

E-Mail: CommitteeServices@horsham.gov.uk

Direct Line: 01403 215465

To contact the Monitoring
Officer E-Mail: standards@horsham.gov.uk

Direct Line: 01403 215478

Standards Committee

Wednesday 14th March 2012 at 10.00a.m.
COMMITTEE ROOM 1, PARK NORTH, NORTH STREET, HORSHAM

Councillors: Andrew Baldwin
David Coldwell
Brian Donnelly

Sheila Matthews
Godfrey Newman
Claire Vickers

Parish Council Representatives:
Valerie Court

Isabel Glenister

Independent Representatives:
Eric Blackburn (Chairman)
Paul Byford

Mary Jagger (Vice-Chairman)
David Tilsley

You are summoned to the meeting to transact the following business

TOM CROWLEY
Chief Executive

AGENDA

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No. |
|---|---------------------|
| 1. Apologies for absence. | |
| 2. To approve the minutes of the meeting of the Committee held on 7 th December 2011 (attached hereto) | 1 |
| 3. To receive any declarations of interest from Members of the Committee | |
| 4. To receive any announcements from the Chairman of the Committee, the Chief Executive or the Monitoring Officer | |
| 5. To receive the minutes of the meetings of the Local Assessment Sub-Committee held on:
(a) 11 th January 2012 (attached)
(b) 10 th February 2012 (attached) | 7
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- | | | |
|----|---|-----------|
| 6. | To note the list of Standards Committee Reports and Documents available for inspection | 19 |
| 7. | To receive a report from the Parish Council representatives | |
| 8. | To consider the following reports by the Monitoring Officer: | |
| | (i) Ethical Framework Update | 28 |
| | (ii) The Ombudsman Update | 47 |
| 9. | Items not on the agenda which the Chairman of the meeting is of the opinion should be considered as urgent because of the special circumstances | |

STANDARDS COMMITTEE

7th December 2011

Present: Councillors: Andrew Baldwin, David Coldwell, Brian Donnelly, Sheila Matthews, Godfrey Newman, Claire Vickers

Parish Council Representatives: Val Court, Isabel Glenister

Independent Representatives: Eric Blackburn (Chairman), Mary Jagger (Vice-Chairman), David Tilsey

Apologies: Independent Representatives: Paul Byford

SC/17 **MINUTES**

The minutes of the meeting of the Committee held on 21st September 2011 were approved as a correct record and signed by the Chairman, subject to the amendment of Resolution (ii) 6 of Minute number SC/14 by the substitution of the word 'retained' for 'retrained'.

SC/18 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

SC/19 **ANNOUNCEMENTS**

The Chairman announced that the next meeting of the Committee would be on 14th March 2012.

SC/20 **STANDARDS COMMITTEE REPORTS AND DOCUMENTS AVAILABLE FOR INSPECTION**

The list was noted.

SC/21 **REPORT BY PARISH COUNCIL REPRESENTATIVES**

There was nothing to report.

SC/22 **REVISED STANDARDS REGIME UPDATE**

The Monitoring Officer reported on developments in the revised standards framework following the Localism Bill receiving Royal Assent on 15 November 2011.

Regular reports had been made to the Standards Committee following the journey of the Localism Bill. Two papers had been presented to the Standards Committee, both of which had been reported into Council. In addition, standards liaison meetings had taken place between the Council's

SC/22 Revised Standards Regime Update (cont.)

Monitoring Officer, Chief Executive, Leader, Leader of the Opposition and Chairman of the Standards Committee to discuss the way forward on standards at Horsham.

Different parts of the Localism Act would come into effect at different times. Standards for England's regulatory functions would cease on a date to be confirmed by Order; it was anticipated that this would occur on 31 January 2012. The likely date for the commencement of the revised standards provisions would be 1 April 2012. Clause 25, dealing with predetermination, would come into effect at the end of two months beginning with the day of Royal Assent.

The Monitoring Officer outlined the following implications of the Localism Act on the standards regime:

- **Amendment to Existing Provisions**
 - The General Principles which govern the conduct of members and the Model Code of Conduct are to be revoked.
 - Members' undertakings will cease to have effect.
 - The requirement to have a Standards Committee will cease.
 - The statutory procedure for dealing with Code of Conduct complaints will cease.
 - Standards for England will be abolished.
 - The First-tier Tribunal will lose its jurisdiction to hear and determine appeals concerning member conduct cases.
- **Duty to promote and maintain high standards of conduct**
 - A new duty for the Council and parish councils to promote and maintain high standards of conduct by members and co-opted members is imposed.
- **Obligation to have a Code of Members' conduct**
 - A new obligation to have a Code of Members' Conduct is imposed consistent with the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It must also contain such other provisions the Council considers appropriate for the registration of pecuniary interests and interests other than pecuniary interests. The Council must publicise the adoption, revision or replacement of a new code.
- **Mechanism for dealing with allegations of breach of the code of conduct**
 - The Council must put in place a mechanism for dealing with written allegations that members have breached the code and a procedure for investigations of and decisions on allegations.
- **Appointment of an "Independent Person"**
 - The Council must appoint an independent person whose views it must seek before reaching decisions about allegations of breaches of the code. Members whose conduct is the subject of a complaint may also seek the views of the independent person. As currently drafted, the definition of 'independent person' would appear to exclude from

SC/22 Revised Standards Regime Update (cont.)

appointment the Standards Committee's current independent members and parish council members since they were co-opted; the Association of Council Secretaries and Solicitors was seeking counsel's opinion on whether current independent members were 'appointed' rather than 'co-opted' and would thus be eligible. A full recruitment process must be undertaken with appointments being made by Council.

- **Sanctions**

- No statutory provision is made in the Localism Act for sanctions for findings of breaches of the new code. Existing common law provisions will need to be applied. It was unclear what sanctions could be imposed by the Council in cases concerning breaches by parish councillors.

- **Register of interests**

- The Council's Monitoring Officer will be responsible for establishing and maintaining a register of interests of members' interests, which must be available for inspection and published on the Council's website; this includes parish councillors' registers. A parish council will also, separately, have to publish its councillors' registers on its website, if it has one.

- **Disclosure of pecuniary interests on taking office**

- Within 28 days of taking office, members must notify the Council's Monitoring Officer of any "disclosable pecuniary interests" which will then be entered onto that member's register of interests. To be disclosable a pecuniary interest would have to be an interest of the member themselves, their spouse or civil partner or somebody they are living with as if spouses or civil partners.

- **Pecuniary interests in matters considered at meetings or by a single member**

- At the beginning of meetings at which members were present they would be obliged to disclose any "disclosable pecuniary interest" relating to the matters to be discussed if such an interest was not included on their register of interest or was pending inclusion on their register. The member may not then participate any further in discussion of that matter or vote on it.

- **Sensitive interests**

- Provisions similar to the current regime preventing the needs for councillors to disclose certain, sensitive interests are contained in the Act.

- **Dispensations**

- The Council must consider applications for dispensations subject to agreeing a new Dispensation Scheme and decision making process.

- **Criminal Offences**

- Members' failure to comply with the new rules on the registration and disclosure of interests would become a criminal offence. Such cases would be dealt with by the Police and CPS albeit that the Monitoring Officer would be the "first port of call".

SC/22 Revised Standards Regime Update (cont.)

- **Parish Councils**

- Parish councils are also subject to the duty to promote and maintain high standards of conduct and adopt a code of conduct. The Council must have in place a mechanism for dealing with parish code of conduct complaints.

In addition to the general provisions on the new standards regime, the Localism Act sought to 'clarify' the law on bias in relation to local councillors. It was intended to ensure that councillors did not feel unable or uncertain about what they may do in terms of championing local issues.

Training and guidance for Members would be provided on the new provisions.

RESOLVED

- (i) That the matters set out in the report be noted.
- (ii) That any views on the best way forward for the Council to implement the revised standards framework be expressed in a full report to Council.

REASONS

- (i) To ensure that the Committee, the Members of the Council and others to whom the report is circulated are kept up to date with developments flowing from the Localism Act 2011 in relation to member conduct; and
- (ii) To assist full Council with their deliberations on what new ethical framework procedures need to be put in place to comply with the Localism Act 2011.

SC/23 **ETHICAL FRAMEWORK UPDATE**

The Monitoring Officer reported on developments in the ethical framework that affected the role and activities of Councillors and the Council's business, including:

- **Standards for England Bulletins:** Standards for England had published a short press release on 16 November 2011, following the Localism Act becoming an Act of Parliament on 15 November 2011. A revised Blogging Quick Guide had been issued.
- **Training and awareness – Standards for England:** The Monitoring Officer recently attended a training course on the Localism Bill.

SC/23 Ethical Framework Update (cont.)

- **Local Assessment, Review, Other Action, Investigations and Determinations:** None had taken place since the last Ethical Framework Update. The next Local Assessment Sub-Committee will take place on 11th January, 2012.
- **Freedom of information:**
For the period 1 July to 30 September, the Council had received 137 requests for information under the Freedom of Information Act, Environmental Information Regulations and Data Protection Act. The Government had published its Code of Recommended Practice for Local Authorities on Data Transparency in September 2011 which set out the 'key principles for local authorities in creating greater transparency through the publication of publication.' It set out the minimum amount of public data and types of datasets that should be released as well as publication requirements.
- **Performance management:** From 1 July to 30 September 2011 the Council had received 26 complaints, no suggestions and 42 compliments. During the previous monitoring period of 1 April to 30 June 2011 the Council had received 25 complaints, 0 suggestions and 42 compliments (not including complaints received about waste management services)
- **Data Protection:** The Information Commissioner had not alerted the Council to any breaches of the Data Protection Act within the last six months. An Information Security Project relating to data sharing in the CenSus partnership was currently in progress.
- **Regulation of Investigatory Powers Act 2000 (RIPA):** It was expected that local authorities would only be able to utilise RIPA in more limited circumstances and only after obtaining a RIPA "warrant" from a Magistrates Court following the Protection of Freedoms Bill, which was currently at the committee stage in the House of Lords.
- **A Local Government Ombudsman case update October 2011 to December September 2011** was presented.
- **A Standards case update October to December 2011** was presented.
- **Standards for England Case Review Update:** An updated version of the line-by-line examination of the Model Code of Conduct produced by Standards for England had been published in October 2011.
- **Constitution update:** On 7 September 2011, changes to the Scheme of Delegation to the Executive (Part 3A) and the Scheme of Delegation to Committees (Part 3C) had been approved.
- **Work Programme update:** The work programme would be considered further when the future of the standards regime at Horsham was clearer.
- **Members' Bulletin:** An update on the implications of the Localism Act for the standards regime at Horsham had been included in the Members' Bulletin.
- **Duty to Promote Standards:** The group photo of the Committee taken at the last meeting was now on the Standards Committee page on the Council's website. An article on the revised standards regime in Horsham under the Localism Act will be included in the spring 2012 edition of the Horsham District News Magazine.

