



STANDARDS COMMITTEE

DATE:	Monday, 27 March 2017
TIME:	10.00 am
VENUE:	Council Chamber, Council Offices, Thorpe Road, Weeley, CO16 9AJ

MEMBERSHIP:

Councillor Heaney (Chairman)	Councillor Steady
Councillor Honeywood (Vice-Chairman)	Councillor Whitmore
Councillor J Brown	
Councillor Cawthron	
Councillor Nicholls	

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For further details and general enquiries about this meeting, contact Ian Ford on 01255 686 584.

DATE OF PUBLICATION: THURSDAY, 16 MARCH 2017

AGENDA

1 Apologies for Absence and Substitutions

The Committee is asked to note any apologies for absence and substitutions received from Members.

2 Minutes of the Meeting of the Standards Committee held on 26 September 2016 (Pages 1 - 6)

To confirm and sign as a correct record, the minutes of the meeting of the Standards Committee, held on 26 September 2016.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests or other interest, and the nature of it, in relation to any item on the Agenda.

4 Report of the Monitoring Officer - A.1 - Complaints Procedure - Reference back from full Council (Pages 7 - 8)

At the request of full Council, to reconsider the Standards Committee's previous recommendation to amend the Complaints Procedure.

5 Report of the Monitoring Officer - A.2 - Review of Monitoring Officer Protocol (Pages 9 - 12)

The Committee is requested to review the Monitoring Officer Protocol and suggest any proposed amendments to that Protocol for consideration by full Council.

6 Report of the Monitoring Officer - A.3 - Disclosure of Information - Non-Payment of Council Tax by Councillors (Pages 13 - 16)

For the Standards Committee to discuss whether it agrees to add the matter of processes and procedures involving Councillors and the payment of Council Tax to its work programme or that a guidance note is issued for Members following on from case-law, concerning the public interest and fairness in disclosing information of non-payment of council tax by councillors.

7 Report of the Monitoring Officer - A.4 - Annual Report Declarations of Interest and Associated Matters (Pages 17 - 20)

To present the Committee with an overview on the register of, and declarations of, interests by Members from 1st August 2016.

8 Report of the Monitoring Officer - A.5 - Standards Committee - Annual Work Programme (Pages 21 - 24)

To agree a work programme for 2017/18.

9 Discussion Topics and/or Updates from the Monitoring Officer

The Monitoring Officer will give a quarterly update on Complaints.

10 Exclusion of Press and Public

The Committee is asked to approve the following resolution:

“That under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of Agenda Item 11 on the grounds that it involves the likely disclosure of exempt information as defined in the relevant paragraphs of Part 1 of Schedule 12A, as amended, of the Act.”

11 Exempt Minute of the Last Meeting held on 26 September 2016 (Pages 25 - 26)

To confirm and sign the exempt minute of the last meeting of the Committee held on 26 September 2016.

Date of the Next Scheduled Meeting

The next scheduled meeting of the Standards Committee is to be held in the at Time Not Specified on Date Not Specified.

Information for Visitors

FIRE EVACUATION PROCEDURE

There is no alarm test scheduled for this meeting. In the event of an alarm sounding, please calmly make your way out of any of the fire exits in the hall and follow the exit signs out of the building.

Please heed the instructions given by any member of staff and they will assist you in leaving the building and direct you to the assembly point

Please do not re-enter the building until you are advised it is safe to do so by the relevant member of staff.

Your calmness and assistance is greatly appreciated.

**MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE,
HELD ON MONDAY 26 SEPTEMBER 2016 AT 10.00 AM,
IN THE COUNCIL CHAMBER, COUNCIL OFFICES, THORPE ROAD, WEELEY**

Present:	Councillors Heaney (Chairman), Honeywood (Vice-Chairman), Cawthron, Davis, Nicholls, White and Whitmore
Also Present:	John Wolton and Clarissa Gosling (Independent Persons)
In Attendance:	Ian Davidson (Chief Executive), Lisa Hastings (Monitoring Officer) and Katie Sullivan (Committee Services Officer)

10. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillor J Brown (with Councillor Davis substituting) and Councillor Steady (with Councillor White substituting).

11. MINUTES OF THE LAST MEETING

The minutes of the meeting of the Standards Committee, held on 29 June 2016, were approved as a correct record and signed by the Chairman.

12. DECLARATIONS OF INTEREST

Councillor Honeywood declared a Non-Pecuniary Interest in relation to agenda item 5 (A.2) as he was the Complainant and informed Members that he would withdraw from the Committee and sit in the public gallery whilst this item was discussed, however, he reserved his right, as a District Councillor, to address the Committee on this item.

13. REPORT OF THE MONITORING OFFICER - A.1 - ANNUAL UPDATE ON MANDATORY TRAINING FOR MEMBERS

There was submitted a report by the Monitoring Officer which sought to update the Committee, as part of its agreed work programme, on the current position of mandatory training for Members and named substitute Members of the Council's Audit, Licensing & Registration, Planning and Standards Committees.

The report reiterated the Council's decision and constitutional requirement to make relevant training mandatory for Members, and their named substitutes, in respect of a number of the Council's Committees and also provided details of training undertaken and attendance to date.

