

AGENDA

Standards Committee

Date: **Friday 2 July 2010**

Time: **2.30 pm**

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

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

For any further information please contact:

Heather Donaldson, Democratic Services Officer

Tel: 01432 261829

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Agenda for the Meeting of the Standards Committee

Membership

Chairman	Robert Rogers	Independent member
	Jake Bharier	Independent member
	Isabel Fox	Independent member
	Richard Gething	Parish and Town Council Representative
	John Hardwick	Parish and Town Council Representative
	David Stevens	Independent Member
	John Stone	Local Authority Representative
	Beris Williams	Local Authority Representative

GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS

The Council's Members' Code of Conduct requires Councillors to declare against an Agenda item(s) the nature of an interest and whether the interest is personal or prejudicial. Councillors have to decide first whether or not they have a personal interest in the matter under discussion. They will then have to decide whether that personal interest is also prejudicial.

A personal interest is an interest that affects the Councillor more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Councillors will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the member works for, is affected more than other people in the area. If they do have a personal interest, they must declare it but can stay and take part and vote in the meeting.

Whether an interest is prejudicial is a matter of judgement for each Councillor. What Councillors have to do is ask themselves whether a member of the public – if he or she knew all the facts – would think that the Councillor's interest was so important that their decision would be affected by it. If a Councillor has a prejudicial interest then they must declare what that interest is. A Councillor who has declared a prejudicial interest at a meeting may nevertheless be able to address that meeting, but only in circumstances where an ordinary member of the public would be also allowed to speak. In such circumstances, the Councillor concerned will have the same opportunity to address the meeting and on the same terms. However, a Councillor exercising their ability to speak in these circumstances must leave the meeting immediately after they have spoken.

AGENDA

		Pages
1.	<p>STANDARDS COMMITTEE CHAIRMAN</p> <p>To note that, at the Annual Council Meeting held on 28 May 2010, Mr Robert Rogers was elected Chairman of the Herefordshire Standards Committee for the ensuing municipal year.</p>	
2.	<p>APOLOGIES FOR ABSENCE</p> <p>To receive apologies for absence.</p>	
3.	<p>DECLARATIONS OF INTEREST</p> <p>To receive any declarations of interest by Members in respect of items on the Agenda.</p>	
4.	<p>MINUTES</p> <p>To approve and sign the minutes of the meeting held on 16 April 2010.</p>	5 - 10
5.	<p>CONSTITUTIONAL MATTERS</p> <p>To consider a report on recent updates to the Council's Constitution; and</p> <p>To appoint a Vice-Chairman of the Standards Committee for the ensuing municipal year.</p> <p>Wards: County Wide</p>	11 - 14
6.	<p>APPLICATIONS FOR DISPENSATIONS RECEIVED FROM PARISH AND TOWN COUNCILS</p> <p>To consider applications for dispensations received from parish and town councils.</p> <p>Wards: County Wide</p>	15 - 18
7.	<p>BLOGGING AND SOCIAL NETWORKING</p> <p>To consider proposed guidance for members in respect of the use of blogging, social networking and other methods of communication.</p> <p>Wards: County Wide</p>	19 - 22
8.	<p>GUIDE TO STANDARDS PROCESSES</p> <p>To consider a report regarding the administrative processes in relation to the local complaints filter.</p> <p>Wards: County Wide</p>	23 - 38
9.	<p>THE FUTURE OF THE LOCAL GOVERNMENT STANDARDS FRAMEWORK</p> <p>To apprise the Committee of recent decisions made by Standards for England in the light of the proposed Decentralisation and Localism Bill.</p> <p>Wards: County Wide</p>	39 - 46

10. DECISION OF THE FIRST TIER TRIBUNAL

47 - 54

To note an appeal decision by the First-Tier Tribunal in respect of a Standards Committee hearing decision.

Wards: County Wide

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following 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. LOCAL FILTER CASES AND DETERMINATIONS

55 - 80

To update the Committee about progress made with complaints about local authority, town or parish councillors.

Wards: County Wide

(This item contains information which is subject to an obligation of confidentiality)

12. PROGRESS REPORT ON A STANDARDS FOR ENGLAND INVESTIGATION

To consider progress made on a Direction issued by Standards for England in respect of a parish or town council.

(Note: this item will be sent "to follow")

Wards: County Wide

(This item contains information which is subject to an obligation of confidentiality)

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- Inspect agenda and public reports at least three clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. A list of the background papers to a report is given at the end of each report. A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
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- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
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Agenda and individual reports can be made available in large print. Please contact the officer named on the front cover of this agenda **in advance** of the meeting who will be pleased to deal with your request.

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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HEREFORDSHIRE COUNCIL

MINUTES of the meeting of Standards Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Friday 16 April 2010 at 2.00 pm

Present:	Robert Rogers	(Chairman) (Independent Member)
	Isabel Fox	(Independent Member)
	Richard Gething	(Parish and Town Council Representative)
	John Hardwick	(Parish and Town Council Representative)
	David Stevens	(Independent Member)
	John Stone	(Local Authority Representative)
	Beris Williams	(Local Authority Representative)

In attendance: Nicky Carless (Parish and Town Council Substitute Representative)
Mary Morris (Parish and Town Council Substitute Representative)

1. APOLOGIES FOR ABSENCE

Apologies were received from Mr Jake Bharier.

2. DECLARATIONS OF INTEREST

None.

3. MINUTES

In respect of Minute 6 (STANDARDS COMMITTEE WEBSITE), the Committee noted that the item was deferred to a future meeting to enable a comprehensive report to be produced on matters relating to the Constitution and the Modern.Gov system on the website, in addition to the Standards Committee web pages.

RESOLVED: (unanimously) that the minutes of the meeting held on 08 January 2010 be approved as a correct record and signed by the Chairman.

4. APPLICATIONS FOR DISPENSATIONS

The Committee considered a report outlining a written application for a dispensation received from Kington Town Council. Members referred to the Standards Committee (Further Provisions) (England) Regulations 2009, which enabled them to grant dispensations in circumstances when the number of councillors that would be prohibited from participating in the business of the council (due to them having a prejudicial interest) would exceed 50%.

Kington Town Council had requested a "block" dispensation in relation to councillors' roles as members of the Kington Recreation Ground Trust, to enable them to discuss management issues and the purchase of items for the ground. All councillors were automatically members of the Trust on acceptance of office. Individual councillors were not trustees; rather, the Town Council as a corporate body was the Trustee. The Committee had granted a similar dispensation on 17 February 2006, and this had now expired. The Town Council's current request was for a dispensation on identical terms to the previous one.

The Committee agreed that it would not be acceptable to make a general rule of granting block dispensations, although there were exceptional reasons for doing so in Kington Town Council's particular instance, namely:

- The proposed block dispensation related entirely to the Kington Recreation Ground and to no other matter;
- The Town Council had provided documentary evidence to support the fact that all members without exception were automatically Trustees and there was no other mechanism for becoming a Trustee;
- In accordance with the Regulations, the block dispensation would apply for a set period and would be subject to re-application and review at the end of the period.

Members felt that there was merit in allowing the dispensation for a twelve-month period so that the next application would coincide with the elections for Parish and Town Councillors in May 2011.

In addition, members suggested that the Herefordshire Association of Local Councils (HALC) be requested to ensure that all of its member councils are reminded at the beginning of each year to renew any expired dispensations, and to include information on dispensations in its induction courses for new councillors.

RESOLVED: (unanimously) that

- (i) **a block dispensation be granted to Kington Town Council in respect of the Kington Recreation Ground Trust, until 16 April 2011; and**
- (ii) **the Monitoring Officer be instructed to review the relationship of this request with the current governance review of Kington Town Council.**

5. THE CONSTITUTION

The Assistant Chief Executive (Legal and Democratic) reported on proposed amendments to the constitution which would further support the role and remit of the Standards Committee, namely:

- **Appointment of Vice-Chairman:** As a measure to address the Committee's increased level of activity, members agreed that there was merit in appointing an independent member as Vice-Chairman, to act in the absence of the chairman and assist in matters which required detailed work.
- **Establishment of additional sub-committees:** In addition to the existing assessment sub-committee, it was proposed to establish sub-committees for reviews, consideration of investigation reports, and hearings. This would afford the committee greater flexibility and fewer opportunities for conflicts of interest at the various complaint stages. Every sub-committee would comprise three members, with an independent member in the Chair, and for parish and town council matters, at least one parish and town council representative.
- **Provisional monthly meeting dates:** It was agreed that, given the significant quantity of sub-committee meetings taking place, and the pressures of members' diary commitments, provisional monthly meetings would be listed in the corporate diary, for use as necessary.
- **Reports to Council:** The new constitution required a report from each committee to Annual Council only, instead of a report to every meeting. Members felt that it was appropriate for the Standards Committee to continue to report to every

Council meeting, however, given the unique role of the committee in promoting and upholding standards and ethics, and because regular reporting was an established area of good practice which had furthered a strong relationship with the Council.

