

To: All Members of the Standards Committee

Professor Steven Broomhead
Chief Executive
Town Hall
Sankey Street
Warrington
WA1 1UH

Councillors:
Chair – S Roberts

S Bland, P Carey, H Mundry, J Wheeler

Parish Councillors M Banner, S Barlow and T Gartland
(Invitations extended to Mr D Clarke, Mr K Horseman and Mrs S Mason as Independent Persons)

Standards Committee

Date: Tuesday, 15 December 2015
Time: 18:30
Venue: Committee Room 1, Town Hall, Sankey Street, Warrington, WA1 1UH

Contact Adam Kellock, Democratic & Member Services, Tel: 01925 442144,
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AGENDA

Part 1

Items during the consideration of which the meeting is expected to be open to members of the public (including the press) subject to any statutory right of exclusion.

1 Apologies

To record any apologies received.

2 Code of Conduct - Declarations of Interest

Relevant Authorities (Disclosable Pecuniary Interests) Regulation 2012

Members are reminded of their responsibility to declare any disclosable pecuniary or non-pecuniary interest which they have in any item of business on the agenda no later than when the item is reached.

3 Minutes

3 - 4

To confirm the minutes of the meeting held on 14 April 2015 as a correct record.

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| 4 | <u>Future Issues for Standards Committee</u> | 5 - 26 |
| | Report of the Monitoring Officer. | |
| 5 | <u>Code of Conduct</u> | |
| | Discussion Item. | |
| 6 | <u>The Role of the Independent Person - Workshop</u> | 27 - 30 |
| | Report of the Monitoring Officer. | |

Part 2

Items of a “confidential or other special nature” during which it is likely that the meeting will not be open to the public and press as there would be a disclosure of exempt information as defined in Section 100I of the Local Government Act 1972.

Nil.

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STANDARDS COMMITTEE

16 APRIL 2015

Present: Councillors – S Bland, C Fitzsimmons (Chair) and J Wheeler.
Independent Persons – Mr K Horseman.

ST14 Apologies for Absence

Apologies for absence were received from Mr D Clarke and Mrs S Mason.

ST15 Code of Conduct

There were no declarations of interest made.

ST16 Minutes

The Minutes of the meeting held on 1 October 2014 were agreed as a correct record and signed by the Chair. It was noted that the meeting of 22 January 2015 had been cancelled.

ST17 Update on Members Interests

The Solicitor to the Council presented the update report on member's interests and reminded the committee that the standards regime had changed significantly since 2012 following the implementation of new legislation. The new standards regime required reviewing periodically to ensure that it was as up to date and effective as possible, taking into account both national and local issues that had been raised as well practical issues in dealing with the new regime. The report primarily focused on registering and declaring pecuniary and non-pecuniary interests.

The difference between pecuniary and non-pecuniary interests was outlined and it was felt the requirements regarding pecuniary registering and declaring pecuniary interests were well known whilst for non-pecuniary it was less clear due to their wide reaching nature. It was acknowledged that non-pecuniary interests were much harder to define than pecuniary interests as it was up to each individual local authority to define and make the necessary amendments. It was also noted that the Code of Conduct was ambiguous with regards to the requirements for what to do when a councillor had a non-pecuniary interest and this would need further clarification. Councillor participation at meetings where they had a non-pecuniary interest was presently left up to individual judgement.

It was agreed that the Code of Conduct would re-drafted and updated to provide greater clarity with regards to the registering and declaring of non-pecuniary interests. The code would then be tabled for re-adoption at the Annual Meeting of the Council.

Members were to be reminded that they were required to update their register of interests periodically and to notify the Monitoring Officer when an interest

Agenda Item 3

changes. Legal advice on individual cases was available from the Monitoring Officer.

At a future meeting of the committee, a report would be brought in order to review the process for registering and declaring and gifts or hospitality received by Councillors. The aim of this review would be to bring the practice in line with the requirements already in place for officers.

Dated.....

Signed.....

**WARRINGTON BOROUGH COUNCIL
STANDARDS COMMITTEE
15th DECEMBER 2015**

Report of the: Solicitor to the Council and Assistant Director Corporate Governance

Report Author: Timothy Date, Solicitor to the Council and Assistant Director Corporate Governance

Contact Details: **Email Address:** **Telephone:**
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Ward Members:

TITLE OF REPORT : FUTURE ISSUES FOR STANDARDS COMMITTEE

1. PURPOSE OF REPORT

1.1 To seek the Committee's views upon the disposal of outstanding complaints and to determine a work programme for the remainder of the municipal year.