The Monitoring Officer informed Members that Appendix B contained a few small errors in that Councillor Davis and Nicholls had both attended the Habitats session on 27 April 2016 however, Councillor Fairley had not. Although correct, as of the time of printing, Councillor White, who was also the Chairman of the Planning Committee, informed Members that the session with ECC Highways had now taken place and that training was scheduled on 6 October 2016 for 'Enabling Development' The Monitoring Officer confirmed that the amendments and updates would be made to Appendix B (Planning Training Programme). Councillor Heaney informed the Monitoring Officer that she had attended the Determining Planning Applications session on 28 May 2015 and Appeals session on 24 February 2016, but it had not been recorded. The Monitoring Officer

confirmed that the information was taken from the sign-in sheets but the records would be updated.

The Monitoring Officer informed Members that, in the future, the recording of Licensing and Registration Committee training would be produced in the same format as the Planning Committee training for consistency.

The Committee's approval was also sought to a slight amendment to the Planning Code and Protocol and a delegation to Officers, in consultation with the Chairmen of the Planning and Standards Committees, to make minor amendments to the Protocol.

Following discussion by the Committee, it was moved by Councillor Heaney, seconded by Councillor White and **RESOLVED** that the Standards Committee:

- (a) notes the contents of the report and its Appendices;
- (b) encourages Members of the Planning, Licensing & Registration and Audit Committees to attend organised mandatory training to comply with the constitutional requirement; and
- (c) delegates authority to the Monitoring Officer and Head of Planning Services, in consultation with the Chairmen of the Standards and Planning Committees, to make minor amendments to the Planning Code & Protocol.

14. REPORT OF THE MONITORING OFFICER - A.2 - OUTCOME OF A CODE OF CONDUCT INVESTIGATION - COMPLAINT AGAINST A DISTRICT COUNCILLOR

Councillor Honeywood had earlier declared a Non-Pecuniary Interest in relation to agenda item 5 (A.2). Councillor Honeywood withdrew from the Committee and sat in the public gallery whilst this item was discussed, however, he had reserved his right to address the Committee on this item, as a District Councillor.

The Monitoring Officer presented a detailed report to the Committee that, in accordance with the District Council's Complaints Procedure, the outcome of an investigation was being reported to the Committee following on from a Members' Code of Conduct investigation.

The Monitoring Officer reported that a complaint had been received in January 2016 from District Councillor Paul Honeywood regarding the actions of District Councillor Ivan Henderson under the Members' Code of Conduct and Complaints Procedure, which had been adopted by Council on 26 November 2013.

The complainant alleged that Councillor I. Henderson had breached the Tendring District Council Members' Code of Conduct. The basis of the complaint concerned the alleged circulation of inaccurate and misleading information on the subject of the Careline Lifting Service along with quotes attributed to Councillor I Henderson appearing in national and local media. It had been alleged that inaccurate information had also been promoted by Cllr I. Henderson through his own Twitter account. The alleged breaches related to:

- (i) Not having regard to three of the Seven Principles of Public Life:
 - Selflessness
 - Objectivity

- Honesty

- (ii) Paragraph 3.4(a) of the Members' Code of Conduct: by conducting himself in a manner which could reasonably be regarded as bringing his office, or the authority, into disrepute.

The Monitoring Officer informed the Committee that, on 4 March 2016, having considered the responses received from both parties, she had decided that it would be reasonable and appropriate that the complaint merited further investigation. There had been a fairly wide difference of opinion between whether information shared on social media was incorrect and misleading and if so, the impact of the media reporting and subsequent use of social media on the proposed Careline Lifting Service.

Members were informed that if there were a potential breach of the Code of Conduct and informal resolution, or mediation, had not been appropriate, the Monitoring Officer must consider an investigation. The Monitoring Officer stated that it was important to point out that the investigation had not looked into any policy decision.

It was reported that politically motivated complaints were not referred for investigation. Consideration of whether the policy for introducing a lifting service and the ability to charge for it was right or wrong had not been the subject of the investigation. The investigation had been commissioned to look at the evidence of how information had been used, whether it was correct or not, and if not, if it had been used intentionally to mislead the public and bring the Council into disrepute.

Members were informed that the parties involved were advised of the Monitoring Officer's decision and that an external investigator would be appointed. Section 5 of the Complaints Procedure set out how an investigation was conducted and under Section 5.6, the investigation report must contain a conclusion as to whether the evidence supported a finding of failure to comply with the Code of Conduct.

The Monitoring Officer confirmed that all parties had had the opportunity to comment on the investigation report in its draft form and the findings contained therein. Consultation had been undertaken with the Independent Person. The final investigation report had been received by the Monitoring Officer on 1 September 2016, which had concluded that Councillor I. Henderson had not breached the Members' Code of Conduct.

The Monitoring Officer reminded the Committee, that if an investigation concluded that there was no evidence of a failure to comply with the Code of Conduct, the Council's Complaints Procedure at Section 6.1 provided the Monitoring Officer with the authority in consultation with the Independent Person, to decide that no further action was required. In such circumstances, the Monitoring Officer would then notify the Standards Committee. The Council's Complaints procedure did not provide the Monitoring Officer with any discretion to refer the matter to the Standards Committee for determination.

The Monitoring Officer had agreed with the outcome of the investigation which was as follows:

- Councillor I. Henderson was found to have been acting in his capacity as a councillor (official) when posting on social media and engaging with the press in the circumstances of this case. The Members' Code of Conduct was therefore relevant.

