

AGENDA

STANDARDS COMMITTEE MEETING



Date: Wednesday 25 November 2009

Time: 9.30 a.m.

Venue: Town Hall, High Street,
Maidstone

Membership:

Councillors Batt, Mrs Hinder, Marchant,
Mrs Stockell, Verrall and Vizzard

Independent Members: Mr Wright (Chairman),
Mrs Phillips and Mr Powis

Parish Representatives: Councillors Mrs Rollinson,
Stead and Younger

Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members

Continued Over/:

Issued on 17 November 2009

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**David Petford, Chief Executive, Maidstone Borough Council,
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

4.	Disclosures by Members and Officers	
5.	Disclosures of Lobbying	
6.	To consider whether any items should be taken in private because of the possible disclosure of exempt information.	
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Agenda Item 7

MAIDSTONE BOROUGH COUNCIL

STANDARDS COMMITTEE

MINUTES OF THE MEETING HELD ON 2 SEPTEMBER 2009

Present: Councillors Batt, Mrs Hinder, Marchant, Verrall and Vizzard

Independent Persons: Mr Wright (Chairman), Mrs Phillips and Mr Powis

Parish Council Representatives: Councillor Stead

Also Present: Councillor Garland

24. APOLOGIES FOR ABSENCE

It was noted that apologies for absence had been received from Councillors Mrs Rollinson and Younger.

25. NOTIFICATION OF SUBSTITUTE MEMBERS

There were no Substitute Members.

26. NOTIFICATION OF VISITING MEMBERS

The Chairman welcomed Councillor Garland, the Leader of the Council, to the meeting. Councillor Garland explained that he was attending the meeting as an observer.

27. DISCLOSURES BY MEMBERS AND OFFICERS

Councillor Mrs Hinder disclosed a prejudicial interest in the report of the Head of Legal Services concerning applications received from Members of Bredhurst Parish Council for dispensations to enable them to speak and vote at meetings of the Parish Council when matters relating to the Bredhurst Woodland Action Group were being considered notwithstanding the fact that they had prejudicial interests in the matter by virtue of being members of the Action Group. She explained that as well as being a member of the Action Group herself, she was married to one of the Parish Councillors who had applied for a dispensation and was friends with another.

Councillor Stead disclosed a personal interest in the same report. He stated that he knew the Bredhurst Parish Councillors.

28. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

29. EXEMPT ITEMS

RESOLVED: That the items on the Agenda be taken in public as proposed.

30. MINUTES OF THE MEETING HELD ON 22 MAY 2009

RESOLVED: That the Minutes of the meeting held on 22 May 2009 be approved as a correct record and signed.

31. MATTERS ARISING FROM THE MINUTES OF THE MEETING HELD ON 22 MAY 2009

Minutes 3 and 16 - Indemnities for Members and Officers

In response to a question, the Head of Legal Services confirmed that a letter would be sent to the Independent Members and Parish Council representatives by the Chief Finance Officer explaining the position with regard to indemnities.

Minute 13 - New Framework for Contract Standing Orders/Purchasing Rules and Ancillary Purchasing Guide

The Head of Legal Services advised the Committee that a report would be submitted to the next meeting by the Property and Procurement Manager on the outcome of the further consideration being given to amending the guidance to strengthen the advice on the financial health vetting of prospective contractors and to tightening the rules relating to inducements and rewards to cover the period before the award of contract as well as after.

Minute 15 - Review of Complaints - January - March 2009

The Head of Legal Services advised the Committee that he had spoken to colleagues in the Planning Department and been assured that all Parish Councils were receiving enforcement updates. A Member stated that one of the Parish Councils in his Ward had not received an update since December 2008 notwithstanding the fact that there were unresolved enforcement issues. The Head of Legal Services undertook to follow up the matter with the Development Control Manager.

Minute 17 (ii) - Criteria for the Appointment of Independent Members to the Standards Committee

The Committee reviewed the arrangements for the recruitment of a fourth Independent Member of the Standards Committee. It was noted that a job description would be developed for future use.

Minute 19 - Promoting High Ethical Standards

In response to a question, the Head of Legal Services updated the Committee on the training which had been arranged for Parish Councils on the Code of Conduct. It was noted that three sessions had been arranged, but the August session had been cancelled due to low numbers.

The next sessions would be held on 16 September and 7 October 2009 at the Town Hall, but again only limited numbers were currently expected. It was suggested that the poor response could be due to attendance being restricted to two delegates per Parish. The Head of Legal Services said that he would ask the Learning and Development Manager immediately to send an email to Parish Councils removing this restriction.

32. REFERENCE FROM THE EMPLOYMENT AND DEVELOPMENT PANEL - HUMAN RESOURCES POLICY - DISCIPLINE, CAPABILITY AND GRIEVANCE PROCEDURES

The Committee was asked to evaluate a proposal by the Employment and Development Panel that the Constitution be amended to reflect changes in the role of the Appeals Committee/Employment and Development Panel and the Chief Executive following the revision of the Council's Grievance, Capability and Disciplinary Procedures.

It was noted that there had been a change in employment law with the implementation of the Employment Act 2008 in April 2009. Prior to the implementation of the Act, although employees needed to raise a claim with an Employment Tribunal within three months of dismissal, the time period was almost automatically extended. However, the Act would restrict the ability of employees to have the time extended for appeal to an Employment Tribunal. Councils were, therefore, reviewing their existing processes to ensure that their policies and procedures did not impact on the employment rights of staff. The Council's dismissal appeal process had been established several years ago and required an Appeals Committee to be set up to hear the appeal. From past experience, the time taken between the decision to dismiss and the date of the appeal ranged from eight weeks to fourteen weeks. In order to achieve much shorter timeframes and to be consistent with best practice, it was proposed that the Chief Executive as the Head of the Paid Service should hear appeals in consultation with the Leader of the Council and the Leader of the Opposition (or their nominated representatives) who would attend the appeal hearing. This necessitated the deletion of paragraph (a) of the functions of the Appeals Committee as set out in Part 3 of the Constitution and the amendment of the terms of reference of the Chief Executive.

The Officers suggested that, in addition to evaluating these proposed amendments, the Committee should consider making a comment in relation to appeals against decisions taken by or about the Chief Executive under the Disciplinary, Grievance or Capability Procedures whereby the appeals would be heard and determined by a Member Panel which would be a three person Sub-Committee of the Employment and Development Panel. This would necessitate the addition of a further paragraph (f) to the functions of the Employment and Development Panel as set out in Part 3 of the Constitution.

In principle, the Committee supported the proposed amendments to the Constitution believing that their implementation would help to ensure that the aims and principles of the Constitution were given full effect by facilitating more efficient and effective decision making. However, the Committee felt that the wording of the paragraph which it was proposed

to add to the terms of reference of the Chief Executive should be amended as follows:-

“To hear and determine appeals, in consultation with the Leader of the Council and the Leader of the Opposition (or their nominated representatives) who will attend the appeal hearing, under the Grievance, Capability or Disciplinary (Level 4) Procedures for all categories of employees except those staff on JNC Conditions of Service for Chief Officers of Local Authorities.”

RESOLVED to RECOMMEND to the COUNCIL:

That the Constitution be amended as follows to reflect changes in the role of the Appeals Committee/Employment and Development Panel and the Chief Executive following the revision of the Council’s Grievance, Capability and Disciplinary Procedures:-

- (a) The deletion of paragraph (a) of the functions of the Appeals Committee as set out in Part 3 of the Constitution.
- (b) The addition of the following paragraph to the terms of reference of the Chief Executive:-

“To hear and determine appeals, in consultation with the Leader of the Council and the Leader of the Opposition (or their nominated representatives) who will attend the appeal hearing, under the Grievance, Capability or Disciplinary (Level 4) Procedures for all categories of employees except those staff on JNC Conditions of Service for Chief Officers of Local Authorities.”

- (c) The addition of the following to the functions of the Employment and Development Panel as set out in Part 3 of the Constitution:-

COMMITTEE AND MEMBERSHIP	FUNCTIONS	DELEGATION OF FUNCTIONS
Employment and Development Panel	f) To hear and determine appeals against decisions taken by or about the Chief Executive under the disciplinary, grievance or capability procedures.	Sub-Committee comprising 3 Members.

33. REVIEW OF COMPLAINTS - APRIL TO JUNE 2009

The Committee considered the joint report of the Assistant Director of Customer Services and Partnerships and the Head of Legal Services reviewing the Council’s performance in dealing with complaints during the period April - June 2009. A Member referred to the three payments made by the Council during the period by way of local settlement upon the

recommendation of the Local Government Ombudsman and other settlements relating to planning mentioned in the annual report. She expressed concern that all of these payments arose from complaints about development control and planning enforcement and asked whether this was indicative of a lack of learning year on year. The Head of Legal Services advised the Committee that, in the context of the number of planning applications and enforcement cases, this was not a poor result and no underlying trend had been identified. However, he would meet the Member and the Development Control Manager about her concerns and report back to the Committee if necessary.

RESOLVED: That the Council's performance in responding to complaints during the period April - June 2009 be noted and that the recommended actions to improve complaints handling and the opportunities for learning from complaints be implemented by Heads of Service.

34. OMBUDSMAN'S ANNUAL REVIEW 2008/09

The Committee considered the Local Government Ombudsman's annual review of the complaints that his office had dealt with about the Council during the year ended 31 March 2009.

RESOLVED:

1. That the Local Government Ombudsman's annual review of the complaints that his office had dealt with about the Council during the year ended 31 March 2009 be noted and published on the Council's website.
2. That, in future, the Local Government Ombudsman's annual review should be circulated to all Members of the Committee upon receipt and published on the website.

35. CODE OF CONDUCT COMPLAINTS

The Committee considered the report of the Monitoring Officer setting out details of the Code of Conduct complaints received by the Council during the period May 2008 to date. It was noted that six complaints had been made by four complainants, all of whom were members of the public. In four cases the Sub-Committee had decided to take no further action and in three of these the complainant had requested a review by the Referrals Panel. The Panel had upheld the decisions to take no further action in all three cases. One complaint had been referred to the Monitoring Officer to arrange Code of Conduct training for the Clerk and the Parish Councillors concerned and this would now be incorporated into the Code of Conduct training sessions which were being arranged for Parish Councillors. The sixth complaint had been referred to the Monitoring Officer for investigation and a hearing into the complaint would take place in due course; the Parish Councillor who was the subject of the complaint having asked for more time to prepare.

The Monitoring Officer advised the Committee that there had not been any discernable trend in the complaints that would lead him to believe that

any specific training needed to be arranged, but one incident had suggested that Members should consider acknowledging all communications received unless the writer had previously been advised that the correspondence was closed.

The Committee felt that Parish Clerks should be encouraged to attend the training on the Code of Conduct.

RESOLVED:

1. That the report be noted.
2. That in the case of the complaint referred to the Monitoring Officer to arrange Code of Conduct training for the Clerk and the Parish Councillors, the Monitoring Officer be requested to check whether the individuals concerned have indicated that they will be attending one of the forthcoming training sessions and, if not, to send a reminder.

36. STANDARDS FOR ENGLAND BULLETIN 44

The Committee considered Standards for England Bulletin 44 which covered issues such as the establishment of joint Standards Committees; changes to the criteria for granting dispensations; Standards for England's response to the inquiry into MP's expenses held by the Committee on Standards in Public Life; the key findings of the survey undertaken by BMG Research on behalf of Standards for England regarding the level of satisfaction in local government with its performance and attitudes to the ethical environment; the findings of the first year of the five year study being carried out by Cardiff University to identify the impact of the standards framework within nine local authorities; the data collated from the quarterly returns and the response to the request to complete annual returns; and the revised guidance note on good planning practice for Councillors and Officers dealing with planning matters published recently by the Local Government Association.

The Chairman drew the Committee's attention to the information collected by Standards for England from the quarterly returns and, in particular, the data relating to the size and composition of a typical Standards Committee. He suggested that it might be appropriate to review the size and composition of the Standards Committee and the Sub-Committee with a view to (a) reducing the number of Borough Councillors on the Standards Committee to three, one from each Political Group, and (b) reducing the membership of the Sub-Committee to three (one Borough Councillor, one Parish representative and one Independent Member).

RESOLVED:

1. That the contents of Standards for England Bulletin 44 be noted.
2. That the Chairman be requested to submit a report to the next meeting of the Committee reviewing the size and composition of the Standards Committee and the Standards Sub-Committee and the options for change.

3. That the Committee's previous decision not to pursue joint committees be endorsed.

37. GUIDANCE ON DISPENSATIONS

The Head of Legal Services advised the Committee that the Standards Committee (Further Provisions) Regulations 2009, which came into force on 15 June 2009, amended the powers of Standards Committees to grant dispensations to Members to allow them to speak and vote at meetings when they had a prejudicial interest. He then drew the Committee's attention to guidance which had been issued by Standards for England to assist Standards Committees in their consideration of requests for dispensations following the change in the Regulations.

RESOLVED:

1. That the issues to consider and the criteria to be applied when dealing with requests for dispensations under the new Regulations, as set out in the guidance issued by Standards for England, be adopted.
2. That the Standards Sub-Committee be given delegated powers to deal with urgent requests for dispensations.

38. BOUGHTON MONCHELSEA PARISH COUNCIL - APPLICATION FOR DISPENSATION

The Head of Legal Services reported that an application had been received from Councillor Gillian Powell, a new Member of Boughton Monchelsea Parish Council, for a dispensation to enable her to speak and vote at meetings of the Parish Council when matters relating to the Boughton Monchelsea Amenity Trust were being considered notwithstanding the fact that she had a prejudicial interest in the matter by virtue of being a Trustee.

RESOLVED: That a dispensation be granted to Councillor Gillian Powell to enable her to speak and vote at meetings of the Boughton Monchelsea Parish Council when matters relating to the Boughton Monchelsea Amenity Trust are being discussed notwithstanding the fact that she has a prejudicial interest by virtue of being a Trustee of the Trust; such dispensation to expire on 30 June 2012.

39. HARRIETSHAM PARISH COUNCIL - APPLICATIONS FOR DISPENSATIONS

The Head of Legal Services advised the Committee that applications had been received from five Members of Harrietsham Parish Council for dispensations to enable them to speak and vote at meetings of the Parish Council when matters relating to the Harrietsham Playscheme were being considered notwithstanding the fact that they had prejudicial interests in the matter by virtue of being employed to work at the Playscheme and/or having children who attended the Playscheme.

RESOLVED:

1. That dispensations be granted to Councillors Laffan and Morris to enable them to speak and vote at meetings of the Harrietsham Parish Council when matters relating to the Harrietsham Playscheme are being discussed notwithstanding the fact that they have prejudicial interests in the matter by virtue of having children who attend the Scheme; such dispensations to expire on 30 June 2011.
2. That dispensations not be granted to Councillors Finch, J Sams and T Sams because it would not be appropriate to do so as they/their partner are employed by the Scheme.