2. INTRODUCTION AND BACKGROUND

2.1 The Council is currently in receipt of four complaints made under the Council's Code of Conduct. It will be recalled that the Code of Conduct and procedures associated with complaints were agreed at the Council's September 2012 meeting.

2.2 As part of the agreed procedures the Monitoring Officer is required to consult the Independent Persons associated with the Standards Committee when complaints are received.

2.3. Consultation with the Independent Persons has taken place upon each of the complaints submitted and the next steps may now be taken by the Monitoring Officer to determine the complaints. There is not at this stage, a formal role for the Standards Committee.

2.4 As part of the dialogue with the Independent Persons there has been considerable discussion around the scope of the Standards Committee powers in the context of the Localism Act 2011. In that connection the Independent Persons have been provided with a 17 page analysis of the role and scope of Standards Committees generally which has proved to be of considerable assistance in dealing with the complaints that have been made.

A copy of the relevant document written by Clive Sheldon QC is attached at Appendix 1.

3. ISSUES ARISING FROM OUTSTANDING COMPLAINTS

3.1 One of the most significant issues arising from the four complaints is the manner in which members record and declare their interests. Whilst the specific complaint, in formal terms, is outstanding and yet to be concluded it would be premature to invite members to engage in a formal review of the relevant procedures.

3.2 However, it will be necessary, regardless of the outcome of the complaint, to review the Council's current arrangements in respect of the declaration and recording of interests in the course of this municipal year.

4. CONFIDENTIAL OR EXEMPT

4.1 The information contained in this report is neither confidential or exempt. Members will note that this report contains no information about the identities of either the complainants or subject of current complaints. It would be inappropriate to identify those concerned at this stage.

5. FINANCIAL CONSIDERATIONS

5.1 No financial considerations arise from this report.

6. RISK ASSESSMENT

6.1 The Council's Strategic Risk Register identifies the possibility of inadequate arrangements leading to failure to deliver the Council's objectives and statutory duties. It is important there be robust standards arrangements in place to assist in the mitigation of that risk.

7. EQUALITY AND DIVERSITY / EQUALITY IMPACT ASSESSMENT

7.1 Democratic and Member Services have an Equality Impact Assessment in place.

8. CONSULTATION

8.1 There has been no direct consultation required in the production of this report.

9. REASONS FOR RECOMMENDATION

9.1 To discharge the role of the Standards Committee as described in the Localism Act 2011 and the Council's constitution.

10. RECOMMENDATIONS

10.1 That Committee :-

- (a) Note the report
- (b) Consider the report entitled "Errand Councillors and the New Standards Regime"
- (c) Agree a date for a future meeting of the Standards Committee, preferably before 1st February 2016 to consider a revision of the arrangements for the declaration and recording of interests.

11. BACKGROUND PAPERS

File held by Solicitor to the Council and Assistant Director Corporate Governance.

Contacts for Background Papers:

Name	E-mail	Telephone
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Errant councillors and the new standards regime Clive Sheldon QC

1. Up and down the country, local authorities have been putting in place new standards arrangements so as to comply with the Localism Act 2011 ("the 2011 Act") and the regulations made thereunder. The first hearings for dealing with allegedly errant councillors under the new standards regime are taking place.
2. In this paper, I shall highlight some of the knotty issues that local authorities have had to deal with in implementing the new regime; describe a recent example of how an errant councillor has been dealt with; and refer to one matter that authorities may want to think about in the forthcoming months.

1. The new standards regime

3. The 2011 Act, which received Royal Assent on 15th November 2011, made substantial changes to the standards regime for local authority members in England and Wales. Section 27 of the 2011 Act provides that:

(1) A relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority.

(2) In discharging its duty under subsection (1), a relevant authority must, in particular, 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.

