



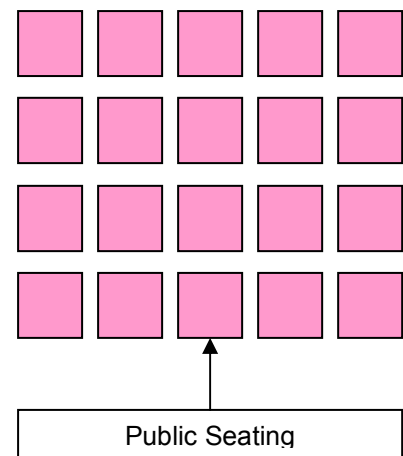
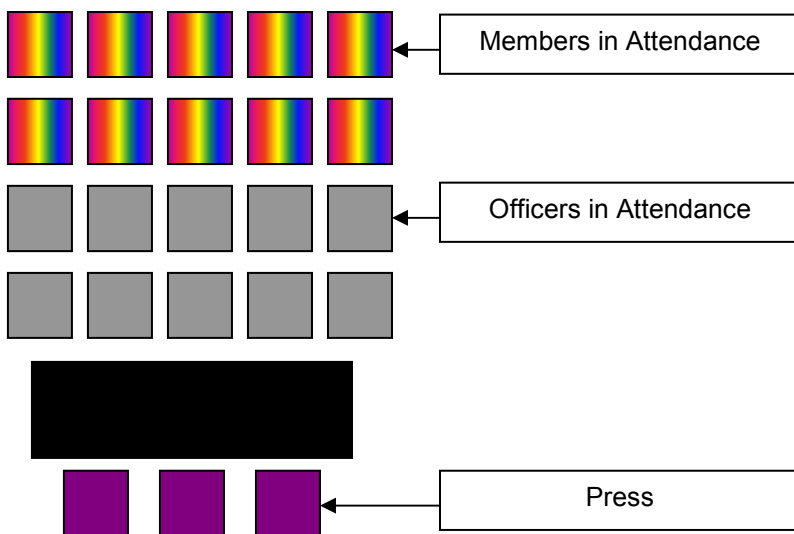
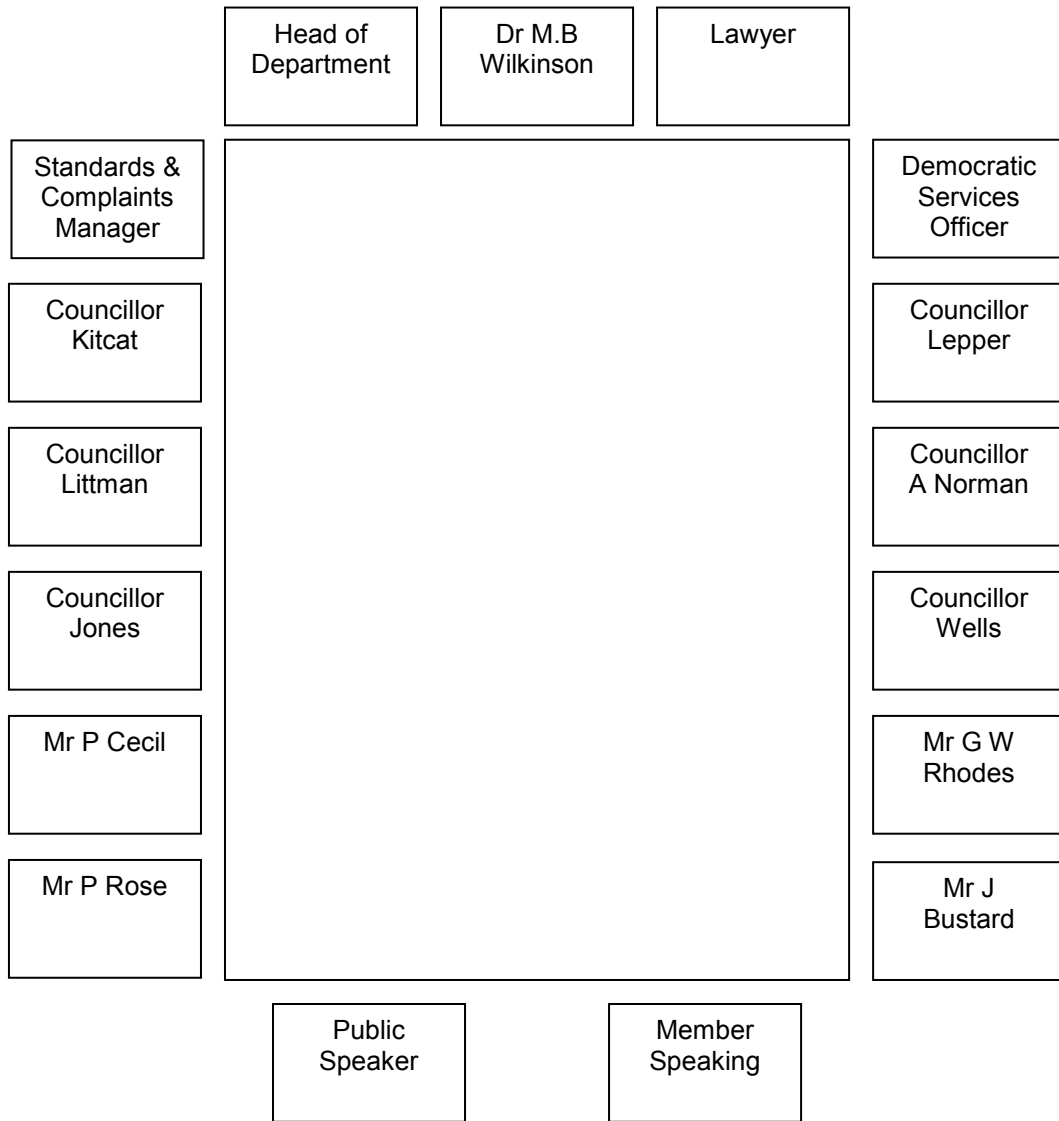
Brighton & Hove
City Council

Standards Committee

Title:	Standards Committee
Date:	17 January 2012
Time:	5.00pm
Venue	Committee Room 1, Hove Town Hall
Members:	Councillors: Jones, J Kitcat, Lepper, Littman, A Norman and Wells Independent Members: Dr M Wilkinson (Chair), Mr Paul Cecil and Mr Peter Rose Rottingdean Parish Council Representatives: Mr John Bustard and Mr Geoff Rhodes
Contact:	Ross Keatley Democratic Services Officer 01273 291064 ross.keatley@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

17. PROCEDURAL BUSINESS

(a) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.

(b) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

18. MINUTES OF THE PREVIOUS MEETING

1 - 6

Minutes of the meeting held on 27 September 2011 (copy attached).

19. CHAIR'S COMMUNICATIONS

20. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 10 January 2012)

No public questions received by date of publication.

21. ANNUAL REPORT OF THE STANDARDS COMMITTEE

7 - 12

Report of the Monitoring Officer (copy attached).

Contact Officer: Liz Woodley Tel: 29-1509

Ward Affected: All Wards

22. COMPLAINTS UPDATE

13 - 22

Report of the Monitoring Officer (copy attached).

Contact Officer: Brian Foley Tel: 291229

Ward Affected: All Wards

STANDARDS COMMITTEE

23. LOCALISM ACT 2011

23 - 30

Report of the Monitoring Officer (copy attached).

Contact Officer: Liz Woodley *Tel:* 29-1509

Ward Affected: All Wards

24. REVIEW OF PART 9.4 OF THE CONSTITUTION

31 - 48

Report of the Director of Strategic Resources (copy attached).

Contact Officer: Oliver Dixon *Tel:* 29-1512

Ward Affected: All Wards

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

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For further details and general enquiries about this meeting contact Ross Keatley, (01273 291064, email ross.keatley@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Monday, 9 January 2012

BRIGHTON & HOVE CITY COUNCIL

STANDARDS COMMITTEE

5.00pm 27 SEPTEMBER 2011

COMMITTEE ROOM 1, HOVE TOWN HALL

MINUTES

Present: Councillors: Jones, Lepper, Littman and A Norman

Independent Members: Dr M Wilkinson (Chair), Mr Paul Cecil and Mr Peter Rose

Rottingdean Parish Council Representatives: Mr John Bustard and Mr Geoff Rhodes

Apologies: Councillor Jason Kitcat (Green Group) and Councillor Geoffrey Wells (Conservative Group)

PART ONE

10. PROCEDURAL BUSINESS

10a Declarations of Interest

10.1 There were none.

10b Exclusion of the Press and Public

10.2 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Committee considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

10.3 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any item on the agenda.

11. MINUTES OF THE PREVIOUS MEETING

11.1 **RESOLVED** – That the minutes of the Standards Committee Meeting held on 21 June 2011 be agreed and signed as a correct record.

