



Uttlesford District Council

Chief Executive: John Mitchell

Standards

Date: Monday, 09 March 2015
Time: 16:00
Venue: Committee Room
Address: Council Offices, London Road, Saffron Walden, CB11 4ER

Members: Councillors C Cant, K Eden, E Godwin, M Lemon (Chairman), J Loughlin, J Parry, J Menell, D Watson

Other Attendees: Mrs G Butcher-Doulton, Mr V Lelliott, Mr D Pearl and Mrs C Wellingbrook-Doswell (Independent Persons)

Public Speaking

At the start of the meeting there will be an opportunity of up to 15 minutes for members of the public to ask questions and make statements subject to having given two working days prior notice.

AGENDA

PART 1

Open to Public and Press

- 1 Apologies for absence and declarations of interest.
- 2 Minutes of previous meetings
- 2i Minutes of the meeting held on 13 October 2014 5 - 18
- 2ii Minutes of the meeting held on 5 November 2014 19 - 26
- 3 Matters arising.

4	Annual Report to Full Council	27 - 30
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7	Any other items which the Chairman considers to be urgent	

MEETINGS AND THE PUBLIC

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Telephone: 01799 510510

Fax: 01799 510550

Email: uconnect@uttlesford.gov.uk

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**STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON
ROAD SAFFRON WALDEN at 4pm on 13 OCTOBER 2014**

Present: Councillor R Lemon – Chairman
Councillors C Cant, E Godwin, J Loughlin and J Menell
Mrs G Butcher-Doulton, Mr V Lelliott (Independent
Members)

Also present:
Councillors A Dean and T Knight

Officers in attendance: R Dobson (Principal Democratic Services
Officer) and M Perry (Assistant Chief Executive – Legal
and Monitoring Officer)

Members of public present: C Griffiths (Debden Parish Council Clerk),
Councillors S Luck, R Simmons, J O'Brien (Debden
Parish Council), A Hynes, D Wilson and C Wilson
(Debden residents).

CHAIRMAN'S ANNOUNCEMENT

The Chairman opened the meeting and asked all the parties present to introduce themselves.

PUBLIC SPEAKING

Statements were made by Councillor Luck, Mr D Wilson, Mrs C Wilson and Mr Hynes. A summary of their statements is appended to these minutes.

Councillor Knight expressed a wish to speak. The Monitoring Officer said whilst the constitution did not now include provision for any member to speak at any Committee, it would be appropriate to permit them to do so with the consent of the Chairman.

The Chairman said he would be content to exercise his discretion to enable Councillor Knight to speak.

SC10

APOLOGIES AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

SC11 **MINUTES OF THE PREVIOUS MEETINGS**

The minutes of the meetings held on 16 June and 5 August 2014 were received and signed by the Chairman as a correct record, subject to the amendment of the list of those attending the meeting on 5 August to include Councillor Knight.

SC12 **MATTERS ARISING**

(i) **Minute S4 – Annual Report to Full Council**

In reply to a question from Mrs Butcher-Doulton regarding a meeting to discuss the role of independent persons in advising the subject member, the Assistant Chief Executive – Legal said he had intended to hold a meeting after he had attended the Monitoring Officers’ conference, and arrangements would now be made.

SC13 **CORRESPONDENCE FROM DEBDEN PARISH COUNCIL**

The committee considered a report on correspondence received from Debden Parish Council, following the conclusion of an investigation into an allegation that a member of that council had breached its code of conduct.

The Assistant Chief Executive – Legal referred the committee to the report setting out the background of how the investigation was conducted. He said the question of the apology was first raised in documentary evidence Councillor Luck had sent to him. At that stage, he had given that evidence little weight. At the hearing, Councillor Luck’s solicitor had handed him two statements, and on the balance of probabilities, he had then accepted that Councillor Luck had made an audible apology. The Parish Council had accepted the committee’s findings, and that Councillor Luck did not breach its code of conduct. The weight of the evidence produced at the meeting was only relevant for mitigation. Under the old regime there were significant sanctions; under the new regime the only sanction was censure, therefore there was a need to be proportionate. Councillor Luck’s solicitor had said that if the Standards Committee felt the evidence of the apology was not enough, he would be prepared to make a further apology. Therefore it would not have been proportionate for the committee to censure him.

The Assistant Chief Executive – Legal said if the committee had had any concerns regarding whether to find as a fact that an apology had been made, it would have been possible to adjourn the hearing for further enquiries to be made. However this would have been a

disproportionate step, as to have adjourned the hearing to enquire into mitigation would not have been an appropriate use of resources.

The Assistant Chief Executive – Legal referred members to the report setting out the specific issues raised by the chairman of the parish council to the chairman of the Standards Committee, and his comments in response. Members were asked to consider how the Committee would respond.

The Assistant Chief Executive – Legal said his report detailed how he had viewed evidence about whether an apology had been made. People might recollect events differently, not through any dishonesty. On the evidence, in the light of what was produced on the day, it was found that on the balance of probabilities an apology was made.

Mrs Butcher-Doulton said whilst the background made sense, she was concerned about the procedure. Neither side seemed content with the outcome of the hearing. She agreed with the principle of acting proportionately in terms of the council's costs, but to be ridiculed in the press was not helpful. She was concerned that the two independent persons had voiced opinions, as they should be part of the process.

The Assistant Chief Executive – Legal said it was not correct to say that neither side were content, as he recalled after the hearing that Mr Luck's solicitor had said the finding was very fair.

Mrs Butcher-Doulton said that subsequent press comment had changed the perception of both parties.

The Assistant Chief Executive – Legal said the Standards Committee's function ceased with its decision, and any further issues following that decision had come from the parish council.

Councillor Loughlin said the parish council was at liberty to make a complaint, but the committee had come to its decision and she thought it was the right decision. All members of the committee had had the opportunity to speak. It had been Councillor Knight who made the complaint, and not the parish council. The issue seemed to have escalated, and had done no one any favours. Before the hearing Mr Luck was vilified in the press. He had this evening read out to the committee an extract from the local parish magazine, but he could take action to rebut that comment.