4. Unlike the previous statutory regime, the 2011 Act does not prescribe a model code of conduct. Section 28(1) merely requires local authorities to secure that the code which they adopt is 'when viewed as a whole, consistent with the following principles— (a) selflessness; (b) integrity; (c) objectivity; (d) accountability; (e) openness; (f) honesty; (g) leadership' (that is, the *Nolan* principles of standards in public life).
5. Different approaches have been adopted by local authorities across the land. Some have gone for a slimmed down code of conduct, with extras – such as equalities, and

a cross reference to the Protocol for Member /Staff relationships so as to encompass issues of respect and bullying. Others have maintained their previous code, but refined it to coincide with the new statutory regime.

6. A number of knotty issues have had to be addressed by local authorities in dealing with the new standards regime:

(a) what sanctions are available for breach of the authority's code?

(b) what pecuniary and other interests can local authorities require members to disclose?

(c) what are the 'disclosable pecuniary interests' that must be provided by members, if criminal liability is to be avoided?

(a) Sanctions

7. Section 28(4) of the 2011 Act provides that: 'A failure to comply with a relevant authority's code of conduct is not [to] be dealt with otherwise than in accordance with arrangements made under subsection (6)'. Subsection (6) provides that:

'A relevant authority other than a parish council must have in place—

(a) arrangements under which allegations can be investigated, and

(b) arrangements under which decisions on allegations can be made.'

8. The 2011 Act does not prescribe the detail of the arrangements for investigating allegations, and does not prescribe the detail of the arrangements under which decisions on allegations can be made, save for the requirement that the arrangements must include the involvement of an "independent person".

9. My reading of the initial legislative provisions was that former 'independent' members of an authority's standards committee could not be appointed by that authority to serve as an 'independent person'. The Government addressed this problem by making a specific exception for former 'independent' members in the transitional regulations:

(1) **Notwithstanding** section 28(8)(b) of the Act, a person may be appointed by a relevant authority as the independent person under section 28(7) of the Act, if that person—

(a) is not a member or co-opted member of the standards committee of the relevant authority on 1st July 2012; but

(b) has held such a post at any time during the 5 years ending on 30th June 2012.

(2) Paragraph (1) only applies in relation to appointments made before 1st July 2013.

(2A) A person who falls within the description in sub-paragraphs (a) and (b) of paragraph (1) may not be appointed for a period ending on or after 1st July 2013.

(2B) Paragraph (2A) does not apply in relation to an appointment—

(a) made before 24th July 2012; and

(b) where the period of the appointment ends on or after 1st July 2013.

(emphasis added).

10. As for how breach of code of conduct matters are to be dealt with, section 28(11) of the 2011 Act provides that:

'If a relevant authority finds that a member or co-opted member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under arrangements put in place under subsection (6)) it may have regard to the failure in deciding—

(a) whether to take action in relation to the member or co-opted member, and

(b) what action to take.'

11. Section 28(11) of the 2011 Act does not prescribe the range of 'actions' that the local authority can take; but does envisage that some action *can* be taken against a member or co-opted member who fails to comply with that authority's code of conduct.
12. The previous standards regime provided for a range of sanctions, including (a) censure of that member; (b) restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the authority; (c) suspension for a period not exceeding six months; (d) the requirement to submit a written apology in a form specified by the standards committee; (e) the obligation to undertake training; and (f) the requirement to participate in conciliation. See regulation 19(c) of the Standards Committee (England) Regulations 2008 (SI 2008/1085).
13. Section 34 of the 2011 Act provides for criminal sanctions -- a fine not exceeding level 5 on the standard scale -- where a local authority member fails to notify disclosable pecuniary interests. Furthermore, the Court considering whether an offence has been committed under this section may 'disqualify the person, for a period not exceeding five years, for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority in question or any other relevant authority' (section 34(4)).
14. As the new standards regime is silent as to the range of available sanctions, local authorities have looked in particular at the common law position that pre-dated the statutory standards regime¹.
15. The earlier case law indicated that local authorities did not have the ability to issue sanctions that interfered with local democracy. See e.g. R. v Flintshire CC Ex p. Armstrong-Braun [2001] B.L.G.R. 344, where the Court of Appeal expressed real concern at the use by a local authority of standing orders to damage local democracy.

¹ See in detail, legal advice that I gave to the Association of Council Secretaries and Solicitors (ACSeS): <http://www.acses.org.uk/news/standards-%E2%80%93-sanctions-and-independent-persons-press-release>.

See also the discussion in R v. Broadland District Council, ex parte Lashley (2000) 2 L.G.L.R. 933.

