Standards Committee

You are requested to attend a meeting of the Standards Committee to be held in Committee Room 2, The Deane House, Belvedere Road, Taunton on 16 July 2009 at 14:30.

Agenda

1 Appointment of Chairman.

2 Appointment of Vice-Chairman.

3 Apologies.

4 Minutes of the meeting of the Standards Committee held on 15 April 2009 (attached).

5 Public Question Time.

6 Declaration of Interests. To receive declarations of personal or prejudicial interests, in accordance with the Code of Conduct.

7 Standards Board Intervention, Joint Standards Committees and Dispensations. Report of the Monitoring Officer (attached).

8 Probity in Planning. A recent booklet produced by the Local Government Association for Members of Planning Committees is attached for information and comment.

9 Draft Protocol for the Local Assessment Scheme. A copy of the draft is attached for consideration and comment by Members.

10 Update on complaints made against Councillors under the Local Standards Framework.

11 Parish Council Visits since the last meeting. Reports back from the Independent Members.

12 "The Way Forward" - Ideas for the future performance and working of Taunton Deane's Standards Committee.

13 Date of next meeting.

Tonya Meers
Legal and Democratic Services Manager

03 December 2009

Members of the public are welcome to attend the meeting and listen to the discussions.

There is time set aside at the beginning of most meetings to allow the public to ask questions.

Speaking under "Public Question Time" is limited to 4 minutes per person in an overall period of 15 minutes. The Committee Administrator will keep a close watch on the time and the Chairman will be responsible for ensuring the time permitted does not overrun. The speaker will be allowed to address the Committee once only and will not be allowed to participate further in any debate.

If a member of the public wishes to address the Committee on any matter appearing on the agenda, the Chairman will normally permit this to occur when that item is reached and before the Councillors begin to debate the item.

This is more usual at meetings of the Council's Planning Committee and details of the "rules" which apply at these meetings can be found in the leaflet "Having Your Say on Planning Applications". A copy can be obtained free of charge from the Planning Reception Desk at The Deane House or by contacting the telephone number or e-mail address below.

If an item on the agenda is contentious, with a large number of people attending the meeting, a representative should be nominated to present the views of a group.

These arrangements do not apply to exempt (confidential) items on the agenda where any members of the press or public present will be asked to leave the Committee Room.

Full Council, Executive, Committees and Task and Finish Review agendas, reports and minutes are available on our website: www.tauntondeane.gov.uk

 Lift access to the John Meikle Room and the other Committee Rooms on the first floor of The Deane House, is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available off the landing directly outside the Committee Rooms.

 An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter.

For further information about the meeting, please contact Democratic Services on 01823 356382 or email d.durham@tauntondeane.gov.uk

Standards Committee Members:-

Councillor D House
Councillor J Allgrove
Councillor S Brooks

Standards Committee – 15 April 2009

AGENDA ITEM NO. 4

Minutes of a meeting of the Standards Committee held in the John Meikle Room, The Deane House, Belvedere Road, Taunton on Wednesday, 15 April 2009 at 2.15 p.m.

Present: Mrs A Elder (Chairman)
Mr M Stanbury (Vice-Chairman)
Councillors Mrs Allgrove and House
Mr A Cottrell, Mrs J Hoyle, Mr R Macey, Mr P Malim OBE, Mr M Marshall, Mr R Symons and Mr B Wilson

Officers: Mrs T Meers (Monitoring Officer), Mr D Greig (Parish Liaison Officer) and Mr R Bryant (Democratic Services Manager)

Also present : Dr Michael Macaulay and Professor Alan Lawton

1. Apologies

Councillor Slattery and Mr L Rogers.

2. Minutes

The minutes of the previous meeting of the Committee held on 11 February 2009 were taken as read and were signed.

3. Declaration of Interest

Councillor Mrs Allgrove declared a personal interest as Chairman of the Somerset Association of Local Councils.

4. Good Practice in Standards – Research Project

The Chairman welcomed Dr Michael Macaulay, Reader in Governance and Public Ethics, University of Teeside and Alan Lawton, Professor of Public Sector Management, Hull University Business School to the meeting.

Dr Macaulay, whom most Members had seen at the 5th Somerset Standards Committees' Annual Forum back in January 2009, explained that he and Professor Lawton had been commissioned by the Standards Board for England to undertake a research project into notable practice in Standards.

Their research would be based on case studies focussed on different Councils across the country looking into the challenges faced and the outcomes.

They had come to Taunton Deane because they were particularly interested in the way in which the Council had successfully developed good relationships with its Parish Councils. Meetings had already taken place with the Chairman, Vice-Chairman, the Monitoring Officer and the Parish Liaison

Officer and a further discussion with the Parish representatives would be held at the conclusion of the Standard Committee's meeting.

Dr Macaulay added that the research project was due to be completed over the next two months and it was hoped that a draft report would be available before the end of July 2009. The main findings would be reported to the Annual Assembly of Standards Committees (the Standards Conference) in Birmingham towards the end of the year.

As well as explaining his main reason for visiting Taunton Deane, Dr Macaulay also received a number of questions from Members concerning his work with the Standards Committees of other local authorities. The answers he provided were as follows:-

- The size of Taunton Deane's Standards Committee was typical of most district Councils. However, three years ago the average appeared to be in the region of eight Members. One authority he visited had a membership of 40! Professor Lawton added that it was unusual to see such a high proportion of Independent Members on Taunton Deane's Committee – but his was not a bad thing;

- In response to what had impressed him at other local authorities, Dr Macaulay stated that he had been pleased to see such things as County-wide training, good governance, visits into schools, specific recruitment procedures and the use of pilot schemes to try new initiatives;

- How to effectively communicate the work of the Standards Committee was important, but down to the individual Council to decide how best to achieve this; and

- It was agreed that care needed to be taken to ensure the Committee did not become over-zealous. Adherence to the Code of Conduct was vital but additional contact with Borough and Parish Councillors was important too.

The Chairman thanked Dr Macaulay and Professor Lawton for the information they had provided and looked forward to receiving their draft report. Both remained in the John Meikle Room to observe the remainder of the meeting.

5. Proposed Guidance to Councillors appointed to Outside Bodies

The Monitoring Officer, Tonya Meers, submitted for comment a document titled "Proposed Guidance for Councillors appointed to represent the Council on Outside Bodies".

The Guidance covered in detail the duties, responsibilities and liabilities a Councillor would have if appointed either as a Company Director, a Trustee of a Charitable Trust or a Member of an Unincorporated Association or Body. The Guidance went on to deal with how the Members Code of Conduct still

had to be adhered to in performing a role with an outside body and detailed the circumstance where personal or prejudicial interests would apply.

Members welcomed the Guidance subject to a number of small amendments being made to clarify specific parts or words contained therein.

Mrs Meers confirmed that the Guidance, once amended, would be issued to all Councillors and would be followed up with training through one of the Council's "Members' Briefings".

6. Update on complaints made against Councillors

The Monitoring Officer provided an update on the three complaints that had been received to date against Councillors under the Local Standards Framework.

The first hearing had been held on 9 April 2009 into a complaint (Reference Standards 2008/01) made against Councillor Ms Denise Webber as to the wording of a statement she had made at a Planning Committee meeting in June 2008.

The Consideration and Hearing Sub-Committee had decided that Ms Webber had shown a lack of respect towards the complainant and had agreed to censure her. The Sub-Committee also recommended that Ms Webber should undergo further diversity and equality training. She had a period of 21 days to appeal against the Sub-Committee's ruling. A publicity notice had been issued and details were likely to appear in the press within the next few days.

Mrs Meers added that a further hearing was due to take place in the morning to consider complaint Reference Standards 2008/02.

The third complaint was still under investigation and it was hoped that the report form the Investigating Officer would be received very soon.

The Democratic Services Manager, Richard Bryant, drew attention to the document that had been circulated at the start of the meeting which proposed a Complaints Performance Indicator Matrix setting out the timescales by which the various stages of handling a complaint were dealt with.

It was agreed that Members should consider the matrix and submit any comments they had to Mr Bryant.

7. Proposed Performance Indicators for the Standards Committee

The Committee considered another Performance Indicator Matrix which would help in the measurement of the work (other than Complaints) of the Committee. Details of the proposed targets were submitted. The aim was to have the targets in place at the earliest opportunity.

Members made a number of comments/suggestions which would be incorporated into the matrix. The matrix would be brought back to the next meeting of the Committee for further consideration.

8. The Standards Committee's Annual Report 2008

Submitted for information the Standards Committee's Annual Report which took a look back on 2008. It contained sections on Membership, Terms of Reference, Functions of the Committee, Review of the Year, Work with Parish Councils, Training and The Future.

The report which had been drafted in conjunction with both the Chairman and Vice-Chairman, had already been submitted to the Council's Corporate Governance Committee for consideration on 16 March 2009.

The Chairman reported that she had attended this meeting and was particularly pleased to say that the report had been well received and that the work of the Standards Committee was supported.

9. Visits to Parish Councils

The Parish Liaison Officer, David Greig, circulated information to the Independent Members as to the Parish Councils which were due to be visited. He said he would co-ordinate the visits if the Independent Members indicated which of the meetings they would like to attend.

10. Future items for discussion

The following items were suggested for future consideration:-

- The Constitution of the Standards Committee; and
- Further consideration as to how to raise the Committee's profile.

11. Date of the next meeting

The next meeting would be on Tuesday, 9 June 2009 at 2.30 p.m. in Committee Room No. 1 at The Deane House.

(The meeting ended at 3.31 p.m.)

Taunton Deane Borough Council

AGENDA ITEM NO. 7

Standards Committee - 16 July 2009

Standards Board Intervention, Joint Standards Committees and Dispensations

Report of the Monitoring Officer, Tonya Meers

Executive Summary

New Standards Committee (Further Provisions) (England) Regulations 2009 (SI 2009/1255), came into force from 15 June 2009. The regulations make provision for the Standards Board for England (SBE) to suspend the functions of a local Standards Committee where the Committee is failing to perform its functions satisfactorily and either to discharge the functions itself or to arrange for another authority's Standards Committee to discharge them. The regulations also give authorities a power to establish Joint Standards Committees and extend the power of Standards Committees to give Members dispensations where they would otherwise be prohibited from participating on a matter because of a prejudicial interest.

1. Purpose of the Report

1.1 The purpose of the report is to update Members on the new regulations and to recommend that the Monitoring Officer notifies all Members of the new grounds for application for dispensation in respect of prejudicial interests.

2. Suspension of Standards Committee Functions

2.1 The function of initial assessment of complaints in respect of a breach of Code of Conduct by Members was transferred from the Standards Board to the Standards Committees (or rather to the Assessment/Referrals Sub-Committees) of local authorities from 8 May 2008. Most local authorities have taken on this new responsibility and are discharging this function effectively, but the regulations now give a power for the Standards Board to intervene in an individual authority if it is considered necessary to do so.

2.2 An intervention can be triggered by the Standards Board where:-

(a) It is the view that the authority's Standards Committee has failed:-

- to have regard to SBE guidance;
- to comply with a direction from SBE;
- to carry out its functions within a reasonable time or in a reasonable manner;

(b) It is of the view that the authority's Monitoring Officer has failed to carry out his/her functions within a reasonable time or in a reasonable manner;

(c) The authority or its Standards Committee has requested the Standards Board to intervene.

2.3 Where the Standards Board considers intervention, it must give the authority notice of its intentions and reasons and give the authority at least 28 days to respond before making a direction. The effect of a direction is to transfer the initial assessment function to either the Standards Board itself, or to the Standards Committee of another named authority ("the substitute authority"). In practice, as the Standards Board is not staffed up to resume the initial assessment function, the preferred route is to transfer the function to a substitute authority, but that is likely to be dependent on the two authorities reaching agreement on costs.

2.4 During the period of the intervention, the Standards Board, or the Standards Committee of the other named authority, would undertake the initial assessment and review in exactly the same manner as the original authority, and can decide to refer the allegation for a local or a Standards Board investigation, alternative action or no action, as appropriate. The intervention is strictly in respect of the initial assessment function, so the regulations give a discretion to the Standards Board to use their own investigators and the Adjudication Panel for hearings (or the substitute authority to use its own Monitoring Officer and Hearings Sub-Committee) or to use the Monitoring Officer and/or the Monitoring Officer and/or Hearings Sub-Committee of the original authority if that is appropriate.

2.5 An intervention can be terminated by the Standards Board at any time.

3. Joint Standards Committees

3.1 The regulations give a discretion for two or more local authorities to set up a Joint Standards Committee, and make it clear that such a Joint Standards Committee can be established to discharge all of each participating authority's standards functions, or can be established to discharge just some of the authorities' standards functions, such that each authority retains its own Standards Committee to discharge those standards functions which have not been allocated to the Joint Committee.

3.2 Authorities may agree to establish a Joint Standards Committee which would establish a Referrals and a Review Sub-Committee, but each retain their own Standards Committees to discharge the functions of conducting hearings, providing Member training and promoting high standards of conduct. But where all standards functions are allocated to the joint Standards Committee, then participating authorities would no longer maintain their own separate Standards Committees. Where a function is allocated to the Joint Standards Committee, it cannot then be discharged by the Standards Committee of an individual participating authority.

3.3 Where authorities wish to establish a Joint Standards Committee, the full Council of each participating authority would need to resolve:-

- to establish the Joint Standards Committee;
- which standards functions are to be allocated to the Joint Committee and which, if any, are to be retained by the authority's own Standards Committee;
- the administrative arrangements to support the Joint Standards Committee;
- whether standards complaints should be addressed directly to the Joint Standards Committee, or should continue to be addressed to the individual authority;
- the number of Members, including Independent and Parish members, to be appointed to the Joint Standards Committee by each participating authority, and their terms of office;
- make provision for the Joint Standards Committee to appoint Members to its Referrals, Review and/or Hearings Sub-Committees, as required;
- provide for the payment of allowances to Members of the Joint Standards Committee;
- provide a procedure for an authority to withdraw from the Joint Standards Committee; and
- provide how the costs incurred by the Joint Standards Committee shall be shared between the participating authorities (or in default to be determined by an arbitrator).

4. Dispensations

4.1 The original 2002 Dispensations Regulations provided that a Member who had a prejudicial interest in a matter which was coming before the authority could apply to the Standards Committee for a dispensation and that the Standards Committee could give a dispensation to allow the Member to speak and to vote on the matter at meetings. The regulations specified two grounds for dispensation:-

(a) the first ground, repeated in the new regulations, was that the business of the authority would be impeded because more than 50% of the Members of the decision-making body (Council, Committee, Sub-Committee or Cabinet) would otherwise be prohibited from voting on the matter;

(b) the regulations got the second ground wrong, by providing that it would apply where, because of the prejudicial interests of Members, the business of the authority would be impeded because the authority was unable to comply with the proportionality requirements for Committees or Sub-Committees. In practice, the proportionality rules apply only to the process of appointment of Committees and Sub-Committees, and not to attendance at individual meetings, so this ground was ineffective.