40. BREDHURST PARISH COUNCIL - APPLICATIONS FOR DISPENSATIONS

Having disclosed a prejudicial interest, Councillor Mrs Hinder left the meeting whilst this item was discussed.

The Head of Legal Services advised the Committee that applications had been received from six Members of Bredhurst Parish Council for dispensations to enable them to speak and vote at meetings of the Parish Council when matters relating to the Bredhurst Woodland Action Group were being considered notwithstanding the fact that they had prejudicial interests in the matter by virtue of being members (or in the case of Councillor Jones, the Chairman) of the Action Group.

RESOLVED: That consideration of this matter be deferred for further information, including details of the Scheme for the Regulation of the Charity, the precise nature of each Parish Councillor's interest (member by subscription or Trustee by virtue of being a Member of the Parish Council etc.) and a plan showing the location of each Parish Councillor's property in relation to the woodland.

41. ANY OTHER APPLICATIONS FOR DISPENSATIONS

There were no other applications for dispensations.

42. ARRANGEMENTS FOR FUTURE MEETINGS

The Committee considered the arrangements for future meetings; specifically, whether they should be held during the day or in the evening.

RESOLVED: That in future meetings should be held alternately in the morning commencing at 9.30 a.m. and in the evening commencing at 6.30 p.m.

43. CHAIRMAN'S ANNOUNCEMENTS

The Chairman announced that an advertisement would appear in the September editions of the Downs Mail seeking applications from members of the public interested in becoming an Independent Member of the Standards Committee.

44. DURATION OF MEETING

6.30 p.m. to 9.05 p.m.

Agenda Item 8

MAIDSTONE BOROUGH COUNCIL

STANDARDS COMMITTEE

25TH NOVEMBER 2009

REPORT OF THE HEAD OF CORPORATE LAW & LEGAL SERVICES & THE ASSISTANT DIRECTOR OF CUSTOMER SERVICES AND PARTNERSHIPS

Report prepared by IT Manager

1. REVIEW OF COMPLAINTS JULY TO SEPTEMBER 2009

1.1 Issue for Decision

1.1.1 To consider the council's performance in dealing with complaints during July to September 2009 and to note the areas identified for improvement.

1.2 Recommendation of the Assistant Director of Customer Services and Partnerships (ADCSP) and the Head of Corporate Law and Legal Services (HCLLS)

1.2.1 That the performance in responding to complaints for the period be noted and that the recommendations set out to improve complaints handling be actioned by Heads of Service.

1.3 Reasons for Recommendation

1.3.1 On June 1 2005, the Council introduced a new corporate complaints system and Standards Committee have since received regular quarterly reports and annual reports detailing the council's performance in relation to the agreed Complaints' Policy.

1.3.2 Since the initial launch of the Complaints' system, significant improvements have been made to the reporting facilities to ensure better management information can be retrieved.

1.3.3 It should be noted that whilst this report deals with complaints, the council also receives a number of compliments. Details of the complaints received broken down by Service area, and performance against the council's published service agreement is shown in **Appendix 1**.

1.3.4 Improvements to the system continue to be made, and the amendments detailed below will be implemented by the end of this calendar year:

- The addition of a flag to indicate instances where a complaint has highlighted an issue relating to council policy or working practices; and

- a field to indicate the estimated officer time spent dealing with each complaint.

1.3.5 A summary of the analysis of the complaints' data for the period July to September 2009 is set out below:

- During the period under review a total of 60 stage 1 complaints were processed;
- The most complaints received during this period related to Housing Benefits (9), Development Control (8), Housing (7) and Revenues (7);
- The percentage of stage 1 complaints processed within 10 days for this period was 92% (55);
- During the period nine Stage 2 complaints were made, of which 100% were processed within the target time.

1.3.6 The ADCSP and HCLLS are currently reviewing the Complaints' procedure to ensure that quality assurance is maintained and that the council uses the complaints made to inform service planning, council policy and working practices. This will include addressing issues that may impact on the council's reputation.

1.4 Trend analysis

1.4.1 A trend analysis has been undertaken using the WOCAS report ('what our customers are saying') to provide additional data concerning the type of complaints being received, and any policy implications or learning experiences.

1.4.2 In conducting this analysis it was noted that the quality of responses to customer complaints was generally very good. Two trends were identified and are set out below with recommended actions to improve the customer experience. The nature of this analysis is inevitably subjective, without detailed investigation into the background of each incident, and any related case files.

- Waiting Times

Several complaints relate to long wait times in the Council's Gateway. Actions have already been taken to address this issue including more information about "peak times on the internet", a review of the opening hours, the introduction of floor walkers and the introduction of alternative arrangements for managing visitors. It should be noted that there have been extremely high customer numbers in the gateway at certain times. Comparisons of visitor numbers during the period April to September 2008, to the same period during 2009 show an increase of 96%. Housing Benefits enquiries currently make up 42% of visitors and during the same period show an increase of over 110%. The average wait time for a Customer Service Advisor (NB this is Service representatives, not Meet and Greet) was 14 minutes during April to May 2009. The waiting times continue to be monitored closely and adjustments to the working arrangements in the Gateway continue to be made to minimize the wait times.

- Customer Care

A number of complaints relate to a perceived lack of civility by council staff dealing with customer issues and a failure by staff to conduct themselves in a professional and courteous manner. It is recommended that Heads of Service review the information in the WOCAS report and identify those staff that require further customer care training.

1.6 Alternative Action and why not Recommended

1.6.1 The council’s complaints’ management follows the Local Government Ombudsman best practice. Managing complaints is a key means of ensuring the council’s services are delivered to a consistently high standard.

1.7 Impact on Corporate Objectives

1.7.1 Customer Services is a core value and improving complaints’ management is critical to the success of this objective.

1.8 Risk Management

1.8.1 Failure to manage complaints represents both a financial risk to the council and a risk to its reputation. Regular reports are produced for management and individual Heads of Service are reminded of their responsibilities. The process is overseen by the Head of Legal Services, supported by the Assistant Director Customer Services and Partnerships.

1.9 Other Implications

1.	Financial	X
2.	Staffing	
3.	Legal	
4.	Social Inclusion	
5.	Environmental/Sustainable Development	
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	

1.10 Financial

1.10.1 The Council has agreed to make 2 payments by way of local settlement during this Period:

- £25 to a Customer following a misaddressed letter from planning; and
- £50 to a Customer following a mis-placed Council tax payment;

1.11 Background Documents

1.11.1 None.

NO REPORT WILL BE ACCEPTED WITHOUT THIS BOX BEING COMPLETED

Is this a Key Decision? Yes No

If yes, when did it appear in the Forward Plan? _____

Is this an Urgent Key Decision? Yes No

Reason for Urgency

Appendix 1: Breakdown of complaints by service.

Date From:
01/07/2009

Date To:
30/09/2009

Service Breakdown (Stage 1)

Service	Total	On Time	Late	% On Time
Housing Options, Private Sector Housing or Housing Policy	7	4	3	57%
Housing and Council Tax Benefits	9	8	1	88%
Development Control	9	9	0	100%
Housing and Council Tax Benefits	9	8	1	88%
Bereavement Services	2	2	0	100%
Building Surveying	1	1	0	100%
Concessionary Fares	2	2	0	100%
Conservation and Landscape	1	1	0	100%
Contact Centre	1	1	0	100%
Council Tax or Business Rates	7	7	0	100%
Grounds Maintenance	1	1	0	100%
IT Support	2	2	0	100%
Other	2	2	0	100%
Parking Enforcement	3	3	0	100%
Planning Enforcement	5	5	0	100%
Pollution	1	1	0	100%
Sports and Play	2	2	0	100%
Street Sweeping	1	1	0	100%
Waste Collection	5	5	0	100%

60 56 4

MAIDSTONE BOROUGH COUNCIL

STANDARDS COMMITTEE

25 NOVEMBER 2009

REPORT OF THE HEAD OF BUSINESS IMPROVEMENT

Report prepared by David Tibbit

1. REVIEW OF CONTRACT STANDING ORDERS/PURCHASING GUIDE

1.1 Issue for Decision

1.1.1 To consider a proposed amendment to the Contract Procedure Rules to tighten the rules relating to inducements to cover the period before the award of a contract; and

1.1.2 To consider a proposed amendment to the purchasing guide to strengthen the advice relating to the financial health vetting of prospective tenderers.

1.2 Recommendation of the Head of Business Improvement

1.2.1 That after Clause 5.6 of the Contract Procedure Rules which states that "Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must immediately report that suspicion to the Council's Monitoring Officer and Head of Internal Audit and Risk Strategy"

a new Clause 5.7 is inserted which states that

"Any person or company against whom any misconduct or corruption referred to in Clause 5.6 is proved will be immediately disbarred from consideration in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services." ; and

1.2.2 That after Note 14 in section 5 of the Purchasing Guide a new Example box is included providing guidance, prepared by the Chief Accountant , covering assessment of the financial viability of potential Contractors which states that

"All tenders and quotes in excess of £50,000 require the approval of the Director of Resources and Partnerships, see the financial procedure

rules. In all such cases the Director requires a financial assessment of the winning tenderer prior to approval. This is good practice and should be considered for all quotes irrespective of their value and especially when the accepted quote is from an organisation that has not transacted business with the Council in the preceding 12 months or the Council faces financial loss if the works are not completed satisfactorily. The Head of Finance will provide support and advice to any officer wishing to carry out such an evaluation.”

1.3 Reasons for Recommendation

1.3.1 The meeting of the Standards Committee on 14 April 2009, at which Members recommended adoption of the new framework for Contract Standing Orders, also recommended that Officers give further consideration to amended guidance to strengthen the advice on the financial health vetting of prospective contractors and to tightening the provisions relating to inducements or rewards to cover the period before the award of contract.

1.4 Alternative Action and why not Recommended

1.4.1 An alternative way to tighten the rules relating to inducements to cover the period before the award of a contract would be to carry out positive vetting of tenderers to ascertain whether they have previous convictions for misconduct or corruption. However, the current interpretation of new Service Directives being promulgated by the EU would appear to allow exclusions only where adverse activity is likely to have a direct bearing on the service to be provided.

1.4.2 The Contract Procedure Rules and Guide could remain unamended, however this would deny the Council the opportunity of improving the guidance regarding financial vetting of contractors and limit the ability to cancel a contract in the event of misconduct or corruption only after the contract has been entered into.

1.5 Impact on Corporate Objectives

1.5.1 The proposed amendments will help the Council maintain its core values of integrity and high standards of corporate governance.

1.6 Risk Management

1.6.1 The procurement section will ensure that officers are made aware of the changes to the contract procedure rules and the purchasing guide.

1.7 Other Implications

1.7.1

1. Financial
2. Staffing
3. Legal
4. Equality Impact Needs Assessment
5. Environmental/Sustainable Development
6. Community Safety
7. Human Rights Act
8. Procurement
9. Asset Management

Agenda Item 10

THE MAIDSTONE BOROUGH COUNCIL

STANDARDS COMMITTEE

25 NOVEMBER 2009

REPORT OF THE DEMOCRATIC SERVICES MANAGER

Report Prepared by Janet Barnes

REPORT OF THE INDEPENDENT REMUNERATION PANEL ON MEMBERS' ALLOWANCES

1. Issue for Decision
- 1.1 To consider the recommendations set out in the report of the Independent Remuneration Panel on Members Allowances for Maidstone Borough Council (attached as Appendix A).
- 1.2 Recommendation of the Democratic Services Manager
- 1.2.1 That the recommendations of the Independent Remuneration Panel be considered and that the Standards Committee refer the recommendations with their comments to Council.
- 1.3 Reasons for Recommendation
- 1.3.1 The report of the Independent Remuneration Panel on Members Allowances is attached at Appendix A. In accordance with the requirements set out in the Local Government Act 2000 and subsequent Regulations, the Council is obliged to give consideration to the recommendations of the Panel.
- 1.4 Alternatives Considered and Why Not Recommended
- 1.4.1 The comments of the Committee to the recommendations of the Independent Remuneration Panel are sought and these could reflect a different approach to the Panel.
- 1.5 Other Implications

Financial	<input checked="" type="checkbox"/>
Staffing	<input type="checkbox"/>
Legal	<input type="checkbox"/>
Social Inclusion	<input type="checkbox"/>
Environmental/sustainable development	<input type="checkbox"/>
	<input type="checkbox"/>

Community safety

Human Rights Act

Procurement

1.5.1 Financial

The financial implications arising from the recommendation to award a Special Responsibility Allowance for the Chairman of the Local Development Document Advisory Group ("LDDAG") of £1,160 per annum are set out in Appendix B.

As will be seen from Appendix B, currently not all allowances are paid and this will result in a small surplus in the budget for this financial year although if all allowances were paid there would a deficit. In this municipal year the Chairman of LDDAG is also the Chairman of Planning and would, therefore, not be entitled to claim a second Special Responsibility Allowance.

It should also be noted that the Standards Committee agreed to increase the number of Independent Members on the Committee and this will result in an extra allowance being paid for that member.

However, there is the possibility that in future years all allowances are claimed and this would result in a budget shortfall.

1.6 Risk Management

Not relevant to the decision being made.

Background Documents

None.



**REPORT OF THE INDEPENDENT REMUNERATION PANEL ON THE REVIEW OF
ALLOWANCES FOR MEMBERS OF MAIDSTONE BOROUGH COUNCIL
21ST OCTOBER 2009**

INTRODUCTION

The Council's Independent Remuneration Panel met on 21st October to consider and review suggestions made by the Council regarding the current Members' Allowance Scheme and to review the changes relating to the Dependent Carers' Allowances as recommended in the Panel's Report of October 2008.

SUMMARY OF RECOMMENDATIONS

The Panel has made the following recommendations, that:

- **no change be made to the level of Special Responsibility Allowance (SRA) paid to the Chairman of the Audit Committee at present, but that this be reviewed again in a year's time**
- **the Chairman of the LDDAG be awarded an SRA equivalent to 5% of the Leader's allowance, which at the time of writing would be £1,160 per annum**
- **the level of allowance paid to the Chairman of the Planning Committee and to the Chairman of each of the Scrutiny Committees continue at the current level**
- **that no allowance be paid to members of the Standards Sub-Committee, with the exception of the Chairman, and that he continue to receive his SRA at the current rate**
- **no change be made to the operation of the Dependent Carers Allowance, following the removal of the 12 hour restriction in 2008.**

TERMS OF REFERENCE

In accordance with the requirements of the Local Authorities (Members' Allowances) (England) (Amended) Regulations 2003, the terms of reference of the Independent Remuneration Panel at this meeting were to make recommendations to the Borough Council in relation to:

- The Work of the Audit Committee

- Chairmen's Allowances - review of payment of allowance to Chairman of the Local Development Document Advisory Group and of the allowance paid to the Chairman of the Planning Committee and of the Scrutiny Committee
- Payment of Allowance to Standards Sub-Committee Members
- The Dependent Carers Allowance

INDEPENDENT REMUNERATION PANEL

The membership of the Independent Remuneration Panel (IRP) is as follows:

Susie Bonfield (Chair) – Policy Officer, Democracy and Governance, South East Employers

Victoria Wallace, Chief Executive of Leeds Castle and member of the Invicta Chamber of Commerce

Valerie Page, Independent Member

CONSIDERATION OF THE KEY ISSUES

The Panel received an overall briefing from Janet Barnes, PA to the Cabinet, and Neil Harris, Democratic Services Manager at Maidstone Borough Council. In addition, the Panel noted that all Members of the Council had been invited to comment on the Council's current Members' Allowance Scheme and to raise any issues for discussion by the Independent Remuneration Panel (IRP).