12. CHAIR'S COMMUNICATIONS

- 12.1 The Chairman noted that Jane Clarke, Senior Democratic Services Officer, would be leaving the Council, and thanked her for her work on the Committee. The Chairman also welcomed Councillor Jones onto the Committee.

13. PUBLIC QUESTIONS

- 13.1 There were none.

14. REVIEW OF CODE OF CONDUCT FOR EMPLOYEES

- 14.1 The Committee considered a report from the Monitoring Officer regarding the Review of Code of Conduct for Employees. The Senior Solicitor, Miss Woodley, outlined the report and said that the Human Resources Team were planning a review of the Code in line with ICT policies, but recommended that the Standards Committee comment on what they would like to see as part of the Code, which would then be fed into the review. She highlighted the issue of disclosure of Officer interests, and asked the Committee questions on what they would like to see regarding this issue.
- 14.2 Mr Cecil felt that if the Council required a mandatory disclosure of interests from all employees, this would create an unnecessary bureaucratic load, and would be impossible to manage. Officers in positions of power or influence should be required to register interests however.
- 14.3 The Monitoring Officer, Mr Ghebre-Ghiorghis, agreed that appropriate officers would need to be identified. He suggested Officers above a certain grade, or by designation, would be effective in deciding who would need to be included. There was currently a register of interests for Officers, but there was almost no compliance with it currently. Other Officers not required to complete the register of interests would still be required to declare interests on an individual and ad-hoc basis.
- 14.4 The Chairman felt that Planning Officers in particular might need to be included in a register of interests, as they had discretion and influence when deciding on planning applications.
- 14.5 Mr Ghebre-Ghiorghis agreed that some Planning Officers, Procurement Officers, and those in other teams could be identified as Officers with influence on decisions.
- 14.6 Mr Rose said that specific declarations would cover most of the issues that might come about regarding the work of these Officers. However, he did feel that some posts might be more relevant to include than others. He was keen not to overburden the Council with excessive administration, but felt that types of activity relevant to the post, rather than a blanket requirement on grading would probably be more effective.
- 14.7 Councillor A Norman believed the register should be accessible to members of the public, to show that decisions were impartial and fair. She agreed that Senior Planning Officers might need to be included as part of a mandatory register, but did not feel every member of staff should be included.

- 14.8 Mr Bustard felt that Officers who routinely entered into contracts on behalf of the Council might need to declare interests. He felt that any decisions where Council money was being used should be subject to scrutiny.
- 14.9 Councillor Lepper believed that a register of interests could help to protect Planning Officers from unfounded accusations of corruption or bias, and that individual declarations should be made as part of the planning process before the application came to a decision. The Chairman thought that this would be dealt with at a departmental level as a matter of course.
- 14.10 Mr Cecil believed there was a difference between a Code of Practice that individual departments may currently use, and a general Code of Conduct and Register of Interests. He felt that local declarations should be made through the appropriate line management. Broader contractual issues would be limited to those Senior Officers who had it as part of their role to disclose interests.
- 14.11 Mr Ghebre-Ghiorghis highlighted different types of disclosure: ad-hoc disclosure on relevant issues, as and when they came up; and annual disclosure, where permanent interests would be registered as part of an annual canvass. The Committee needed to clarify which Officers would need to disclose it what aspect, and whether part or all of the register should be disclosed to the public. The Code of Conduct for Employees could be flexible and relate to types of decision made rather than based purely on an Officer grade. Sensitive information relevant to the employee would need to be considered carefully before it was disclosed. Any proposals would be fed back to the Human Resources Team, and then back to Standards Committee, with consultation with the Unions included.
- 14.12 Mr Rose asked if the Council's Whistleblowing Policy would be reviewed at the same time, as the two policies were linked in terms of effective staff relations. Mr Ghebre-Ghiorghis replied that the Whistleblowing policy could be reviewed in the light of the outcomes from the draft Code of Conduct for Employees.
- 14.13 Mr Cecil noted that it seemed odd to proscribe work outside of the Council within the Code of Conduct for Employees, and felt this was more of a contractual matter that should be contained within the terms and conditions of employment.
- 14.14 **RESOLVED** – That the Committee has reviewed the Code of Conduct for Employees, and has made suggestions for amendment to be considered as part of Human Resources' review of the Code as detailed in the minutes.

15. UPDATE FROM THE WORKING PARTY REGARDING THE LOCALISM BILL

- 15.1 The Committee considered a report regarding an Update from the Working Party Regarding the Localism Bill. Ms Woodley said there were no moves in the House of Lords to save the Standards regime. The Localism Bill was currently in the report stage and there were a number of amendments to the Bill that had been moved. A proposal had been made to include a mandatory Code of Conduct and for a requirement to have a Standards Committee. Changes to the Bill were being proposed daily however
- 15.2 Mr Ghebre-Ghiorghis added that the Government had agreed in principle to a Code of Conduct and Standards Committee, which included retaining Independent Members. It was proposed that Members would be required to register pecuniary interests and for the Monitoring Officer to maintain the register. There was a general feeling that standards of conduct should be applied on a nationwide basis.
- 15.3 Miss Woodley said that the working group had felt that the existing Code of Conduct was a useful basis from which to develop a new Code. The working group had also supported the notion of a stand alone Standards Committee.
- 15.4 Mr Rhodes agreed with the conclusions of the working group. From the perspective of the Parish Council, he wanted to see the excellent support from Brighton & Hove City Council Officers on standards issues relating to the Parish Council continue, but felt that it was unnecessary for the parish to be represented on the formal Standards Committee. Mr Bustard agreed with this assertion.
- 15.5 Mr Ghebre-Ghiorghis clarified that the Monitoring Officer would still retain a role in terms of overseeing declarations of interests at the Parish Council. One of the issues raised by the working group was how the Code might apply to those councillors who had been cautioned for an offence. Cautions were recorded and so there was an option to extend the code in this area. The 10 general principles of conduct were felt to be an easy reference for members of the public to relate, and it was felt that they should be incorporated more fully into the new Code. He suggested that the Officers follow developments regarding the Bill, and look at best practice until it received Royal Assent. Following this, the working group might choose to reconvene once the full situation was known.
- 15.6 Mr Rose was concerned that provisions were in place should the Standards regime be abolished.
- 15.7 Mr Ghebre-Ghiorghis stated that when the Local Government Act 2000 came into force it had transitional arrangements that allowed Standards Committees created voluntarily by local authorities before the Act came into force to continue, and he expected, subject to the necessary regularisation being made, that some transitional arrangements of a similar nature to be put in place so that the current Standards Committee could be carried forward, if it was necessary. It was anticipated that the Bill would come into force in February 2012 and the government had agreed in principle to draft a Model Code outlining the mandatory aspects beforehand. The current situation was very ambiguous,

and more work would need to be done to clarify and local options that might be included with a new Code of Conduct.

15.8 **RESOLVED** – That the Committee notes the conclusions of the working group.

16. COMPLAINTS UPDATE

16.1 The Committee considered a report from the Monitoring Officer regarding the Complaints Update. The Standards and Complaints Manager, Mr Foley, highlighted aspects of the report and said that the average time for cases being dealt with was 110 days. Since April there had been four cases assessed, three of which were still being considered. Four new complaints had been submitted for assessment, and would be dealt with in the next few weeks.

The number of cases referred to the Local Government Ombudsman increased by about 40% in comparison to the previous year. However, the Ombudsman had gone a long way to making its services more accessible and there was no surprise that this had resulted in more enquiries being made; but the number of complaints that the Ombudsman had chosen to investigate had not increased. The number of local settlements was slightly higher than the national average. Compensation payments were generally low, but a couple of recent cases had resulted in higher payouts and this had skewed the figures for this year.

Mr Foley noted that the Ombudsman would be visiting the Standards & Complaints Team informally in the next few weeks, and he extended an invitation for Members to attend the visit.

16.2 **RESOLVED** – That the Standards Committee notes the report.

The meeting concluded at 6.00pm

Signed

Chairman

Dated this

day of

Subject:	Annual report of Standards Committee		
Date of Meeting:	17 January 2012		
Report of:	Monitoring Officer		
Contact Officer:	Name:	Liz Woodley	Tel: 291509
	Email:	liz.woodley@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 Section 3 of this report summarises the main ethical requirements of the Local Government Act 2000 (the Act), and demonstrates how the council has complied with them over the 12 months since the previous report of January 2011.

2. RECOMMENDATIONS:

- 2.1 That the Committee reviews the period January 2011 to December 2011 and advises of any action that it wished to be taken
- 2.2 That the Chair presents the report to Council.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**3.1 Standards Committee**

- 3.1.2 Section 53 of the Local Government Act 2000 requires the council to establish a Standards Committee, which must include two elected members and at least one independent member. Independent members must account for at least 25% of the membership of the Committee. Where a Council is responsible for parish councils, the Standards Committee (England) Regulations 2008 require at least two parish council representatives to be members of the Standards Committee. A Standards Committee must be chaired by a person who is not a member or officer of the authority

- 3.1.3 The Council has established a Standards Committee with a membership of 12. Over the period of the report, the membership of the Committee has been as follows:-

4 Independent Persons – Paul Cecil, Peter Rose and Dr M B Wilkinson and one vacancy. Uncertainty over the future of the Standards regime caused by the Localism Bill has meant that a decision has been taken not to recruit a further independent member following the resignation in February 2011 of Melanie Carter. .