- A finding that he failed to comply with the Members' Code would be a disproportionate restriction on his freedom of expression and, therefore, it was recommended that Councillor I. Henderson was found not to have breached the Code.
- There were concerns that *“some of Councillor I. Henderson’s posts on Twitter demonstrated a lack of good judgement on his part. The way in which councillors use social media is increasingly becoming an issue for councils across the country. It is therefore recommended that a summary of the investigation findings are provided to the Council’s Standards Committee”*.
- It was recommended that guidance be made available to all councillors on the appropriate use of social media.

John Wolton, one of the Council's Independent Persons had responded as set out below that this case clearly involved political differences from the time of the Cabinet meeting, the subsequent use of social media and submission of the complaint:

“The investigation although necessary, had involved individuals’ time and expense for the authority, and it had been unfortunate that this had started with a Cabinet Report, which, when questions were asked, the responses and details had been unclear. Details of the Policy introducing the charges should have been known and considered first, especially when the service users would be vulnerable people.

However, Councillor I. Henderson ‘jumped on’ what he saw as a political opportunity but with his vast experience he should have also considered the impact of the way in which he shared the information and used the media attention, especially after the Council’s press release”.

John Wolton had noted the reliance on freedom of expression and agreed with the Investigator's findings and looking at it from a member of the public's viewpoint he had concurred with the concerns raised.

Members discussed the report and raised a number of concerns which included not being able to determine the matter themselves, especially if they disagreed with the findings of the Investigator and the Monitoring Officer and not having the opportunity to view the Investigator's Report. The Monitoring Officer confirmed that the Investigator's report had not been made available in previous instances where an outcome was being reported rather than the Committee holding a hearing. Upon the Committee raising further questions on the Investigator's findings, the Chief Executive (Ian Davidson) reminded the Committee that the meeting was not for a Hearing, a copy of the Investigator's report had not been distributed to the Committee due to that reason and that the Monitoring Officer's report was for information only and not for further judgement.

The Monitoring Officer agreed that it would be appropriate in exceptional cases to have some discretion to refer cases to the Standards Committee to determine whether a breach of the Code of Conduct had occurred. In such matters, the Monitoring Officer would wish to consult the Chief Executive and the Chairman of the Standards Committee. The Committee was also reminded that the recommendations as set out in the report could be altered by the Committee to reflect their concerns.

The Chairman of the Committee invited Councillor Honeywood to address them and as he wished to raise matters which would identify individuals and refer to the Monitoring

Officer, the Chairman decided to exclude the Public and Press pursuant to paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972.

The Monitoring Officer, Committee Services Officer and the Independent Persons withdrew from the meeting. Following the Committee's consideration of the matters reported in Minute 17 below, the Monitoring Officer, Committee Services Officer and the Independent Persons were readmitted to the meeting.

Following discussion, it was moved by Councillor Heaney, seconded by Councillor Nicholls and **RESOLVED** that the Standards Committee:

- (a) Notes the outcome of an external investigation undertaken on behalf of the Monitoring Officer in respect of Councillor Ivan Henderson.

Following further discussion, it was moved by Councillor Heaney, seconded by Councillor White and **RESOLVED** that the Standards Committee:

- (b) Notes the Monitoring Officer's report that the Investigator raised concerns that the behaviour demonstrated a lack of good judgement on Councillor Ivan Henderson's part when using social media and the Committee strongly recommend Councillor Ivan Henderson undertakes Social Media training.

Following further discussion, it was moved by Councillor White, seconded by Councillor Nicholls and **RESOLVED** that the Standards Committee:

- (c) Was unhappy that, despite the concerns raised by the Investigator, as set out in (b) above that Councillor Ivan Henderson had been found not to have breached the Code of Conduct and that subject to reporting this to the Committee, no further action would be taken in respect of Councillor Ivan Henderson.

Following further discussion, it was moved by Councillor Heaney, seconded by Councillor White and **RESOLVED** that the Standards Committee:

- (d) Notes that the basis of the finding to this particular case is on the right of freedom of expression, notwithstanding there is still an expectation of high standards of behaviour for all Councillors in accordance with the Code of Conduct and Principles of Public Life.

Following further discussion, it was moved by Councillor Heaney, seconded by Councillor White and **RESOLVED** that the Standards Committee:

- (e) Agrees to a review of the Council's Social Media Policy to provide all Councillors with guidance and training on the parameters on appropriate use of social media.

Following further discussion, it was moved by Councillor Nicholls, seconded by Councillor White and **RESOLVED** that the Standards Committee:

- (f) Recommends to Council to amend the Complaints Procedure, as set out in the Constitution to allow the Monitoring Officer, at their own discretion and, in exceptional cases, following consultation with the Chief Executive and the

Chairman of the Standards Committee, to decide to refer cases to the Committee for determination where the outcome of an investigation was to recommend no breach of the Code of Conduct.

15. REPORT OF THE MONITORING OFFICER - A.3 - REVIEW OF THE CODE OF CONDUCT

The Committee reviewed the Members' Code of Conduct, with particular attention paid to the definitions of interests.

The Monitoring Officer made some suggestions on potential changes and additions to the Code, to provide clarity, each of which were discussed with Members. Some of the suggestions were in relation to:

- Separating the Rules of Conduct and General Obligations from the introduction and interpretation part of the Code;
- Merge Other Pecuniary Interests with Non-Pecuniary Interests;
- Effect of Other or Non-Pecuniary Interests on participation;
- Including a Councillor Recall Scheme; and
- Including Voluntary Sanctions.