SC/23 Ethical Framework Update (cont.)

- **Survey on Public Attitudes Towards Conduct in Public Life:** Every two years the Committee on Standards in Public Life carried out a survey to assess public attitudes, expectations and perceptions about the behaviour of those in public life. The most recent survey, based on data collected between 29 December 2010 and 4 January 2011, had been published in September 2011.

RESOLVED

- (i) That the matters set out in the report be noted.

REASON

- (i) To ensure that the Committee, the Members of the Council and others to whom the report is circulated are kept up to date with developments in the ethical framework.

SC/24 **URGENT ITEMS**

There were no urgent matters to be considered.

The meeting finished at 11.32am having commenced at 10.00am.

CHAIRMAN

STANDARDS COMMITTEE
LOCAL ASSESSMENT SUB-COMMITTEE
11th JANUARY 2012

Present: Councillor Claire Vickers, Mary Jagger (Independent Representative), Val Court (Parish Council Representative)

LA/1 **ELECTION OF CHAIRMAN**

RESOLVED

That Mary Jagger be appointed Chairman of the Sub-Committee for the purposes of this meeting.

LA/2 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

LA/3 **ASSESSMENT UNDER S57A OF THE LOCAL GOVERNMENT ACT 2000 (AS AMENDED) AND THE STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008 IN RELATION TO ALLEGATIONS THAT DISTRICT COUNCILLOR BRIAN O'CONNELL FAILED TO COMPLY WITH HORSHAM DISTRICT COUNCIL'S CODE OF MEMBERS' CONDUCT**

The Local Assessment Sub-Committee considered a complaint by way of allegations that District Councillor Brian O'Connell failed to comply with Horsham District Council's Code of Members' Conduct (the Code).

Brian O'Connell was a District Councillor and local Member for the Henfield Ward. Councillor O'Connell was a Member of the Development Control (South) Committee. He also sat on Scrutiny & Overview Committee, Performance Management Working Group and Business Improvement Working Group. He was first elected to the Council in May 2011. A full copy of the complaint made by the complainant against him together with all supporting papers supplied by the complainant dated 25 November 2011 was considered. A copy of Councillor O'Connell's Register of Member's Interests and photocopy of the office copy entries for Sake Ride Farm had also been provided.

The complaint arose from an application under reference DC/11/2378 dated 11th November 2011 made by Councillor Brian O'Connell's wife, Mrs Jacqui O'Connell for a certificate of lawfulness in relation to the conversion of a building to a dwelling house at Sake Ride Farm Wineham Lane Wineham Henfield BN5 9AG. The applicant alleged that both the building works and the use of the building as a single dwelling house had begun in July 2005 in breach of planning control and had continued ever since. Councillor Brian O'Connell had declared an interest in the application submitted by his wife.

The complainant alleged that concealment of an unauthorised dwelling house from the local planning authority whilst sitting as a Member of the Development Control (South) Committee was a breach of paragraph 5 of

the Members Code of Conduct. It was alleged that Councillor O'Connell had brought his office or authority into disrepute.

The complainant further alleged that he had gained financially from letting the dwelling as an assured shorthold tenancy, for which he was the joint Landlord with his wife.

In addition the complainant alleged that Councillor O'Connell had not paid Council Tax on the new dwelling throughout the period of unlawful use as a dwelling house.

Finally the complainant requested that the complainant's personal details be withheld from the Member concerned as the complainant was an employee of the Council and felt that disclosure of their details to the Member concerned may prejudice the complainant's ability to do the complainant's job.

DECISIONS

In accordance with Section 57A(2) of the Local Government Act 2000, as amended, the Local Assessment Sub-Committee decided that:

- A** no action should be taken on the allegation.
The complainant had not disclosed any evidence to suggest Councillor O'Connell had been acting in his official capacity at the time of the relevant conduct. The Sub-Committee did however express concern about the likely perception of his conduct in his private life by the public and the effect on his reputation as a councillor and that of the Council as a whole.
- B** the personal details of the complainant should remain confidential and should not be disclosed to the Member.

REASONS FOR THE DECISIONS

DECISION A

- 1) The Local Assessment Sub-committee was charged with determining whether the case was within the jurisdiction of the Sub-Committee and if so whether there was a potential breach of the Code of Members' Conduct. In the event that the facts disclosed a potential breach of the Code the Sub-Committee was required then to decide which course of action was appropriate. No investigation had been carried out.

- 2) The Sub-Committee firstly considered whether or not the Member had been acting within the scope of the Horsham District Council Code of Members' Conduct in the circumstances explained by the complainant.

- 3) In particular the Sub-Committee considered paragraph 2 of the Code of Members' Conduct:

“(1) Subject to paragraphs (2) to (5) you must comply with this Code whenever you -

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression that you are acting as a representative of your authority,

and references to your official capacity are construed accordingly ...

(2) Subject to sub-paragraphs (3) and (4) this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted

- 4) To assist with the Sub-Committee's deliberations the following questions were considered:

(1) Is the Members' Code of Conduct engaged in this case?

- a. The Code of Conduct applies when a Member is acting in their official capacity which includes when they are conducting the business of the Authority or acting, claiming to act or giving the impression they are acting as a representative of the Authority. Although there is also a general expectation that Members' conduct will always be of a higher standard and subject to closer scrutiny than members of the public, failure by a Member to live up to meet such standards will not amount to a breach of the Authority's Code of Conduct if this occurs when the Member is not acting in their official capacity.

- b. In particular the following cases were considered on the question of official capacity. These included the decision of the Upper Tribunal on 18 August 2011 in case *2011 UKUT 332 (AAC) AF v Standards Committee of Central Bedfordshire Council*, which set aside a decision of the First Tier Tribunal which had failed to distinguish between the questions of whether the relevant Member was acting as a Member or whether he was acting as a representative of the Authority. That decision referred to the Upper Tribunal (Administrative Appeals Chamber) case dated 14 June 2011 of *2011 UKUT 232 (AAC) MC v Standards Committee of LB Richmond* as the authoritative decision on this issue. The decision in case *2011 UKUT 232 (AAC)* set aside a decision of the First Tier Tribunal, which had placed too much reliance on the dictum in another case *2006 EWHC 2533 (Admin) Livingstone v The Adjudication Panel of England* that “official capacity will include anything done in dealing with staff” and did not conduct a fact-sensitive analysis. In addition the Adjudication Panel decision in case *APE 0458 South Ribble Borough Council and Councillor Tom Sharratt* was observed in which the chairman of the Appeals Panel said “*The dedication of many councillors to activities in public life means that often their social and professional lives are shaped by their roles as councillors and in turn shape how they approach those activities. However while they may always be conscious of their office as councillor and carry out a wide range of activities in which that is a factor in their thinking, no reasonable observer would conclude that they are carrying out the business of the office of councillor; a test which, in the light of the decision in Livingstone, should be narrowly construed.*”
- c. It was the Sub-Committee’s view that Members inevitably have to make applications in their individual personal capacity and as such it is appropriate for Members to make planning applications in respect of development they are undertaking on their own land and premises. Indeed there is a well developed practice to enable Members who may be involved in making planning decisions to declare an interest and withdraw from decision making where they have a prejudicial interest in an application.
- d. By making an application albeit in this case by way of lawful development application the Sub-

Committee's view was that Members are acting in their personal capacity and not their official capacity as a Member. The application for a lawful development application had in this case been made by another party on behalf of the councillor namely his wife. The applicant had disclosed her relationship with the relevant Member and the Member had also included details of the relevant land ownership in his entries on the Authority's register of interests. However, there did not seem to be any evidence that the Member had tried to have any involvement in the decision making or sought to use his position to influence the progress of the application. Councillor O'Connell had drawn the attention of the Democratic Services Officer to the fact that he had an interest in an application which had been submitted in his wife's name, thereby alerting the officer to the requirement for there to be a committee report.

- e. The complainant had put forward details of what the complainant considered to be an aggravating factor, namely that a Compliance Officer, Legal Officer and three members of the police recently attended a property to execute a warrant of entry to investigate a breach of planning control, having been refused entry on a previous occasion. However, the complainant had not provided any information on what role, if any, Councillor O'Connell had played in this case.
- f. Accordingly, on the basis of the information seen, the Sub-Committee could see no evidence that Councillor O'Connell had been acting in his official capacity at the time of the conduct which was the subject of a complaint. Therefore, that conduct would not have been subject to the Authority's Code of Conduct.
- g. The assessment by the Local Assessment Sub-Committee was an assessment for the purposes of determining the next steps and was not an investigation of the complaint. In some cases the Sub-Committee is not able to reach a conclusive view on the Member's capacity but rather that this should be addressed in an investigation where the Sub-Committee decide that a complaint indicates a potential breach of the Code. However, in this case, the lack of evidence of any conduct carried out by the Member in his official capacity indicated that the Sub-Committee were unable to identify any potential for the complaints to disclose a failure to comply with the Code of Conduct. The

Sub-Committee therefore decided to take no further action for that reason.

(2) Is a Member permitted to put his house in order by submitting a lawful development application in his private capacity such that the Code will not be engaged?

The Sub-Committee considered that a Member could make such an application and that the Code of Conduct would not be engaged in those circumstances. In order for a Member to be in this position, it would be necessary for the Member to ensure that he or she did nothing which could be regarded as conducting the business of the Authority or acting, claiming to act or giving the impression of acting as a representative of the Authority. The Sub-Committee considered that Councillor O'Connell had done nothing to imply that he had not been acting in a private capacity in respect of the lawful development application relating to property in which he had an interest.

(3) Is the Member somehow acting in their official capacity?

As indicated above, the Sub-Committee did not consider that the complainant had shown any evidence that Councillor O'Connell had been acting in his official capacity at the time of the relevant conduct. The Sub-Committee did not therefore go on to consider which paragraphs of the Code might have been breached by the Member's conduct if they had been subject to the Code at the relevant time.

DECISION B

- 1) As a general rule in the interests of fairness and in compliance with the rules of natural justice, it is considered right that Members who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against him/her.
- 2) While the name and the details of the complainant were confidential to the Local Assessment Sub-Committee and the Monitoring Officer until the complaint had been assessed by the Local Assessment Sub-committee, they would generally be made public afterwards unless the Sub-Committee considered that there were very exceptional circumstances.
- 3) In this case the complainant was an employee of Horsham District Council. The Sub-Committee considered that very exceptional circumstances existed and to disclose the complainant's details in this case

would be contrary to the public interest. In particular it was considered that disclosure would prejudice the complainant's ability to carry out their job as an employee of Horsham District Council.

The meeting commenced at 10.00am and adjourned at 11.55am.

