



MEETING : STANDARDS COMMITTEE
VENUE : ROOM 27, WALLFIELDS, HERTFORD
DATE : WEDNESDAY 14 MARCH 2012
TIME : 7.00 PM

MEMBERS OF THE COMMITTEE

District Council Members:

Councillors A Burlton, M Carver, N Poulton and M Wood

Town Councils Representative:

Mrs E Woods

Parish Councils Representatives:

Mr J Jones
Mr C Marks

Independent Members:

Mr S Bouette
Mr D Farrell
Mr J Morpew
Mr T Vickers

CONTACT OFFICER: Jeff Hughes

PERSONAL AND PREJUDICIAL INTERESTS

1. A Member with a personal interest in any business of the Council who attends a meeting of the Authority at which the business is considered must, with certain specified exemptions (see section 5 below), disclose to that meeting the existence and nature of that interest prior to the commencement of it being considered or when the interest becomes apparent.
2. Members should decide whether or not they have a personal interest in any matter under discussion at a meeting. If a Member decides they have a personal interest then they must also consider whether that personal interest is also prejudicial.
3. A personal interest is either an interest, as prescribed, that you must register under relevant regulations or it is an interest that is not registrable but where the well-being or financial position of you, members of your family, or people with whom you have a close association, is likely to be affected by the business of the Council more than it would affect the majority of inhabitants of the ward(s) affected by the decision.
4. Members with personal interests, having declared the nature of that personal interest, can remain in the meeting, speak and vote on the matter unless the personal interest is also a prejudicial interest.
5. An exemption to declaring a personal interest applies when the interest arises solely from a Member's membership of or position of general control or management on:
 - any other body to which they have been appointed or nominated by the authority
 - any other body exercising functions of a public nature (e.g another local authority)

In these exceptional cases, provided a Member does not have a prejudicial interest, they only need to declare their interest if they speak. If a Member does not want to speak to the meeting, they may still vote on the matter without making a declaration.

6. A personal interest will also be a prejudicial interest in a matter if all of the following conditions are met:
 - the matter does not fall within one of the exempt categories of decisions
 - the matter affects your financial interests or relates to a licensing or regulatory matter
 - a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest.

7. Exempt categories of decisions are:
 - setting council tax
 - any ceremonial honour given to Members
 - an allowance, payment or indemnity for Members
 - statutory sick pay
 - school meals or school transport and travelling expenses: if you are a parent or guardian of a child in full-time education or you are a parent governor, unless it relates particularly to the school your child attends
 - housing; if you hold a tenancy or lease with the Council, as long as the matter does not relate to your particular tenancy or lease.

8. If you have a prejudicial interest in a matter being discussed at a meeting, you must declare that interest and its nature as soon as the interest becomes apparent to you.

9. If you have declared a personal and prejudicial interest, you must leave the room, unless members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise. If that is the case, you can also attend the meeting for that purpose. However, you must immediately leave the room once you have finished or when the meeting decides that you have finished (if that is earlier). You cannot remain in the public gallery to observe proceedings.

AGENDA

1. Apologies

To receive apologies for absence.

2. Chairman's Announcements

3. Declarations of Interest

4. Minutes (Pages 7 - 10)

To confirm the Minutes of the meeting held on 16 August 2011.

5. Localism Act 2011 (Pages 11 - 24)

Proposals by the Chairman of the Standards Committee for the New Standards Regime.

6. IT protocol for Members (Pages 25 - 34)

7. Urgent Business

To consider such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration and is not likely to involve the disclosure of exempt information.

8. Exclusion of the Press and Public

To move that under Section 100 (A) (4) of the Local Government Act 1972 the press and public be excluded from the meeting during the discussion of items 9 and 10 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 7C of Part I of Schedule 12A of the said Act (see subsequent pages for definitions of exempt information categories).

It is for the Committee to determine whether or not these items should be considered in public and the report made available for

public information. Until a decision is taken, please regard the report as confidential.

9. Complaint in respect of a Parish Councillor: Reference HORM/03/2011: Consideration (Pages 35 - 48)
10. Complaint in respect of a Parish Councillor: Reference HORM/03/2011: Hearing (Pages 49 - 68)
11. Urgent Business

To consider such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration.

This page is intentionally left blank

MINUTES OF A MEETING OF THE
STANDARDS COMMITTEE HELD IN THE
ROOM 27, WALLFIELDS, HERTFORD ON
TUESDAY 16 AUGUST 2011, AT 7.00 PM

PRESENT:

District Council Members:

Councillors A Burlton, M Carver, N Poulton
and M Wood

Town Councils' Representatives:

Mrs E Woods

Parish Councils' Representatives:

Mr J Jones
Mr C Marks

Independent Members:

Mr S Bouette
Mr D Farrell
Mr J Morphew
Mr T Vickers

OFFICERS IN ATTENDANCE:

Simon Drinkwater	- Director of Neighbourhood Services
Jeff Hughes	- Head of Democratic and Legal Support Services

218 ELECTION OF CHAIRMAN

Mr J Morphey and Mr T Vickers were duly nominated for the position of Committee Chairman for the remainder of the Civic Year 2011/12. Upon being put to the vote, each candidate received the same number of votes. Mr Morphey subsequently withdrew his candidature and the Committee duly elected Mr Vickers as Chairman.

RESOLVED – that Mr T Vickers be elected Chairman of the Standards Committee for the remainder of the Civic Year 2011/12.

219 CHAIRMAN'S ANNOUNCEMENTS

The Chairman thanked Mr Morphey for his work during his term of office as Committee Chairman.

The Chairman also welcomed the newly appointed District Councillors to their first meeting of the Committee.

220 MINUTES

RESOLVED – that the Minutes of the meeting held on 8 September 2010 be approved as a correct record and signed by the Chairman.

221 LOCALISM BILL

The Monitoring Officer submitted a report outlining changes to the councillors' standard regime detailed in the Localism Bill.

The Monitoring Officer invited the Committee to formulate its views on the proposed changes, particularly with regard to a non statutory code; the investigation of complaints and the future of Independent Members.

The Committee agreed to make recommendations detailed below on this matter.

RECOMMENDED – that subject to review should there be any significant changes to the Localism Bill upon enactment:

- (A) Council opt for a voluntary code of conduct for Members;**
- (B) the Standards Committee be asked:**
 - (1) to draft such a code (as referred to in (A) above) based on a revision of the current statutory code and to advise on any necessary consequential changes to other codes and protocols, and**
 - (2) to propose a scheme for handling complaints concerning Members' conduct, having regard for the need to respond to such complaints equitably and expeditiously and without any unnecessary expense or calls on other resources, and**
- (C) the Monitoring Officer be instructed to write to the clerk of each of the District's parish and town councils to ensure that each one is aware of its probable new responsibilities and inviting co-operation in the preparation and adoption of a common code and machinery for its implementation.**

222 **DRAFT 2010/11 ANNUAL GOVERNANCE STATEMENT**

The Leader of the Council submitted a report on the Authority's draft Annual Governance Statement for 2010/11.

The Committee considered the content of the report, particularly the element detailing its activities during the year. In response to Members' suggestions, the Monitoring Officer undertook to amend this section of the Statement to provide more detail on the activity of both the Assessment and Review

Sub-Committees and complaints relating to Members of the District and its constituent town and parish councils.

The Committee had no (further) comments on the Statement.

RESOLVED – that Audit Committee be advised that this Committee has no comments (apart from that detailed in the narrative to this Minute) on the draft Annual Governance Statement for 2010/11.

223 WORK PROGRAMME 2011/12

The Monitoring Officer submitted a report inviting the Committee to consider its work programme for the period ending 31 March 2012.

The Committee agreed to add the following items to those currently listed in the programme:

- (1) review of questioning procedures for the Monitoring Officer’s investigation, and
- (2) review of the Council’s Member IT protocol (initially through a virtual meeting mechanism involving a sub-group of Members).

The Committee noted that it would also be invited to consider a reference from a recent meeting of the Assessment Committee at a future meeting.

RESOLVED – that the proposed work programme for the Committee, as now submitted and updated, be agreed.