The Assistant Chief Executive – Legal said the parish council was objecting to a finding of fact that the Standards Committee had made. However some people would inevitably be disappointed with its decision. The committee had found that Mr Luck had made an apology at the meeting in February which was sufficiently audible, as it was entitled to. If it could not reach a conclusion it would have had to give the benefit of the doubt to the accused. The committee had to make a

finding of fact and then stick to it, and there was nothing amiss with the procedure.

Councillor Lemon said the Standards Committee had had the benefit of independent legal advice.

Councillor Knight said she considered the process was not applied correctly in many ways and there was conflicting evidence. She said that at the hearing Councillor Luck had not stated the whole truth, but that no-one else could comment. She had been concerned that having been told witness statements would not be admitted, subsequently they were admitted. She was also concerned that witness statements taken by telephone were admitted. She would like this case to be used as a case study.

Councillor Lemon said these comments should be made in relation to the agenda item regarding procedure for complaints to the committee.

The Assistant Chief Executive – Legal said after first concluding that Councillor Luck had not tendered an apology he had then been persuaded that he had done so, only on the morning of the hearing. The evidence changed his and the Committee's mind, but it would have been disproportionate to obtain further evidence.

Councillor Knight said the validity of the evidence had not been checked.

The Assistant Chief Executive – Legal said the only available way in which the case could be re-considered would be by way of judicial review in the High Court.

Mrs Butcher-Doulton said the points raised should be taken on board.

Councillor Lemon said the committee would take notice of the comments which had been made.

AGREED that the chairman of the Standards Committee would reply to the chairman of Debden Parish Council, reflecting the responses stated in paragraphs 17 to 21 of the report of the Assistant Chief Executive – Legal.

SC14

MONITORING OFFICERS' CONFERENCE ON STANDARDS

The committee considered the report of the Assistant Chief Executive – Legal on topics of potential interest to the Standards Committee discussed at the recent conference for Monitoring Officers which he had attended.

Regarding the lack of effective sanctions under the new standards arrangements, the Assistant Chief Executive – Legal said the increase in the number of complaints under the new regime indicated the public were more interested in the finding of wrongdoing than in the consequences of it. The question had been considered as to whether the far more severe sanctions under the previous regime had been any more effective than under the present regime. The case of Councillor Bleakley of Wigan Council had been cited, where the imposition of various severe sanctions had nevertheless not acted as a deterrent to repeated serious breaches of the code of conduct.

Mrs Butcher-Doulton said she did not agree that stronger sanctions were not effective deterrents. She advocated considering further sanctions.

The Assistant Chief Executive – Legal said the committee could not consider further sanctions as it had no power to do so.

Mrs Butcher-Doulton said the committee should ask for a review of legislation regarding sanctions.

The Assistant Chief Executive – Legal said primary legislation would be required in order to re-open the question of sanctions, and whether a different government would view that question differently was unknown. Councillors like Mr Bleakley were few and far between, and those councillors the committee usually dealt with usually took matters far more seriously, and in fact tended to find being the subject of a complaint very stressful. The fact that some councillors were prepared to take the findings of a Standards Committee to judicial review showed how seriously members took the existing regime.

Mrs Butcher-Doulton said the effect of the previous regime might have been carried forward to an extent. The imposition of a sanction was not registered anywhere.

The Assistant Chief Executive – Legal said that where there had been a breach of the code of conduct this was recorded in public minutes.

Councillor Cant said the whole issue of standards regarding public office had been through many changes. There might be an opportunity to lobby government so that in serious cases there was the ability to refer a matter. Mr Bleakley should clearly not hold public office, and there ought to be a higher regime to deal with persistent conduct which brought a public office into disrepute.

The Assistant Chief Executive – Legal said at the conference the consensus was that although there were no sanctions, most members other than odd rogues did take the standards regime seriously. The view of the government was that correction would take place via the

ballot box. Certain types of breaches of a code of conduct were subject to criminal proceedings, for example failure to disclose a disclosable pecuniary interest, for which there was a sanction.

Councillor Dean said this topic opened up a whole discussion between the area of internal processes and public sanctions, as in a recent example in the media of the activities of a minister who was not fit to be a Member of Parliament. Parliament had considerable powers of recall, which this council did not have. The key was the strength of any process to support the democratic process.

Councillor Loughlin said it was surprising Councillor Bleakley had been re-elected.

Councillor Cant said if an officer had abused a member of staff in the way that Councillor Bleakley had done, there would be severe repercussions. The absence of any real sanction other than a slap on the wrist made a mockery of the system.

Councillor Lemon said members could not change the system, but its view could be made known to the Minister.

AGREED the Chairman of the Committee would write to the Secretary of State for Communities and Local Government to express the committee's concerns that the sanctions under the standards regime were not satisfactory.

The Assistant Chief Executive – Legal said one of the government's concerns was that the previous regime was excessively bureaucratic. Any provision for suspension of a member entailed provision for a right of appeal.

Regarding consideration of when the code of conduct applied to members, it was noted that Uttlesford had adopted the definition of "official capacity" used in the previous standards regime, so effectively its code in this regard was inconsistent with the legislation in that it effectively adopted the definition of "official capacity" under the previous standards regime. However legislation provided for minimum requirements for a code of conduct, and it was open to authorities to adopt more stringent requirements than those required by the legislation.

Members commented on the potential difficulties for councillors in rural areas in feeling they could never be "off duty".

Members agreed that the council's code of conduct should remain unchanged.

The issue of criminal convictions which councillors might receive was considered. It was agreed there should be no variation to the code of

conduct as since the proposed legislation to address criminal convictions of councillors had not been made into statute, there were difficulties for addressing the issue via the code of conduct.

Members considered the council's current practices in relation to the roles of independent members. The independent members spoke about their experiences. Mrs Butcher-Doulton said she did not feel the role of the independent person could be limited to providing "quality assurance", but should focus on ensuring rules were observed and providing support. Mr Lelliott said he had not had to advise a member so had found it straightforward to fulfil his role in deciding whether or not to conduct investigations and in advising the committee. Advising a councillor was difficult as it was not obvious whether the independent person should act as a friend or advocate, or simply to advise on procedure.