The Panel then considered the key issues as follows:

The Audit Committee

Councillor Horne, Chairman of the Audit Committee, requested that the Panel note that there has been an increase in the range and work of the Audit Committee.

The IRP met with Councillor Horne and with Zena Cooke, Director of Resources and Partnerships and the Council's Statutory 151 Officer.

The Committee heard that the role and the workload of this Committee had grown in recent months but that a formal change to the remit and responsibilities of this Committee was subject to approval by the full Council.

The Panel recommended that no change be made to the level of SRA paid to the Chairman of the Audit Committee at present, but that this be reviewed again in a year's time.

Chairmen's Allowances

- **Review of payment of allowance to Chairman of the Local Development Document Advisory Group (LDDAG)**

Councillor David Marchant, a member of the LDDAG, requested that the Panel review and consider again the payment of an allowance to the Chairman of LDDAG.

The IRP noted that the meetings have been held on an ad-hoc basis, but since August 2009, meetings have been booked for every month for the foreseeable future, although, the Panel noted that not every meeting has been necessary. Noted that the October meeting of the Group had been cancelled and that the September and November meetings had been changed to Seminars to inform members of progress on different matters within the Local Development Framework.

- **Review of allowance paid to Chairman of the Planning and Scrutiny Committees**

Councillor Lusty, Chairman of Planning Committee and the Local Development Document Advisory Group, requested that the Panel look at the Special Responsibility Allowances paid to Committee Chairmen. Councillor Lusty had expressed the view that there is a discrepancy between the allowances paid and the workload of the Chairman, in particular, in relation to the Special Responsibility Allowance paid to the Chairman of Planning and the Chairmen of the four Scrutiny Committees and that this is not reflected in the payments.

The Panel met with Councillor Richard Lusty, Chairman of LDDAG and also of the Planning Committee, and with Sue Whiteside, Team Leader, Planning Policy. In addition, the Panel met with Councillor Eric Hotson, Chairman of the Corporate Services Overview and Scrutiny Committee, and with Angela Woodhouse, the Borough's Scrutiny Manager.

The Panel heard that in relation to the LDDAG, whilst the post of Chairman of this Committee had not received an SRA in the past, the Committee had a demanding workload, likely to continue for the foreseeable future, with members having to consider a large amount of evidence based information. Noted that the Committee were dealing with a sizeable amount of Government guidance, and that Maidstone was a complex area to plan for. Noted that the Chairman of this Committee plays an integral role in both the monthly meetings and the seminar style sessions.

The Panel recommended that the Chairman of the LDDAG be awarded a Special Responsibility Allowance equivalent to 5% of the Leader's allowance, which at the time of writing would be £1,160 per annum.

The Panel also considered very carefully the role of the Chairman in relation to both Planning and Scrutiny, and whilst noting that the agendas for the Planning Committee meetings were very full and that these meetings commanded the highest public attendance of any of the council meetings, the Panel felt that there was not a sizeable discrepancy in the role and responsibility of the Chairman in relation to Planning and Scrutiny Committees to warrant any adjustment in the level of their respective SRAs.

The Panel recommended that the level of allowance paid to the Chairman of the Planning Committee and to the Chairman of each of the Scrutiny Committees continue at the current level.

Payment of Allowance to Standards Sub-Committee Members

Councillor Marchant, in his capacity as a member of the Standards Committee, also requested that the Panel consider paying an allowance to the members of Standards Sub-Committees, when meetings are held.

The IRP met with Mike Powis, one of the co-opted independent members of the

Standards Sub-Committee, and received a briefing note from Maidstone BC's Monitoring Officer, Paul Fisher, who was unable to attend for interview.

The Panel noted the new responsibilities of the Standards Sub-Committee in relation to the Members' Code of Conduct and the investigatory role the Sub-Committee now has. However, the Panel noted that following these changes, there had not been a major impact on the hours involved for members of the Sub-Committee.

The Panel recommended that no allowance be paid to members of the Standards Sub-Committee, with the exception of the Chairman, and that he continue to receive his Special Responsibility Allowance at the current rate.

Dependent Carers Allowance

In October 2008, the IRP recommended that the restriction of 12 hours per week for this allowance be removed with immediate effect and that the impact of this be discussed at the next meeting. This recommendation was agreed by Council in December 2008.

Following a review of the changes, the Panel noted that there has been no adverse impact following this change and, in fact, claims under this allowance have fallen for the first 9 months of this calendar year, in comparison to the same time last year.

The Panel recommended that no change be made to the operation of the Dependent Carers Allowance, following the removal of the 12 hour restriction in 2008.

The Panel would like to thank all the members and officers who gave up their time to speak to them, and in particular to Janet Barnes who provided advice and support to the Panel throughout the day.

MEMBERS ALLOWANCES - 2009/2010**APPENDIX B**

	<u>Allowance</u>	<u>Nos.</u>	<u>Total if all claimed</u>	<u>2009/10 Budget</u>	<u>Variance</u>
Basic Allowance	4643	55	255365		
Cabinet Members	11605	5	58025		
Leader	23210	1	23210		
Scrutiny Chairmen	5802	4	23208		
Chairman of Planning	5802	1	5802		
Chairman of Licensing	2321	1	2321		
Chairman of Licensing Act 2003	2321	1	2321		
Chairman of Standards	1160	1	1160		
Chairman of Audit	1160	1	1160		
Group Leaders	11605	3	11605		
Co-Opted Member of Standards	329	6	1974		
	<u>69958</u>		<u>386151</u>	<u>385320</u>	<u>-831</u>
Additional Payment for Chairman of LDDAG	1160	1	1160		<u>-1991</u>
Additional Co-Opted Member of Standards	329	1	329		<u>-2320</u>

	<u>Allowance</u>	<u>Nos.</u>	<u>Actual claimed</u>	<u>2009/10 Budget</u>	<u>Variance</u>
Basic Allowance	4643	55	255365		
Cabinet Members	11605	5	58025		
Leader	23210	1	23210		
Scrutiny Chairman	5802	4	23208		
Chairman of Planning	2321	1	5802		
Chairman of Licensing	5802	1	2321		
Chairman of Licensing Act	2321	1	2321		
Chairman of Standards	1160	1	1160		
Chairman of Audit	1160	1	1160		
Group Leaders	11605	2	5486		
Co-Opted Member of Standards	329	3	987		
	<u>69958</u>		<u>379045</u>	<u>385320</u>	<u>6275</u>
Additional Payment for Chairman of LDDAG	1160	1	1160		<u>5115</u>
Addition Co-Opted Member of Standards	329	1	329		<u>4786</u>

2009 ANNUAL ASSEMBLY OF STANDARD COMMITTEES.

It was very noticeable that many of the delegates (including KCC) had eschewed the larger and much more expensive hotels, for more reasonably priced venues. Thus I feel, setting the standards for their councils, except that Standards Board for England put everyone up in the Hyatt (double standards).

During the early sessions, there was a fixation with Standards for England over their future, i.e. will they continue if there is a new Government. It actually became quite boring.

There is a new DVD coming out shortly on Assessments.

They were still talking of the new code coming out for us to see in November, with implementation sometime next year. The main change to the code will be how it covers conduct in a private capacity. The code will limit this to criminal conduct that has led to a conviction in court. Purely criminal convictions not cautions etc. There are likely to be a number of amendments, which are just tidying up existing sections.

Lot of talk about ethical collapse, i.e. jaunts overseas, the planning regime and unlawful policies. We heard later of two Councils (Hull and Lincolnshire) where there had been ethical meltdown, and the background behind how they took the road to recovery.

There is to be new guidance coming out on Gifts and hospitality, and we may wish to ask for the record kept to be shown at Standards Committee meetings.

There was a suggestion that we should ask the Planning Committee to explain to the Standards Committee how they work.

There was also a suggestion that the Leader and the Chief Executive should be asked to come to the Standards Committee to talk about their vision on Ethics. Mandatory training, especially on The Code of Conduct, was a topic of conversation during several of the sessions. This would apply to both newly elected Parish and Borough members, and they would have to sign up to this. Bill Stead was very forceful on this issue, and the impression was that the idea found favour, and would be taken forward.

There is a need for us to set agendas/work plans each year, and I will be talking to Paul about this.

There are 4507 members of Standards Committees in England of which 1658 are Independents.

The number of complaints received by Committees varied dramatically, from over 200 to nil.

We are being encouraged to carry out a review of the Standards Committee, and to look at peer group reviews of members.

There was a look of talk about how Standards Committees recruited both Parish and Council members. There was a great deal of talk about Leaders dumping people on the Standards Committees. One Councillor I sat beside said that she was voted onto the Standards Committee in her absence.

There were a considerable number of Parish Councillors present, and a lot of discussion on how to ensure they were trained on the Code of Conduct. There seemed to be agreement amongst the Parish Councils that the training should be done, but also agreement that it was difficult to make some of the dinosaurs take part. Thus the suggestion, that newly elected members have to sign an agreement to training.

The main causes of ethical failures are:

1. Pressure to meet targets.
2. Lack of understanding.
3. Personal differences.

Lots of discussion on how the Standards Committee could improve its image, to the public, to the Parishes, to Borough Councillors, and to Borough Council Staff. Something we in Maidstone have already started on, and having mentioned our article in the Downsmail, I have asked Paul to send a copy to Standards for England.

To sum up the Assembly was a bit like a curate's egg, and listening to the grumbles from regular attendees, was cutting corners on costs (but not hotels).

DJW

RESTRUCTURING OF THE STANDARDS COMMITTEE.

The Standards Committee has the following functions:

Main Functions.

- To promote and maintain high standards of conduct for Borough and Parish members.
- To help members to follow the Code of Conduct.

Specific Functions

- To give the council advise on adopting a local Code.
- To monitor the effectiveness of the Code.
- To train members on the Code, or arrange for such training.
- To assess and review complaints about members.
- To conduct determinations' hearings.
- To grant dispensations to members with prejudicial interests.
- To grant exemptions for politically restricted posts.

“ABOVE EVERYTHING, THE STANDARDS COMMITTEE SHOULD BE ABOVE PARTY POLITICS AND ITS MEMBERS NEED TO HAVE THE RESPECT OF THE WHOLE AUTHORITY, REGARDLESS OF THE GOVERNING POLITICAL PARTY.” This is a quote from Standards for England and they go on to say **“ STANDARDS COMMITTEES SHOULD BE SEEN AS MAKING JUDGEMENTS IMPARTIALLY AND WITHOUT REGARD TO PARTY LOYALTY.”** Also **“ELECTED MEMBERS ON STANDARDS COMMITTEES SHOULD NOT BE SUBJECT TO A PARTY WHIP.”** In other words members must vote with their conscience, which I know everyone on this Standards Committee does.

However, the biggest problem we have in modern life is the perception of the General Public, who view all types of politics with suspicion, especially at this present time. Indeed only last year Maidstone was ranked only 9th. Out of 12 Kent Boroughs when

residents were asked if they felt they could influence decisions in their local area. I have attached some pages on the Role and Make-Up of Standards Committees from which you will see that the suggested number for a committee such as ours is 9. That is 3 Borough Members, 3 Parish Members and 3 Independents. There is a suggestion that some authorities may wish to have a majority of independent members, and although that has happened in at least one case (London), I am not suggesting that route. I am also relaxed about the use of substitutes, for if you agree to what I am suggesting then we have ready trained people.

Anyone looking at the makeup of the MBC Standards Committee at the moment, would instantly come to the conclusion that it is run on Party Political lines, purely, I hasten to add, because of its makeup. Also, if any complainant looked at the makeup of our Sub Committees they would also notice a dominance of Borough Councillors. All of this is not good for the perception of our ethical standing in the eye of the Public, and puts questions in their minds, as to whether we can deliver a fair and balanced decision.

I have been looking closely at the makeup of other Standards Committees in Kent, which make interesting reading, and attach a chart to show my findings. You will see that there are two who have gone along with the recommendations, and one which is close. I won't comment on the one highlighted in red.

I sounded out two of the Group Leaders (unfortunately only two attended the meeting), as to whether such a change would be acceptable, and did not come away from the meeting with the impression that it would be a problem, in fact the reverse.

I believe that now is the time for Maidstone to take a lead in this issue, and to agree that the Borough Council representation should be 1 representative from each of political groupings with a maximum of say 5. This gives scope for councillors for others groups at present

not represented on the Council. It is not an issue of getting rid of people, but one of creating an ethical committee which sets an example for the Council, and I look for your agreement to this proposal. I understand the comments made about experience, but unfortunately, in life, we can be here today, and gone tomorrow. We are, none of us, immortal. **IF WE DO NOT SET THE STANDARDS, WHO WILL?**

Sub Committees:

Whether you agree to the above or not, I would ask you to consider that we reduce membership of our Sub Committees to 3, i.e. 1 Borough Member, 1 Parish Member and 1 Independent Member. This is very much in line with Tribunals, Magistrates etc, and with the membership proposed, would again produce a more balanced panel to the outside world. We do at times struggle to get the 3 Borough Members, for reasons of holidays, and knowledge of the parties involved, and coming down to 3 would make it easier to ensure that we have the required number. The majority of Districts in Kent run on a membership of 3 for their Sub Committees, although, this is more difficult to prove. You may wish to consider, that for Hearings we have 5, which may consist of any makeup as long as there are Borough or Parish members on board, depending where the Councillor concerned is from.

May I ask that you support this change, which is not just change for changes sake, but one of providing a more balanced image to the General Public.

DJW.

