

21 February 2014

STANDARDS COMMITTEE

A meeting of the Standards Committee will be held in the Committee Room, London Road, Saffron Walden on Monday 3 March 2014 at 4.00pm.

Yours faithfully

JOHN MITCHELL

Chief Executive

AGENDA PART I

	Page
1 Apologies for absence and declarations of interest.	
2 Minutes of the meeting held on 7 October 2013.	3
3 Matters arising.	
4 Call-in Procedure.	6
5 Probity in Planning.	10
6 Plain English Code of Conduct.	13
7 Parish Council update.	16
8 High Court decision on Standards.	20
9 Monitoring Officer's update.	23
10 Any other items that the Chairman considers to be urgent.	

To: Councillors C Cant, K Eden, E Godwin, **M Lemon** J Loughlin and J Menell (District Councillors)
Mr A Brobyn, Mrs G Butcher - Doulton and Mr V Lelliott (Independent Persons)

Lead Officer: Michael Perry (01799 510416)
Democratic Services Officer: Maggie Cox (01799 510369)

MEETINGS AND THE PUBLIC

Members of the public are welcome to attend any of the Council's Cabinet and Committee meetings and listen to the debate. All agendas, reports and minutes can be viewed on the Council's website www.uttlesford.gov.uk.

Members of the public and representatives of parish and town councils are now permitted to speak at the meetings. You will need to register with the Democratic Services Officer 2 days prior to the meeting. An explanatory leaflet has been prepared which details the procedure and is available from the Council offices at Saffron Walden.

The agenda is split into two parts. Most of the business is dealt with in Part 1 which is open to the public. Part II includes items which may be discussed in the absence of the press or public, as they may deal with information which is personal or sensitive for some other reason. You will be asked to leave the meeting before Part II items are discussed.

You are entitled to see any of the background papers that are listed at the end of each report.

If you want to inspect background papers or speak before a meeting please contact either Peter Snow on 01799 510430, Maggie Cox on 01799 510369, Rebecca Dobson on 01799 510433, or by fax on 01799 510550.

FACILITIES FOR PEOPLE WITH DISABILITIES

The Council Offices has facilities for wheelchair users, including lifts and toilets. The Council Chamber has an induction loop so that those who have hearing difficulties can hear the debate.

If you are deaf or have impaired hearing and would like a signer available at a meeting, please contact Peter Snow on 01799 510430 or email psnow@uttlesord.gov.uk as soon as possible prior to the meeting.

FIRE/EMERGENCY EVACUATION PROCEDURE

If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by Committee staff. It is vital you follow their instructions.

- You should proceed calmly; do not run and do not use the lifts.
- Do not stop to collect personal belongings.
- Once you are outside, please do not wait immediately next to the building.
- Do not re-enter the building until told to do so.

**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD
SAFFRON WALDEN at 4.00 pm on 7 OCTOBER 2013**

Present: Councillor R M Lemon – Chairman
Councillors K Eden, J Loughlin, J Menell (Uttlesford members)
Mrs G Butcher-Doulton, Mr V Lelliott and Mr A Brobyn
(Independent members).

Officers in attendance: M Cox (Democratic Services Officer), M Perry
(Assistant Chief Executive - Legal) and A Taylor (Assistant
Director Planning and Building Control).

S10 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillors C Cant and E
Godwin.

S11 MINUTES

The minutes of the meetings held on 17 July and 29 August 2013 were
agreed and signed by the Chairman as a correct record.

S12 BUSINESS ARISING

**i) Minute S9 –Hearing into allegation of a breach of the Code of
Conduct**

In relation to the meeting on 29 August 2013, Mr Lelliott inquired whether the
councillor concerned had been asked to clarify his reason for the call-in. He
was informed that the councillor had provided a reason but it did not
constitute a valid planning reason, and at the time a formal procedure for
rejection of a member call –in had not been in place.

S13 PROTOCOL FOR CALL-IN OF PLANNING APPLICATIONS

The Assistant Chief Executive – Legal presented a report on a proposed
protocol for the call-in of planning applications. A review of this procedure
had been requested by members following a complaint on this issue that had
recently come before the committee.