- **Questions to Council:** The Committee supported proposal to ensure that its Chairman was notified appropriately of any relevant question to Council which might require a response in relation to standards and ethics matters. Furthermore, agreement would be sought about who would respond to the question, and the appropriate level of involvement in the drafting and approval of answers, including supplementary questions.
- **Procedure Rules:** Members welcomed a proposal to include additional information in the Constitution about the Committee's processes, and the different stages of the standards framework. This would help members of the public to understand the processes better, and engage with it more effectively.

The Chairman confirmed that he would attend the Constitutional Review Working Group on 30 April 2010 to present the Committee's views on these matters.

RESOLVED: (unanimously) that:

it be recommended to the Constitutional Review Working Group and Council that:

- (i) the office of Vice-Chairman of the Standards Committee be formally established;**
- (ii) the Constitution provides for review, consideration and hearing sub-committees to be established by selection of three members of the Committee (including one independent member in the Chair, and for parish and town matters, one parish and town council representative);**
- (iii) provisional monthly meetings be listed in the corporate diary for use by Standards sub-committees as required; and**

that the Standards Committee:

- (iv) notes the revised procedure for dealing with questions to Council from members of the public or members of the Council;**
- (v) notes the proposals for procedure rules to be included in the constitution; and**
- (vi) delegates authority to the Monitoring Officer and the Chairman to finalise the submission to the Constitutional Review Working Group for consideration.**

6. STANDARDS FOR ENGLAND BULLETIN 47

Members noted the contents of the latest bulletin from Standards for England. In particular, they noted the abolition of the Adjudication Panel for England, with the post-hearing appeal process instead being dealt with by the First Tier Tribunal Service. The Council website and relevant joint Standards Committee/Herefordshire Association of Local Councils publications would be amended to reflect the change.

In addition, the Assistant Chief Executive (Legal and Democratic) said that she would email to the committee details of costs which might be awarded to or claimed by any party in respect of the post-hearing appeal process.

RESOLVED: (unanimously) that:

- (i) the report be noted; and**
- (ii) the Council website and relevant joint Standards Committee/Herefordshire Association of Local Councils publications be amended to reflect changes to the post-hearing appeal process.**

7. BLOGGING AND SOCIAL NETWORKING

The Committee considered the "Blogging Quick Guide" which was available on the Standards for England (SfE) website. It provided advice to members using social networking sites as a means of interacting with their constituents. It outlined the appropriate use of such sites, and highlighted the potential difficulties caused by the speed and wide catchment of this form of communication, which enabled members' statements to be viewed almost instantaneously, and made retraction particularly difficult. It also raised issues about whether a member was perceived as acting in an official or private capacity when using such sites.

The Committee felt that there was merit in producing an A4 sheet of guidance for all local authority, town and parish council members, which outlined the SfE guidance and gave additional advice to members who were the subject of defamation through any form of communication. The Herefordshire Association of Local Councils would be informed of the guidance and asked to circulate it to its members.

RESOLVED: (unanimously) that:

- (i) the Assistant Chief Executive (Legal and Democratic) be requested to produce an A4 short guide on blogging and social networking for all local authority, town and parish council members; and**
- (ii) the Herefordshire Association of Local Councils be notified about the SfE guidance and requested to circulate it to its members.**

8. ANNUAL ASSEMBLY OF STANDARDS COMMITTEES

The Assistant Chief Executive (Legal and Democratic) presented a report in respect of the Annual Assembly of Standards Committees, to be held at the International Conference Centre in Birmingham on 18 and 19 October 2010. Feedback from members who had attended the event in the past had always been positive in terms of information gained, networking opportunities and raising the Herefordshire Standards Committee's profile.

The Committee noted that there had been significant pressures on the members' services budget during 2009/10, and noted the requirement for all of the Council's directorates to stay within budget in the current financial year, and meet corporate efficiency target in the Council's medium term financial plan.

It was agreed that places for three members would be booked, and that the Hereford and Worcester Fire and Rescue Authority be requested to fund places for joint Standards Committee Members. The Democratic Services Officer would establish which members wished to attend, including those members who were not present at the meeting.

RESOLVED: (unanimously) that:

- (i) three members of the Standards Committee attend the Annual Assembly of Standards Committees in October 2010; and**
- (ii) Hereford and Worcester Fire and Rescue authority be requested to fund the attendance of joint Standards Committee members.**

EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED: (unanimously) that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in Schedule 12(A) of the Act.

9. LOCAL FILTER CASES AND DETERMINATIONS

Members reviewed progress made on complaints about local authority, town and parish councillors since the introduction of the local filter on 08 May 2008. To date, the assessment and review sub-committees had dealt with seventy-one complaints.

The Assistant Chief Executive (Legal and Democratic) referred to the significant workload involved in progressing complaints cases, and she anticipated that this would intensify in the lead-up to the local elections in 2011. During the discussion, the following key points were made:

- To assist in managing the local filter, a small budget had been allocated specifically for additional legal support, should it be required. The Assistant Chief Executive (Legal and Democratic) also circulated the first draft of a manual which explained the administrative systems and processes which were necessary to ensure good management of the local filter by officers.
- It was agreed that room 18a at Brockington was unsuitable for hearings due to the lack of room for movement throughout its length. Only the Council Chamber and Room 22a at Brockington, or the Shire Hall would be used in future.
- The Chairman thanked members of the Committee for their dedication and commitment in dealing with a substantial amount of assessments, reviews, and considerations of late.

RESOLVED: (unanimously) that:

- (i) the report be noted;**
- (ii) a further report be made to the Committee's next meeting on progress made with cases;**
- (iii) the list of suitable rooms for hearings be noted for future use.**

10. PROGRESS REPORT ON A STANDARDS FOR ENGLAND DIRECTION

The Assistant Chief Executive (Legal and Democratic) apprised members of progress made with a Standards for England Direction issued in respect of a particular parish or town council.

RESOLVED: (unanimously) that:

- (i) the report be noted; and**
- (ii) the costs of undertaking the direction be logged wherever possible.**

The meeting ended at 3.40 pm

CHAIRMAN

MEETING:	STANDARDS COMMITTEE
DATE:	2 JULY 2010
TITLE OF REPORT:	CONSTITUTIONAL MATTERS
REPORT BY:	ASSISTANT CHIEF EXECUTIVE - LEGAL AND DEMOCRATIC (INTERIM)

CLASSIFICATION: Open

Purpose

To advise the Committee of relevant constitutional matters agreed by the Annual Council meeting on 28 May and to action the delegated appointment of Vice-Chairman to the Standards Committee for 2010/11.

Recommendation(s)

THAT:

- (a) **The relevant constitutional matters agreed by the Annual Council on 28 May 2010 be noted**
- (b) **That an appointment be made to the position of Vice-Chairman**

Key Points Summary

- The Annual Council meeting on 28 May agreed the following constitutional matters pertinent to the Standards Committee:
 - That a position of Vice Chairman of the Standards Committee is created and delegate this appointment to the Standards Committee.
 - That the Constitution provides for review, consideration and hearing sub-committees to be established by selection of three members of the Committee (including one independent member in the Chair, and for parish and town matters, one parish and town council representative).
 - That the Council receive formal reports from the Standards Committee at all its meetings (as appropriate).

Further information on the subject of this report is available from
Siân Clark, Democratic Services Manager on (01432) 260222

Alternative Options

- 1 The Standards Committee have been delegated to appoint a Vice-Chairman of the Standards Committee. There is no formal requirement for this position, although it has been recognised that the creation of such a position would be beneficial to the Committee.

Reasons for Recommendations

- 2 To comply with the decision of the Annual Council held on 28 May 2010.

Introduction and Background

- 3 The Council at its meeting on 13 November 2009 agreed to adopt a new Constitution to take effect on 1 January 2010. Work has continued, through the Constitutional Review Working Group, to further refine elements within the constitution with recommendations made to Council. The Standards Committee at their meeting of 16 April 2010 considered some constitutional issues which were further discussed by the Constitutional Review Working Group prior to ratification and adoption by Annual Council on 28 May 2010.

Key Considerations

Establishment of Vice-Chairman Office

- 4 Annual Council was advised that the only formal position on the Standards Committee of eight members was that of the Chairman, who is an independent member and that there was no nominated Vice-Chairman position. Council was advised that the level of activity of the Committee had increased and it was felt that it would be beneficial to have a formally appointed Vice Chairman who could share the responsibility for fulfilling the role of Chairman in his absence or where demands are such that it requires detailed work of more than a single person with the authority of the Chairman
- 5 Annual Council agreed that this position be formally established and delegated the appointment of Vice-Chairman of the Standards Committee for 2010/11 to the Standards Committee.
- 6 As it is a requirement that the Standards Committee should be chaired by an Independent Member, the Vice Chairman should be appointed from amongst the Independent Members of the Standards Committee.
- 7 The decision of the Standards Committee will be reported to the Council on 16 July 2010.