THE ROLE AND MAKE-UP OF STANDARDS COMMITTEES

Contents

Introduction

Functions of standards committees

Size and composition

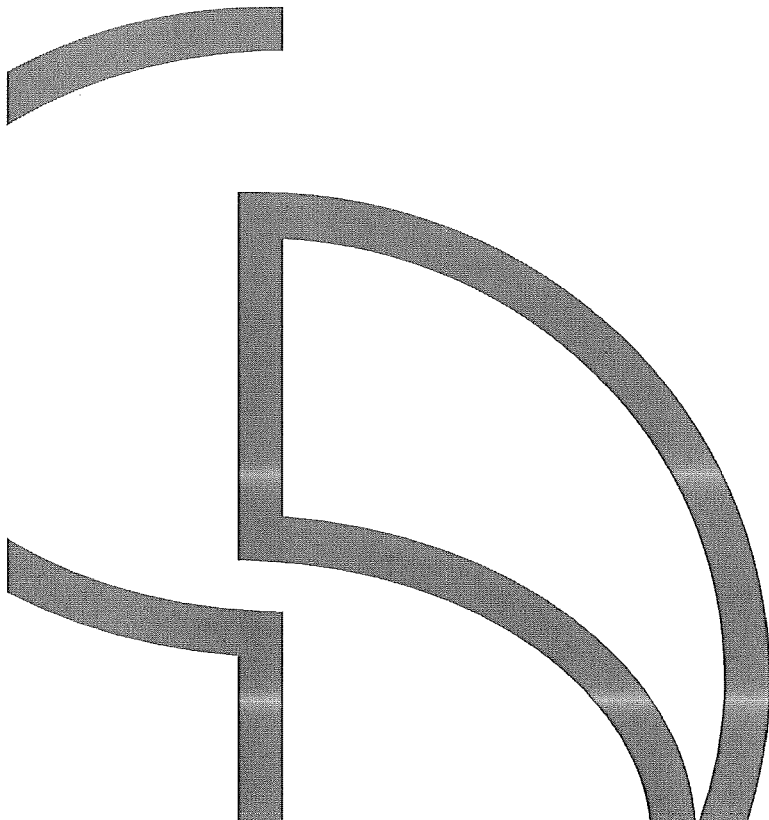
Independent members

Parish and town council representatives

Other members

Supporting standards committees

Operation of standards committees



size & composition

You must have at least three people on your standards committee. It must include at least two members of the authority and at least one independent member. At least 25% of the members of the standards committee must be independent members.

Please see the section on **Parish and town council representatives** on page **16** for further information.

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

If your authority has executive arrangements, you are permitted to have one executive member on the standards committee. However, this executive member must not be the elected mayor or leader.

As the standards committee carries out a number of functions including the assessment of complaints and determination hearings, we recommend that your authority has at least six members on your standards committee. This is because different members will be required to carry out the different functions to avoid conflicts of interest.

If your authority is responsible for any parish or town councils, at least two representatives from those parish or town councils must be appointed to your standards committee and they cannot also be members of your authority. A parish or town council representative must sit on the standards committee at all times when parish matters are being discussed.

independent members

Independent members are important in helping increase public confidence in local government. They provide a clear signal that the standards committee acts fairly and impartially. Independent members also bring a wider perspective from their outside experiences. There is no limit to the number of independent members you can have on your standards committee. Indeed some authorities may wish to have a majority of independent members.

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

When re-appointing an independent member, you should bear in mind that we recommend that independent members should serve no longer than two terms, which is a maximum of eight years. It may be helpful for independent members to be appointed for differing lengths of time so that the experience they gain is not all lost simultaneously.

Choosing an independent member

Independent members must be chosen in a fair and open way.

A person can only be an independent member if that person:

- has not been a member or employee of your authority within the five years before the date of appointment
 - is not a member or officer of that or any other relevant authority. Please see the section **Recruiting independent members from another standards committee** on page 13 for further information on when this does not apply
 - is not a relative or close friend of a member or employee of your authority
 - has applied for the appointment
 - has been approved by a majority of the members of the council
 - the position has been advertised in at least one newspaper distributed in your authority's area, and in other similar publications or websites that the authority considers appropriate. The decision on which other publications or websites to use may be something that the authority delegates to the standards committee.
- The regulations say that a 'relative' means:
- a partner (a spouse, civil partner or someone a person lives with in a similar capacity)
 - a parent
 - a parent of a partner
 - a son or daughter
 - a stepson or stepdaughter
 - the child of a partner
 - a brother or sister

independent members

- a brother or sister of a partner
- a grandparent
- a grandchild
- an uncle or aunt
- a nephew or niece
- the partners of any of the people mentioned above

The regulations do not provide a specific definition of a close friend. The Standards Board for England's publication the *Case Review 2007* includes a section on defining a close associate, which might be helpful in identifying a close friend. The *Case Review 2007* is available at www.standardsboard.gov.uk.

The regulations require a majority of all members of the authority to approve the appointment. However, we believe that in practice, a report only needs to go to full council when selecting independent members. If so, we recommend that the monitoring officer ensures the majority of members approve, not just those attending the meeting.

We recommend that the power to assist the recruitment of independent members is delegated to the standards committee by the authority and is included in the committee's terms of reference. A standards committee may appoint a sub-committee to take on some of its functions, for example, if your standards committee is asked to advise members of the council on the appointment of independent or parish members. If so, then the standards committee may set up a sub-committee of suitably trained members to shortlist and interview candidates and make recommendations to

the council. The sub-committee may find it helpful to have the monitoring officer and a human resources officer present to provide advice and assistance.

An individual's membership of a political party does not automatically bar them from being an independent member of a standards committee. However, the more politically active an independent member is the less likely they will be seen as being independent. You should consider public perception before making an appointment of this sort.

If you are finding it difficult to attract suitable people to become independent members, you should review the criteria in your advertisement to make sure they are reasonable. For example, you should make sure that the time you are asking the member to invest is reasonable for the role.

You may also want to consider additional methods of attracting candidates. This could include:

- placing articles in the local press about the role of an independent member
- placing advertisements on your website or on your local radio station
- placing flyers in libraries, adult learning centres or places of worship
- advertising through other authorities' partnerships or through the local voluntary or community sector
- approaching your citizen's panel

independent members

- the personal approach. For example, contacting neighbouring authorities which may have more suitable candidates than they can appoint.
- approaching a person who is an independent member of a standards committee of a different authority. This person may also be appointed as an independent member of the standards committee of your authority. This is unless they were a member or officer of your authority within the five years preceding the appointment, or are a relative or a close friend of a member or officer of your authority.

Remember that all the selection criteria for the position will still apply, so even if you approach someone directly, they must still make a formal application.

We recommend that the application form includes sections on:

- personal details
- qualifications
- summary of experience
- relevant expertise/skills

Accepting a CV with an application form may make the process easier for busy candidates. You may also want to consider online applications. We recommend that the monitoring officer should be involved throughout the recruitment process to advise the panel and the authority.

Skills and competencies of independent members

The competencies you should look for in an independent member include:

- a keen interest in standards in public life
- a wish to serve the local community and uphold local democracy
- high standards of personal integrity
- the ability to be objective, independent and impartial
- sound decision making skills
- questioning skills
- leadership qualities, particularly in respect of exercising sound judgment
- the ability to act as the chair of an assessment or review sub-committee or a determination hearing

Please see the section **The role of the chair** on **page 13** for further information on acting as a chair.

You should assess candidates looking for these qualities in interviews and any other assessment process you carry out. You also need to ensure that your authority complies with its duties under the Equality Act 2006. The human resources department of your authority may be able to advise you further on this matter.

independent members

For further information on the recruitment of independent members, you may want to look at the recruitment pack produced by the Association of Council Secretaries and Solicitors (ACSeS). The pack provides practical advice on how to set about recruiting independent members, together with their roles and responsibilities. The pack can be downloaded at www.acses.org.uk

Recruiting independent members from another standards committee

An independent member of one standards committee may also sit on other standards committees. For example, the member can sit on county and district, or county, police and fire authorities' standards committees.

Independent members may also be temporarily appointed to another standards committee to consider a particular assessment, review or hearing or for a particular period of time. For example, it would be appropriate to appoint an independent member of a neighbouring standards committee for a short period in situations where the permanent member is unwell or if there is a conflict of interest. These appointments can be made without needing to advertise the position. The appointments do not need to be ratified by a majority of the members of the authority, but proper procedures should be in place to appoint independent members on a temporary basis.

Independent members appointed on a temporary basis cannot have been a member or officer of that authority in their

five years before the appointment, and cannot be a close friend or a relative of a member or officer of that authority. They must also comply with the Code of Conduct of each authority whose standards committee they sit on.

Ceasing to be an independent member

Under the regulations, any person appointed as an independent member who becomes a member or officer of an authority, or a relative of a member or officer of that authority, will no longer be able to be an independent member of that authority's standards committee.

The role of the chair

It is a legal requirement that the chair of the standards committee must be an independent member. It is important for the chair to be independent because of the key role they play in the business of the standards committee. By being independent, the chair can ensure that the standards committee's business is conducted in such a way that no one can question its integrity.

Authorities should aim to select a person who will command the respect of members and the local community. We recommend that the decision on who should be appointed as chair be taken by the full council or delegated to the standards committee. You may also choose to appoint an independent vice chair for the reasons discussed in the section on **Size and composition** on page 9.

independent members

An effective chair will ensure that the business of the meeting is completed while allowing a fair and balanced debate and any professional advice to be taken into account. The chair may summarise the points put to the committee, and will ensure that the meeting is run correctly from a procedural point of view. They will also ensure that the decisions made are accurately recorded. The chair is responsible for keeping order and adjourning meetings where necessary. They should also have a good level of assertiveness.

It is also the chair's responsibility to ensure that members of the public and press leave the meeting when a private report is being considered. Please see the section **Skills and competencies of independent members** on page 12 for further information.

Preliminary matters will often arise in relation to hearings. The chair, with the advice of the monitoring officer, may make initial process decisions in relation to such matters. However, it is important that the hearing committee or sub-committee considers and approves such arrangements.

Ultimately, it is the way the chair operates independently, and is seen to operate independently, that should enhance confidence in the integrity of the standards committee. It is also the chair's status as an independent member, a role drawn from outside the authority and independent from the authority that should provide a clear signal that the committee is fair.

Induction of independent members

While it is not mandatory, we recommend that an induction programme should be provided for independent members. This should include training on the Code of Conduct and the functions of standards committees. Inductions should also include attendance at authority meetings, such as meetings of planning and licensing committees and the full council. If authorities are operating executive arrangements, then attendance at cabinet meetings and overview and scrutiny committee meetings should be part of the induction.

Independent and parish representatives should also receive a copy of the authority's constitution. In addition, they should receive a copy of the Code of Conduct that has been adopted by your authority, the protocol for member/officer relations and any other protocol in use.

The constitution should also include the authority's scheme of delegations of functions. Whistle-blowing policies, any policies and procedures under the Equality Act 2006, and the authority's anti-bullying policy should also be included. It may be helpful to add an A-Z of people in the authority, a list of authority services and the municipal calendar.

There are a number of regional independent member organisations. Many authorities use a mentoring system to assist new independent members of standards committees. In some parts of the country regional groups of independent

independent members

members have been established. Information relating to these will be helpful as may a list of useful websites.

To find out if there is a regional group of independent members in your area you should contact the Standards Board for England. The Association of Independent Members of Standards Committees in England (AIMSce) may also be able to provide support. Information about AIMSce can be found at www.aimsce.org.uk Authorities may also want to consider making members' IT facilities available to both their independent and parish representatives.

Remuneration for independent members

Authorities must introduce an annual scheme for the payment of a basic allowance to their members, based on the recommendations of an independent remuneration panel. The annual scheme can also extend to the payment of other allowances, including a co-optee's allowance. A co-optee's allowance relates to a person who is not a member of the authority but is a member of a committee or sub-committee, for example an independent member of a standards committee.

We recommend that independent members should be able to claim for financial loss, travel and subsistence. This will help attract those people that may have been deterred from the role because of the costs involved. Each authority must consider the recommendations of its panel

as to whether it should provide for the payment of a co-optee's allowance and of travelling and subsistence expenses.

Indemnities for independent members

Where independent members are carrying out their statutory duties, they may be protected by their authority's indemnity arrangements under the Local Authorities (Indemnities for Member and Officers) Order 2004. We recommend that all authorities include independent members in their indemnity arrangements.

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

Independent members must sign an undertaking to comply with the Code of Conduct and disclose their interests in the register of members' interests maintained by the monitoring officer, in the same way as other members. Complaints about the conduct of independent members must be treated in the same way as that of other members.

parish and town council representatives

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

A standards committee with three parish or town council representatives will provide you with flexibility. It should allow the local assessment of complaints to be carried out if a parish or town council representative is unavailable or conflicted out. You may wish to increase the number further to avoid situations where the parish or town council representative is conflicted out, and to prevent the parish or town council representatives from feeling isolated. It will also avoid meetings having insufficient members, if the parish or town council representative is not present when issues affecting parish or town councils are discussed.

This will bring the recommended total number of people on your standards committee to nine members.

Having nine members means that you can meet the requirement of having a different parish or town council representative when the committee's sub-committees carry out each of the separate assessment and review functions. Please see our guidance **Local assessment of complaints** for further information.

Your council must consult parish and town councils within its area to help decide if there should be a parish sub-committee to deal with some of its functions relating to

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

Choosing parish and town council representatives

Your authority must decide how to recruit and appoint parish or town council representatives. Your parish and town council representative should have the trust of town and parish councils in your area, so you should involve them in the selection procedure.

If you are finding it difficult to find a parish or town council representative, your local county association of local councils may be able to help you. For example, the county association may be able to give you a list of possible candidates. They may also be prepared to conduct an election process for you.

This process should receive the support of the parish and town councils in the area and show that you want to appoint standards committee members in a fair and open way.

other members

Executive members on the standards committee

If the authority is operating executive arrangements, the standards committee does not need to include a member of the executive. However, you should consider whether it is appropriate to appoint an executive member. Appointing an executive member might show that the committee is supported and respected by all parts of the authority. Not having an executive member could reflect a degree of independence from the political leadership of the authority. Nevertheless, this is ultimately a decision for the authority.

Elected members on the standards committee

Standards committees need not reflect the political balance of the authority. This is because the standards committee should be above party politics and its members need to have the respect of the whole authority, regardless of the governing political party. It may be helpful to remind elected members of this when committee appointments are being made.

It would be useful for your standards committee to include members who are supported by all political parties, particularly when the local assessment of complaints is carried out. This is so that greater trust and confidence can be established in the decision-making process among all political members.

Standards committees should be seen as making judgments impartially and without

regard to party loyalty. Elected members should consequently be mindful of this when serving on a standards committee. Elected members on standards committees should not be subject to a party whip. In other words, they should not be told how to vote on matters. Members should also remember that they must adhere to the Code of Conduct when serving on a standards committee.

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

Substitute members

Some authorities operate a substitute system. This allows a substitute member to attend a meeting of the committee or sub-committee whenever a regularly appointed member cannot be present. This is often done to maintain the political composition.

However, we do not recommend the use of substitutes for standards committees. Standards committees are not intended to operate along party political lines and therefore it is not necessary to ensure a political balance.

In instances where all your independent members are unavailable, you would be

other members

able to substitute your independent members with independent members from another authority. Please see the section on **Recruiting independent members from another standards committee** on **page 13** for further information.

It should also be noted that nothing in the regulations requires a sub-committee of a standards committee to have fixed membership or chairmanship.