The council had a written procedure for member call- in that had been
circulated to all councillors at the start of the year, but during the recent
investigation it had become clear that members were not fully familiar with its
content. A formal protocol would raise the profile of this procedure as any
deviation would amount to a breach of the code of conduct.

The Assistant Chief Executive - Legal explained that the majority of the
decisions on planning applications were taken by officers under delegated

powers. Officers could refuse those applications that did not accord with the council's policies and approve applications within policy except in cases that were not covered by delegated powers when they would be considered by the Planning Committee. Any member could call-in an application which would also be dealt with by the Planning Committee

In the preparation of the report the Assistant Chief Executive - Legal had researched the practises of other councils and this had revealed a variety of approaches. Mr Lelliott asked whether the council's current procedures were along the right lines or whether now would be a good opportunity for a more fundamental review. He was advised that the council's approach was generally acceptable but needed to be formalised and provide clarity in certain areas.

The draft protocol was circulated, based on the current guidance and the following points were highlighted.

- The call-in should be in writing and received within 5 weeks of the validation date.
- If a member was intending to call-in an application that was not within their ward they should inform the ward member concerned of their intention to do so.
- A valid planning reason should be provided.
- There was an additional paragraph that gave the authority for the Assistant Director of Planning and Building Control to refuse a request for a call-in if he was not satisfied that the reason given was a planning reasons.

The Assistant Director Planning and Building Control said that the call-in system provided a good balance and on the whole the current procedure worked well. Planning officers were happy to discuss any planning application with members and give advice on the planning issues. He did not expect to reject many requests for call-in; this provision had been included as a fail-safe. Councillor Menell asked if there should be an avenue to appeal against the Assistant Director's decision but members did not consider this to be necessary.

In response to a member question, the Assistant Director said there were about two or three 'call-ins' per committee, which was a small number in relation to the number of cases although it did create an additional workload. Most of the cases were prompted by town and parish councils or comments from local people and tended to be smaller and locally controversial applications. He had investigated recent cases and found that members of the planning committee were more likely to call-in an application, probably because they were more confident in their knowledge of planning policies.

Mrs Butcher –Doulton said there appeared to have been a loophole in the system that had led to the recent case before the Standards Committee. Investigating the issue had cost the council time and money and she wanted to ensure that all members were aware of how they should act in future. She asked for clarification on the type of planning reasons to be used and whether they were stringent and clear. The Assistant Director replied that it

would not be possible to set out specific planning reasons as each application was concerned with different issues.

It was noted that the majority of councillors tended to speak to a planning officer if they were thinking of calling in an application, although this was not always the case. Councillor Lemon said it was very helpful for members to do this and asked whether this practise could be formalised within the protocol. He was advised that this would not be workable because any member who chose not to consult with an officer would be deemed to have breached the code. As an alternative it was suggested that the following paragraph could be added to the introduction as an advisory note.

‘1.4 It is recommended that members considering calling in an application should seek advice of planning officers before doing so’

The committee agreed the draft protocol and suggested that the operation of the new procedures should be reviewed in 12 months’ time.

RECOMMENDED to Full Council the adoption of a protocol to deal with the call –in of planning application with the addition of the additional paragraph 1.4 above.

S14 **DATE OF NEXT MEETING**

The next meeting would be held at 4.00pm on Monday 5 March 2014.

The meeting ended at 4.45pm

Committee: Standards Committee

Agenda Item

Date: 3 March 2014

4

Title: Call-in Procedure

**Author: Michael Perry, Assistant Chief Executive
Legal, 01799 510416**

Item for decision

Summary

1. On 7 October 2013 the Committee resolved to recommend to Full Council a protocol to deal with the call-in of planning applications. Members are requested to bring the committee report from the meeting on 7 October 2013 to this meeting along with the draft protocol or to request further copies from the Committee section.
2. Full Council received the recommendation at its meeting on 10 December. After some debate members were not prepared to adopt the protocol and referred it back to the Standards Committee for further consideration.
3. This report is to inform members of the views of members of the council and to seek members' views as to whether any variations to the protocol should be made and if not how the committee wishes to proceed.