4.2 The regulations now re-state the second ground to apply where the business of the authority will be impeded because the absence of Members as a consequence of prejudicial interests would upset the political balance of the meeting to such an extent as to prejudice the outcome of voting in that meeting.

4.3 Where one or more Members have made a written application for a dispensation, setting out why they consider that a dispensation would be desirable, the Standards Committee may only grant a dispensation if it is of the opinion that it is appropriate to grant a dispensation. A dispensation can be granted for a particular meeting or for a period, not exceeding four years. A dispensation cannot be granted for a Member who is prohibited from participating at an Overview and Scrutiny Committee by virtue of having been involved in taking the original decision, or for an Executive Member for the exercise of delegated powers (on the basis that the appropriate course would be to refer the matter to the Leader or to the full Executive for decision). All dispensations are then entered in the register of Members' interests.

4.4 In practice, the grant of dispensations will continue to be problematic because Members are rarely aware of the numbers of Members who are going to be debarred from the consideration of a particular matter by reason of prejudicial interests until it is too late to call a Standards Committee to consider their requests for dispensation before the meeting takes place.

4.5 The re-drafted text of the second ground for a dispensation would suggest that a dispensation can now only be granted where the request is supported by clear evidence that voting at the meeting on this item will be conducted on strict party lines, and that the Standards Committee should only grant the minimum number of dispensations necessary to secure that the same result is achieved as would have been achieved had no Members had prejudicial interests (i.e. that the majority party, if any, secures a majority of votes, but not that it secures the same degree of majority as it would otherwise have secured).

5. Recommendation

That the Monitoring Officer advises all Members of the new grounds for application for a dispensation.

Contact Tonya Meers, Monitoring Officer,
t.meers@tauntondeane.gov.uk Tel 01823 356391

DISPENSATIONS

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introduction

This guidance on dispensations is aimed at standards committees. It is not mandatory but has been written to help describe when standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest.

dispensations

Granting dispensations under the new regulations

The legislation states standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. The criteria for granting these dispensations changed in June 2009

Concerns were raised by some authorities, as well as the Standards Board for England, about the provisions of previous dispensation regulations. Due to these concerns, the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations) revoke the previous regulations. They replace them with new provisions to clarify the grounds on which standards committees may grant dispensations to local authority members.

Under Section 54A(1) of the Local Government Act 2000 an authority's standards committee can set up a sub-committee to consider requests for dispensations. Any reference in this guidance to the standards committee includes any sub-committee which has this function.

Dispensations may be granted for speaking only, or for speaking and voting. The 2007 Code of Conduct (the Code) relaxed the provisions for restricting members from speaking. Therefore, the need to request a dispensation in this respect is now limited to circumstances where the public do not have the right to speak, or to where a parish or police authority has not adopted paragraph 12(2) of the Code.

Part 4 of the regulations sets out the circumstances in which a standards committee can grant dispensations to members of relevant authorities in England, and police authorities in Wales. If a member acts in accordance with the granting of a dispensation, taking part in business otherwise prohibited by an authority's code of conduct would not result in a failure to comply with that code.

A standards committee may grant a dispensation to a member or co-opted member of an authority in the following circumstances:

- where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting **OR**
- where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

Note: Although the Regulations are not explicit, political balance is a legal formula, set out in the Local Government and Housing Act 1989 and associated regulations. It applies only to relevant authorities and places an obligation on them to reflect the political balance of their elected members when determining who should sit on certain committees. It does not apply to parish councils.

Standards committees must ignore any dispensations that have already been given to others at the meeting to decide whether either of these criteria apply.

There are two **exceptions** to this:

- Members cannot be given a dispensation allowing them to vote in

dispensations

overview and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken.

- A dispensation cannot be given to allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

The dispensation granted may apply to just one meeting or it may be applicable on an ongoing basis. However, the dispensation cannot be used to allow participation in the business of the authority if it was granted more than four years ago.

Legal requirements for granting dispensations

1) Standards committees can grant a dispensation if more than 50% of members have a prejudicial interest in an item of business to be discussed at a meeting which is covered by their code of conduct. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). The list of meetings is set out in paragraph 1(4) of the Model Code of Conduct contained in the Local Authorities (Model Code of Conduct) Order 2007. These are meetings of:

   - the authority
   - its executive and its committees and sub-committees
   - any other committees, sub-committees, joint committees, joint sub-committees or area committees of the authority.

2) Standards committees can grant a dispensation for an item of business if the political balance of a meeting would be upset enough to prejudice the outcome of the vote. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). This means that due to the number of members who are prevented from voting the political balance of the committee is changed. This is similar to a provision that has been in existence in Wales for some time. As before, this does not apply to parish councils as they are not bound by the political balance rules.

[*]The requirement to ignore any members who have already been granted dispensations means that standards committees should disregard any previously granted dispensations in order to work out whether the two circumstances above apply.

So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, once two people had been granted dispensations, the remaining four would be ineligible because at that point 50% of the committee would be able to vote.

In addition it is necessary to consider if any of the exceptions set out above apply.

Issues and criteria to consider when granting dispensations

The number of members in each political group on an authority could affect the eligibility to apply for a dispensation.

In situations where one political party has a large majority on an authority, and therefore on its committees, members of that political party will not be eligible to apply for a dispensation frequently under the criterion for political balance (see page 3). Where an authority has two or more political parties, and the number of members that each party has is fairly evenly balanced, the eligibility to apply for a dispensation will rise.

Clearly there is a difference between being eligible to apply for a dispensation and it being appropriate for that dispensation to be granted. We recommend that the standards committee considers the need for criteria to be applied to requests for dispensations. The committee will need to balance the prejudicial interest of the member seeking the dispensation to vote on an item of business, against the potential effect on the outcome of the vote if the member is unable to do so.

Considerations for dealing with dispensation requests

Q. Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?

For instance, it is unlikely that it would be appropriate to grant a dispensation to a member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the member would probably outweigh any public interest in maintaining the political balance of the committee making the decision. This is especially where an authority has well-established processes for members on committees to be substituted by members from the same political party.

However, the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases, it is possible that any public interest in maintaining the political balance of the committee making the decision might be given greater prominence.

Q. Is the interest common to the member and a significant proportion of the general public?

For example, the member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

dispensations

Q. Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?

For instance, a member might represent the authority on another public body – such as a fire or police authority – and have particular expertise in the work of that body. Therefore it may be appropriate for that member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the member's expertise before making a decision which would benefit it financially.

Q. Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? And is the member's interest not a financial one?

In circumstances such as these, the standards committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

Practical guidance on the process for granting dispensations and recording them

The process for making requests for dispensations, the criteria that will be applied and the process that will be followed when the request is considered should all be clearly understood by those concerned. Therefore, standards committees should set all this out and make it available to members.

A member must submit an application in writing explaining why a dispensation is desirable. Only the member can do this – they can't ask somebody else to do it on their behalf. It is sensible to send that application to the monitoring officer so that they can arrange for it to be considered by their standards committee.

A standards committee meeting must be convened to consider the application for a dispensation. Therefore, it is not possible to grant a dispensation as a matter of urgency to deal with emergency business.

The committee must consider the legal criteria set out on pages 3 – 4, including the exceptions. They must also consider any other relevant circumstances. These can include any local criteria they have adopted.

The committee will need to consider whether the member making the request will be allowed to make oral representations to the committee or whether the application will be dealt with only through written representations.

A standards committee has the discretion to decide the nature of any dispensation. For example, the committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

It is our view that the regulations do not

dispensations

allow standards committees to issue general dispensations to cover members for any situation where a prejudicial interest may arise. The regulations refer to circumstances that arise at “a meeting”. Therefore, we would expect most dispensations to cover a specific item of business at one meeting of the authority.

The decision must be recorded in writing and must be kept with the register of interests established and maintained under Section 81 (1) of the Local Government Act 2000.

Standards committees can refuse to grant a dispensation. The regulations allow for standards committees to use their discretion rather than impose an obligation for them to grant dispensations.

JOINT STANDARDS COMMITTEES GUIDANCE

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introduction

This guidance on the establishment of joint standards committees reflects the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations). The regulations which enable authorities to establish joint standards committees are not mandatory.

The guidance is aimed primarily at members of standards committees and monitoring officers but will also provide a useful reference tool for all members and officers.

It applies to:

- district, unitary, metropolitan, county and London borough councils
- English police authorities
- fire and rescue authorities (including fire and civil defence authorities)
- the London Fire and Emergency Planning Authority
- integrated transport authorities
- the Broads Authority
- national park authorities
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

Members of parish and town councils may also find this guide useful.

The Local Government Act 2000 says that your authority must set up a standards committee. The Standards Committee (England) Regulations 2008 set out the rules governing the size and composition of a standards committee and should be read alongside this guidance.

Throughout this guidance we use the term 'independent member' to describe members appointed by the authority under Section 53(4)(b) of the Local Government Act 2000, and Regulation 5 of the Standards Committee (England) Regulations 2008.

You may also like to consult our *The role and make-up of standards committees* and *The local assessment of complaints* guidance.

Why might a joint standards committee be a good idea?

The regulations enable joint standards committees to carry out any of the functions of a standards committee granted to them by or under Part III of the Local Government Act 2000 or Part 1 of the Local Government and Housing Act 1989.

Joint arrangements are likely to be most useful where additional flexibility to deal with cases is needed, or where resources are limited and sharing them would benefit the successful management of the standards framework in that area.

Potential benefits of forming a joint standards committee

We have identified a number of potential benefits of forming a joint standards committee. In addition, they may have some bearing on the type of joint working structure adopted. These are:

- avoidance of conflicts of interest through a wider pool of members
- consistency of procedures
- public confidence in the complaints process enhanced through a greater

'distance' between standards committees and complainants/subject members
- greater capacity to meet the increased role and workload of standards committees under the local standards framework
- efficient and effective use of resources through sharing of resources and pooling expertise
- increased ability to promote high ethical standards through a raised profile of the standards committee
- the ability to jointly commission and fund mediation, training and investigations
- the opportunity to create stronger support and advisory functions

Note: These are just some of the potential benefits and we acknowledge that some authorities may have their own reasons for forming a joint standards committee that are specific to their own circumstances and requirements.

Potential problems/issues

We have also identified a number of potential problems or issues with joint arrangements, which we think are important to consider in conjunction with the benefits listed above:

- the possibility that it could become an overly bureaucratic and more complex process, leading to a lack of clarity for the general public
- member resistance to joint standards committees
- differing resource implications for authorities within the same joint working arrangement
- loss of local ownership of standards and ethical issues

The standards framework became fully localised on 8 May 2008. This reflected a general desire – which was supported by the Standards Board – among those in the field to be able to manage their own complaints. The local standards framework also recognised that a knowledge of the local area and local situation can have a positive impact on finding the right solutions.

Model Structures

We understand that authorities will each have different reasons for wanting or needing a joint standards committee. As a result, we have identified three model structures for joint standards committees which we think offer the most practical ways of operating joint arrangements.

The model structures are:

Model A

A joint standards committee to receive written allegations and requests for a review, and to decide what action to take in relation to them.

The defining feature of this model is that authorities will be able to retain their own standards committee. Furthermore, aside from receiving and assessing allegations and reviews, the authority's own standards committee will perform all other functions independently.

An advantage of this model structure is that it will help reduce the likelihood of standards committee members being

introduction

conflicted out of a stage of the complaints process. The regulations state that standards committee members who have been involved in decision making on the initial assessment of a complaint must not take part in the review of that decision. Forming a joint standards committee will increase the number of standards committee members, and so reduce the chance of conflicts of interests occurring.

This model also allows standards committees to share resources when assessing allegations, yet at the same time allows them to retain ownership of all other functions, including the hearing and determination processes. This will ensure that individual standards committees are applying sanctions based on their own local knowledge and are taking responsibility for implementing standards in their own local authorities.

Model B

A joint standards committee to carry out the functions in Model A along with receiving and considering final investigation reports and conducting hearings, making findings and imposing sanctions.

This model is an extension of Model A and will therefore also help to reduce the likelihood of standards committee members being conflicted out of a stage of the complaints process for the same reason. In addition, Model B offers an increased opportunity to reduce costs through holding joint hearings.

However, when considering whether to adopt such a structure, authorities should bear in mind that the ability to draw on local knowledge when applying sanctions may be diminished. This potential lack of local knowledge becomes more important at this stage, given that much more information is available to the standards committee once an investigation has been conducted.

Model C

A joint standards committee to carry out all of the functions of a standards committee granted by or under Part III of the Local Government Act 2000 and Part 1 of the Local Government and Housing Act 1989.

Model C is most appropriate for single purpose authorities such as police or fire authorities. These authorities usually have less contact with the public than local authorities and are the source of fewer complaints, so they tend to need to meet less frequently to exercise their specific complaint-handling functions. A joint working arrangement could therefore be a more sensible use of resources.

Establishing a joint standards committee in such situations should not lead to a weakening of the local standards framework in individual authorities. The same high levels of input expected of a single standards committee should also be applied to ensure that a culture of high standards is still developed within each participating authority.

We do not generally recommend that local authorities adopt Model C because it remains an important role of an authority's standards committee to promote and maintain high standards within its own authority.

Composition of joint standards committees

The general rule is that a joint standards committee is composed in the same way as an ordinary standards committee but with the changes necessary to reflect the fact that it is a joint committee.

It must include at least one elected member of each authority involved in the joint arrangement.

At least 25% of the members of the joint standards committee must be independent members.

At least three people must attend any joint standards committee meeting.

The chair of the joint standards committee must always be an independent member. Therefore, you may also want to appoint an independent member to act as vice chair of the committee in case the chair is unable to attend.

If any of your authorities has executive arrangements, you are permitted to have one executive member on the joint standards committee. The authorities involved in the joint arrangement will decide which authority that member comes from. However, the executive member must not be the elected mayor or leader.

If your joint standards committee is responsible for any parish or town councils, at least two representatives from those parish or town councils covered by the authorities involved in the joint arrangement must be appointed to your standards committee. They cannot also be members of any of the authorities involved in the joint arrangement.

A parish or town council representative must be present on the standards committee at all times when parish matters are being discussed.

There is no limit to the number of independent members you can have on your joint standards committee

You will need to decide how to select independent members and how long an independent member should sit on the joint standards committee for. These arrangements will need to be set out in the terms of reference of the joint standards committee.

We recommend that you set a fixed period of four years. This will be long enough for them to gain an understanding of the committee, the authority and its workings, but not so long that they could be perceived as losing their independence.

When reappointing an independent member, you should bear in mind that we recommend that independent members should serve no longer than two terms, which is a maximum of eight years. It may be helpful for independent members to be appointed for differing lengths of time so that the experience they gain is not all lost simultaneously. The usual rules apply about advertising and appointing if you wish to reappoint an independent member.