2 Rottingdean Parish Councillors – John Bustard and Geoff Rhodes throughout

Green Members – Councillor Deane to May 2011 and Councillors Jones, Kitcat and Littman thereafter

Conservative Members - Councillors Harmer-Strange and Mrs Theobald until May 2011 and Councillors Norman and Wells thereafter

Labour - Councillors Carden and Lepper until May 2011 and Councillor Lepper thereafter

Liberal Democrat/Independent Member – Councillor Watkins until May 2011

3.1.3 The composition of the Committee complies with the statutory requirements. Dr Wilkinson has been the Chair throughout the period covered by the report.

Functions of Standards Committees

3.2.1 Section 54 (1) (a) of the Act provides that the general functions of a standards committee are promoting and maintaining high standards of conduct by members and co-opted members, and assisting them to observe the authority's code of conduct. By section 54 (1) (b) a standards committee is also required to have the following specific functions – advising on the adoption of a code of conduct; monitoring the operation of the code of conduct and advising, training or arranging to train members and co-opted members on matters relating to the code of conduct. All the prescribed functions are covered in the Committee's Terms of Reference.

3.2.2 An authority may arrange for its standards committee to exercise such other functions as the authority may consider appropriate. The Committee has been given a wide range of functions.

3.2.3 The Committee's wide remit is reflected in the written reports considered throughout the year:-

18 January 2011

Annual report of the Standards Committee
Localism Bill
Review of Election Guidance
Complaints Update

29 March 2011

Localism Bill update
Member Induction Programme
Complaints Update

21 June 2011

Update on the Localism Bill
Review of Webcast guidance

Review of Use of Council Facilities
Work Programme for 2011/2012
Complaints Update

27 September 2011

Review of Code of Conduct for Employees
Update from the Working Party regarding the Localism Bill
Complaints Update

Sub-Committees

- 3.3.1 A Standards Committee may appoint sub-committees to assist in the discharge of its functions (Section 54). The Council has established a Standards Assessment Panel, a Standards Assessment Review Panel and a Standards Hearing Panel. During the period covered by the report, the Assessment Panel has met 5 times and dealt with 12 complaints, the Review Panel has not met, and the Hearing Panel has met four times, twice as a Consideration Panel.

Code of Conduct

- 3.4.1 Under section 50 of the Local Government Act 2000, the Secretary of State may issue a model code as regards conduct which is expected of members and co-opted members of local authorities in England. Local authorities must adopt a code which incorporated the mandatory provisions of the code and may incorporate other provisions which are consistent with the Model. The Council adopted a Code of Conduct for Members on 15 May 2008, incorporating the mandatory provisions.
- 3.4.2 A person who becomes a member of the council may not act as such unless he/she has given a written undertaking that in performing his/her functions he/she will observe the council's Code of Conduct. Written undertakings have been given by all elected and co-opted members of the council.

Periodic Returns

- 3.5.1 Section 66B of the Act provides that an authority must send to the Standards Board (now known as Standards for England - SfE) within such period beginning with the end of each relevant period as the Board may direct, a return containing the required information. Early in 2010 SfE suspended the requirement to submit returns.

Disclosure and Registration of Members' Interests

- 3.6.1 By section 81 of the Act, the monitoring officer of each authority must establish and maintain a register of interests of the members and co-opted members of the authority. The council's Code of Conduct requires all members to register financial and other interests.
- 3.6.2 The council has declarations of interest from all Councillors and independent persons who are or who have been, members during the period of this report.

- 3.6.3 A copy of the register containing the most recent declarations of all current members and independent members serving on the Standards Committee is available for inspection at Kings' House. The register is also available on line, although members' home addresses have been withheld.

Future of the Standards Regime

- 3.7.1 The Localism Act received Royal Assent in November 2011. When in force, its standards provisions will have a significant effect on the standards regime. How the new provisions will be implemented by the council is yet to be determined.

4. THE MONITORING OFFICER FUNCTIONS

- 4.1 The functions of the Monitoring Officer derive from section 5 of the Local Government and Housing Act 1989 and the Local Government Act 2000. These are supplemented by the council's Scheme of Delegations to Officers, various codes and protocols contained within Part 9 of the constitution, as well as custom and practice. The Monitoring Officer in respect of legality and the Director of Finance & Resources in respect of finance both have statutory powers to intervene in decision making and to issue formal reports to the full council. Neither officer has had to use these powers in the period covered by the report.

Adequacy of Resources and Officer Arrangements

- 4.2 For the period covered by this report, the Head of Legal and Democratic services, Abraham Ghebre-Ghiorghis, has been the council's Monitoring Officer.
- 4.3 The Council is obliged to provide the Monitoring Officer with the necessary resources to enable him to discharge his functions. The Monitoring Officer is supported by a number of lawyers (who attend Cabinet, Cabinet Member meetings and committees and provide legal and probity advice), the Standards and Complaints Team (which deals with allegations of maladministration by any part of the council as well as ethical complaints about members) as well as Democratic Services Officers.
- 4.4 The council's Internal Audit undertakes an audit of corporate governance from time to time and supports the Monitoring officer by identifying any issues and suggesting steps for improvement.
- 4.5 These arrangements, taken together, provide the necessary expertise and resources for the effective discharge of the Monitoring Officers' functions.

COMMUNITY ENGAGEMENT AND CONSULTATION

- 5.1 The Chairman and Monitoring Officer have been consulted on the report.

6. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There are no financial implications arising from the report

Finance Officer Consulted: Anne Silley

Date: 15/12/11

Legal Implications:

- 5.2 These are addressed in the body of the report.

Lawyer Consulted: Name Liz Woodley

Date: 14/12/11

Equalities Implications:

- 5.3 No Equality Impact Assessment has been undertaken. It is not considered that there are any equalities implications arising from the report.

Sustainability Implications:

- 5.4 There are no sustainability implications arising from the report.

Crime & Disorder Implications:

- 5.5 There are no crime and disorder implications.

Risk and Opportunity Management Implications:

- 5.6 There are no risk and opportunity management implications,.

Public Health Implications:

- 5.7 There are no public health implications.

Corporate / Citywide Implications:

- 5.8 There are none

SUPPORTING DOCUMENTATION

Appendices:

None

Documents in Members' Rooms

None

Background Documents

None

STANDARDS COMMITTEE

Agenda Item 22

Brighton & Hove City Council

Subject: Complaints Update
Date of Meeting: 17 January 2011
Report of: Monitoring Officer
Contact Officer: Name: **Brian Foley** Tel: **293109**
E-mail: brian.foley@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 Complaints regarding Member conduct are administered under the arrangements as defined by The Standards Committee (England) Regulations 2008 which came into effect on 08 May 2008. These regulations are derived from the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007.
- 1.2 This paper gives information about active Standards complaints and recently completed cases.
- 1.3 There is a brief update on complaints dealt with via the Local Government Ombudsman. The powers of the Ombudsman are set out in the Local Government Act 1974.

2. RECOMMENDATIONS:

- 2.1 The Standards Committee is asked to note the report.

3. RELEVANT BACKGROUND INFORMATION

- 3.1 The Local Government Act 2000 requires the names of complainants and of Members about whom allegations have been made to be kept confidential.
- 3.2 With regard to timescales for complaints Standards for England recommend:
 - Assessments should on average be completed within 20 working days.
 - Review panels should be held within 65 working days.

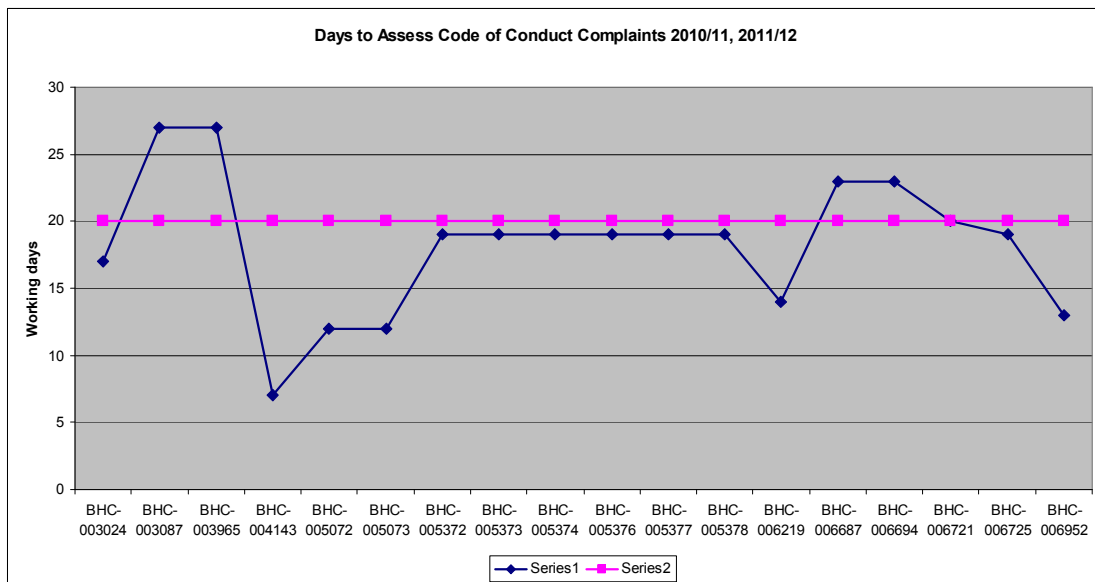
- Investigations should be completed within 130 working days from the date of assessment.