It was agreed that the Monitoring Officer would produce a revised draft Code of Conduct for further discussion to take place at the next meeting so that the Committee could work towards recommending minor changes to the Members' Code of Conduct to full Council in early 2017.

16. REPORT OF THE MONITORING OFFICER - A.4 - QUARTERLY ORAL UPDATE FROM THE MONITORING OFFICER

The Monitoring Officer circulated to the Committee the quarterly schedule, which gave general details of complaints received, without providing any names, and went through it with the Committee. The Monitoring Officer also highlighted a number of other matters which included:

- (1) A couple of incidents had occurred which had involved contact between the Police and the Council involving Councillors, but in both instances it had been appropriate and correct for the Police to resolve the same as they were related to alleged criminal activity or acting within their private capacity.
- (2) There had been one Parish Council in which several contacts had been made but no formal complaints received. The Monitoring Officer intended to visit a Parish Council meeting to view the proceedings and, if necessary, report back to the Clerk.
- (3) There had been no requests received for a dispensation.

The meeting was declared closed at 1.26 pm

Chairman

STANDARDS COMMITTEE

27 MARCH 2017

REPORT OF THE MONITORING OFFICER

A.1 COMPLAINTS PROCEDURE – REFERENCE BACK FROM FULL COUNCIL

(Report prepared by Lisa Hastings, Monitoring Officer)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

At the request of full Council to reconsider the Standards Committee's previous recommendation to amend the Complaints Procedure.

EXECUTIVE SUMMARY

The Standards Framework includes the Complaints Procedure (contained within the Members' Constitution Booklet). The Council's statutory duty is to promote and maintain high standards of conduct and build public confidence by demonstrating a commitment to maintaining positive behaviours in relation to all seven principles of public life.

Delegation has been given to the Monitoring Officer to undertake key elements of the complaints process to maximise independence from the political process.

Section 5 of the Complaints Procedure sets out how an investigation is conducted and under Section 5.6, the investigation report must contain a conclusion as to whether the evidence supports a finding of failure to comply with the Code of Conduct. Annex E of the Complaints Procedure sets out the Investigation Procedure.

If an investigation concludes that there is no evidence of a failure to comply with the Code of Conduct, the Council's Complaints Procedure at Section 6.1 provides the Monitoring Officer with the authority, in consultation with the Independent Person, to decide no further action is required. In such circumstances, the Monitoring Officer will notify the Standards Committee.

The current procedure, which was adopted by full Council in November 2013, does not provide the Monitoring Officer with any discretion to refer a matter to the Standards Committee, if they consider an investigation was finely balanced. In most cases, an investigator will have a clear conclusion as to whether any evidence existed of a failure to comply with the Code of Conduct but in rare circumstances; this might not be the position. The Monitoring Officer, when consulting colleagues in other authorities, found that their Councils had provided them with a discretion to refer to the Standards Committee, if they personally felt it was necessary to do so.

At the meeting of the Committee held on 26 September 2016 (minute no. 14 refers) and following discussion, it was moved by Councillor Nicholls, seconded by Councillor White and RESOLVED, inter alia, that the Standards Committee:

- (f) *Recommends to Council to amend the Complaints Procedure, as set out in the Constitution to allow the Monitoring Officer, at their own discretion and, in exceptional cases, following consultation with the Chief Executive and the Chairman of the Standards Committee, to decide to refer cases to the Committee for determination*

where the outcome of an investigation was to recommend no breach of the Code of Conduct.'

At the meeting of Council held on 22 November 2016, when that recommendation was being considered (minute 83 refers) Councillor Calver moved an amendment, which was seconded by Councillor Bray, that to have the ongoing confidence of the entire Council it required the possibility of any political interference to be removed and that the recommendation would be safer and stronger if any consultation was between the Chief Executive and the Monitoring Officer with no involvement of the Chairman of the Standards Committee.

Following those concerns raised by Members with respect to the original recommendation of the Standards Committee and pursuant to Council Procedure Rule 16.6 (Alteration of Motion), Councillor Stock, with the consent of both the meeting and his seconder, Councillor Heaney, indicated that he was prepared to alter his motion so that it read as follows:

(a) that the minutes of the meeting of the Standards Committee held on 26 September 2016, as circulated, be received and noted; and

(b) that consideration of the recommendation to Council, as contained in Minute No.14 (resolution (f)) of the Standards Committee of 26 September 2016 be deferred and that the matter be referred back to the Standards Committee for reconsideration.

Councillor Calver and Councillor Bray both then agreed to withdraw their amendment.

The Standards Committee are now requested to reconsider their proposed amendment to the Complaints Procedure taking into account the concerns raised at the meeting of full Council in November 2016.

RECOMMENDATION

That the Standards Committee agrees to recommend to Council to amend the Complaints Procedure, as set out in the Constitution to allow the Monitoring Officer, at their own discretion and, in exceptional cases, following consultation with the Chief Executive, to decide to refer cases to the Committee for determination where the outcome of an investigation was to recommend no breach of the Code of Conduct.