Choosing an independent member

The arrangements for appointing independent members under a joint arrangement will be decided by the authorities involved in that arrangement and will be set out in its terms of reference.

Composition of joint standards committees

Authorities have two choices. Each authority can appoint its own independent members or the authorities involved in the joint arrangement can appoint independent members jointly.

Where each authority appoints its own independent members, the requirements of paragraph 5(1) of the Standards Committee (England) Regulations 2008 apply. This means:

- the vacancy must be advertised in a local newspaper and such other publications as the authority deems appropriate
- the person must have submitted an application to the authority
- the person's appointment must be approved by the majority of the members of the authority

If an authority's standards committee has any independent members, it can appoint them to be independent members of a joint standards committee. The Standards Board believes that the regulations do not require the authority to comply with the requirements of paragraph 5(1) again for its existing independent members in order to appoint them to a joint standards committee.

An authority may not have any independent members to appoint to the joint standards committee if it is setting up a committee as set out in Model C (see page 4) and therefore is not also operating its own standards committee.

Where the authorities appoint jointly:

- the appointment must be approved by each authority
- the vacancy must be advertised in a newspaper local to each authority area and in such other publications as each authority deems appropriate
- the person must have submitted a joint application, sent to the lead authority

Where more than a couple of authorities are involved in a joint arrangement it is likely that it will take some time for the authorities to each approve the appointment of the independent members.

Similarly coordinating the advertisement for the vacancy or vacancies in more than one local newspaper may take time. Formal and evidenced arrangements would need to be made for one authority to act on behalf of all the others involved in the joint arrangement. This is in order to accept application forms from candidates – otherwise any applicant would need to submit a separate form to each authority. This application, managed by the lead authority, would need to make it clear that it is to all of the authorities involved in the joint arrangement, and those authorities should be named on the form. The lead authority should then send a copy of the application to the other authorities.

Given the practical difficulties of joint appointments, we recommend that each authority arrange to appoint its own independent members. We also recommend this because there is some uncertainty in the legislation over the process for independent members appointed jointly on whether they should sign an undertaking to be bound by a code of conduct.

Whatever arrangements are used, the following factors need to be taken into account:

Composition of joint standards committees

1) A person can only be an independent member if that person:
   - has not been a member or employee of any of the authorities involved in the joint arrangement within the five years before the date of appointment
   - is not a member or officer of any relevant authority
   - is not a relative or close friend of a member or employee of any of the authorities involved in the joint arrangement
2) The regulations say that a 'relative' means:
   - a partner (a spouse, civil partner or someone a person lives with in a similar capacity)
   - a parent
   - a parent of a partner
   - a son or daughter
   - a stepson or stepdaughter
   - the child of a partner
   - a brother or sister
   - a brother or sister of a partner
   - a grandparent
   - a grandchild
   - an uncle or aunt
   - a nephew or niece
   - the partners of any of the people mentioned above

The regulations do not provide a specific definition of a close friend. Please refer to our publication the *Case Review 2007*, which includes a section on defining a close associate. This might be helpful in identifying a close friend. The *Case Review 2007* is available on our website.

Ceasing to be an independent member

Under the regulations, either of the following will no longer be able to be an independent member of the joint standards committee:

- any person appointed as an independent member who becomes a member or officer of an authority
- any person appointed as an independent member who becomes a relative of a member or officer of any of the authorities involved in the joint arrangement

Remuneration for members of a joint standards committee

Authorities in a joint arrangement will need to ensure that their joint arrangement specifies what provisions, if any, are to be made for the payment of allowances to members of the joint standards committee.

Indemnities for independent members

Where independent members are carrying out their statutory duties, they may be protected by their authority's indemnity arrangements under the Local Authorities (Indemnities for Member and Officers) Order 2004. We recommend that any joint arrangement includes consideration of what indemnity arrangements should be in place for independent members.

Composition of joint standards committees

Complying with the Code of Conduct and the register of members' interests

Members of a joint standards committee must sign an undertaking to comply with the Code of Conduct of the authority that appointed them to that committee. They must also disclose their interests in the register of members' interests maintained by the monitoring officer of the authority that appointed them. Independent members must do so in the same way as other members.

Town and parish representatives

If your joint standards committee is responsible for parish or town councils we recommend you have a minimum of three parish or town council representatives on your standards committee, though the legal minimum is two.

Three parish or town council representatives will provide you with flexibility. It should allow the local assessment of complaints to be carried out if a parish or town council representative is unavailable or conflicted out.

Your council must consult parish and town councils within the area covered by the joint arrangement to help decide if there should be a parish sub-committee to deal with some of the joint standards committee's functions about parish and town councils.

Any parish sub-committee must include at least one parish or town council representative and at least one independent member. In addition, you must consult parish and town councils within the area covered by the joint arrangement to determine how many parish and town council representatives are needed and how long they should serve on the sub-committee.

Choosing parish and town council representatives

The authorities involved in the joint arrangement must decide how to recruit and appoint parish or town council representatives. Your parish and town council representatives should have the trust of town and parish councils in the area covered by the joint arrangement, so you should involve them in the selection procedure.

Executive members on the joint standards committee

If the authorities are operating executive arrangements, the standards committee does not need to include any executive members. However, you should consider whether it is appropriate to appoint an executive member and, if so, how that member is to be chosen from among the authorities in the joint arrangement. There can only be one executive member on a joint standards committee, regardless of how many authorities are involved in the joint arrangement.

Appointing an executive member might show that the committee is supported and respected by all parts of the authorities. Not having an executive member could reflect a degree of independence from the political leadership of the authorities. This is ultimately a decision for the authority.

Composition of joint standards committees

Elected members on the joint standards committee

A joint standards committee does not need to reflect the political balance of the authorities involved in the arrangement. This is because the joint standards committee should be independent of party politics. Its members need to have the respect of all the members of the authorities. It may be helpful to remind elected members of this when committee appointments are being made.

In the same way that independent members need to be appointed by a majority of the authority, it would be useful for your joint committee to include members who are supported by all political parties. This is particularly when the local assessment of complaints is carried out. This is so that greater trust and confidence can be established in the decision-making process among all political members.

Standards committees should be seen as making judgments impartially and without regard to party loyalty. Elected members should consequently be mindful of this when serving on a standards committee and should not be told how to vote on matters. Members should also remember that they must adhere to the Code of Conduct when serving on a standards committee.

Note: Where police authorities are included in joint arrangements, any reference above to an elected member needs to be read as a reference to an authority member.

Substitute members

Some authorities operate a substitute system. This allows a substitute member to attend a meeting of the committee or sub-committee whenever a regularly appointed member cannot be present. However, we do not recommend the use of substitutes for joint standards committees.

In instances where all your independent members are unavailable, you would be able to substitute your independent members with independent members from another authority. You should also note that nothing in the regulations requires a sub-committee of a standards committee to have fixed membership or chairmanship.

Training

It is important when assessing complaints, reviewing assessment decisions and holding determination hearings that the sub-committee is properly constituted and that members are trained on the Code and the relevant legislation. We recommend that you keep a clear record of the training of all standards committee members. Some authorities provide refresher training before hearings.

operation of a joint standards committee

Paragraph 15(2)(a) and (b) require the terms of reference of a joint standards committee to include the functions and administrative arrangements under which the joint committee will operate.

Functions

The joint standards committee can carry out any of the functions of a standards committee granted by or under Part III of the Local Government Act 2000 or Part 1 of the Local Government and Housing Act 1989. Some authorities have conferred other functions on standards committees under Section 54 of the act. These include:

- overview of the whistle blowing policy
- advising on the content of the authority's officer code of conduct
- overview of complaints handling and Ombudsman investigations
- oversight of the constitution

These functions may not be allocated to a joint standards committee as they are not granted by Part III of the Local Government Act 2000 or any regulations made under that Part. They therefore need to remain with the authority's standards committee, or be reallocated elsewhere.

If a joint standards committee exercises a certain function – that function cannot also be exercised by a standards committee of any of the authorities involved in the joint arrangement. Therefore, the authorities involved in a joint standards committee arrangement must **all** agree which of their functions they wish the joint standards committee to have.

An authority cannot assign functions to a joint standards committee only to deal with particular complaints. For example, a complaint might be made about a dual-hatted member, or any member who belongs to more than one authority. In such cases, the authority cannot set up a joint assessment sub-committee with the other authority or authorities that the member belongs to but also continue to use its own assessment sub-committee for complaints about single-hatted members. The functions assigned to a joint standards committee are applicable for all complaints received by the authority.

Lead authority

In any joint standards committee arrangement there should be one authority with responsibility for making the administrative arrangements necessary for it to operate. This responsibility may rotate over time.

Sub-committees

Where a joint standards committee arrangement has been set up just to carry out initial assessments or initial assessments and reviews, it will be necessary to set up sub-committees to carry out those functions under regulation 6 of the Standards Committee (England) Regulations 2008. Membership of these sub-committees will need to be drawn from the joint standards committee.

Meetings

Meetings of the joint standards committee and its sub-committees should be arranged by the lead authority's monitoring officer in consultation with the monitoring officers of the other authorities involved in the joint arrangement.

operation of a joint standards committee

Any committee or sub-committees should have a minimum of three members. However, ensure you pay attention to the detailed requirements of paragraph 7(3) of the Standards Committee (England) Regulations 2008 as amended by paragraph 14(5)(e) of the Standards Committee (Further Provisions)(England) Regulations 2009.

A committee or sub-committee must have at least one elected member on it, where it is dealing with any of the following:

- making an initial assessment of a case
- reviewing an assessment
- considering what to do with a monitoring officer's report on an investigation
- holding a hearing

If the case concerns a parish member or former parish member then the committee or sub-committee must also have a parish representative present. The elected member and parish representative do not have to be from the same authority as the member whose case is being considered.

Preparation of agendas and minutes

The monitoring officer of the lead authority should prepare the agenda for meetings of a joint standards committee or its sub-committees. This can be done in consultation with the monitoring officers of the other authorities involved in the joint arrangement who would normally be expected to prepare reports about cases from their own authorities.

Any joint arrangements will need to clearly identify who will have responsibility for:

- notifying the parties of any decisions made
- for preparing the minutes of the meeting
- for preparing the summary of proceedings under regulation 8(5) of the Standards Committee (England) Regulations 2008
- the summary under Section 57C(2) of the Local Government Act 2000 to the member complained about

Ultimate responsibility for these tasks lies with the monitoring officer of the authority the subject member comes from. However, the monitoring officer of the lead authority could carry out those tasks on their behalf as long as the joint arrangements make this clear.

Standing orders/procedure rules

As with any other committee of a local authority, you will need rules to govern the way in which meetings are administered and conducted. See Appendix 2 of the model constitution, attached at the end of this document, which sets out a suggested format for those rules.

Financial arrangements

Any joint standards committee arrangements should be clear about how the financial expenses of the arrangements will be met. We recommend that the joint committee should have a budget which is held separately from that of the constituent authorities by the chief financial officer of the lead authority. We also recommend that the budget is

operation of a joint standards committee

managed by the lead authority's monitoring officer.

The basis on which the expenses are shared should be clearly set out in the joint standards committee's terms of reference. Much will depend on the functions carried out under the joint arrangement. For instance, where the joint standards committee has been set up to deal with initial assessment and review cases, the expenses might be shared based on the number of cases submitted for consideration by an authority as a proportion of the total cases considered. So an authority submitting 30 cases in a year from a total of 50 considered under the joint arrangement would pay 60% of the expenses incurred.

Any disagreement about the proportion of expenses that should be met by an authority involved in the joint arrangement must go to a single arbitrator agreed between the authorities. This is as required by paragraph 15(3) of the regulations.

Withdrawal from joint arrangements

Under paragraph 15(2)(g) of the regulations, the authorities entering into a joint arrangement must make sure that there is a procedure set out in the terms of reference to enable an authority to withdraw from the arrangement.

Any such procedure should ensure that any authority which wants to withdraw has to give sufficient notice before doing so. This is to enable the remaining authorities involved in the joint arrangements to:

1) consider what changes they need to make to the terms of reference and have time to implement those changes
2) decide how to deal with the financial consequences of the authority withdrawing.

We suggest a minimum notice period of six months in order to achieve this.

The terms of reference should make it clear what financial consequences flow from a decision by an authority to leave a joint arrangement. For example, six months' notice expiring on the 31 March might be required to withdraw from a joint arrangement. If this were the case, it would enable the authorities left in the joint arrangement to make proper budgetary provision for the joint arrangement in the following financial year, as part of their normal annual budget preparation process. It would also give them time to agree and implement any changes to the joint arrangements that they wish to make. They would additionally be able to sort out how to deal with forthcoming cases when the joint arrangement is disbanded or altered.

Suspension from joint arrangements

Under paragraph 3(3) of the regulations, the Standard Board for England can use its powers under Section 57d of the Local Government Act 2000 to suspend the initial assessment functions of a joint standards committee in the same way as it can a normal standards committee.

operation of a joint standards committee

Providing information to the Standards Board under sections 66B&C of the Local Government Act 2000

The Standards Board can demand periodic returns from authorities and information from them relating to the functions of standards committees and monitoring officers. Therefore any joint arrangements should ensure that responsibility for compiling returns and responding to requests for information is properly identified within the administrative arrangements agreed between the authorities.

Where there is a joint arrangement in place, the monitoring officer of the lead authority will be required to submit information about the composition of the standards committee.

Case information, even where the case was dealt with by a joint standards committee, must be submitted by the monitoring officer at the authority to which the subject member belongs.

Schedule 1

MODEL TERMS OF REFERENCE FOR JOINT STANDARDS COMMITTEES IN ENGLAND

[This document provides the terms of reference for a joint standards committee of relevant authorities in the form of a template for a model constitution. It is written in broad terms so that it can be used by authorities of the same type, or by authorities of different types. In some instances alternative approaches are offered, or authorities may wish to use this model as the basis for discussions leading to the production of a different document.]

1) Definitions

In this Constitution:

"the Act" means the Local Government Act 2000

"the Constituent Authorities" means

(a) [*insert name*]

(b) … [*etc*]

"Executive", "Executive Member", "Elected Mayor" and "Executive Leader" have the same meaning as in the Act

"Independent Member" has the same meaning as in the Standards Committee Regulations

"the Joint Standards Committee" means the [insert name]

"Monitoring Officers" means the officers designated by the Constituent Authorities under section 5 of the Local Government and Housing Act 1989 and any deputy nominated by them acting where they are unable to do so owing to absence or illness

"Proper Officer" has the same meaning as in the Local Government Act 1972

"the Regulations" means the Standards Committee (Further Provisions) (England) Regulations 2009

"Relevant Authority" has the same meaning as in the Act

"Scheme of Allowances" means any scheme of allowances made under the Local Authorities (Members Allowances) Regulations 2003

"the Standards Committee Regulations" means The Standards Committee (England) Regulations 2008

2) Constitution and Terms of Reference

2.1) The Constituent Authorities, in exercise of their powers under the Regulations, have each determined to establish a joint standards committee, to be known as the [*insert name*] to exercise those functions conferred by or under Part 3 of the Act or Part 1 of the Local Government and Housing Act 1989 set out in this Constitution.