COUNCIL			BOROUGH MEMBERS	PARISH MEMBERS		INDEPENDENT MEMBERS
Ashford			5		3	3
Canterbury			4 (C 2. LD 1. L 1.)		3	3
Dartford			6 (C 4. L 1. RES 1.)		2	4
Dover			6 (C 4. L 2.)		3	5
Gravesham			7 (C 4. L 3)		0	4
Maidstone			6 (C 3. LD 2. IND 1)		3	4
Medway			3 (C 1. LD 1. L 1.)		3	6
Sevenoaks			6 (C 4. LD 1. L1.)		4 Inc 1 KCC	6
Shepway			3 (C 1. LD 1. PF 1.)		3	3
Swale			6 (C 3. LD 1.L 1. IND 1)		2	3
Thanet			7 (C 4. L2. IND 1.)		3	4
Tonbridge and Malling			13 (10 C, 3 LD)		2	5
Tunbridge Wells			6 (C 5. LD 1.)		6	5

Agenda Item 13

PARISH COUNCIL TRAINING ON THE CODE OF CONDUCT.

After much delay, the first course was due to take place on the 27 July. However, due, I believe to the short notice of the email sent out to Parishes, only 6 applied and the course was cancelled.

The next course was scheduled for the 16 September, and in the interim, I wrote to all Chairs, urging them to encourage their members to attend. On the night some 13 Councillors attended, and the event was hailed a success by them. The format of the evening was simply to show them the DVD, and to follow that with a question and answer session. One of the suggestions made was that we held these courses outside of Maidstone, and I am awaiting feedback from the Parishes on suggested clusters, and hosts within those clusters. As members are aware, the e-mail sent out restricted attendance to 2 from each Parish, this has now been removed. My thanks to Bill Stead, David Marchant and Paul Fisher for their input.

The next session was on the 7 October, and some 30 Councillors booked to attend. Unfortunately the weather that evening was very wet and only 20 turned up. The other problem we had, was that the Training Team did not send anyone to the event, and the equipment malfunctioned and we could not show the DVD in its entirety. There were however lots of questions, and a desire to see the DVD in full. We took forward the discussion we had in the first session about mentoring for Parish Clerks, and I have since had an e-mail from Pauline Bowdery the clerk at Boxley who is keen to get something going. Paul Fisher has a copy of her suggestions, and I awaiting a response from the Officer dealing. I have also asked Paul to ensure that we always have backup from Training for the first part of the evening.

We have been asked to run a daytime session for Clerks only, and I have suggested doing another session in November, whilst we have the momentum, but as I write this, I am still awaiting feedback. I have suggested we rename the sessions "Code of Conduct Forum".

As part of our ongoing requirement to provide training on the Code of Conduct, I would like a member of the Committee to take on the role of Training Co-ordinator, covering, Borough, Parishes and the Standards Committee. Do I have a volunteer?

DJW

MAIDSTONE BOROUGH COUNCIL

REPORT OF THE HEAD OF LEGAL SERVICES

STANDARDS COMMITTEE

25 NOVEMBER 2009

BOUGHTON MONCHELSEA PARISH COUNCIL – APPLICATION FOR DISPENSATION

1. BOUGHTON MONCHELSEA PARISH COUNCIL

- 1.1 I have received an application for dispensation from Councillor Sara Evans, a new member of Boughton Monchelsea Parish Council to enable her to speak and vote at meetings of the Parish Council when matters relating to the Boughton Monchelsea Amenity Trust are being considered notwithstanding the fact that she has a prejudicial interest in the matter, by virtue of being a member of the Amenity Trust. All of the existing Parish Councillors have been granted dispensations.
- 1.2 I attach a copy of the letter from the Parish Councillor requesting the dispensation.
- 1.3 The Standards Committee (Further Provisions) (England) Regulations 2009 provide (amongst other things) that a Standards Committee may grant a dispensation to a member or co-opted member:
 - where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting, or
 - where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

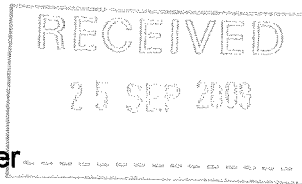
The regulations also provide that the Councillor must submit to the Standards Committee a written request for dispensation explaining why it is desirable. If a Standards Committee concludes that, having regard to these matters, and to all the other circumstances of the case, it is appropriate to grant the dispensation, then they may grant it. Guidance on considering applications for dispensations can be found as a separate agenda item.

2. RECOMMENDATION

- 2.1 It is recommended that Members consider granting a dispensation to Councillor Evans to enable her to speak and vote at meetings of the Boughton Monchelsea Parish Council when matters relating to the Boughton Monchelsea Amenity Trust are being discussed, notwithstanding the fact

that she has a prejudicial interest by virtue of being a member of the Amenity Trust. It is recommended that if a dispensation is granted it expires on 30 June 2012.

Boughton Monchelsea Parish Council



The Old Vicarage
Church Hill
Boughton Monchelsea
Maidstone
Kent
ME17 4BU

Mr P. Fisher
Head of Corporate Law & Monitoring Officer
Maidstone Borough Council
Maidstone House
King Street
MAIDSTONE
Kent. ME15 6JQ

1 September 2009

Dear Mr Fisher

STANDARDS COMMITTEE – DISPENSATION BOUGHTON MONCHELSEA AMENITY TRUST

I am a new councillor on the Boughton Monchelsea Parish Council. By reason of my membership of that Council and with my agreement, I am also a trustee of the Boughton Monchelsea Amenity Trust as are the other fourteen councillors on the Parish Council.

The Boughton Monchelsea Amenity Trust is a charitable trust set up by Deed in 1994 with the object of:

1. "the preservation, protection and improvement for the benefit of the inhabitants of Boughton Monchelsea and the neighbouring communities of any amenity or other land as shall or may at any time be vested in the Charity or in respect of which the Charity shall have an interest (and which is associated with any building or buildings where such land is of scientific, agricultural, horticultural or silvercultural interest); and
2. the provision of or assistance in the provision of facilities for recreation or other leisure time occupation for the benefit of the inhabitants of Boughton Monchelsea and the neighbouring communities".

The Trust deed provides "that the trustees shall consist when complete of all the councillors for the time being of Boughton Monchelsea Parish Council". At the present time there are no trustees who are not on the Parish Council and all new councillors are invited to become trustees.

The Charity is supported financially by the Parish Council and is actively seeking to secure land and other amenities in the parish to further the objectives of the Trust. The Trust already owns land in the parish and has option agreements in respect of other land.

Having considered the available advice from the Standards Board and from you, I along with my fellow councillors, consider that under the current Code of Conduct there may be a conflict of interest being a trustee that could be construed as prejudicial when considering matters affecting the Trust at Parish Council meetings. As more than 50% of the membership of the Parish Council are trustees, I wish to apply for a dispensation to permit me to continue as a voting member of the Council when considering matters relating to the Boughton Monchelsea Amenity Trust.

Yours sincerely

A handwritten signature in black ink, appearing to read "Sara Evans". The signature is fluid and cursive, written in a professional but personal style.

Cllr Sara Evans

Agenda Item 15

MAIDSTONE BOROUGH COUNCIL

REPORT OF THE HEAD OF LEGAL SERVICES

STANDARDS COMMITTEE

25 NOVEMBER 2009

BREDHURST PARISH COUNCIL – APPLICATION FOR DISPENSATIONS

1. BREDHURST PARISH COUNCIL

- 1.1 At your last meeting I reported applications for dispensations received from Bredhurst Parish Councillors. A copy of that report is attached at Appendix A to this report.
- 1.2 At that meeting members asked me to obtain further information relating to the Bredhurst Woodland Action Group. I attach at Appendix B the response from the Parish Clerk.
- 1.3 In the meantime I have received an application for a dispensation from the 7th Parish Councillor, Councillor Timothy J Gough and I attach a copy of that application at Appendix C.
- 1.4 I recommend that Members now consider the seven applications for dispensations made, in the light of the new information supplied by the Parish Clerk.
- 1.5 I attach at Appendix D the Guidance on Dispensations adopted at your last meeting.

2. RECOMMENDATION

- 2.1 It is recommended that Members consider granting dispensations to Councillors Bill Anderson, Stephen Bowring, Timothy Gough, Charles Hewitt, Bob Hinder, Venessa Jones and Brian Mohabir to enable them to speak and vote at meetings of the Bredhurst Parish Council when matters relating to the Bredhurst Woodland Action Group are being discussed, notwithstanding the fact that they have prejudicial interests by virtue of being members of the Action Group. Members may wish to consider whether a dispensation should be granted to the Chairman of the Group. If granted, it is recommended that they expire on 30 June 2012.

MAIDSTONE BOROUGH COUNCIL
REPORT OF THE HEAD OF LEGAL SERVICES
STANDARDS COMMITTEE
2 SEPTEMBER 2009

BREDHURST PARISH COUNCIL – APPLICATION FOR DISPENSATIONS

1. BREDHURST PARISH COUNCIL

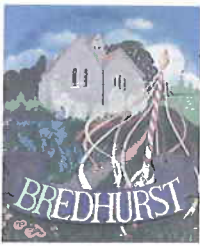
- 1.1 I have received applications for dispensations from (6) members of Bredhurst Parish Council to enable them to speak and vote at meetings of the Parish Council when matters relating to the Bredhurst Woodland Action Group are being considered notwithstanding the fact that they have prejudicial interests in the matter, by virtue of being members of the Action Group (Cllr Jones is also the Chairman of the Group). I understand that all seven Parish Councillors have prejudicial interests in this matter.
- 1.2 I attach copies of the letters from the Parish Councillors requesting dispensations.
- 1.3 The Standards Committee (Further Provisions) (England) Regulations 2009 provide (amongst other things) that a Standards Committee may grant a dispensation to a member or co-opted member:
- where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting, or
 - where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

The regulations also provide that the Councillor must submit to the Standards Committee a written request for dispensation explaining why it is desirable. If a Standards Committee concludes that, having regard to these matters, and to all the other circumstances of the case, it is appropriate to grant the dispensation, then they may grant it. Guidance on considering applications for dispensations can be found as a separate agenda item.

- 1.4 Applications have been received from Councillors Bill Anderson, Stephen Bowring, Charles Hewitt, Bob Hinder, Vanessa Jones and Brian Mohabir.

2. **RECOMMENDATION**

- 2.1 It is recommended that Members consider granting dispensations to Councillors Bill Anderson, Stephen Bowring, Charles Hewitt, Bob Hinder, Vanessa Jones and Brian Mohabir to enable them to speak and vote at meetings on the Bredhurst Parish Council or when matters relating to the Bredhurst Woodland Action Group are being discussed. Notwithstanding the fact that they have prejudicial interests by virtue of being a member of the Action Group. Members may wish to consider whether dispensation should be granted to the Chairman of the Group. It is recommended that if dispensations are granted they expire on 30 June 2012.



*in Maidstone
Borough*

Bredhurst

PARISH COUNCIL

Melanie Fooks

Camellia, Dunn Street Road, Bredhurst, Kent ME7 3NB
Telephone: 07789 498551. Email: clerk@bredhurstpc.co.uk

P Fisher Esq.
Head of Legal Services
Maidstone Borough Council
Maidstone House
King Street
Maidstone
Kent
ME15 6JQ

RECEIVED

29 OCT 2009

15 October 2009

Dear Paul

RE: APPLICATION FOR DISPENSATIONS - BREDHURST WOODLAND ACTION GROUP

I am writing in response to your letter, dated 9 September, asking for clarification of the above matter.

All Bredhurst Parish Councillors are BWAG members and are requesting dispensations as a precautionary measure to allow BWAG issues to be discussed, should the need arise. Although BPC has no involvement in the day to day running of the site, Cllrs feel it is important to keep close ties with the group. It also demonstrates to residents that both BPC & BWAG are working closely together on this major village project, with some residents finding the monthly updates given to BPC a reason to attend parish meetings - something we are always trying to encourage.

Before I answer your specific questions, it may be helpful for the Standards Committee to have some background information about BWAG.

BWAG was formed in 2005 by residents concerned about the neglect and deterioration of 600 acres of ancient woodland. The area encompasses Bredhurst, Boxley and Detling Parishes and was being destroyed by the illegal use of off-road vehicles, fly tipping on a huge commercial scale, and many other illegal activities. The area was virtually out of bounds for legitimate use. Residents approached the Parish Council for assistance, only to learn that Cllr Jones, then Vice-Chairman of BPC, had already begun to tackle this problem. With the backing of Mr Khanna, then Chairman of BPC, and the unanimous support of the council, an Advisory Committee to BPC was formed. Cllr Jones chaired this committee which was made up of Cllrs and residents who reported monthly to BPC.

Initially BWAG lobbied residents, Borough and County Councillors, local conservation and wildlife groups and our MP. This resulted in strong support for the restoration of the area and a management plan was compiled by Kent Wildlife Trust. The main obstacle faced by BWAG was the multiply ownership of the land which consists of 139 separate plots. To date, about half of the owners have been traced, with the majority granting BWAG management rights allowing the removal of rubbish and various improvements to benefit the wildlife habitat. Fund raising began to allow the work recommended by KWT to take place. Nearly all funding bodies asked

for evidence showing that the community wanted this area restored. For this reason the BWAG membership scheme was launched in 2006 and there are now over 350 members. To date, approximately £85,000 has been secured for the area which has all come from outside bodies with no financial support from BPC. Much of this funding has been spent on improvements to the public rights of way at the site.

When Cllr Jones became Chairman of BPC in 2007, she and I attended a meeting with you to take advice on improving various aspects of council business. One of your recommendations being that BWAG should seek charitable status as it had outgrown its status of an Advisory Committee. In 2009 charitable status was granted.

In response to the particular questions you have raised:

- It was only after the Standards Committee meeting on 2 September that I was alerted to the fact that you had received only 6 applications for dispensations. I know Cllr Jones emailed you on 20 July in response to your letter dated 15 July to inform you to expect 7 dispensation requests, but it appears that, for some reason, the letter sent by Cllr Gough did not reach you. I attach a copy and ask this to be considered along with the six requests you have already received.
- Cllr Jones is the only member of BPC who is a Trustee of BWAG and therefore she has management responsibilities. She is both chairman of BPC & BWAG
- The remaining 6 councillors are subscription members of BWAG
- Parish Councillors are not automatically Trustees. When BWAG was an Advisory Committee to BPC, appointments to BWAG were sanctioned by BPC. Now BWAG is a registered charity, Trustees are elected by BWAG Members.
- There are 10 Trustees:

Cllr Jones	Chairman
Mrs P Newman	Vice Chairman
Mr R Attwood	
Mr J Chalmers	
Cllr Wendy Hinder	Boxley Representative
Mr R Grimble	Detling Representative
Mrs D Foulds	
Mr D Olver	
Mrs A Callen	Membership Secretary
Mrs M Fooks	Treasurer
- There are 355 subscription members
- BWAG does not own any land but has been granted management rights by owners (nearly 100% are absentee) allowing access to remove fly tipping and to carry out environmental/habitat improvements.
- Please find attached a copy of the BWAG Trust Deed and a map of the area, as requested.

I hope that I have provided sufficient information to allow the Standards Committee to reach a decision and to grant the dispensations.

