitoring Officer or investigators appointed by the Monitoring Officer into complaints of a breach of the Code of Conduct by Parish or Town Councillors; advising the Parish or Town Council concerned whether there has been a breach of the Code of Conduct and recommending what action the Parish or Town Council should take with regard to any breaches found to have been proved

ALL CHIEF OFFICERS & DEPUTY CHIEF OFFICERS

*SCHEME OF DELEGATION OF COUNCIL
FUNCTIONS - DELEGATION TO THE MONITORING
OFFICER*

7. Issue of statutory notices, registrations and certificates in respect of charitable collections and gaming
8. To suspend licenses issued under Part II Local Government (Miscellaneous Provisions) Act 1976 for a period not exceeding 2 weeks where there has been a breach of condition or an alleged offence where in the view of the Assistant Chief Executive – Legal a prosecution would not be appropriate
9. To suspend licenses under s.61 Local Government (Miscellaneous Provisions) Act 1976 (as amended) immediately if in his or her opinion it is in the interests of public safety that the suspension should have immediate effect such suspension to last until the day after the next meeting of the Licensing and Environment Committee
10. Subject to the provision of a satisfactory statutory declaration to grant an application for a licence where the Council requires a criminal record check where the applicant is in possession of a check to the level required by the Council which is not more than 18 months old and to revoke any licence if a false declaration is made
11. Subject to the provision of a satisfactory statutory declaration to grant an application for renewal of a licence granted by the Council where the Council requires a criminal record check but a check to the level required by the Council is not immediately available and to revoke any licence if a false declaration is made
12. To grant applications for consent to place tables and chairs and other items on pedestrian areas of the highway subject to conditions where such applications fall within the policy previously adopted by the Licensing Committee or any amendment or amendments thereto made by the Licensing and Environment Committee and to refuse applications which do not fall within that policy
13. In consultation with an independent person appointed under s.28 (7) Localism Act 2011 to determine whether to investigate an allegation that a member of the Council or a member of any Parish or Town Council for which the Council is the principal authority within the meaning of s. 29 (9) of that Act has breached the members' Code of Conduct

14. To grant dispensations to members of the Council under s.33 Localism Act 2011 subject to a right of appeal by the member applying for such to the Standards Committee against any refusal to grant or any limitations placed upon dispensations

DIRECTOR OF CORPORATE SERVICES

1. Implementation of national provincial and local agreements and amendments to conditions of service
2. The approval of pensionable ill health retirement in consultation with the Leader of the Council or cabinet member authorised by him or her

DIRECTOR OF PUBLIC SERVICES

1. All functions delegated to the Divisional Head of Planning and Building Control under this Scheme of Delegation

DIVISIONAL HEAD PLANNING & BUILDING CONTROL

- 1 Decide whether: -
 - 1.1 applications are "county matters"
 - 1.2 planning permission is required for development, including Section 64 applications
 - 1.3 environmental impact assessment is required
 - 1.4 listed Building Consent is necessary
 - 1.5 express consent to display advertisements is required.
- 2 Make comments on: -
 - 2.1 minor proposals submitted by government departments,
 - 2.2 Essex County Council and statutory undertakers
 - 2.3 minor proposals submitted for consultation by an adjoining planning authority
 - 2.4 consultations from the Forestry Commission
 - 2.5 consultations from Diocese of Chelmsford on proposals under the Pastoral Measures Act 1983

APPENDIX B

DRAFT TERMS OF REFERENCE FOR AN APPOINTMENTS COMMITTEE/TASK GROUP FOR THE RECRUITMENT OF INDEPENDENT PERSONS

1. To agree upon a person specification for the role
2. To agree upon how the vacancies should be advertised and otherwise promoted
3. To agree the selection process
4. To short list candidates based upon written applications received
5. To interview (or to appoint an interview panel to interview) candidates
6. To make recommendations as to appointment of independent persons to Full Council.