2.2) The Joint Standards Committee is the standards committee to which written allegations under section 57A (1) of the Act may be sent [*either*] for all the Constituent Authorities [or] for the following Constituent Authorities: [*insert names*].

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[*It is important that each constituent authority is clear about whether it, or the joint committee, will receive written allegations, and that the process for publicising, receiving and submitting written allegations is clear and effective*.]

2.3) This Constitution contains the Terms of Reference of the Joint Standards Committee for the purposes of Regulation 15 of the Regulations and section 53 (9) of the Act.

3) Functions to be exercised by the Joint Standards Committee

3.1) The Joint Standards Committee may exercise the functions set out in Appendix 1.

3.2) Any Standards Committee established by any of the individual Constituent Authorities may not exercise any function set out in Appendix 1.

4) Membership of the Joint Standards Committee

[*The following version is for a joint committee where at least one constituent authority is responsible for parish councils. If no constituent authority has this responsibility then 4.1 (b) and 4.5 should be deleted and the other sub-paragraphs renumbered*]

4.1) The Joint Standards Committee shall consist of:

a) [*insert number*] members of the Constituent Authorities, appointed by those authorities in accordance with paragraph 4.2;

b) [*insert number*] members of parish councils for which any of the Constituent Authorities is responsible, appointed in accordance with paragraph 4.5;

c) *[insert number which must be at least 25% of the total membership of the committee*] Independent Members, appointed in accordance with paragraph 4.6.

4.2) Subject to paragraphs 4.3 and 4.4, the following Constituent Authorities shall appoint the following numbers of members of those authorities to be members of the Joint Standards Committee:

a) [*Name of Constituent Authority*] : [*number*] members

b) [*etc*]

4.3) Appointment of Executive Members

a) No more than one of the members of the Constituent Authorities appointed under paragraph 4.2 shall be a member of the Executive of any of the Constituent Authorities.

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b) If an Executive Member has previously been appointed to and is still a member of the Joint Standards Committee then no further appointment of an Executive Member will be valid.

c) Otherwise, if the Constituent Authorities seek to appoint more than one Executive Member then only one appointment will be valid and the other Constituent Authorities will be required to make a new appointment. The valid appointment shall be agreed between the Constituent Authorities or in default of agreement shall be made annually in turn by each of the Constituent Authorities in the order set out in paragraph 4.2 starting with the Constituent Authority named in paragraph 4.2 (a).

[*Alternative: provide as follows but amend annually* – Only [*insert name of Constituent Authority*] may appoint a member of the executive of any of the Constituent Authorities as a member of the Joint Standards Committee.]

4.4) None of the members of the Constituent Authorities appointed under paragraph 4.2 shall be the Elected Mayor or Executive Leader of any of the Constituent Authorities.

4.5) The Constituent Authorities that are responsible for parish councils shall each appoint [insert number] members of the parish councils for which they are responsible, who are not also members of any of the Constituent Authorities, to be members of the Joint Standards Committee.

[*Alternatively* – The following Constituent Authorities shall appoint the following numbers of members of the parish councils for which they are responsible, who are not also members of any of the Constituent Authorities, to be members of the Joint Standards Committee:

a) [*Name of Constituent Authority*] : [*number*] members

b) [*etc*]

4.6) The following Constituent Authorities shall appoint the following numbers of Independent Members (in accordance with the provisions of the Standards Committee Regulations) to be members of the Joint Standards Committee:

a) [*Name of Constituent Authority*] : [*number*] members

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b) [*etc*]

4.7) A person who is disqualified under Part 5 of the Local Government Act 1972 or by the decision of a Case Tribunal under Part 3 of the Act for being a member of a relevant authority shall be disqualified for membership of the Joint Standards Committee.

5) Tenure of office and casual vacancies

5.1) A member of the Joint Standards Committee will hold office until one of the following occurs:

a) He or she resigns by giving written notice to the proper officer of the Constituent Authority that appointed him or her;

b) He or she is removed or replaced by the Constituent Authority that appointed him or her;

c) He or she is disqualified for membership of the Joint Standards Committee;

d) He or she ceases to be eligible for appointment to the Joint Standards Committee in the capacity in which he or she was appointed;

e) The Constituent Authority which appointed him or her ceases to participate in the Joint Standards Committee.

[*Options – We recommend that the appointing authority be given the power to replace a member under (b) but it is not essential. It is possible, instead, for all members, or a class of members such as independent members, to be appointed for a fixed term. In that case (b) would read*:

b) He or she [*option* – , being an independent member/parish council member/member of a constituent authority] has held office for a period of [*insert period*] years.]

5.2) A casual vacancy shall be filled as soon as possible by the Constituent Authority which appointed the member of the Joint Standards Committee whose membership has ceased.

6) Sub Committees

6.1) The Joint Standards Committee shall appoint Sub Committees in so far as is necessary to exercise its functions under Part 3 of the Act and may establish Sub Committees for other purposes in the exercise of its functions.

6.2) Each person appointed as a member of a Sub Committee must be a member of the Joint Standards Committee.

6.3) The Joint Standards Committee will determine the membership and terms of reference of the Sub Committee, and the

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quorum for its meetings, when it is appointed.

6.4) If the Joint Standards Committee appoints more than one Sub Committee to exercise one or more of its functions then it shall ensure that the Proper Officer of the Constituent Authority providing support to the Joint Standards Committee allocates particular matters to a Sub Committee first on the basis of the availability of the members required to constitute the Sub Committee, and thereafter by rotation, and summonses meetings accordingly.

7) Meetings and proceedings

7.1) The meetings and proceedings of the Joint Standards Committee shall be conducted in accordance with the rules set out in Appendix 2.

7.2) The Joint Standards Committee will adopt standing orders or rules of procedure for the conduct of its meetings. The standing orders or rules of procedure must be consistent with the requirements of the Act, the Standards Committee Regulations and the rules set out in Appendix 2. They may provide for different procedures to be followed when the Joint Standards Committee or a Sub Committee is exercising different functions.

8) Monitoring Officers

8.1) The Monitoring Officers will agree and keep under review a protocol about how they will exercise their functions in relation to the matters dealt with by the Joint Standards Committee.

8.2) The initial protocol is set out in Appendix 3. The Monitoring Officers will inform the Joint Standards Committee and the Constituent Authorities of any changes to the protocol.

9) Support

9.1) The Joint Standards Committee will appoint one of the Constituent Authorities to provide accommodation and professional, technical, administrative and clerical support for its meetings.

9.2) The Joint Standards Committee will keep the appointment under review and may from time to time make a new appointment having regard to the geographical area that it covers and to the interests of economy, efficiency and effectiveness.

[*Alternatively the Constitution may provide for the rotation of the support function. Where this is done appropriate arrangements will need to be made for dealing with on-going cases*]

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For the period stated in column 1 of the following table, the Constituent Authority identified in Column 2 shall be appointed to provide accommodation and professional, technical, administrative and clerical support for its meetings.

Table

Column1 Period	Column 2 Constituent Authority
[*insert period, eg I June 2009 to 31 May 2009. Consider whether to rotate quarterly, six monthly, annually or less frequently.*] [etc]	[*Insert name*] [etc]

9.3) The Proper Officer appointed by the Constituent Authority for the time being providing such support will discharge the proper officer functions under the Local Government Act 1972 that relate to the meetings of the Committee. He or she will therefore prepare agendas and minutes and summaries of meetings and arrange for notices and other communications to and from the Joint Standards Committee to be given and received, save in so far as one of the Monitoring Officers agrees to undertake this activity.

10) Expenses of Joint Standards Committee

10.1) The expenses of the Joint Standards Committee and of the discharge of functions relating to matters dealt with by the Joint Standards Committee will be defrayed by the Constituent Authority providing support and by any Constituent Authority whose Monitoring Officer has dealt with or exercised his or her functions in relation to such matters.

10.2) The other Constituent Authorities will make payments to the Constituent Authority that has incurred expenses under paragraph 10.1, to defray them in such proportions as the Constituent Authorities shall all agree or in the case of disagreement as shall be determined by a single arbitrator agreed on by the Constituent Authorities, or, in default of agreement, appointed by the Secretary of State for Communities and Local Government.

10.3) In determining the allocation of expenses the Constituent Authorities or any arbitrator appointed under paragraph 11.2 will have regard to the principles set out in Appendix 4.

10.4) The Constituent Authority for the time being providing support will report to the Joint Standards Committee at least annually on such expenses, on their

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allocation between the Constituent Authorities and on the financial provision made by the Constituent Authorities to cover present and future expenses. The Joint Standards Committee may notify the Constituent Authorities if it considers that the financial provision is or is likely to be inadequate.

11) Allowances

11.1) The Constituent Authorities will review the Schemes of Allowances for their members, will consult each other for the purposes of the review, and will seek [*Option* - (with a view to ensuring that all members of the Joint Standards Committee of the same type and whose responsibilities are, in principle, the same, should have broadly the same entitlement)]:

a) To reach agreement as to which members of the Joint Standards Committee should receive allowances, the level of allowances, and whether related attendance or activity should affect, either directly or by reason of any calculations that are performed, the entitlement to allowances;

b) [*Option, if the joint committee appoints Independent Members* – To determine which Constituent Authority will pay any allowances to Independent Members appointed by the Joint Committee;]

c) To ensure that no member of the Joint Standards Committee is paid more than one allowance, or more than one enhanced allowance, on account of such attendance or activities;

d) To ensure that the agreement reached is reflected in the Constituent Authorities' Schemes of Allowances.

11.2) An agreement reached under paragraph 11.1 shall not bind the Constituent Authorities so as to prejudice the legality of their decisions, or compromise their decision-making processes, under the Local Authorities (Members Allowances) Regulations 2003.

12) Withdrawal from the Joint Standards Committee

12.1) A Constituent Authority may cease to participate in the Joint Standards Committee by resolution to that effect taking effect on the date of the next annual meeting of the Constituent Authority, and communicated in writing to the Proper Officer the time being providing support to the Joint Standards Committee at least six [alternative – nine or twelve] months before the date on which it is to take effect.

Appendix 1

[Part 1]

Functions to be exercised by the Joint Standards Committee

[*Option 1: all functions*]

The Joint Standards Committee may exercise all the functions of a standards committee of a Constituent Authority conferred under Part 3 of the Act and Part 1 of the Local Government and Housing Act 1989.

[*Option 2: some functions*]

[*Select from, or adapt, the following list. The phrase "all related actions and determinations" includes decisions about how meetings should be held and all the pre and post meeting paperwork, notifications and publicity.*]

The Joint Standards Committee may exercise all the functions of a standards committee of a Constituent Authority relating to:

1) The general and specific functions set out in section 54 of the Act, namely:
   - a) promoting and maintaining high standards of conduct by the members and co-opted members of the authority;
   - b) assisting members and co-opted members of the authority to observe the authority's code of conduct;
   - c) advising the authority on the adoption or revision of a code of conduct;
   - d) monitoring the operation of the authority's code of conduct, and
   - e) advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct
2) Publishing the address or addresses to which written allegations should be sent and the procedures to be followed (under Regulation 10 of the Standards Committee Regulations).
3) Receiving written allegations under section 57A of the Act and deciding what action, if any, to take, in relation to them, and all related actions and determinations.

   [*The Committee that "received" the complaints must decide how to respond to them. Administratively, other constituent authorities may provide an address to which complaints are sent, but they must then forward them directly to the Committee that will decide them.*]
4) Receiving requests for a review under section 57B of the Act, deciding what action, if any, to take, and all related actions and determinations.
5) Receiving a report from a Monitoring Officer under Regulation 13 of the Standards Committee Regulations on the actions taken or proposed to comply with a direction to take steps other than carrying out an investigation, determining whether it is satisfied with the action specified in the report, and all related actions and determinations.
6) Receiving references back from a

Appendix 1

Monitoring Officer under Regulation 16 of the Standards Committee Regulations in relation to a matter referred for investigation, deciding what action, if any, to take, and all related actions and determinations.

7) Receiving reports from a Monitoring Officer under Regulation 14 of the Standards Committee Regulations, following investigation by the Monitoring Officer (as defined in the Standards Committee Regulations), considering the report and making findings under Regulation 17, and all related actions and determinations.

8) Receiving reports from a Monitoring Officer under Regulation 15 of the Standards Committee Regulations, following investigation by or on behalf of an Ethical Standards Officer, considering the report and making findings under Regulation 17, and all related actions and determinations.

9) Conducting hearings under Regulation 18 of the Standards Committee Regulations, making findings, imposing sanctions (if it finds that a sanction should be imposed), and all related actions and determinations including determining what action, if any, to take if there is an appeal and whether (and if so, how) to be represented at an appeal hearing.

10) In relation to written allegations made before the 8 May 2008, receiving reports from a Monitoring Officer under Regulation 5 of the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 , following investigation by or on behalf of an Ethical Standards Officer or Monitoring Officer, deciding whether to accept a Monitoring Officer's finding of no failure to comply with the Code of conduct, conducting a hearing under Regulation 6, making findings, imposing sanctions (if it finds that a sanction should be imposed), and all related actions and determinations including determining what action, if any, to take if there is an appeal and whether (and if so, how) to be represented at an appeal hearing if the opportunity is given.

11) Considering recommendations of Case Tribunals and taking related action.

12) Receiving requests for dispensations from members and co-opted members wishing to take part in the business of a Relevant Authority despite having a prejudicial interest, under Part 4 of the Regulations, deciding whether to grant a dispensation, and all related actions and determinations.

13) Receiving any other notices or notifications, determining what action, if any, to take and all related actions and determinations.

14) Considering applications for exemption from political restriction or for directions to include a post in a list of politically restricted posts under section 3 of the Local Government and Housing Act 1989, making determinations and taking all related action.

Appendix 1

[*Other functions]*

In addition to the specific and general functions, section 54 of the Local Government Act 2000 allows a Standards Committee to exercise such other functions as the authority consider appropriate. These then become Standards Committee functions which may be exercised by Joint Standards Committees under the Regulations. In so far as these functions are conferred by or under Part 3 of the Act, or Part 1 of the Local Government and Housing Act 1989, they may be allocated to the Joint Standards Committee.

Some authorities have conferred other functions on Standards Committees under section 54, such as overview of internal and external audit (now more likely to be an Audit Committee function, overview of the whistle blowing policy, overview of complaints handling and Ombudsman investigations, and oversight of the constitution. These functions may not be allocated to a Joint Standards Committee and may remain with the Constituent Authorities Standards Committee, or be reallocated.]