CHAIRMAN

STANDARDS COMMITTEE
LOCAL ASSESSMENT SUB-COMMITTEE
10th FEBRUARY 2012

Present: Councillor Andrew Baldwin, David Tilsley (Independent Representative), Val Court (Parish Council Representative)

LA/1 **ELECTION OF CHAIRMAN**

RESOLVED

That David Tilsley be appointed Chairman of the Sub-Committee for the purposes of this meeting.

LA/2 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

LA/3 **ASSESSMENT UNDER S57A OF THE LOCAL GOVERNMENT ACT 2000 (AS AMENDED) AND THE STANDARDS COMMITTEE (ENGLAND) REGULATIONS 2008 IN RELATION TO ALLEGATIONS THAT DISTRICT COUNCILLOR PHILIP CIRCUS FAILED TO COMPLY WITH HORSHAM DISTRICT COUNCIL'S CODE OF MEMBERS' CONDUCT**

The Local Assessment Sub-Committee considered a complaint by way of allegations that District Councillor Philip Circus failed to comply with Horsham District Council's Code of Members' Conduct (the Code).

Councillor Circus was a District Councillor and local member for the Chanctonbury Ward. He was a member of the Conservative majority, sat on the Development Control (South) Committee and was a member of the Scrutiny & Overview Committee. He had first been elected to the Council in 2007. A full copy of the complaint made by the complainant against him, together with all supporting papers supplied by the complainant, dated 15th December 2011 was considered. A copy of Councillor Circus' Register of Members' Interests was also provided.

Councillor Circus wrote a fairly regular column in the West Sussex County Times. The complainant alleged that an article written by Councillor Circus and published in the West Sussex County Times on 17th November 2011 had been written in the Councillor's official capacity; that he had failed to treat a named employee with respect; and that in so doing the Councillor had brought his office or authority into disrepute. The complainant further stated that the content of the article amounted to bullying of the employee and that the column had been used to confer a disadvantage on the employee. An issue had also been raised regarding the Councillor's Register of Interests and whether the writing of the column containing details of Council staffing amounted to a disclosable interest.

The complaint listed the general principles that the Councillor was alleged to have breached: in that the alleged behaviour showed a lack of selflessness;

honesty and integrity; objectivity; accountability; openness; respect for others and leadership. The complainant requested that a written and verbal apology be given to the named employee and that a restriction be placed on the councillor writing newspaper articles for Horsham publications.

DECISION

In accordance with Section 57A(2) of the Local Government Act 2000, as amended, the Local Assessment Sub-Committee decided that no action should be taken on the allegation.

REASONS FOR THE DECISION

- 1) The Local Assessment Sub-Committee was charged with determining whether there was a prima facie breach of the Code of Members' Conduct and if so deciding which course of action was appropriate. No investigation was carried out.
- 2) The Sub-Committee firstly considered whether or not the Member was acting within the scope of the Horsham District Council Code of Members' Conduct in the circumstances explained by the complainant.
- 3) In particular the Sub-Committee considered paragraph 2 of the Code of Members' Conduct:

“(1) Subject to paragraphs (2) to (5) you must comply with this Code whenever you -

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression that you are acting as a representative of your authority,

and references to your official capacity are construed accordingly ...”

- 4) To assist with the Sub-Committee's deliberations the following question was considered:

Is the Members' Code of Conduct engaged in this case?

- a. The Code of Conduct applies when a member is conducting council business, for instance when participating as a member of a Council committee. This is not alleged within the complaint. However, the Code also applies when a member acts, claims to act or gives the impression they are acting as a representative of the authority. There is also a

general expectation that members' conduct will always be of a higher standard and subject to closer scrutiny than that of members of the public. However, failure by a member to meet such standards will not amount to a breach of the authority's Code of Conduct if at the time the member was not acting in their official capacity. The key question on these facts is whether or not Councillor Circus was acting in his official capacity by giving the impression that he was acting as a representative of Horsham District Council within the article complained of.

- b. In this instance Councillor Circus wrote an article which clearly stated that "[t]hese columns are written in a personal capacity" but also stated that he is a "lawyer and district councillor". In the column subject to this complaint, Councillor Circus stated that he was a Councillor within the main body of the article, wrote about a named member of staff and stated that "all of us who are councillors at Horsham, are not hostile to the public sector". The article then dealt with his views on the Government proposals for pension reform and challenged Mr Milton to leave the public sector if he believed "the grass is very much greener" in the private sector before finally adding that he didn't think that Mr Milton would "take up the challenge".
- c. The Sub-Committee considered cases from the Standards for England Case Review that dealt with similar circumstances. Consideration was given to whether the Code applies to blogs, social networking sites, Twitter etc. The guidance indicates that a personal blog that deals with "council business" rather than just "general political issues" could be caught by the Code, notwithstanding that the author states that they are writing in their personal capacity. The following cases were referred to.
- d. In case reference APE 0421 the Councillor was held to be acting in her official capacity when posting comments on an internet newspaper forum, even though she stated that she was writing in her personal capacity. The Appeals Tribunal found that notwithstanding the use of a pseudonym, taking the contents of the postings on the forum as a whole, the Appellant did give the impression that she was acting as a Councillor and therefore in her official capacity.

- e. In Case APE 0503 a Councillor wrote comments in a newsletter and on his Twitter site; he stated that he was not writing in his official capacity but referred to himself as a Councillor and wrote about Council business. It was found that in both the newsletter and Twitter site postings that he was acting in his official capacity, but only part of the newsletter was found to have constituted a breach of the Code.
- f. In Case APE 0458 the Councillor was a journalist who produced a newsletter with a variety of articles and advertisements. Some of the articles dealt with Council business. The Adjudication Panel decided that as the appellant was a journalist the journal was not part of the business of the Council and that the journalist did not claim or give the impression of acting as a representative of the Council.
- g. On the basis of the information we have seen, we can see no evidence that Councillor Circus was acting in his official capacity at the time of the conduct which is the subject of the complaint. He produces a regular column for the newspaper, and the column complained of was clearly marked as being written in a personal capacity. The Sub-Committee decided that the contents of the column did not give the impression that Councillor Circus was representing Horsham District Council in his official capacity in that article. Therefore, that conduct would not have been subject to the authority's Code of Conduct.
- h. The assessment by the Local Assessment Sub-Committee was an assessment for the purposes of determining the next steps and was not an investigation of the complaint. In some cases the Sub-Committee is not able to reach a conclusive view on the member's capacity but rather that this should be addressed in an investigation where the Sub-Committee decide that a complaint indicates a potential breach of the Code. However, in this case, the lack of evidence of any conduct carried out by the member in his official capacity indicates that the Sub-Committee were unable to identify any potential for the complaint to disclose a failure to comply with the Code of Conduct. The Sub-Committee has therefore decided to take no further action for that reason. We have not considered what paragraphs of the Code might have been breached by their conduct if they had been subject to the Code at the relevant time

The meeting commenced at 10.00am and closed at 10.30am.

CHAIRMAN

LIST OF STANDARDS COMMITTEE REPORTS AND DOCUMENTS – 2011 to 2012

The following reports and documents are available for inspection by arrangements with the Monitoring Officer and her staff.

The most up-to-date version of the list is available via the following link:

<http://www.horsham.gov.uk/council/members/1113.aspx>

PART A - REPORTS

Date of report	Subject of report
Past Reports	
14.01.09	Ethical Framework Update January 2009
1.04.09	Ethical Framework Update April 2009
1.04.09	Ombudsman Update April 2009
15.07.09	Ethical Framework Update July 2009
15.07.09	Report to Council – Appointment of Additional Parish Member of Standards Committee
21.10.09	Ethical Framework Update October 2009
21.10.09	Ombudsman Update October 2009
13.01.10	Ethical Framework Update January 2010
13.01.10	Work Programme and future Annual Reports 2010/11
28.04.10	Ombudsman Update April 2010
28.04.10	Ethical Framework Update April 2010
22.09.10	Ombudsman Update September 2010
22.09.10	Ethical Framework Update September 2010
08.12.10	Ethical Framework Update December 2010
16.03.11	Ethical Framework Update March 2011
16.03.11	Ombudsman Update March 2011
16.03.11	Standards Annual Report 2010-11
13.04.11	Report to Council – Standards Annual Report 2010-11
21.09.11	Ethical Framework Update September 2011
21.09.11	Ombudsman Update September 2011 and Annual Letter
21.09.11	Future of Standards at Horsham – Issues and Options Document
07.12.11	Ethical Framework Update December 2011
07.12.11	Revised Standards Regime Update December 2011
14.03.12	Ethical Framework Update March 2012
14.03.12	Ombudsman Update March 2012
Future Reports	
30.05.12	Ethical Framework Update May 2012
27.06.12	Ethical Framework Update June 2012
27.06.12	Ombudsman Annual Review Letter 2011-12

PART B – DOCUMENTS

	Description	Date	Publisher	Internet Links
SC362	Misconduct and the Code	26.05.10	Bevan Brittan LLP	
SC363	Compact Toolkit	24.06.10	Standards for England	http://www.standardsforengland.gov.uk/Resources/Resourcelibrary/Toolkits/Compacttoolkit/
SC364	Local Government Ombudsman's Annual Review 2009/2010	21.06.10	LGO	http://www.horsham.gov.uk/council/1111.aspx
SC365	CLG Structural Reform Plan	01.07.10	DCLG	http://www.communities.gov.uk/publications/corporate/structuralreformplan
SC366	NALC Power to the People Action Plan	01.07.10	NALC	http://www.createacouncil.org.uk/
SC367	Governance Toolkit for Parish & Town Councils	01.04.2009	ACSeS/SfE/NALC /LGA/SLCC	http://www.acses.org.uk/public_file/filename/28/Parish_Toolkit_April_2009.doc
SC368	Local Government Ombudsman Case Update April to September 2010	22.09.10	HDC	
SC369	Standards Case Update April to September 2010	22.09.10	HDC	
SC370	Horsham District News Magazine Article	Autumn 2010	HDC	
SC371	Committee on Standards in Public Life Annual Review	01.07.2010	CSPL	http://www.public-standards.org.uk/Library/2010_ANNUAL_REPORT_Final.pdf
SC372	Statement on Regional Government	22.07.2010	Government Office for the South East	http://www.horsham.gov.uk/council/members/files/MembersBulletin_Issue104N.pdf
SC373	DCLG Confirm Plans to Scrap Standards Board, Ends Predetermination Rule	21.06.2010	Local Government Lawyer	http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=2545%3Adclg-confirms-plan-to-scrap-standards-board-end-pre-determination-rule&catid=59%3Agovernance-a-risk-articles&q=&Itemid=27
SC374	The Future of the Ethical Framework for Local Government	26.08.2010	ACSeS	