Recommendations

4. That members either
 - (a) Repeat the recommendation to Full Council
 - (b) Amend the protocol and recommend the amended protocol to Full Council, or
 - (c) Issue guidance to members as to what would constitute unacceptable conduct.

Financial Implications

5. None.

Background Papers

6. None.

Impact

- 7.

Communication/Consultation	None
----------------------------	------

Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

8. The background behind the protocol is fully summarised in the report presented to the meeting on 7 October 2013.
9. In the light of concerns expressed by members at the meeting of Full Council I circulated all members of the council by email seeking their views on the draft protocol. Despite the strength of opposition at Full Council there has been a limited response. Comments received were as follows:

“I would not consider calling in an application from an individual if it was not a planning issues, I would find myself in an intolerable position if either of the Parish Councils in my Wards were to ask me to call something in and I had to refuse as it may technically not be a full planning issue. It could actually involve other factors that would cause major problems for the Parish Council and the surrounding area. I feel that a Parish Council would not abuse the procedure of ‘calling in’ and would have discussed the matter fully beforehand. I would, therefore, like to see the wording altered to allow us to accommodate a Parish Council if so required.”

“I have no opinion, it all seemed fine to me.”

“I think that it would be the best to keep it simple ie that any call in must have a Planning reasons attached to it and any advice should be sought from the Planning Department.

My only concern is that any applicant can withdraw at any time as can a Counsellor and when represented the call in lapses

In this instance I would like to receive an e mail saying that the Applicant has withdraw his application and another when the Applicant has represented it This does not happen and it shouldIt can only effect a limited number of cases so shouldn't be a problem”

“My concern is that the public feel that the protocol is fair and open. Some parish councils feel strongly about some applications and ask their local councillor to call it in.

Providing there are sound planning reasons and not just a 'We don't like this' scenario, it seems perfectly reasonable to do so.

I don't regard the way other councils do things to be too relevant. For example some councils hold their planning meetings in the evening when the public are more able to attend. We don't!"

"I am happy to go along with the suggested guidelines and would agree with all of them, if I could be assured that action could be taken if an application were submitted "under the radar" as in the recent case of [text redacted as being commercially sensitive]"

"I think the draft is trying to address the consequences of action by two councillors in the wrong way. The act of asking a fellow member to call in an item on one's behalf has undertones of opaqueness that raise concerns in themselves. Acting in this way raises concerns in my mind, whatever the subject or process involved. This does not call for stringent rules subject to the code of conduct that will inhibit a member openly going about his duties to request a planning application to the determined in public if he or she feels that it is in the public interest so to do. Whilst it would be courteous to advise a ward member (including one's fellows in a multi-member ward), it is hardly a failure to meet the code if that is not done; rather a minor discourtesy. There is a danger that we try to regulate every action of every member. I think the onus must be on an officer to advise why an application should not be called in. But planning officers need to remain cognizant of being bureaucrats who are not directly accountable to the public, so what seems appropriate for them may not seem right to an elected politician. It makes sense for a member to say the purpose behind a call-in so that the case officer can address the matter. This may result in a member deciding that call-in is not necessary. However, I would wish to call in an application simply because I consider that it is in the public interest that the decision should be made in public so that democracy can be seen to be done. I might wish on occasions to do this without any view on whether an application should be approved or refused. This is why I would advise against creating complicated and potentially draconian rules that may tie us all in knots. Guidance is fine if it sets out what we are trying to achieve by open and transparent democracy rather than rules that try to restrict it. If there is no serious problem, such as a large number of call-ins, I would advise against creating one."