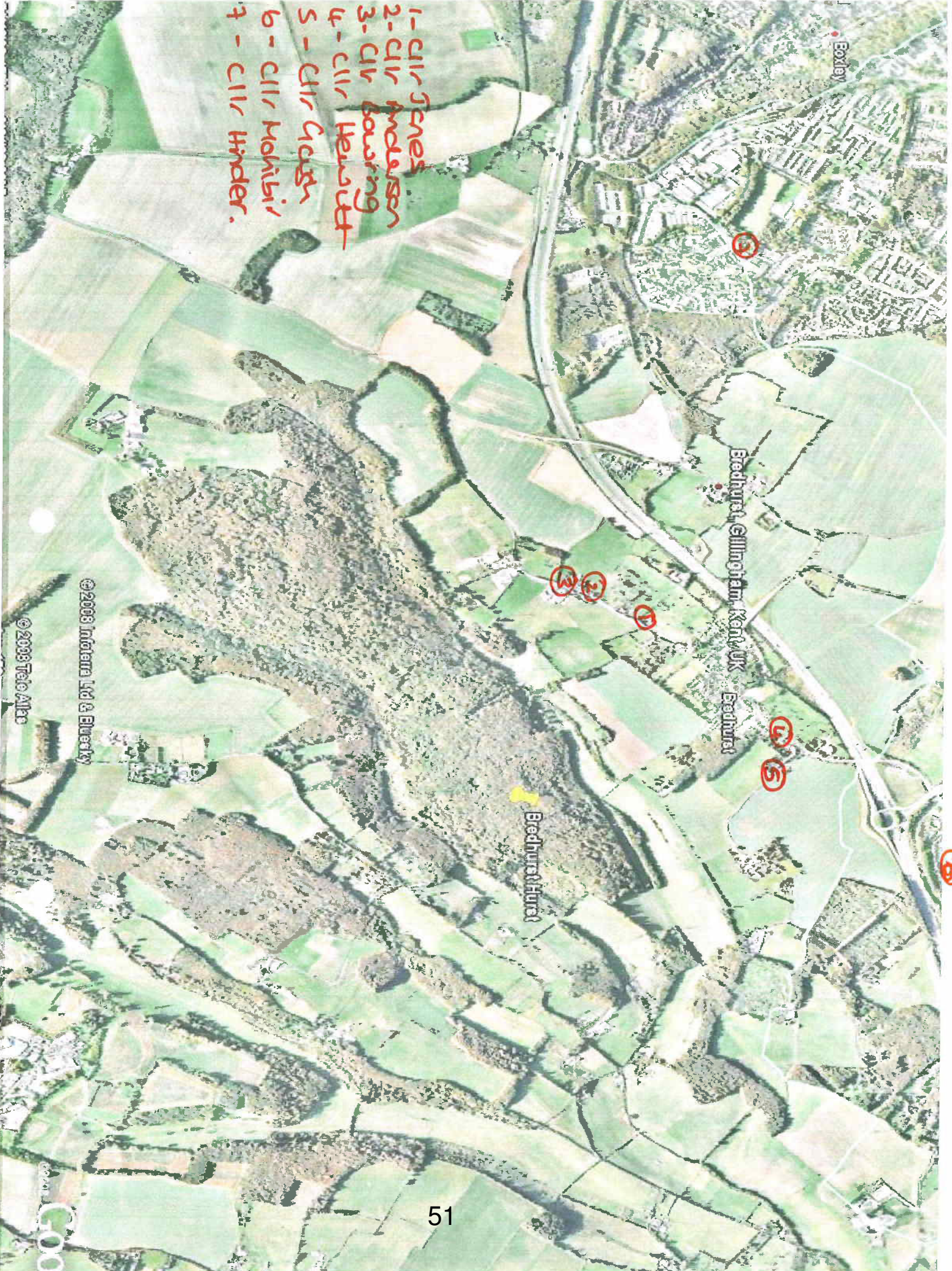
Should you require additional information BPC would be happy to attend a Standards Committee meeting to answer questions? Further information regarding BWAG can be found at www.bwag.org.uk

Yours sincerely



Mrs M Fooks
Clerk to Bredhurst Parish Council

- 1- Cllr Jones
- 2- Cllr Anderson
- 3- Cllr Bowring
- 4- Cllr Hewitt
- 5 - Cllr Gresh
- 6 - Cllr Makibi
- 7 - Cllr Hinder.



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CONSTITUTION
of
**BREDHURST WOODLAND
ACTION GROUP**

A charitable unincorporated association

Registered with the
Charity Commission for England and Wales
Registered Number 1129178

Adopted 1st April 2008

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BREDHURST WOODLAND ACTION GROUP
A Charitable Unincorporated Association

CONSTITUTION

1. Name

The name of the **Charity** is

BREDHURST WOODLAND ACTION GROUP

2. Objects

The **Objects** are:

- 2.1 To conserve the environment, and in particular Bredhurst Woodland in the County of Kent, for the benefit of the public.
- 2.2 To educate the public in the principles and practice of conservation.

3. Powers

The Charity has the following powers, which may be exercised only in promoting the **Objects**:

- 3.1 To promote or carry out research.
- 3.2 To provide advice.
- 3.3 To publish or distribute information.
- 3.4 To co-operate with other bodies.
- 3.5 To support, administer or set up other charities.
- 3.6 To raise funds (but not by means of **taxable trading**).
- 3.7 To borrow money and give security for loans (but only in accordance with the restrictions imposed by the **Charities Act**).
- 3.8 To acquire or hire property of any kind.
- 3.9 To let or dispose of property of any kind (but only in accordance with the restrictions imposed by the **Charities Act**).
- 3.10 To make grants or loans of money and to give guarantees.

- 3.11 To set aside funds for special purposes or as reserves against future expenditure.
- 3.12 To deposit or invest in funds in any manner (but to invest only after obtaining such advice from a **financial expert** as the Board of **Trustees** consider necessary and having regard to the suitability of investments and the need for diversification).
- 3.13 To delegate the management of investments to a financial expert, but only on terms that:
- (1) The investment policy is recorded **in writing** for the financial expert by the Board of Trustees.
 - (2) Every transaction is reported promptly to the Board of Trustees.
 - (3) The performance of the investments is reviewed regularly with the Board of Trustees.
 - (4) The Board of Trustees are entitled to cancel the delegation arrangement at any time.
 - (5) The investment policy and the delegation arrangement are reviewed at least once a **year**.
 - (6) All payments due to the financial expert are on a scale or at a level which is agreed in advance and are reported promptly to the Board of Trustees on receipt.
 - (7) The financial expert must not do anything outside the powers of the Board of Trustees.
- 3.14 To insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required.
- 3.15 To pay for **indemnity insurance** for the Trustees.
- 3.16 Subject to sub-clause 9.3, to employ paid or unpaid agents, staff or advisers.
- 3.17 To enter into **contracts to provide services** to or on behalf of other bodies.
- 3.18 To establish or acquire subsidiary companies to assist or act as agents for the Charity.
- 3.19 To pay the costs of **forming the Charity**.
- 3.20 To do anything else within the law which promotes or helps to promote the Objects.

4. Membership

- 4.1 **Membership** is open to any individual or organisation interested in promoting the Objects.
- 4.2 The Board of Trustees may establish different classes of membership prescribe their respective privileges and duties and set the amounts of any subscriptions.
- 4.3 The Board of Trustees must keep a register of **members**.
- 4.4 A member whose subscription is three months in arrears ceases to be a member but may be reinstated on payment of the amount due.
- 4.5 A member may resign by **written** notice to the Charity.
- 4.6 The Board of Trustees may refuse membership to any person if in their reasonable opinion that person being a member would be harmful to the Charity.
- 4.7 The Board of Trustees may by resolution terminate the membership of any member on the ground that in their reasonable opinion the member's continued membership would be harmful to the Charity. The Board of Trustees may only pass such a resolution after notifying the member in writing and considering the matter in the light of any written representations which the member puts forward within **14 clear days** after receiving notice. The Board shall offer the member the opportunity to meet with the Board or such person or persons it may appoint for this purpose. At such a meeting the member shall be entitled to be accompanied and assisted by a friend. Such a member is not entitled to a refund of any subscription.
- 4.8 Membership of the Charity is not transferable.

5. General Meetings

- 5.1 Members are entitled to attend general meetings of the Charity either in person or (in the case of a member organisation) through an **authorised representative**. General meetings are called on at least fourteen clear days' written notice to the members specifying the business to be transacted.
- 5.2 There is a quorum at a general meeting if the number of members or authorised representatives personally present is at least three. Should no quorum be present within half an hour from the time appointed for the meeting then the meeting will be reconvened on seven clear days notice and held within twenty eight days of the date originally fixed. If at such a reconvened meeting no quorum is present within half an

hour from the time appointed for the holding of the meeting, then the members present shall be a quorum.

- 5.4 The **Chairman** or (if the Chairman is unable or unwilling to do so) the **Deputy Chairman** or (if the Deputy Chairman is unable or unwilling to do so) some other member appointed by the trustees who are present or failing that elected by those present, presides at a general meeting.
- 5.5 Except where otherwise provided by this Constitution, every issue at a general meeting is determined by a simple majority of votes cast by the members present in person or (in the case of a member organisation) through an authorised representative.
- 5.6 Except where otherwise provided by this Constitution, voting is by a show of hands, but the chairman of the meeting or not less than five members present in person or (in the case of a member organisation) through an authorised representative may require, before or after a show of hands, a poll vote.
- 5.7 Members may not appoint a proxy unless the Board of Trustees invites members to appoint a proxy when they shall issue proxy forms to all members with the notice of the meeting.
- 5.8 Except for the chairman of the meeting, who has a second or casting vote, every member present in person or (in the case of a member organisation) through an authorised representative is entitled to one vote on every issue.
- 5.9 An **AGM** must be held in every year.
- 5.10 At an **AGM** the members:
 - (1) Approve the minutes of the previous **AGM** and any intervening **EGMs**.
 - (2) Receive the report of the Board of Trustees on the Charity's activities since the previous **AGM**.
 - (3) Receive the accounts of the Charity for the previous **financial year**.
 - (4) Appoint an auditor or **independent examiner** for the Charity where required or delegate such appointment to the Board of Trustees.
 - (5) Accept the retirement of those **elected Trustees** who wish to retire or are retiring by rotation.
 - (6) Elect **elected Trustees** to fill the vacancies arising, through an election process determined by the Trustees which includes members being invited to nominate candidates and all

candidates names being supplied to members with the notice of the meeting; and

- (7) Discuss and determine any issues of policy or deal with any other business put before them by the Board of Trustees.

5.11 Any general meeting which is not an AGM is an EGM.

5.12 An EGM may be called at any time by the Board of Trustees and must be called within fourteen clear days after a written request to the Board of Trustees from at least ten members unless a majority of the requesting members agree to a longer period.

5.13 A members' request for an EGM is subject to the following:

- (1) A members' request shall state the business of the meeting and the resolution or resolutions to be put to the meeting.
- (2) A members' request shall be accompanied by the name, address and signature of each member making the request. The request shall be in writing and may be on more than one piece of paper but each page which carries a member's signature shall state the resolution or resolutions.
- (3) A members' request may be accompanied by a statement which, without the agreement of the Board of Trustees, shall not exceed one thousand words and this statement shall be sent to all members with the notice of the meeting.
- (4) Any person directly affected by the resolution shall be supplied by the Trustees with a copy of the resolution and member's statement and be invited by the Board of Trustees to submit a statement which, without the agreement of the Trustees, shall not exceed one thousand words, and this statement shall be sent to all members with the notice of the meeting.
- (5) The Board of Trustees may circulate one or more statements to accompany the notice of the meeting or otherwise.
- (6) The Board of Trustees are not obliged to call a meeting or circulate a resolution or statement which they reasonably consider is vexatious, frivolous or unlawful but shall explain their reasons to those members who have requested a meeting and invite them to amend such resolution or statement.

6. The Trustees

6.1 The Trustees as **charity trustees** have control of the Charity and its property and funds.

- 6.2 The Board of Trustees when complete consists of ten individuals, all of whom must be members or authorised representatives.
- 6.3 The Board of Trustees consists of:
- (1) Eight elected Trustees;
 - (2) Two **selected Trustees**.
- 6.4 One third (or the number nearest one third) of the total places for elected Trustees must be vacated at each AGM, those trustees longest in office since their last election retiring first and the choice between any of equal service being made by drawing lots.
- 6.5 No elected Trustee shall stand for re-election at an AGM if he or she has served six consecutive periods between one AGM and the next without subsequently not being a trustee for the period between one AGM and the next. Such a retiring Trustee shall be eligible for co-optation as a selected Trustee but shall not be eligible to stand for election as an elected Trustee until he or she has not been a Trustee for the period between one AGM and the next.
- 6.6 The Board of Trustees may co-opt as a Trustee any member to fill a casual vacancy amongst the elected Trustees.
- 6.7 Selected Trustees are appointed by resolution of the Board of Trustees to hold office until the end of the next AGM.
- 6.8 Every Trustee after appointment or reappointment must sign a declaration of willingness to act as a charity trustee of the Charity before he or she may vote at any meeting of the Board of Trustees.
- 6.9 A Trustee's term of office automatically terminates if he or she:
- (1) Is disqualified under the Charities Act from acting as a charity trustee.
 - (2) Is incapable, whether mentally or physically, of managing his or her own affairs.
 - (3) Is absent from three consecutive meetings of the Board of Trustees.
 - (4) Ceases to be a member of the Charity (but such a person, on resuming membership of the Charity, may be reinstated by resolution of the other Trustees before the next AGM).
 - (7) Resigns by written notice to the Board of Trustees (but only if at least two Trustees will remain in office).

- (8) Is removed by a resolution passed by all the other Trustees after they have invited the views of the Trustee concerned and considered the matter in the light of any such views. The Board shall offer the Trustee the opportunity to meet with the Board and at such a meeting the Trustee shall be entitled to be accompanied and assisted by a friend.
- 6.10 A retiring Trustee is entitled on written request to an indemnity from the continuing Trustees at the expense of the Charity in respect of any liabilities properly incurred while he or she held office.
- 6.11 A technical defect in the appointment of a Trustee of which the Board of Trustees are unaware at the time does not invalidate decisions taken at a meeting.

7. Board of Trustees' Proceedings

- 7.1 The Trustees must hold at least two meetings each year.
- 7.2 A quorum at a meeting of the Board of Trustees is three Trustees, but if the total number of trustees is below three then the remaining trustees may act but only to co-opt additional trustees.
- 7.3 A Board meeting of the Trustees may be held either in person or by suitable electronic means agreed by the Trustees in which all participants may communicate with all other participants.
- 7.4 The Chairman or (if the Chairman is unable or unwilling to do so) the Deputy Chairman or (if the Deputy Chairman is unable or unwilling to do so) some other member of the Trustees chosen by the Trustees present presides at each meeting of the Board of Trustees.
- 7.5 Every issue may be determined by a simple majority of the votes cast at a meeting of the Board of Trustees but a resolution which is in writing and signed by all the Trustees is as valid as a resolution passed at a meeting and for this purpose the resolution may be contained in more than one document and will be treated as passed on the date of the last signature.
- 7.6 Except for the chairman of the meeting, who has a second or casting vote, every Trustee has one vote on each issue.
- 7.7 A procedural defect of which the Board of Trustees are unaware at the time does not invalidate decisions taken at a meeting of the Board of Trustees.