3.3 Table 1 below shows the number of working days taken to assess each complaint dealt with under the Local Assessment procedure during the council years 2010/11 and 2011/12.

3.4 There were twelve complaints in 2010/11. The average time to assess was 18 working days.

3.5 There have been six complaints in 2011/12. The average time to assess has been 19 working days.

Table 1



3.6 The complaints raised in 2010/11 resulted in three cases being referred to the Monitoring Officer for investigation. Two of those have been determined with a finding of no breach of the code of conduct. A third has yet to be determined.

3.7 In 2011/12 there has been one case referred to the monitoring officer for investigation. This case is about to be determined.

3.8 In 2011/12 one case was referred to the Monitoring Officer for alternative action.

3.9 In 2011/12 the decision of the Standards Committee Assessment Panel was that no action should be taken on the four remaining complaints.

3.10 Details of the cases follow below.

3.11 **Summary of active complaints about member conduct and cases where decisions have not previously been reported.**

3.11.1 **Complaints where Standards Committee Assessment Panel decided to refer the complaint to the Monitoring Officer for Investigation**

Complaint 1

Case Number: **BHC- 005373 B**

Complainant: Member of the public

Date of complaint: 07 March 2011

Date of Assessment Panel: 31 March 2011

Total number of working days to assess: 19

Allegation: It was alleged that a Member had each breached the following section of the Code of Conduct:

- Paragraph 3(1)
You must treat others with respect.
- Paragraph 5
You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

Decision of Assessment Panel:

Referred to the Monitoring Officer for Investigation.

Outcome:

Yet to be determined

Complaint 2

Case Number: **BHC- 005376**

Complainant: Member of the public

Date of complaint: 07 March 2011

Date of Assessment Panel: 31 March 2011

Total number of working days to assess: 19

Allegation: It was alleged that a Member had each breached the following section of the Code of Conduct:

- Paragraph 3(1)
You must treat others with respect.
- Paragraph 5
You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

Decision of Assessment Panel:

Referred to the Monitoring Officer for investigation.

Outcome:

Apart from the complainant, no other person had complained about photographs being taken. She was invited to confirm if any persons seated in the gallery would be willing to act as witnesses. None were forthcoming. The Panel also heard from the former member who admitted taking the photograph on the spur of the moment.

The Panel decided there was insufficient evidence to reach a finding that there has been a breach of Paragraph 3(1).

The Panel concluded there had been no breach of Paragraph 5.

The Panel recommended that at the beginning of public meetings of the Authority, clear guidance should be given by the Chair on the use of all recording devices during the meeting.

Complaint 3

Case Number: **BHC- 006219**

Complainant: Elected member

Date of complaint: 06 July 2011

Date of Assessment Panel: 25 July 2011

Total number of working days to assess: 14

Allegation: It was alleged that a Member had breached the following sections of the Code of Conduct:

- Paragraph 3(1)
You must treat others with respect.
- Paragraph 3(2)(a)
You must not do anything which may cause your authority to breach any of the equality enactments.
- Paragraph 5
You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

Decision of Assessment Panel:

Referred to the Monitoring Officer for investigation.

Outcome:

- (1) On the alleged breach of paragraphs 3(1) and 3(2), the Panel reiterates the findings of the Consideration Panel that there has been no breach of the Code;
- (2) On paragraph 5, the Panel considered carefully the finely balanced arguments presented. The Panel considered that the sole issue was the action of the leaflets given to the travellers. This action was a breach of the Code of Conduct. The Panel unanimously accepted the Investigating Officer's reasoning as detailed in the report.

In considering an appropriate sanction, the Panel noted:

- a. The Councillor's previous record of good service,
- b. Her co-operation with the process of investigation,
- c. Her compliance with the Code since the events giving rise to the determination,
- d. Her immediate action in withdrawing the leaflet.

The Panel therefore imposed no sanction.

3.12 Complaints where the decision of the Standards Committee Assessment Panel was to take 'other action'

Complaint 4

Case Number: **BHC- 006952**

Complainant: Member of the public

Date of complaint: 05 October 2011

Date of Assessment Panel: 21 October 2011

Total number of working days to assess: 13

Allegation: It was alleged that a Member had each breached the following section of the Code of Conduct:

- Paragraph 3(1)
You must treat others with respect.

Decision of Assessment Panel:

Referred to the Monitoring Officer for Alternative Action.

Outcome:

The Panel requested that the Monitoring Officer arrange for a training session to be made available to all members which pays particular reference to communication between elected members and members of the public. The training will pay due regard to a member's right to freedom of speech but will examine where the line should be drawn between respectful and disrespectful communications with fellow councillors and members of the public.

The Panel requires that the member attend this training. The member has confirmed he will do so.

3.13 Complaints where the decision of the Standards Committee Assessment Panel was to take no further action

Complaint 5

Case Number: **BHC- 006694**

Complainant: Member of the public

Date of complaint: 02 September 2011

Date of Assessment Panel: 04 October 2011

Total number of working days to assess: 23

Allegation: It was alleged that a Member had each breached the following section of the Code of Conduct:

- Paragraph 3(1)
You must treat others with respect.

Decision of Assessment Panel:

No action should be taken on the allegation.

Outcome:

The Panel commented that they thought it is good practice to acknowledge receipt of correspondence.

Complaint 6

Case Number: **BHC- 006687**

Complainant: Member of the public

Date of complaint: 02 September 2011

Date of Assessment Panel: 04 October 2011

Total number of working days to assess: 23

Allegation: It was alleged that a Member had each breached the following section of the Code of Conduct:

- Paragraph 3(1)
You must treat others with respect.

Decision of Assessment Panel:

No action should be taken on the allegation.

Outcome:

The Panel commented that they thought it is good practice to acknowledge receipt of correspondence. The Panel noted that the Councillor had asked an officer to reply on her behalf. They thought it would have been appropriate to have informed the complainant that his correspondence was being dealt with in this way.

Complaint 7

Case Number: **BHC- 006721**

Complainant: Member of the public

Date of complaint: 07 September 2011

Date of Assessment Panel: 04 October 2011

Total number of working days to assess: 20

Allegation: It was alleged that a Member had each breached the following section of the Code of Conduct:

- Paragraph 5

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

Decision of Assessment Panel:

No action should be taken on the allegation.

Outcome:

The Panel concluded that the information provided by the complainant was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the Panel is taking no further action on this complaint.

No additional information was provided.

Complaint 8

Case Number: **BHC- 006721**

Complainant: Member of the public

Date of complaint: 08 September 2011

Date of Assessment Panel: 04 October 2011

Total number of working days to assess: 19

Allegation: It was alleged that a Member had each breached the following section of the Code of Conduct:

- Paragraph 5

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

Decision of Assessment Panel:

No action should be taken on the allegation.

Outcome:

The Panel concluded that the information provided by the complainant was insufficient to make a decision as to whether the complaint should be

referred for investigation or other action. So unless, or until, further information is received, the Panel is taking no further action on this complaint.

No additional information was provided.

3.14 Complaints where a decision of the Standards Committee Assessment Panel is pending

There are no cases falling into this category.

3.15 The Local Government Ombudsman complaints 2011/12

	Maladministration causing injustice	Discontinue investigation	Local Settlement	No Maladministration	Not to initiate investigation	Outside Jurisdiction	Not yet determined	Total
Adult Assessment				1	1		1	3
Adults Provider				1			3	4
Children and Families		3		1	1		9	14
City Infrastructure		2		2	1		3	8
City Services		2	1	1		2	4	10
Housing and Social Inclusion	1	4	1	1	2	2	1	12
Planning & Public Protection		2		4	1		2	9
Resource Units		1						1
Tourism & Leisure					1			1
	1	14	2	11	7	4	23	62

3.15.1 The above table shows the number of complaint investigations carried out by the Local Government Ombudsman from April 2011 to the end of December 2011.