Members felt the role of independent person should be clarified. The Assistant Chief Executive – Legal said the input of the independent persons was valuable in deciding whether or not to hold an investigation. However the only statutory function of the role was to be available to the subject member and to advise the committee.

Councillor Loughlin said it was preferable for independent persons to have some experience of being a councillor or working with a councillor, to give them insight into how easy it was to be accused of a breach of the rules.

Mrs Butcher-Doulton said the presence of the independent person provided a reassurance to the public that the Standards Committee was not solely comprised of fellow councillors, which could otherwise give the impression that councillors favoured each other.

Councillor Cant said she felt councillors tended to be more harsh on fellow councillors, as they felt breaches of the code of conduct brought their office into disrepute.

Councillor Godwin said professional legal advice would be more important if she were a subject of an investigation than the advice of an independent person.

The Assistant Chief Executive – Legal said the resources of the council's small legal team were such that legal advice could not be provided to members, due to the need to ensure that legal officers could not be seen to pre-judge an investigation, or if they were required to advise the committee.

Councillor Dean asked whether a conclusion that no investigation was required was notified to all members of the committee.

The Assistant Chief Executive – Legal explained the procedure, which was to reach a conclusion by consensus with the independent person. If after investigation there was a finding of no breach, then the investigating officer's report was circulated and any member of the committee could then indicate whether they disagreed, in which case they could require an investigation, much like a call in.

There had not yet been a finding of no breach where members had disagreed; there had been some instances of a finding by the investigating officer that there had been a breach, but members had considered there had not been a breach. The calling of a meeting of the committee to determine whether there was no breach would be disproportionate in terms of time and cost.

Councillor Lemon asked members whether they were content with the existing system of potentially involving independent members in separate roles within the investigation. Members agreed the current system worked well.

Members also agreed there should be no change to the council's current arrangements in respect of protection from public disclosure of findings of no breach of the code of conduct unless requested by the subject member.

Members noted advice on fairness of process, in that Article 6 of the European Convention on Human Rights did not apply to the present standards regime, but did not prevent applications for judicial review.

The report described the practice of one council to go straight to a hearing if a case was considered worthy of investigation. The Assistant Chief Executive – Legal advised that such a procedure was inconsistent with the Localism Act 2011 which required authorities to have in place arrangements whereby complaints could be investigated.

Councillor Knight said in her view the council should have a procedure whereby a case went straight to a hearing.

The Assistant Chief Executive – Legal said investigation was necessary and that to proceed to a hearing without investigation was inconsistent with the legislation.

Councillor Knight said this matter should be considered in the light of the next item, which was the review of the procedure for dealing with complaints to the Standards Committee.

Councillor Cant said in her view there would be many more hearings if the system permitted a case to go to a hearing without an investigation.

Members agreed there should be no change to the current procedure.

The final paragraph of the report highlighted the view of those attending the Monitoring Officers' conference that investigations did not need to be "gold-plated", but should be proportionate to the likely sanction. Members agreed that the important outcome to try to achieve was that at the end of the process both the complainant and the subject member should consider the process had been fair.

AGREED there should be no change to the Council's Code of Conduct.

SC15

REVIEW OF THE PROCEDURE FOR DEALING WITH COMPLAINTS TO THE STANDARDS COMMITTEE

The committee considered a report reviewing the procedure for dealing with complaints regarding the code of conduct, in the light of experience gained in the two years since the procedure was adopted.

Amendments were suggested in response to comments received so as to make the code clearer.

Councillor Knight said she was concerned the procedure was not fair to either side, and she had a complaint regarding the latest case dealt with by the committee. She said perceptions could be very different to different people, for example there were different accounts in the recent case regarding the fact of whether someone had left a meeting before it had closed. It was not satisfactory that the Monitoring Officer was judge, jury and executioner. In an investigation there should be two people so a balanced view could be obtained. She wished to treat this latest case as a case study. She acknowledged there was conflicting evidence, but the minutes of the meeting in question should have been relied on. Whilst an emailed request to amend the minutes to reflect an apology should be capable of being checked, telephone evidence should be supported by a transcript. Councillor Knight said letters produced at the hearing were not dated or signed, and one was allegedly not seen by the recipient. In her view, the balance of evidence changed on the day of the hearing but could not then be challenged.

Councillor Knight said she felt councillors had a life outside their role and had freedom of speech, so at a meeting they could say they were there as a member of the public. She understood this practice was permitted in some councils. In the case dealt with recently, she had answered a technical question about declaration of a disclosable pecuniary interest in the belief that she could "wear two hats", so had chosen to speak as a non-district councillor.

Councillor Knight said she was also concerned that a case could not be re-opened. The process jumped from the slap on the wrist of a censure, to judicial review. If further evidence came forward, the procedure should allow for review, and the current process was not a fair one. It would be more helpful if more substantial procedures could be drawn up, as the current process was very hit and miss. Confusion was unhelpful to the Standards Committee as it caused disquiet in public perception. If the committee had no teeth, what was the point? It was beyond belief that Councillor Bleakley, whose conduct at Wigan Council had been described earlier, had got away with such behaviour.

Councillor Lemon said training for parish councillors was important, and whilst tonight's agenda had been too full to include it, that topic would be considered at the next meeting.

The Assistant Chief Executive – Legal said he had provided training for parish councillors in roadshows and had also offered training on the Localism Act. Take up had been disappointing.

Councillor Knight said it should be mandatory that councillors including those co-opted were trained.

The Assistant Chief Executive – Legal said mandatory training was a matter for legislation.

The Assistant Chief Executive – Legal said the Council had a statutory duty to promote high standards of conduct and accordingly had adopted a code of conduct. The council had to have procedures for dealing with breaches of that code. The power to do this had been delegated from Full Council to the Standards Committee. In his experience, censure was taken seriously as members found being the subject of an investigation stressful.

Members considered how best to ensure training was taken up by parish councillors. The Assistant Chief Executive – Legal said he had written to all parish clerks, and it was not possible to do anything about failure to attend training. If there was a particular problem at a parish council he could arrange training, but he could not offer training on an individual basis.

Councillor Dean referred to the issue of members acting in a private capacity, and asked whether behaviour which was improper but was not criminal could be considered as subject to the code of conduct.