Establishment of formal sub-committee structure

- 8 Annual Council was informed that the Standards Committee had only one sub-committee; the assessment sub-committee. All other business must be conducted by the Committee as a whole. Council was advised of the different roles that need to be fulfilled by the Committee during the course of handling a complaint and the need for different members to deal with some of those tasks.
- 9 Annual Council agreed for the Standards Committee to be permitted to conduct assessments, reviews, consideration of investigation reports and hearings by sub-committee. To ensure flexibility, Council authorised the Monitoring Officer to establish a sub-committee when required for each of these purposes by selecting at least 3 members (one of which must be independent and one of which on parish matters must be a parish representative).

- 10 It is a legislative requirement that all Sub-Committees of the Standards Committee be chaired by Independent Members

Reports to Meetings of the Council

- 11 Annual Council agreed that, given the unique relationship between the Council and the Standards Committee, and to maintain good practice, that the Standards Committee continues to provide reports to all Meetings of the Council (as appropriate).

Community Impact

- 12 These amendments to the Constitution seek to clarify elements of the constitution thus enable the public to understand more clearly what the Council and its partners are trying to achieve and how they work together to do that.

Financial Implications

- 13 There are none.

Legal Implications

- 14 The Constitution reflects the statutory requirements and guidance.

Risk Management

- 15 There are no risk management issues other than the need to ensure legal compliance.

Consultees

- 16 The Standards Committee considered a report on constitutional issues at their meeting on 16 April and submitted their comments to the CRWG for progression to the Annual Meeting.

Appendices

- 17 There are none

Background Papers

There are none

MEETING:	STANDARDS COMMITTEE
DATE:	02 JULY 2010
TITLE OF REPORT:	DISPENSATIONS TO TOWN AND PARISH COUNCILS

CLASSIFICATION: Open

Purpose

- To consider an application for a dispensation received from Bridstow Parish Council.

Recommendations

THAT

- the seven members of Bridstow Parish Council named in the report be granted a dispensation in respect of Bridstow Village Hall**

Background

- 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, when the number of councillors who would be prohibited from participating will impede the transaction of business.
- The Relevant Authorities (Standards Committee) (Dispensations) Regulations 2002, amended by the Standards Committee (Further Provisions) (England) Order 2009, give 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 who are entitled or required to participate, 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.
- In each case, the councillor must request the dispensation in writing, setting out why the dispensation is desirable. The Standards Committee must then decide whether, in all the circumstances, it is appropriate to grant the dispensation.

Further information on the subject of this report is available from
Heather Donaldson, Democratic services Officer on (01432) 261829

5. The regulations also specify two circumstances where a dispensation may not be granted; first, in respect of participation in business conducted more than 4 years after the date on which the dispensation was granted; and, secondly in relation to prejudicial interests concerning attendance at a scrutiny committee meeting which is scrutinising the activity of any other committee to which the member belongs, or for executive members in relation to their own portfolios.
6. All seven members of Bridstow Parish Council have requested a dispensation in relation to Bridstow Village Hall. They are:

Mr Richard Gething
Mrs Shirley Preece
Mr Simon Brewer
Mrs Margaret Lewis
Mrs Valerie Davies
Mr Russell B Hamilton
Mrs Jenny Colin
7. The Clerk states that the Parish Council is Custodian Trustee of the village hall, and therefore all members are automatically trustees on acceptance of office. The dispensation will enable them to discuss village hall matters. The Standards Committee had previously granted a dispensation to the Parish Council for the same matter, on 21 April 2006, and this has now expired.

Financial Implications

8. None.

Appendix

Letter from the Clerk to Bridstow Parish Council dated 27 April 2010.

Bridstow Parish Council

Overlea,
Bridstow,
Ross on Wye,
HR9 6AJ
01989 562809

27 April, 2010

Herefordshire Standards Committee,
Brockington,
35 Hafod Road,
Hereford,
HR1 1SH.

Dear Sir or Madam:

Re: Application for Dispensation – Bridstow Parish Councillors.

On April 21, 2010, dispensation expired for the councillors of Bridstow Parish Council, to allow them to vote on matters concerning the Bridstow Village Hall.

Therefore could you grant dispensation to the following councillors:

Mr Richard Gething, Mrs Shirley Preece, Mr Simon Brewer, Mrs Margaret Lewis, Mrs Valerie Davies, Mr Russell B Hamilton and Mrs Jenny Collin.

Sincerely,



Mrs Pat Newton.
Clerk to Bridstow Parish Council.

MEETING:	STANDARDS COMMITTEE
DATE:	02 JULY 2010
TITLE OF REPORT:	BLOGGING AND SOCIAL NETWORKING GUIDANCE
REPORT BY:	DEMOCRATIC SERVICES OFFICER

Purpose

To consider proposed guidance for local authority, parish and town councillors in respect of blogging, social networking, and other methods of communication.

Recommendation(s)

THAT:

- (a) **The guidance be approved for adoption by Council, subject to any amendments made by the standards committee; and**
- (b) **It be distributed to all local authority, parish and town councillors.**

Key Points Summary

- Standards for England has issued guidance on blogging and social networking. At its meeting on 16 April 2010, the Standards Committee agreed to develop this guidance for Herefordshire Council, with additional advice for situations when members find themselves the subject of derogatory comments in publications of any nature.
- The proposed guidance is attached to this report at Appendix A, for consideration and approval.

Alternative Options

- 1 The Standards Committee and the Council are not obliged to publish such guidance; however, because electronic communication now has a much wider use, there is significant merit in providing guidance to all members.

Reasons for Recommendations

- 2 Electronic forms of publication are being used increasingly by councillors as an alternative method of communication with their constituents. In general, this kind of communication is to be encouraged. Some incidents of misuse have been reported to the Monitoring Officer. Guidance is essential, therefore, to ensure that members are aware of some of the pitfalls of blogging and social networking, particularly given the rapid and widespread distribution of this format. The guidance will help members to ensure that they are compliant with the Code of conduct.

Community Impact

3. Correct use of blogging and social networking can be an effective and enjoyable way of engaging with the community when used appropriately, and is likely to reach groups of people who use this medium in preference to longer established methods.

Financial Implications

4. There is no financial impact for the Council. There might be a cost to the individual councillor if good practice is not adhered to, due to the potential for civil claims in instances when blogs and social networks are used inappropriately to make adverse comments about individuals. .

Appendices

5. "Blogging and Social Networking Guide" attached.

Background Papers

There are none.

Guide to Blogging and Social Networking

1. Blogging and social networking are effective methods for councillors to interact with constituents and support local democracy. Used effectively, they can engage those who would not normally have access to local councillors and politics.
2. Standards for England supports the use of such media and encourages councillors to get online. You should think about what you say and how you say it, in just the same way as you must when making statements in person or in writing.
3. You will also need to think about whether you are seen to be, or give the impression that you are acting in your official capacity as a councillor.
4. The Council does not provide a specific site in which councillors can write blogs. Individual councillors are permitted to write their own official blogs as Herefordshire Councillors, however, and under this circumstance, they will only be permitted to act in their official capacity, and not in their private capacity. Councillors must also bear in mind that if they do have private blogs and refer to council business on them, they will be viewed as acting in their official capacity.
5. To make sure you comply with the Code of Conduct (the Code) and to ensure your use of online media is well received, you are requested to observe the following guidelines:

Do

- set appropriate privacy settings for your blog or networking site – especially if you have a private, non-political blog
- keep an eye out for defamatory or obscene posts from others on your blog or page and remove them as soon as possible to avoid the perception that you condone such views
- be aware that the higher your profile as a councillor, the more likely it is you will be seen as acting in your official capacity when you blog or network
- ensure you use council facilities appropriately; and be aware that any posts you make will be viewed as made in your official capacity
- be aware that by publishing information that you could not have accessed without your position as a councillor, you will be seen as acting in your official capacity
- make political points, but be careful about being too specific or personal if referring to individuals. An attack on individuals may be seen as disrespectful, whereas general comments about another party or genuine political expression is less likely to be viewed as disrespect.

Don't

- blog in haste.
- post comments that you would not be prepared to make in writing or face to face
- use council facilities for personal or political blogs.

When the Code may apply

6. Bear in mind the Code when you blog or use social networking sites. You should pay particular attention to the following paragraphs of the Code:
 - Disrespect
 - Bullying
 - Disclosure of confidential information
 - Disrepute
 - Misuse of authority resources
7. However, it is difficult to give definitive advice on the application of the Code as each blog and social networking page is different. The content of a blog or other social networking tool and the circumstances surrounding its creation will determine whether or not it might be covered by the Code.
8. Ethical use of online social media is not limited to what is covered in the Code. Councillors are encouraged to respect the **Ten General Principles of Public Life**, which can be found in the Constitution as the preamble to the Members' Code of Conduct. While your conduct may not be a breach of the Code it may still be viewed as less than exemplary and attract adverse publicity for your office and authority.