BACKGROUND PAPERS

- Complaints Procedure
- Minutes of the meetings of Standards Committee on 26 September 2016 (minute 14) and Council on 22nd November 2016 (minute 83).

TENDRING DISTRICT COUNCIL MONITORING OFFICER PROTOCOL

This Protocol relates to the discharge of the Monitoring Officer functions in relation to the assessment of an allegation that a Member of the District, Town or Parish Council has failed to comply with the Council's Members' Code of Conduct.

1. Overarching Principles:

- a. The Monitoring Officer is a statutory appointment under s.5 Local Government and Housing Act 1989.
- b. This Protocol has been produced in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
- c. The Monitoring Officer will discharge their statutory responsibilities with a positive determination contributing to promotion and maintenance of high standards of conduct, in a manner that enhances the overall reputation of the Council, in particular:
 - (i) Complying with the law (including any relevant Codes of Conduct);
 - (ii) Complying with any general Guidance issued including consideration of Best Practice;
 - (iii) Complying with the procedures adopted by the Standards Committee following such guidance;
 - (iv) Complying with the Council's Constitution and standing orders; and
 - (v) Acting impartially in the interests of fair and natural justice.
- d. The Monitoring Officer must establish and maintain a Register of Interests of members and co-opted members of the authority.
- e. The Monitoring Officer is employed by Tendring District Council and owes their primary responsibility to the Authority rather than to any individual Member or group of Members. Accordingly, when they are of the opinion that providing advice to a Member or group of Members on a matter is incompatible with their role as adviser to the Authority, or any action which they may have to take on behalf of the Authority, they may decline to provide such advice, but may at their discretion, secure that such advice is provided from an independent source at the expense of the Authority.
- f. Where the advice or recommendation of the Monitoring Officer is departed from by the Standards Committee or Sub-Committee, in accordance with administrative law, full reasons will be provided by the relevant Committee in making its decision.
- g. This Protocol operates in conjunction with the terms of reference of the Standards Committee, Sub-Committee, the Complaints Procedure and Independent Person's Protocol.

- h. The Monitoring Officer is the principal adviser to the Standards Committee and Sub-Committee. Additional advice and support is provided by the Corporate Director (Corporate Services) and Officers within the Legal and Democratic Services teams.
- i. The Monitoring Officer is not the legal adviser for or to Town and Parish Councils and the role only extends in relation to the promotion and maintenance of high standards of conduct at these Authorities.
- j. The Monitoring Officer will consult with one of Independent Persons on complaints received and throughout the process in accordance with the Complaints Procedure.
- k. In circumstances where either the Monitoring Officer or one of the Officers has made a complaint, witnessed the breach or previously assisted with the complaint, internal procedures will be implemented to ensure a conflict of interest does not exist. These procedures will consist of maintaining an information barrier and restricted access to the matter in consideration; this is referred to as 'conflicted out'.

In practical terms, in these circumstances, the Monitoring Officer or Officer will take no part in the process unless called upon either as the complainant or as a witness.

- l. In instances (exceptional circumstances) where the Monitoring Officer decides to refer a complaint to the Standards Committee or Sub-Committee for initial assessment or further investigation, in accordance with the Complaints Procedure (see flowchart), any approved information as is readily available, which would assist the Standards Committee or Sub-Committee in its function of considering the allegation will be attached to their Report.
- m. In providing information, in any manner at any stage in the process, the Monitoring Officer must be satisfied that they have the legal power to do so and the requirements of the Data Protection Act 1998 and Freedom of Information Act 2000 have been considered, as reflected in the Council's Constitution.
- n. It is recognised that, where a complaint is referred for investigation, this may not be personally conducted by the Monitoring Officer. The investigator instructed will be suitably qualified with the requisite experience and may include another senior officer of the Council, a senior officer of another Authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained. Wherever possible and if appropriate to do so, the Monitoring Officer will seek external resources from outside of the County of Essex.

2. Receipt of Allegations:

- (a) If the allegation or complaint does not refer to the Code of Conduct the matter will not be considered under the Localism Act or associated specific Complaints Procedure. The Monitoring Officer will treat this as a general complaint and

forward it to be dealt with under the Council's general formal complaints process, as appropriate.

- (b) The Monitoring Officer will keep the complaint file and associated papers in accordance with the Retention and Destruction Policy.

3. Consultation with the Independent Persons:

- (a) The Monitoring Officer and supporting Officers will facilitate the contact with Independent Persons for the purposes of discussions with the Member subject of the complaint, the complainant and the Monitoring Officer. Direct contact without the Monitoring Officer's knowledge is not permitted and the Monitoring Officer should be notified immediately by the Independent Person if direct contact is attempted by the parties.
- (b) The Monitoring Officer will allocate roles for the Independent Persons in accordance with their Protocol and each party will be notified who the relevant Independent Person is and they will be in contact shortly.
- (c) The Monitoring Officer does not have to agree with the Independent Person but if a different view is taken the Monitoring Officer will consult with another Independent Person in the first instance, before making a final decision.