The meeting closed at 8.10 pm

Chairman
Date

EAST HERTS COUNCIL

STANDARDS COMMITTEE- 14 MARCH 2012

REPORT BY THE DIRECTOR OF NEIGHBOURHOOD SERVICES AND MONITORING OFFICER

THE LOCALISM ACT 2011 – PROPOSALS BY THE CHAIRMAN OF THE STANDARDS COMMITTEE FOR THE NEW STANDARDS REGIME

WARDS AFFECTED: ALL

Purpose/Summary of Report

<u>RECOMMENDATION FOR COUNCIL :</u>

1.0 Background

- 1.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors.
- 1.2 This report describes the changes and recommends the actions required for Council to implement the new regime.
- 1.3 The Authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members.
- 1.4 The Chairman of the Committee has prepared a draft Members' Code of Conduct and proposals to administer the new standards regime at **Essential Reference Paper B**. The Committee is requested to consider these proposals and make recommendations to Council.

2.0 Report

2.1 Standards Committee

2.2 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. There will be no requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work. It is likely to remain convenient to have a Committee. It will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result:–

- (a) The composition of the Committee will be governed by proportionality, unless the Council votes otherwise with no Member voting against. The present restriction to appoint only one Member of the Executive on the Standards Committee will cease to apply;
- (b) The current co-opted independent Members will cease to hold office. The Act establishes for a new category of Independent Persons who must be consulted at various stages, but provides that the existing co-opted independent Members cannot serve as Independent Persons for 5 years. The new Independent Persons may be invited to attend meeting so the Standards Committee, but are unlikely to be co-opted onto the Committee;
- (c) Council will continue to have responsibility for dealing with standards complaints against elected and appointed Members of Parish/Town Councils, but the current Parish/Town Council representatives cease to hold office. Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants.
- (d) The choices include establishing a Standards Committee as a Committee of the District Council, with co-opted but non-voting Parish/Town Council representatives (which could then only make recommendations in respect of Parish/Town Council Members), or establishing a Standards Committee as a Joint Committee with the Parish/Town Councils within the District (or as many of them as wish to participate) and having a set number of Parish/Town Council representatives as voting Members of the Committee (which could then take operative decisions in respect of Members of Parish/Town Councils, where the Parish/Town Council had

delegated such powers to such a Joint Standards Committee). The Chairman of the Committee has put forward an alternative with an Advisory Committee.

- 2.2 Therefore, Council will need to decide whether to set up a Standards Committee and determine how it is to be composed.
- 2.3 The Code of Conduct
- 2.4 The current ten General Principles and Model Code of Conduct will be repealed, and Members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted Member's conduct when acting in that capacity. The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles –
- (a) Selflessness
 - (b) Integrity
 - (c) Objectivity
 - (d) Accountability
 - (e) Openness
 - (f) Honesty
 - (g) Leadership
- 2.5 Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. The result is that it is not yet possible to draft Code provisions which reflect the definition of DPIs which will appear in regulations.
- 2.6 The Act's provisions prohibits Members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring Members to withdraw from the meeting room.
- 2.7 Council has to decide what it will include in its Code of Conduct

3.0 Dealing with Misconduct Complaints

3.1 “Arrangements”

3.1.1 The Act requires that the Council adopt “arrangements” for dealing with complaints of breach of Code of Conduct both by District Council Members and by Parish/Town Council Members, and such complaints can be dealt with only in accordance with such “arrangements”. So the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the relevant Code of Conduct.

4.0 Independent Person(s)

4.1 The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

4.2 “Independence”

4.2.1 The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all Members of the District Council (not just of those present and voting).

4.2.2 A person is considered not to be “independent” if:

- (a) he is, or has been within the last 5 years, an elected or co-opted Member or an officer of the District Council or of any of the Parish Councils within its area;
- (b) he is, or has been within the last 5 years, an elected or co-opted Member of any Committee or Sub-Committee of the District Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted independent Members of Standards Committee from being appointed as an Independent Person); or
- (c) he is a relative or close friend of a current elected or co-opted Member or officer of the District Council or any Parish Council within its area, or of any elected or cop-opted Member of any Committee or Sub-Committee of such Council.

4.2.3 For this purpose, “relative” comprises –

- (a) the candidate's spouse or civil partner;
- (b) any person with whom the candidate is living as if they are spouses or civil partners;
- (c) the candidate's grandparent;
- (d) any person who is a lineal descendent of the candidate's grandparent;
- (e) a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
- (f) the spouse or civil partner of anyone within Paragraphs (c), (d) or (e);
or
- (g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

4.3 Functions of the Independent Person

4.3.1 The functions of the Independent Person(s) are –

- (a) They must be consulted by the authority before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- (b) They may be consulted by the authority in respect of a standards complaint at any other stage; and
- (c) They may be consulted by a Member or co-opted Member of the District Council or of a Parish/Town Council against whom a complaint has been made.

5.1 The Register of Members' interests

5.2 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and

available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish/Town Councils, which also has to be open for inspection at the District Council offices and on the District Council's website.

- 5.3 At present it is not known what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the Member's own interests, but also those of the Member's spouse or civil partner, or someone living with the Member in a similar capacity.
- 5.4 The provisions of the Act in respect of the Code of Conduct require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.
- 5.5 The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish/Town Council, available for inspection at the District Council offices and on the District Council's website and, where the Parish/Town Council has a website, provide the Parish/Town Council with the information required to enable the Parish/Town Council to put the current register on its own website.
- 6.0 The Committee is requested to consider the Chairman's proposals and make recommendations to Council.
- 7.0 Implications/Consultations
- 7.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Localism Act 2011

Contact Officer: Simon Drinkwater Director of Neighbourhood Services

Report Author: Simon Drinkwater Director of Neighbourhood Services

ESSENTIAL REFERENCE PAPER 'A'

<p>Contribution to the Council's Corporate Priorities/ Objectives <i>(delete as appropriate):</i></p>	<p>Fit for purpose, services fit for you <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.</i></p> <p>Leading the way, working together <i>Deliver responsible community leadership that engages with our partners and the public.</i></p>
<p>Consultation:</p>	<p>-</p>
<p>Legal:</p>	<p>Legal implications are discussed in the report.</p>
<p>Financial:</p>	<p>None.</p>
<p>Human Resource:</p>	<p>Not applicable.</p>
<p>Risk Management:</p>	<p>The Council is required to apply the governance provisions contained in the Localism Act 2011.</p>

[Text in square brackets, as here, is explanatory for the benefit of those reviewing the draft – to be omitted from the definitive version. Text between ligatures {EHDC: ... } and {TP: ... } are variants respectively for the District or as a model code for the Towns and Parishes, the intention being that the Code given to a member will have only the forms of words appropriate to that member's council.]

[DRAFT] MEMBERS' CODE OF CONDUCT

Introduction

1. Section 27 of the Localism Act 2011 lays upon authorities *a duty to promote and maintain high standards of conduct*. Section 28 requires each authority to have a Code of Conduct. You are accountable to the Council for compliance with the Code when you act, or purport to act, or might reasonably be believed by others to be acting, in your role as a member. Your role as a member includes any additional council duties or offices undertaken by you. The accountability does not extend to conduct in private life.
2. Subsection 28(1) of the Act requires the Code to be consistent with the principles of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. To those, the Council adds other general requirements derived by extension from those principles: Regard for others, Independence of judgement, Respect for the law, and Stewardship of the Authority's resources.
3. The Code is in two parts. The first deals with general provisions and obligations. The second relates to the Act's requirements (Sections 29 to 34) regarding members' *interests other than pecuniary interests* and *pecuniary interests*. This categorisation replaces the earlier *personal interests* and *personal and prejudicial interests*. Failures to register or to declare interests or otherwise to fail to observe the related provisions of the Act are now potentially criminal offences. Some obligations in the first part of the Code also relate to potentially unlawful conduct. The Code aims both to discourage conduct that might make members or the Council itself liable in law; and also to signal the unacceptability of breaches that do occur and are below the threshold for legal action. Members cannot be required, as a condition of office, to be bound by the Code, but you will be deemed to have read the Code and to be aware that {EHDC: the Council is required, by Subsection 27(6) of the Act, to provide for complaints alleging breaches of the Code to be determined, after, if necessary, investigation}{TP: East Herts District Council, as the Principal Authority for this Council, has the duty to receive and to determine, after any necessary investigation, complaints alleging breaches of this Code by members of this Council}. The procedures for making a complaint and for the subsequent handling of a complaint, including actions that might follow a finding that the Code has been breached, are published on the EHDC website, and are available from the EHDC Offices, and from the Clerk of each of those Town or Parish Councils for which EHDC is the Principal Authority.