Derogatory comments

9. On occasion, councillors might find themselves the subject of offensive or defamatory remarks on other people's blogs or networking sites. The following approach is advised in such circumstances, and applies equally to any form of publication:
 - Pursue a policy of indifference to such remarks, and do not be tempted into retaliation because you may risk breaching the Code. You could ask the person making the remarks to remove them from the site.
 - If the person making the comments is a local authority, town or parish councillor, discuss the situation with the Monitoring Officer. It might be the case that the person has breached the Code by making the remarks, and it could be appropriate to make a complaint to the Standards Committee.
 - Aside from any possible breaches of the Code of Conduct, the matter is usually deemed private between yourself and the individual. The Council cannot provide legal assistance for pursuit of a claim through the civil courts, but you may decide that you wish to take independent legal advice.
 - If a person had a blog or a social networking site, and a second person places comments about you on that site, you could ask the person to remove the second person's comments from their site.

MEETING:	STANDARDS COMMITTEE
DATE:	02 JULY 2010
TITLE OF REPORT:	GUIDE TO STANDARDS PROCESSES
REPORT BY:	ASSISTANT CHIEF EXECUTIVE LEGAL AND DEMOCRATIC (INTERIM)

CLASSIFICATION: Open

Purpose

To consider, in light of the proposed Decentralisation and Localism Bill, a draft guide to the standards processes and framework.

Recommendation(s)

THAT:

- (a) Members note the Government's proposal in relation to the wider standards processes and agree that detailed procedure rules are not included in the Council's constitution at this stage.**
- (b) Members comment on the proposed guide to the standards processes and framework**
- (c) An agreed version be made publically available**

Key Points Summary

- In light of the proposed Decentralisation and Localism Bill and its implications on the wider Standards process, it is recommended that detailed procedure rules are not considered for inclusion in the Council's constitution at this stage.
- A draft guide has been drafted which outlines the Standard Committee's processes in respect to complaints received on Members Code of Conduct.
- Each stage of the standards framework is outlined together with possible outcomes.
- It is hoped that this guide will assist Members of the public to better understand the processes and timescales involved.
- The website section of the Standards Committee is currently being reviewed and it is proposed that the new pages will be closely aligned to the structure provided in the guide.

Alternative Options

- 1 Not to make a guide to the standards processes and framework available. However, it is good

Further information on the subject of this report is available from
Siân Clark, Democratic Services Manager on (01432) 260222

practice to ensure that such processes are made widely available.

Reasons for Recommendations

- 2 Due to the recent announcement regarding abolition of the Standards Board regime, changes to standards processes are anticipated. Therefore a guide to the standards processes and framework is proposed to be made publically available. Until such time as the relevant legislation is passed, the statutory framework remains operative.

Introduction and Background

- 3 The Government have proposed a Decentralisation and Localism Bill which will include the abolition of the Standards Board regime. Item 9 on this agenda provides more detailed information on the known impact to Standards for England.
- 4 Given this position, changes to the standards processes and framework are anticipated. In advance of any further legislation, it is proposed to put on hold the Standards processes procedure rules which were to be included in the constitution.
- 5 Being mindful of the need to ensure that additional information about the Committee's processes and the differing stages of the standards framework is made widely available; a guide to these processes has been drafted and is attached as Appendix 1.
- 6 Subject to the view of the Committee, as the website section of the Standards Committee is currently being reviewed it is proposed that the new pages will be closely aligned to the structure provided in the guide.

Community Impact

7. A guide to the Standards processes and framework will help inform members of the public and assist them to engage more effectively with the process.

Financial Implications

8. It is proposed that the information be made publically available.

Legal Implications

9. Until such time as the relevant legislation is passed, the statutory framework remains operative.

Risk Management

10. The availability of a guide of the standards processes and framework to members of the public ensures that information provided is consistent and clear. It is essential that this guide be kept up to date to take account of any new legislation.

Consultees

11. There are none

Appendices

11. Draft guide to Standards processes and framework.

Background Papers

Standards Committee 2 July 2010: Agenda Item 9 - The Future of the Local Government Standards Framework

(Draft) Guide to Standards Committee Processes and Framework

Role and function of the Standards Committee

One of the functions of Herefordshire Council's Standards Committee is to assess and review complaints about members of Herefordshire Council and the county's town and parish councils and, where appropriate, to conduct hearings. The committee can consider only complaints that allege that a member has failed to comply with the council's Code of Conduct (see Appendix 1).

The Standards Committee comprises an independent chairman, two members of the council, two town or parish council representatives and other independent members. At least a quarter of the Standards Committee must be independent members. The Standards Committee is supported by the council's monitoring officer. The **monitoring officer** has a number of functions relating to the standards committee, including investigating complaints.

Making a complaint

1. Complaints against councillors must be made in writing to the Standards Committee (e-mails and faxes are permissible). There is a complaint form for this purpose which is available on the council's web site or which may be obtained contacting the monitoring officer at the council. The Council can provide help if the complainant is unable to make the complaint in writing because of a disability. (see Appendix 2)
2. When a complaint is received, the monitoring officer considers it to see whether it falls properly within the standards committee's remit – that is, that it relates to a potential failure to comply with the Code of Conduct. If the monitoring officer decides that the complaint is clearly not about member conduct, s/he does not have to pass it to the Standards Committee.
3. If any aspect of the complaint is unclear, council officers may contact the person making the complaint for clarification before the complaint is referred to the assessment sub-committee.
4. If the monitoring officer decides that the complaint is about member conduct and could, therefore, indicate a failure to comply with the Code of Conduct, the monitoring officer refers the complaint to the standards committee. The standards committee appoints an **assessment sub-committee** to consider the complaint and decide how it should be dealt with.
5. The person making the complaint is referred to as the **complainant** and the member about whom the complaint is made is referred to as the **subject member**. The monitoring officer will acknowledge receipt of the complaint to the complainant, and may also inform the subject member that a complaint has been received. However, the monitoring officer does not, at this stage, give the subject member details of the complaint. Only the standards committee has the power to disclose the details of the complaint to the subject member.
6. If the complainant has asked that their identity should not be disclosed to the subject member, the monitoring officer will not disclose it to the subject member at this stage. However, the standards committee believes that, in the interests of fairness and natural justice, members who are complained about have a right to know who has made the complaint. The committee will consider a request for confidentiality from the complainant where:
 - a) the complainant has good reason to believe that they will be at risk of physical harm;
 - b) the complainant is an officer who works closely with the member and there is a reasonable fear of intimidation or recrimination;
 - c) the complainant suffers from a serious health condition which might already be affected. In such cases the assessment sub-committee may request medical evidence.

7. The assessment sub-committee will not automatically grant a request for confidentiality, but will consider a request for confidentiality alongside the substance of the complaint. The committee will advise the complainant of their decision on the request for confidentiality and, if the request is not granted, they will normally allow the complainant the option of withdrawing the complaint.
8. In exceptional circumstances, where the matter complained about is very serious, the assessment sub-committee can proceed with an investigation or other action and disclose the complainant's identity even if the complainant has expressly asked the committee not to do so.
9. There are sub committees established to support the work of the Standards Committee. These sub-committees must have at least three members of the standards committee, and must be chaired by an independent member. For specific matters, at least one of the council members must be present, and for matters relating to a parish or town council, at least one parish or town member must be present for any decision to be made.

The assessment sub-committee

10. The assessment sub-committee comprises at least three members. The assessment sub-committee normally meets within 20 working days of the date the complaint is received. The meeting is not held in public. The assessment sub-committee will issue a decision notice setting out its decision, normally within five working days. It may decide:
 - that no action should be taken;
 - to refer the complaint to the monitoring officer for action other than investigation;
 - to refer the complaint for investigation.

Assessment sub-committee decides to take no further action

11. If the assessment sub-committee decides to take no further action, the decision notice will be sent to the complainant and the subject member within five working days of the date the decision was made. The complainant may ask for a review of a decision to take no further action. A request for a review must be received within 30 days of the date of the decision notice.
12. If a request for a review is received, the standards committee will notify all parties, and set up a **review sub-committee**. The review sub-committee comprises will comprise at least three members. Members of the original assessment sub-committee will not sit on the review sub-committee.
13. The review sub-committee will meet within three months of the date they receive a request for a review. The review sub-committee will consider the complaint as in paragraphs 10 above and 15 to 21. They will notify all parties of their decision normally within five working days.
14. If the review sub-committee decides that no further action should be taken, the complainant has no further right to request a review of the decision.

Assessment sub-committee decides to refer the complaint to the monitoring officer for other action

15. Where the assessment sub-committee decides to refer a complaint to the monitoring officer for other action, the sub-committee does not make any decision about whether there has been a failure to comply with the Code of Conduct. Other action may be appropriate in cases where, for example, the complaint suggests that there may be a general problem of misunderstanding of a particular part of the Code of Conduct or where the complaint is part of a wider pattern of similar complaints.
16. Other action might be, for example, training, re-training, mediation or other action to address the cause of the complaint.

17. The assessment sub-committee will send a decision notice to the complainant, the subject member and, if appropriate, the town or parish clerk. When the assessment sub-committee decides to refer the complaint to the monitoring officer for action other than investigation, there is no right to request a review of the decision.
18. The monitoring officer will report back to the standards committee normally within three months of receiving the decision, notifying the outcome of the other action or proposals for other action.