10. The advantage of having a protocol is that it is incorporated into the council's conduct by reference. Breach of the protocol would therefore be a breach of the code. However it is always open to the standards committee to give guidance as to its interpretation of the code. The issue which gave rise to the request for a protocol concerned an improper call-in of a planning application. If the council does not adopt a protocol dealing with the issue it would be reasonable for the standards committee to issue guidance as to what the committee considers may and may not be a breach of the code of conduct either by way of improperly using a members' position to endeavour to secure an advantage or disadvantage for another or by way of bringing the council into disrepute.

Risk Analysis

11.

Risk	Likelihood	Impact	Mitigating actions
The council does not adopt a formal protocol for dealing with call-ins	3 – Full Council does not adopt the protocol when first proposed to it	3 – Without clear guidelines there may be further allegations of a breach of the code of conduct which could lead the council to suffer reputational damage	If the council is unwilling to accept a protocol formal guidance be issued

- 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.

Committee: Standards

Agenda Item

Date: 3 March 2014

5

Title: PROBITY IN PLANNING

**Author: Michael Perry, Assistant Chief Executive
Legal, 01799 510416**

Item for decision

Summary

1. This report is to seek members views as to the necessity of referring applications from councillors and former councillors and staff and former members of staff to the Planning Committee.

Recommendations

2. Members recommend a protocol for dealing with referrals.

Financial Implications

3. None

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	None.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. Planning is a Full Council function delegated to the Planning Committee. There is further delegation from the committee to planning officers. The Scheme of Delegation is extensive and the vast majority of applications are in fact dealt with by officers under delegated powers.
7. In order to ensure transparency and to avoid the suspicion of impropriety all planning applications made by councillors, ex-councillors, employees and ex-employees must be referred to the planning committee even where the nature of the application is such that had it been made by a member of the public it would have been dealt with by officers under delegated powers.
8. This does place an administrative burden on the council which may be unnecessary in certain circumstances. It may therefore be appropriate to seek to strike a balance between transparency on the one hand and the efficiency of the service and use of committee time on the other.
9. So far as current councillors and members of staff are concerned, it is easy to understand how the public would be suspicious of the grant of planning permission under delegated powers. However, it is equally difficult to see how the public would consider that an officer had acted inappropriately in refusing an application from such a person under delegated powers. Members are asked therefore to consider whether it is necessary for all planning applications by current councillors and employees to be referred to the Planning Committee or only those where the officer recommendation is for approval.
10. With regard to ex councillors and employees it is suggested that there must come a time when their association with the council has become so tenuous that a suspicion of partiality could not arise. Members are therefore asked to consider whether it would be appropriate to specify a period of time after the date when the ex-councillor or employee ceased to be a member or employee of the council after which it would not be necessary to refer any planning applications from such an individual to the Planning Committee regardless of the recommendation.
11. If members do not consider that the passage of time would remove suspicion then it is suggested that ex-members and employees should be dealt with in the same way as existing members and employees. If members are satisfied that passage of time does remove any suspicion then it is suggested that ex members and employees should be treated the same as existing members and employees until that time has expired and thereafter should be treated as ordinary members of the public.

Risk Analysis

12.

Risk	Likelihood	Impact	Mitigating actions
The public perceive planning applications from members and former members and employees and former employees are being dealt with inappropriately.	2, there is a slight risk that treating ex members and employees as members of the public may allow suspicion in some quarters.	3, confidence in the planning system could be damaged.	Members ensure that appropriate safeguards are put in place to prevent adverse perceptions arising.

- 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.

Committee: Standards

Agenda Item

Date: 3 March 2014

6

Title: PLAIN ENGLISH CODE OF CONDUCT

**Author: Michael Perry, Assistant Chief Executive
Legal, 01799 510416**

Item for decision

Summary

1. This report is to draw members' attention to a recently published suggested Code of Conduct and to seek members' views as regards thereto.

Recommendations

2. That the committee determine whether to recommend to Full Council any changes in the Code of Conduct.

Financial Implications

3. None.

Background Papers

4. The following papers were referred to by the author in the preparation of this report:
 - HM Government Guide for Councillors on Openness and Transparency on Personal Interests and revised Illustrative Texts for a Code of Conduct copies of which are attached to this report.