Part 1

General provisions and obligations

4. When you represent the Council —

- (a) on another 'relevant authority', as defined in Subsection 27(6) of the Act, you must, in the conduct of that authority's business, comply with any necessary provisions of that authority's code of conduct; *or*
 - (b) on any body other than a 'relevant authority', you must, when acting for that other body, comply with this Council's Code of Conduct, except and insofar as it conflicts with any over-riding lawful obligations of that other body. If such a conflict arises or seems likely to arise, the guidance of this Council's Monitoring Officer should be sought.
- 5. By leadership and example, you should assist the Council to fulfil its duty in law to promote and maintain high standards of conduct. To that end you must—
 - (a) aim to uphold the law and not do, or connive with or at others in doing, anything unlawful;
 - (b) comply with the Council's standing orders and with any relevant guidance that may be issued from time to time, including codes and protocols;
 - (c) at no time, in your role as a member and in the performance of your Council duties, conduct yourself in a manner that might reasonably be regarded as bringing, or being likely to bring, into disrepute you yourself, in your office of member, or the Council.
- 6. You should aim to promote equality and must treat others with respect and with due regard for them and to their rights as individuals.
In particular, you must not—
 - (a) in any way discriminate, or indicate a disposition to discriminate, on grounds of sex or sexual orientation, or of nationality, race, creed, disability or age. Nor should you do anything that might cause the Council itself to be liable under any of the provisions of the Equality Act 2010);
 - (b) bully, harass or treat in an oppressive manner any person or persons;
 - (c) intimidate or attempt to intimidate any person who is or might be (i) a complainant that any member has breached the Council's Code of Conduct, or (ii) a witness or potential source of other material evidence regarding such an allegation, or (iii) in any other way actually or potentially involved in the administration of any investigation or proceedings in relation to an allegation of misconduct;
 - (d) do anything that compromises or is likely to compromise the impartiality, integrity and objectivity of those who work for, or on behalf of, the Council.
- 7. You must not disclose information, whether communicated to you or that comes to your notice in any other way, that is explicitly confidential or that you ought reasonably to be aware is of a confidential nature, unless—
 - (a) you have the consent of an appropriately authorised person; *or*
 - (b) disclosure is required by law; *or*
 - (c) the disclosure is necessarily made to a third party for the purpose of obtaining professional advice and provided that the third party agrees not to disclose the information to any other person; *or*
 - (d) the disclosure is reasonable, in the public interest, made in good faith and in compliance with the Council's policies or protocols on whistle-blowing and

confidential information. For protection by the Public Interest Disclosure Act 1988 to apply, you must first have raised your concerns through the appropriate internal machinery {EHDC: see the Council's Disclosure Code}.

8. You must not impede or prevent another person from gaining access to information to which that person is entitled by law.
9. You must not use, or attempt to use, your position to gain financial or other material benefits for yourself, your family, or your friends.
10. You must not to place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
11. When using, or authorising or agreeing to others' use, of the resources of your authority, you must—
 - (a) act in accordance with the Council's reasonable requirements and so far as possible ensure that the Council uses its resources prudently and in accordance with the law.;
 - (b) ensure that the Council's resources are not used improperly for political purposes (including party political purposes).
12. When reaching decisions on any matter you must—
 - (a) exercise independent judgement and act solely in the public interest;
 - (b) have in mind that a Council decision might be open to challenge on grounds of predetermination if a member (or members) involved in the decision had, or might reasonably been thought by a disinterested observer to have, a closed mind at the time the decision was taken. To avoid predetermination, even if beforehand you have expressed a strong view on the matter or indicated how you were minded to vote, you should keep an an open mind about matters for decision, having regard for all the facts and advice from officers and weighing others' views, and ideally demonstrate that open-mindedness in discussion;
 - (c) heed any relevant advice provided to you by the {EHDC: Council's Chief Executive, Chief Finance Officer or Monitoring Officer where that officer is acting pursuant to his or her statutory duties}{PT: the Council's Clerk}.
13. As a holder of public office, you are accountable to the public and you should—
 - (a) aim to be open about decisions and actions that you take or to which you are a party;
 - (b) restrict such communication only when required by law or the confidentiality of information or justified by the wider public interest;
 - (c) make clear In communication with members of the public and especially with representatives of the media, whether you are expressing personal views or speaking in any way on behalf of the Council;{EHDC: (d) have regard to the Council's Code of Publicity, in particular if you initiate the communication by, for example, writing a letter to a newspaper.}

Part 2

[To be inserted when/if regulations are issued.]

[DRAFT Version 3]

Outline Proposals for a new standards regime

The Authority must have a Code of Conduct. Given that the current Code is well-known to all concerned (or should be) and, during the period of its application, has given rise to no major problems, the obvious option is to keep its general form, with changes to reflect the new regime and experience with the current one. A draft is appended.

Town/Parish Codes:

Town and parish councils must have a code but are free to adopt any code consistent with the Act. Those for which EHDC is responsible, as the 'Principal Authority', should be encouraged to use the one adopted by EHDC, otherwise there may be problems for the EHDC administrative system, charged with following up complaints against town and parish councillors for breaches of an idiosyncratic Code. Incentives: (a) town and parish councils should be consulted on the proposed EHDC code while it is in draft; (b) they should be warned that, if they adopt a non-standard code of their own, they will have to publicise it initially at their own expense (presumably EHDC will issue a notice in the Mercury etc and could simply add to it the names of all the towns and parishes that subscribe to the standard version) and arrange for it to be made available locally, and (c) copies of non-standard versions would be need to be lodged with the Monitoring Officer.

Administration:

The Act Subsection 28(6) requires the Authority to make arrangements for processing complaints of breaches of the Code(s) (including those relating to town and parish councillors). The debate in the House of Lords was clear that there should be strong independent involvement. What was hastily contrived in Subsections 28(7) and (8) – for an 'Independent Person' to be appointed – does not provide that. To have a Standards Committee composed entirely of members would (rightly) attract public ridicule, contempt and outrage. To have a committee with co-opted members, who could neither vote nor chair the committee, would be little better and would have the additional implausibility in that it is most unlikely that anyone would stomach acting as a powerless co-opted member.

The logic is to have an Advisory Committee, under Subsection 102(4) of the LGA of 1972 (as amended), with a strong independent membership with voting rights, which would operate, in dealing with complaints, in much the same manner as at present but advising (say) the full Council that e.g., a complaint (set out in summary) by X against councillor Y was found to require no further action, or that specified other action should be taken, either with regard to the subject member or, on advice by the Standards Committee, to address systemic or cultural issues, or that the subject member should be censured perhaps with a level of severity suggested on a scale of I to V and, if need be, recommending any further sanctions directly or indirectly available to the Council, such as removal from committees or the executive. The primary role of the 'Independent Person' would be to act as assessor to the Council, to assist it in deciding whether to accept the Advisory Committee's advice and would be fully consistent with the Act's requirement (28(7)(a)). An arrangement along these lines would give the Council (as a body) ownership of its own

Code of Conduct and challenge it to set its own standards publicly by its responses to the Committee's advice.

The Committee's advice, the Assessor's opinion and the Council's response would be published on the Council's website (and perhaps a press-release made, but not a paid-for notice in the press) and a searchable database maintained of all complaints and the outcome, so that (a) if the Council were to take the line that it would simply routinely or wilfully disregard the Committee's advice, it would risk bringing itself into disrepute; and (b) there would be a source of information about councillors to refresh electors' memories in due course. Town and Parish Councils that chose to disregard advice would themselves risk being complained against. There should be provision for the Committee itself to originate complaints.