Assessment sub-committee decides to refer the complaint for investigation by the monitoring officer or Standards for England

19. If the assessment sub-committee decides to refer the complaint for investigation, it will send a decision notice to the complainant and the subject member, giving details of who the complaint will be referred to for investigation. This will be normally be to the council's monitoring officer but, in special cases, may be the ethical standards officer of the Standards for England.
20. If the complaint is referred to the monitoring officer for investigation, the monitoring officer will write to the subject member and the complainant advising them who will be conducting the investigation. This will be either the monitoring officer or an investigation officer appointed by the monitoring officer.
21. If the complaint is referred to the Standards for England for investigation, the monitoring officer will write to the subject member and the complainant advising them who will be conducting the investigation. This will be the **ethical standards officer** of the Standards for England. (see paragraphs 46-58)

Investigation by the council's monitoring officer or investigation officer appointed by the monitoring officer

22. The monitoring officer or investigation officer will normally complete their investigation within six months of the date of the assessment sub-committee decision. When the monitoring officer has completed an investigation, s/he will make a report on the findings of the investigation. The monitoring officer's investigation will result in one of the following findings:
 - that there has been a failure to comply with the Code; or
 - that there has not been a failure to comply with the Code.
23. The monitoring officer will normally write a draft report before completing a final report. The draft report will be sent to the complainant and the subject member for comment, and the monitoring officer will consider all the comments before completing the final report.
24. The monitoring officer will send the final report to the subject member and the standards committee. A copy may also be made available to the complainant. The standards committee appoints a consideration sub-committee to consider the monitoring officer's report.

Consideration sub-committee

25. The consideration sub-committee comprises at least three members and may be open to the public.

Consideration sub-committee decides that there was no failure to comply with the Code of Conduct

26. If the consideration sub-committee decides that there has been no failure to comply with the Code of Conduct, they arrange for a notice to be published in the local press, unless the subject member does not wish the matter to be publicised.

Consideration sub-committee decides that there was a failure to comply with the Code of Conduct

27. If the consideration sub-committee decides that there has been a failure to comply with the Code of Conduct, they decide whether the local standards committee should hear the case, or

it should be referred to the First-tier Tribunal (Local Government Standards in England), for hearing.

28. A complaint would be referred to the First-tier Tribunal only in the most serious cases, where there was likely to be a finding that there had been a failure to comply with the Code, and, if there was such a finding, the standards committee would be unable to impose an appropriate sanction. The most severe sanction that can be imposed by the standards committee is a six-month suspension from the member's current office; the First-tier Tribunal has the power to disqualify a member from holding office in any authority.

Standards Committee hearing

29. The Standards Committee hearing must take place within three months of the receipt of the monitoring officer's report following investigation or, where the investigation was conducted by an ethical standards officer of the Standards for England, within three months of the date the monitoring officer receives the ethical standards officer's report.
30. The hearings sub-committee comprises of at least three members and is usually held in public.
31. The report by the monitoring officer or the ethical standards officer will be sent to the subject member and, if appropriate, the town or parish clerk. The hearing must take place at least 14 days after the date the subject member receives the report.
32. The process of preparing for the hearing is the **pre-hearing process**. At least two weeks before the hearing date, a copy of the pre-hearing process summary will be sent to everyone involved with the complaint. The summary will give details of:
- the date, time and place for the hearing;
 - the allegation;
 - the facts that are agreed and the facts that are disputed;
 - who will attend the hearing, including any representatives and witnesses;
 - the procedure for the hearing.
33. The Standards Committee will try to complete the hearing in one sitting and to avoid any late night or lengthy hearings. After the hearing, the standards committee will arrange for a summary of the decision and their reasons for making the decision to be published in at least one independent newspaper, the council's website and any other publication it considers appropriate.

Standards Committee decides there has been no failure to comply with the Code

34. If the standards committee finds that there has been no failure to comply with the Code of Conduct, the subject member may ask that the decision is not publicised in local newspapers.

Standards Committee decides that there has been a failure to comply with the Code, but that no action is needed

35. If the standards committee decides that there has been a failure to comply with the Code, but that no action will be taken, the summary will give the decision, an outline of the process and the reasons for the decision. It will also state that the subject member has a right to appeal to the First-tier Tribunal against the decision that they have failed to comply with the Code.

Standards Committee decides that there has been a failure to comply with the Code, and that sanctions should be imposed

36. If the standards committee decides that there has been a failure to comply with the Code, and that a sanction should be imposed, the summary will give the decision, an outline of the

process, what sanction has been imposed and the reasons for the decision. It will also state that the subject member has a right to appeal to the First-tier Tribunal against the decision that they have failed to comply with the Code.

Sanctions

37. The Standards Committee will decide on sanctions ensuring that they are reasonable and proportionate to the subject member's behaviour. The committee can impose the following sanctions, including a combination of sanctions:

- censure of the member;
- reasonable restrictions on the member's access to council premises or resources for up to six months, provided the restriction does not unduly restrict the member's ability to carry out their functions as a member;
- partial suspension for up to six months;
- full suspension for up to six months;
- requirement for the member to write an apology as specified by the committee;
- training as specified by the committee;
- participation in conciliation, as specified by the committee;
- full or partial suspension for up to six months until the member has provided the apology, undertaken training or participated in conciliation.

If the subject member appeals against the decision of the standards committee, they may ask to have any sanction suspended pending the outcome of the appeal.

Appeals

38. Members found by the standards committee to have failed to comply with the Code of Conduct have a right to apply to the First-tier Tribunal for permission to appeal against the decision. There is a standard form for this purpose which the First-tier Tribunal must receive within 28 days of the date the subject member receives the standards committee decision. If the tribunal gives permission for the appeal, they will treat the application as the appeal.

39. The member may:

- appeal against the finding and request a suspension of any sanction imposed pending an appeal hearing; or
- appeal only against the sanction imposed.

40. Once permission to appeal has been given, the Tribunal will send the standards committee a copy of the appeal and of any accompanying documents. The standards committee must send or deliver a response to the Tribunal within 28 days of receiving the appeal. The standards committee must copy the response and any accompanying documents to the appellant. The appellant should submit any reply within 14 days of receiving it, but must not raise any new issues.

41. With the consent of the parties, the tribunal can determine the matter without a hearing if it is satisfied that it can properly do so. Where appeals are determined without a hearing the tribunal may nevertheless refer the matter to an oral hearing if it considers that it is not appropriate to make a determination on the written evidence available.

42. If the tribunal decides to hold an oral hearing, their website lists all scheduled tribunals and the date, time and place fixed for the hearings. The hearing is usually held public. It is open to the Tribunal to decide if all or part of the hearing should be held in private.

43. The decision will usually be given at the hearing and a written notice of the decision will be issued immediately. A fuller written decision will be issued as soon as practicable after the hearing – usually within 14 days. A copy of the decision will be posted on the Tribunal's website after the parties have been notified.
44. The tribunal can uphold or reject the finding which is the subject of the appeal. Where the finding is upheld the appeals tribunal may confirm or vary any sanction imposed by the standards committee. The tribunal has the same range of sanctions available to it as were available to the standards committee.
45. Where a tribunal rejects the findings of a Standards Committee, the standards committee's sanction ceases to have effect from the date of the tribunal's decision.

Process for complaint referred to Standards for England

46. The Standards for England can decide to:

- take no action;
- refer the complaint back to the monitoring officer for other action
- refer the complaint back to the assessment sub-committee to reconsider; or
- refer to an ethical standards officer to investigate the complaint.

They will notify the local standards committee of their decision, normally within ten working days. There is no right of appeal against the Standards Board for England decision.

Standards for England decides that no further action should be taken

47. If the Standards for England decides that no action should be taken, it will inform the local standards committee. The assessment sub-committee will send a decision notice to the complainant and the subject member and, if appropriate, the town or parish clerk, within five working days of receiving the decision.

Standards for England refers the complaint to the monitoring officer for other action

48. If the ethical standards officer of the Standards for England decides to refer a complaint to the monitoring officer for other action, the ethical standards officer does not make any decision about whether there has been a failure to comply with the Code of Conduct. The complaint will be dealt with as in paragraphs 14 to 17 above.

Standards for England refers the complaint back to the assessment sub-committee

49. If the Standards for England refers the complaint back to the assessment sub-committee, it might give directions to the standards committee on how to proceed. Otherwise, the assessment sub-committee will reconsider the case as in paragraphs 9 to 20 above.

Standards for England decides to investigate the complaint

50. If the Standards for England decides to investigate the complaint, they will appoint an ethical standards officer to conduct the investigation. The investigation will normally be completed within six months of the date of the assessment sub-committee's decision. The ethical standards officer may decide:

- that there has been no failure to comply with the Code of Conduct;
- that there has been a failure to comply with the Code of Conduct but no action needs to be taken;
- that the matter should be referred for a hearing by a local standards committee;
- that the matter should be referred for a hearing by the First-tier Tribunal.