	Description	Date	Publisher	Internet Links
SC375	The Future of the Local Government Standards Regime	01.09.2010	Local Government Improvement & Development	http://www.idea.gov.uk/idk/core/page.do?pagelId=21932703
SC376	Law Commission Consultation Paper on Public Service	02.09.2010	Law Commission	http://www.lawcom.gov.uk/docs/cp196.pdf
SC377	Ombudsman Complaints 2009-10 Reporting Year Case Schedule	22.09.2010	HDC	
SC378	Local Settlement Cases 2009-10 – Lessons Learnt	22.09.2010	HDC	
SC379	Ombudsman Complaints 2010-11 Reporting Year Case Schedule	22.09.2010	HDC	
SC380	Comparison of LGO Complaints Annual Review Letters for Seven Councils	22.09.2010	HDC	
SC381	Committee on Standards in Public Life Review of Party Funding – Issues and Questions	01.09.2010	CSPL	http://www.public-standards.gov.uk/Library/Party_Funding_Issues_and_Questions_Final.pdf
SC382	Standards For England "Remains Open For Business", Calls on MOs to Meet Obligations	06.09.2010	Local Government Lawyer	http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=3775%3Astandards-for-england-qremains-open-for-businessq-calls-on-mos-to-meet-obligations&catid=59%3Agovernance-a-risk-articles&q=&Itemid=27
SC383	Department for Communities and Local Government Business Plan	11.2010	DCLG	http://transparency.number10.gov.uk/transparency/srp/view-srp/36/37#
SC384	Consultation on the Code of Recommended Practice on Local Authority Publicity and Responses	29.09.2010	DCLG	http://www.communities.gov.uk/documents/localgovernment/pdf/1727384.pdf
SC385	Local Government Ombudsman Case Update September to December 2010	08.12.2010	HDC	
SC386	Standards Case Update September to December 2010	08.12.2010	HDC	
SC387	Public Bodies Bill	28.10.2010	Parliament	http://www.publications.parliament.uk/pa/ld201011/ldbills/025/2011025.pdf

	Description	Date	Publisher	Internet Links
SC388	Letter from Bob Neill MP Regarding the Future of the Standards Regime	15.10.2010	DCLG	http://www.standardsforengland.gov.uk/media/letter%20from%20bob%20neill.pdf
SC389	Letter from Robert Chilton in Response to Letter from Bob Neill MP	30.11.2010	SfE	http://www.standardsforengland.gov.uk/media/Letter%20to%20standards%20committee%20chairs%2030%20November%202010.pdf
SC390	Standards for England Case Review 2010	21.12.2010	SfE	http://www.standardsforengland.gov.uk/CaseinformationReporting/OnlineCaseReview2010/case_review_211210.pdf
SC391	A Guidance Note And Checklist For Newly Established Local (Parish And Town) Councils	24.01.2011	NALC	http://www.nalc.gov.uk/Publications/Booklets_and_Resources.aspx
SC392	Proposed Code of Recommended Practice on Local Authority Publicity	27.01.2011	Commons CLG Committee	http://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/news/local-authority-publicity/
SC393	Localism Bill: Abolition of the Standards Board - Equality Impact Assessment	31.01.11	DCLG	http://www.communities.gov.uk/publications/localgovernment/localismstandardsboard/ea
SC394	Localism Bill: The abolition of the Standards Board regime, clarification of the law on predetermination and the requirement to register and declare interests - Impact Assessment		LGL	http://www.communities.gov.uk/publications/localgovernment/localismstandardsboard
SC395	Councillors Set Free?	03.02.2011	LGL	http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=5768%3Acouncillors-set-free&catid=59%3Agovernance-a-risk-articles&q=&Itemid=27
SC396	Response to IPSA Annual Review of the MPs' Expenses Scheme	11.02.2011	Committee on Standards in Public Life	http://www.public-standards.org.uk/Library/2011_Annual_Review_Response_Final_1_.pdf
SC397	Draft Code of Recommended Practice on Local Authority Publicity	11.02.2011	DCLG	http://www.communities.gov.uk/documents/localgovernment/pdf/1840962.pdf
SC398	Code Of Recommended Practice On Local Authority Publicity: Explanatory Memorandum	11.02.2011	DCLG	http://www.communities.gov.uk/documents/localgovernment/pdf/1840982.pdf
SC399	Code of Recommended Practice on Local Authority Publicity consultation and Select Committee report: Government response	11.02.2011	DCLG	http://www.communities.gov.uk/documents/localgovernment/pdf/1841152.pdf

	Description	Date	Publisher	Internet Links
SC400	Code of Recommended Practice on Local Authority Publicity: Impact Assessment	11.02.2011	DCLG	http://www.communities.gov.uk/documents/localgovernment/pdf/1841098.pdf
SC401	Local Authority Publicity in the Pre-Election Period - Guidance	14.02.2011	Monitoring Officer	
SC402	Local Government Ombudsman Case Update January to March 2011	22.02.2011	HDC	
SC403	Standards Case Update January to March 2011	22.02.2011	HDC	
SC404	Maintaining Ethical Standards in Local Government	22.02.2011	LGA and ACSeS	http://www.acses.org.uk/doc/filename/1324/LGA_ACSeS_Paper_on_Local_Authority_Standards_Provisions_February_2011.pdf
SC405	Ombudsman Complaints Schedule (annual) 2010/11	16.03.2011	HDC	
SC406	Ombudsman Local Settlement Cases – Lessons Learnt	16.03.2011	HDC	
SC407	The Localism Bill – Implications for Standards and the Ethical Framework	16.03.2011	HDC	
SC408	ACSeS Submission to the Public Bill Committee on the Localism Bill	01.03.2011	ACSeS	
SC409	Future Standards of Conduct of Members of Local Authorities in England	20.04.2011	NALC	http://www.horsham.gov.uk/files/SC409.pdf
SC410	A Plain English Guide to the Localism Bill	15.06.2011	DCLG	http://www.communities.gov.uk/documents/localgovernment/pdf/1923416.pdf
SC411	Annual Report 2010/2011 – Delivering Public Value	14.07.2011	LGO	http://www.lgo.org.uk/publications/annual-report/
SC412	Life After Standards	20.06.2011	Bevan Brittan	http://www.bevanbrittan.com/articles/Pages/Lifewithoutstandards.aspx

	Description	Date	Publisher	Internet Links
SC413	Parish Clerk Sacked in Red Diesel Furore	26.07.2011	Cambridge News	http://www.cambridge-news.co.uk/Cambridge/Parish-clerk-sacked-in-red-diesel-furore-26072011.htm
SC414	ACSeS Backs Peers in Bid To Bolster Standards Provisions of Localism Bill	28.07.2011	LGL	http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=7440%3Aacses-backs-peers-in-bid-to-bolster-standards-provisions-of-localism-bill&catid=59%3Agovernance-a-risk-articles&q=&Itemid=27
SC415	Ombudsman Complaints Schedule March to September 2011 (interim)	21.09.2011	HDC	
SC416	Comparative Ombudsman Complaints Statistics to 31 March 2011	24.06.2011	LGO	http://www.lgo.org.uk/CouncilsPerformance/
SC417	Hansard Report 23 June 2011 Column 1475 Onwards	23.06.2011	Parliament	http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110623-0003.htm
SC418	Local Government Ombudsman Case Update April to September 2011	21.09.2011	HDC	
SC419	Standards Case Update April to September 2011	21.09.2011	HDC	
SC420	Schedule of Local Assessment Sub-Committee Meetings 2011 to 2012	21.09.2011	HDC	
SC421	Annual Report and Accounts 2010 to 2011	18.07.2011	SfE	http://www.standardsforengland.gov.uk/media/Standards%20for%20England%20Annual%20Report%20and%20Accounts%20HC%201247%20v1.pdf
SC422	Standards Regime Post Localism at Horsham – Issues and Options	30.08.2011	HDC	
SC423	The Future of Standards of Conduct of Members of Local Authorities in England – Update	20.07.2011	NALC	http://www.horsham.gov.uk/files/SC423.pdf
SC424	Localism Bill - Second Marshalled List of Amendments to Standards Provisions	05.09.2011	Parliament	
SC425	Local Authorities Could Still be Obligated to Have Code of Conduct as Minister Signals Localism Bill Concession	15.09.2011	LGL	http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=7898%3Alocal-authorities-could-still-be-obliged-to-have-code-of-conduct-as-minister-signals-localism-bill-concession&catid=59%3Agovernance-a-risk-articles&q=&Itemid=27

	Description	Date	Publisher	Internet Links
SC426	Survey of Public Attitudes Toward Conduct in Public Life 2010	01.09.2011	Committee on Standards in Public Life	http://www.public-standards.gov.uk/Library/CSPL_survey_Final_web_version.pdf
SC427	Hansard Report 12 September 2011 Column 609 Onwards	12.09.2011	Parliament	http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110912-0003.htm
SC428	Hansard Parliamentary Debates House of Lords Official Report Localism Bill (4 th Day) (page 44 onwards)	14.09.2011	Parliament	http://www.publications.parliament.uk/pa/ld201011/ldhansrd/lhan195.pdf
SC429	Citizenship Survey April 2010 to March 2011	22.09.2011	DCLG	http://www.communities.gov.uk/documents/statistics/pdf/1992885.pdf http://www.communities.gov.uk/documents/statistics/xls/1992761.xls
SC430	Government response to the Communities and Local Government Select Committee's Report: Localism	23.09.2011	DCLG	http://www.communities.gov.uk/documents/localgovernment/pdf/1993667.pdf
SC431	Preliminary Draft Model Code of Conduct for Members	07.10.2011	ACSeS	http://www.horsham.gov.uk/files/SC431.pdf
SC432	Standards for England Case Review 2010 Update (to 31 August 2011)	11.10.2011	SfE	http://www.standardsforengland.gov.uk/media/Case%20review%20111011.pdf
SC433	Ministers Amend Localism Bill to Require Authorities to Have Code of Conduct	27.10.2011	LGL	http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=8332%3Aministers-amend-localism-bill-to-require-authorities-to-have-code-of-conduct&catid=59%3Agovernance-a-risk-articles&q=&Itemid=27
SC434	Localism Bill Amendments to Be Moved on Third Reading – Standards Provisions	27.10.2011	Parliament	http://www.publications.parliament.uk/pa/bills/lbill/2010-2012/0100/amend/am100-b.htm
SC435	Councils Will Have to Rely on Existing Sanctions for Conduct Breaches	02.11.2011	LGL	http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=8387%3Acouncils-will-have-to-rely-on-existing-sanctions-for-conduct-breaches-says-minister&catid=59%3Agovernance-a-risk-articles&q=&Itemid=27
SC436	Updated Blogging Quick Guide	04.11.2011	SfE	http://www.standardsforengland.gov.uk/Guidance/TheCodeofConduct/CodeGuidance/Onlineguides/Quickcodeguides/BloggingQuickGuide/
SC437	Local Government Ombudsman Case Update October to December 2011	07.12.2011	HDC	
SC438	Standards Case Update October to December 2011	07.12.2011	HDC	