A system of the sort described in outline could, even in the limited time still available, be worked up to provide the necessary detailed procedures that would be followed and made public. The alternative, of continuing to wait for some other body to produce a model system, seriously risks the Council finding itself with no choice but to accept whatever eventually turns up, having had no say in its development and thus re-running the nonsenses of recent years (or struggling with new ones).

In terms of practicalities, the present Standards Committee might be invited to remain in office for the time being but reconstituted, after the appointed date of 1 July, as a Joint (i.e. EHDC *plus* towns and parishes) Advisory Committee on Standards of Conduct, charged with the management, implementation and initial operation during the first year of a new system.

The Committee might in the longer term have representation on the same basis as at present: four members from the Council; three (preferably four) town and parish representatives to be appointed by those councils, plus four independent members including a Chairman and a Vice-Chairman. The Act's 'Independent Person or Persons' would be appointed as Assessor(s) to the Council(s) (as above) and as existing independent members' terms expire, might be in line to become independent members of the Committee. There should at any time be at least two 'Independent Persons', since otherwise paralysing conflicts of interest might arise or be contrived. There need not be an inevitable career path but there would be the practical benefit of providing, with one public notice, a way to meet the requirement of the Act (28(8)(c) and maintaining the present open system for appointing independent members to the Committee. The legislation, while requiring the appointment of 'Independent Persons', with 'independence' defined in strangely rigorous terms, and with a defined remit, does not seem, even by implication, to rule out independent persons, not appointed in the prescribed manner, being members of an advisory committee with other remits. That assumption is obviously pivotal to what is proposed by way of a transitional regimen. The primary (mandatory) role for the independent persons would be enabled by a right to attend any meetings of the Committee or its subcommittees, without voting rights, to receive all papers, and to submit opinions (on the Committee's advice) to the Council(s).

Provision would need to be made, in the term of the Act (28(7)(ii-iii)), for subject members, if they so wished, to consult an 'Independent Person': that duty could be a very fraught and potentially open to serious abuse.

The processes of assessment and hearing should continue on much the same procedural lines as at present, except that (a) the right of appeal by complainants would be abolished and (b) hearings would be conducted by a subcommittee of all the independent members. The procedure should be flexible enough to take account of (e.g.) complaints where the facts were not in serious doubt and might indeed be admitted by the subject member and a summary decision made on whether there had been a minor breach of the Code. More serious or contested cases would require investigation.

The system would need (a) to identify and distinguish those cases where either the fault was a personal one of ignorance (to be treated summarily, on first offence, by warnings or, if appropriate, by inviting apology) or there was wilful disregard for the Code and/or serial offending (to be dealt with by 'naming and shaming' in a way that could impact seriously on offenders); (b) to identify systemic or cultural problems that should be addressed initially by the Standards Committee and then, subject to the Committee so advising, by the Council.

Unless persuasive arguments were provided to the contrary, the complaint should, on receipt by the Monitoring Officer, be immediately communicated to the subject member, with an invitation to him or her to respond, e.g., by submitting a rebuttal. That provision would immediately remove a major flaw in the present system. Any complaint properly made should be promptly assessed by the Assessment SC and then an option would be to refer back to the Monitoring Officer for 'other action', which would necessarily be limited, so far as the subject member was concerned, to offers of advice or guidance. The Council would need to delegate to the Monitoring Officer the power to act, at the request of the Subcommittee, in limited ways – say, issuing a caution or seeking an apology as a way to settle a grievance. If the subject member refused to co-operate, he would be charged with an additional offence and go back into the system. That would remove a second current flaw. Presumably complaints concerning failures to register or declare 'interests' in the terms of the Act, would not be referred to the Subcommittee unless and until it was clear that the DPP had set a threshold for prosecution that left minor infringements to be dealt with locally.

The process of investigation needs to be reconsidered and fundamentally changed and the completion of the entire process, from receipt of a complaint onwards, streamlined and condensed drastically, to save time and money while maintaining fairness.

The Committee itself, in addition to reporting to the Council on systemic, organisational or cultural issues emerging from case-work, might usefully maintain an overview of ethical governance, including reviewing relevant codes and protocols, and reporting at least annually to the Council (and town and parish councils) and otherwise as occasion arises.

This page is intentionally left blank

EAST HERTS COUNCIL

STANDARDS COMMITTEE- 14 MARCH 2012

REPORT BY THE DIRECTOR OF NEIGHBOURHOOD SERVICES AND MONITORING OFFICER

IT PROTOCOL FOR MEMBERS

WARDS AFFECTED: ALL

Purpose/Summary of Report

<u>RECOMMENDATION FOR COUNCIL :</u>

1.0 **Background**

1.1 The IT Protocol for Members was developed some time ago. It is due to be reviewed.

2.0 **Report**

2.1 **Essential Reference Paper B** contains the current IT Protocol. The proposed IT Protocol for Members is contained in **Essential Reference Paper C**. The aim has been to simplify the protocol and exclude information which is not essential. The new protocol concentrates on the areas which are important for Members.

2.2 The Protocol concentrates on the important areas of ownership of the equipment and insurance. The Protocol deals with use of the equipment including passwords, data protection and freedom of information issues. Member training on data protection and freedom of information will be provided.

3.0 **Implications/Consultations**

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None.

Contact Officer: Simon Drinkwater Director of Neighbourhood Services

Report Author: Simon Drinkwater Director of Neighbour hood Services

ESSENTIAL REFERENCE PAPER 'A'

<p>Contribution to the Council's Corporate Priorities/ Objectives <i>(delete as appropriate):</i></p>	<p>Fit for purpose, services fit for you <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.</i></p> <p>Leading the way, working together <i>Deliver responsible community leadership that engages with our partners and the public.</i></p>
<p>Consultation:</p>	<p>Chairman of the Standards Committee</p>
<p>Legal:</p>	<p>The protocol has been drafted to take account of Members' legal responsibilities.</p>
<p>Financial:</p>	<p>None</p>
<p>Human Resource:</p>	<p>None</p>
<p>Risk Management:</p>	<p>The IT Protocol is intended to manage risks for the Council and Members in respect of the use of IT provided by the Council for the use of Members.</p>

Protocol on the Use of IT by Members May 2011

Each Councillor is required to sign and must comply with the terms of this Protocol as a condition of using the Council's computers at home or in the office. An electronic copy of the Protocol will be installed on the desktop of all Councillor laptops.

1 Introduction

East Herts Council offers to provide all Councillors with computers to facilitate the performance of their duties as Councillors.

The use of these computers can make Councillors much more effective, but there are risks associated with such use. This protocol sets out the conditions on which such computers are provided. In order to minimise those risks both to the Council and to individual Councillors.

For definition purposes "Computer" means the computer provided by the Council for use at the Councillor's home or office, together with any hardware, software, services or consumables provided. For those Councillors who use equipment that is part of the East Herts network they are required to sign and adhere to another protocol common to all internal Council users.

2 Security for the Computer

- (a) The Councillor accepts personal responsibility for the safekeeping and proper use of the computer.
- (b) The Councillor shall make reasonable arrangements for the safe-keeping of the computer.
- (c) Access to the Council's information systems via the computer is subject to password security. The Councillor shall ensure that passwords are kept obscure and secret. No-one other than the Councillor should be given access to those Council information systems and they shall not reveal their password to any other person.
- (d) The Council's insurance policies will cover Councillors' computers for the usual "perils" of fire, flood, theft and accidental damage. Please see paragraph 4d for advice on other liabilities.
- (e) Councillors are advised to notify their own building and contents insurance company that they will be using Council equipment for work purposes at their home.

3 Use for Council Business

- (a) The computer is provided to the Councillor specifically to facilitate the discharge of the Councillor's functions as a Councillor. The Councillor must therefore not use the computer in any manner which is inconsistent with Council duties and activities.
- (b) Accordingly, the Councillor must not:
 - (i) misuse the computer in such a manner as to cause it to cease to function
 - (ii) install or use any equipment or software without prior approval of the Council's PC Support team.
- (c) The Councillor must:
 - (i) Ensure that the computer is maintained in a working condition;
 - (ii) Report any faults promptly to the Council's IT Help Desk;
 - (iii) Provide prompt access to Council officers to service, maintain and repair the computer.
- (d) The Council provides the computer together with ancillary equipment, consumables and materials required for their functions as a Councillor. Accordingly, the Council may decline to provide further equipment, consumables or materials where the use of these appears to be for private (non-Council) use.