51. The ethical standards officer will send a draft decision document to the subject member, the complainant and monitoring officer. The document will contain the proposed finding and the reasons for the finding. The subject member, complainant and monitoring officer will have 10 working days in which to make comments on the draft document. The ethical standards officer will consider all comments received on the draft document before issuing their final decision.
52. Where appropriate, the ethical standards officer will advise the parish or town clerk that the draft decision has been issued, but they do not send clerks a copy of the decision letter or report or invite comments.
53. Once all comments on the draft have been considered, the ethical standards officer will send a final report or letter to the subject member, the complainant, the monitoring officer, the town or parish clerk and any witnesses.
54. Although the parties have the opportunity to comment on the ethical standards officer's draft report or letter, there is no right of appeal against anything in the final report.

Ethical standards officer decides there has been no failure to comply with the Code of Conduct

55. The ethical standards officer will send their report to the monitoring officer. The monitoring officer will notify all parties of the decision.

Ethical standards officer decides that there has been a failure to comply with the Code of Conduct but that no action should be taken

56. The ethical standards officer will send their report to the monitoring officer. The monitoring officer will notify all parties of the decision.

Ethical standards officer decides that the matter should be referred for a hearing by a local standards committee

57. The ethical standards officer will send their report to the monitoring officer. The monitoring officer will notify all parties of the decision, and the standards committee will appoint a **consideration sub-committee** to consider the report.

Ethical standards officer decides that the matter should be referred for a hearing by the First-tier Tribunal

58. The monitoring officer will notify all parties of the decision, and the complaint will be referred to the First-tier Tribunal (Local Government Standards in England) for hearing.

Making a complaint

Should I complain?

If you are considering making a complaint about a member of Herefordshire Council or any of the town or parish councils within the county, you need to consider the following points:

Is your complaint about the conduct of a member of Herefordshire Council or any of the town or parish councils within the county?

Your complaint must be about one or more named members of Herefordshire Council or a Parish Council or Town Council in Herefordshire. The Standards Committee cannot deal with complaints about:

- dissatisfaction with a decision or action of the council or one of its committees;
- a service provided by a council, or its procedures
- the actions of people employed by a council.

For Herefordshire Council, these matters are dealt with by the Council's complaints procedure, accessible at www.herefordshire.gov.uk or by the Local Government Ombudsman at www.lgo.org-uk.

Was the member in office at the time the conduct occurred?

Your complaint must be about conduct that occurred while the member complained about was in office. Conduct of an individual before he or she was elected, co-opted or appointed to a council, or after he or she has resigned or otherwise ceased to be a member, cannot be considered by the standards committee.

Is your complaint that the member's conduct breached, or may have breached, the members' Code of Conduct?

Your complaint must be that the member has, or may have, breached the Code of Conduct. See the outline of the Code of Conduct, or a copy of the Code of Conduct and frequently asked questions about the Code of Conduct are available at www.standardsboard.gov.uk. Contact the council's Assistant Chief Executive (Legal and Democratic) if you need any further information.

How do I complain?

Your complaint must be in writing. If a disability prevents you from making your complaint in writing, please contact the monitoring officer at the address below for help.

There is a form that you can complete to make your complaint. This is available from the monitoring officer, or may be downloaded from the council's website. You may write a letter of complaint, but using the form will ensure that you have included all the information we need.

What happens once you submit your complaint?

When we receive your complaint we will write to you to let you know we have received it. We will also tell the member that you are complaining about that we have received a complaint, and, in most cases, who made the complaint. We will advise the member which paragraphs of the Code of Conduct it is alleged have been breached.

Your complaint will be considered by the **standards committee**. The standards committee will set up a subcommittee, called the **assessment sub-committee**. The assessment sub-committee will meet to decide whether your complaint can be dealt with by the standards committee – that is, whether it falls within the jurisdiction of the standards committee. They will normally meet within 20 working days of the date we receive your complaint. Meetings of the assessment sub-committee are not held in public so you will not be able to attend. We will write to you to let you know the outcome of the meeting, normally within five days.

Assessment sub-committee decision

If the assessment sub-committee decides that there is no potential breach of the Code of Conduct, they will not refer your complaint for investigation or other action. They will write to you to tell you the decision and the reasons for it. If you are unhappy with the decision not to take any action, you may have a right to ask for a review of that decision. The letter will explain this and tell you how to ask for a review.

If the assessment sub-committee decides that there may have been a breach of the Code of Conduct, they will either refer your complaint for investigation or refer it to the monitoring officer for other action. They will send you a notice telling you the decision. The notice will also be sent the member you have complained about and, if they are a member of a town or parish council, the town or parish clerk. We will send these letters within five working days of the assessment sub-committee reaching its decision.

What is meant by ‘other action’?

The assessment sub-committee may decide to refer your complaint for ‘other action’ instead of referring it for investigation. ‘Other action’ is a deliberately broad term that may include, for example, requiring the person you have complained about to apologise or to undergo training, or to agree to mediation. The sub-committee will consider the circumstances of your complaint when deciding whether other action is appropriate. If the sub-committee decides to refer your complaint for other action we will explain what this involves.

How should I set out my complaint?

It is very important that you set your complaint out fully and clearly, and provide as much information as possible at the outset and recommend that you use our complaint form. You should also provide any documents or other material that you wish the sub-committee to consider, where possible.

In the summary you should tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are sending supporting documentation please cross-reference it against the summary of your complaint.

You should be as detailed as possible and substantiate your complaint where you can. Although you are not required to prove your complaint at this stage of proceedings, you do have to demonstrate that you have reasonable grounds for believing that the member(s) complained about has breached the Code of Conduct.

Contact details:

The Monitoring Officer
Herefordshire Council
Brockington
35 Hafod Road
Hereford, HR1 1SH

Tel: 01432 260200
e-mail: monitoringofficer@herefordshire.gov.uk

The Code of Conduct

All councils must have a Code of Conduct that governs the behaviour of their members. The Code must include the provisions of the Model Code of Conduct approved by Parliament, which was issued on 4 April 2007.

The Code covers all elected, co-opted and independent members of local authorities, including parish councils, fire, police and national park authorities.

The Code consists of **general obligations** and obligations relating to **interests**.

General obligations

1. There is a general obligation to treat others with respect. In particular, council members must not:
 - do anything that could be in breach of any equality legislation;
 - bully anyone;
 - intimidate anyone who might be a complainant or witness to a complaint
 - intimidate anyone who is involved in the administration of an investigation of a complaint or proceedings following a complaint;
 - do anything that might compromise the impartiality of anyone working for the council.
2. There is a general obligation that members must not disclose information given to them in confidence, or information that could reasonably be thought to be confidential. Members may disclose such information only if they:
 - have the consent of someone authorised to give consent;
 - are required by law to disclose it;
 - need to disclose it to someone who is giving professional advice, but then only if that person agrees not to disclose it to anyone else;
 - consider the disclosure to be reasonable and in the public interest, and the member makes the disclosure in good faith and in compliance with reasonable requirements of the council.
3. Members must not prevent anyone having access to information if the person is entitled by law to have access to it.
4. There is a general obligation that members must not behave in a way that could reasonably be regarded as bringing their position as a member or the council into disrepute.
 - Members must not use, or try to use, their position as a member to give themselves or anyone else any advantage or disadvantage;
 - When members are using the council's resources, or authorising someone else to use the council's resources, they must act in accordance with the council's reasonable requirements;
 - When members are using the council's resources, or authorising someone else to use the council's resources, they must make sure that the resources are not used improperly for political purposes (including party political purposes).

Interests

6. Members attending council meetings must inform the meeting if they have a personal interest in any of the business being discussed at the meeting. Personal interests include membership of outside bodies where the member has a position of control or management, involvement in any business or employment, involvement with anyone who has given the member gifts or hospitality. There would also be a personal interest where any business being discussed at the meeting might affect the member or someone connected with the member, personally or financially.
7. Members must register any interests in the council's register of members' interests.

MEETING:	STANDARDS COMMITTEE
DATE:	2 JULY 2010
TITLE OF REPORT:	THE FUTURE OF THE LOCAL GOVERNMENT STANDARDS FRAMEWORK
REPORT BY:	ASSISTANT CHIEF EXECUTIVE LEGAL AND DEMOCRATIC (INTERIM)

Classification: Open

Purpose

To inform Members of information received regarding the future activities of Standards for England.

Recommendation

THAT the report be noted.

Key Points Summary

- A letter has been received from Dr Robert Chilton, Standards for England Chairman concerning the recent Government announcement about the future of the local government standards framework. The letter is attached at Appendix A for information
- The proposed Decentralisation and Localism Bill will include proposals to 'abolish the Standards Board regime'. The budget for Standards for England has also been reduced for this year by £1.45m (18%).
- Until such time as the relevant legislation is passed, the statutory framework remains operative.
- Standards for England are interested in hearing views about how future arrangements could most effectively work.
- The Board of Standards for England has begun a process to review its activities and to update its Business Plan, which will include a postponement of the quarterly monitoring return. Once the Board has concluded its review Standards for England will advise local authorities of any future monitoring requirements.
- Standards for England have also announced their decision to cancel the Annual Assembly which was to take place in Birmingham on 18 and 19 October 2010. The letter outlining the reasons for the cancellation is attached at Appendix B for information.