16. A local authority was not able to 'disqualify' one of its own members for misconduct. The same most probably applied to *suspension* from performing the role of member. This interferes with the will of the local electorate. Similarly, the sanction of exclusion from meetings of the authority, which would also interfere with the democratic process.

17. What is available? The observations of Munby J. in ex parte Lashley support the following sanctions:

- Censure of a member -- 'name and shame'.
- Giving advice or making observations either generally or specifically about a councillor's misconduct'.
- Reporting matters to the police.
- Making a recommendation to the full authority to remove a councillor from a committee (see also R v. Portsmouth City Council, ex parte Gregory 89 LGR 478) (it is important to note that where the appointment of a member to a committee is the decision of one of the political groups, only the leader of the relevant political group could remove the member from the committee: see R v. Brent LBC, ex p. Gladbaum (1990) 154 L.G. Rev. 597).

18. I consider the following sanctions are also available:

- sending a formal letter to a councillor who has been found to have breached the authority's code.

- sending out a press release/giving publicity to the fact that a member has breached the local authority's code of conduct

Some will argue that these sanctions are meaningless; and not provide any deterrence against future misbehaviour, and do not provide any 'just satisfaction' for past misbehaviour. I am not so sure: councillors are inherently political and although it is often said that all publicity is good publicity, that may not be totally true. Councillors will be acutely aware of election cycles and the use by which their electoral opponents may make of findings of misconduct.

19. Looking at other possible sanctions: I do not consider that withdrawing allowances is permissible. There is a statutory scheme for the withdrawal of allowances, and I do not consider that the general power of competence overrides this. Similarly, I do not consider that a sanction of withholding confidential information is available for breach of the code; even where the breach of the code involves the breach of a duty of confidentiality by the councillor in question.

20. An interesting issue for local authorities to consider is whether any of the permissible sanctions engage Article 6 of the European Convention of Human Rights. If so, then authorities will need to consider making an 'independent' appeal available: it may not be possible to rely on the Administrative Court's oversight to provide 'full jurisdiction': c.f. Regina (Alconbury Developments Ltd and Others) v Secretary of State for the Environment, Transport and the Regions [2003] 2 A.C. 295.

21. I consider that Article 6 is probably not engaged. I say this because the Strasbourg jurisprudence suggests that 'political rights' (including the electoral process) are not to be treated as 'civil rights', and that this may apply even where the decision in question has economic consequences: see Pierre-Bloch v France (1998) 26 E.H.R.R. 202 (member of French Assembly disqualified from retaining his seat as a result of

exceeding election expenses); and Porter v. United Kingdom (2003) 37 EHRR CD 8 (surcharge of local authority member).

22. This means that the common law principles of fairness and natural justice will need to be applied to the process, but none of the additional features required by Article 6.

(b) Interests that an authority can require to be disclosed

23. Section 28(2) of the 2011 Act provides that:

"A relevant authority must secure that its code of conduct includes the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of—

(a) pecuniary interests, and

(b) interests other than pecuniary interests."

24. There is nothing in the statutory language to limit the 'interests' or 'pecuniary interests' in an authority's code of conduct to those that have been prescribed by the Secretary of State: see Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464 ("the 2012 Regulations").

25. The additional matters that a local authority can require of its members must be lawful as a matter of public law (e.g. rationality, and be for a proper purpose); and must not contravene the Convention rights of members (or their partners).

26. One issue that may come up is whether an authority can require members to disclose their membership of a particular body, such as the Freemasons. This may be permissible *if* there is a good reason for including this particular requirement.

27. There is clearly a question as to whether this requirement contravenes Convention rights: paying proper respect to 'private and family life' (Article 8), and also giving proper consideration to Article 9 (freedom of religion and belief), Article 10 (freedom of

expression), Article 11 (freedom of association), and Article 14 (non-discrimination) of the European Convention on Human Rights.

28. A requirement to register membership of the Freemasons would be regarded as interfering with the 'freedom of association' of the authority's members. Whether it is likely to be justified will depend on the authority's reasons for the requirement: the interference with a member's Article 11 rights must be 'necessary in a democratic society . . . for the protection of the rights and freedoms of others'.