4 Use of Facilities

- (a) The Councillor should use the computer only for purposes for which it is provided and should take reasonable measures to ensure its use is confined to approved purposes;
- (b) The Council is prohibited from publishing (in either print or electronic format) any material of a party-political nature. If the Councillor uses the computer for the preparation of any material of such nature, he/she must make it clear that such material is not on behalf of the Council, and that no costs have been incurred by the Council as a consequence of its publication;
- (c) The Council has obtained the necessary software licenses for the use of the computer by the Councillor in an individual capacity, but not for any non-Council commercial business use of the computer.
- (d) Should any Councillor fail to abide by this protocol (e.g. by downloading unapproved software or using the computer in a commercial business capacity) the Council accepts no responsibility for any loss, costs or liability which the Councillor or any other person may suffer as a result. In most cases the Council will seek to recover the equipment.

5 Bringing the Council into Disrepute

- (a) The Councillor shall not use the computer, or permit its use, in any manner which may bring the Council or the Councillor into disrepute.
- (b) Specifically, where the Council provides websites for Councillors, the Council retains editorial control of such websites and the right to remove or require the removal of any material which is unlawful or likely to negatively affect the reputation of the council.
- (c) Access to sites containing sexual or gratuitous violence or any other subversive material through use of the Council's equipment is forbidden.

6 Inspection and Audit

The Council reserves the right to inspect the computer at any reasonable time and Councillors may be required to give officers access at any convenient time for this purpose. Inspection and audit may also be undertaken remotely and without notice to the Councillor in exceptional circumstances. Councillors are advised that the computer includes a history file which records its use, and particularly any websites which it has accessed.

7 Costs

- (a) The Council will meet the cost of providing the computer.
- (b) Each Councillor is responsible for his/her own electricity bill.

8 Return and Recovery of the Computer

- (a) The computer remains the property of the Council at all times.
- (b) The Council reserves the right to require the Councillor to return the computer and the right to recover the computer from the Councillor where there is evidence of serious misuse.
- (c) The Councillor is required to return the computer to the Council upon ceasing to be a Councillor.

9 Confidentiality

- (a) The Councillor will be able to access confidential Council information using the computer. The Councillor is responsible for ensuring the continued security of any such confidential information which s/he receives, including the security of any storage of such information on the computer. The Councillor is reminded of his/her obligations under the Council's Code of Conduct for Councillors not to disclose such confidential information to any third party.

- (b) Some of this information will be personal information relating to individuals. The unauthorised processing or disclosure of such information is prohibited under the Data Protection Act and the Councillor is responsible for ensuring that there is no such unauthorised disclosure from the computer.

10 Restriction of Use

The Council reserves the right to restrict the use of the computer if it has reason to believe that the use of the computer is likely to offend any provision of the Protocol. In particular, the Council reserves the right to:

- (a) remove or disable any software or equipment;
- (b) remove any information stored on the computer.
- (c) Recover the facility in the case of proven serious misuse.

Protocol for the Loan of IT Facilities to, and their Use by, Members

A copy of this protocol is on the desktop of each laptop on loan.

- 1 In this protocol, *IT facilities* means computers and pre-loaded software, together with any ancillary equipment, e.g., power-supplies and cables, issued on loan to members and signed for individually in the register maintained by the Council's IT Support Team. **The member's signature indicates both agreement as to which facilities are on loan to him/her and acceptance of the terms of this protocol.** All facilities remain the Council's property and must be returned on demand and immediately membership ceases. If need be, the Council may take steps to repossess facilities.
- 2 A Member is responsible for arranging any necessary provision of an internet connection and for payment of all charges made by his/her chosen Internet service provider. The IT Support Team will advise how the IT facilities provided can share a broadband connection, printer(s) or files or other computing facilities available to the member.
- 3 The Member is personally responsible for the safe-keeping of IT facilities while they are on loan to him/her. The Council's insurance policies will, however, normally cover the facilities against the risks of fire, flood, theft and accidental damage. Any such occurrences or any other damage, faults or failures, however arising, must be reported without delay to the IT Support Team and, if necessary, e.g., for the assessment and repair of damage, the equipment returned. Although the pre-loaded software, if damaged, can be re-loaded by the Support Team, the Member is personally responsible for backing up any stored data-files whose loss would be significant. The Council will not pay for data to be retrieved from (e.g.) damaged or failed hard drives.
- 4 The Member may not use, or permit others to use, the equipment for any purpose unrelated to his/her Council duties and activities as a member. The Council's software licences may not extend to such purposes.
- 5 Without prior approval of the Council's IT Support Team, the Member may not install any software (other than updates to the operating system and other pre-loaded programs), or disable or change security-settings, including those of internet security systems, or connect any items of ancillary hardware other than those provided.
- 6 The Member must not use the facilities, or permit their use by others, in any manner or for any purpose that is unlawful and/or which might bring the Council or the Member into disrepute. By law, the Council may not publish any material of a party-

political nature, and the IT facilities provided must not be used for the preparation and/or dissemination of any such material.

- 7 The Council may require any of the loaned facilities to be made available, on reasonable notice, for inspection and for maintenance. Access may on occasion be undertaken remotely and without notice to the Member. The Council may remove or disable any software or equipment or delete any inappropriate information stored on the computer.
- 8 The Member must keep secret any password(s) issued to him/her for the purpose of accessing restricted information and is accountable for the continued security of any such information if stored on the computer or otherwise retained by the Member. The unauthorised and inappropriate possession of personal information relating to identifiable individuals and the processing and/or disclosure of such information are prohibited under the Data Protection Act and the Member is responsible for compliance.
- 9 Any member with special responsibilities (e.g., as a member of the executive or as a committee chairmen) will need to consider whether and when material held on his/her computer has to be retained and preserved – and possibly made available under the Freedom of Information Act – as part of documentation of council business. A member's accountability under this head will be discharged by ensuring that any such material is duplicated in the Council's records.
- 10 The Council disclaims responsibility in any legal action, or for any claim, loss, costs or liability incurred by the Member (or any other person), consequential upon any failure to abide by the terms of this protocol.

This page is intentionally left blank

EAST HERTS COUNCIL

STANDARDS COMMITTEE - 14 MARCH 2012

REPORT BY THE MONITORING OFFICER

COMPLAINT IN RESPECT OF A COUNCILLOR: REFERENCE HORM/03/2011: CONSIDERATION

Purpose/Summary of Report

- To consider a complaint in respect of Councillor J Kilby, a Member of Hornead Parish Council.

<u>RECOMMENDATION FOR :</u>	
(A)	

1.0 Background

1.1 The Committee will decide whether the matters to be considered appear to disclose exempt or confidential information under the provisions of Schedule 12A of the Local Government Act 1972 as amended by the Standards Committee (England) Order 2008. The categories are set out at Appendix 1.

1.2 Consideration of the complaint.

1.3 The Committee will consider the Investigator's report and make one of the following findings:

- a) that the matter should be considered at a hearing of the Standards Committee;
- b) that the matter should be referred to the First Tier Tribunal for determination.

2.0 The complaint

2.1 Details of the complaint are set out in the Investigating Officer's report.

3.0 Report

3.1 The Committee is invited to make one of the following findings:

- a) that the matter should be considered at a hearing of the Standards Committee conducted under Regulation 18; or
- b) that the matter should be referred to the First Tier Tribunal for determination.

3.2 Before such a referral can be made the Standards Committee needs to have determined that the action which the Standards Committee could itself take (if there were a finding that there had been a failure to follow the provisions of the Code) would be insufficient. The reference itself can be made only if the First Tier Tribunal has been agreed to accept it.

3.4 The possibility of such a reference arises only after a monitoring officer has produced a report of the Standards Committee. The Principle Judge is willing to indicate, prior to the consideration of that report by the Standards Committee, whether he would agree to accept such a referral. Such agreement would not commit the Standards Committee to making such a referral but would avoid the Standards Committee seeking to refer matters which were suitable.

