

A G E N D A

Standards Committee

Date: **Friday, 3rd December, 2004**

Time: **3.00 p.m.**

Place: **Council Chamber, Brockington, 35
Hafod Road, Hereford**

Notes: Please note the **time, date** and **venue** of
the meeting.

For any further information please contact:

*Pete Martens, Committee Manager, Tel:
01432 260248, Email:
pmartens@herefordshire.gov.uk*

**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Standards Committee

To: Robert Rogers (Independent Member)(Chairman)

Councillors J.W. Edwards and P.E. Harling
David Stevens (Independent Member)
Richard Gething (Parish Council Representative)
John Hardwick (Parish Council Representative)

	Pages
1. APOLOGIES FOR ABSENCE To receive apologies for absence.	
2. DECLARATIONS OF INTEREST To receive any declarations of interest by Members in respect of items on the agenda.	
3. MINUTES To approve and sign the minutes of the meeting held on 15th October, 2004.	1 - 6
4. STANDARDS COMMITTEE ANNUAL REPORT 2003-04 To review the work undertaken by the Standards Committee during 2003-04 with a view to the possible publication of an Annual Report. To follow Wards: County-wide	
5. APPLICATIONS FOR DISPENSATIONS RECEIVED FROM TOWN AND PARISH COUNCILLORS To consider the attached report on applications for dispensation received from Bartestree with Lugwardine Group Parish Council, and any other Town and Parish Councils. Wards: County-wide	7 - 8
6. THE FREEDOM OF INFORMATION ACT 2000 To consider the attached report on the Freedom of Information Act 2000 and its potential impact on the Standards Committee. Wards: County-wide	9 - 12
7. TRAINING AND DEVELOPMENT To receive a verbal report about appropriate training for Members of the Committee. Wards: County-wide	
8. SELECT COMMITTEE EVIDENCE	

To note the written evidence to the Select Committee investigating the role and effectiveness of the Standards Board for England.

Wards: County-wide

9. PUBLIC INTEREST REPORT - KINGTON TOWN COUNCIL

13 - 14

To consider the Public Interest Report recently published by the District Auditor concerning Kington Town Council.

Kington

10. DATE OF NEXT MEETING

To consider the date of the next meeting.

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the next item will not be, or is likely not to be, open to the public and press at the time it is considered.

RECOMMENDATION:

That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below.

11. DETERMINATIONS BY THE STANDARDS BOARD FOR ENGLAND

15 - 18

To update the Committee on determinations by the Standards Board for England in 2004 concerning the County.

Wards: County-wide

NOT FOR PUBLICATION – This item discloses information relating to the financial or business affairs of a particular person (other than the Authority).

12. LOCAL DETERMINATION OF COMPLAINTS

19 - 22

To advise the Committee of arrangements for a hearing in respect of an investigation under the Local Government Act (Code of Conduct) (Local Determinations) Regulations 2003, regarding a complaint referred to the Committee for adjudication, by the Standards Board for England.

Wards: County-wide

NOT FOR PUBLICATION – This item discloses information relating to the financial or business affairs of a particular person (other than the Authority).

COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

MINUTES of the meeting of Standards Committee held at Brockington, 35 Hafod Road, Hereford on Friday, 15th October, 2004 at 2.00 p.m.

Present: Robert Rogers (Independent Member)(Chairman)
 Councillor John Edwards, Richard Gething (Parish Council Representative), John Hardwick (Parish Council Representative), Councillor Peter Harling and David Stevens (Independent Member)

In attendance: Councillors R.M. Wilson

9. APOLOGIES FOR ABSENCE

There were no apologies for absence

10. DECLARATIONS OF INTEREST

There were no declarations of interest

11. MINUTES

RESOLVED: That the minutes of the meeting held on 13 February 2004 be approved as a correct record and signed by the Chairman.

12. PROTOCOL ON THE USE OF COUNCIL RESOURCES

The County Secretary and Solicitor presented a report on the preparation of the Protocol on the use of Council resources, including personal computers, access to the Internet and e-mail. She said that the views of the Standards Board for England had been sought and that the Members Development Working Group had been consulted. The main aim of the protocol was to provide sound guidance which was consistent with the National Code of Conduct for Councillors and with legislation. The Code provided that when using Council resources a Councillor must act in accordance with a Council's requirements and ensure that such resources are not used for political purposes except in certain specified circumstances. The Standards Board for England had strongly recommended that Local Authorities should adopt protocols to guide Members but unfortunately had not issued a model text or detailed guidance.