The Assistant Chief Executive – Legal said the test suggested at the Monitoring Officers' conference was whether the person in carrying out that act was describing him or herself as a councillor. An example would be writing a letter as a councillor to try to have a parking fine incurred by a relative lifted. In relation to the case considered earlier of benefit fraud, it was not part of the business of a council to engage in

benefit fraud, so it was not the business of a councillor to commit benefit fraud therefore the code of conduct did not apply, whereas it would apply to any false claim for expenses.

Councillor Knight asked what the position was in relation to a district councillor dealing with a matter on a personal level, and asking another councillor to put in a good word for them.

The Assistant Chief Executive – Legal said that conduct would be an abuse of their position as a councillor.

Councillor Cant said regarding reliance on telephone evidence, she would be keen to see telephone calls authenticated. The subject member's reputation was at stake so it was important to rely on sound evidence.

Councillor Godwin said the committee should tighten up the procedures. She was worried about the prospect of decisions being re-opened.

The Assistant Chief Executive – Legal confirmed decisions could not be re-opened.

Regarding suggested amendments to paragraph 14c of the code, in relation to the procedure to be followed for a hearing, Mrs Butcher-Doulton said the determination of whether live witness rebuttal evidence would be permitted should be considered not only by the Monitoring Officer and Chairman or other member of the committee, but also by an independent person.

The Assistant Chief Executive – Legal said he would be concerned at having too many people involved in the process. He did not have a preference as to whether the other person was a voting member of the committee, or an independent person, but considered two rather than three people to be better. Members agreed to leave the proposed amendment as it was.

Councillor Dean said in relation to paragraph 14b, where it was suggested that live evidence would not usually be given at a hearing, that this statement would change the onus away from live evidence. In his view it was important not to deter people from giving live evidence, as the impact from a live statement was often greater than a written one.

Councillor Loughlin said she agreed live evidence could be perceived as having more impact, and that sometimes a person needed to have their day in court.

The Assistant Chief Executive – Legal said the difficulty with live evidence was that it could extend the duration of the meeting

intolerably, which was not proportionate for the sanction which could be imposed.

Members commented further on the question of when live evidence could be permitted. Mr Lelliott said the situations where live evidence would be permitted were set out in the following subsections, so to include the statement that it would not normally be called would simply be inflammatory.

The Assistant Chief Executive – Legal said it was important to have regard to the expectations of live witnesses were called. If not called to speak they were likely to be disappointed. The council's reputation could then suffer. Statements were admissible, and the weight given to them was a matter for the committee. To adopt the procedure of the county court would be too expensive and not proportionate. There was provision in the suggested paragraphs for the subject member to call live evidence.

It was agreed to change paragraph 14b to "Live evidence will not usually be called by the Investigating Officer at the hearing."

AGREED to amend the procedure for dealing with complaints to the Standards Committee as set out in the report, save as to paragraph 14b, to be amended as stated in the above minute.

SC15

INDEPENDENT MEMBERS

The Committee considered a report informing members of the resignation of one of the independent members of the Standards Committee. The Assistant Chief Executive – Legal said that if members were content, two new independent persons could be recruited.

Members accepted there would be an additional cost to recruiting two independent persons, but acknowledged the benefit of having an additional person gaining experience.

Mrs Butcher-Doulton asked that the sub-committee which would be set up for recruitment of the new independent members should include one of the existing independent persons.

AGREED that:

- (a) There be no amendment to the job description and Person Specification for Independent Persons.
- (b) Members recommend to Full Council that a sub-committee of the Council be appointed for the purpose of

recruiting new independent persons, such sub-committee to include one of the independent persons of the Standards Committee.

- (c) That members recommend appointing two independent persons as soon as possible.

SC16

URGENT BUSINESS

The Chairman said he had been asked to take the following matter as an item of urgent business as a decision had been requested by 14 November. There was no other meeting of the committee scheduled before that date and it would not be proportionate for an extraordinary meeting to be called for the purpose of considering this report.

The committee then considered a report informing members of a draft protocol for co-operation between the police and Monitoring Officers with regard to allegations of improper conduct relating to disclosable pecuniary interests. Breach of any of the provisions relating to disclosable pecuniary interests was a criminal offence.

The Assistant Chief Executive – Legal said in his view it was doubtful whether the protocol was necessary, for the reasons set out in his report. He had grave doubts as to the governance arrangements, and had concerns with regard to the provision in the draft Protocol which placed a burden on the Monitoring Officer to determine the seriousness of a complaint and whether it should therefore be reported to the police. The Assistant Chief Executive – Legal said his view was that any decision on whether or not a matter should be investigated should rest with the police.

AGREED the council should not sign up to a draft protocol between Essex Police and district councils.

The meeting ended at 6.20pm.

SUMMARY OF PUBLIC STATEMENTS

Councillor Luck

Councillor Luck referred to submissions he had circulated to the Committee before the meeting, in which he contended that the item on the review of procedure for dealing with complaints to the Standards Committee did not fully address procedural flaws. He said he had benefited from the advice of the former Independent Person, Allen Brobyn. Mr Brobyn had advised him that the change in the Standards regime restricted the rights of the subject member. The report contained no proposals to clarify the role of the Independent Member.

Consequently he had submitted “tainted” evidence to the committee. Councillor Luck said he had expected the matter to be dealt with by a meeting with the Monitoring Officer and independent persons, and he urged the committee to meet as soon as possible and to proceed to recruit a new independent person. He asked that his submissions be considered.

Mrs C Wilson

Mrs Wilson said she found it confusing that a district councillor attending a meeting was subject to a code of conduct, but when attending other types of meeting was not subject to it. There should be a code of conduct to cover all proceedings.

Mr A Hynes

Mr Hynes said he had been asked by Councillor Luck to forward a witness statement. He had written down what he had heard. Subsequently the Monitoring Officer had decided his statement carried no weight, and he could not believe he was being dismissed as an unreliable witness.

Mr D Wilson

Mr Wilson expressed his frustration at the situation. He said the original complaint had been made by a self-proclaimed “off-duty” councillor, who was subsequently “on duty” and who left the meeting in question before it closed, so could not have known what was said. He had made a statement which was given very little weight. If it had been allowed by the Monitoring Officer, Councillor Luck’s apology would have been disclosed. In his view the new procedures were too restrictive.