The Constituent Authorities have decided that it is appropriate that the Joint Standards Committee should exercise the following additional functions:

[*Select from, or adapt, the following list*]

1) Sending returns to the Standards Board for England under section 66B of the Act in relation to the functions of the Joint Standards Committee.
2) Providing information to the Standards Board for England under section 66C of the Act in relation to the functions of the Joint Standards Committee.
3) Considering recommendations from a case tribunal under section 80 of the Act that relate to the functions of the Joint Standards Committee.

Appendix 2

Rules for the conduct of meetings and proceedings

1) Meetings

1.1) The Joint Standards Committee shall in every year hold an annual meeting.

1.2) The first Meeting held after the 31 May in any year shall be the annual meeting.

1.3) The Joint Standards Committee may hold such other meetings as they may determine.

1.4) The provisions of the Local Government Act 1972 and the Standards Committee Regulations (and transitionally the Relevant Authorities (Standards Committee) Regulations 2001 and the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003), relating to giving a summons to attend the meeting, giving notice of time and place of the meeting, admission of the public and press to meetings, access to agendas and reports, preparation of and access to minutes of the meeting (or a written summary), access to background papers and the timing and conduct of hearings, that apply to a standards committee of a Relevant Authority, shall apply to the Joint Standards Committee.

2) Appointment of chair and vice-chair

[*The style "chair" or "chairman" is a matter of choice.*]

2.1) Subject to paragraph 2.4, the Joint Standards Committee shall at their annual meeting appoint a chair and a vice-chair from among the independent members of the Joint Standards Committee.

2.2) The chair and vice-chair shall, unless they resign their office or cease to be independent members of the Joint Standards Committee, continue in office until their successors become entitled to act.

2.3) In the case of an equality of votes in respect of the appointment of a chair or the appointment of a vice-chair, the person presiding at the meeting shall give a casting vote in addition to any other vote he or she may have.

2.4) The chair and vice-chair must be independent members.

2.5) Subject to paragraph 2.4, if a casual vacancy occurs in the office of chair or vice-chair of the Joint Standards Committee the vacancy shall be filled by the appointment by the Joint Standards Committee of one of their members at the next meeting and the person so appointed shall hold office until the next annual meeting.

3) Conduct of meetings

Appendix 2

3.1) At a meeting of the Joint Standards Committee the chair if present shall preside.

3.2) If the chair is absent from a meeting of the Joint Standards Committee the vice-chair shall preside.

3.3) If both the chair and vice-chair are absent, another independent member of the Joint Standards Committee, chosen by the members of the Joint Standards Committee present at the meeting, shall preside.

4) Quorum

4.1) No business shall be transacted at a meeting of the Joint Standards Committee unless at least [insert number- at least three] members are present.

4.2) Where a meeting is convened to exercise functions specified in sections 57A or 57B of the Act or in regulations 17 to 20 of the Standards Committee Regulations:

a) At least one member of one of the Constituent Authorities must be present:

b) [if relevant] If the matter relates to a member or former member of a parish council, at least one parish council member must be present.

5) Proceedings of meetings

5.1) All questions coming or arising before a meeting of the Joint Standards Committee shall be decided by a majority of the members of the joint committee present and voting at that meeting.

5.2) The minutes of the proceedings of each meeting of the Joint Standards Committee shall be drawn up and shall be signed at the next ensuing meeting of the Joint Standards Committee by the person presiding at that next meeting.

5.3) A copy of the minutes of the proceedings of each meeting of the Joint Standards Committee shall be sent to the proper officer of each Constituent Authority within 14 days after the date of the meeting at which they were signed.

5.4) The names of the members present at each meeting of the Joint Standards Committee shall be recorded in the minutes of the proceedings of that meeting.

6) Sub Committees

6.1) Paragraphs 1 to 5 apply to meetings of Sub Committees of the Joint Standards Committee with the following modifications.

6.2) References to the Joint Standards Committee should be read as references to the Sub Committee.

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6.3) Sub Committees will not hold an annual meeting.

6.4) The chair and vice chair of the Sub Committee may be appointed by the Joint Standards Committee when it appoints the Sub Committee or at any time thereafter but if it does not do so then the Sub Committee will make the appointments at its first meeting.

[*Alternative* - The Sub Committee will not appoint a chair or vice chair to hold office for more than one meeting but will appoint an independent member to chair each meeting as the first item of business at that meeting. In the case of an equality of votes in respect of the appointment of a chair lots will be drawn.]

6.5) The quorum for a Sub Committee meeting will be determined by the Joint Standards Committee when it appoints the Sub Committee but shall not be less than three.

6.6) For the avoidance of doubt, by virtue of Regulation 8 (5) (a) of the Standards Committee Regulations the provisions of Part 5 A of the Local Government Act 1972 do not apply to a Sub Committee considering an allegation received under section 57A (1) of the Act or reviewing a decision under section 57B of the Act, and the provisions of Regulation 8 (5) (b) and (c) do apply.

[*The joint committee may wish to draw up its own more detailed rules of procedure for meetings, following a model with which one of the Constituent Authorities is familiar. This might include the arrangements for substitute members. It should also draw up rules of procedure for hearings, taking into account the advice given by the Standards Board for England.*]

Appendix 3

Protocol for the exercise of Monitoring Officer functions

1) This protocol has been agreed by the Monitoring Officers of the Constituent Authorities as a way of defining their relationship with the Joint Standards Committee and describing how they will exercise their statutory functions.

2) The objective is to ensure that the Constituent Authorities, the Joint Standards Committee, any other Standards Committee appointed by the Constituent Authorities, and the Monitoring Officers all:

    1) exercise their functions as effectively, efficiently and economically as possible

    2) demonstrate a strong ethical framework and structure within the authorities

    3) demonstrate innovation and best practice, strong outcomes for the community (including through partnership working), performance well above minimum accepted levels, and excellent value for money.

3) The Monitoring Officers necessarily retain personal responsibility for their statutory functions under sections 5 and 5A of the Local Government and Housing Act 1989 and Part 3 of the Local Government Act 2000. They may arrange for their functions under sections 5 or 5A to be performed by a member of their staff, nominated as their deputy for the purposes of those sections, but only if they are unable to act owing to absence or illness. It appears that such nomination is also effective for the purposes of Part 3, and therefore in these protocols "Monitoring Officer" includes a deputy acting in those circumstances.

4) Under section 82A of the Local Government Act 2000 the Monitoring Officer may delegate some, but not all, Part 3 functions ("the Delegable Functions") to a person whom he or she has nominated. The criterion is that the Monitoring Officer considers that in a particular case he or she ought not to perform those functions.

5) The Delegable Functions are:

    1) Receiving a reference from a Standards Committee under section 57A of the Act and a direction to take steps other than an investigation, dealing with it and reporting further to the Standards Committee.

    2) Receiving a reference from a Standards Committee under section 57A of the Act and dealing with it by conducting an investigation, making a finding and reporting to the Standards Committee.

    3) Receiving a reference from an ESO under section 60 (2) or (3) of the Act and a direction to take steps other than an investigation, dealing with it and reporting further to the ESO.

    4) Receiving a reference from an ESO under section 60 (2) or (3) of the Act and dealing with it by

Appendix 3

conducting an investigation, making a finding and reporting to the Standards Committee.

5) Receiving a reference from an ESO under section 64 (2) or (4) of the Act following an investigation by the ESO, sending a copy of the ESO's report to the subject member and referring the report to the Standards Committee.

6) The other functions under Part 3 cannot be delegated to a nominated person (the "Non-delegable Functions"). These include:

1) Receiving a reference from an ESO following a finding of "no failure to comply" or "no action" and deciding whether to send it to any member or officer of the authority.

2) Receiving a copy of an ESO's interim report and deciding whether to send it to the Standards Committee and/or any member or officer of the authority.

3) Receiving notice of a decision of an interim case tribunal.

4) Maintaining the register of interests.

7) The Monitoring Officer also has "Non-statutory Functions": activities that are incidental to the specific statutory duties and help promote good standards of conduct, including:

1) Giving general advice to members and officers of the authority.

2) Ensuring that the authority complies with its responsibilities under Part 3 of the Act.

8) The Monitoring Officer also has "Standards Committee Functions": activities to assist the Standards Committee in the exercise of its functions, including;

1) Advising the Standards Committee on the exercise of its general and specific functions under section 54 of the Act (promoting and maintaining high standards of conduct, assisting members to observe the Code of Conduct, advising on the Code, monitoring the operation of the Code and advising and training members on it).

2) Advising the Standards Committee on the exercise of its specific functions under the Act.

3) Attending and advising at meetings of the Standards Committee or a Sub Committee:

i) Assessing a written allegation

ii) Reviewing the assessment of a written allegation

iii) Considering reports from Monitoring Officer following (a) and ESO investigation (b) a MO investigation (c) other action by the MO

Appendix 3

iv) Conducting a hearing

v) Considering requests for dispensations

vi) Exercising other functions.

9) The Monitoring Officers have agreed that these functions will be allocated in the following way:

1) They will each exercise the Non-delegable and Non-statutory functions relating to their authority.

2) They will consider in each case whether or not they ought to perform the Delegable Functions personally, and if they decide that they will not:

[*Insert text - Options include a lead authority offering this service, pooling spare capacity or joint procurement of external assistance*.]

3) In so far as the Standards Committee functions relate to the Joint Standards Committee [or list the functions in question] then they will be discharged by

[*Option 1* - the Monitoring Officer for [*insert name of Lead Authority*].

Option 2 – the Monitoring Officer for the Constituent Authority which the Joint Standards Committee has appointed to provide accommodation and technical, professional, administrative and clerical support for its meetings.

Option 3 – for the period stated in column 1 of the following table, the Monitoring Officer for the Constituent Authority identified in Column 2.

Table

Column1	**Column 2**
Period	**Constituent Authority**
[*insert period, eg I June 2009 to 31 May 2009. Consider whether to rotate quarterly, six monthly, annually or less frequently*.]	[*Insert name*]
[etc]	[etc]

10) The Monitoring Officers will cooperate to achieve the objectives of this protocol. They recognise that the operation of this protocol will need to be amended and refined and will keep it under review. Any changes will be reported to the Joint Standards Committee and the Constituent Authorities.

Appendix 4

Allocation of expenses

The Constituent Authorities will have regard to the following principles in determining the allocation of expenses:

[*Select from the following. Delete references to parish councils if not relevant.*]

- Any expenses directly attributable to:
  - an investigation or other action taken following a reference to a Monitoring Officer
  - consideration of a report by an ESO or a Monitoring Officer following an investigation or other action
  - any hearing
  - any appeal

  will be allocated to the Constituent Authority of which the subject member or co-opted member is a member, or which is responsible for the subject parish council member or co-opted member.
- Expenses directly attributable to the assessment or review of assessment of written allegations will be allocated pro rata to the number of written allegations received against members or co-opted members of each Constituent Authority (or for which the Constituent Authority is responsible).
- Expenses relating to allowances paid to members of the Joint Standards Committee [*Option, if the joint committee appoints Independent Members* – ,apart from allowances paid to Independent Members appointed by the Joint Standards Committee] by reason of their attendance at meetings and other related activities will be allocated pro rata to the number of members appointed by the authorities [*Or* will be allocated to the Constituent Authority which appointed the member to whom the allowance was paid].
- Expenses [*Or* Other expenses] will be shared equally between the Constituent Authorities.

  [*Or*]
- Expenses [*Or* Other expenses] will be shared in the following proportions:

  [*Name of authority*] : [*insert*] %

  [*etc*]

  [*Or*]
- Expenses [*Or* Other expenses] will be shared pro rata to the number of written allegations received against members or co-opted members of each Constituent Authority (or for which the Constituent Authority is responsible).

Schedule 2

CHECKLIST (NOT TO FORM PART OF CONSTITUTION)

In order to decide which options to select, the Constituent Authorities will need to decide:

1) The name of the Joint Standards Committee.
2) Whether the Joint Standards Committee is to receive written allegations for assessment.
3) Whether any of the Constituent Authorities is responsible for parish councils.
4) The number of members of the Joint Standards Committee.
5) The number of members appointed from each of the Constituent Authorities.
6) The number of parish council members appointed by each of the Constituent Authorities.
7) Whether the Joint Standards Committee or the Constituent Authorities will appoint Independent Members, and, in either case, how many.
8) Whether any of the Constituent Authorities is to have the sole right to appoint an executive member, or whether this right is to be allocated by agreement (or in default, in turn on an annual basis), or by some other means.
9) Whether a Constituent Authority should be able to replace a member they have nominated, or whether the appointment should be for a period of time (subject to continuing eligibility).
10) Which Constituent Authority is to provide support and proper officer functions, and whether this is for an indefinite period or by rotation.
11) Whether, in principle, all Joint Standards Committee members of the same type, and with the same responsibilities, should be entitled to the same allowance.
12) What period of notice is needed to withdraw from the joint committee.
13) Whether the joint committee is to exercise all relevant functions, and, if not, which it is to exercise.
14) Whether the joint committee is to exercise the same functions for all Constituent authorities.
15) Whether the joint committee is to exercise other Part 3 functions, and, if so, which.
16) The quorum for Committee meetings.
17) Whether Sub Committees are to have standing or ad hoc chairs/chairmen.
18) How expenses are to be shared: in particular whether:
    - 18.1) the authority concerned should bear the whole cost of their investigations, hearings and appeals;
    - 18.2) assessment costs should be allocated pro rata to the number of complaints per authority;
    - 18.3) allowances should be paid by the nominating authority;
    - 18.4) other expenses (e.g. training) are to be shared equally or in some other proportion.

Schedule 2

The Monitoring Officers will need to decide:

1) Which options for the discharge of delegable functions by nominated officers they prefer.
2) Who is to advise the Joint Standards Committee, and for how long.

The Joint Committee will need to decide:

1) The number, composition and terms of reference of sub committees.
2) The quorum for Sub Committee meetings
3) Whether it should have more detailed procedural rules for meetings, and if so which.
4) The procedural rules for hearings.
5) Assessment and review criteria and other policies.

Local Government Association

AGENDA ITEM NO. 8

probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters

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foreword

1.1 Planning has a positive and proactive role to play at the heart of local government. It is a powerful tool that helps councils achieve the ambitions of local communities. Good planning stimulates growth and promotes innovation. It helps to translate goals for healthier communities, higher employment, better housing, reduced congestion, educational attainment, safe and sustainable communities into action through well-designed medical centres, offices, universities, homes, roads and other facilities vital to achieving them.

The planning system works best when the roles and responsibilities of the many players essential to its effective operation are clearly understood. It is vital that elected councillors and planning officers understand their roles and the context and constraints in which they operate.

1.2 Planning decisions involve balancing:

- the needs and interests of individual constituents and the community, with
- the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.

The challenge of achieving the balance between these dual roles led the LGA to issue its original ***Probity in planning*** guidance note in 1997. However, since then a comprehensive ethical framework for local government was introduced following the Local Government Act 2000. A revised national code of conduct for councillors was introduced in 2007. Each authority is required to adopt a local code of conduct that sets out rules governing the behaviour of its members.