Section 2 of the Local Government Act 1986 prohibited local authorities from publishing political material which is aimed at promoting or supporting a political party or policy associated with a political party. This had widely been taken to cover e-mails sent by Councillors from a local authority network. The Committee expressed concerns about this interpretation because the use of IT had changed out of all recognition since the passing of the 1986 Act, and felt that was entirely unrealistic not to take account both of this technological change and the fact that Councillors were practising politicians. The Standards Board for England were of the view that Councillors were not prevented from using Council IT resources in this way. The Committee had some concerns about this interpretation because the Board's advice was at odds with the 1986 Act and the interpretative circulars issued

by the Office of the Deputy Prime Minister. It was especially concerned by a recent decision of the Adjudication Panel for England disqualifying a Member for a breach of the Code of Conduct when he used a council computer for private purposes and allowed his family to do so as well.

It was agreed that the final guidance needed to be entirely legally sound and that confirmation of the Standards Board's view should be sought in writing. When the Committee was satisfied with the outcome it was agreed that all Councillors would be consulted on the final draft before it was submitted to Council. It was also agreed that the report to Council from the Committee would explain the course of action being taken.

RESOLVED: (Unanimously) That the views of the Standards Board for England be sought on the proposed protocol with a view to a final draft being prepared for submission to Council after all Members have been consulted

13. PLANNING CODE OF CONDUCT REVISIONS

The County Secretary and Solicitor recalled that the Committee had reviewed this matter at its last meeting on 2 July 2004. She said that the Standards Board for England had not produced formal advice on the matter but informally supported the Committee's approach. She also noted that the matter had been considered by the Council's Constitutional Review Working Group who were in favour of the changes as part of the overall review of the Constitution. The Court of Appeal case (*Richardson and Orme -v- North Yorkshire County Council*) (recently upheld by the House of Lords) required the Council to reconsider the section of the Planning Code of Conduct dealing with planning applications in which a member of the Council had an interest.

The Committee noted that the law on the use of agents (that you cannot do by an agent something which you cannot do in person) suggested that an agent could not speak or attend a meeting on behalf of the Councillor in these circumstances. The SBE took contrary view, but had produced no formal guidance. It was agreed that formal clarification should be sought from the Board and reported at the 12 November Council. It was also agreed that the amendment to the Planning Code of Conduct that would be necessary should be included in the constitutional amendments that Council would also be considering on 12 November.

RESOLVED: (Unanimously) That clarification be sought from the Standards Board for England on the use of agents in planning matters by Members with prejudicial interests, and that the amendments to the Planning Code of Conduct set out in the report of the County Secretary and Solicitor be included in the constitutional amendments that Council would be considering on 12 November 2004.

14. APPLICATIONS FOR DISPENSATIONS RECEIVED FROM TOWN AND PARISH COUNCILLORS

The Committee considered the report of the County Secretary and Solicitor on applications for dispensations from Bartestree with Lugwardine Group Parish Council and from Dinedor Parish Council. Bartestree with Lugwardine Group Parish Council had requested that the following Councillors be granted dispensation because they were Trustees for Bartestree Village Hall, a registered charity:- R. Lawley; R. Rolfe; T. Rowberry; R. Salmond; N. Shore; K. Watkins; J. Williams; R. Williams; M. Wilson and A. Wood. The Parish Council consisted of eleven Councillors and the request therefore fulfilled the criteria for a dispensation to be granted. Councillor R.M. Wilson, the local Ward Member, asked if dispensation

could also be granted to Mr P.A. Wargent for the same purpose. He was advised that law required that the request had to be made in writing, in practice by the Parish Clerk.

Dinedor Parish Council had submitted a request for Councillors P. Greenow and E. A Owen to be granted dispensation because they were Trustees of Dinedor Village Hall Management Committee, a registered charity. The Parish Council currently consisted of only four Councillors; the request thus did not fulfil the criteria for a dispensation. The County Secretary and Solicitor said that it might be possible for a solution to be found to this problem and that she would investigate the matter further.