Councillor Luck then quoted from a letter sent to a parish publication referring to the finding of the Standards Committee that there had been no breach, and asserting that this finding was not a correct reflection of what had taken place. He said this statement had been made after the committee had made its finding.

EXTRAORDINARY STANDARDS COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10.00 am on 5 NOVEMBER 2014

Present:- Councillors C Cant, J Loughlin and J Menell (Uttlesford Members)
Mrs G Butcher-Doulton (Independent Member)

Officers in attendance:- M Cox (Democratic Services Officer)
C Olivia (Solicitor) and M Perry (Assistant Chief Executive – Legal and Monitoring Officer).

Also present: Councillor Richard Broad (Hatfield Broad Oak Parish Council).

SC17 ELECTION OF CHAIRMAN

RESOLVED that Councillor C Cant be elected Chairman for the meeting.

SC18 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

SC19 HEARING INTO AN ALLEGATION OF A BREACH OF THE CODE OF CONDUCT

The hearing had been called to determine an allegation that Councillor Richard Broad had breached the Code of Conduct of Hatfield Broad Oak Parish I Parish Council.

Report of the Monitoring Officer

The Monitoring Officer presented his report. He explained that Cllr Keith Artus of Hatfield Parish Council had made a number of complaints that Cllr Richard Broad, the Chairman of the parish council had breached the Code of Conduct.

The independent member and the Monitoring Officer having considered the complaints found that four of them did merit investigation, all of which concerned the proposals for a new sports pavilion on the village green in the parish. The complaints passed for investigation alleged that Cllr Broad:-

1. Repeatedly failed to record a non-pecuniary interest in that he holidays with a member of the cricket club executive and is friends with other cricket club executive members.

2. Advised councillors that the working group established to progress the development of the pavilion would not prepare any agendas, or produce meeting minutes or notes, and that the meetings will not be scheduled or announced (effectively in secret, even to parish councillors).
3. Authorised correspondence to third parties (grant funders) in the name of or on behalf of the parish council without authority or approval from the council and not providing copies to councillors.
4. Wrote reports for the village magazine in the name of the council without authority or approval from the council.

Facts not in dispute

The report explained the background to the report and the facts which were not in dispute.

The plans and proposals for the establishment of a village green and sports pavilion in Hatfield Broad Oak had been controversial within the parish. Cllr Broad was a member of Hatfield Broad Oak Parish Council and bound by its code of conduct.

The complainant was Cllr Artus, who was a trustee of Hatfield Broad Oak Village Green Company (“HBOVGC”) a registered charity which had promoted and raised funds for a scheme, which was not now being supported by the parish council as it was considering a smaller scale proposal.

At the meeting on 13 November 2013 the parish council had resolved to dissolve the existing development group and set up a new project management group to fund, design and build the new pavilion. The Council’s long-term policy was to minimise costs to the public, to let the pavilion to a body representing sports organisations in the village, but to retain ultimate responsibility for the pavilion under the terms of the head lease. Cllr Broad had declared a non-pecuniary interest at this meeting as he knew some people who might be interested in being appointed to the new project group.

At the next meeting, on 11 December 2013, Cllr Artus put forward a number of motions regarding the pavilion, its funding and future use, which were defeated. Cllr Broad did not declare an interest at this meeting.

On 29 January 2014, the parish council appointed a Pavilion Working Group (“PWG”). Cllr Broad declared a non-pecuniary interest at this meeting to the extent that he knew some of the candidates. There was no evidence that the parish council had approved the working group’s

remit and terms of reference at that meeting or at any subsequent meeting.

At the parish council meeting on 9 April 2014, the council resolved that the village green and any buildings or structures would remain in the control of the parish council and a sub-lease or rental agreement would not be granted to the Village Green Company. Cllr Broad did not declare an interest in this item at the meeting.

After the meeting Cllr Broad wrote and sent various letters and emails. The minutes do not indicate that these letters were approved or requested by the council.

At the parish council meeting on 14 May 2014 there were further discussions regarding the proposed pavilion and subsequently Cllr Broad submitted an explanatory article to the parish magazine. The minutes did not indicate that the article was approved or requested by the Council.

Cllr Broad acknowledged that he was a friend of a member of the cricket club and had been on holiday with him. He also knew other members of the cricket club.

Facts in dispute

There was a dispute as to whether the revised proposals for the pavilion would make it suitable for use by a variety of sporting clubs or fit for use by the cricket club only. No findings were made on this issue but it was highlighted as a background factor to the complaint.

Legal issues

The Monitoring Officer explained that under s.101 Local Government Act 1972 a council could only discharge its functions by itself, through a committee or sub-committee, by an officer of the council or by another local authority. For a parish council there could be no delegation to or performance of a function by an individual member. The minimum number of members which could be appointed as a committee was 3.

He explained that working groups could include persons who were not members of the council but they were governed by the standing orders of the appointing council. Hatfield Broad Oak Parish Council's standing orders stated that any appointed advisory committees and working groups could comprise councillors and non-councillors. They stated that council and committee meetings should normally be held in public but did not mention the application of this to sub-committees and working groups.

Findings as to whether the facts (which are not disputed) amount to a breach of the Code of Conduct

The Monitoring Officer explained his findings as to whether the four complaints had breached the Code of Conduct

1) Failure to declare a non-pecuniary interest

Cllr Broad accepted that his friendship with a member of the cricket club constituted a close association. It was not alleged that there was a pecuniary interest in this instance but if the matters being considered would impact upon his friend's wellbeing to a greater extent than the majority of other persons living or carrying on business in the ward affected by the decision, this would constitute a non-pecuniary interest. At the meetings in November and December 2013, Councillor Broad declared non-pecuniary interests on the basis that his friend was interested in becoming a member of the Pavilion Working Group. However, at other meetings held in 2014 he failed to declare an interest

It was considered that Councillor Broad did have a non-pecuniary interest because the downsizing of the proposed pavilion would have the effect of reducing costs. This would reduce the amount of money the parish council would have to raise in order to build the pavilion, which made it likely that the building would be completed and ready for use by the cricket club at an earlier date. This would affect Cllr Broad's friend's wellbeing to a greater extent than the majority of people living in the ward most of whom would not take part in sports activities.