	Description	Date	Publisher	Internet Links
SC439	The Localism Act 2011	15.11.2011	Parliament	http://www.legislation.gov.uk/ukpga/2011/20/pdfs/ukpga_20110020_en.pdf
SC440	Localism Bill Royal Assent Update	16.11.2011	SfE	http://www.standardsforengland.gov.uk/news/futureofthelocalstandardsframework/
SC441	A Plain English Guide to the Localism Act - Update	15.11.2011	DCLG	http://www.communities.gov.uk/documents/localgovernment/pdf/1896534.pdf
SC442	Responses to the Localism Bill receiving Royal Assent	16.11.2011	DCLG	http://www.communities.gov.uk/newsstories/localgovernment/2031000
SC443	Localism Act code of conduct provisions "create as many difficulties as they resolve"	21.11.2011	LGL	http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=8626%3Alocalism-act-code-of-conduct-provisions-qcreate-as-many-difficulties-as-they-resolve&catid=59%3Agovernance-a-risk-articles&q=&Itemid=27
SC444	Explanatory Notes to Localism Act 2011	24.11.2011	Parliament	http://www.legislation.gov.uk/ukpga/2011/20/pdfs/ukpgaen_20110020_en.pdf
SC445	Localism Act 2011: Special Report	15.12.2011	LGL	http://www.localgovernmentlawyer.co.uk/images/stories/Localism%20Act%20Special%20Report.pdf
SC446	Independent Persons Under the Localism Act 2011	08.12.2011	LGL	http://localgovernmentlawyer.co.uk/index.php?option=com_myblog&show=independent-persons-under-the-localism-act-2011.html&Itemid=111
SC447	Implementation of New Standards Regime Delayed Until 1 st July 2012	23.12.2011	LGL	http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=8911%3Aimplementation-of-new-standards-regime-delayed-until-1st-july-2012&catid=59%3Agovernance-a-risk-articles&q=&Itemid=27
SC448	Cessation of Standards for England	17.01.2012	SfE	
SC449	Local Government Ombudsman Case Update January to March 2012	14.03.2012	HDC	
SC450	Standards Case Update January to March 2012	14.03.2012	HDC	
SC451	Ombudsman Complaints 2011/12 Reporting Year to 29 February 2012	14.03.2012	HDC	

	Description	Date	Publisher	Internet Links
SC452	Updated Schedule of Local Assessment Sub-Committee Meetings 2011 to 2012	14.03.2012	HDC	
SC453	10 Rules of Thumb for Every Tweeting MP	07.02.2012	Grant Shapps MP	
SC454	Submission to Select Committee on Recall of MPs Draft Bill	02.02.2012	Committee on Standards in Public Life	http://www.public-standards.gov.uk/Library/CSPL_submission_to_PCRC_on_recall_of_MPs.doc
SC455	Legal Topic Note: Members' Conduct and the Registration and Disclosure of Their Interests	01.03.2012	NALC	

Report to Standards Committee

14 March 2012

By the Monitoring Officer

INFORMATION REPORT

Not exempt



Ethical Framework Update – March 2012

Executive Summary

This report is to inform Members of the Council and all those who may be interested about developments in the ethical framework which affect the role and activities of Councillors and the Council's business.

In particular this report gives details on the following matters:

- Standards for England
- Training and awareness
- Local assessment, review, other action, investigations and determinations
- The Localism Act 2012
- Membership of the committee
- Standards' Liaison Group
- Parish Clerks' Meeting
- Standards in Public Life
- Freedom of Information requests
- Performance management
- Data Protection Act 1998
- Regulation of Investigatory Powers Act 2000
- LGO case update
- Standards case update
- Constitution update
- Standards Annual Report
- Work Programme update
- Members' Bulletin

Recommendations

The Committee is recommended to note the matters set out in the report.

Reason for Recommendation

To ensure that the Committee, the Members of the Council and others to whom the report is circulated are kept up to date with developments in the ethical framework.

Background Papers: Standards Committee Documents: SC343; SC350; SC449; SC450; SC452

Consultation: CMT

Wards affected: All

Contact: Sandra Herbert 5482

BACKGROUND INFORMATION

1 Introduction

The purpose of this report

- 1.1 The purpose of this report is to update Members and all those who may be affected by or have an interest in the ethical framework about developments in the ethical framework since the preparation of the last report in December 2011.

Background/Actions taken to date

- 1.2 Members regularly receive reports on developments in the ethical framework and this report continues that approach. Members of this Committee will wish to be aware of the following helpful websites:
- 1.3 - Standards for England:
www.standardsforengland.gov.uk (the website address and internet search engine functionality remain available at present. On closure of Standards for England information and resources will be transferred to the National Archives website and will be current up to the date of transfer only).
- The First Tier Tribunal (Local Government Standards in England):
<http://www.justice.gov.uk/about/hmcts/tribunals.htm>
- Local Government Ombudsman:
www.lgo.org.uk
- Department for Communities and Local Government:
<http://www.communities.gov.uk/>

2 Statutory and Policy Background

Statutory background

- 2.1 The statutory background is to be found in the Local Government Act 2000, Part 3, the Local Government and Public Involvement in Health Act 2007, Part 10 the Local Democracy Economic Development and Construction Act 2009 and the Localism Act 2011, Part 1 Chapter 6 and Chapter 7 and Regulations made there under.

Relevant Government policy

- 2.2 The relevant Government policies so far as the ethical framework is concerned are contained in the 2000, 2007 and 2009 Acts and the Regulations made under those Acts and the guidance of the Department for Communities and Local Government and Standards for England. Regulations under the Localism Act 2011 are awaited.

Relevant Council policy

- 2.3 The Council's policy is set out in its Constitution and through the activities of this Committee the chairman's Standards' Liaison Group and Council.

3 Details

Standards for England

- 3.1 The regulatory role of Standards for England ceased on 31 January 2012. From this date Standards for England no longer has power to accept referrals from local standards' committees or conduct investigations into complaints against members. In addition, from this date Standards for England no longer has a role in providing guidance on the existing standards framework.

Training and Awareness

- 3.2 The Monitoring Officer provided Val Court, Parish Representative, with training on the standards framework and conducting local assessments on 11 January 2012. In addition, Councillor Stuart Ritchie, newly elected member for Itchingfield, Slinfold and Warnham, received induction training on the Code of Members' Conduct on 21 February 2012 from the Monitoring Officer.
- 3.3 On 24 January 2012 the Monitoring Officer made a presentation to the members of H.A.L.C. on the provisions of the Localism Act in particular the new standards regime. She was attended by the Chief Executive Tom Crowley who provided an overview of the legislation and also Barbara Childs who provided training on the new planning provisions in the Act, in particular, neighbourhood planning.

Local Assessment (s 57A of the Local Government Act 2000)

- 3.4 Since the last Ethical Framework Update was presented to this Committee in December 2011, the Local Assessment Sub-Committee has met twice. On both occasions the Sub-Committee decided to take no further action on the allegations.

Local review (s 57B of the Local Government Act 2000)

- 3.5 Since the date of the last Ethical Framework Update no cases have been referred for a review although the time limit for requesting a review of the most recent Local Assessment Sub-Committee decision is still running.

Other action directed (regulation 13 of The Standards Committee (England) Regulations 2008/1085)

- 3.6 Since the date of the last Ethical Framework Update no cases have been referred for other action.
- 3.7 The Monitoring Officer is required (under regulation 13(4) (c)) to report back on the outcome of other action directed. As there have been no cases referred there are no cases falling into this category.

Local investigations (regulation 14 of The Standards Committee (England) Regulations 2008/1085)

- 3.8 Since the date of the last Ethical Framework Update no local investigations have been carried out.

Local determinations (regulations 17-19 of The Standards Committee (England) Regulations 2008/1085)

- 3.9 Since the date of the last Ethical Framework Update no local determinations have been carried out.

- 3.10 Attached is a draft schedule of forthcoming Local Assessment Sub-Committee dates and Sub-Committee membership (SC452). The calendar of meetings for 2012/13 was approved by Council on 22 February 2012. There are currently two Local Assessment Sub-Committee meetings scheduled between the beginning of the next municipal year and the anticipated end of the current standards regime, the last one being June 27 2012; these two meetings have been added to the end of the existing schedule. The Committee is asked to check their availability for the dates scheduled.

The Localism Act 2011

- 3.11 On 22 February 2012 a full report on the provisions of the Localism Act 2011 and in particular the provisions of Part 1 Chapter 6 and Chapter 7 was presented to Council. A copy of the report can be accessed by following the link:
http://www.horsham.gov.uk/files/Agenda_120222.pdf

- 3.12 Members will be aware as enacted the Act requires councils to:

- Promote and maintain high standards of conduct;
- Adopt a new code of conduct;
- Put in place “arrangements” for dealing with misconduct complaints both in relation to district and parish complaints;
- Appoint at least one Independent Person;
- Prepare and maintain a Register of Interests for both district and parish councillors;
- Comply with the introduction of criminal offences in relation to interests; and
- Adopt a Dispensation Scheme.

- 3.13 As a consequence Council resolved:

1. That the Monitoring Officer be instructed to prepare and present to Council, in consultation with the Chairman’s Standards’ Liaison Group the following -

i) future options for promoting and maintaining high standards of conduct amongst members, dealing with standards issues and case work;

ii) a draft Code of Members’ Conduct;

iii) “Arrangements” for dealing with standards complaints both in relation to District Council and Parish Council Members and for taking action where a member is found to have failed to comply with the Code of Conduct;

iv) a new Register of Members’ Interests for both District and Parish Councillors and to present to Council proposals for revisions to the Council’s Constitution in respect of withdrawal from meetings where a Member has a Disclosable Pecuniary Interest;

v) a revised Dispensation Scheme.

2. That the Chairman’s Standards’ Liaison Group be authorised, in consultation with the Monitoring Officer to -

i) advertise a vacancy for the appointment of one Independent Person and one reserve Independent Person;

ii) short list and interview candidates and make recommendations to Council for appointment;

- iii) set the initial allowance and expenses for the Independent Person and Reserve Independent Person (such allowance not to exceed the sum of £1195 p.a. per person).