3.5 In order to assist the Committee, the sanctions available to the Standards Committee and the First Tier Tribunal if there is a failure to comply with the Code of Conduct are at Appendix 2.

3.6 The report of the Investigator provides further information. Please find attached the Investigator's report at Appendix 3.

3.7 Accompanying evidence has already been provided to the Standards Committee which supports the Investigator's findings of fact.

4.0 Implications/Consultations

4.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers:

Appendix 1 Categories of Exempt Information

Appendix 2 Sanctions for Local Investigations

Appendix 3 Investigator's report

Contact Officer: Simon Drinkwater – Monitoring Officer

Report Author: Simon Drinkwater – Monitoring Officer

ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/Objectives:	Fit for purpose, services fit for you. <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation</i> Leading the way, working together <i>Deliver responsible community leadership that engages with our partners and the public.</i>
Consultation:	None
Legal:	The procedures are in accordance with the regulations.
Financial:	None.
Human Resource:	None
Risk Management:	The case should be determined in accordance with the regulations having regard to the relevant guidance.

Definitions of “confidential” and “exempt” information

Meaning of confidential information

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order

Meaning of exempt information

Descriptions of Exempt Information

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
 - a. Information which is subject to any obligation of confidentiality.
 - b. Information which relates in any way to matters concerning national security.
 - c. The deliberations of a Standards Committee or of a Sub-Committee of a Standards Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

8. Qualifications

Information is not exempt information if it is required to be registered under:

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Friendly Societies Act 1992;
- (d) the Industrial and Provident Societies Acts 1965 to 1978;
- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993.

9. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.

10. Information which:

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of paragraph 8 or 9 above,

is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

11. Interpretation

(1) In Parts 1 and 2 and this Part of this Schedule:

"employee" means a person employed under a contract of service;

"financial or business affairs" includes contemplated, as well as past or current, activities;

"labour relations matter" means—

- (a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or
- (b) any dispute about a matter falling within paragraph (a) above;

and for the purposes of this definition the acts mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders

under the authority as they apply in relation to employees of the authority;

"office-holder", in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority;

"registered" in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act).

Sanctions of the Standards Committee and Sanctions of the Adjudication Panel for England

Sanctions of the Standards Committee

Regulation 19(3) of the Standards Committee (England) Regulations

- (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, provided that those restrictions—
 - (i) are reasonable and proportionate to the nature of the breach; and
 - (ii) do not unduly restrict the person's ability to perform the functions of a member;
- (c) partial suspension of that member for a period not exceeding six months;
- (d) suspension of that member for a period not exceeding six months;
- (e) that the member submits a written apology in a form specified by the standards committee;
- (f) that the member undertakes such training as the standards committee specifies;
- (g) that the member participate in such conciliation as the standards committee specifies;
- (h) partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the standards committee;
- (i) partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the standards committee specifies;
- (j) suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the standards committee;
- (k) suspension of the member for a period not exceeding six months or until such time as that member has undertaken such training

or has participated in such conciliation as the standards committee specifies.

Sanctions of the Adjudication Panel for England

- (A) Censure
- (B) Suspend, or partially suspend, the member from being a member or co-opted member of the relevant authority concerned for a limited period,
- (C) Disqualify the member, for a period not exceeding five years, for being or becoming (whether by election or otherwise) a member of that or any other relevant authority.

PRIVATE AND CONFIDENTIAL REPORT

MJB/1/2/2012

**REPORT OF AN INVESTIGATION UNDER s60 OF THE LOCAL GOVERNMENT ACT
2000 INTO AN ALLEGATION CONCERNING COUNCILLOR JOHN KILBY OF
HORMEAD PARISH COUNCIL**

CONTENTS

1. **Executive Summary**
2. **Councillor John Kilby's official details**
3. **Summary of allegations and conclusion on whether there have been failures to comply with the code**
3. **The Code of Conduct**
4. **Investigating Officer's summary of facts**
5. **Reasoning as to whether there have been failures to comply with the Code of Conduct**
6. **Finding**

Appendix A Schedule of evidence taken into account

1.0 Executive Summary

1.1 Allegation

The complaint is that Councillor John Kilby has failed to treat Colin Marks who is the clerk to Hormead Parish Council with respect as an employee and as the proper officer of the clerk to the Parish Council meeting in public.

It is alleged that Councillor Kilby has failed to treat Colin Marks with respect by accusing him of fraud in a public meeting.

I have investigated the complaint made and in doing so have taken email evidence from Councillors Elizabeth Collery, Elaine Harding, Geoff Abbey, David Ginn, ex Councillor Brian Stone and Councillor John Kilby.

1.2 Finding

My finding is that there is evidence that Councillor Kilby failed to comply with the Code of Conduct adopted by Hormead Parish Council.

2.0 Councillor John Kilby's official details

2.1 Councillor Kilby is an elected member of Hormead Parish Council. He was originally co-opted to fill a vacancy in September 2006 and was elected to be a Parish Councillor in May 2007 and again in May 2011. There is no record of Councillor Kilby attending a training course for the Code of Practice.

3.0 Summary of allegations and conclusions on whether there have been failures to comply with the Code of Conduct

3.1 Colin Marks, Clerk at Hormead Parish Council, complained that Councillor John Kilby failed to comply with the Code of Conduct as follows:

- Failed to treat Colin Marks with respect both as an employee and as a proper officer of the Town Council in public.

3.2 Specifically Colin Marks complained that Councillor Kilby who is a Councillor with Hormead Parish Council, failed to comply with the Code of Conduct as follows:

- Councillor Kilby accused Colin Marks of fraud in respect of an expenses claim during a meeting of the Hormead Parish Council on 13th October 2011.

3.3 Colin Marks says he did not hear the remarks himself, but Councillors confirmed at the 10th November 2011 meeting that they had heard them, and the minutes of the meeting were subsequently amended to reflect this.

3.4 Colin Marks states that he was stunned to hear of this accusation as the matter had been explained and resolved prior to that meeting, and was not relevant to anything on the agenda.

3.5 He further states that the public record shows that he has been accused of fraud by a Councillor, an accusation that was unwarranted, totally unjustifiable, unacceptable and is a stain upon his character. Furthermore at no time has he received an apology.

3.6 This report investigates whether by his conduct Councillor John Kilby has failed to treat others with respect. The report considers whether Councillor Kilby failed to comply with the paragraph 3 of the Code of Conduct.

3.7 I have also considered whether paragraph 5 of the Code has been breached but do

not find any evidence of this.

- 3.8 My finding is that there is evidence that Mr Kilby made this accusation on 13th October 2011 against Colin Marks and thereby failed to comply with the Code of Conduct paragraph 3.

3.0 The Code of Conduct

3.1 Hertford Town Council has adopted the model Code of Conduct.

3.2 The relevant part of the Code of Conduct is as follows:

- Paragraph 3 of the Code states a Member must 'treat others with respect'.
- Paragraph 5 of the Code states that a Member must not 'conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

3.3 The seventh General Principle of the Annexure to the Code states

- Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

4.0 Investigating Officer's findings of fact

4.1 I have relied upon evidence from Councillors Elizabeth Collery, Elaine Harding, Geoff Abbey, David Ginn, ex Councillor Brian Stone, Colin Marks and Councillor John Kilby, together with a copy of the minutes of meetings of Hormead Parish Council held on 13th October, 11th November and 8th December 2011.

4.2 Colin Marks was appointed Clerk to Hormead Parish Council in July 2011, the previous clerk having left shortly before. The previous Chairman did not stand for re-election so a new Councillor became Chairman.

4.3 On 13th October 2011 Colin Marks was clerking a meeting of the Hormead Parish Council and was asked to leave for an item concerning his contract of employment.

4.4 Councillor John Kilby accused Colin Marks of fraud in relation to a previous expenses claim.

4.5 A successful application was subsequently made for the minutes of this meeting to be amended to reflect this accusation.

5.0 Reasoning

5.1 I must now consider whether the actions of Councillor Kilby failed to comply with

paragraph 3 of the Code of Conduct.