It was found that Cllr Broad failed to declare a non-pecuniary interest and had therefore breached the Code of Conduct.

Cllr Broad had failed to appreciate that the interest extended beyond the appointments to the pavilion working group. The Monitoring Officer believed that if he had been aware of this he would have declared the interest and expected that he would do so if the situation arose in future.

2) The process to establish the Pavilion Working Group.

It was explained that if a decision was made by the council as a whole it could not be the subject of a complaint against the Chairman. It could only be a breach of the code of conduct if the Chairman was acting alone.

The minutes of the meeting on 29 January 2014 showed that the PWG had been appointed by the council. The terms of reference of the group should have been determined by the council either at that time or at a later meeting. The parish council had instead agreed that the Chairman and Vice-Chairman should discuss the remit with the working group.

This was a flawed decision but as it was made by the parish council, it was not relevant for the code of conduct.

There were no standing orders set up to govern the operation of the PWG. On 14th May a motion was put to the parish council that meetings of the PWG should be open for councillors to attend and that the group should publish agendas and minutes. This motion was defeated. This decision was also a resolution of the parish council and could therefore not form the basis of a complaint against the chairman.

The Monitoring Officer concluded that there had been no breach of the code of conduct on the issue of the conduct of the PWG.

3) & 4) Publication without the authority or approval of the council.

The investigation had found examples of e-mails or letters from Cllr Broad which might be considered to have been written on behalf of the parish council.

The Code only applied when a councillor was conducting the business of his authority, acting or giving the impression of acting on behalf of his authority. It was found that in relation to the correspondence Cllr Broad was holding himself out as acting on behalf of the council when he sent them and was subject to the Code of Conduct at the time.

There was no evidence that the parish council requested, authorised or approved any of the correspondence or the articles. As individual members should not undertake actions on behalf of the council the correspondence ought to have come from the parish clerk and not from Cllr Broad.

In relation to this issue, the relevant section of the Code were as follows

Section 3.3.7 - To require a councillor not to do anything that might bring his authority or his office into disrepute

This was interpreted as action which would lessen the public's confidence in the ability of that member to perform the functions of his office.

In relation to the correspondence, it was considered that the information in the letter would be helpful to the council in its deliberations and the questions were reasonable. The other items of correspondence merely reported factually what the council had resolved to do. The parties had a legitimate interest in receiving this information.

With regard to the article, it appeared to be a regular occurrence for the chairman to issue such articles. Although not strictly in accordance with S101 the public would not be aware of this. They would expect the parish chairman to write letters on behalf of the council and publish

articles on its behalf. There had been no complaints prior to this one and there appeared to be a culture of failing to adhere rigidly to the provisions of s.101 of the Act.

The Monitoring Officer believed that the public would judge the actions of Cllr Broad in the light of the culture of the council rather than a strict interpretation of the legislation and found that he had not breached the Code in this respect

Section 3.3.8- not to use a member's position to confer or secure an advantage or disadvantage,

The Monitoring Officer referred to a First Tier Tribunal Case - Cllr Myers of Walford Parish Council – when the councillor had written to developers complaining about a development within his parish, signed as vice-chairman of the parish council, but with no authority from the council. Even though he stated that the parish council would have agreed to the letter being sent, the First Tier Tribunal held that sending the letter in such a way as to give the clear impression that he was writing with the authority of the parish council did amount to using his position improperly to secure a disadvantage for another person.

The Monitoring Officer concluded that it was highly probable that the offer of grant funding to the Village Green Committee would have been withdrawn but this would have been as a consequence of the council's decision not to grant a lease of the village green and not as a result of Cllr Broad's actions. It was not considered that Cllr Broad was using his position improperly to secure the benefit of the grant funding for the project.

Questions to the Monitoring Officer

Mrs Butcher-Doulton asked for further clarification about the reference to the culture of the organisation. The Monitoring Officer explained that instead of being channelled through the clerk, individual councillors were charged with carrying out tasks contrary to s.101 but this would not seem unusual to the public. As none of the complaints concerned actions that were outside the culture of HBO, it was considered that Cllr Broad's actions were not likely to reduce public confidence in the parish council or in Councillor Broad as a Chairman and councillor.

In answer to a question it was pointed out that although the parish council had habitually ignored s.101 since 2010 there had been no complaints from the public.

Councillor Cant asked about the relevance of the Myers Case in relation to this complaint. It was explained that in this case Cllr Broad appeared only to be conveying information and not trying to obtain advantage or disadvantage when sending the correspondence.

It was confirmed that in law the Chairman had no greater authority than other members but this was different to the public's perception who would expect letters to be sent from the Chairman.

In answer to a question from Mrs Butcher-Doulton the Monitoring Officer explained that there was nothing unusual about the leasing arrangements of the proposed village green and pavilion to a third party organisation.

Statement by Councillor Broad

Councillor Broad acknowledged that he hadn't declared a non – pecuniary interest at meetings where he was required to do so. However he said this was an oversight and he had not intended to mislead. He apologised to the committee.

He said that Hatfield Broad Oak Parish Council was a fractured council. There were two factions, each with different views and strong personalities on either side. The majority of parish councillors were trying to do the best for the community and not intending to mislead and if mistakes were made this was partly down to lack of training and knowledge.

He confirmed that 90% of problems had been caused by the village green and the pavilion and this conflict had spilt over to other areas. He said this was a difficult time and he was aware that the parish council might not always be operating in the proper way. Up to 40/50 people attended some council meetings and the atmosphere could be unpleasant at times. He agreed that there was a culture of individual councillors taking on roles from very basic jobs right up to large decisions.

In answer to a question, he said that the parish clerk was snowed under with work, which was one reason why she didn't deal with all the correspondence. The clerk had been with the parish council for 14 months and was still undertaking training.