29. Nevertheless, if membership of the Freemasons is required to be disclosed, it will be necessary to consider requiring disclosure of membership of other bodies or organisations. Otherwise, members could challenge the picking out of the Freemasons as contravening Article 14 (non-discrimination) read with Article 11. There will need to be a 'rational' reason for treating Freemasonry differently to a member's involvement in other groups.

(c) Disclosable Pecuniary Interests

30. The 2012 Regulations set out the 'Disclosable Pecuniary Interests' that must be disclosed by members --- when assuming office or being appointed (section 30 of the 2011 Act) and, where not already registered, if a member 'is present at a meeting of the authority or of any committee, subcommittee, joint committee or joint sub-committee of the authority' and 'has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting', and is aware of this (section 31 of the 2011 Act).

31. The 'Disclosable Pecuniary Interests' are interests of the member or the member's spouse or partner, falling within the following categories (see Schedule 1 to the 2012 Regulations):

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.
	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—
	(a) under which goods or services are to be provided or works are to be executed; and
	(b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)—
	(a) the landlord is the relevant authority; and
	(b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where—
	(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and
	(b) either—
	(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
	(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

(i) Spouse/partner interests

32. Of particular concern to some members is the requirement to register their spouse or partner's interests. What if a member is divorcing and does not want/is not able to register spousal interests? What if a member's partner does not want his/her

employment to be registered? What if a member is gay and does not want to be 'outed' by disclosure in the register?²

33. It might be said that information relating to a member's partner or spouse should not be disclosed, as it violates *their* data protection rights and/or right to privacy (Article 8 of the Convention). With respect to data protection, section 34 of the Data Protection Act 1998 ("the DPA") provides that:

Personal data are exempt from—

- (a) the subject information provisions,
- (b) the fourth data protection principle and section 14(1) to (3), and
- (c) the non-disclosure provisions,

if the data consist of information which the data controller is obliged by or under any enactment other than an enactment contained in the Freedom of Information Act 2000 to make available to the public, whether by publishing it, by making it available for inspection, or otherwise and whether gratuitously or on payment of a fee.'

34. The terms of section 29 of the 2011 Act oblige local authorities to publish and make available for inspection, and thereby 'process', 'personal data' concerning councillors' and their spouse/partner. Accordingly, this personal data falls within the ambit of section 34 of the DPA, and is exempt from 'the non-disclosure provisions'. It does not matter, therefore, whether or not consent to disclosure is provided by the councillor and/or their spouse or partner. The effect of section 34 of the DPA is that consent is not required.

35. The same conclusion would be reached if one considered section 35(1) of the DPA. This provides that 'Personal data are exempt from the non-disclosure provisions

² Section 30(3) of the 2011 Act defines DPs

"in relation to a person ("M") if it is of a description specified in regulations made by the Secretary of State and either (a) it is an interest of M's or (b) it is an interest of—

(i) M's partner or civil partner, (ii) a person with whom M is living as husband or wife, or

(iii) a person with whom M is living as if they were civil partners, and M is aware that that other person has that interest.

where the disclosure is required by or under any enactment, by any rule of law or by the order of a court.' Section 29 of the 2011 Act requires disclosure.

36. As for whether Article 8 of the Convention is violated, this is more problematic. An argument could be made that sections 29-30 of the 2011 Act are incompatible with the Convention. Why is it necessary in the interests of a democratic society for there to be public disclosure of the interests of a member's partner? Even if, as a general proposition, disclosure can be justified – and so sections 29-30 are compatible generally – this does not necessarily mean that the specific items in the 2012 Regulations do not contravene the Human Rights Act 1998, and could be struck down.

(ii) Corporate interests

37. Other issues that have been taxing Monitoring Officers with respect to registration of DPIs have included identifying a "body in which the relevant person has a beneficial interest", relevant to the DPI categories of 'Contracts' and Corporate Tenancies.

38. The term "body in which the relevant person has a beneficial interest" is defined at regulation 1(2) of the 2012 Regulations as "a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest'. There are three areas of activity caught by this definition; where the relevant person: (a) is a partner in a firm; (b) is a director of a body corporate; and (c) has a beneficial interest in the securities of a body corporate.