Impact

- 5.

Communication/Consultation	There is no evidence of consultation by the Department of Communities and Local Government with regard to the documents they have published. If the council were to consider making amendments to its Code of Conduct, then it ought to consult with the town and parish councils in the district most of whom have now adopted the council's Code.
Community Safety	None.
Equalities	None.

Health and Safety	None.
Human Rights/Legal Implications	Section 28(1) of the Localism Act 2011 requires local authorities to be satisfied that their Codes of Conduct comply with s.28 of the Act. The Standards Committee of this authority scrutinised the current Code of Conduct for that purpose and satisfied itself that the Code was compliant before recommending it for adoption to Full Council. There is no evidence that the government has carried out this exercise with regard to the document now published.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. Following the enactment of the Localism Act 2011, members of the then Standards Committee worked on a draft Code of Conduct over a number of months. The government had indicated an intention to introduce the new standards regime with effect from the 1 July 2012 and it was important therefore that a Code of Conduct should be in place by that date. However, no guidance was given by the government as to what form a Code should take.
7. Having concluded its work the Standards Committee made a recommendation to Full Council that the draft Code prepared by the Committee should be adopted. However, a few days before the meeting of the council which would have considered that recommendation, the government and ACSeS/LGA both promulgated similar but different draft Codes of Conduct for consideration. The council therefore deferred consideration of the Standards Committee recommendation until such time as the Standards Committee had considered the alternatives.
8. The Standards Committee met for that purpose on the 14 May 2012. It considered the revised drafts. These were rejected as being too discursive. Members felt that the draft code originally recommended by the Committee had the advantage of certainty in that it was precise in terms of what was required from members; familiarity as it was largely based on the previous Code which members were used to working with and there was also consistency with other authorities as most local authorities had adopted the Essex Legal Partnership Code of Conduct which was in very similar terms.

9. The government has now issued further guidance and an amended illustrative text for a Code. The only amendments to the government's original draft are to include specific reference to membership of trade unions.
10. I consider that this is adequately covered by our current code of Conduct which provides that membership of trade unions is a registerable non-pecuniary interest. It would therefore appear unnecessary for any amendments to be made to our Code in the light of the government guidance.

Risk Analysis

11. There are no risks attached to this report.

Committee: Standards

Agenda Item

Date: 3 March 2014

7

Title: PARISH COUNCIL UPDATE

**Author: Michael Perry, Assistant Chief Executive
Legal, 01799 510416**

Item for information

Summary

1. Members will recall that on a previous occasion I highlighted the lack of knowledge concerning which parish councils had adopted the Uttlesford Code of Conduct. This report is to update members as to the current position and also to advise Members of the extent to which parish councils have embraced the power of general competence.

Recommendations

2. Members note the contents of this report.

Financial Implications

3. None.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	Town and parish councils which have not adopted a code of conduct to be effective from 1 July 2012 are in breach of the legislation. Whilst there is no sanction contained in the legislation decisions of such councils must be at risk of challenge by way of judicial review, particularly where members' interests are involved. Further councillors with disclosable pecuniary interests put themselves at risk of

	prosecution if they fail to deal with such interests in accordance with the legislation.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. The Local Government Act 2000 imposed an obligation upon all local authorities to adopt a Code of Conduct in a form prescribed by Parliament. If a council failed to adopt the code of conduct the prescribed code automatically applied to the council by statute and members who refused to sign an undertaking to abide by the code ceased to be members of the authority.
7. The code which was prescribed by central government was last updated in 2007 and again adoption of that code was obligatory.
8. The Localism Act 2011 abolished the power of the government to prescribe a code of conduct. The Act contained a requirement on the part of the local authorities to promote high standards of conduct and in order to do so councils were obliged to adopt a code. The code had to be compliant with what are commonly known as the Nolan principles which are expressly set out in the Act. The code is also required to make provision for the registration and declarations of interest. Apart from these requirements the contents of a code were left entirely to council's discretion.
9. Town and parish councils were expressly empowered to adopt the code of conduct of the district within which they were situated. If they chose to do so they were absolved of the duty of ensuring compliance with the Nolan principles.
10. Having adopted a code of conduct the Standards Committee advised all town and parish councils within the district to adopt the Uttlesford code. The advantages to the town and parishes were expressed to be as follows:
 - (a) They need not demonstrate compliance with the legislation as they could assume the district council had done that on its behalf (as indeed this council had)
 - (b) Certainty, as our code of conduct was precise as to what was required of members
 - (c) Familiarity, as the code was based largely upon the previous code which councillors were used to working with
 - (d) Consistency, as most authorities in Essex were adopting the code the same as or very similar to that being adopted by Uttlesford