Further information on the subject of this report is available from
Sian Clark, Democratic Services Manager on (01432) 260222

Alternative Options

- 1 There are none.

Reasons for Recommendations

- 2 To inform Members of the Government's planned Decentralisation and Localism Bill, the published 2010/11 Government Savings and their current impact on Standards for England's activities.

Introduction and Background

- 3 The Coalition: Our Programme for Government was published on 20 May in which it was stated that; 'We will abolish the Standards Board regime'.

Key Considerations

- 4 The Decentralisation and Localism Bill was announced in the Queen's Speech on 25 May 2010. The Bill would devolve greater powers to councils and neighbourhoods and give local communities control over housing and planning decisions. One of the elements of the Bill will be to abolish the Standards Board regime.
- 5 On 10 June, the Government published details of the contributions required to the £6.2bn cross government savings in 2010/11. This included the £0.405bn (26 per cent) savings which are to be made from Local Government DEL (the Departmental Expenditure Limit). As part of the reductions in the Local Government DEL, it was announced that the Standards (Board) for England would deliver efficiency savings of £1.45million during 2010/11 which equates to 18% of Standards for England's total budget.
- 6 In the first parliamentary questions for CLG's new ministerial team on 8 June, Andrew Stunell, Local Government Minister confirmed that the Localism Bill would include legislation to scrap the local government Standards Board meeting the commitment made in The Coalition Agreement. Mr Stunell referred to the fact that the Standards Board costs £7.8 million a year, but dealt with only 1,000 real complaints last year, which is £7,800 per complaint.
- 7 The immediate impact of the announcement to abolish the Standards Board regime and the need to deliver efficiency savings has been that Standards for England have cancelled their Annual Assembly, due to be held in Birmingham in October. It was stated that given current uncertainty about any future local standards arrangements Standards for England did not feel it was appropriate to continue with the event.
- 8 A letter, dated 1 June 2010, has been received from Sir Robert Chilton, Standards for England Chairman, outlining whilst changes are expected that currently Standards for England does not currently have clear details of the scope or implications of the proposal, but emphasises that the statutory framework remains operative.
- 9 Further correspondence from the Standards for England on 18 June (following the savings announcement) stated that they have postponed quarterly monitoring return arrangements and that the Board was beginning a process to review activities and to update our Business Plan.

Community Impact

- 10 It is important to ensure that the community at large is aware that the statutory framework

remains operative.

Financial Implications

- 11 Four places had been reserved for Members of the Standards Committee and the Monitoring Officer to attend the Standards for England Annual Assembly on 18 and 19 October; this equates to £1,720 (plus VAT) and excludes any travel or accommodation costs.

Legal Implications

- 12 Until such time as the relevant legislation is passed, the statutory framework remains operative

Risk Management

- 13 There is a need to ensure that, until otherwise known, the statutory framework is adhered to.

Consultees

- 14 There are none

Appendices

1. Letter received on 1 June 2010 from Dr Robert Chilton, Standards for England Chairman
2. Letter received on 11 June 2010 from Glenys Stacey, Chief Executive, Standards for England

Background Papers

None

Sent via email

1 June 2010

Dear Colleague

As you will no doubt be aware the Government announced in the recent Queen's Speech that the proposed Decentralisation and Localism bill will include proposals to 'abolish the Standards Board regime'. Beyond this statement, we do not currently have clear details of the scope or implications of this proposal. However, until such time as the relevant legislation is passed, the statutory framework remains operative.

We will therefore continue to work with you to support your work. In turn, we expect you to continue with your statutory duties including the assessment of allegations, and we will continue to consider cases which you refer to us.

We remain committed to ensuring that there is a proper framework of local accountability in which the public can have confidence and we wish to work with central and local government to develop any proposals. As more details emerge we will keep you informed of developments and would be interested in hearing your views about how future arrangements could most effectively work.

In the meantime, if you need clarity on any specific issues, please do continue to call our enquiries line.

Yours sincerely



Dr Robert Chilton
Chair

Via email

11 June 2010

Dear Colleague

STANDARDS FOR ENGLAND ANNUAL ASSEMBLY 2010

As you will be aware the Government has announced that there will be provisions in its proposed Decentralisation and Localism bill 'to abolish the Standards Board regime'.

We are making changes to our plans, to reflect the new situation, and I am writing to you now in relation to one of our planned key events, the Annual Assembly due to take place at the International Convention Centre (ICC), Birmingham, on 18 and 19 October this year.

We do not expect the draft bill to be published until the autumn, when we can expect to understand better the implications for local government, and know to what extent any local standards framework is proposed. This will be too late to inform our event preparations, and in consultation with CLG we have now taken the decision to cancel the 2010 Annual Assembly.

Our external event partners – Benedict Business Resources – will be writing shortly to individuals who are already booked to attend the event, and I thought you would appreciate this advance notice. Delegates will receive a full refund, with Benedict's contacting individual delegates directly with the necessary details in next few days.

We are contacting our scheduled event speakers to let them know of the decision. In the meantime, if you need clarity on any specific issues, please do call our enquiries line.

Yours sincerely



Glenys Stacey
Chief Executive

MEETING:	STANDARDS COMMITTEE
DATE:	2 JULY 2010
TITLE OF REPORT:	APPEAL TO THE FIRST TIER TRIBUNAL
REPORT BY:	ASSISTANT CHIEF EXECUTIVE LEGAL AND DEMOCRATIC (INTERIM)

CLASSIFICATION: Open

Purpose

To inform Members of the Standards Committee of the appeal made to the First Tier Tribunal from Councillor Frank Myers of Walford Parish Council.

Recommendation(s)

THAT: the report be noted

Key Points Summary

- The First Tier Tribunal considered an appeal by Councillor Frank Myers of Walford Parish Council against a Standards Committee decision.
- The Tribunal considered written evidence and submissions on behalf of the Standards Committee and the Appellant
- The Tribunal considered that the sanctions imposed by the Standards Committee were appropriate and upheld the finding of the Standards Committee.
- Any request for the decision to be reviewed or for permission to appeal needs usually to be made to the First-tier Tribunal, in writing, within 28 days of publication of the Tribunal's reasoned decision (publication was 4th June 2010, therefore the appeal period finishes on 02 July 2010).
- The Council has not received any notification that such a formal application has been made to date. Councillor Myers will be contacted with a view to determining whether he will ask for a review of the First-Tier Tribunal's decision, and to put the sanctions in place.
- The full details of the appeal are attached as Appendix 1.

Financial Implications

6 Not applicable

Further information on the subject of this report is available from
Siân Clark, Democratic Services Manager (01432) 260222

Appendices

Copy of decision notice of the first tier tribunal dated 4 June 2010.



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(Local Government Standards in England)**

CASE NO: LGS/2010/0491

ON APPEAL FROM:

Standards Committee of: Herefordshire Council
Decision Notice No: SC0802
Dated: 11 December 2009

APPELLANT:

**Councillor Frank Myers of Walford Parish
Council**

RESPONDENT:

**Herefordshire Parish Council Standards
Committee**

Determined on the papers:

21 May 2010

DATE OF DECISION:

4 June 2010

BEFORE

**Judge: Beverley Primhak
Member: Brian McCaughey
Member: Chris Perrett**

Subject matter:

**Appeal by a member of a local authority
against a Standards Committee decision**

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal has been refused and the decision of the Standards Committee has been upheld.

REASONS FOR DECISION

1. The Tribunal has considered an appeal from the Appellant.
2. The Appellant had appealed against the Standards Committee's finding that the Appellant had failed to follow paragraph 6(a) of the Code of Conduct following a determination by the Standards Committee of Herefordshire Council that in April 2008 the Appellant used his position as Vice Chairman of the Parish Council improperly to confer on or secure an advantage for himself or a disadvantage for Councillor Cole.
3. The Appellant has appealed against the action which the Standards Committee decided to take in the light of the failure to follow the provisions of the Code of Conduct. That action was that the Appellant be required to undertake training provided by the Monitoring Officer and be required to make a written apology in a form agreed by the Deputy Monitoring Officer.
4. The Tribunal has considered written evidence and submissions on behalf of the Standards Committee and the Appellant. It is satisfied that the appeal may appropriately be determined by way of written representations.

Relevant paragraphs of the Code

5. Paragraph 2 provides:

(1) Subject to sub-paragraphs (2) and (5), you must comply with this Code whenever you:

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

(b) act, claim to act or give the impression you are acting as a representative of your authority; and references to your official capacity are construed accordingly.

6. Paragraph 6(a) provides:

"You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage".

Preliminary issues

7. In his grounds of appeal the Appellant alleged that the procedures followed by the Standards Committee were unfair. However, the Tribunal has considered the issues afresh and has reached its own view of the facts and whether those facts disclose a

breach of the Code. The Tribunal has not made a determination on the fairness or otherwise of the Standards Committee procedures as the appeals process has effectively cured any injustice. The Appellant submitted that there was an unreasonable delay in the matter being heard; however the Tribunal considered that any delay that had occurred has not had an effect on the outcome.