- 5.2 Paragraph 1 states that it is the responsibility of a Councillor to comply with the provisions of the code and paragraph 2 confirms that this is whenever a Councillor conducts the business of the Authority in an official capacity. Paragraph 3 of the code states that a Member must treat others with respect.
- 5.3 This paragraph is not intended to stand in the way of lively debate as such discussion is a crucial part of the democratic process. A very clear line has to be drawn between the Code of Conduct and the freedom to disagree with the views and opinions of others. However, I consider that an accusation of fraud goes far beyond this, and is a serious matter, being not only disrespectful but potentially slanderous too, especially when spoken about the Clerk to the Meeting who was not even there to defend himself.
- 5.4 An adjudication Panel in a previous case (APE 0419) has decided that you can be the victim of disrespect even if you did not witness the disrespectful behaviour. Therefore a Member's disrespectful treatment of an officer who is not present may amount to a failure to comply with the Code.
- 5.5 I have found that there is compelling evidence that Councillor Kilby has behaved in a disrespectful manner by accusing the Clerk of fraud in a public meeting. I consider therefore that Councillor Kilby did fail to comply with paragraph 3 of the Code of Conduct.

Finding

My finding on all the circumstances of this case is that in accordance with the Local Government Act 2000 there is evidence of a failure to comply with the code.

EAST HERTS COUNCIL

STANDARDS COMMITTEE – 14 MARCH 2012

REPORT BY THE MONITORING OFFICER

COMPLAINT IN RESPECT OF A COUNCILLOR: REFERENCE HOM/03/2011: HEARING

Purpose/Summary of Report

To conduct a hearing concerning allegations made against a Parish Councillor.

<u>RECOMMENDATION FOR :</u>

1.0 Background

1.1 To consider a complaint in respect of Councillor Kilby, a Member of Hormead Parish Council.

2.0 The Report

2.1 The Committee previously agreed a procedure for considering complaints.

2.2 The Committee will conduct a hearing concerning allegations made about Councillor Kilby and make one of the following findings:

- a) that the Member has not failed to comply with the Council's code of conduct;
- b) that the Member had failed to comply with the Council's code of conduct but that no action needs to be taken in respect of the matters considered at the hearing; or
- c) that the Member had failed to comply with the Council's code of conduct and that a sanction should be imposed.

2.3 Accompanying evidence has already been provided to the Committee which supports the Investigating Officer's findings of fact.

3.0 The Complaints

3.1 Colin Marks, the Clerk to Hormead Parish Council, has made a complaint to the Assessment Sub-Committee that Councillor Kilby breached the Parish Council's Code of Conduct.

3.2 Details of the complaint are set out in the Investigating Officer's report.

4.0 The Investigating Officer's Report

4.1 The Council's Assessment Sub-Committee decided that these complaints should be investigated. An investigating officer was appointed under Section 82A of the Local Government Act 2000. Following the investigation, the Investigating Officer concluded that in all the circumstances of this case is that in accordance with the Local Government Act 2000 there has been a failure to comply with the Members' Code in that Councillor Kilby has breached the following provisions of the Code;

Clause 3 (1) General Obligations – failed to treat others with respect.

Clause 5 - conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

5.0 Pre-Hearing

5.1 In preparation for this hearing, Councillor Kilby has been provided with a copy of the Investigating Officer's report. In order to attempt to simplify the hearing process and identify those matters which are agreed, Councillor Kilby has been requested to identify any points of disagreement relating to the findings of fact. Councillor Kilby was also asked if he wished additional evidence to be considered and if there were any representations to be taken into account if he is found to have breached the code of conduct.

6.0 Procedure for the Hearing

6.1 A copy of the procedure which the Standards Committee has adopted for the conduct of such hearings is attached at Appendix 1. A copy of the Investigating Officer's report is attached at Appendix 2. The sanctions which the Committee may impose are set out in Appendix 3.

6.2 The issues for the Committee to determine are:

- a) the material facts;
- b) whether, on the facts, Councillor Kilby has breached the following paragraphs of the code of conduct:
 - Clause 3 (1) General Obligations – failed to treat others with respect.
 - Clause 5 - conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

6.3 If the Committee finds that there has been a breach of the code of conduct, what action, if any, should be taken and whether or not any recommendations should be made to Council.

Contact Officer: Simon Drinkwater – Monitoring Officer

Report Author: Simon Drinkwater – Monitoring Officer

ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/ Objectives <i>(delete as appropriate):</i>	Fit for purpose, services fit for you <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.</i> Leading the way, working together <i>Deliver responsible community leadership that engages with our partners and the public</i>
Consultation:	None
Legal:	The procedures are in accordance with the regulations.
Financial:	None
Human Resource:	None
Risk Management:	The case should be determined in accordance with the regulations having regard to the relevant guidance.

EAST HERTFORDSHIRE DISTRICT COUNCIL

STANDARDS COMMITTEE

PROCEDURE FOR LOCAL STANDARDS HEARINGS WHERE THE
ETHICAL STANDARDS OFFICER HAS REFERRED A CASE TO THE
STANDARDS COMMITTEE1. INTERPRETATION

- (a) “Member” means the Member of the authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the Member’s nominated representative.
- (b) “Investigator” means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the investigator mean the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her nominated representative).¹
- (c) “The Matter” is the subject matter of the investigator’s report.
- (d) “The Committee” refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) “The Committee Support Officer” means an officer of the authority responsible for supporting the Committee’s discharge of its functions and recording the decisions of the Committee.
- (f) “Legal Advisor” means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.²

1 This definition has been amended to make it clear that, when the Monitoring Officer arranges for someone else to undertake the investigation, the definition of the “investigator” no longer includes the Monitoring Officer

2 In practice, the matter is referred by the ESO to the Monitoring Officer, who is then responsible for reporting the matter to the Committee. It is therefore convenient for the Monitoring Officer to conduct the pre-hearing process, except in so far as the Member requires it to be conducted at a meeting of the Committee, and to present the introductory report to the Committee at the commencement of the hearing. Where the Monitoring Officer is not legally qualified, he/she will need to ensure that a suitably qualified person is available to provide legal advice to the Committee. It is obviously preferable that any such separate legal advisor be present throughout the hearing, in order to be able to provide such advice against an understanding of the context in

(g) "The Chairman" refers to the person presiding at the hearing.

2. MODIFICATION OF PROCEDURE

The Chairman may agree to vary this procedure in any particular instance where the Chairman is of the opinion that such a variation is necessary in the interests of fairness.

3. REPRESENTATION

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person. Note that the cost of such representation must be met by the Member, unless the Committee has expressly agreed to meet all or any part of that cost.³

4. LEGAL ADVICE

The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Member and the investigator if they are present.⁴

5. SETTING THE SCENE

At the start of the hearing, the Chairman shall introduce each of the Members of the Committee, the Member (if present), the investigator (if present) and any other officers present, and shall then explain the procedure which the Committee will follow in the conduct of the hearing.

6. PRELIMINARY PROCEDURE ISSUES

The Committee shall then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chairman shall ask Members of the Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

which the advice is given.

3 Under the Local Authorities (Indemnities for Members and Officers) Order 2004, authorities have discretion to provide an indemnity to Councillors in specified circumstances.

4 In the interests of openness, the Committee may prefer to receive any such advice in the main hearing room in the presence of the investigator and the Member. Where this is not practicable, the legal advisor should repeat in the presence of the investigator and the Member the advice which he/she has tendered.

(b) Quorum

The Chairman shall confirm that the Committee is quorate.⁵

(c) Hearing procedure

The Chairman shall confirm that all present know the procedure which the Committee will follow in determining the matter.