- RESOLVED (unanimously) That**
- (a) the Bartestree with Lugwardine Group Parish Councillors listed above be granted a dispensation in respect of Bartestree Village Hall; and**
 - (b) that the request for a dispensation from Dinedor Parish Council be refused but that further investigation be made into the way in which the problem could be overcome**

15. THIRD ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

Mr Richard Gething and Mr David Stevens had attended the Annual Assembly of Standards Committees; Mr Stevens presented his report. He noted guidance that County Councillors who were also Parish Councillors could take part or vote on planning matters at both Councils provided that declarations of interest was made where appropriate. This was at variance with the Council's Planning Code of Conduct. Another matter discussed had been the tenure and terms of appointment of Standards Committee Members; the County Secretary and Solicitor would pursue this.

The Chairman thanked Mr Gething and Mr Stevens for attending the Assembly and for the report.

16. INQUIRY INTO THE ROLE AND EFFECTIVENESS OF THE STANDARDS BOARD FOR ENGLAND

It was noted that the House of Commons Select Committee on the Office of the Deputy Prime Minister (Housing, Planning, Local Government and the Regions) was inquiring into the role and effectiveness of the Standards Board for England with particular reference to the following issues:

- the effectiveness of the Standards Board for England in promoting and overseeing the Code of Conduct that sets out the rules governing the behaviour of members of local authorities;
- the role of the Standards Board for England in ensuring local authorities adhere to a Code of Conduct and its ability to assess allegations of misconduct in a timely and fair way;
- the Standards Board for England's relationships with:
 - (a) other regulatory organisations that support the ethical framework set out in the Local Government Act 2000;
 - (b) central Government;
 - (c) local Government stakeholders; and

- the role of the Standards Board for England in supporting the establishment and operation of standards committees at a local level.

Written evidence had been invited on the above points and it was agreed that the Committee should submit a Memorandum to the Select Committee.

17. CASE REVIEWS - STANDARDS BOARD FOR ENGLAND

The County Secretary and Solicitor presented her review of cases heard in 2003-04 by The Adjudication Panel for England and by Standards Committees under local determination powers. It was agreed that the summary of the outcome of the investigations would be included in the report of the Committee to Council on 12 November 2004.

18. COMMITTEE DATES FOR 2004/05

It was agreed that the next meeting on 3 December 2004 be put back to a 3:00 a.m. start and that the following meeting be brought forward from 18 February 2005 to 4 February 2005.

19. DETERMINATIONS BY THE STANDARDS BOARD FOR ENGLAND 2004

The Committee considered a report on current investigations by the Standards Board for England in respect of complaints of alleged misconduct against certain councillors.

The meeting ended at 4:20 p.m.

CHAIRMAN

Document is Restricted

DISPENSATIONS TO TOWN AND PARISH COUNCILS

Report By: County Secretary and Solicitor

Ward Affected

Hagley

Purpose

1. To consider an application for dispensation received from Bartestree with Lugwardine Group Parish Council and any others received prior to the meeting.

Financial Implications

2. None

Background

3. Under the Code of Conduct, town and parish councillors are prohibited from participating in matters in which they have a prejudicial interest. In the normal course of events this would not prejudice the proper working of their councils. There are instances, however, where the number of Councillors who would be prohibited from participating will impede the transaction of business.
4. The Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002 gives Standards Committees the power to grant dispensations in circumstances where the number of councillors that are prohibited from participating in the business of the council exceeds 50% of those that are entitled or required to so participate.
5. In each case, the councillor requesting the dispensation must request it in writing, setting out why the dispensation is desirable.
6. The Standards Committee must then decide whether, in all the circumstances, it is appropriate to grant the dispensation.
7. The Regulations set out a number of exceptions where, even though the criterion above is met, a dispensation may not be granted for town or parish councils. This is where the business of the council for which the dispensation is granted is more than 4 years after the date on which the dispensation is granted.
8. At the meeting on 10th October the Committee granted a request from Bartestree with Lugwardine Group Parish Council for the following Councillors to be granted dispensation because they serve as Trustees for Bartestree Village Hall, a registered charity:- R. Lawley; R. Rolfe; T. Rowberry; R. Salmond; N. Shore; K. Watkins; J. Williams; R. Williams; M. Wilson and A.Wood. Prior to the meeting the Parish Council requested that the name of Mr P. A. Wargent also be added to the list of those seeking dispensation but due to an error his name was not included in the report to the Standards Committee. Mr Wargent therefore needs to be added to the list of the Parish Councillors to be granted dispensation.