4. Standards Committee and Sub-Committee:

- (a) The Monitoring Officer, in consultation with the relevant Chairman of the Standards Committee or Sub-Committee, will decide on the type of attendance permitted for an Independent Person when considering complaints.
- (b) All meetings of the Standards Committee or Sub-Committee are considered to be open to the public and press unless (c) and (d) below apply.
- (c) The Monitoring Officer will advise the Standards Committee or Sub-Committee when to go into private session and exclude public access to the meeting in accordance with the Access to Information Procedure Rules, as set out in the Council's Constitution.
- (d) In accordance with Access to Information Procedure Rules, if the Monitoring Officer or Corporate Director (Corporate Services) considers it appropriate, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with the meeting at which those reports are to be discussed is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.
- (e) Any decision departing from the Monitoring Officer's recommendation or advice will be supported with full reasons and recorded within the public part of the minutes for the meeting.

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STANDARDS COMMITTEE

27 MARCH 2017

REPORT OF THE MONITORING OFFICER

A.3 DISCLOSURE OF INFORMATION – NON-PAYMENT OF COUNCIL TAX BY COUNCILLORS

(Report prepared by Lisa Hastings, Monitoring Officer)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For the Standards Committee to discuss whether it agrees to add the matter of processes and procedures involving Councillors and the payment of Council Tax to its work programme or that a guidance note is issued for Members following on from case-law, concerning the public interest and fairness in disclosing information of non-payment of council tax by councillors.

EXECUTIVE SUMMARY

At the meeting of full Council on 22 November 2016, Councillor Everett asked a supplementary question to the former Portfolio Holder for Finance (minute no. 81) concerning the general matter of processes and procedures involving councillors and the payment of council tax. As the matter falls within the remit of the Standards Committee, the Monitoring Officer agreed to take this matter to the next meeting for a discussion as to whether the Committee wanted to include it within their work programme.

An Upper Tribunal (Administrative Appeals Chamber) decided that it was fair and reasonable to identify a councillor who had defaulted in the payment of council tax, due to being a serious matter of public concern, both as to the ability of the councillor to perform their key functions and in terms of public confidence and accountability.

RECOMMENDATION(S)

It is recommended that the Standards Committee:

Agrees that a Guidance Note should be issued by the Monitoring Officer to all Councillors informing them of the outcome of the Upper Tribunal case and that in response to any Freedom of Information request concerning non-payment of Council Tax, information maybe disclosed.

BACKGROUND

In March 2016, the Upper Tribunal (Administrative Appeals Chamber) (“the Tribunal”) decided the names of councillors who had not paid their council tax were not exempt from disclosure and that the information should be provided to a newspaper whom had made the request under the Freedom of Information Act 2000 (FOI Act).

In response to the original request Bolton Council confirmed that six councillors had not paid their council tax and two had been summoned to court. A subsequent request, and the one which was the subject of the appeal to the Upper Tribunal, was made by the newspaper for the names of those two councillors.

One councillor voluntarily disclosed his name when the case first received publicity; however the Council withheld the second name relying on Section 40 of the FOI Act, which provides an exemption for personal data. The exemption is heavily intertwined with the Data Protection Act 1998 and whether it is fair to disclose the personal details of an individual.

Bolton Council argued that the non-payment of the council tax was mostly a private issue. The Tribunal concluded that the matter is partly private, as "it is a matter of a private debt in respect of which the individual incurs a private liability".

However, the Tribunal judgment refers to [section 106 of the Local Government Finance Act 1992](#) which bars a councillor from voting on the Council's budget if they have an outstanding council tax debt of over two months. If a councillor is present at any meeting at which relevant matters are being discussed, they must disclose that section 106 applies.

In the judgement, Judge Markus QC states,

"council tax default strikes at the heart of the performance of a councillor's functions. It is evident that settling the council's budget is one of the most important roles undertaken by councillors" ...

"this adds significant public dimension to the non-payment of council tax"...

"recent failure to pay council tax is likely to impact on public perceptions and confidence in a councillor as a public figure".

These factors were of critical relevance to expectation. If the public are not able to know what councillors were not able to discharge their functions properly then they would be unable to scrutinise the elected official or "whether they can trust a councillor properly".

In the decision over whether it would be fair for a councillor who has been summoned over council tax to be named Judge Markus QC said: "it is not reasonable for a councillor to expect not to be identified". The judgement goes on to say that a councillor should expect to be scrutinised and held accountable for their actions when they are relevant to public office.

The following paragraph is a summary of the whole decision:

"There is a compelling legitimate interest in the public knowing whether a particular councillor has failed to pay the council tax, at least in the circumstances where they have remained in default for over two months with the result that section 106 applies. In most cases this compelling interest will outweigh the councillor's personal privacy. The public interest in knowing the information is central to the proper functioning and transparency of the democratic process. The identification of a defaulting councillor involves an intrusion into his private life but it is an intrusion that a councillor must be taken to have accepted when taking office."

In addition, it is alleged that Leeds City Council are to challenge the Information Commissioner's decision (Reference: FS50635609 **Dated: 3 November 2016**) that it must release the names of four councillors who were in arrears, to a newspaper. The Information Commissioner told the Council to release the names of members who were sent court summons over unpaid council tax to the Yorkshire Post. It is understood that Leeds Council believes there are mitigating circumstances and in all of the cases, one instalment had been accidentally missed and reasonable explanations were given as to why and all outstanding debts were immediately paid.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Any guidance issued builds on the Council's good governance arrangements and reputation.

FINANCE, OTHER RESOURCES AND RISK

Finance and Other Resources

Finance

None associated with the content of this report.