This 2009 update provides refreshed advice on achieving this balance in the light of such changes. It also better reflects local authorities' roles as place shapers and the enhanced role for councillors as champions of their local communities. It recognises councillors' ability to participate in discussions prior to the receipt of a planning application on behalf of their communities, and engaging in spatial planning policy formulation.

It provides advice on this following the Killian Pretty review's recommendations. It also advises on how to avoid predetermination or bias in decision making. Whilst the advice is designed primarily for officers and councillors involved in plan-making and development management, it will also assist scrutiny and standards committees dealing with planning matters.

2 introduction

2.1 A lot has changed in expectations of the planning system since the previous LGA guidance was published.

2.2 Following the planning green and white papers, and subsequent legislation, planning is moving to the heart of local authorities place-shaping and community planning roles. Positive attitudes to harnessing the benefits of sustainable development are changing stereotyped images of planning as a control mechanism. More flexible and responsive development plans are being prepared to harness development to build communities and shape places.

2.3 Councillors are encouraged to act as champions of their local communities and to co-ordinate public service delivery through Local and Multi Area Agreements, Strategic Partnerships, and Sustainable Community Strategies. Creative place-shaping requires early and wide engagement and councillor and officer involvement. The 2008 LGA publication ***Planning at the heart of local government*** explains these changes in more detail.

2.4 This guidance is intended to facilitate the development of councillors' community engagement roles. The Nolan report resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. However in the place-shaping context, early councillor engagement is now positively encouraged to ensure sustainable development proposals can be harnessed to produce the settlements that communities need.

2.5 This guidance is intended to amplify the following for councillors grasping these new opportunities:

- Standards Board for England 2007 ***members guide on the code of conduct and occasional paper on predisposition, predetermination and bias;***
- Association of Council Secretaries and Solicitors ***Model member's planning code of good practice 2007***; and the
- Planning Advisory Service ***Effective engagement*** advice.

2.6 Planning decisions are not based on an exact science. Rather, they rely on informed judgement within a firm policy context. Decisions can be highly controversial as they affect the daily lives of everyone. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of the development plan and decision notices. It is important, therefore, that the process is characterised by open and transparent decision-making.

2.7 One of the key purposes of the planning system is to manage development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.

2.8 Bearing in mind all these factors, it is not surprising that, from time to time, things can go wrong unless councils are on their guard. This is why this guidance is essential.

2.9 The intention of the guidance is not to suggest that there is one best way of doing things. Local circumstances may well provide good reasons for local variations of policy and practice. However, each council should review the way in which it conducts its planning business, holding in mind the recommendations of this guidance.

2.10 This guidance refers to the actions of a planning committee of an authority, as the main decision-making forum on planning matters. However, it is recognised that authorities have developed a range of alternative forms of decision-making: area committees; planning boards, and of course, the full council itself - as the final arbiter in planning matters. It is important to stress, therefore, that the advice in this guidance note applies equally to these alternative forms of decision-making arrangements. Indeed, it becomes very important if the full council is determining planning applications referred to it, or adopting local development documents, that councillors taking those decisions understand the importance of this guidance. The guidance also applies to councillor involvement in any planning enforcement.

2.11 This revised guidance note is useful to both councillors and officers who become involved in operating the planning system - it is not therefore restricted to professional town planners and planning committee members. The successful operation of the planning system relies on mutual trust and understanding of each other's role. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

3 the general role and conduct of councillors and officers

3.1 Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors. It follows that instructions may only be given to officers through a decision of the council or its executive or a committee. Any other system which develops is open to question. A successful relationship between councillors and officers can only be based upon mutual trust and understanding of each others positions. This relationship and the trust which underpins it must never be abused or compromised.

3.2 Both councillors and officers are guided by codes of conduct. The code of conduct for members (the code), supplemented by guidance from the Standards Board, provides standards and guidance for councillors. Staff who are Chartered Town Planners are guided by the RTPI's Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. However, not all planning officers are members of the RTPI and it is therefore recommended that the Code of Professional Conduct (or those parts of it which are relevant) is incorporated into conditions of employment. In addition to these codes, a council's standing orders set down rules which govern the conduct of council business.

3.3 The code sets out the requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests, as well as appropriate relationships with other members, staff and the public. This impacts on the way in which councillors participate in the planning process. Of particular relevance to councillors making decisions on planning applications and planning policies is paragraph 6(a) which states that a member:

"must not in his or her official capacity, or any other circumstance, use or attempt to use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage."

3.4 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst councillors should take account of these views,

they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee.

3.5 Councillors should also be very cautious about accepting gifts and hospitality. The code requires any members receiving, in their capacity as members, any gift or hospitality over the value of £25, to provide written notification of the details to the monitoring officer of the council within 28 days of its receipt. Such details will go in a register of gifts and hospitality, which will be open to inspection by the public.

3.6 Similarly, officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. Wherever possible, offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of the minimal level and declare its receipt as soon as possible. Councils should provide a hospitality book to record such offers whether or not accepted. This book should be reviewed regularly by the council's monitoring officer. Failure by an officer to make an entry is likely to lead to disciplinary measures.

3.7 Employees must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

3.8 Staff must act impartially as a requirement of the draft statutory employees' code. Such impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on members in the code. Members are placed under a requirement by paragraphs 2(b) and (c) of the code to: treat others with respect; and not to do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

3.9 Finally, planning legislation and guidance can be complex. The LGA endorses the good practice of many councils which ensures that their members receive training on the planning process when first serving on the planning committee. It also recommends that members be updated regularly on changes to legislation or procedures. Such training is essential for those members involved in making decisions on planning applications and on local development documents. Authorities should provide training on the planning processes for all members.

4 registration and declaration of interests: predetermination, predisposition or bias

4.1 The Local Government Act 2000 and the national code place requirements on members on the registration and declaration of their interests, as well as the consequences for the member's participation in consideration of an issue, in the light of those interests. For full guidance on personal and prejudicial interests reference should be made to the Standard's Board ***Code of Conduct guidance*** 2007. In addition, advice may be sought from the council's monitoring officer. The requirements must be followed scrupulously and councillors should review their situation regularly. However, ultimate responsibility for fulfilling the requirements rests individually with each councillor.

4.2 The provisions of the code are an attempt to separate out interests arising from the personal and private interests of the councillor and those arising from the councillor's wider public life. The emphasis is on a consideration of the status of the interest in each case by the councillor personally, and included in that judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts.

4.3 A register of members' interests will be maintained by the council's monitoring officer, which will be available for public inspection. A member must provide the monitoring officer with written details of relevant interests within 28 days of their election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the member becoming aware of such changes.

4.4 An interest can either be personal or personal and prejudicial. The 2007 national code defines personal and prejudicial interests in any matter under discussion, and should be referred to for the appropriate detail. A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. Predetermination goes beyond predisposition and essentially evades the process of weighing and balancing relevant factors and taking into account other viewpoints. Sections 6.4 and 6.5 of this guidance further illustrate the concepts of bias and predetermination.

4.5 A prejudicial interest would require withdrawal of the councillor from the committee. However, an exception has been included in the 2007 code. Where a councillor has a prejudicial interest in any business of the authority, they may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose. Paragraph 5.3 of this guidance advises on this when a councillor is submitting a planning application to their authority.

4.6 If a councillor with a prejudicial interest speaks at a committee, they should withdraw after they have spoken. This is to ensure that members of the committee do not, by their presence, influence or seek to influence the remainder of the decision-making body.

4.7 The exceptions made to the definition of personal interests in the code, relating to membership of outside bodies, are attempts to clarify the nature of such interests and to encourage participation in such cases. It appears that too often in the past, members had been prevented from participation in discussions in such circumstances, on the basis that mere membership of another body constituted an interest that required such a prohibition, even in cases where the member was only on that body as a representative of the authority.

In addition, this clause was intended to allow councillors to exercise their representative function and make representations on behalf of their constituents, in cases where they have a personal and prejudicial interest.

4.8 A personal interest will not require withdrawal. Where a member considers they have a personal interest in a matter, they must always declare it, but it does not follow that the personal interest debars the member from participation in the discussion.

4.9 In addition to any declaring personal or prejudicial interests, members of a planning committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application. The Standards Board has provided guidance on predetermination, predisposition and bias. Avoidance of bias or predetermination is a principle of natural justice which the decision-maker is expected to embrace by the courts. But councillors will often form an initial impression or view.

A distinction is drawn by the courts between a planning councillor having clearly expressed an intention to vote in a particular way before a meeting (pre-determination), and a predisposition to an initial view, but where the councillor is clear they are willing to listen to all the material considerations presented at the committee before deciding on how to exercise their vote on behalf of the community. In the latter case there is no predetermination. This distinction is helpfully explained by the Standards Board for England in an occasional paper.

4.10 If a planning committee councillor has been lobbied by friends or others and wishes to pre-determine their position to promote or oppose a planning application, they will need to consider whether this has become a personal interest or not. Whether or not it is a personal interest, they need to consider if their view is likely to be regarded as pre-determined and against the fair determination of the planning application. If they have pre-determined their position, they should avoid being part of the decision-making body for that application.

4.11 A ward councillor who is also a member of the planning committee wishing to campaign for or against a proposal could speak at a planning committee on behalf of their constituents, having declared their pre-determined position. The councillor can continue to represent those ward interests as a spokesperson for their local community, notwithstanding their normal planning committee membership. However they would have to declare their position and not take part in the vote to avoid accusations of bias.

4.12 Cabinets and executives have created an interesting situation for cabinet members, portfolio holders and leaders who are also members of the planning application or local development document planning decision body. Authorities will typically have a member responsible for development. If that member is on the authority's planning committee or other decision-making body for planning matters, there may be occasions when that member will wish to press for a particular development which the member regards as beneficial to the development of the area. Should that executive member be able to vote on any planning application relating to that development?

4.13 The appropriate action is not clear cut, and will depend on the circumstances of a particular case. However, the general advice is that a member in such circumstances may well be so committed to a particular development as the result of their cabinet/executive responsibility that they may not be able to demonstrate that they are able to take account of all material considerations before a final decision on a planning application is reached. The member may be seen as the chief advocate on behalf of the authority for the development in question. In that sense, the member almost represents the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the member is able to argue for the development but should not vote on the relevant applications.

4.14 Given the significance of well-informed and appropriate judgments by members on the declaration of interests, predetermination predisposition and bias, it is strongly recommended that councils should hold annual seminars on the issue, and on the planning process generally. Many do this.

The Standards Board nationally, and the authority's standards committee locally, have the statutory responsibility of promoting and maintaining high standards of conduct by members and assisting them to observe the authority's statutory code of conduct. In providing such guidance and training to members at local level, the standards committee of the authority should be encouraged to include provision for the implications of the code and this guidance in planning matters to be considered.

5 development proposals submitted by councillors and officers; and council development

5.1 Proposals to their own authority by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. So can proposals for a council's own development. Proposals can take the form of either planning applications or development plan proposals.

5.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Any local planning protocol or code of good practice should address the following points in relation to proposals submitted by councillors and planning officers:

- serving councillors who act as agents for people pursuing planning matters within their authority should not play a part in the decision-making process for those proposals. Similarly, if they submit their own proposal to their authority they should play no part in its decision making;
- a system should be devised to identify such proposals;
- the council's monitoring officer should be informed of such proposals;
- proposals should be reported to the planning committee as main items and not dealt with by officers under delegated powers.

5.3 The consideration of a proposal from a councillor in such circumstances would be considered as a prejudicial interest under the code and as such, the councillor would be required to withdraw from any consideration of the matter. The code also provides that the councillor should 'not seek improperly to influence a decision about the matter'. It is important to emphasise here that 'improperly' does not imply that a councillor should have any fewer rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a committee.

However, whilst a member with a prejudicial interest may now address the committee under the code if the public enjoy the same rights, the member should consider whether it would be wise to do so in all the circumstances of the case, which could include the nature of the prejudicial interest and the relationship of the councillor with the remainder of the planning committee.

5.4 Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers . A member whose cabinet/executive responsibility effectively makes them an advocate for the development in question almost represents the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the member is able to argue for the development but should not vote on the relevant applications.

6

lobbying of and by councillors

6.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of the planning committee. As the Nolan Committee's third report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves". Any guidance failing to take account of the realities of the political/representative process will not carry credibility with experienced elected members.

6.2 However, lobbying can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved. When being lobbied, councillors (members of the planning committee in particular) should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the relevant officer, in order that their opinions can be included in the officer's report to the committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.

6.3 Concerns on poor practices within local authorities have often been based on the issue of lobbying.

6.4 Councillors, and members of the planning committee in particular, need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, members taking the decision will take account of all the evidence presented before arriving at a decision, and will avoid committing themselves one way or another before hearing all the arguments. To do otherwise makes them vulnerable to an accusation of partiality. Bias or the appearance of bias has to be avoided by the decision-maker. Whilst the determination of a planning application is not strictly a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is,

nevertheless, a formal administrative process involving application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. There is an added possibility that an aggrieved party may seek judicial review on the way in which a decision has been arrived at; or complain to the Local Government Ombudsman on grounds of mal-administration; or that a member has breached the code.

6.5 In reality of course, members will often form an initial view (a predisposition) about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the planning committee's proceedings as set out in the paragraph above, is that members of the committee (at least those who are not councillors of the affected ward - see overleaf) should not decide or declare which way they may be inclined to vote in advance of the planning meeting, or before hearing evidence and arguments on both sides.

6.6 Political reality suggests that it is often important to distinguish between the role of the planning committee member who is, and who is not, a ward member for the area affected by a particular planning application.

A planning committee member who does not represent the ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the committee meeting before declaring one way or another.

6.7 A planning committee member who represents a ward affected by an application may be in a difficult position if it is a controversial matter on which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support of a particular outcome - or even campaigning actively for it - they will have predetermined their position when the committee comes to take a decision on the application. The risk of perceived bias means that the proper course of action for such a member would be not to vote.

6.8 As explained previously, even where a councillor has a prejudicial interest in any business of the authority, they may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose.

6.9 A ward councillor who is also a member of the planning committee wishing to campaign for or against a proposal could speak at a planning committee on behalf of their constituents, having declared their pre-determined position. A pre-determined councillor can continue to represent those ward interests as a spokesperson for their local community, notwithstanding their planning committee membership. If that councillor speaks on behalf of a lobby group at the decision-making committee, they would be well advised to withdraw once any public or ward member speaking opportunities had been completed. This is to counter any suggestion that members of the committee may have been influenced by their continuing presence.

6.10 Councils should consider the provision of arrangements for the planning committee to hear representations from a ward member in circumstances where that member takes the view that it would be inappropriate to vote, if these are not already dealt with in the council's procedures. (See also section 9 on public speaking at planning committees).