Further information on the subject of this report is available from
Marie Rosenthal, County Secretary and Solicitor on 260200

RECOMMENDATION

THAT **that Mr P.A. Wargent of the Bartestree with Lugwardine Group Parish Councillors be granted a dispensation in respect of Bartestree Village Hall**

BACKGROUND PAPERS

- Letters from Bartestree with Lugwardine Group Parish Council dated 28th July, 2004, and 23rd September, 2004.

FREEDOM OF INFORMATION ACT 2000 AND THE IMPLICATIONS ON THE STANDARDS COMMITTEE

Report By: County Secretary and Solicitor

Wards Affected

County Wide

Purpose

1. To consider the Freedom of Information Act 2000 ("the Act") and the implications it will have on the work of the Standards Committee.

Background

2. The Act is a piece of legislation designed to give the public, greater access to information and promote transparency and openness in government. The subject access provisions of the Act come into force on 1st January 2005.
3. The Act gives members of the public a right of access to all recorded information held by Herefordshire Council, and imposes obligations to disclose information and to provide advice and assistance to those proposing to make a request for information.

Procedure

4. The Council has now set up a procedure for the handling of requests that fall under the Act.
5. Any letter or e-mail is a potential FOI request for information. The request must be legible, contain enough information to understand what is being asked for, and have an address to write back to.
6. The Council has 20 working days to confirm or deny that we hold the information requested and provide it, unless an exemption applies.
7. The Council has set up an Information Co-ordination Team to handle certain types of requests under the Act. The team will be led by the FOI Compliance Officer, Geoff Hardy and be supported by Adrian Rhead, Lucy Davies and Sam Smith in Legal Services. This team will be responsible for judging if information can be disclosed, or whether an exemption needs to be applied to stop the information from being released.
8. However, most requests will be handled within the relevant department, as it is the responsibility of every member of staff to recognise a Freedom of Information request. Only more complex requests will be forwarded to the FOI Compliance Officer.
9. The Information Team will then ask the relevant Service through the key Manager to gather information in their section if the request relates to information in their area of

Further information on the subject of this report is available from
Marie Rosenthal, County Secretary and Solicitor on (01432) 260200

work. On occasion, the team also have the option to ask ICT Services to conduct a search of all emails in response to an FOI request.

10. One way that the Council plan to cut down on requests is to publish more information as if it is already easily available, members of the public can obtain it themselves without having to make a formal request.
11. The Council will shortly be publishing an updated Publication Scheme listing all the information that they currently publish.
12. The e-Gateway Project, which is currently underway to improve the Council web site, will incorporate this making it easier for staff to publish information on the Internet.

Records Management

13. Anthony Sawyer is currently carrying out records surveys of all departments, which will give an overall picture of what recorded information the Council holds. From the records survey, "retention schedules" will be produced, which will enable staff to see how long to keep records for. Records can then be destroyed (or in some cases, archived) in accordance with their retention schedule.
14. It must be remembered that it is an offence under the Freedom of Information Act to destroy information once the Council have received a request for it.
15. When creating records, we will ensure that they:
 - are authentic and reliable
 - provide evidence for decisions and activities
 - facilitate auditing
 - allow current staff and their successors to undertake appropriate actions

Impact on the work of the Standards Committee

16. There are a number of exemptions contained within the Act, which may be relevant to the work of the standards board.
17. Section 30 of the Act relates to Investigations and proceedings conducted by public authorities and all allows an exemption for information held by a public authority if it has at any time been held by the authority for the purposes of
 - a) any investigation which the public authority has a duty to conduct with a view to it being ascertained
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
 - b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or

(c) any criminal proceedings which the authority has power to conduct.