- (e) Availability of advice, as whilst the Uttlesford legal team would be fully familiar with our code of conduct they would not have such familiarity with any alternative code which may be adopted by a town or parish council and would not therefore be in a position to give ad hoc advice with regards to issues which may arise under the code
11. In addition the facility was offered to town and parish councils to delegate to Uttlesford District Council the power to grant dispensations to permit members with pecuniary interests to take part in debates and vote on issues where such interests arose and also the power to impose sanctions where a breach of the code was found.
 12. Parish Councils are asked to indicate whether they had adopted the code of conduct and whether they had delegated either or both of the powers referred to above.
 13. Many town and parish councils did not respond in the first instance. However, reminders did produce further responses and an examination of the websites of the town and parishes concerned has produced further information.
 14. I can report that 48 of the 53 parishes within the district have adopted the UDC Code of Conduct. I believe that another has adopted that code as the register of interests completed by the members of that authority is on the current form, but the parish clerk has not responded to the enquiry and the minutes of council meetings are not on-line as the council does not have a website.
 15. Three councils have not responded and there is no information on-line to indicate whether or not they have adopted the Uttlesford code.
 16. One parish council has certainly not adopted the Uttlesford code. Its code of conduct which is available on its website is the old 2007 code and the council members have not completed registers of interest. I have written to that council accordingly.
 17. One parish council has considered the code of conduct and has expressly refused to adopt it because of the requirement for members' interests to be published on-line. The parish clerk has asked if I would be prepared to go and speak to the councillors of that council and I have accepted an invitation to do so on the 4th March.
 18. Of the councils that have adopted our code of conducted 12 have delegated both the power to grant dispensations and sanctions to Uttlesford District Council. Two councils have delegated only the power to grant dispensations and one council has granted only the power to impose sanctions.
 19. In addition to the changes to the standards regime, the Localism Act introduced a power of general competence. In summary this is a power for a council to do anything which a natural person could lawfully do. The

power is automatically available to all principle councils (district councils and above). However it is only available to town and parish councils which meet certain qualifying criteria, namely that at least two thirds of the councillors must have been declared to have been elected and that the clerk must hold a prescribed qualification.

20. Councils are creatures of statute. Prior to the Localism Act 2011 this meant that they could only act in accordance with a specific statutory power. The general power of competence is therefore a very valuable one and indeed the government encourages its use as a power of first rather than last resort.
21. I have enquired of the town and parishes as to whether they have the general power of competence. I asked the clerks to indicate if the council had the general power of competence and if not if the council met the electoral and/or clerk qualification requirements.
22. Of the 53 towns and parish councils in the district 27 responded. Of these only 5 had the general power of competence. Unfortunately the responses did not all identify whether the criteria were met but at least 2 parish councils have qualified clerks but do not meet the electoral criteria and at least 10 meet the electoral criteria but do not have qualified clerks. That leaves 10 councils out of the 27 that responded that appear to meet neither of the criteria.