8. Trustees' Powers

The Trustees have the following powers in the administration of the Charity:

- 8.1 To appoint and remove a Chairman, a Deputy Chairman and other officers from among their number on such terms as the Board of Trustees from time to time decide.
- 8.2 To appoint any individual (with his or her consent) and on such terms as the Board of trustees from time to time decide, with such honorary titles as Patron, President or Vice-President of the Charity.
- 8.3 To delegate any of the Board's functions to committees consisting of two or more individuals appointed by them (but at least one member of every committee must be a Trustee and all proceedings of committees must be reported promptly to the Board of Trustees).
- 8.4 To make standing orders consistent with this Constitution to govern proceedings at general meetings.
- 8.5 To make rules consistent with this Constitution to govern their proceedings and proceedings of committees.
- 8.6 To make regulations consistent with this Constitution to govern the administration of the Charity (including the operation of bank accounts and the commitment of funds).
- 8.7 To resolve, or establish procedures to assist the resolution of, disputes within the Charity.
- 8.8 To exercise any powers of the Charity which are not reserved to a general meeting.

9. Benefits to Members and Trustees

- 9.1 The property and funds of the Charity must be used only for promoting the Objects and do not belong to the members or the Trustees.
- 9.2 No Trustee may receive any payment of money or other **material benefit** (whether direct or indirect) from the Charity except:
 - (1) Under sub-clauses 3.15 (indemnity insurance) and 9.3 (contractual payments).
 - (2) Reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in the administration of the Charity.
 - (3) Interest at a reasonable rate on money lent to the Charity.
 - (4) A reasonable rent or hiring fee for property let or hired to the Charity.

- (5) An indemnity in respect of any liabilities properly incurred in running the Charity (including the costs of a successful defence to criminal proceedings).
- (6) Payment to a company in which the Trustee has no more than a one per cent shareholding.
- (7) Charitable benefits in his or her capacity as a **beneficiary** ; and
- (8) In exceptional cases, other payments or material benefits (but only with the prior written approval of the Commission).

9.3 A Trustee may not be an employee of the Charity, but a Trustee or **connected person** may enter into a contract with the Charity to supply goods or services in return for a payment or other material benefit, but only if:

- (1) The goods or services are actually required by the Charity.
- (2) The nature and level of the benefit is no more than reasonable in relation to the value of the goods or services and is set at a meeting of the Trustees in accordance with the procedure in sub-clause 9.4 and.
- (3) Not more than half of the Trustees are interested in any such contract in any one financial year.

9.4 Whenever a Trustee has a personal interest in a matter to be discussed at a meeting of the Trustees or a committee, he or she must:

- (1) Declare an interest before the meeting or at the meeting before discussion begins on the matter.
- (2) Be absent from that part of the meeting unless expressly invited to remain in order to provide information.
- (3) Not be counted in the quorum for that part of the meeting.
- (4) Be absent during the vote and have no vote on the matter.

10. Property and Funds

10.1 Funds which are not required for immediate use (including those which will be required for use at a future date) must be placed on deposit or invested in accordance with clause 3.12 until needed.

10.2 Investments and other property of the Charity may be held:

- (1) In the names of the Trustees for the time being (or in the corporate name of the Trustees if incorporated under the Charities Act).
 - (2) In the name of a **nominee company** acting under the control of the Board of Trustees or of a financial expert acting on their instructions.
 - (3) In the name of at least two and up to four holding trustees for the Charity who may be appointed (and removed) by resolution of the Trustees.
 - (4) In the name of a **trust corporation** as a holding trustee for the Charity, which must be appointed (and may be removed) by deed executed by the Board of Trustees.
- 10.3 Documents and physical assets may be deposited with any company registered or having a place of business in England and Wales as **custodian**.
- 10.4 Any nominee company acting under sub-clause 10.2(2), any trust corporation appointed under sub-clause 10.2(4) and any custodian appointed under sub-clause 10.3 may be paid reasonable fees.

11. Records and Accounts

- 11.1 The Board of Trustees must comply with the requirements of the Charities Act as to the keeping of financial records, the audit or independent examination of accounts and the preparation and transmission to the Commission of:
- (1) Annual returns;
 - (2) Annual reports; and
 - (3) Annual statements of account.
- 11.2 The Board of Trustees must keep proper records of:
- (1) All proceedings at general meetings;
 - (2) All proceedings at meetings of Trustees;
 - (3) All reports of committees; and
 - (4) All professional advice obtained.
- 11.3 Accounting records relating to the Charity must be made available for inspection by any Trustee at any time during normal office hours and

may be made available for inspection by members if the Board of Trustees so decide.

- 11.4 A copy of the Charity's latest available statement of account must be supplied on request to any Trustee or member. A copy must also be supplied, within two **months**, to any other person who makes a written request and pays the Charity's reasonable costs.

12. Notices

- 12.1 Notices under this Constitution may be sent by hand, by post or by suitable electronic means or with or within any journal distributed by the Charity.
- 12.2 The address at which a member is entitled to receive notices is the address noted in the register of members (or, if none, the last known address).
- 12.3 Any notice given in accordance with this Constitution is to be treated for all purposes as having been received:
- (1) 24 hours after being sent by electronic means or delivered by hand to the relevant address,
 - (2) Three clear days after being sent by first class post to that address,
 - (3) Four clear days after being sent by second class post or overseas post to that address,
 - (4) On being handed to the member or its authorised representative personally or, if earlier,
 - (5) As soon as the member acknowledges actual receipt.
- 12.4 A technical defect in the giving of notice of which the members or the Board of Trustees are unaware at the time does not invalidate decisions taken at a meeting.
- 12.5 The accidental failure to deliver a member's notice on time or at all does not invalidate decisions taken at a meeting.

13. Amendments

This Constitution may be amended at a general meeting by a two-thirds majority of the votes cast, but:

- 13.1 The members must be given twenty one clear days' notice of the proposed amendments.

- 13.2 No amendment is valid if it would make a **fundamental change** to the Objects or to this clause or destroy the charitable status of the Charity.
- 13.3 Clause 9 may not be amended without the prior written consent of the Commission.

14. Incorporation

- 14.1 The Board of Trustees may apply to the Commission under the Charities Act for a certificate of incorporation relating to the Trustees but only after consulting the members at a general meeting.
- 14.2 The members at a general meeting may authorise the Board of Trustees to transfer the assets and liabilities of the Charity to a limited company established for exclusively charitable purposes within, the same as or similar to the Objects and of which the members of the Charity will be entitled to be members.
- 14.3 On a transfer under clause 14.2 the Board of Trustees must ensure that all necessary steps are taken as to:
- (1) The transfer of land and other property;
 - (2) The novation of contracts of employment and transfer of pension rights; and
 - (3) The trusteeship of any property held for special purposes.

15. Dissolution

- 15.1 If at any time members at a general meeting decide to dissolve the Charity, the Trustees will remain in office as charity trustees and will be responsible for the orderly winding up of the Charity's affairs.
- 15.2 After making provision for all outstanding liabilities of the Charity, the Board of Trustees must apply the remaining property and funds in one or more of the following ways:
- (1) By transfer to one or more other bodies established for exclusively charitable purposes within, the same as or similar to the Objects;
 - (2) Directly for the Objects or charitable purposes within or similar to the Objects; or
 - (3) In such other manner consistent with charitable status as the Commission approve in writing in advance.

15.3 A final report and statement of account relating to the Charity must be sent to the Commission.

16. **Interpretation**

In this Constitution:

16.1 'AGM' means an annual general meeting of the Charity;

'Authorised representative' means an individual who is authorised by a member organisation to act on its behalf at meetings of the Charity;

'The Board' means the trustees collectively acting as the governing body of the Charity;

'Beneficiary' means the general public;

'The Chairman' means the chairman of the Charity appointed by the Board of trustees;

'The Charity' means the charity comprised in this Constitution;

'Charity trustees' has the meaning prescribed by section 97(1) of the Charities Act;

'The Charities Act' means the Charities Act 1993;

'Clear day' means 24 hours from midnight following the relevant event;

'The Commission' means the Charity Commission for England and Wales;

'connected person' means any spouse, partner, parent, child, brother, sister, grandparent or grandchild of a Trustee, any **firm** of which a Trustee is a member, or employee or a company of which a Trustee is a director, employee or shareholder being beneficially entitled to more than one per cent of the share capital;

'Custodian' has the meaning prescribed by section 17(2) of the Trustee Act 2000;

'Deputy chairman' means the deputy chairman of the charity appointed by the Board of trustees;

'EGM' means a general meeting of the members of the Charity which is not an AGM;

'Elected Trustees' means those Trustees who are elected at the AGM;

‘Financial expert’ means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;

‘Financial year’ means the Charity’s financial year;

‘Firm’ includes a limited liability partnership;

‘Fundamental change’ means such a change as would not have been within the reasonable contemplation of a person making a donation to the Charity;

‘holding trustee’ means an individual or corporate body responsible for holding the title to property but not authorised to make any decisions relating to its use, investment or disposal;

‘indemnity insurance’ means insurance against personal liability incurred by any Trustee for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the Trustee concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty;

‘Independent examiner’ has the meaning prescribed by section 43(3)(a) of the Charities Act;

‘Material benefit’ means a benefit which may not be financial but has a monetary value;

‘Member’ and ‘membership’ refer to membership of the Charity;

‘Months’ means calendar months;

‘The Objects’ means the charitable objects of the Charity set out in clause 2;

‘Selected Trustees’ means those Trustees who are selected by the elected Trustees and co-opted as Trustees.

‘Taxable trading’ means carrying on a trade or business on a continuing basis for the principal purpose of raising funds and not for the purpose of actually carrying out the Objects;

‘Trust corporation’ has the meaning prescribed by section 205(1)(cxxviii) of the Law of Property Act 1925 (but does not include the Public Trustee);

‘The Trustee’ means a member of the governing body of the Charity and ‘Trustees’ the members of the governing body;

‘Written’ or ‘in writing’ refers to a legible document on paper including a fax message;

'Year' means calendar year.

- 16.2 References to an Act of Parliament are references to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.

ADOPTED at a meeting held at the Village Hall, Hurstwood Road, Bredhurst, Kent
on 1st April 2008

SIGNED BY THE CHAIRMAN OF THE MEETING

Name

Signature

WITNESSED

Name

Address

.....

Occupation

Signature

148 Lonsdale
Drive
Rainham
Kent
ME8 9HX

Mr S P Fisher
Head of Corporate Law and Legal Services
Maidstone Borough Council
London House
5-11 London Road
Maidstone
Kent
ME15 8HR

17 July 2009

Dear Mr Fisher

Application for Dispensation – Bredhurst Parish Council

I should like to apply to the Borough Council's Standards Committee for a dispensation to speak and vote at meetings of the Bredhurst Parish Council whenever matters relating to the Bredhurst Woodland Action Group (BWAG) are being discussed, notwithstanding the fact that I have a prejudicial interest in that matter.

BWAG, set up in 2005, was initially an Advisory Committee to Bredhurst Parish Council. In April 2009 it was approved by the Charity Commission as a Registered Charity (No. 1129178) and aims to address the misuse of 600 acres of ancient woodland caused by fly tipping and off road vehicles. The woodland is within the parishes of Bredhurst, Boxley and Detling. The Objects of the Charity are:

- To conserve the environment, and in particular Bredhurst Woodland in the County of Kent, for the benefit of the public.
- To educate the public in the principles and practice of conservation.

BWAG is working with a wide range of partners including KCC, MBC, the Kent Downs AONB Unit and Kent Wildlife Trust. Funding to improve the area is sourced from numerous organisations including KCC, Lottery funding and BWAG Members. To date no funding has been provided to BWAG from Bredhurst Parish Council.

The nature of my interest is that I am a member of the Bredhurst Woodland Action Group. The Parish Council has seven Members, all of which are members of Bredhurst Woodland Action Group and thereby sharing my prejudicial interest.

I believe that it would be desirable to grant me a dispensation to participate whenever the Parish Council is discussing matters relating to the Bredhurst Woodland Action Group. We should all continue to participate fully in these discussions.

Yours sincerely

Cllr Timothy J Gough
Bredhurst Parish Council

DISPENSATIONS

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introduction

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

dispensations

Granting dispensations under the new regulations

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

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

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

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

Part 4 of the regulations sets out the

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

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

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

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

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

There are two exceptions to this:

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

dispensations

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

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

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

Legal requirements for granting dispensations

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

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

of the authority.

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

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

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

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

dispensations

Issues and criteria to consider when granting dispensations

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

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

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

Considerations for dealing with dispensation requests

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

For instance, it is unlikely that it would be appropriate to grant a dispensation

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

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

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

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

dispensations

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

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

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

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

Practical guidance on the process for granting dispensations and recording them

The process for making requests for dispensations, the criteria that will be applied and the process that will be followed when the request is considered should all be clearly understood by those

concerned. Therefore, standards committees should set all this out and make it available to members.

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

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

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

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

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

It is our view that the regulations do not

dispensations

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

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

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



Code revision

We reported on Communities and Local Government's consultation on proposals for a revised code for members and the introduction of a national code for officers in [issue 41](#) of the *Bulletin*.

Many of you have been in touch to find out when you can expect the new code for members. The department for Communities and Local Government is responsible for dealing with the revisions and current advice is that a revised code will be ready in late autumn 2009.

We do not anticipate many changes to the Code this time around. The main change will be to allow the Code to cover members in their non-official capacity, where that conduct would be a criminal offence.

We have been informed that further consultation on the introduction of a code for officers is likely to take place in 2010.

Imposing sanctions: Written apologies

Regulation 19 of the [Standards Committee \(England\) Regulations 2008](#) lists the 11 sanctions available to a standards committee. Standards committees must be careful that any sanctions they choose are included in this list. For example, a verbal apology is not listed and would not therefore be a valid sanction. Asking a member to submit a written apology in a form specified by the committee is valid.

The written apology sanction is a difficult sanction to enforce if a member chooses not to comply with it. Standards committees should consider this when deciding on which sanction to impose.

If a standards committee decides that a written apology is appropriate it should:

- specify the form in which the apology should be written
- set a time-limit for the apology to be written.

If a member fails to issue the written apology, the member may face a further complaint of potentially bringing their office or authority into disrepute by failing to comply with the sanction. However, it could be argued that it would be a better use of council resources to ensure the original sanction allows for the possibility that the apology is not given.

The regulations allow for the suspension of a member for a period not exceeding six months or until such time as the member submits a written apology in a form specified

by the standards committee. In this way a standards committee can ensure that if a member does not apologise, they will remain suspended for a period of up to six months or until they do.

Care should be taken when deciding on the period of suspension that would apply if no apology is given. It should properly reflect the seriousness of the breach of the code of conduct. Imposing a six month suspension period to encourage an apology to be given would be a misuse of the power.