18. Information held by a public authority is exempt information if it relates to information obtained from confidential sources and was obtained or recorded by the authority for the purposes of its functions relating to

- (i) investigations falling within subsection 30(1)(a) or (b)
- (ii) criminal proceedings which the authority has power to conduct,
- (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
- (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations.

19. The duty to confirm or deny does not arise in relation to information which is exempt under this section.

20. Section 31 which relates to Law Enforcement may also be relevant. This provides an exemption for information acquired through the exercise of the public authority's function for the purpose of ascertaining whether

- a) any person has failed to comply with the law.
- b) Any person is responsible for any conduct which is improper
- c) Circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

21. Section 36 relates to prejudice to effective conduct of public affairs and may also be relevant. This exempts information held by a public authority where it is the opinion of the qualified person (any officer or employee authorised by a Minister of the Crown for the purposes of this section) that the disclosure of the information under this Act would, or would be likely to, inhibit

- (i) the free and frank provision of advice, or
- (ii) the free and frank exchange of views for the purposes of deliberation, or
- (iii) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

22. The duty to confirm or deny may not arise in relation to information to which this section applies.

23. Section 41 relating to confidentiality may also be relevant in that it provides an exemption for information obtained by the public authority from another person and the disclosure of the information to the public by the authority would constitute a breach of confidence actionable by that or any other person. The duty to confirm or deny would not arise here to the extent that, the confirmation or denial would constitute an actionable breach of confidence

Conclusion

24. The Standards Committee should be aware of the requirements of this legislation and the documents which will potentially be available for public inspection when determining complaints about members referred to it by the Ethical Standards Officers.

RECOMMENDATION

THAT the Committee consider the impact of the Act and the effect it will have on their procedures and practices.

PUBLIC INTEREST REPORT - KINGTON TOWN COUNCIL

Report By: COUNTY SECRETARY AND SOLICITOR

Wards Affected

Kington

Purpose

1. To consider the Public Interest Report recently published by the District Auditor concerning Kington Town Council.

Financial Implications

2. None at this stage.

Background

3. The Audit Commission Act 1998 gives local government electors the right to "object" to the accounts of a local authority asking the auditor to exercise formal powers to issue a report in the public interest if there should be a finding that certain expenditure has been unlawful.
4. In the course of the audit of Kington Town Council's accounts for 2001/02, 2002/03 two electors made objections alleging that the basis of employment of the Town Clerk was unlawful and that the Council had no statutory power to pay certain legal expenses relating to the Town Clerk. Whilst the District Auditor has decided not to uphold these objections, he has issued a Report in the Public Interest arising from general concerns about the Town Council's corporate governance arrangements.

The Public Interest Report

5. A copy of the Public Interest Report is appended to this report for the Committee's attention. The Committee will note the conclusion at paragraphs 24, 25 and 26 and the specific recommendation set out paragraph 27.
6. The District Auditor is recommending that the Town Council seek advice and support from Herefordshire Council's Standards Committee and monitoring officer in promoting higher standards of conduct and considering possible breaches of the Code of Conduct.
7. The County Secretary and Solicitor has met with the Chairman of the Town Council, to discuss the report and the assistance the Standards Committee may be able to offer the Town Council in responding to the District Auditor's recommendations. It has been suggested that the County Secretary and Solicitor and Chairman of the Committee arrange to meet with the Town Council to determine a way forward in providing advice and support to ensure that the Town Council promotes high

Further information on the subject of this report is available from Marie Rosenthal, County Secretary and Solicitor on (01432) 260200

standards of conduct and the steps that should be taken should any member of the Town Council consider that there has been a breach of the Code of Conduct.

8. An extraordinary meeting of Kington Town Council was held on Wednesday 17 November 2004 to receive and consider the Public Interest Report and recommendations. The Town Council are considering their response to the report and are required to notify the auditor of their proposed action plan to deal with the recommendations. Once the District Auditor has agreed to those actions, the Town Council must then publicise a summary of its decisions in the local press.

RECOMMENDATION

THAT the Standards Committee consider the Public Interest Report relating to Kington Town Council.

BACKGROUND PAPERS

- Public Interest Report – Kington Town Council

Document is Restricted

Document is Restricted

Document is Restricted