Risk Analysis

23. There are no risks to the council arising from this report.

Committee: Standards

Agenda Item

Date: 3 March 2014

8

Title: High Court decision on standards

**Author: Michael Perry, Assistant Chief Executive
Legal, 01799 510416**

Item for decision

Summary

1. This report is to inform members of a recent High Court decision concerning the Code of Conduct.

Recommendations

2. That Members note this report

Financial Implications

3. None.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. In December 2013 the High Court gave judgement in the case of R. (on the application of Benjamin Dennehy) –v- London Borough of Ealing.
7. Councillor Dennehy maintained a blog site under the heading ‘Cllr Benjamin Dennehy (Conservatives) putting Hanger Hill residents first’. In March 2012 he published an item on that blog entitled ‘the Southall Card’. Under this heading the following passages were included:-

“Back to Southall and how this all came about. Southall is a constant on the public purse in Ealing. It is home to the worst concentration of illegal immigrants in the UK. It has gambling, drinking, drug, prostitution and crime issues unlike many other parts of London. It is an arguably Indian community who say they deplore this behaviour but yet it is that very same community that harbours and exploits their own people in squalid third-world living conditions. A simple rule: supply and demand. If there was no demand for gambling in Southall, why then does it have such concentration of gambling shops? I can say the same for prostitutes, drugs and drinking. Betting shops want to make money and usually exclusivity is the best way, but not in Southall though, one shop, two shops, three shops more can’t stem the demand. I heard that it is the most lucrative area threatening shops in the UK. I suspect that illegal rent money is letting people live it up. The exploding population of illegal immigrants is a constant on the public purse. Illegal immigrants don’t pay tax. The legitimate immigrants exploiting them in these squalid bed sheds don’t pay tax on their rental income. If these sort of people exploit the desperate what other scams are they perpetrating I ask? Criminality is endemic in Southall”.

8. A complaint was made to the Standards Committee of Ealing Borough Council. Although the complaint fell to be dealt with under the old code of conduct as the complaint was made in the transitional period for the purposes of the Localism Act 2011, the hearing procedure would have been under the new arrangements. The Standards Committee found that Councillor Dennehy had failed to treat the residents of Southall with respect by the posting on his blog and had also brought his council into disrepute. The sanction imposed by the Standards Committee was to ask Councillor Dennehy to issue an appropriate apology.
9. Although based on the old code the case has a relevance to this council as the relevant provisions of the old code are carried forward to that which applies today.
10. The first point of interest is that the High Court upheld the finding of the Standards Committee that Councillor Dennehy had failed to treat others with respect. This finding goes against decisions of the First Tier Tribunal, formerly the Adjudication Panel, in previous cases. It had previously been held that the requirement to treat others with respect related to identifiable individuals and not groups of people. Thus a councillor who was severely and unjustifiably critical of a council department was held not to have breached the code of conduct by treating others disrespectfully. It does not appear from the judgement that this point was argued before the court and the decision cannot therefore be taken as being binding authority on this point. Further, even if the

decision of the standards committee had not been upheld on this point, the finding of bringing the council into disrepute may well still have stood.

11. As is frequently the position with these cases Councillor Dennehy argued that his right to freedom of expression contained in the Human Rights Act was infringed. Not surprisingly the court found that Article 10 of the European Convention on Human Rights guaranteeing freedom of speech was engaged, that the code of conduct did interfere with that right, but that the interference was justified in all the circumstances. The court held that Councillor Dennehy comments “were not the expression of a political view, but an unjustified personal and generic attack on a section of the public. The subjects of the speech were not politicians, but ordinary members of the public and, as such, the comments did not attract the higher level of protection applicable to political expressions and the comments would plainly have undermined confidence in local government, the preservation of which is a recognised aim of the code”. This approach is now long established in dealing with the code of conduct and is not capable of being criticised.
12. The case is illustrative of the fact that notwithstanding the absence of effective sanctions councillors do still take the code of conduct seriously. As mentioned this case was dealt with under transitional arrangements. At the time the matter came before the standards committee of Ealing Borough Council there was no power of suspension and it was not possible to refer members to a higher tribunal with a view to disqualification. The only sanction available to the council was one of censure. Instead of applying a sanction the standards committee asked Councillor Dennehy to apologise. Councillor Dennehy refused to do so. The matter could have rested there. However, instead of accepting this Councillor Dennehy incurred expense by way of instructing solicitors and counsel to pursue his ultimately failed attempt to secure judicial review. Although the law report does not state as much it is probable that in addition to his own costs Councillor Dennehy was also ordered to pay at least part of the cost of the London Borough of Ealing.