3.15.2 There has been a reduction in complaints referred for investigation compared to the corresponding period in the previous year from 85 to 62 cases.

3.15.3 However, more than a third of cases have not yet been concluded by the Ombudsman so a comparison of outcomes is not yet available.

3.15.4 The Ombudsman has found maladministration causing injustice in respect of a complaint about the excessive delay in repairing serious damage to a flat. The Council has put in place a number of procedural improvements to prevent similar problems happening again. A significant level of compensation has been agreed.

3.15.5 Eleven complaints resulted in findings of no maladministration.

- 3.15.6 Two complaints (5% of the determined cases) have been settled by Local Settlement, which is a considerable reduction compared to 13% in the same period last year.
- 3.15.7 In total the council have paid £3600 in compensation at the recommendation of the Ombudsman to the end of December.
- 3.15.8 The greatest proportion of complaints investigated related to education and children's social care complaints. This is because matters relating to schools admissions are invariably investigated by the Ombudsman with no referral to the Local Authority's complaint procedure. This sometimes happens for cases brought about children's social care.

4. CONSULTATION

- 4.1 There has been no consultation

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The costs of complaints in terms of administration and compensation are met within the allocated budget.

Finance Officer Consulted: Anne Silley Date: 16/12/2011

Legal Implications:

- 5.2 There are no legal implications

Lawyer Consulted: Liz Woodley Date:

Equalities Implications:

- 5.3 There are no Equalities implications

Sustainability Implications:

- 5.4 There are no Sustainability implications

Crime & Disorder Implications:

- 5.5 There are no Crime and Disorder implications

Risk and Opportunity Management Implications:

- 5.6 There are no Risk and Opportunity Management implications

Corporate / Citywide Implications:

- 5.7 There are no Corporate or Citywide implications

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents In Members' Rooms

1. None

Background Documents

1. None

Subject:	Localism Act 2011		
Date of Meeting:	17 January 2012		
Report of:	Monitoring Officer		
Contact Officer:	Name:	Liz Woodley	Tel: 291509
	Email:	liz.woodley@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE.**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The current regime for dealing with standards of member conduct derives from the Local Government Act 2000 as amended. The Localism Act makes significant changes to that regime. This report introduces the main changes.

2. RECOMMENDATIONS:

- 2.1 That the Committee note the report.
- 2.2 That the Localism Bill Working Party be reconvened to consider arrangements under the Localism Act for the assessment, investigation and determination of Code of Conduct complaints.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The current Standards Board regime for regulating member conduct includes a mandatory code of conduct, standards committees with the power to suspend members and a central body charged with overseeing standards of conduct – Standards for England. The Coalition Agreement, “Our Programme for Government” included a commitment to abolish “the Standards Board regime.” The chosen vehicle for abolition was the Localism Bill.
- 3.2 The Localism Act received Royal Assent on 15 November 2011. Of its 241 sections, only 12 (sections 26 to 37) relate to Standards. For the most part, those sections are not yet in force. Although the Standards Board and mandatory standards committees are to be abolished by the Act, the Government had a change of heart over a mandatory code of conduct.

4. LOCALISM ACT 2011**Standards for England**

- 4.1 The Standards Board for England, now known as Standards for England, was established by the Local Government Act 2000 in response to the Nolan report

and high profile failings in local government. It is to be abolished on a date to be appointed by the Secretary of State. None of its functions are to be preserved. Based on an answer to a parliamentary question, Standards for England is working on the assumption that it will be abolished with effect from 31 March 2012. Prior to that date, its regulatory role in handling cases and issuing guidance will stop from a date to be set out in regulations. This is anticipated to be 31 January 2012. From that date, Standards for England will no longer have powers to accept new referrals from local standards committees or conduct investigations into complaints against members. Any existing referrals or investigations will be transferred back to the relevant authority for completion. However, any complaints which are being handled locally on that date will need to continue through to a conclusion; and similarly any matters relating to completed investigations or appeals which have been referred to the First Tier Tribunal will continue to conclusion.

Standards Committees

- 4.2.1 The 2000 Act requires all local authorities to have a standards committee. Such committees are required to promote and maintain high standards of conduct by members and co-opted members, and to assist them to observe the authority's code of conduct. They are also required by the Act to have the following specific functions – advising on the adoption or revision of a code of conduct; monitoring the operation of the code, and advising, training or arranging to train members and co-opted members on matters relating to the code of conduct. All the prescribed functions have been delegated to the council's Standards Committee.
- 4.2.2 The requirement to have a Standards Committee is to be abolished by the 2011 Act, although there is nothing in the legislation to prevent the council from having one on a voluntary basis.
- 4.2.3 The duty to promote and maintain high standards of conduct is now imposed by section 27 of the new Act on relevant authorities, rather than committees as previously. The council is a relevant authority for the purposes of this section

Code of Conduct

- 4.3.1 Under the 2000 Act, local authorities must adopt a Code of Conduct incorporating the mandatory provisions of the model code of conduct issued by the Secretary of State. Section 51 of that Act imposes a duty on members to comply with the Code. A person who becomes a member of an authority may not act as such until he has given a written undertaking that in performing his/her functions, he/she will observe that authority's code of conduct.
- 4.3.2 Section 28 of the new Act provides that a relevant authority must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. That code must be consistent in accordance with the seven Nolan principles of standards in public life, namely Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. It must also set out the rules that an authority wants to put in place with regard to requiring members to register and disclose pecuniary and non-pecuniary interests.

4.3.3 The Act also requires an authority to put in place arrangements under which it can investigate a written allegation that a member has or may have breached the code, together with arrangements under which decisions on allegations can be made. Those latter arrangements must include provision for the appointment of at least one independent person whose views must be sought after it has undertaken an investigation and before it takes a decision. The Act allows members who have had an allegation made against them to seek the views of the independent person if they wish. If an authority finds a member has failed to comply with its code, it may have regard to the failure in deciding whether to take action, and what action to take. The Act is silent on what sanctions may be imposed. The council's existing procedures for the assessment, investigation and determination of complaints are generally regarded as bureaucratic. The report therefore recommends that the Localism Bill Working Group be reconvened to consider alternative procedures once the standards provisions of the Localism Act are in force.

4.3.4 There are provisions in the Act for the process of appointment of independent members to be publicised and transparent. Allowances may be paid without affecting an independent person's independence. According to the Explanatory Notes accompanying the Act, the section is designed to prevent councillors, officers or their relatives or friends from being appointed as independent persons.

4.3.5 One issue which is vexing legal commentators is whether existing independent members on Standards Committees are eligible for appointment as an independent person under the new arrangements. The legislation provides:-

For the purposes of subsection (7)-

(a) A person is not independent if the person is-

- i. a member, co-opted member or officer of the authority
- ii. a member, co-opted member or officer of a parish council of which the authority is the principal authority , or
- iii. a relative , or close friend, of a person within sub-paragraph (i) and (ii)

(b) a person may not be appointed under the provisions required by subsection (7) if at any time during the five years ending with the appointment the person was-

- i. a member co-opted member or officer of the authority, or
- ii. a member, co-opted member or officer of a parish council of which the authority is the principal council.

ACSeS, the Association of Council Secretaries and Solicitors, has concluded that these provisions are clouded in uncertainty and has determined to seek counsel's opinion on the same. It is suggested that the council awaits that advice before making any decisions on how to implement the new regime.

- 4.3.6 Authorities can revoke their existing codes, adopt a new one to replace the existing code or revoke the existing one without replacing it. A duty is imposed by the Act to publicise the adoption, revision or withdrawal of a code in such manner as it considers likely to bring the adoption, revision or withdrawal to the attention of person who live in its area. As now, the formal adoption of a new code is reserved to full council.

Register of Interests

- 4.4 Section 29 of the new Act requires monitoring officers of relevant authorities to establish and maintain a register of members' and co-opted members' interests, to make the register available for inspection and to publish it on their authority's website. The requirements to establish and maintain a register and to make it available for inspection replicate existing requirements. Although publication of the register on the website is not a legal requirement, it is the council's practice to publish it on line.

Disclosure of pecuniary interests on taking office

- 4.5 Section 30 requires members of relevant authorities to notify the monitoring officer of any disclosable pecuniary interests of them or a spouse or civil partner they live with, within 28 days of taking up office. The section allows the Secretary of State to make regulations defining a "disclosable pecuniary interest", and requires the monitoring officer to enter any notified disclosable pecuniary interest in the authority's register, as well as any other interest notified to him/her, whether or not it is pecuniary. Until these Regulations are available, it will be difficult to draw up a draft Code of Conduct for the council.

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

- 4.6 Section 31 requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest), at a meeting, where any matter to be considered relates to their interest. If the interest is not already registered, and is not the subject of a pending notification, the section requires a member to register it within 28 days. The member is prohibited from participating in discussion or voting on any matter relating to their interest (subject to any dispensations). Local authorities can amend their standing orders to require a member to leave the room when a matter in which they have a disclosable pecuniary interest is debated or voted on.