Membership of the Committee

- 3.14 The Committee currently consists of six elected members (to include one cabinet member and the chairman/vice-chairman or past chairman of the council), four Independent Members and four Parish Representatives (two vacancies). The committee must be chaired by an Independent Member.
- 3.15 The Localism Act repeals section 55 of the Local Government Act 2000 which provides for the current statutory Standards Committee and in particular the prescriptive membership and chairmanship of the Committee. In the future there will be no statutory obligation for a Standards Committee nor any rules as to its membership. There will continue, however, to be a need to deal with standards issues and case work
- 3.16 The current statutory Standards Committee will cease on 30 June 2012. It is anticipated that the new standards regime will come into effect on 1 July 2012.
- 3.17 It would be open to Council to:
- Retain responsibility unto itself;
 - Delegate responsibility to a new ordinary committee;
 - Delegate responsibility to the Accounts Audit and Governance committee; and/or
 - Delegate responsibility to an officer
- 3.18 It is unlikely to be feasible that the duty to promote and maintain high standards of conduct can be discharged by full meetings of Horsham District Council in respect of the requirement to establish and oversee the arrangements to receive complaints about members across the principal and parish councils, conduct investigations, determine allegations at a hearing and make recommendations or decisions in respect of what action to take against a member who is found to have breached their code of conduct. It is likely that a committee will be needed.
- 3.19 The Council must decide how it will promote and maintain high standards of conduct amongst its members, deal with standards issues and case work in the future. A full report on the matter will be presented to Council at its meeting on 25 April 2012 following consideration of the options by the Chairman's Standards' Liaison Group and the views of the Standards Committee.
- 3.20 If Council decide to delegate its responsibilities to a committee it would be an ordinary committee of the Council without the unique features which were conferred by the previous legislation. As a result
- (a) The composition of any committee will be governed by proportionality. The present restriction to only one member of the Cabinet on the Standards Committee will cease to apply.
- (b) The four current co-opted Independent Members will cease to hold office. The Act establishes a new category of Independent Person who must be consulted at various stages, but provides that the existing co-opted Independent Members cannot serve as Independent Persons for 5 years.
- Discussion is currently taking place between DCLG and Ministers to make transitional provision for a council to appoint a person as an Independent Person who although not a chairman or member of a standards committee at the time of appointment has held such a post within the last 5 years. This implies

appointments should not overlap. It is not clear yet what transitional arrangements will be required for ongoing cases. The Monitoring Officer will need to look at the relevant provisions when drafted carefully to ascertain the full implications.

The new Independent Persons may be invited to attend meetings of any committee or could be co-opted onto a committee but would only be able to act in an advisory capacity and would not be entitled to vote.

On 22 February 2012 full Council authorised the chairman's Standards' Liaison Group to advertise, short list, interview and make recommendations to Council in relation to the appointment of one Independent Person and one Reserve Independent Person.

(c) Similarly the Parish Representatives would cease to hold office. In future Parish Representatives could be invited to attend meetings of any committee or could be co-opted onto a committee but would only be able to act in an advisory capacity and would not be entitled to vote.

Standards' Liaison Group

- 3.21 At the Council meeting on 21 December 2011 the Chairman of the Council set up a cross party Standards Liaison Group of members to discuss the way forward on standards at Horsham. The group consists of Councillor Claire Vickers, Councillor Liz Kitchen, Councillor David Holmes, Councillor Sheila Matthews and is assisted by the Chief Executive and the Monitoring Officer. The chairman of this committee has also been invited to assist the group.
- 3.22 The first meeting of the group took place on 7 February 2012 to discuss the detail of the proposed report to Council on 22 February 2012. A further meeting is scheduled to take place on 6 March 2012 and an oral update will be provided for members.

Parish Clerks' Meeting

- 3.23 The Monitoring Officer attended the Society of Local Council Clerks' meeting on 24 January 2012 and provided an update from the Committee's last meeting in December 2011. General advice was also given on the then recent enactment of the Localism Act in relation to the standards regime and also the abolition of Standards for England. The Clerks were relieved to note the revised provisions in the Act particularly in relation to the requirement placed upon the District Council to have in place "arrangements" for dealing with complaints in relation to breaches of the Member Code of Conduct concerning parish councillors. It was also noted that this service would continue to be provided to the parishes at no cost to them as under current arrangements. The Parish Clerks agreed it would be preferable if all parishes and the district adopted the same Code.

Standards in Public Life

- 3.24 The Committee on Standards in Public Life has published its submission to the Select Committee carrying out pre-legislative scrutiny on the government's draft Bill on the recall of MPs.
- 3.25 Arrangements for standards management in local government has recently lurched in the opposite direction, but if the draft Bill for recalling MPs eventually becomes enacted, similar arrangements for councillors could follow.
- 3.26 A copy of the paper is attached at:
http://www.public-standards.gov.uk/Library/CSPL_submission_to_PCRC_on_recall_of_MPs.doc

Freedom of Information

- 3.27 For the period 1 October to 31 December the Council received 126 requests for information under the Freedom of Information Act, Environmental Information Regulations and Data Protection Act. Of those requested 102 were responded to within the 20 working day statutory timeframe. A further 23 responses were made at an average timescale of 25 days.
- 3.28 One request for information about any non payment of Council Tax by Members has been received during this period. There have also been 14 requests for detailed information about Broadbridge Heath Leisure Centre made by both local residents and the local press. Any information held has been published and is available to view on the Council's disclosure log at <http://www.horshamfoi.org.uk/disclosureLogYear.asp>
- 3.29 Further information about the Council's obligations under the Freedom of Information Act can be accessed via the council's website at: <http://www.horsham.gov.uk/council/7914.aspx>
- 3.30 In addition information the Council has released under the Freedom of Information Act from 2008 onwards can be accessed at <http://www.horshamfoi.org.uk/disclosureLogYear.asp>. The information posted here shows the nature of the request and the response provided by the Council.
- 3.31 The Information Commissioner issued guidance in December 2011 on when information held in private email accounts falls within the scope of the Freedom of Information Act. The guidance confirmed the position that FOIA applies to official information held in private email accounts (and other media formats e.g. text messages) when held on behalf of the authority. However it should be noted that information may be exempt under one or more of the exemptions specified in the Act and may not necessarily have to be disclosed. Therefore it may be necessary to request relevant individuals to search private email accounts in particular cases. All Members have been advised of this guidance.

Performance Management

- 3.32 The Complaints and Information Officer submitted a report to the Performance Management Working Group meeting on 8 February to report on details of all complaints, compliments and suggestions to the Council from 1 October to 31 December 2011. During that period the Council received 18 complaints, no suggestions and 23 compliments. Figures for Operational Services were reported separately with 82 complaints and 49 compliments being received during the same period. The full report on Compliments, Comments and Complaints can be read on the Council's website <http://www.horsham.gov.uk/council/3144.aspx>.

Data Protection Act 1998

- 3.33 The Information Commissioner has not alerted us to any breaches of the Data Protection Act during this period at Horsham. Five other Councils have been required to sign undertakings for breaching the Data Protection Act during this period. In addition fines totalling £450,000 have been served on 4 Councils for failure to ensure personal data is kept secure. The main reasons for these breaches of the Data Protection Act were sending personal information to the wrong recipients by post or email, and theft of papers containing personal information from an unsecure location (in one case from a briefcase in a pub).
- 3.34 The Information Commissioner has fined local authorities in England, Wales and Scotland over £1 million since his power to serve monetary penalties was introduced in 2010 – mainly on local authorities and NHS organisations. He has not requested parliament to

increase his enforcement powers in respect of data protection to include the power to compulsory audit organisations.

Regulation of Investigatory Powers Act 2000 (RIPA)

- 3.35 On 20 January 2012 a briefing note on RIPA and the changes to be introduced by the Protection of Freedoms Bill was circulated to members of the Scrutiny & Overview Committee, which now has a statutory role in the oversight of the Council's use of RIPA. On 1 February 2012 the new Procedure and Guidance document published by the Office of Surveillance Commissioners was circulated to all members of the RIPA Forum.

Local Government Ombudsman Case Update January to March 2012 (SC449)

- 3.36 *Brighton & Hove City Council*
- 3.37 A tenant of the Council had to live on his friend's sofa for 18 months before he was able to return to his flat, which had been damaged so badly by a flood that he had to move out. Once the tenant returned home there were still outstanding issues. The Ombudsman found that the Council's excessive delay in carrying out the repairs could have been avoided or at least cut short, meaning the tenant could have moved back in almost one year earlier.
- 3.38 The Ombudsman found maladministration causing injustice and recommended that the Council pay the tenant £3,000 compensation and welcomed the Council's agreement to implement procedural changes to prevent similar problems occurring again.
- 3.39 *London Borough of Havering*
- 3.40 The Council failed to allocate a three bedroom property to a family whose housing bid had the highest priority. The family's disabled daughter would need a ground floor bedroom and bathroom and would have to use the ground floor reception room in the property in question as a bedroom; the Council argued this would make the property four-bedroom and the family had only been assessed to need a three-bedroom. Had the daughter not been disabled and requiring a ground-floor bedroom the family would have been allocated the property.
- 3.41 The Ombudsman concluded that the Council had failed to consider the family's circumstances and its duties under the Disability Discrimination Act (now replaced by the Equality Act), failed to follow its own Equalities and Diversity Policy and reached an unfair and illogical decision.
- 3.42 The Ombudsman found maladministration causing injustice and recommended that the Council offer the family suitable accommodation without delay, pay them £4,000 in recognition of their injustice and review the wording of its lettings policy, which it found to be ambiguous.
- 3.43 *London Borough of Camden*
- 3.44 The complainant applied to the Council to request a street trading pitch which had been unused since 2008. He received no response and his subsequent complaints over the next three years were not dealt with properly. The Ombudsman found that the Council had no proper procedure or policy in place for allocating miscellaneous street trading pitches and the Council's complaints procedure had failed, causing unacceptable delay and frustration to the complainant. The Ombudsman's own investigation was hampered by incorrect information being provided by the Council.
- 3.45 The Ombudsman found maladministration causing injustice and recommended that the Council draw up new procedures for the allocation of miscellaneous street trading pitches,

review the way it handles complaints and apologise to the complainant and pay him £300 compensation.