6.11 It should be evident from the previous paragraphs that it is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual member.

6.12 Any local code or guidance of planning good practice should also address the following more specific issues about lobbying:

- given that the point at which a decision on a planning application is made cannot occur before the planning committee meeting, when all available information is to hand and has been duly considered, no political group meeting should be used to decide how councillors should vote. The use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration;
- with the exception in some circumstances of ward councillors, whose position has already been covered in the preceding paragraphs, planning committee councillors should in general avoid organising support for or against a planning application, and avoid lobbying other councillors. Such actions can easily be misunderstood by parties to the application and to the general public;
- councillors should not put improper pressure on officers for a particular recommendation, and, as required by the code, should not do anything which compromises, or is likely to compromise, the officers' impartiality. Officers acting under the council's delegation scheme to determine an application or making recommendations for decision by committee, are required to be impartial. It is therefore important, as reflected in the code, for councillors to refrain from seeking to influence the outcome of the officer's decision or recommendation;
- call-in procedures, whereby members can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committees, should include provisions requiring the reasons for call in to be expressed in writing so that there is a record of decision, and should refer solely to matters of material planning concern.

7

pre-application discussions

7.1 Discussions between a potential applicant and a council prior to the submission of an application can be of considerable benefit to both parties and are encouraged. However, it would be easy for such discussions to become, or to be seen by objectors to become part of a lobbying process on the part of the applicant.

7.2 With the recognition of the need to allow and encourage councillors to be champions of their local communities in the local government white paper, there has followed a realisation that councillor engagement in pre-application discussions on major development is necessary to allow councillors to fulfil this role. Many councils had been so concerned about probity issues following Nolan and the introduction of the ethical code, that they had not involved councillors in pre-application discussions for fear of councillors being accused of predetermination when the subsequent application came before them for determination.

7.3 In 2006, the Audit Commission followed emerging advice from the Local Government Association, National Planning Forum, and Planning Advisory Service that councillor involvement in pre-application discussions was beneficial provided it was done within carefully established limits to protect the council and its councillors.

The Audit Commission recommended that councils should develop effective approaches to pre-application discussions which involve councillors, to ensure the issues relating to proposed planning applications are identified and addressed early in the process. This was partly to help councillors lead on community issues and partly to ensure that issues were not identified for the first time when the application was presented to the committee for decision, causing delay and frustration.

7.4 The updated 2008 leaflet ***Positive engagement – a guide for planning councillors*** endorsed by the government and LGA asks councillors to be prepared to engage with officers in appropriate pre-application discussions.

7.5 In order to avoid perceptions that councillors might have fettered their discretion in any pre application discussions, **such discussions should take place within clear guidelines. These guidelines need to be developed by an authority and published to assist councillors and officers**. Although the term 'pre-application' has been used, the same considerations should apply to any discussions which take place before a decision is taken. In addition to any guidelines to deal with specific local circumstances, a protocol should include:

- clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place;
- consistent advice should be given by officers based upon the development plan and material considerations. There should be no significant difference of interpretation of planning policies amongst planning officers. It is officers' role to ensure consistency of advice and officers should therefore be present with councillors in pre application meetings. All officers taking part in such discussions should make clear whether or not they are the decision-maker. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations. They should ask their officers to deal with any necessary negotiations to ensure that the authority's position is co-ordinated;
- a written note should be made of all meetings. An officer would best make the arrangements for such meetings, attend and write a follow-up letter. A note should also be taken of similar telephone discussions. The note should be placed on the file as a public record to show a transparent approach. Sometimes confidentiality is needed and should be respected. However the need for this can easily be exaggerated and confidentiality of advice by representatives of a public body on a planning matter will rarely be justified even if the applicant's interest is sensitive. If there is a legitimate reason for confidentiality regarding the proposal, a note of the non-confidential issues raised or advice given can still normally be recorded on the file to reassure others not party to the discussion;
- care must be taken to ensure that advice is not partial (nor seen to be), otherwise the subsequent report or recommendation to committee could appear to be advocacy; and
- the decision as to whether to establish a register for everyday contacts between councillors and interested parties will depend on local circumstances. Many councillors will be talking regularly to constituents to gauge their views on matters of local concern, and such a register may be considered, as the Nolan Committee argued, impractical and unnecessary. Councillors will, however, need to register any gifts and hospitality received as a requirement of the code.

7.6 Consideration needs to be given to when to involve other consultees and the community in pre-application discussions. Some authorities have been very successful in engaging their councillors and communities by having public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consulttees. The advantages of the authority setting up such forums are the transparency of process, and the ability of ward councillors and other councillors to seek information and identify important issues for the proposal to address, without the risk of planning councillors having engaged with developers in such a way as to suggest they have pre-determined themselves. Members should also be aware of the code of conduct which means that they should not use their position to improperly influence decisions. This provision does not only apply to councillors when they are in a committee meeting.

7.7 Authorities also have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers of discussions from which councillors can identify items of interest and seek further information and raise issues for consideration;
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be;
- ward councillor briefing by officers of the content of initial pre application meetings held.

7.8 The 2007 CLG report on ***Member Involvement in Planning Decisions***, the 2007 London Councils report on ***Connecting Councillors with Strategic Planning Applications***, and the 2007 POS Enterprises Development Management practice guidance note on ***Councillor involvement in pre-application discussions*** provide examples and advice for those interested in developing appropriate protocols for their authority. Full references are given at the end of this document.

7.9 Statements of Community Involvement required as part of the LDF need to be reviewed to see whether mechanisms for such dialogue are already in place, or if the statement needs to be updated to reflect the council's approach.

8 officer reports to committee

8.1 The courts and Ombudsman advice have determined officer reports on planning applications must have regard to the following points:

- reports should be accurate and cover, amongst other things, the substance of any objections and the views of those consulted;
- relevant information should include a clear exposition of the development plan; site or related history; and any other material considerations;
- reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur;
- reports should contain technical appraisals which clearly justify a recommendation;
- if the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated.

It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration, or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004.

9

public speaking at planning committees

9.1 The principle of whether or not public speaking should be allowed at a planning committee is very much a matter for the local authority concerned. A majority of authorities now provide such an opportunity. The benefits seen by those authorities are that public confidence is generally enhanced and that direct lobbying may as a result be reduced. The disadvantage is that the approach may lengthen meetings and make them marginally more difficult to manage. However, where public speaking is allowed, it is important that clear protocols are established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors arrangements. In addition, in the interests of equity, the time allowed for presentations for and against the development should be identical, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the council in writing.

9.2 Documents not previously submitted should not normally be circulated to the committee as all parties may not have time to react to the submissions, and councillors may not be able to give proper consideration to the matter. Officers may not be able to provide considered advice on any material considerations arising. This should also be told to those who intend to speak.

The acceptance of circulated material could imply a willingness to take the necessary time to investigate any issues raised and lead to the need to defer the application or risk a complaint about the way the material has been considered. For similar reasons, messages passed to members sitting in planning committees should be avoided. Care needs to be taken to avoid the perception of external influence or bias.

10 decision contrary to officer recommendation and/or the development plan

10.1 The law requires that decisions should be taken in accordance with the development plan, unless material considerations indicate otherwise (s38A Planning & Compensation Act 2004).

10.2 This gives rise to two main issues. Firstly, all applications which are not in accordance with the development plan must be identified and advertised as such. Secondly, if it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated. The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed. If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

10.3 The Association of Council Secretaries and Solicitors' ***Model Planning Code*** advises planning committees to take the following steps prior to making a decision contrary to officers' recommendations:

- encouraging the formation of tentative reasons by discussing a predisposition with planning officers beforehand;
- writing down the reasons as part of the mover's motion;
- adjourning for a few minutes for those reasons to be discussed;
- if a very strong objection from officers on validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.

10.4 If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Thus, members should be prepared to explain in full their reasons for not agreeing with the officer's recommendation. In so doing, members should observe the 'Wednesbury principle' (the case of Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223) which, put simply, requires all relevant information (ie material considerations) to be taken into account and all irrelevant information (ie non-material matters) to be ignored.

The officer should also be given an opportunity to explain the implications of the contrary decision.

10.5 The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant, or any other material or non-material considerations which might cause local controversy, will rarely provide such grounds. A notable exception is where planning policy allows for this, for example, the provision of a dwelling for an agricultural worker.

11 committee site visit

11.1 Earlier enquiries revealed little consistency amongst councils on the operation of site visits, both in terms of why they are held and how they are conducted. While a variety of approaches can be healthy, the lack of any common approach on when and why to hold a site visit and how to conduct it can leave a council open to the accusation that such visits are arbitrary and unfair or a covert lobbying device. A protocol setting out the arrangements for a council could be used to encourage consistency and transparency of process.

11.2 The code applies whenever the councillor is conducting official business, which will include site visits. Councils should set out the criteria for deciding when a site visit is justified and consider the procedures for such visits. In doing so, the following points may be helpful:

- site visits can cause delay and additional costs and should only be used where the expected benefit is substantial; officers will have visited the site and identified material considerations on behalf of the council;
- they should be carefully organised to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to throughout the visit;
- many councils allow site visits to be 'triggered' by a request from the ward councillor. It is acknowledged that this may be a proper part of the representative role of the member, and should normally be considered if allowed for in any local planning guidance, although the 'substantial benefit' test should still apply. It is also good practice to keep a record of the reasons why a site visit is called.

11.3 A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance); or
- there is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.

11.4 Site visits consisting simply of an inspection by a viewing sub-committee, with officer assistance, are in most cases the most fair and equitable approach. An inspection could be unaccompanied (ie without applicant and objectors) or accompanied but run on the strict lines of a planning inspector's site inspection, ie not allowing arguments to be expressed on site.

12

regular review of decisions

12.1 The report of the Audit Commission Building in Quality recommended that councillors should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, strengthening public confidence in the planning system, and can help with reviews of planning policy.

12.2 Such reviews are best undertaken at least annually. They should include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The planning committee should formally consider the review and decide whether it gave rise to the need to reconsider any policies or practices.

12.3 Scrutiny committees may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to refine their understanding of the impact of their decisions from the visiting of completed developments. It is therefore important for planning committee members to be fully engaged in such reviews.

13

complaints and record keeping

13.1 Whatever procedures a council operates, it is likely that complaints will be made. However, the adoption of the advice in this guidance should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.

13.2 A logical consequence of adopting good planning practice guidance is that a council should also have in place a robust complaints system. Such a system may well apply to all council activities, but a council should consider specifically how planning-related complaints will be handled, in relation to the code of good practice.

13.3 So that complaints may be fully investigated and as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could cause a complaint or undermine a council's case. The guiding rule is that every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. Particular care needs to be taken with applications determined under officers' delegated powers. Such decisions should be as well documented and recorded as those taken by members. These principles apply equally to enforcement and development plan matters.

14

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Local Government Association

The Local Government Association is the national voice for more than 400 local authorities in England and Wales. The LGA group comprises the LGA and five partner organisations which work together to support, promote and improve local government.

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AGENDA ITEM NO. 9

Taunton Deane Borough Council

Standards Committee – 16 July 2009

Protocol for the Local Assessment Process

The purpose of this protocol is to ensure that every complaint is dealt with promptly and efficiently. This Protocol should be used in conjunction with the guidance issued by the Standards Board for England.

PART 1

1. When a complaint is received by the Monitoring Officer it must be considered by an Assessment Sub-Committee within **20 working days**.

2. Various options will be available to the Sub-Committee namely:-

   (i) Other action to be agreed with the Monitoring Officer (MO)
   (ii) Further information is required from the complainant
   (iii) No further action
   (iv) Refer for investigation

   (a) Timescales for the investigation are to agreed with the Chair of the Sub-Committee and the MO and will be incorporated within a contract or service level agreement with the Investigating Officer . Dates for delivery of the draft and final report to be agreed

   (b) Monthly reports will be made to the Chair of the Sub- Committee on progress of the investigation.

   (c)The complainant and the subject member (the individual who is the subject of the complaint) will be informed of the decision of the assessment sub committee within **5 working days.**

3. If there has been a request from the complainant to review a decision to take no further action, a Review Sub-Committee will be formed which will be made up of a different sub-set of members to review the decision of the Assessment Sub-Committee. A review must be requested within **30 days** of the initial assessment decision notice and will be held within **20 working days** of the request being received.

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PART 2

INVESTIGATION AND SUBSEQUENT PROCESS

1. Once an investigation has been completed a draft report will be sent to the subject member. The subject member will have **14 days** to respond with any comments they may have.

2. Once those comments have been reviewed the report will be finalised by the Monitoring Officer with any alterations as deemed appropriate.

3. A consideration hearing must then be held ideally with a different sub-set of members as soon as possible. A provisional date will have been set once the draft report was received to ensure unnecessary delay.

4. If there is a finding of no breach by the Monitoring Officer and the Sub-Committee accepts this finding then no further hearing is necessary.

5. If the Monitoring Officer finds that there has been a breach of the Code of Conduct the Sub-Committee must decide whether the matter should be decided locally or referred to the Adjudication Panel for England for determination.

6. If the Sub-Committee decide that they can deal with the matter a hearing should be set up **within 20 working days** and the pre-hearing process should be carried out as soon as possible.

7. Following the hearing, the findings of the Sub-Committee will be communicated to the complainant and the subject member in writing at the earliest opportunity, which will normally be immediately the hearing has been concluded. The public will be informed by the release of a press notice within **5 working days** and the content of the press release will be posted on the TDBC website.