Sensitive interests

- 4.7 Section 32 provides for details about a registered interest to be excluded from versions of the register that are available for public inspection or published where a member and monitoring officer agree that the disclosure of these details could lead to harm or intimidation of the member or their family. It provides for members to disclose only the fact that they have a disclosable pecuniary interest in the matter concerned at meetings. This is similar to the existing "sensitive information" provisions in the Code of Conduct.

Dispensations

- 4.8 Section 33 empowers a relevant authority, on receipt of a written request, to grant dispensations for up to four years for a member to be able to participate in or vote at meetings where they have a disclosable pecuniary interest. Authorities may grant dispensations if they consider that by not granting a dispensation, the business of the authority or committee is likely to be impeded; or that the political balance of the committee or authority is so upset as to alter the outcome of a vote; or that granting the dispensation is in the interests of residents; or that they consider it appropriate to grant a dispensation for other reasons.

Offences

- 4.9 Section 34 makes it a criminal offence for a member or co-opted member to fail, without reasonable excuse, to comply with requirements under section 30 or 31 to register or declare disclosable pecuniary interests, or take part in council business at meetings when prevented from doing so. It empowers the magistrates' court, upon conviction, to impose a fine of up to level 5 (currently £5,000), and an order disqualifying the person from being a member of a relevant authority for up to five years. The usual time limit for bringing summary offences, i.e. those triable only by a Magistrates' Court is 6 months. The Act extends the time for bringing a prosecution for the offence by allowing a prosecution to be brought within 12 months of the prosecuting authority having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions

5. COMMUNITY ENGAGEMENT AND CONSULTATION

- 5.1 There has been no engagement or consultation on this information report.

6. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 6.1 There are no direct financial implications associated with this report

Finance Officer Consulted: Anne Silley Date: 14/12/11

Legal Implications:

- 6.2 These are addressed in the body of the report.

Lawyer Consulted: Name Liz Woodley Date: 13/12/11

Equalities Implications:

- 6.3 There are none.

Sustainability Implications:

6.4 There are none.

Crime & Disorder Implications:

6.5 There are none.

Risk and Opportunity Management Implications:

6.6 There are none.

Public Health Implications:

6.7 There are none.

Corporate / Citywide Implications:

6.8 There are none.

SUPPORTING DOCUMENTATION

Appendices:

None

Documents in Members' Rooms

None

Background Documents

None

Subject:	Review of Part 9.4 of the Council's Constitution: guidance to members and officers serving on outside bodies		
Date of Meeting:	Standards Committee – 17 January 2012 Governance Committee – 20 March 2012 Council – 22 March 2012		
Report of:	Strategic Director Resources		
Contact Officer:	Name:	Oliver Dixon	Tel: 291512
	Email:	oliver.dixon@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 One of the functions of the Standards Committee is to carry out periodic reviews of those parts of the council's constitution relating to member and/or officer conduct. This report addresses Part 9.4 of the constitution: guidance to Members and officers serving on outside bodies.
- 1.2 A number of changes to the regulatory framework relevant to outside appointments have occurred since Part 9.4 was last reviewed. This report highlights those and other changes and proposes an amended version of Part 9.4, which the Committee is asked to recommend to Governance Committee and Full Council.

2. RECOMMENDATIONS:

- 2.1 That Standards Committee agrees the amended version of Part 9.4 of the council's constitution, as set out in Appendix 1, and recommends it to Governance Committee for consideration; and to Full Council for approval.

3. RELEVANT BACKGROUND INFORMATION

- 3.1 Part 9.4 of the council's constitution comprises guidance for members and officers serving on outside bodies. At Annual Council 2011, Members were appointed to no fewer than 61 outside bodies. In addition, Members may occupy a position on an outside body not by nomination of the council but by the body itself. Alternatively, a person may already serve on an outside body before being elected a Member. In all cases, it is important both for the Members and bodies concerned that appointees understand the duties and responsibilities that accompany the appointment.

- 3.2 It is several years since the content of the guidance was substantively revised, and during that time there have been a number of changes to the regulatory framework relevant to outside appointments. Of these, the most significant has been the provisions in the Companies Act 2006 which have put the common law duties of company directors onto a statutory footing – see paragraph 2.7 of the amended guidance.
- 3.3 In addition, the proposed amendments reflect recent changes to other relevant legislation and policy, in particular the Bribery Act 2010 – see paragraph 75 of the amended guidance – and the council’s general indemnity for Members and officers appointed or nominated to serve on outside bodies. The indemnity came into force in July 2005 and is provided for under the Local Authorities (Indemnities for Members and Officers) Order 2004; it is referred to in the amended version of the guidance at paragraph 1.8.2.

4. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 There are no direct financial implications from the recommendations however through complying with the updated guidance, the risk of corporate and/or individual liability is reduced, thus limiting the council's potential exposure to financial penalties or paying out on indemnities.

Finance Officer Consulted: Anne Silley

Date: 05/01/12

Legal Implications:

- 5.2 The proposed amended guidance takes into account relevant legislation and sets out the legal duties and potential liability of members and officers appointed to or serving on outside bodies.

Proposed amendments to Part 9.4 of the constitution require the approval of Full Council following consideration by Standards Committee and Governance Committee.

Lawyer Consulted: Oliver Dixon

Date: 03/01/12

Equalities Implications:

- 5.3 Any outside organisation to which a Member or officer is appointed is likely to be subject to the Equality Act 2010 which, amongst other things, prohibits unfair treatment in the workplace, when providing goods, services or facilities, and in the management and disposal of premises. Members and officers may wish to satisfy themselves that any organisation to which they are appointed is adhering to the relevant parts of that Act.

Sustainability Implications:

- 5.4 There are no sustainability implications arising directly from this report

Crime & Disorder Implications:

- 5.5 The guidance has been updated to reflect the latest regulatory environment applicable to appointments to outside bodies. By following the guidance, Members and officers should reduce their potential criminal liability under relevant legislation.

Risk and Opportunity Management Implications:

- 5.7 Those appointed to outside bodies need to be aware of the legal duties and prohibitions that accompany such appointments and the potential liability associated with breaching those provisions. Equally, becoming part of the management of an outside body gives members and officers an opportunity to complement and enhance their council role.

Corporate / Citywide Implications:

- 5.8 The proposed amended guidance should provide assurance to an external body that when a Member or officer of the council is appointed to it, that person is aware of their key duties and liabilities on appointment and thereby contributes to the good governance of the body in question.

SUPPORTING DOCUMENTATION

Appendices:

1. 'Guidance for Members and Officers Appointed to Outside Bodies' in its proposed amended form. For ease of reference, amendments are shown as tracked changes

Documents in Members' Rooms

None

Background Documents

1. The Local Authorities (Indemnities for Members and Officers) Order 2004
2. The Companies Act 2006
3. The Bribery Act 2010

PART 9.4 GUIDANCE FOR MEMBERS AND OFFICERS APPOINTED TO OUTSIDE BODIES

CONTENTS

1. Introduction
2. Companies
3. Charities
4. Unincorporated Associations
5. Registration and Disclosure of Outside Interests for Members
6. Disclosure of Outside Interests for Officers
- | 7. Gifts, Hospitality and Bribery ----- **Deleted:** and

GUIDANCE FOR MEMBERS AND OFFICERS APPOINTED TO OUTSIDE BODIES

I. INTRODUCTION

- I.1 This guide is intended to give a general overview of the issues which affect Members and officers who are appointed to outside bodies. The council's Monitoring officer or legal team will be able to provide further advice to expand upon any of the issues raised.
- I.2 Each year, either at the council's annual meeting or cabinet meetings, Members are appointed to a range of outside bodies. The list of appointments is published in the minutes of those meetings.
- I.3 The roles of Members or officers on outside bodies will depend upon the legal nature of that organisation and the capacity in which they are appointed to act. It may, for example, involve acting as a company director, the trustee of a charity, or a member on a management committee.
- I.4 In participating in outside bodies, Members and officers may take account of the council's wishes but they must ultimately make independent judgements in line with their duty of care to the outside body. They must also act according to the framework set by the outside body and take an active and informed role in the management of the outside body's affairs. This involves attending meetings on a regular basis and carrying out their duties to the best of their abilities. In addition, they must follow as far as applicable the council's Code of Conduct for Members or the Code of Conduct for Officers.
- I.5 Members should be aware that they will have to disclose membership of the outside body in their dealings with the council and where a conflict of interest arises it is likely that they will have to withdraw from any consideration by the council of any matter affecting the outside body. Members should bear this in mind when deciding whether or not to accept a particular nomination. In the case of officers, arrangements should be made to refer the matter to another officer to deal with whenever a conflict of interest arises.
- I.6 Whilst there is no legal obligation on Members or officers to report back to the council on their involvement in outside companies to which they have been nominated by the council, it is good practice to do so; this is best achieved by way of an annual report to the relevant committee or cabinet meeting. In the case of officers, their participation should be discussed on a more regular basis with their line managers at supervision or appraisal meetings.
- I.7 The most common types of outside bodies in which Members or officers may become involved are considered in more detail below and include:-

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- (a) Limited Liability Companies
- (b) Charities
- (c) Unincorporated Associations

1.8 Indemnities and Insurance.

1.8.1 The primary responsibility for providing proper indemnities and insurance cover to protect Members and officers when acting for outside bodies lies with those bodies. However, officers will assist in checking that there is a corporate or organisational structure which, on its face, appears adequate and that some form of indemnity exists to provide protection to the council's appointee or nominee.