Risk Analysis

13. There are no risks attached to this report

Committee: STANDARDS COMMITTEE

Agenda Item

Date: 3 March 2014

9

Title: Monitoring Officer's Update

**Author: Michael Perry Assistant Chief Executive –
Legal and Monitoring Officer**

Item for information

Summary

1. This report is to update members on activity regarding Standards over the past council year

Recommendations

2. Members note this report

Financial Implications

3. None

Background Papers

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

None

Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. The year so far has been relatively quiet with regard to Standards issues. Members will recall that the Act came into effect for these purposes on 1 July 2012. For the period from that date to the end of that council year (30 April 2013) 5 allegations of a breach of the Code of Conduct were received. Only 1 of those was passed for investigation and that led to a finding of no breach of the Code.
7. Since 1 May 2013 there have been 4 allegations of a breach of the Code. All of these involved district councillors in their capacity as such. No complaints have been made regarding parish or town councillors although I have recently been informed that some may be forthcoming shortly (details of which appear below).
8. With regard to the allegations received 2 were passed for investigation and 2 were not. Of the 2 cases investigated 1 led to a finding of a breach of the Code of Conduct but no sanction was considered necessary. In the other case there was a finding of no breach.
9. In addition to dealing with complaints of alleged breaches of the Code I have had a number of requests for dispensations to permit councillors with pecuniary interests to take part in the debate and vote. All requests for dispensations have come from town or parish councillors.
10. One request was from a parish councillor with a pecuniary interest relating to his employment. He applied on the ground that it was in the public interest or otherwise appropriate for a dispensation to be granted. He did not however offer any explanation as to why either ground applied. I refused the dispensation at first instance and invited further clarification which was not forthcoming. The refusal therefore stood.
11. In another instance a town councillor requested a dispensation in connection with a planning application for a site very near to his home. He said that it was in the public interest for a dispensation to be granted as his constituents had asked him to represent their interests. Given the nature of his disclosable pecuniary interest I did not grant a dispensation giving permission to vote but I did grant a dispensation allowing the councillor to take part in the debate.
12. All members of a parish council applied for dispensations to deal with a particular issue as they all had pecuniary interests. I was satisfied that without dispensations the business of the council would be impeded and therefore granted the whole council dispensations to speak and vote.
13. Very recently I was contacted with a view to granting dispensations to members of another parish council. When first contacted I noted that only 2 of the councillors had registered their interests with me. I indicated that I was not prepared to consider applications from councillors who were in breach of the Code by not having registered their interests. This prompted 3 other councillors to complete their register.

14. I also advised that the interests concerned were pecuniary interests. This advice was challenged by some of the councillors but the circumstances as explained to me were such that the interests clearly were pecuniary as defined by the Code and I maintained my position.
15. I was informed that only 2 members of the council did not have the pecuniary interest concerned. Therefore the business of the council would have been impeded as the council would not have been quorate to consider the matter. However the issue was very controversial and the interest was such that a member of the public with knowledge of the facts would have reasonably considered that the judgment of the public interest by those with the interest would have been prejudiced. I therefore decided to grant no more than 2 dispensations to ensure that in the event that 1 member did not attend the council would be quorate.
16. I granted a dispensation to speak and vote to the first member with the pecuniary interest to apply. Thereafter I was informed that there were in fact 3 members of the council who were not conflicted out of the issue. I therefore declined to issue further dispensations to vote but I did grant others who applied dispensations to enable them to take part in the debate.
17. Apparently at the meeting some members indicated that notwithstanding the advice I had given they intended to vote. The meeting fell into disorder with one councillor allegedly swearing at the public. The chairman called the meeting to an end because of disorder before a vote could be taken on the issue. It is this meeting which may give rise to complaints of a breach of the Code referred to in paragraph 7 above

Risk Analysis

18. There are no risks associated with this report