Standards committees should carefully consider the appropriateness of imposing a written apology when a member has shown no remorse for their conduct and no evidence at the hearing to indicate they are able to acknowledge their behaviour and its impact on others. Any apology issued in such circumstances is unlikely to be seen as being genuine.

For more information on sanctions please see our [Standards Committee Determinations guidance](#).

Intimidation and the Code

On July 23 2009, the President of the Adjudication Panel for England made a significant decision in the case of Councillor Buchanan, an ex-councillor of Somerset County Council.

This is an important judgment as it is the first occasion in which the Adjudication Panel had to deal with a potential breach of paragraph 3(2)(c) of the Code of Conduct. Paragraph 3(2)(c) concerns the intimidation of, or an attempt to intimidate, a complainant in a Code of Conduct investigation.

The Facts

In April 2007, the Chief Executive of Somerset County Council made a number of complaints about Councillor Buchanan's behaviour to Standards for England. Later on that year, Councillor Buchanan made a formal complaint to the council about the Chief Executive's conduct which the council decided not to investigate.

Following a further complaint from the Chief Executive about Councillor Buchanan, the council's Liberal Democrat group asked Councillor Buchanan if he would suspend himself from the group pending the outcome of all ongoing investigations, but he declined. Councillor Buchanan was notified that his membership of the Liberal Democrat group had been formally revoked on 5 December 2007.

On that same day, Councillor Buchanan wrote a letter to the Association of Local Authority Chief Executives, (ALACE) stating formal complaints about the Chief Executive and listed five headings of inappropriate and unacceptable types of behaviour that the Chief Executive had allegedly committed. And five days later, he sent a letter in identical terms to the Society of Local Authority Chief Executives (SOLACE).

On 15 December 2007 Councillor Buchanan further wrote a formal complaint to the council's monitoring officer in almost identical terms.

The Chief Executive then complained about Councillor Buchanan's motivation and intent in making the serious allegations about him in the letters. This was because Councillor Buchanan knew that Chief Executive was the complainant in an ongoing investigation.

Against these facts the Tribunal had to decide whether:

- Councillor Buchanan had brought his office or authority into disrepute
- had used his position to improperly disadvantage the Chief Executive
- had intimidated or attempted to intimidate the Chief Executive.

The respondent's case was that he had either witnessed or been told about the Chief Executive's alleged behaviour and had previously raised his concerns about the behaviour with various senior officers of the council.

The Adjudication Panel's findings

The Tribunal's findings were that Councillor Buchanan had not voiced the concerns he was now alleging and that:

- although he may have formed a belief about the seriousness of the alleged behaviour, there was no evidence to suggest that it was reasonable for him to have done so
- whatever he had seen, he did not at the time regard the alleged incidents as seriously as he was asserting at the time he wrote the letters
- he had knowingly exaggerated the facts about the Chief Executive's style and performance in order to strengthen his allegations of serious misconduct.

Counsel for the ethical standards officer (ESO) had helpfully referred the Adjudication Panel to the Shorter Oxford Dictionary definition of the word 'intimidate' as meaning terrify, overawe, cow. The dictionary suggested the word was now used especially in order to mean to force to or to deter from some act by threats of violence.

Counsel for the ESO also referred the Tribunal to R v Patresca [2004] EWCA Crim 2437, which concerned an offence under Section 51 of the Criminal Justice and Public Order Act 1994. This proves that a person commits an offence if he or she does an act:

- (a) which intimidates and is intended to intimidate another person (the victim)
- (b) knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness
- (c) intending thereby to cause the investigation or the course of justice to be obstructed perverted or interfered with.

The Court of Appeal noted that the Criminal Justice and Public Order Act provided that "an intimidatory act which consists of threats may threaten financial as well as physical harm".

In the course of the judgment, May LJ confirmed that 'intimidate' and 'intimidation' are ordinary English words and endorsed the dictionary definition referred to above and stated:

"In our judgement, a person does an act which intimidates another person within section 51 (1) (a) of the 1944 Act if he puts the victim in fear. He also does it if he seeks to deter the victim from some relevant action by threat or violence. A threat unaccompanied by violence may be sufficient and the threat need not necessarily be a threat of violence. The act must be intended to intimidate. The person doing the act has to know that the

victim is a ...witness or potential witness..., He has to do the act intending thereby for the cause of justice to be obstructed, perverted or interfered with. A person may intimidate another person without the victim being intimidated...An act may amount to intimidation even though the victim is sufficiently steadfast not to be intimidated.

"In our judgement pressure to change evidence alone is insufficient, Pressure alone might be unexceptional and entirely proper at least if applied in an honest belief, for instance that what was sought was evidence which would be truthful. Alternatively pressure might be improper but lack any element of intimidation, for example a bribe. For a person to intimidate another person the pressure must put the victim in some fear, or if not there must nevertheless be an element of threat or violence such that the pressure is improper pressure."

Against this background, the Case Tribunal had no doubt that in writing the letters to ALACE and SOLACE and later to the council, Councillor Buchanan was motivated by a desire to cause harm to the Chief Executive whom he saw as responsible for the collapse of his political career.

The Case Tribunal was also in no doubt that in writing those letters, the respondent intended to cause the Chief Executive a disadvantage both in terms of his future employment with the council or more widely. Because those letters were submitted essentially as an act of revenge, the respondent did use his position improperly and had thus failed to follow the provisions of paragraph 6(a) of the council's Code of Conduct.

The Tribunal also found that even though there was no evidence that the Chief Executive was intimidated, that did not of itself mean that the allegation of a breach of paragraph 3 (c) failed. There would still be such a breach if the respondent had attempted such intimidation.

The Case Tribunal believed that for the claim to succeed it would have to accept that the letters were intended to intimidate the Chief Executive into:

- altering any evidence he was called upon to give against the Councillor; **or**
- not making further complaints about the Councillor.

On the facts of this particular case the Case Tribunal concluded that neither were Councillor Buchanan's intention. The evidence here was that the respondent was seeking revenge for the Chief Executive's past actions rather than seeking to intimidate him. Therefore there was no breach of paragraph 3(c) of the council's Code.

The Case Tribunal's view was that the respondent, in allowing his actions to be motivated by his desire for revenge, had shown himself to be unfit to be a councillor and local authorities should be protected from his membership.

Although the respondent had by then ceased to be a councillor, he was disqualified was two years.

You can read the Adjudication Panel's decision in this case on its [website](#).

New organisational design for SfE

During the summer, Standards for England has been making progress with an internal restructure which coincides with three new senior officers taking up their posts.

Our three new directors are Director of Risk Vivienne Horton, Director of Regulation Tim Leslie, and Director of Standards Steve Barrow.

The restructuring allows us to align our resources more closely with our role as a strategic regulator and to deliver the tasks we have set ourselves in our corporate plan. Our day-to-day Regulation activities – investigations, guidance, liaison and monitoring – fall within our new Regulation directorate.

In the new Risk directorate, Vivienne leads on our approach to assessing and managing standards risks. Within the new Standards directorate we are developing our knowledge base, our approach to strategic regulation and, of course, our own standards.

Corporate Plan and Annual Report published

Our Annual Report for 2008-09 was laid before Parliament in July. It contained a summary of our work and all of the required corporate reporting of financial arrangements.

We think you'll be more interested in our Annual Review of 2008-09 which we expect to publish in the autumn. That's a little later in the year than we've published our annual review in the past, but we wanted this year to be able to include a significant digest of the information supplied to us by authorities in our annual returns.

The document will be in two parts – a review of our work at Standards for England, and a review of the first year of the local framework based on the information you've supplied us. We'll be highlighting plenty of examples of what we consider to be notable practice, and setting out some of the issues we wish to tackle as regulator, based on what you've said.

Copies will be distributed to all authorities and we'll publish online too.

In the early part of this year, we've been operating to a draft corporate plan pending sign off by the responsible minister in our sponsor department, Communities and Local Government. The plan was signed off earlier in the summer and we have now published our corporate plan under the title of The Changing Role of the Standards Board for England.

Copies have been sent to monitoring officers and it is also available to download [here](#).

Review of online monitoring system - an update

The majority of monitoring officers believe that our Quarterly Returns and Annual Returns are working effectively, according to our research.

During the summer, our research team conducted the final part of its review of Standards for England's online monitoring system. This forms part of a programme of work to assess how well the system is working, and was the final part of a review project that started in June 2008.

For this part of the research, the team distributed surveys to a random sample of monitoring officers and officers who are nominated to make an online submission. Some 50 surveys were sent to assess satisfaction levels with the quarterly return, and another 50 for the annual return (this was the first time this return had been used by stakeholders). We had a good response to our survey with about half the questionnaires being returned. We would like to thank all those who participated in the survey.

The survey's results show that the majority of monitoring officers/nominated staff surveyed continue to agree that the quarterly return is working effectively, with respondents encountering minimal or no difficulty in submitting their return. There were plenty of suggestions from respondents on how to further develop the form now that the quarterly return has been operational for over a year.

The annual return survey also showed that stakeholders are pleased with how the annual return form worked during its first run. There were lots of suggestions from respondents on how the form can be enhanced in the future, with certain sections of the form being considered more relevant than others. These suggestions have been passed on to our annual return development team, and will be incorporated into the design of next year's form.

If you have any questions about this review or future reviews of the system, please contact Tom Bandenburg, Research Assistant: 0161 817 5427 or email: tom.bandenburg@standardsforengland.gov.uk.

That's a wrap!

Editing is now underway for our new training DVD on Local Assessment following a successful shoot last month. Viewers will follow the work of Jack Ridley and his fellow assessment sub-committee members as they look at a variety of complaints about councillors covered by their standards committee.

The film is designed to help standards committees and officers who are involved in the assessment of complaints that a member may have breached the Code of Conduct. It will take viewers through the main stages of local assessment, exploring important or contentious issues along the way.

Learning points are interspersed with the drama. Standard DVD extras including scene selection and subtitles will also be available.

Copies of the DVD will be sent to all monitoring officers in October, and we look forward to hearing your thoughts.

Annual Assembly 2009: Bringing standards into focus

There are just a handful of places left for the 2009 Annual Assembly, 'Bringing standards into focus', at the ICC, Birmingham, on 12-13 October 2009.

This year, we've responded to your call for more sessions focused on good practice, and the programme is full of opportunities for you to share the lessons you've learnt about the local standards framework. A great range of speakers are now on board, including standards committee members and officers from authorities across the country, as well as all those shortlisted for the 2009 LGC Standards and Ethics award. Full details of the programme, including confirmed speakers, is available [here](#).

Solicitors attending the Assembly can earn 10.25 bonus credits towards their continuing professional development, as the event is certified to count towards SRA's CPD scheme.

Breakout sessions are filling up fast and if you have secured your place at the conference you are urged to choose your sessions and return your preference form as soon as possible to avoid disappointment.

Changes at the Adjudication Panel for England

In Bulletin [issue 42](#) we wrote about the Adjudication Panel for England's integration into the new unified tribunals' structure.

The Adjudication Panel's work is due to transfer into the new General Regulatory Chamber (GRC) within the First-tier Tribunal in January 2010, subject to Parliamentary approval. The GRC is a new chamber that will bring together individual tribunals that hear appeals on regulatory issues.

From January 2010, proceedings which would previously have been before the Panel's tribunals, and decisions previously made by the President of the Adjudication Panel, will be undertaken in the GRC of the First-tier Tribunal. Appeals from the GRC will be to the Administrative Appeals Chamber of the Upper Tribunal.

These changes are part of a programme of tribunal reform that began with the establishment of the First-tier and Upper Tribunals in November last year. This put in place a new flexible structure where services can be built that are increasingly responsive to the needs of users.

The independent status of the judicial office holders who consider the references and appeals that come to the Adjudication Panel is not affected by the transfer into the unified structure. Tribunal users will continue to receive a specialist service following the changes, as members of the Adjudication Panel will move into the new First-tier Tribunal. They will continue to deal with the references and appeals on matters arising from the operation of the Code.

You can find out more about the merger [here](#).

All postal correspondence, including standards committee referrals and subject member appeals should now be sent to the Adjudication Panel's new address:

Adjudication Panel for England
Tribunal Service
York House
31-36 York Place
Leeds
West Yorkshire
LS1 2ED

Forthcoming events

Standards for England has a packed event calendar for the next few months.

You can visit us on our stands at the following events:

NALC Annual Conference

4-5 September
Royal College of Physicians, London
Stand 4 in the Dorchester Library

Liberal Democrat party conference

19 -23 September 2009
Bournemouth ICC
Stand 36 in the Solent Hall

Labour party conference

27 September - 1 October 2009
Brighton Centre
Stand 92 in the Hewison Hall

Conservative party conference

5 -8 October 2009
Manchester Central
Stand 106

Solace Annual Conference

20 - 22 October
Brighton Centre

Society of Local Council Clerks National Conference

23-25 October

De Vere Hotel, Daventry
Stand 34

AcSeS Annual Conference
18-19 November
The Armouries, Leeds

SfE continues to support LGC award

We are pleased to announce our continued support for the **Standards and Ethics** category at the **2010 LGC Awards**, following the success of last year's award.

The quality of last year's entries showed that many local authorities are strongly committed to promoting high standards of member conduct, and see the vital connection between standards, public trust and success. Good practice ideas from last year's winners are available on our [website](#).

This year, we want to know more about how authority standards committees, members and officers are working together to champion ethical standards and make a positive difference to public trust.

Entries should demonstrate how high standards of conduct are central to the authority's culture and governance. You can enter online at www.lgcawards.co.uk, where you can also find further information on the LGC Awards. The closing date for entries is **13 November 2009**.

If you would like further information on the award, you can also contact Clare Sydney, Standards for England Communications and Events Manager, on 0161 817 5332.

NALC's Local Council Awards 2009

NALC's Local Council Awards 2009 NALC has re-launched its Local Council Awards. NALC is looking for good practice from councils regardless of size or location. This year's NALC Local Council Awards will be in the categories of:

- Council of the Year sponsored by AON
- Clerk of the Year sponsored by AON
- Councillor of the Year sponsored by the Commission for Rural Communities (CRC)
- Council Worker of the Year sponsored by The Co-operative Bank
- Much Improved Council of the Year sponsored by Standards for England

The closing date for applications is 30 November 2009.

For further information about the awards criteria and application details please visit the NALC website or the website of [NALC's](#) flagship publication, [LCR](#).

Updating authority websites

If your authority's website contains contact information for us, please make sure that it is up-to-date.

You are welcome to use our logo as a link to our website. If you would like to do so, please contact Trish Ritchie on 0161 817 5406 or trish.ritchie@standardsforengland.gov.uk who will send one to you.

Here are our current contact details

Address:

Standards for England
Fourth Floor
Griffin House
40 Lever Street
Manchester
M1 1BB

Website: www.standardsforengland.gov.uk

Email: enquiries@standardsforengland.gov.uk

Enquiries line: 0845 078 8181