39. With respect to (b), this will obviously include the situation where a relevant person is a director of a commercial company. Such person will ordinarily be understood to have a 'pecuniary' interest in that body. What about for non-commercial corporations, must the 'director' also have a 'pecuniary' interest for his or her interest to fall within

(b)? I consider that the answer is 'no': the 'director' does not have to have a 'pecuniary' interest in the non-commercial corporation. I say this because the 2012 Regulations do not expressly require a member (or partner) to have specific "pecuniary" interest in the entity in question. There is no additional qualification of having a specific "beneficial interest" in that entity.

40. Whether or not an entity is a 'body corporate' will turn on the precise legal characterisation of the organisation in question. A corporation is 'a body of persons . . . which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body', unincorporated associations on the other hand 'do not have legal personality, may not sue or be sued in their own names': see Halsbury's Laws of England, Corporations (Vol. 24)(5th ed) at para. 301. If the entity in question is a 'body corporate', then the member will have a DPI where the relevant person is a 'director' of that entity (and that body has a contract with the authority, or has a corporate tenancy with the authority). The fact that the relevant person is not remunerated for the position of 'director' is not necessary. What is relevant is that they hold the position of 'director' in an executive or non-executive capacity.

41. What does 'director' mean? The term "director" is not defined by the 2012 Regulations, save that it is expressly stated to 'include' a committee member of an industrial and provident society. Whether or not a person will be a "director" must be a question of law, rather than whether they are described (whether rightly or wrongly) as a 'director' of that entity.

42. Persons who are "directors" of companies registered under the Companies Act 2006 will obviously fall within the definition. They are statutorily described as "directors": the definition of such a director is at section 250 of the Companies Act 2006. Similarly, the trustees of a charitable trust which is registered as a company with charitable status. They are regarded in law as 'directors': see e.g. section 45(1) of the Charities

Act 2011 ('In relation to a charitable company, any reference in section 42 or 43 to the charity trustees of a charity is to be read as a reference to the directors of the company': change of name of the charity).

43. For other organisations, the issue is not so straightforward. The body corporate will have officers who may not be described in law as 'directors'. For example, Primary Care Trusts are 'body corporates' (see paragraph 1 of Schedule 3 to the National Health Service Act 2006: 'Each Primary Care Trust is a body corporate'). PCTs appoint 'officers', but the statute establishing PCTs makes no reference to the post or role of 'director'. There are competing arguments as to whether they are "directors" for the purposes of the 2012 Regulations.
44. On the one hand, it can be argued that because the 2012 Regulations have included within the definition of "director" the committee members of industrial and provident societies, even though strictly speaking they may not be described in law as directors, all officers or members of body corporates who carry out a similar role to such committee members should also fall within the definition of "director".
45. On the other hand, it can be argued that the committee members of an industrial and provident society are specifically included, and that their specific inclusion should not be construed as bringing within the definition of "director" all officers of body corporates whose duties are similar to that of committee members.
46. I consider that the better view is that these committee members are a specific exception, rather than an example of an expansive definition. An industrial and provident society is a "body corporate", and if the term "director" was intended to include those who carried out certain duties – duties akin to that of a company director – then there would be no need for specific inclusion of these committee members. It is likely that these committee members have been specifically included in the definition of "director" for the 2012 Regulations because, in law, they are for some purposes

treated 'as if' they are company law directors.: see section 7F of the Industrial and Provident Societies Act 1965.

47. Also there is sense in the narrower construction. The body corporates that are not registered as companies under the Companies Act 2006, or as industrial and provident societies, will generally be public bodies (e.g. schools, health bodies). It may have been thought that such office-holders would not have pecuniary interests in their bodies, save for where they were remunerated for their involvement. Where they are remunerated for carrying on any 'office', this will need to be disclosed under the 'Employment, office, trade, profession or vocation' category.

II. Olympic Torch rant by councillor

48. The workings of the new standards regime can be illustrated by the way in which one local authority dealt with a complaint from a member of the public alleging that a councillor had been aggressive and bullying towards her and had used abusive language directed at her when attending an event to celebrate the arrival of the Olympic Torch in the grounds of the authority's Town Hall: she alleged that the councillor accused her of lobbying him, seeking to interview him, and saying to her "Go on, f*** off, take your bag and f*** off".

49. There were no witnesses to the conversation. Following the incident, however, the councillor had sent two voicemails to the complainant. The matter was investigated by the authority, a report was prepared. A hearing took place before the authority's sub-committee. Neither the complainant, nor the councillor were in attendance.