Standards Case Update January to March 2012 (SC450)

- 3.46 *First-tier Tribunal – Councillor Smith v Standards Committee of Knowsley Metropolitan Borough Council*
- 3.47 Councillor Smith was a member of Knowsley Borough Council (the Council) and Prescott Town Council. Three complaints were made to the Monitoring Officer about the Councillor by three senior members of staff, including the Chief Executive. The complaints were about Facebook posts and an email by the Councillor relating to a public consultation on the review of leisure services in the Prescott area, on which the Councillor had strong views.
- 3.48 The Tribunal found that the Council should have followed its own policy of referring the case to Standards for England in exceptional cases here because the Chief Executive was a complainant, the Monitoring Officer was the Deputy Chief Executive and the Deputy Monitoring Officer was the Investigating Officer; the interrelationships and apparent discussions between these parties would reasonably cause an objective observer to fear that there might be unfairness and bias. The Tribunal accepted that the Council may have been disadvantaged by the uncertainty as to the future of Standards for England but failed to approach the body for guidance and in any event could have appointed an independent investigating officer. The Tribunal also considered that the fact the Sub-Committee was not politically balanced could give the impression of unfairness.
- 3.49 *First-tier Tribunal – Councillor Gerada v Standards Committee of Scarborough Borough Council*
- 3.50 Councillor Gerada, a parish councillor, sent an email outlining her concerns about the alleged misappropriation of public funds at the Parish Council by fellow parish councillors. The Tribunal considered that this did not constitute a breach of the Code; she had been pursuing these concerns for some time before becoming a parish councillor and was doing so as a resident. The Tribunal considered that making the allegations did not of itself indicate a lack of respect towards the individuals involved; it considered that the Code should not have the effect of preventing a councillor from raising such concerns. To interpret the Code in a way which precluded her from expressing such views was not necessary for the protection of the fellow councillors, who could seek a remedy through the law of defamation. The decision of the Council's Hearing Sub-Committee was overturned.
- 3.51 *First-tier Tribunal – Councillor Bryson v Standards Committee of Cornwall Council*
- 3.52 Councillor Bryson was a member of Bude Stratton Town Council. She regularly visited the Town Clerk and Deputy Town Clerk throughout the week at times of her choosing without an appointment, despite a memo being circulated to all councillors stating that there was only an open door policy on Wednesday mornings and appointments were to be made at any other time. The Tribunal considered that this conduct showed a lack of respect.
- 3.53 The Councillor was of the opinion that she had not been invited to a meeting with the Chief Executive of Cornwall Council because of a fault of the Town Clerk and thus at a parish council meeting said "it's a disgrace madam clerk" in front of other councillors and officers of Cornwall Council. The Tribunal considered this to be disrespectful; the comments were not an articulation of political comment but personal attacks on the Town Clerk said out of frustration.
- 3.54 The Councillor was also a member of a group set up to raise concerns about a particular planning application. The Councillor attended a planning inquiry related to that application and told the inquiry she spoke on behalf of the Parish Council even though the Council had

not resolved to support or oppose the application or chosen anyone to speak. The Tribunal found that the Councillor had attempted to use her position as a member to improperly confer an advantage on her and others.

- 3.55 Taking into account the number and nature of other breaches the Tribunal also concluded that the Councillor had brought her office, although not her authority, into disrepute. The Tribunal upheld the Standards Committee's original sanction of suspension for three months.

Constitution Update

- 3.56 On 22 February Council approved changes to the secretarial support arrangements for the Chairman, Leader, Chief Executive and Directors, the corporate management structure and the structure of the Development Management department. In addition Councillor Ray Dawe was elected Leader of the Council. He has selected his Cabinet and allocated responsibilities to individual portfolio holders. The Constitution will need to be amended to reflect these changes.

Standards Annual Report 2011-12

- 3.57 The Chairman of the Committee is currently drafting the Standards Committee Annual Report 2011-12, which will be reported to full Council on 25 April 2012. Copies will be distributed to members of the Committee when the report is finalised.

Work Programme update (SC350)

- 3.58 Members will recall at the meeting in January 2011 that the committee commented upon and agreed a programme of forthcoming work to be put before the Committee. The proposed Work Programme incorporates the key responsibilities of the Standards committee. This is a living document and Members are asked to consider any update or amendment required to the Work Programme 2011/12.
- 3.59 A copy can be access by following the link <http://www.horsham.gov.uk/council/10255.aspx>

Members' Bulletin

- 3.60 District Council Members will be aware that a Members' Bulletin, an information document that provides all Councillors with a summary of information and key activities across the various aspects of the business conducted by Horsham District Council, is published weekly on the Council's intranet. All members of the Committee should now be receiving a link to the Bulletin by email to the Horsham.gov.uk address.
- 3.61 An update on the core provisions of the revised standards regime under the Localism Act was included in the Bulletin on 5 December 2011.

4 Next Steps

- 4.1 The Committee is asked to note the matters contained in this report

5 Outcome of Consultations

- 5.1 Corporate Management Team were consulted on this report.

6 Other Courses of Action Considered but Rejected

- 6.1 Not applicable.

7 Staffing Consequences

- 7.1 There are no specific staffing consequences flowing from this report.

8 Financial Consequences

- 8.1 There are no specific financial consequences flowing from this report.

9 Other Consequences of the Proposed Action

- 9.1 Other consequences of the proposed action are set out in Appendix 1.

Appendix 1

Consequences of the Proposed Action

What are the risks associated with the proposal?	Failure to keep Members up to date with developments in the ethical framework would lead to a diminution of ethical standards amongst Members.
Risk Assessment attached Yes/No	No.
How will the proposal help to reduce Crime and Disorder?	Creating the right climate for decision-making and ensuring adequate probity measures are in place will ensure that the Council's duty to seek to reduce crime and disorder is properly taken into account.
How will the proposal help to promote Human Rights?	There is a positive obligation on the Council under the Human Rights Act 1998 to have regard for human rights. The Convention rights are scheduled in the Act. The creation of the right climate for decision-making and adequate probity measures will ensure that human rights are regarded and in some cases enhanced.
What is the impact of the proposal on Equality and Diversity?	<p>The current code of conduct includes the expectation of respect for others defined in the General Principles as:</p> <p>“Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability”.</p> <p>In addition there is a general obligation in the code in which members undertake “Not to do anything which may cause your authority to breach any of the equality enactments.</p>
Equalities Impact Assessment attached Yes/No/Not relevant	No.
How will the proposal help to promote Sustainability?	Where possible electronic means of communication are used.

Local Assessment of Complaints from 8th May 2008

SC343

File ref	Name of Councillor	Council	Decision Date	Complainant	Date rcd	Working days	Decision	Review Requested
CES45	Roger Purcell	Warnham	26.06.08	Public: S Pavey	12.06.08	10	No further action pending release of confidential report. Close case.	
CES45(2)	Roger Purcell	Warnham	30.07.08 pm	Public: S Pavey	21.07.08	7	Other action – training, add to register of interests, clarity of body representing, Positive engagement – a guide for planning issued to councillors. Training undertaken 5/9/08.	
CES46 (CESR1)	Jan Botting	Pulborough	30.07.08 am	Public: N Page	09.07.08	15	Outside jurisdiction – letter sent to Parish re local complaint resolution.	Y 27.8.08
CES47	Ivor Kiverstein	Pulborough	24.09.08	Public: N Page	22.8.08	22	No further action – general note re use of language and issue of member being RFO.	

File ref	Name of Councillor	Council	Decision Date	Complainant	Date rcd	Working days	Decision	Review Requested
CES48	Doug Rands	Billingshurst	12.11.08	Parish Council	28.10.08	11	Investigation into allegation of bullying, bringing office into disrepute.	
CES49	Ray Dawe	Horsham	31.12.08	Public: P Orpwood	26.11.08	22	No further action – insufficient evidence provided.	Y
CES50	Jim Sanson	Horsham	31.12.08	Public: P Orpwood	26.11.08	22	No further action – insufficient evidence provided.	Y
CES51	Ray Dawe	Storrington & Sullington	31.12.08	Public: P Orpwood	26.11.08	22	No further action – insufficient evidence provided.	
CES52	Jim Sanson	Storrington & Sullington	31.12.08	Public: P Orpwood	26.11.08	22	No further action – insufficient evidence provided.	
CES53	Leonard Warner	Horsham	11.03.09	Public: Mr Mrs P Hammond	13.02.09	18	Refer for investigation.	
CES54	Alan Grant	Billingshurst	11.03.09	Parish Councillor: C Milne	18.02.09	15	No further action.	

Local Assessment of Complaints from 8th May 2008 continued

File ref	Name of Councillor	Council	Decision Date	Complainant	Date rcd	Working days	Decision	Review Requested
CES58	Gavin Collins	Billingshurst	23.09.09	Public: A Rodwell	12.08.09	29	No further action.	
CES59	Ted Brown	Rudgwick	05.05.10	Public: Andrew Leahy	20.04.10	11	Refer for investigation.	
CES60	Duncan England	Horsham	17.11.10	Public: Judith Norris	01.11.10	12	No further action.	Y
CES61	Elizabeth Kitchen	Horsham	17.11.10	Public: Judith Norris	01.11.10	12	No further action.	Y
CES62	Peter Rowlinson	Horsham	17.11.10	Public: Judith Norris	01.11.10	12	No further action.	Y
CES63	David Holmes	Horsham	17.11.10	Public: Judith Norris	01.11.10	12	No further action.	Y
CES64	David Sheldon	Horsham	17.11.10	Public: Judith Norris	01.11.10	12	No further action.	Y

File ref	Name of Councillor	Council	Decision Date	Complainant	Date rcd	Working days	Decision	Review Requested
CES65	Philip Circus	Horsham	22.12.10	Public: Lindsay Dobson	22.11.10	22	No further action.	
CES69	Brian O'Connell	Horsham	11.01.11	Council employee: Details confidential	25.11.11	33	No further action.	
CES70	Philip Circus	Horsham	08.02.12	Public: Anna Berry	15.12.11	39	No further action.	

Review of Local Assessment Decisions from 8th May 2008

File ref	Name of Councillor	Council	Decision Date	Complainant	Date rcd	Working days	Decision
CESR1	Jan Botting	Pulborough	24.9.08	Public:	27.8.08	20	Original decision upheld
CESR2	Ray Dawe	Horsham	11.03.09	Public:	29.1.09	29	Original decision upheld
CESR3	Jim Sanson	Horsham	11.03.09	Public:	29.1.09	29	Original decision upheld
CESR4	Duncan England	Horsham	12.01.11	Public: Judith Norris	23.11.10	36	Original decision upheld

Decision	Working days	Date rcd	Complainant	Decision Date	Council	Name of Councillor	File ref
Original decision upheld	36	23.11.10	Public: Judith Norris	12.01.11	Horsham	Elizabeth Kitchen	CESR5
Original decision upheld	36	23.11.10	Public: Judith Norris	12.01.11	Horsham	Peter Rowlinson	CESR6
Original decision upheld	36	23.11.10	Public: Judith Norris	12.01.11	Horsham	David Holmes	CESR7
Original decision upheld	36	23.11.10	Public: Judith Norris	12.01.11	Horsham	David Sheldon	CESR8

Local Determinations

Sanction	Finding	Hearing Date	Council	Name of Councillor	File ref
<p>a) Suspended from all duties as parish councillor for one month with immediate effect.</p> <p>b) Undertake training in the Code of Members' Conduct especially those provisions relating to interests and that the training be undertaken on 27 April 2009 with the Monitoring Officer and the Chairman of the Local Determinations Sub-Committee.</p>	Did not fail to comply with paragraphs 3(1), 3(2)(b), 3(2)(d), 4(a) and 5 Billingshurst Parish Council's Code of Members' Conduct but failed to comply with Paragraphs 8, 9(1), 12(1)(a)(ii) and 12(1)(b).	8.04.09	Billingshurst	Doug Rands	CESL10

					Recommendation to Parish - Councillor Rands receives written clarification concerning how and when he should contact the Parish Office if he has an issue that he wants to discuss That Councillor Rands receives training in the Councillor/Officer protocol with particular emphasis on how to maintain good relationships with office staff.
CESL11	Leonard Warner	HDC	10.06.09	Did not fail to comply with paragraphs 10(1) 10(2) and 12 (1) of Horsham District Council's Code of Members' Conduct.	No sanction.
CESL12	Ted Brown	Rudgwick	25.10.10	Did not fail to comply with paragraphs 5, 6(a) and 12(1) of Horsham District Council's Code of Members' Conduct but did fail to comply with paragraph 9(1).	No sanction.