Finding of Facts

8. The Standards Committee made findings of fact. The undisputed facts are as follows:
 - 8.1. The Appellant held a beneficial interest in the Wythall Estate. Whilst the estate is adjacent to Thorny Orchard, separated only by a B road, the topography of the location means that the habitable element of the estate is a significant distance from either Thorny Orchard, which is screened from the road by a screen of mature trees, or Orchard House. There is no access road from the adjoining B road to the estate.
 - 8.2. The agenda item described as Thorny Orchard in the minutes of the meeting of the Walford Parish Council of 12 March 2008 was primarily concerned with the planning enforcement history relating to both Thorny Orchard and Orchard House.
 - 8.3. Whilst the development of the site did create noise and disruption, the activities which were the subject of the planning consent and discussion of the Parish Council meeting did not create interference, or directly or indirectly affect the Wythall Estate.
 - 8.4. There were concerns within the community concerning the activities undertaken by Councillor Cole at Orchard house.
 - 8.5. The Parish Council had not authorised the Appellant to raise concerns with the water authority or its contractors.
 - 8.6. The Appellant believed there to be a breach of planning law but professional advice had not been sought and his view had not been endorsed.
 - 8.7. The cessation of Laing O'Rourke activities at Orchard House did not impact upon the Wythall Estate to any greater extent than other residents in the area.
9. The disputed facts relate to:
 - 9.1. Whether there was a continuing disagreement between the Appellant and Councillor Cole as a result of actions taken during an earlier County Council election campaign;
 - 9.2. Whether the Appellant when writing to Laing O'Rourke, signing the letter as Vice Chairman of Walford Parish Council, created the perception that he was acting in his capacity as a senior councillor on behalf of the Council; and
 - 9.3. Whether the letter written by the Appellant acted as a catalyst for the termination of the agreement between Councillor Cole and the Welsh Water Authority and that consequently Councillor Cole suffered financial loss as a result.

Whether there was a continuing disagreement between the Appellant and Councillor Cole as a result of actions taken during an earlier County Council election campaign

10. The Standards Committee concluded as a matter of fact that there was a continuing disagreement between the Appellant and Councillor Cole, after hearing oral evidence. The Appellant strongly disputes this. He states that there has been political rivalry but not personal enmity. The Tribunal considers that whether or not there is a continuing disagreement between Councillor Cole and the Appellant is not central to the issues and makes no finding in this respect.

Whether the Appellant when writing to Laing O'Rourke, signing the letter as Vice Chairman of Walford Parish Council, created the perception that he was acting in his capacity as a senior councillor on behalf of the Council.

11. The Appellant wrote letters to the Chief Executives of Laing O'Rourke, Severn Trent and Enterprise PLC in April 2008. These all used similar wording. They were on his own headed notepaper and signed "*Frank Myers MBE, Vice Chairman Walford Parish Council*". The Appellant submits that the letters were written by him in his personal capacity. However, the letters all use the words "*It is our view and belief that such use is not permitted on this site and that you are potentially committing various offences.*" There is nothing in the letter to indicate whom "*our view and belief*" could relate to other than the Parish Council. The letters go on to state: "*We who live in the locality are considering every possible means to put a stop to this eyesore*" and "*Your comments would be appreciated and will be shared with the Community*". The Tribunal considers that a person receiving such a letter would be given the clear impression that it was sent on behalf of the Parish Council.

Whether the letter written by the Appellant acted as a catalyst for the termination of the agreement between Councillor Cole and the Welsh Water Authority and consequently whether Councillor Cole suffered financial loss as a result

12. The Appellant argues that there is no evidence that the letter acted as a catalyst for the termination of the agreement for use of the site by Welsh Water. However, it is quite clear from letters sent back by the Managing Director of Welsh Water and Laing O'Rourke that they treated the letters sent to them very seriously indeed and that the Appellant's involvement was influential in their decision to close the site by 1 May 2008, very shortly after the letters were written. The Tribunal accepts that it cannot be said that Councillor Cole necessarily suffered a financial loss as a result of the actions of the Appellant. Whether or not the contractors left the site was a matter for them and would depend on various factors, including how seriously they viewed their community policies and what legal agreements were in place. It is not known how much Laing O'Rourke and others were affected by the reference in the letters to "offences." It could be assumed that they would know that the Parish Council had no formal remit in respect of planning or environmental controls; however, it was bound to cause them concern.

Official Capacity

13. The Appellant has argued that he wrote the letters to Laing O'Rourke and others in his private capacity and that therefore he cannot have breached the Code. However, in response to the Standards Committee's submissions he accepted that in writing the letters, he acted as a Councillor and wrote the letters as a result of complaints made to him as a Councillor. He also signed his letters as Vice Chair of the Parish Council.
14. The Tribunal finds that the Appellant was acting in his official capacity when writing to Laing O'Rourke and the other companies.

Whether there was a breach of Paragraph 6(a)

15. The Tribunal has to consider whether the Appellant used his position as a member improperly and whether it was to confer on or secure for him or someone else an advantage or disadvantage.
16. In considering whether the Appellant breached paragraph 6(a) of the Code, the Tribunal has had regard to Article 10 of the European Convention on Human Rights. This provides:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of ... the protection of the reputation or rights of others."

The right to freedom of expression is an important right in a democratic society and may only be interfered with where there are convincing reasons justifying the interference. It is important that the restraints do not extend beyond what is necessary to maintain proper standards in public life.

17. The Tribunal has found that the letters sent by the Appellant would have given the fair-minded reader the impression that they had been sent on behalf of the Parish Council and were expressing their official concerns. It is clear that the Appellant had no authority to write in those terms. Indeed, he says in his submissions that, although he had no doubt that the Parish Council would have written a letter in the way that he did if he recommended it, it was not worth creating the ill-feeling that would have been caused, given that the complainant and Mrs Cole were both councillors. The Parish Council was certainly concerned about the state of the Coles' site as recorded in the minutes of their meeting held on 12 March 2008. The minute states: *"It was agreed that Cllrs. Thomas and Myers would draft a letter for further comment by Councillors and then submission to the Authorities"*. However, the intention was clearly that a letter would be agreed and then presumably sent in the normal way to the Local Planning Authority and other agencies. There was no authority from the Parish Council for the Appellant to send letters such as he did to the companies occupying the site.
18. The Tribunal considers that it would have been acceptable for the Appellant to write as he did in his personal capacity and probably also as a councillor on behalf of his constituents. What he was not entitled to do was to write seemingly on behalf of the Parish Council in the terms he did, and the Tribunal considers that his actions were improper.
19. Given the facts as found, the Tribunal does not consider that the Appellant wrote to the contractors to secure a direct advantage for himself; what he did was to confer a disadvantage on Councillor Cole, whether intentionally or recklessly. He wrote to Laing O'Rourke and the other companies, claiming the weight of the community behind him, to persuade them to stop doing business with Councillor Cole and to leave the site. It is clear from the correspondence that the Respondent's intervention had a strong influence on the actions of the contractors. The Tribunal considered that the Appellant did not require a prejudicial interest to confer a disadvantage on Councillor Cole.
20. For these reasons the Tribunal considers that the Appellant breached paragraph 6(a) of the Code of Conduct and that in all the circumstances the finding involves a proportionate restriction on his right to freedom of expression.

Sanction

21. The Tribunal must decide whether the sanction imposed by the Standards Committee was reasonable and proportionate in all the circumstances.
22. The Tribunal has taken account of the guidance issued by Standards for England for Standards Committee determinations.
23. The Standards Committee's submissions state that they took into account the Standards for England guidance and imposed the lightest sanction that was appropriate in all the circumstances, taking into account the councillor's relative inexperience and that he had apologised to the Committee.
24. The Standards for England guidance states:

"Suspension may be appropriate for more serious cases, such as those involving: trying to gain an advantage or disadvantage for themselves or others"
25. Although a period of suspension might have been appropriate for a breach of paragraph 6(a), the Tribunal agreed with the Committee that there were mitigating factors in this case as identified by them. The Tribunal was also mindful of the fact that, although the Appellant had broken the Code by writing as he did, the Parish Council had had concerns about the planning situation at the Orchard House site, and that there was no evidence that the Respondent had acted for his personal gain.
26. For these reasons the Tribunal considered that the sanctions imposed by the Standards Committee were appropriate.
27. The Tribunal upheld the finding of the Standards Committee.
28. The Tribunal directs that the sanctions that the Respondent should undertake training provided by the Monitoring Officer and that he be required to make a written apology within four weeks in a form agreed by the Deputy Monitoring Officer, as originally imposed by the Standards Committee, will take effect.
29. The written reasons for the Tribunal's decision will be published on the Tribunals website at www.adjudicationpanel.tribunals.gov.uk.
30. Any request for the decision to be reviewed or for permission to appeal needs usually to be made to the First-tier Tribunal within 28 days of receipt of the Tribunal's reasoned decision. Such applications need to be in writing.

Beverley Primhak

Judge

4 June 2010

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