PART 3

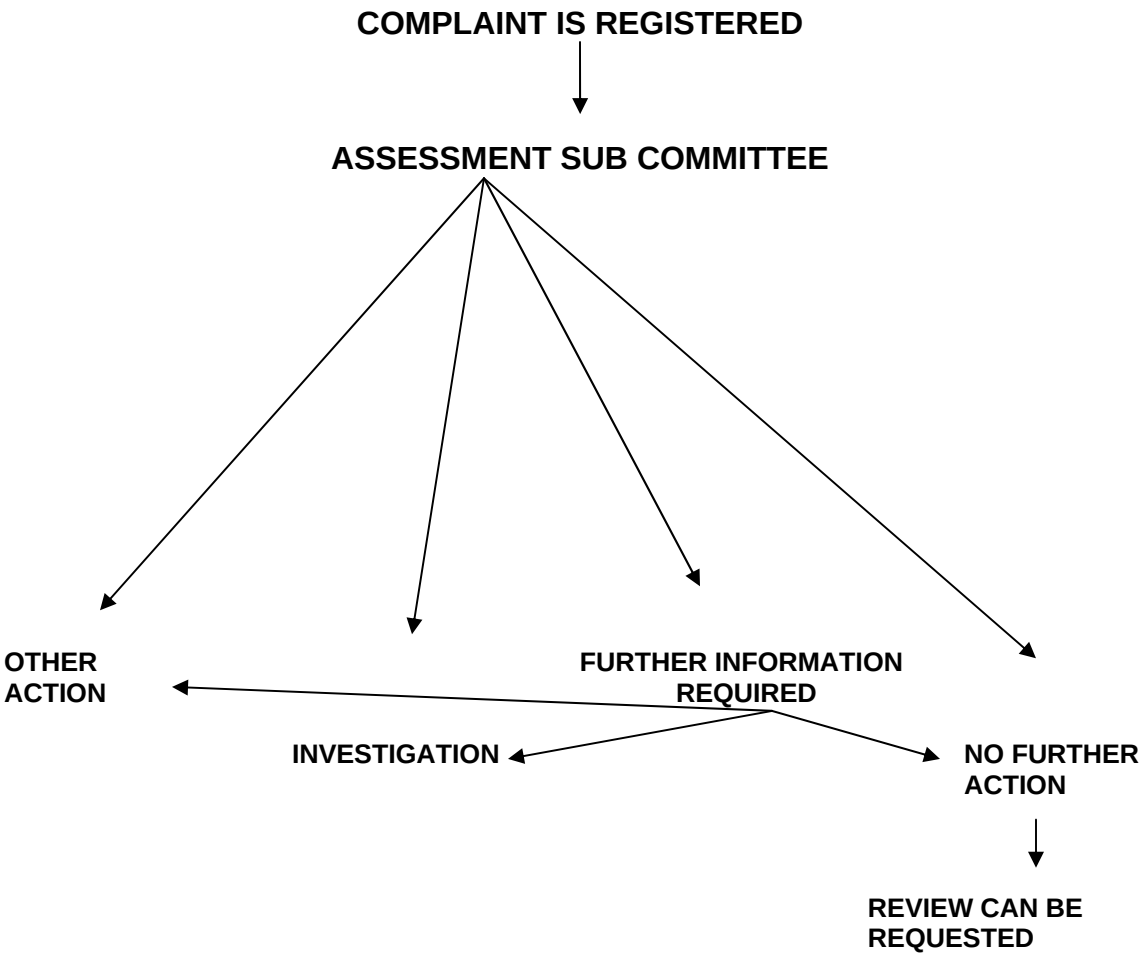
Application and monitoring of sanctions

1. If a subject member is found to be in breach of the Code of Conduct the Hearing Sub-Committee will need to consider which sanctions should be imposed on the subject member.

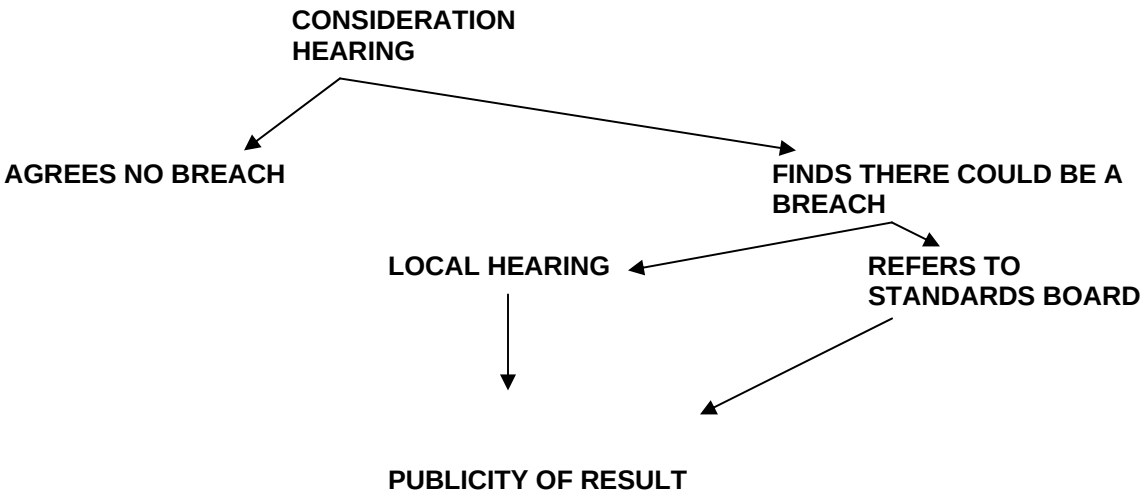
2. The MO will ensure that any sanction imposed is implemented.

APPENDIX

PART 1



PART 2



Standards Committee – 16 July 2009

Minutes of a meeting of the Standards Committee held in Committee Room No. 2, The Deane House, Belvedere Road, Taunton on Wednesday, 16 July 2009 at 2.30 p.m.

Present: Councillors Mrs Allgrove and House
Mr A Cottrell, Mrs A Elder, Mr R Macey, Mr P Malim OBE, Mr L Rogers, Mr M Stanbury, Mr R Symons

Officers: Mrs T Meers (Monitoring Officer) and Mr R Bryant (Democratic Services Manager)

12. Appointment of Chairman

Resolved that Mrs Anne Elder be appointed Chairman of the Standards Committee for the remainder of the Municipal Year.

13. Appointment of Vice-Chairman

Resolved that Mr Maurice Stanbury be appointed as Vice-Chairman of the Standards Committee for the remainder of the Municipal Year.

14. New Councillor Appointment

The Democratic Services Manager, Richard Bryant, reported that since the last meeting the Liberal Democrat Group had appointed Councillor Steve Brooks to replace Councillor Tim Slattery on the Standards Committee.

15. Resignation

The Chairman reported that Mrs Jenny Hoyle had tendered her resignation from the Standards Committee. She undertook to write to Mrs Hoyle on behalf of the Committee to thank her for contributions to the work of the Committee over the past two years.

In terms of finding a replacement Parish Representative, Richard Bryant reported that he still had details of those Parish Councillors who had applied during the course of 2008 to fill the last vacancy. He would initially contact those individuals in areas of Taunton Deane which were not “covered” by the existing Parish Representatives to establish whether they were still interested in joining the Committee. A discussion with the Chairman would then take place as to the next part of the recruitment process.

16. Apologies

Councillor Brooks, Mr M Marshall and Mr B Wilson.

17. Minutes

The minutes of the previous meeting of the Committee held on 15 April 2009 were taken as read and were signed, subject to the following amendment to Minute No 4 “Good Practice in Standards – Research Project”:-

First bullet point, last sentence, the word “his” to read “this”.

18. Declaration of Interest

Councillor Mrs Allgrove declared a personal interest as Chairman of the Somerset Association of Local Councils.

19. Standards Board Intervention, Joint Standards Committees and Dispensations

Reported that the Standards Committee (Further Provisions) (England) Regulations 2009 (SI 2009/1255), came into force on 15 June 2009.

The regulations made provision for the Standards Board for England (SBE) to suspend the functions of a local Standards Committee where the Committee was failing to perform its functions satisfactorily. They also gave Councils a power to establish Joint Standards Committees and extended the power of Standards Committees to give Members dispensations where they would otherwise be prohibited from participating on a matter because of a prejudicial interest.

(i) Suspension of Standards Committee Functions

The function of initial assessment of complaints in respect of a breach of the Code of Conduct by Members was transferred from the SBE to local Standards Committees from 8 May 2008. Although most local authorities had taken on this new responsibility and were discharging this function effectively, the new regulations now gave a power for the SBE to intervene in an individual authority if it was considered necessary to do so.

An intervention could be triggered by the SBE in a number of ways, including if it was felt the authority’s Standards Committee had failed to have regard to SBE guidance or a direction from the SBE, or the authority’s Monitoring Officer had failed to carry out his/her functions within a reasonable time or in a reasonable manner.

Where the SBE considered intervention, it had to give the authority notice of its intentions and reasons and give the authority at least 28 days to respond before a direction was made. The effect of a direction was to transfer the initial assessment function to either the SBE itself, or to the Standards Committee of another named authority (“the substitute authority”).

During the period of the intervention, the SBE or the substitute authority would undertake the initial assessment and decide whether to refer the allegation for a local or a SBE investigation, alternative action or no action, as appropriate.

The intervention was strictly in respect of the initial assessment function, so the regulations also provided a discretion to the SBE as to how any subsequent hearing should be conducted.

Noted that an intervention could be terminated by the SBE at any time.

(ii) Joint Standards Committees

The regulations gave a discretion for two or more local authorities to set up a Joint Standards Committee, and made it clear that such a Joint Standards Committee could be established to discharge all of each participating authority's standards functions if it so wished. Alternatively, if it was decided that only some functions should be dealt with by a Joint Committee, each participating authority would retain its own Standards Committee to deal with the remaining functions.

Where authorities wished to establish a Joint Standards Committee, the Full Council of each participating authority would need to resolve a number of issues including which standards functions were to be allocated to the Joint Committee, the administrative arrangements, the number of Members, including Independent and Parish members, to be appointed and how the costs incurred by the Joint Standards Committee would be shared between the participating authorities.

(iii) Dispensations

The new regulations had updated the original 2002 Dispensations Regulations which provided that a Member who had a prejudicial interest in a matter which was coming before the Council could apply to the Standards Committee for a dispensation to allow him/her to speak and to vote on the matter at meetings.

The regulations specified two grounds for dispensation:-

(a) Where the business of the authority would be impeded because more than 50% of the Members of the decision-making body (Council, Committee, Sub-Committee or Cabinet) would otherwise be prohibited from voting on the matter; and

(b) Where the business of the authority would be impeded because the absence of Members as a consequence of prejudicial interests would upset the political balance of the meeting to such an extent as to prejudice the outcome of voting in that meeting.

A dispensation could be granted for a particular meeting or for a period, not exceeding four years. A dispensation could not however be granted to a Member who was prohibited from participating at an Overview and Scrutiny Committee by virtue of having been involved in taking the original decision, or to an Executive Member for the exercise of delegated powers. All dispensations granted were entered in the register of Members' interests.

In practice, the grant of dispensations would continue to be problematic because Members were rarely aware of the numbers of Members who would be debarred from the consideration of a particular matter by reason of prejudicial interests until it was too late to call a Standards Committee.

During the discussion of this item, it was agreed that the merits of possibly establishing a Joint Standards Committee with neighbouring Councils should be considered in greater detail at a future meeting of the Committee.

Members also asked whether the granting of dispensations could be delegated to the Monitoring Officer, in consultation with the Chairman of the Standards Committee, to overcome the situation described above where in normal circumstances, a decision of the Standards Committee appeared to be required. Mrs Meers agreed to report back on this point at the next meeting.

Resolved that:-

(1) the Standards Committee (Further Provisions) (England) Regulations 2009 be noted; and

(2) the Monitoring Officer advises all Members of the new grounds for application for a dispensation.

20. Probity in Planning

Mrs Meers reported that the Local Government Association (LGA) had recently published a document titled “Probity in Planning : The role of Councillors and Officers – Revised guidance note on good Planning practice for Councillors and Officers dealing with Planning matters”.

Unfortunately, this guidance had already been issued to Members of Taunton Deane’s Planning Committee without any changes to previous guidance being highlighted.

The Vice-Chairman, Maurice Stanbury, suggested that a comparison should be undertaken between existing guidance and the new document from the LGA.

Messrs Malim and Symons agreed to undertake this analysis and would report their findings to a future meeting of the Committee.

21. Draft Protocol for the Local Assessment Scheme

Mrs Meers submitted for comment a draft protocol which had been prepared in conjunction with the Vice-Chairman. Its purpose was to ensure that every complaint made against a Councillor or Parish Councillor was dealt with promptly and efficiently. The protocol would be used alongside the guidance issued by the SBE.

The protocol was divided into the following three sections:-

- Actions from initial receipt of the complaint to the decision of the Assessment Sub-Committee;
- Investigation and subsequent process; and
- Application and monitoring of sanctions.

Members welcomed the protocol although it was hoped the flowchart which accompanied it could be modified to include the key time limits for easy reference.

Resolved that the Complaints Protocol be formally adopted.

22. Exclusion of the Press and Public

Resolved that the press and public be excluded from the meeting for the following item because of the likelihood that exempt information would otherwise be disclosed relating to Clause 9 of Schedule 12A to the Local Government Act, 1972 and the public interest in withholding the information outweighed the public interest in disclosing the information to the public.

23. Update on Complaints

Mrs Meers circulated a spreadsheet which provided a complete update on the five complaints received against Taunton Deane Councillors since May 2008 when the Local Assessment Framework had been introduced.

The Chairman reported on the case involving Councillor Stone (Reference 2008/02) which had been subject to a hearing on 16 April 2009. Part of the sanction imposed on Councillor Stone was to appear at the Full Council meeting on 14 July 2009 to apologise to his fellow Members for not withdrawing from a previous meeting of Full Council when he had declared a prejudicial interest.

Without any explanation, Councillor Stone had submitted his apologies shortly in advance of the meeting on 14 July and had not therefore delivered the required apology. The Chairman had attended the meeting of Full Council and had expressed her concern at Councillor Stone's "cavalier attitude". She had sought and received backing for an appropriately worded letter to be sent to Councillor Stone.

Mrs Meers confirmed that she was in contact with the SBE as to what further steps could be taken to ensure Councillor Stone complied with the sanction imposed on him. It was possible that a further complaint might need to be lodged but this would be confirmed once further SBE guidance had been received.

24. Visits to Parish Councils

The Democratic Services Manager, Richard Bryant, circulated information to the Independent Members as to the Parish Councils which were still due to be

visited.

Only Bradford on Tone and Wellington Without had not been visited during the "first round" and with meetings scheduled for September 2009, Messrs Cottrell and Symons volunteered to attend on behalf of the Standards Committee.

In terms of providing further or refresher training, Mrs Meers informed Members that there was likely to be a revision to the Code of Conduct later in the year. This would give the opportunity for further training to be delivered to Parish Councils as well as updating them on the new regulations concerning dispensations.

During the discussion of this item the Vice-Chairman suggested that it might be helpful for the Independent Members to receive some further information about Parish Council procedures and protocols to gain a greater understanding of the how meetings should be conducted.

The Chairman warned that it was beyond the remit of the Committee to become involved in how a Parish Council meeting should be run. If anything of concern was noted, this should be reported to the Parish Liaison Officer to follow up, if appropriate.

25. "The Way Forward"

Mrs Meers reported that she had recently discussed with the Chairman a number of ideas for the future working of the Standards Committee.

It was felt that arranging an informal meeting of the Committee away from The Deane House would be of considerable benefit to allow discussions to take place on obtaining a better understanding of the work of the Legal and Democratic Services Unit, to consider the Committee's Terms of Reference, to decide the "way forward" for the Committee and how best to build a relationship with the rest of the Council.

The next scheduled meeting of the Committee was on Tuesday, 11 August 2009 and it was suggested that the informal session should take place that morning at a venue to be notified. This suggestion was agreed.

26. Date of the next meeting

The next meeting would be on Tuesday, 11 August 2009 at 2.30 p.m. in The John Meikle Room at The Deane House.

(The meeting ended at 4.18 p.m.)