50. The Investigating Officer confirmed that the conversation and words used were not in dispute. The areas of dispute related to whether the incident had occurred in the Members' VIP area or in the public area, and whether or not the councillor had been aggressive towards the complainant.

51. In his interview with the Investigating Officer, the councillor had explained that he had obtained tickets for the event by way of the public ballot. He saw that there was a Members' enclosure, and was able to enter. It was in the Members' enclosure where he was introduced to the complainant by a local MP.

52. At the hearing, and before the members retired to consider the issue, the Chair of the sub-committee asked the Council's Independent Person, for his comments. His view was that there had been no dispute about what words had been used in the conversation between the complainant and the Councillor, and that he considered that the Councillor's behaviour was not consistent with that of a Councillor. It was his view that the Councillor's words to the complainant -- "are you lobbying me?" -- suggested that he was at the Torch Relay event as a Councillor.

53. The sub-committee's determination was as follows:

a) The Sub-Committee decided that Councillor X was acting in his official capacity when the conversation with Ms G took place and so the Code of Conduct applied at this time for the following reasons. First, the Torch Relay event held on 21 July 2012 was a Council-sponsored event. Second, whilst Cllr X had attended with privately procured tickets, he was introduced to Ms G as a councillor and their conversation related to Council matters. The Sub-Committee felt this was a situation where an objective observer would consider that a councillor would be expected to "on duty" as a councillor.

b) The Sub-Committee found Cllr X to be in breach of paragraph 3.1 (h) of the Code of Conduct in that he failed to "treat others with respect and not to bully or harass another person". What Councillor X said to the complainant was not disputed by him. The Sub-Committee found that Councillor X's demeanour, response and swearing were in breach of the Code of Conduct. The swearing alone would have constituted a breach.

c) The Sub-Committee found that there were no breaches of any other standard in the Code of Conduct.

d) In considering the appropriate sanction, it was noted that neither the complainant nor Councillor X were present at the meeting to provide their submission or final statements. It was noted that the Sub-Committee had very limited powers to sanction any member

under the Standards regime established by the Localism Act 2011. In mitigation, the Sub-Committee found that Councillor X apologised almost immediately to the complainant for his behaviour and that his second voicemail message to the complainant was an unequivocal apology. It was noted that Councillor X had faced adverse press and publicity surrounding this matter and was a form of penalty. This was balanced against his clearly unacceptable behaviour and the Sub-Committee agreed that the Monitoring Officer would write to Councillor X to inform him of the Sub-Committee's recommendation as to his future conduct, namely to remind him of the standards expected of him by the Code of Conduct in respect of paragraph 3.1(h).

54. The authority's finding that the 'Livingstone defence'³ had not been made out is an interesting one: when is a member acting *qua* councillor is often a difficult matter to resolve.

55. There is little doubt that the use of abusive language towards a member of the public is a breach of the obligation (in this authority's code of conduct) 'To treat others with respect and not to bully or harass any person'.

56. It is interesting to note that in consideration the sanction, the sub-committee noted that the councillor 'had faced adverse press and publicity surrounding this matter and was a form of penalty.' This is members, at the coalface, pointing out that publicity is not always good.

III. Protocol with the police?

57. At least one local authority has been pro-active in recent months in seeking to arrange a protocol with their local police commander for the reporting of potential criminal offences arising from the failure to register or declare disclosable pecuniary interests or from participating and voting where a Member has a disclosable pecuniary interest and has not first sought a dispensation.

³ Livingstone v Adjudication Panel for England [2006] B.L.G.R. 799.

58. A draft protocol that I have seen provides for the Monitoring Officer, who receives a complaint regarding a potential DPI offence to make immediate contact with the police through a nominated single point of contact. Similarly, the police will notify the Monitoring Officer if they receive a complaint from a member of the public. It is to be agreed that the authority will not have a role in investigating allegations arising from the failure to register or notify, or from participating and voting where a dispensation has not been sought. Investigation is to rest with the police, although if the police consider that an offence is not made out but a breach of the authority's code of conduct has occurred, the police can refer the matter to the Monitoring Officer for further consideration.

59. What is the benefit of this protocol? The local authority believes that it is better to have guidelines set out in advance, rather than await an incident and have to make *ad hoc* arrangements under pressure both of time and the seriousness of a potential criminal offences. Other authorities may prefer to let sleeping dogs lie.