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1.8.2 As there may be occasions when the insurance or other indemnity arrangements made by the outside body prove inadequate to protect the council's appointee or nominee from liability, the council has put in place a general indemnity for its Members and officers so appointed or nominated. It would only apply where the indemnity or insurance offered by the outside body did not provide adequate cover.

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2. COMPANIES

- 2.1 The obligations imposed by company law are onerous and there are severe penalties for non-compliance with many of the duties imposed on directors. It is important for Members and officers appointed to act as company directors to ensure that they understand the duties and obligations which the law imposes on them.
- 2.2 A company is a separate legal entity which can hold property in its own right, enter into contracts, employ staff and sue and be sued in its own name. A company is distinct from its members, who may be either shareholders or guarantors.
- 2.3 Whether a company is limited by shares or by guarantee, the day to day management of the company is usually vested in the directors. The members ultimately control the company by electing the directors and deciding the major issues at general meetings. The main differences are as follows:-
- in a company limited by shares the shareholders share the ownership of the company and its profits and if the company is wound up each shareholder is liable to pay an amount equivalent to the nominal value of his or her shareholding;
 - a company limited by guarantee does not normally seek to make a profit and in the event of the company being wound up, the members guarantee to

make a payment to the level of their guarantee (usually a nominal figure of £1.00). Hence companies limited by guarantee are more commonly used for voluntary and public bodies, especially where charitable status is sought.

- 2.4 A company is controlled by reference to its 'constitution', which is contained in the Memorandum and Articles of Association. These documents will set out the powers of the company, and the rules by which it is to be managed. Any act carried out by the company that is outside the powers set out in the Memorandum will be unlawful, and a director involved in such an act may be personally liable for any resulting losses.
- 2.5 In general Members and officers should avoid taking executive or managerial responsibility for the company's activities because the duties of executive or managing directors can be particularly onerous. This is because executive directors are directly responsible for particular aspects of the company's affairs. For example, a finance director will have responsibility for the company's financial position, which could give rise to liability for allowing the company to trade while insolvent if the company goes into liquidation. However, all directors, including part-time and non-executive directors, are required to make themselves fully aware of the company's financial position and should attend Board meetings regularly. Ignorance of transactions entered into by the company through a failure to make proper enquiries may not be an adequate defence to a charge of negligence brought against such a director.
- 2.6 In some situations, the Council may nominate Members or officers to act as "observers" on the board of directors of a company. Although such observers have no specific legal status, Members and officers should be aware that if an observer's involvement increases to such an extent that it could be said that there is an active engagement in the management of the company, he or she may be deemed to be a "shadow director" which may entail liabilities. Any person appointed to this role should therefore ensure that the extent of their role as an observer is clearly defined and agreed to avoid involvement in managing or directing the management of the company.

- 2.7 Under the Companies Act 2006 ('the Act'), directors owe a number of legal duties to their company. These are duties to:
- Act within powers (section 171 of the Act)
 - Promote the success of the company (section 172)
 - Exercise independent judgement (section 173). Although it is permissible to take account of the interests of a third party (in this case the council) a director cannot vote simply in accordance with the council's instructions.
 - Exercise reasonable skill, care and diligence (section 174)
 - Avoid conflicts of interest (section 175). There may be actual or potential conflicts between the interests of the company and those of the

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council. A Member or officer cannot waive their statutory responsibilities as a director, hence they may have to cease to act as a Member or officer in relation to the particular matter. In extreme cases, the only proper way for the conflict to be resolved may be for the Member or officer to resign either from the company or from the council.

- Not accept benefits from third parties (section 176)
- Declare interest in a proposed transaction or arrangement with the company (section 177). Directors must therefore disclose any interests they or their family may have in relation to the company's contracts. Whether they are then allowed to vote will depend on the company's Articles of Association. Equally, officers are not allowed under cover of their office to take any more than their proper remuneration so they must obtain the consent of the Council if they are to receive any remuneration from a company to which they have been appointed by the Council.

Members acting as directors should be aware of these duties, particularly those which could lead to:

- A conflict with their role as member of the local authority (for example, the duties to promote the success of the company, to exercise independent judgement, and to avoid conflicts of interest).
- Personal liability for the debts of the company

▼ The fact that a director is appointed to a company board as a representative of the council does not diminish these duties.

(2) ▼

(3) ▼

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▼ Liabilities and Indemnities

2.8 Directors cannot be indemnified by a company against liability arising out of negligence, fraud or breach of duty or trust. The company's Articles of Association may however allow for directors to be indemnified by the company in respect of the cost of defending such proceedings, where the director concerned is granted relief by the court or acquitted.

2.9 The Council does have limited powers to provide indemnities for Members or officers when appointing them to act as directors, and to buy insurance to cover any losses which they may suffer through acting conscientiously as a director

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Deleted: The director will be an agent of the company and their whose principal duties and liabilities are as follows:
¶ Directors' Duties ¶
¶
(1) A fiduciary duty to the company to act honestly and in good faith and in the best interests of the company as a whole. ¶
¶
A general duty to exercise reasonable care and skill in acting in the company's affairs, commensurate with his or her knowledge and experience, including seeking professional advice when necessary.

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(see paragraph 1.8.2 above). It is also appropriate for a company to purchase insurance to protect its directors against claims of negligence, breach of trust or duty, or other default. Before taking up an appointment, directors should ensure that such insurance is in place and that the provision of the insurance is within the powers of the company.

3. CHARITIES

- 3.1 Many outside bodies with which Members or officers will be involved will be charities.
- 3.2 A charitable organisation is one which is formed for one or more of the following charitable purposes:
- the relief of poverty and human suffering
 - the advancement of education
 - the advancement of religion
 - another purpose for the benefit of the community.
- 3.3 It must operate for the public benefit and have exclusively charitable purposes. It must be registered with the Charity Commissioners. The Commissioner oversee the operations of all charities, and grant consent to various transactions involving charities, where the law requires this.
- 3.4 The law relating to charities imposes a number of duties and liabilities on those controlling the organisation. They are normally referred to as 'trustees' which will include the directors (of a company limited by guarantee) and the management committee of an unincorporated association.

Trustees' Duties

- 3.5 Trustees have the following duties:
- (1) A duty to act in accordance with the charities governing instrument and to protect the charity's assets.
 - (2) A duty to comply with the Charities Acts and other legislation affecting the charity.
 - (3) A duty not to make a private profit from their position.
 - (4) A duty to act with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.

- (5) A duty to ensure that the information relating to the trust and trustees is registered with the Charity Commissioners and that annual accounts and returns are completed and sent.
- (6) Where charitable income exceeds £10,000, a duty to ensure that letters, adverts, cheques etc. bear a statement that the organisation is a registered charity.

Trustees' Liabilities and Indemnities

3.6 Trustees have the following liabilities:

- (1) To make good any deficiency where trust property has been used for the trustee's own purposes, or for purposes not in accordance with the purposes of the trust.
- (2) Personal liability for losses or claims where the trustee has acted outside the scope of the trust deed.
- (3) Personal liability where the trustee has not shown the required standard of care.

3.7 An indemnity may be given from the trust fund provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts. If premiums are to be paid out of the charitable funds the trustees will need the consent of the Charity Commissioners unless the trust deed allows it.

3.8 Further guidance and advice can be obtained from the Charities Commission. A trustee who seeks advice from the Charity Commissioners in a particular situation and acts on that advice will generally avoid personal liability.

4. UNINCORPORATED ASSOCIATIONS

4.1 An unincorporated association is an informal organisation which may arise whenever several people join together, with the intention of creating legal relations, to carry out a mutual purpose otherwise than for profit.

4.2 The rules governing the members' duties and liabilities will usually be set out in a written constitution, which is simply an agreement between the members as to how the organisation will operate. Usually the constitution will provide for the election by the members of a management committee, which will be responsible for the everyday running of the organisation. The constitution may also provide for members to have annual general meetings, to deal with business such as the accounts and the appointment of the management committee.