Risk

The Council must ensure that any guidance issued to Councillors and Officers is up to date with current policy, legislation, good practice and national guidance. It is also important to ensure that the contents are clear and concise and easily understood.

LEGAL

Section 1(1) of the Freedom of Information Act 2000 states that:

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.”*

Section 40(2) provides that:

Any information to which a request for information relates is also exempt information if–

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition ... is satisfied.*

Personal data is defined by **Section 1 of the Data Protection Act 1998** (“the DPA”) as:

...data which relate to a living individual who can be identified–

- (a) from those data, or*
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual...*

In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the Data Protection Act (“the DPA”).

The data protection principles are set out in schedule 1 of the DPA. The first data protection principle is most relevant. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA. Considerations have focused on the issues of fairness in relation to the first principle. In considering fairness, the Tribunal and the Information Commissioner found it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

The view of the Upper Tier Tribunal in *Haslam v Information Commissioner and Bolton Council* [2016] UKUT 0139 (AAC), was that elected officials should have a greater expectation of scrutiny regarding their payment of council tax. The Tribunal observed that “those who have taken public office should expect to be subject to a higher degree of scrutiny and that information which impinges on their public office might be disclosed.” “A councillor is a public official with public responsibilities to which non-payment of council tax is directly and significantly relevant”. “In my view a councillor should expect to be scrutinised as to, and accountable for, his actions in so far as they are relevant to his public office.”

Section 106 of the Local Government Finance Act 1992, bars a councillor from voting on the council’s budget if they have an outstanding council tax debt of over 2 months is relevant and will impinge upon a councillor’s public office.

The Tribunal’s position was that whilst “in the case of an ordinary member of the public, the payment or non-payment of council tax is essentially a private matter”, “it is not reasonable for a councillor to expect not to be identified where he is summoned for non-payment of council tax”. The Tribunal acknowledged that whilst “the identification of a defaulting councillor involves an intrusion into his private life...it is an intrusion that a councillor must be taken to have accepted when taking office”.

The Tribunal accepted that there might be exceptional cases in which the personal circumstances of a councillor were “so compelling” that their name should be protected. However, the Tribunal found that even though disclosure might cause some distress to the councillor, and damage to his reputation, this was not sufficient to outweigh the significant legitimate public interest in disclosure. In short, elected officials are not in the same position as other members of the public when it comes to disclosure of their names. They can expect their names to be disclosed in circumstances where ordinary members of the public might expect the opposite.

The Tribunal decision was recently considered by the Information Commissioner (reference FS50635609) concerning disclosure of information relating to non-payment of council tax of councillors at Leeds City Council and the Council has been ordered to release the information. The individual circumstances and how these were different to that in the Haslam case was considered by the Commissioner in detail. Information concerning only two councillors should not be disclosed due to specific mitigating circumstances, being bereavement and arrears due before election to office. In all other cases the Information Commissioner decided the information should be disclosed, demonstrating that in most cases public interest in disclosure outweighs protection of the councillor.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder/Equality and Diversity/Health Inequalities/Area or Ward affected/Consultation/Public Engagement.

Wards Affected: All

STANDARDS COMMITTEE

27 MARCH 2017

REPORT OF THE MONITORING OFFICER

A.4 ANNUAL REPORT DECLARATIONS OF INTEREST AND ASSOCIATED MATTERS

(Report prepared by Lisa Hastings, Monitoring Officer and Katie Sullivan)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To present the Committee with an overview on the register of and declarations of interests by Members from 1st August 2016.

EXECUTIVE SUMMARY

It was agreed at the meeting of the Standards Committee on 29 June 2016 that, as part of its annual work programme, the Committee would receive an annual report on declarations of interest and associated matters. This report covers the period from 1 August 2016 to 10 March 2017.

RECOMMENDATION

That the Standards Committee note the contents of the report, subject to the Committee's comments through debate.

BACKGROUND and CURRENT POSITION

In accordance with the Committee's work programme, this is an annual report on declarations of interest and associated matters. This report covers the period from 1 August 2016 to 10 March 2017 and provides statistics on the number of declarations of interest made, the number of offers of gifts and hospitality that have been registered by Members during this period and updates to the Members' Register of Interests. The data has been collated from the new Committee system modern.gov which the Council started using as of August 2016 and from Members' submissions.

Register of Members' Disclosable Pecuniary Interests

The Council is required to publish the 'Register of Disclosable Pecuniary Interests' on its website in accordance with the Localism Act 2011 and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, which prescribes the categories of interests.

It is confirmed that the Council's website includes a Register of Disclosable Pecuniary Interests for all District Councillors and this is updated, when an individual Member provides details of an amendment direct to the Monitoring Officer. Any entry which is relevant to a business item on an agenda, must be declared by the individual member and they must subsequently remove themselves from the meeting, unless a dispensation has been granted by the Monitoring Officer.

No dispensations have been granted by the Monitoring Officer during the relevant period, however if granted, as previously has been the case, the reasons for the decisions are recorded on the website together with the Register.

Declarations of interest at meetings

Currently, Members are only required to declare Other and Non-Pecuniary Interests at meetings and those recorded on the committee system, as declared by District Councillors for the period 1 August 2016 to 10 March 2017 are set out in the table below. All minutes of the meetings also record the declarations.