APPENDIX C

PROCEDURE FOR DEALING WITH COMPLAINTS TO THE STANDARDS COMMITTEE

1. The Standards Committee can only investigate complaints of a breach of the Code of Conduct by individual members. It cannot investigate complaints against the whole council, the cabinet, committees or council officers.
2. Complaints must be in writing. If a complainant is unable to make a complaint in writing personally council officers will assist. The council will supply a complaints form to assist complainants in making their complaint but its use is not compulsory and a letter or e-mail complaint will suffice.
3. Upon receipt of a complaint an acknowledgement will be sent to the complainant. The subject member will be informed that a complaint has been made and be told the substance of the complaint unless in the opinion of the Monitoring Officer to do so could prejudice a fair investigation.
4. The complainant will be offered the opportunity to advance reasons why his or her name should not be disclosed to the subject member and will be informed that if no response is received within 10 working days the subject member will be informed of the complainant's identity. In the event that the complainant does advance reasons as to why his or her name should not be revealed to the subject member at that time the Monitoring Officer will consult with an independent person. In the event that following such consultation the Monitoring Officer decides that the complainant's identity should be revealed then the complainant will be notified of that decision and will be given a period of 5 working days to decide whether to proceed with the complaint. If the complaint is not withdrawn the subject member will be informed of the complainant's name.
5. The Monitoring Officer or his or her deputy will consult with an independent person with regard to all complaints received. Such consultation may be at a meeting or In writing. Following such consultation the Monitoring Officer or his or her deputy will take one of the following decisions:-
 - a. To take no action
 - b. To take action other than an investigation (e.g. to ascertain whether the subject member may be willing to apologise, undergo training or undergo mediation)
 - c. To require an investigation

Whilst the Monitoring Officer is solely responsible for taking the decision, where the independent person has expressed a view that the allegation should be investigated the Monitoring Officer may refer the matter to the Standards Committee if he or she is of a view that an investigation is unnecessary and the Standards Committee will then determine how the allegation should be dealt with.

6. Not all complaints will be passed for action. The subject of the complaint must have been a member of the council at the time the facts alleged occurred. The complaint, if proved, must also be capable of amounting to a breach of the

Code of Conduct. No findings of fact are made at this stage. The decision as to whether to investigate a complaint is made on the assumption that the facts as alleged are true. Findings of fact are only made after an investigation and report to a sub-committee.

7. Even when the aforementioned conditions are satisfied this does not necessarily mean that a case will be passed for action. There is a balance to be struck between the desirability of ensuring that issues regarding the Code of Conduct are dealt with appropriately against the costs involved of carrying out an investigation and hearing. The Standards Committee are of the view that there is little public benefit in investigating allegations which are not sufficiently serious, politically motivated, malicious or vexatious. In reaching a decision whether to refer a case for action the following criteria will be applied:-
 - a. Complaints which are not supported by sufficient information are unlikely to be referred.
 - b. If the complaint has been investigated elsewhere further action is unlikely to be justified.
 - c. Stale complaints are unlikely to be referred. The Standards Committee expects that complainants would normally make their complaint within six months of the relevant facts coming to light.
 - d. Where a member who is the subject of a complaint has acknowledged the breach of the Code and made a sincere apology the complaint is unlikely to be referred unless it is considered that such apology would be insufficient.
8. Where a case is accepted for investigation the Monitoring Officer will arrange for an investigation to be carried out.
9. At the conclusion of the investigation the investigating officer may prepare a draft report which he sends to the complainant and the subject member for comment. The investigating officer may or may not amend the report in the light of representations received. Alternatively the investigating officer may in his or her sole discretion proceed to a final report.
10. In the final report the investigating officer will set the facts which have been agreed and any conflicting evidence he has received from the complainant, the subject member and any witnesses. The investigating officer will not make any findings of fact nor express any opinion as to whether there has been a breach of the Code of Conduct in the final report.
11. Following an investigation there will be a hearing to consider the complaint and the investigating officer's report. The hearing will normally be held in public. The complainant and others may be invited to attend and give evidence. The subject member will have the opportunity of attending and addressing the hearing and calling evidence.
12. Having received evidence and hearing submissions the Committee will announce its findings of fact, its findings as to whether there has been a breach of the Code of Conduct and what sanction (if any) should apply.
13. The range of sanctions available are:-
 - a. To find that no further action is required.

- b. To censure the member (this is the only sanction available if the member is no longer a councillor at the date of the hearing)
- c. To recommend that a member's access to council premises or the use of council resources be restricted providing that such restrictions do not prevent the member performing his functions as a councillor
- d. To recommend that the member makes a written apology in a form acceptable to the Standards Committee.
- e. To recommend that the member undertakes specified training.
- f. To recommend that the member undertakes specified conciliation or mediation.
- g. To recommend that the member be removed from a committee or committees of the Council (this can only be done by Full Council and if the member is a member of a recognised political group on the Council with the consent of his or her group leader)
- h. To recommend that the member be removed from an outside body or bodies to which the member has been appointed by the Council (this can only be done by Full Council and if the member is a member of a recognised political group on the Council with the consent of his or her group leader)
- i. To recommend that the member be removed from the Cabinet (this can only be done by the Leader of the Council)
- j. To require the decision of the Standards Committee to be published.