Councillor Broad was asked why he hadn't declared an interest on all occasions. He explained that the clerk had advised him of his need to declare an interest before the appointment of the working group as he was close friends with one of the applicants. He had done this but hadn't realised he should also declare an interest when other related matters were being discussed. He now understood this and assured the committee that this wouldn't happen again.

Councillor Loughlin said there appeared to be a 'them and us' situation in the parish council and asked if it was possible to arrange mediation. The Monitoring Officer said this was not available but he would write to the parish clerk about parish council's governance arrangements.

Councillor Broad and the Monitoring Officer left the room at 3.30 pm and returned at 3.50 pm and announced the following decision

Decision

The Committee agreed with the conclusions of the Monitoring Officer's report and found that Councillor Broad of Hatfield Broad Oak Parish Council had breached the code of conduct by failing to declare a non-pecuniary interest at meetings of the parish council when matters relating to the village green were discussed, but there had been no other breaches of the code.

Councillor Broad realised his mistake and apologised to the committee, so the committee therefore felt that no further action should be taken.

The meeting ended at 4.00pm.

Committee: STANDARDS

Agenda Item

Date: 9 March 2015

4

Title: ANNUAL REPORT TO FULL COUNCIL

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

Item for decision

Summary

1. It is considered good practice that the Standards Committee should make a report on an annual basis to Full Council. This report is to seek members' approval as to this year's annual report to be presented to Full Council.

Recommendations

2. That members approve the draft report (attached) for presentation to Full Council by the Chairman of the Standards Committee.

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. The draft annual report explains the composition of the Standards Committee and details the work undertaken by the Committee during the past year.

Risk Analysis

7. There are no risks attached to this report.

Annual Report to Full Council Uttlesford District Council's Standards Committee 2014-15

Background

It is now almost 3 years since the standards regime under the Localism Act 2011 came into force. Functions under the Act cannot be executive functions and the Council therefore appointed a Standards Committee to be responsible for standards. As the 2011 Act contains no power to appoint a Standards Committee the Committee is appointed under the Local Government 1972. Committees appointed under the 1972 Act should be politically balanced. The Council has operated a policy of appointing 2 members from each political group plus 3 independent members. Any member of the Council present when the Committee is appointed may effectively veto this arrangement and require the Committee to be politically balanced. It is to the credit of members that this has not happened ensuring that the Committee is free from any perception of political control.

Independent Members

When the Localism Act became effective the Council appointed 3 independent members. One resigned after 2 years in office as he moved to another part of the country. Another has indicated that he will not seek re-appointment. Following a recruitment exercise the Council has appointed 2 new members to join the Committee with immediate effect and the Committee look forward to working with them and the remaining independent person who has agreed to be re-appointed.

In addition to taking part in committee meetings, the independent persons fulfil three functions. In the first instances, when a complaint of a breach of the Code of Conduct has been received one of the independent persons works with the Monitoring Officer in considering the complaint and determining whether it merits an investigation under the council's published criteria. The council has a statutory duty to make an independent person available to give his or her views to a member who is the subject of a complaint. Finally if following an investigation there is a finding of a breach of the Code of Conduct the matter must be considered by the Standards Committee and an independent person is required to give the committee his or her views on the investigating officer's report. When a complaint is received, each independent person is allocated one of these roles and the roles are rotated to ensure that the independent persons all gain experience of each of these functions.

Meetings during the year

The committee met on five occasions during the course of the year. Three of these were scheduled meetings. The other two were extraordinary meetings to consider reports that members of two parish councils had breached the authority's Code of Conduct. The committee upheld the findings of the investigating officer that there had been a breach of the Code in each case but considered that a further breach was not likely to take place and that no action was therefore required.

Actions undertaken by the Standards Committee

The Standards Committee reviewed the Code of Conduct in the light of developments since the 2011 Act became law but decided that it was working well and that it did not wish to recommend any changes to the Council at present. The Committee also reviewed the procedure for dealing with complaints and a number of amendments were made. The current procedure is available on the Council's website.

When following an investigating there is a finding of no breach of the Code of Conduct a report is circulated to all members of the Standards Committee. Any member of the Standards Committee (including the independent members) may request the Monitoring Officer to arrange a hearing to consider the report. If no such request is made within 10 working days of the report being circulated then the decision stands. This procedure has been working well with no call-ins to date.

Complaints received

In the period from 1 April 2014 to 31 March 2015 there were twenty two allegations received of a breach of the Code of Conduct compared to six in the previous twelve months. Fifteen councillors were the subject of these complaints. Two of these were against parish or town councillors and thirteen against district councillors. One complaint against a parish councillor was made by a fellow councillor; the other was made by the clerk. Fifteen complaints against district councillors were made by members of the public. Four complaints were made by fellow councillors and one by an officer. Two complaints against a parish and town councillors and five complaints against district councillors were passed for investigation. In one case a parish councillor was found to have breach the council's Code of Conduct but the committee decided that no action was necessary. None of the concluded cases involving district councillors led to a finding of a breach of the Code. Two investigations are pending (one against a town councillor the other against a district councillor).

Future actions

With the elections just having taken place the Committee's emphasis for the immediate future is upon training, particularly for new district, parish and town councillors.

Committee: STANDARDS

Agenda Item

Date: 9 March 2015

5

Title: TRAINING

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

Item for decision

Summary

1. This report is to inform members of the proposals for training councillors with regard to standards issues.

Recommendations

2. That members consider the proposals and determine whether they consider them adequate and if not what further matters they would wish to see covered or further training provided.

Financial Implications

3. None.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	Parish and town clerks have been asked to note the dates for training for their new members. If any further dates are added these will be notified to the town and parish clerks as soon as such dates have been set.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	None.
Sustainability	None.
Ward-specific impacts	None.