- 4.3 As the association is not a separate legal entity from its members, it cannot hold property in its own name. Any property which it controls will therefore have to be vested in an individual, or individuals, who are usually called the trustees of the association. They will hold the asset, subject to the direction of the members, or (more usually) the management committee.
- 4.4 Where an unincorporated association is a registered charity the members of the management committee may also be charity trustees. As such their role and responsibilities will be determined not only by the association's constitution but also by the general law relating to trusts and charities as referred to above.

Duties

- 4.5 The members of the management committee, and the trustees appointed to hold any assets for the association, must act within the constitution, and must take reasonable care in exercising their powers.

Liabilities and Indemnities

- 4.6 Generally management committee members are liable for the acts or omissions of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the committee members are personally liable for the shortfall.
- 4.7 Management committee members will have personal liability if they act outside the authority given to them or if they do not comply with the law.
- 4.8 It is possible (subject to the rules in the constitution) for insurance to be taken out, to cover trustees and members of the management committee for their potential liabilities. As with other outside bodies, Members and officers should satisfy themselves that the organisation has adequate insurance cover in this respect.

5. REGISTRATION AND DISCLOSURE OF OUTSIDE INTERESTS FOR MEMBERS

- 5.1 In accordance with Part III of the Local Government Act 2000, the Council has adopted a Code of Conduct for Members. Each Member of the authority, elected or co-opted, has signed an undertaking to observe the provisions of the Code. The Code of Conduct for Members is set out in full in the Council's constitution (Part 9) and its provisions continue to apply to Members in respect of their appointments to outside bodies.

Registration of Interests

- 5.2 The Code of Conduct for Members requires every Member to notify the Monitoring Officer of any registrable interests which he/she holds, within 28 days of election or appointment. In addition, the Member must notify the Monitoring Officer of any change in his/her registrable interests within 28 days of becoming aware of that change. A copy of the relevant declaration form and a form for amendments are set out in the Council's constitution at Part 9.2.

Disclosure of Interests

- 5.3 There are a number of rules which Members must be aware of, which may limit the extent to which they are able to take part in debates or votes on issues. These rules extend to matters involving outside bodies. The rules require that, in certain situations, Members should disclose the fact that they have an interest in the matter under discussion. They may also be required not to take part in any debate or discussion on the matter, and may have to leave the meeting during the item.

Personal Interests

- 5.4 A Member appointed to an outside body will have a personal interest in that body. Provided that it is not also a prejudicial interest (see below), the Member only needs to declare the personal interest if and when he/she speaks on the matter at a Council meeting.

Prejudicial Interests

- 5.5 A Member will probably have a prejudicial interest in a matter relating to the outside body if he/she is a member of or in a position of general control or management on the outside body and the interest falls into one of the following two categories:-
- (a) the matter affects the financial position of the outside body (e.g. an application for grant funding to the outside body); or
 - (b) the matter relates to an approval, consent, license, permission or registration that affects the outside body (e.g. an application by the outside body for planning permission).
- 5.6 If a Member has a prejudicial interest in a matter under discussion he/she must declare the nature of that interest as soon as it becomes apparent to him/her. The Member should then leave the meeting room, unless members of the public are allowed to make representations, give evidence or answer questions about the matter. If that is the case, the Member can make his/her representations, in accordance with the decision making bodies rules, but must then immediately

leave the meeting room. A Member with a prejudicial interest cannot remain in the public gallery to observe or vote on the matter.

Bias

- 5.7 Where there is no prejudicial interest in a matter, a Member's duties as a director or trustee or a member of a management committee may still mean that he/she should not participate in a decision because of a legitimate fear of lack of impartiality, or bias, which could potentially invalidate the decision.
- 5.8 Bias will not be assumed by mere membership of an outside body. However, where the outside body has a line which is being advocated by the Member, it is likely that the Court would find bias on that issue and therefore the Member should not take part in a discussion or decision at a Council meeting on that issue. In such circumstances, it would be appropriate to seek advice from the Council's Monitoring Officer or Head of Law.

6. DISCLOSURE OF OUTSIDE INTERESTS FOR OFFICERS

Declaration of Interests

- 6.1 Section 117(1) of the Local Government Act 1972 requires that if it comes to the knowledge of any officer of a local authority that the authority has entered or proposes to enter into any contract in which he/she has a pecuniary interest, whether or not he/she would actually be a party to the contract, he/she must give notice in writing to the authority. A pecuniary interest should be interpreted as any circumstance in which he/she or a member of his/her immediate family stand to gain or lose financially as a result of the contract.

Conflicts of interest

- 6.2 Where an officer has been appointed to an outside body by the Council and a conflict of interest arises, this should always be disclosed to the officer's immediate manager who should, in appropriate cases, seek advice from the Council's Corporate Law Team. Such conflicts may be dealt with in a number of different ways, depending on the nature and seriousness of the conflict. If the conflict is insubstantial then it should simply be recorded and no further action need be taken. Where there is a discrete conflict this may preclude the officer from undertaking a particular discrete task, such as dealing with the administration of a planning application, but would not be incompatible with the general performance of their job. In the case of a more serious incompatible conflict it may be determined that the nature of the conflict of interest is such

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that the officer must resign their position on the outside body and/or re-arrange their duties in a manner which avoids the conflict.

7. GIFTS, HOSPITALITY and BRIBERY Deleted: AND

7.1 Members and officers must never accept any gift or consideration as an inducement for doing or forbearing to do anything in their roles as Councillors or officers of the authority. In the case of officers accepting any such gift or consideration from anyone who has or is seeking a contract with the authority, the gift or consideration is deemed to have been accepted corruptly unless the officer can prove the contrary. It is therefore very important to be completely open about any significant gift or hospitality to avoid the suspicion of misconduct.

7.2 Members are required by the Code of Conduct for Members to notify the Monitoring Officer, in writing, on receipt of any gift or hospitality with a value of more than £25, whatever the motivation for such a gift. Members should note that they only need to register gifts and hospitality worth more than £25 that are received in connection with their official duties as a Member. Gifts received by Members in a personal/private capacity do not need to be registered.

7.3 Officers are required to disclose offers and receipts of gifts and hospitality which must be recorded in the register of gifts and hospitality, in accordance with the Code of Conduct for Employees. Officers should read the detailed guidance in the Code of Conduct for Employees which explains what must be declared and where there is discretion to declare. Deleted: held by their director
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7.4 A particular issue arises for officers seconded to work on outside bodies, as section 117(2) of the Local Government Act 1972 provides that an officer shall not, under colour of his office or employment, accept any fee or reward whatsoever other than his/her proper remuneration. Where an officer is to be seconded and might be in receipt of any remuneration, bonus or allowances from the authority to which he/she is to be seconded, the seconding authority must agree that his/her proper remuneration shall henceforth include any remuneration, bonus or allowances paid to the officer by the body to which he/she is seconded.

7.5 Members and officers appointed to outside bodies need also to be aware of their potential liability under the Bribery Act 2010. This Act created a number of new criminal offences, of which the most relevant in the context of this guidance are: Formatted: Indent: Left: 0 cm, Hanging: 1.27 cm

- bribing another person

- receiving a bribe

- failure by a commercial organisation to prevent bribery

The Act defines bribery as offering, promising or giving someone a financial or other advantage either –

to encourage that person to perform their functions or activities improperly or to reward that person for having already done so; or

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in the knowledge or belief that the acceptance of the advantage would itself constitute the improper performance of the recipient's functions or activities

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7.6 Personal liability. Where any of the offences referred to in paragraph 7.5 are committed by a company, a senior officer of that company is liable to be prosecuted for the same offence if it is proved to have been committed with their consent or connivance. No indemnity or insurance is available to Members or officers found guilty in this situation.

7.7 As regards the offence of a commercial organisation failing to prevent bribery, Members and officers should note the following (taken from Ministry of Justice guidance): so long as the organisation is incorporated (by whatever means), or is a partnership, it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made.

7.8 Members and officers should also refer to the council's counter-fraud strategy for further details of (i) the bribery risks facing the council, its Members and officers, and (ii) advice on the measures that Members and officers should take to mitigate the risks identified.

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A duty to exercise independent judgement when dealing with the company's affairs. Although it is permissible to take account of the interests of a third party (in this case the Council) a director cannot vote simply in accordance with the Council's instructions.

A duty to avoid conflicts of interests

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There may be actual or potential conflicts between the interests of the company and those of the Council. A Member or officer cannot waive their statutory responsibilities as a director and so they may have to cease to act as a Councillor or officer in relation to the particular matter. In extreme cases, the only proper way for the conflict to be resolved may be for the Member or officer to resign either from the company or from the Council.

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Directors must therefore disclose any interests they or their family may have in relation to the company's contracts. Whether they are then allowed to vote will depend on the company's Articles of Association. Equally, officers are not allowed under cover of their office to take any more than their proper remuneration so they must obtain the consent of the Council if they are to receive any remuneration from a company to which they have been appointed by the Council.

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A duty to ensure compliance with the Companies Acts in relation to the keeping of accounts, and that the relevant returns are made to the Registrar of Companies.