Clive Sheldon QC
11KBW
November 2012

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**WARRINGTON BOROUGH COUNCIL
STANDARDS COMMITTEE
15th DECEMBER 2015**

Report of the: Timothy Date, Solicitor to the Council and Assistant Director
Corporate Governance
Report Author: Democratic Services Officer, Adam Kellock
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Ward Members: All

TITLE OF REPORT: THE ROLE OF THE INDEPENDENT PERSON - WORKSHOP

1. PURPOSE OF THE REPORT

- 1.1 To provide an update on the workshop regarding the role of the Independent Persons attended by Mr Clark, Mrs Mason and the Democratic Services Officer at Lancashire County Council on 27 November 2015.

2. BACKGROUND

- 2.1 As part of continuous training and development to deal with Standards issues, the Independent Persons and the Democratic Services Officer attended a workshop run by Hoey Ainscough Associates Ltd.
- 2.2 The workshop was attended by a number of Independent Persons, Monitoring Officers and Democratic Services Officers from Local Authorities across the North West and provided a useful opportunity to share experiences and best practices as well as receiving updates on general Standards issues.

3. REPORT BODY

- 3.1 The workshop took place from 1.30pm to 5pm and covered a variety of topics including current issues for Standards Committees and Independent Persons, dismissals of Senior Officers, assessing cases and giving views on investigations.
- 3.2 An update was provided on Standards and Code of Conduct Issues following the implementation of The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the 2015 regulations) which were introduced in June 2015 and have now been fully incorporated into the Council's Constitution.
- 3.3 A key issue discussed during the session was the visibility and transparency of the Independent Persons within the Council and it was queried whether Members of the Council were aware of the Independent Persons and their role within the Council. It was also noted that the Independent Persons were often an underutilised resource for any Standards or Code of Conduct issues.
- 3.4 Independent Persons could act as a useful resource throughout any Standards procedure through their role to provide views on any issues that may arise. This

could be done at the initial stage of any complaint as well as being during the investigation and reporting stages.

- 3.5 A number of anonymised scenarios from actual Standards issues were considered at the workshop and those present were invited to discuss the scenarios and give their views on the outcomes. Key issues considered during this exercise included when was a Councillor acting as a Councillor and when were they not as well as when an incident related to a Code of Conduct breach or a breach of internal political discipline.
- 3.6 The main issue considered during the workshop was the process for dismissing any of the three Statutory Officers – The Head of Paid Service, Section 151 Officer and the Monitoring Officer.
- 3.7 The procedures for such a dismissal had been amended through the 2015 regulations and a discussion took place regarding best practice for dealing with such situations. It was acknowledged that as the regulations had only recently been adopted there was very little practical evidence of how the procedures would work.
- 3.8 The regulations allowed each individual Council to set their own arrangements for the dismissal of Statutory Officers which are included at section 11 of the Staff Employment Rules within the Constitution.
- 3.9 A particular issue raised during discussions on this topic was Independent Person involvement in the potential dismissal of the Monitoring Officer. It was noted that Independent Persons were encouraged to maintain a working relationship with the Monitoring Officer and as such it was felt by many that they could not act impartially in a potential dismissal scenario.

4. CONFIDENTIAL OR EXEMPT

- 4.1 Not confidential or exempt.

5. FINANCIAL CONSIDERATIONS

- 5.1 No financial considerations.

6. RISK ASSESSMENT

- 6.1 Strategic Risk Register Reference 4 - Inadequate Strategic Governance arrangements leading to failure to deliver the Council's objectives/statutory. Ensuring there are robust standards arrangements in place will assist in the mitigation of risk

7. EQUALITY AND DIVERSITY/EQUALITY IMPACT ASSESSMENT

- 7.1 Democratic and Member Services have an Equality Impact Assessment in place.

8. CONSULTATION

- 8.1 Previous consultation with the Standards Committee and Council.

9. REASONS FOR RECOMMENDATIONS

9.1 To ensure that the Council maintains effective corporate governance through the Standards Committee.

10. RECOMMENDATIONS

10.1 That the report be noted by the committee.

11. BACKGROUND PAPERS

11.1 Report to Council on 22 June 2015. Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

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