	No. of Meetings	Disclosable Pecuniary Interest (DPI)	Other Pecuniary Interest (OPI)	Non Pecuniary Interest (NPI)
Audit Committee	2	0	0	0
Cabinet	7	0	0	8
Community Leadership and Partnerships Committee	4	0	0	2
Corporate Management Committee	7	0	0	0
Council	5	0	0	0
Council Tax Committee	1	0	0	0
General Purposes Sub-Committee	2	0	0	0
Human Resources Committee	1	0	0	0
Licensing and Registration Committee	3	0	0	0
Local Plan Committee	3	0	0	10
Planning Committee	9	0	0	35
Premises/Personal Licences Sub-Committee 'A'	1	0	0	0
Premises/Personal Licences Sub-Committee 'B'	0	0	0	0
Premises/Personal Licences Sub-Committee 'C'	0	0	0	0
Service Development and Delivery Committee	4	0	0	5
Standards Committee	1	0	0	1

The Committee will recall that at a previous meeting it has considered simplifying the category of interests under the Code of Conduct, which is on-going as part of the Committee's review of the Code of Conduct which will be recommended to full Council later in the year. The Committee has also suggested the registration of interests so that these are registered centrally and declared at meetings for greater protection and openness and transparency, again this will be picked up in the review of the Code of Conduct.

Detailed advice was issued to Members at the meetings of Cabinet, Local Plan Committee and Council concerning the declarations of interests related to the Local Plan.

Use of Blanket dispensations

The Members' Code of Conduct at paragraph 8.2, as agreed by full Council in November 2013 contains blanket dispensations for any business of the Authority where that business relates to the Council functions in respect of:

- i. housing, where you are a tenant of your Authority provided that those functions do not relate particularly to your tenancy or lease;
- ii. school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

- iii. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- iv. an allowance, payment or indemnity given to Members;
- v. any ceremonial honour given to Members; and
- vi. setting Council Tax or a Precept under the Local Government Finance Act 1992

Since their introduction, some of these blanket dispensations have been called upon at meetings of the Cabinet and full Council.

Declarations of offers/receipt of gifts and hospitality

Following the Standards Committee review of the Councils Gift and Hospitality Policy for Members, new guidance and a notification form was issued to all District Councillors in May 2016. Two declarations of offers/receipt of gifts and hospitality have been made by District Councillors during this period.

LEGISLATION/POLICY:

The Council's Code of Conduct for Members sets out guidance for Councillors regarding the registration and disclosure of interests. The relevant legislation is the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

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STANDARDS COMMITTEE

27 MARCH 2017

REPORT OF THE MONITORING OFFICER

A.5 STANDARDS COMMITTEE - ANNUAL WORK PROGRAMME

(Report prepared by Lisa Hastings, Monitoring Officer)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To agree a work programme for 2017/18.

EXECUTIVE SUMMARY

The Standards Framework comprises of:

- The Members' Code of Conduct (contained within the Members' Constitution Booklet);
- The Monitoring Officer Protocol (contained within the Members' Constitution Booklet);
- The Independent Persons' Protocol (contained within the Members' Constitution Booklet);
- Member and Officer Relations Protocol (contained within the Members' Constitution Booklet); and
- The Complaints Procedure (contained within the Members' Constitution Booklet).

These documents collectively fulfil the Council's statutory duty to promote and maintain high standards of conduct and to building public confidence by demonstrating a commitment to maintaining positive behaviours in relation to all seven principles of public life.

The overall approach of the arrangements is to seek:

- Information and training for Members and Officers to increase awareness and support good standards of behaviour;
- Proportionality – responses to complaints which are proportionate to their seriousness;
- Timeliness – with clear timescales for the various stages of complaints to be progressed;
- Checks, balances, reporting requirements and delegation to the Monitoring Officer of key elements of the process to maximise independence from the political process; and
- Early and informal intervention to resolve complaints wherever possible (including an expectation that Group Leaders will play a key role).

The Arrangements were adopted by full Council in November 2013, and elements have been reviewed in 2014, 2015, 2016 and 2017 to ensure that the procedures and protocols are robust, up to date and fit for purpose. The Members' Code of Conduct is currently being reviewed.

To enable the Committee to focus on promoting high standards of conduct as well as reacting to complaints it is considered appropriate to discuss and agree a work programme for the Committee for 2017/18. A draft is enclosed as **Appendix 1**.

RECOMMENDATION

That the Standards Committee note the contents of the report and agree the annual work programme for 2017/18, as set out in Appendix 1, subject to the Committee's comments or amendments through debate.

APPENDICES

- Appendix 1 – Draft work programme for 2017/18

DRAFT COMMITTEE WORK PLAN – STANDARDS COMMITTEE

28 June 2017

Review of the Code of Conduct

Review of Social Media Policy

Quarterly Complaints update by Monitoring Officer

27 September 2017

Review of the Code of Conduct (to report to full Council)

Case review – update for the Committee on decisions and actions taken nationally for information and guidance

Quarterly Complaints update by Monitoring Officer

22 January 2018

Update on Mandatory Training

Quarterly Complaints update by Monitoring Officer

19 March 2018

Annual Report on declarations of interest (meetings, gifts and hospitality)

Work Programme 2018/2019

Quarterly Complaints update by Monitoring Officer

Individual matters may be referred to these meetings by the Monitoring Officer in accordance with the Committee's Terms of Reference as necessary, for example an appeal against dispensation decision or code of conduct hearing.

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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

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