Schedule of Standards Committee Members availability 2011/12 (to June 2012)

SC452

	PANEL				RESERVES		
	IND (chair)	HDC	PC		IND	HDC	PC
Dates							
2012							
14 March	PB	DC	VC		MJ	CV	IG
4 April	EB	BD	IG		PB	AB	VC
2 May	MJ	SM	VC		DT	DC	IG
30 May	DT	GN	IG		EB	BD	VC
27 June	PB	CV	VC		MJ	SM	IG

Report to Standards Committee

14 March 2012

By the Monitoring Officer

INFORMATION REPORT

Not exempt



The Ombudsman Update – March 2012

Executive Summary

This report updates Members on the developments in the volume and nature of complaints about the Council to the Local Government Ombudsman. It provides figures for the 2011/12 reporting year.

Recommendations

The Committee is recommended:

- i) to note the contents of the report.

Reasons for Recommendations

- i) to ensure that the Committee has the necessary information to ensure that complaints can be easily made to the Council and properly responded to.
- ii) to assist with learning lessons and improving performance following complaints made to the Local Government Ombudsman about the Council.

Background Papers SC451 - Information on case files is confidential.

Consultation CMT

Wards affected All

Contact Christie Redley, extn 5478

File reference CEA/284

Background Information

1 Introduction

The purpose of this report

- 1.1 This report updates Members on the volume and nature and the present position of complaints about the Council to the Ombudsman.

Background/Actions taken to date

- 1.2 The Local Government Ombudsman (LGO) uses a “council first” procedure which requires complainants to go through all stages of a council’s own complaints procedure before the LGO will consider the complaint. Those complaints that have not been through all stages of the complaints procedure are returned to the Council and the LGO logs them as premature complaints.
- 1.3 Details of all complaints, compliments and suggestions to the Council are considered by the Performance Management Working Group on a quarterly basis.

2 Statutory and Policy Background

Statutory background

- 2.1 The statutory background is found in the Local Government Act 1974 (as amended) and the Local Government and Public Involvement in Health Act 2007.

Relevant Government policy

- 2.2 Relevant Government policy is contained in the 1974 and 2007 Acts.

Relevant Council policy

- 2.3 The Council’s Complaints Procedure (Part 5D of the Council’s Constitution).

3 Details

Ombudsman Determinations

- 3.1 The Local Government Ombudsman prepares annual statistics for the period to 31 March each year. The figures for 2011/12 have yet to be received but the final figures for 2011/12 will be published, made available on the Council’s website and reported next time.
- 3.2 Since 1 March 2011, 13 cases have been referred for investigation, of which three are ongoing; two were determined as having no or insufficient evidence of maladministration; and one was withdrawn by the complainant following a provisional view from the Ombudsman indicating an intention not to continue the investigation. Seven of these cases were deemed to have been premature as they had not been through the Council’s complaints procedure. In the previous reporting

period 2010/11, which covered 11 months instead of 12 due to a change to meeting dates, 14 cases were referred.

- 3.3 Since the last Ombudsman Update in September 2011 four new case files have been opened relating to Ombudsman cases referred for investigation and one previously ongoing investigation has been resolved.
- 3.4 The identity of individuals is confidential within the meaning of section 110A(3)(b) of the Local Government Act 1972 and therefore cannot be disclosed.
- 3.5 CEO155 was reported to the Committee in the last Ombudsman Update, at which point a provisional view had been received. A final decision, finding insufficient evidence of maladministration and indicating an intention to discontinue the investigation, has now been received.
- 3.4 CEO159, a Strategic Land and Property matter, was determined on 7 November 2011. The Ombudsman found no or insufficient evidence of maladministration. The complainant alleged that the Council had publicly accused the complainant of being vexatious and causing the demise of a deal relating to a Council building and had failed to respond to a request for details of a public marketing exercise. The Ombudsman found no evidence to substantiate the former point and in relation to the latter point found that the Council had had a good reason for failing to respond.
- 3.5 CEO160 was a Planning and Development case. The complainant alleged that the Council had failed to identify suitable gypsy and traveller sites. Failures in relation to the consultation procedure and defence of a planning appeal relating to a particular planning application were also alleged. Following a provisional view from the Ombudsman indicating an intention to discontinue the investigation, the complainant withdrew the complaint.
- 3.6 CEO161 was also a Planning and Development case. The complainant alleged that the Council had failed to comply with legislation relating to Environmental Impact Assessments in relation to a planning application and had failed to draft a correct and effective planning condition. The Ombudsman's final decision was not to initiate an investigation and close the case.
- 3.7 CEO162 again concerns Planning and Development. The complainant alleged that the Council was at fault in the way that it considered and determined a planning application in that the incorrect address was cited, the incorrect planning history included in the case officer's report and that the original plans, rather than amended ones which would have protected the complainant's privacy, were approved. A provisional view has been received from the Ombudsman indicating an intention to discontinue the investigation subject to clarification that the amended plans were those approved.
- 3.8 An updated schedule of cases recorded for the 2011/12 reporting year (1 March 2011 to 29 February 2012) is attached (SC452).

4 Next Steps

- 4.1 The report is to assist with learning lessons and improving performance following complaints made to the Local Government Ombudsman about the Council.

- 4.2 A further Ombudsman update will be made when the Annual Review Letter is received from the Local Government Ombudsman.

5 Outcome of Consultations

- 5.1 Corporate Management Team have been consulted on this report.

6 Other Courses of Action Considered but Rejected

- 6.1 Not applicable.

7 Staffing Consequences

- 7.1 There are no staffing consequences flowing from this report.

8 Financial Consequences

- 8.1 There are no specific financial consequences flowing from this report.

9 Other Consequences of the Proposed Action

- 9.1 Other consequences of the proposed action are set out in Appendix 1.

Appendix 1

Consequences of the Proposed Action

<p>What are the risks associated with the proposal?</p> <p>Risk Assessment attached Yes/No</p>	<p>The report will assist the Council with learning lessons and improving performance.</p> <p>No.</p>
<p>How will the proposal help to reduce Crime and Disorder?</p>	<p>This report does not directly affect the Council's duty to reduce crime and disorder.</p>
<p>How will the proposal help to promote Human Rights?</p>	<p>Responding to complaints effectively and learning from the process together with the adoption of the ethical framework will enhance citizens' human rights in all their aspects.</p>
<p>What is the impact of the proposal on Equality and Diversity?</p> <p>Equalities Impact Assessment attached Yes/No/Not relevant</p>	<p>The Council is committed to the values of Equality and Diversity in relation to the provision of services and when serving residents.</p> <p>It has adopted a Single Equality Scheme as a public commitment of how the Council will meet the duties placed upon it by equality legislation.</p> <p>Having the right climate to accept and respond effectively to complaints against the Council will ensure the duties placed upon the Council by equality legislation are considered.</p> <p>No.</p>
<p>How will the proposal help to promote Sustainability?</p>	<p>This report does not directly help to promote sustainability.</p>

Ombudsman Complaints 2011/12 reporting year case schedule to 29 February 2012

SC452

Ref	Nature of Complaint	Date Complaint Received	Current Position	Date Determined	Further Action	Lesson Learnt
CEO155	Planning and development – unhappy with neighbour's planning permissions and Council procedure.	02.03.11	Determined: No or insufficient evidence of maladministration.	24.02.12		
CEO156	Other services – Council's alleged failure to take action regarding recycling facility and anti-social behaviour.	11.03.11	Determined: No or insufficient evidence of maladministration.	05.07.11		Council departments must communicate more effectively.
CEO158	Planning and development – unhappy with planning permissions granted on neighbouring land.	04.08.11			See CEOP13	
CEO159	Corporate and other services – publicly accusing complainant of certain matters and failing to respond to a request for details of a public marketing exercise.	07.09.11	Determined. No or insufficient evidence of maladministration.	07.11.11		

Ref	Nature of Complaint	Date Complaint Received	Current Position	Date Determined	Further Action	Lesson Learnt
CEO160	Planning and development – alleged failure to identify suitable gypsy and traveller sites and did not handle consultation and appeal hearing on planning application adequately.	23.12.11	File closed: Complainant withdrew complaint. LGO indicated intention not to pursue complaint further in any event.	07.02.12		
CEO161	Planning and development – alleged failure to comply with legislation relating to EIAs and failure to draft a correct and effective planning condition.	24.01.12	Determined: Ombudsman decided not to initiate an investigation.	28.02.12		
CEO162	Planning and development – alleged failures by the Council relating to errors on a planning report and consultation documentation and the approval of incorrect plans.	27.02.12	Ongoing: Provisional view received from LGO indicating intention not to pursue complaint further. LGO has asked for clarification on one point by 19.03.12.			

Ref	Nature of Complaint	Date Complaint Received	Current Position	Date Determined	Further Action	Lesson Learnt
CEOP12	Benefits and tax – incorrect advice given in relation to amount of benefits received.	17.03.11	File closed: Investigation discontinued by Ombudsman.	06.04.11		
CEOP13	Planning and development – unhappy with planning permissions granted on neighbouring land.	04.08.11	File closed: Problem resolved through complaints procedure.			
CEOP14	Planning and development – unhappy with planning permissions granted on neighbouring land and perceived discrimination.	05.08.11	File closed: Problem resolved through complaints procedure.			
CEOP15	Planning and development – planning permission granted without adding agreed conditions and lack of response to correspondence from complainant.	25.08.11	File closed: Problem resolved through complaints procedure.			
CEOP16	Planning and development – complaint about height of neighbour's hedge and alleged administrative fault in dealing with this.	12.10.11	File Closed: Investigation discontinued by Ombudsman.	12.10.11		

Ref	Nature of Complaint	Date Complaint Received	Current Position	Date Determined	Further Action	Lesson Learnt
CEOP17	Housing – complainants were to be put in bed and breakfast accommodation and were concerned this would be too far from their jobs to enable them to commute.	09.01.12	Ongoing: Being dealt with under complaints procedure. Stage 1 response sent.			
CEOP18	Planning and Development - No enforcement action taken on works which allegedly did not comply with approved plans and lack of response to letters.	25.01.12	Ongoing: Being dealt with under complaints procedure.			