Workforce/Workplace	None.
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Situation

6. Elections will be held for the district council and the parish and town councils within the district on the 7 May 2015. Inevitably there will be a number of new councillors at both district and parish/town level. It is not yet known how many contests there are likely to be at parish and town level. However, all parish councils have a specified number of councillors. If there are insufficient candidates to fill all positions on a council then the council has a duty to endeavour to co-opt members to bring it up to its full strength.
7. All councillors are of course bound by the Code of Conduct. Training is therefore more than desirable for new councillors. It should also be offered as a refresher to existing councillors and to parish and town clerks.
8. The district council will be holding an induction session for new members on the 15 May 2015. This will include a presentation on the Code of Conduct. This will be repeated on the evening of the 18 May and I intend to invite all councillors (whether they have had previous experience or not) to attend that session should they wish to do so.
9. I have booked the council chamber to provide training for the towns and parishes at the council offices on the 20 and 28 May in the evenings. I intend to invite any district councillors who have not received training to attend either of those meetings should they wish to do so. In the event that there are a large number of councillors in the south of the district I shall explore the viability of hiring Foakes Hall at Dunmow which may be a more convenient venue for new councillors from the southern parishes.
10. The training will take the form of a Powerpoint presentation. I intend covering the following issues:
 - I. The historic background as to why we have legislation relating to conduct.
 - II. The requirements when adopting a Code of Conduct.
 - III. When the Code applies.
 - IV. The provisions of the Code of Conduct.
 - V. Registration of interests.
 - VI. Dispensations.
 - VII. Complaints procedure.
 - VIII. Sanctions for breach of the Code.

Risk Analysis

11.

Risk	Likelihood	Impact	Mitigating actions
District parish and town councillors are not familiar with the Code of Conduct.	3, whilst historically it has been possible to train most district councillors there has been resistance on the part of some members to attend training and 5 of the current members are believed not to have received training on the current Code. When the Localism Act came into effect less than 16% of the parish and town councillors attended training sessions.	3, councils whose members do not observe the Code are likely to suffer reputational damage.	Other than offering training it is difficult to see what steps the council can take to ensure compliance with the Code.

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: 9 March 2015

6

Title: MONITORING OFFICER'S UPDATE

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

Item for information

Summary

1. This report is to update members on standards issues since the last meeting of this committee.

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. Following the resignation of one of the independent members of the Standards Committee and an indication from one of the two remaining independent members that he would not seek re-appointment, on the 21 October 2015 the council appointed a committee to undertake a recruitment exercise for two new members of the committee and to make recommendations as to appointment to Full Council in due course.
7. The committee met on three occasions on 8 December 2014, the 6 February 2015 and the 18 February 2015.
8. The first meeting considered the job description and person specification, considered questions to be asked of candidates at interview and determined an advertising strategy to encourage applications.
9. The vacancies were publicised on the council's website shortly after the December meeting. A press release was issued at the same time. The vacancies were also advertised in all local newspapers circulating in the area in January 2015.
10. The website notice and press release produced little interest. Only one enquiry was received as a result of that exercise. The newspaper advertisements were far more successful. Twenty-three expressions of interest were received and the job description/person specification and application forms were despatched. Seven applications were received. Of those who enquired but did not apply three were disqualified from applying as having been members of councils within the previous five years or being married to a parish councillor. One person did not apply for health reasons. Another was unable to attend meetings during the day time. Another decided he felt that he did not meet the education levels required even though no education levels were specified.
11. At its meeting on the 6 February 2015 members considered the seven application forms received and decided to invite five of the candidates for interview. All five did attend and were interviewed on the 18 February. The quality of the candidates was very high and at the conclusion of the interviews the committee decided to recommend to Full Council that they should appoint Mrs Catherine Wellingbrook-Doswell and Mr David Pearl as the independent members of the Standards Committee. Council confirmed that appointment at its meeting on the 26 February.
12. At the meeting of this committee on the 13 October 2014, I reported back on a Monitoring Officers' Conference I had attended. I informed members that the view of the speakers was that a prosecution for failing to register or declare disclosable pecuniary interests or for taking part in a meeting where disclosable pecuniary interests exist were unlikely ever to take place. Very shortly after that meeting charges were brought against a county councillor for failing to declare disclosable pecuniary interests as a non-executive director of two companies and by participating and voting in matters in which those companies had an interest. The councillor concerned has pleaded not guilty to the charges and a trial has been set for the 24 April 2015. This is believed to be the first prosecution of its type under the Localism Act 2015. Members will recall that prosecutions for these offences must be authorised by the DPP. The DPP considered in this case the public interest justified a prosecution.

13. Further to the October meeting the chairman of the Standards Committee responded to correspondence received from Debden Parish Council in accordance with the views expressed by the committee. No reply has been received. The councillor who was the subject of that complaint however did complain to the Local Government Ombudsman regarding the way in which his complaint was dealt with. The Local Government Ombudsman has carried out an investigation and has expressed a provisional view that the council did deal with the complaint properly. Both parties have been given the opportunity to comment upon the Ombudsman's provisional findings and a final decision is expected shortly.
14. The Draft Protocol between Essex Police and local authorities has now been agreed by most councils in the county. The only councils who have not agreed to sign the same are Essex County Council and ourselves. For the reasons reported to members at the last meeting, I still consider the protocol to be unnecessary and inappropriate.
15. Members will note from a further report on this agenda that during the 1 April 2014 to the date of preparation of the report, 22 allegations were received of a breach of the Code of Conduct. Nine of those were received since the last meeting of this committee and six complaints have been received in this calendar year. Because of the protocol surrounding the pre-election period any investigations which are commenced and are ongoing at the end of March will need to be placed in abeyance until after the elections have been concluded. Members may be interested to know that in one complaint, a request was made for anonymity. The independent person and I considered that this request should be granted until such time as a decision had been taken as to whether the complaint should be investigated as the complainant was an employee of the council concerned. However, it would not have been possible to investigate the complaint without identifying the complainant. Having taken a decision to investigate subject to the complainant being identified, the complainant gave his consent and the investigation is now underway.
16. I have discovered that Saffron Walden Town Council has abandoned Uttlesford District Council's Code of Conduct and adopted a code of its own. This of course they are entitled to do but I can find no evidence from the minutes of the town council meetings that the council has complied with its statutory duty under s.28(1) Localism Act 2011 to secure that its code when viewed as a whole is consistent with the principles set out in that sub-section. I have drawn this shortcoming to the attention of the locum Town Clerk. The town council has also decided that in future it will deal with its own requests for dispensations revoking the delegation of authority to this council to deal with dispensations on its behalf.

Risk Analysis

17. There are no risks associated with this report.