(d) Proceeding in the absence of the Member

If the Member is not present at the start of the hearing:

- (i) the Chairman shall ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the hearing;
- (ii) the Committee shall then consider any reasons which the Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
- (iii) if the Committee is satisfied with such reasons, it shall adjourn the hearing to another date;
- (iv) if the Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Committee shall decide whether to consider the matter and make a determination in the absence of the Member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Committee may exclude the press and public from its consideration of this matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chairman shall ask the Member, the investigator and the legal adviser

5 (1) A meeting of a Standards Committee, or Sub-Committee of a Standards Committee, shall not be quorate unless at least three Members of that Committee or Sub-Committee are present for its duration.
(2) Where a meeting of a Sub-Committee of a Standards Committee is convened to consider a request under section 57B (2) of the Act, no decision on that request may be taken by the Sub-Committee if any member of that Sub Committee is present who took part in the decision under section 57A (2) of the Act to which that request relates.
(3) Where a meeting of a Standards Committee, or Sub-Committee of a Standards Committee of an authority is convened to –
a) carry out an initial assessment or review an assessment or
b) have a consideration meeting or a hearing,
no decision may be taken unless at least one Member of that authority is present when such matters are being considered.
(4) Where a meeting of a Standards Committee, or Sub-Committee of a Standards Committee of an authority is convened to –
a) carry out an initial assessment or review an assessment or
b) have a consideration meeting or a hearing,
relating to a member or former member of a Parish Council, no decision may be taken unless at least one member of a Parish Council for which the authority is the responsible authority, who is not also a member of that responsible authority, is present when such matter are being discussed.
[Standards Committee (England) Regulations 2008 Regulation 7]

to the Committee whether they wish to ask the Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Committee shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Committee does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

7. A FAILURE TO COMPLY WITH THE CODE OF CONDUCT⁶

The Committee will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the investigator's report.⁷

- (a) The Chairman shall ask the Member to confirm that he/she maintains the position as set out in the pre-hearing summary.
- (b) The Pre-Hearing Process Summary

The Chairman will ask the legal advisor or the Committee Support Officer⁸ to present his/her report, highlighting any points of difference in respect of which the member has stated that he/she disagrees with any finding of fact in the investigator's report. The Chairman will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with

6 Model separates findings of fact from failure to comply. It is suggested that these two are so closely connected that the Committee may find that it can conveniently determine the two together without any loss of fairness.

7 Note that the Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the investigator's report. It is possible that, in the course of their consideration, the Committee apprehend that the Member may have failed to comply with the Code of Conduct in some other manner (for example that the Member's alleged failure to treat a person with respect appears also, or in the alternative, to be conduct likely to bring the Member's office or authority into disrespect). Note that, at that stage, the Member will not have had notice of the Committee's consideration of the possible additional or alternative failure and that it would therefore be unfair to proceed to consider that second matter at the hearing into the first alleged failure. Where the Committee do apprehend a possible additional alternative failure, a failure by a different Member, or a failure in respect of the code of conduct of another authority, they should refer the second matter to the Monitoring Officer with a view to a separate allegation being made to the Standards Committee.

8 As set out above, unless conflicted out, it is likely that the Monitoring will:

- (i) take on the conduct of the pre-hearing process;
- (ii) present an introductory report to the Committee at the commencement of the hearing setting out the outcomes of the pre-hearing process;
- (iii) will (if legally qualified) act as the legal advisor to the Committee; and
- (iv) will distribute and publish any required notices of the Committee's determination.

However, there may be reasons in particular cases for the Monitoring Officer to arrange for any or all of these functions to be carried out on his/her behalf.

any finding of fact in the investigator's report.

- (i) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the investigator's report, the Committee may then make a determination that the Member has failed to comply with the Code of Conduct in the manner described in the investigator's report and proceed directly to consider whether any action should be taken (Paragraph 9)
- (ii) If the Member identifies additional points of difference, the Chairman shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigator (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Committee is not satisfied with the Member's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the Member to challenge the veracity of those findings of fact which are set out in the Investigator's report but in respect of which the Member did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.

(c) Presenting the Investigator's report

- (i) If the Investigator is present, the Chairman will then ask the Investigator to present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigator may call witnesses as necessary to address any points of difference.
- (ii) If the Investigator is not present, the Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigator. In the absence of the Investigator, the Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses' attention to any relevant section of the Investigator's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
- (iii) No cross-examination shall be permitted but, at the conclusion of the Investigator's report and/or of the evidence of each witness, the Chairman shall ask the Member if there are any matters upon which the Committee should seek the advice of the Investigator or

the witness.

(d) The Member's Response

- (i) The Chairman shall then invite the Member to respond to the Investigator's report and to call any witnesses as necessary to address any points of difference.
- (ii) No cross-examination shall be permitted but, at the conclusion of the Member's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigator if there are any matters upon which the Committee should seek the advice of the Member or the witness.

(e) Witnesses

- (i) The Committee shall be entitled to refuse to hear evidence from the Investigator, the Member or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.
- (ii) Any Member of the Committee may address questions to the Investigator, to the Member or to any witness.

(f) Determination as to whether there was a failure to comply with the Code of Conduct

- (i) At the conclusion of the Member's response, the Chairman shall ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the code of conduct as set out in the investigator's report.
- (ii) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 6(a)(i) above), the Committee shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigator's report.
- (iii) The Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.
- (iv) The Committee's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigator, the Member or a witness, or to seek the legal advice from or on behalf of the Monitoring Officer. If it requires any further information, it may adjourn and instruct an officer or request the Member to produce such further evidence to the Committee.

- (v) At the conclusion of the Committee's consideration, the Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.
- (vi) The Committee shall then return to the main hearing room and the Chairman will state the Committee's principal findings of fact and their determination as to whether the Member failed to comply with the Code of Conduct as set out in the Investigator's report.

8. IF THE MEMBER HAS ADDITIONALLY FAILED TO FOLLOW THE CODE OF CONDUCT

If the Committee determines that the Member has additionally failed to follow the Code of Conduct in the manner set out in the Investigator's report:

- (a) If the Committee apprehends, from the evidence which they have received during the hearing, that a Member has additionally failed to comply with the Code of Conduct (other than the matter which the Committee has just determined), the Chairman shall outline the Committee's concerns and state that the Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (b) The Chairman should then set out any recommendations which the Committee is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigator and the legal advisor before the Committee finalises any such recommendations.
- (c) Finally, the Chairman should ask the Member whether he/she wishes the authority not to publish a statement of its finding in a local newspaper.

9. ACTION CONSEQUENT UPON A FAILURE TO COMPLY WITH THE CODE OF CONDUCT

- (a) The Chairman shall ask the Investigator (if present, or otherwise the legal advisor) whether, in his/her opinion, the Member's failure to comply with the Code of Conduct is such that the Committee should impose a sanction and, if so, what would be the appropriate sanction.⁹

⁹ The sanctions which are available to the Committee under the Standards Committee (England) Regulations 2008, Regulation 19, are any, or any combination, of the following:

- “(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 and that Member's use of the resources of the authority, provided that those restrictions -
 - (i) are reasonable and proportionate to the nature of the breach; and
 - (ii) do not unduly restrict the person's ability to perform the functions of a Member
- (c) partial suspension (a) of that Member for a period not exceeding six months;
- (d) suspension of that Member for a period not exceeding six months;

- (b) The Chairman will then ask the Member to respond to the Investigator's advice.
- (c) The Chairman will then ensure that each Member of the Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- (d) Any Member of the Committee may address questions to the Investigator or to the Member as necessary to enable him/her to take such an informed decision.
- (e) The Chairman should then set out any recommendations which the Committee is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigator and the legal advisor;
- (f) The Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Committee will make to the authority.
- (g) At the completion of their consideration, the Committee shall return to the main hearing room and the Chairman shall state the Committee's decisions as to whether or not to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Committee will make to the authority.

-
- (e) that the Member submits a written apology in a form specified by the Standards Committee;
 - (f) that the Member undertaken such training as the Standards Committee specifies;
 - (g) that the Member participate in conciliation as the Standards Committee specifies;
 - (h) partial suspension of that Member for a period not exceeding six months or until such time as the Member submits a written apology in a form specified by the Standards Committee;
 - (i) partial suspension of that Member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the Standards Committee specifies;
 - (j) suspension of the Member for a period not exceeding six months or until such time as the Member has submitted a written apology in a form specified by the Standards Committee;
 - (k) suspension of the Member for a period not exceeding six months or until such time as that member has undertaken such training or has participated in such conciliation as the Standards Committee specifies."

Subject to the paragraph below and any appeal any sanction imposed under this regulation shall commence immediately following its imposition by the Standards Committee.

A Standards Committee may direct that the sanction imposed under any of sub-paragraphs (b) to (k) or, where a combination of such sanctions is imposed, such one or more of them as the Committee specifies, shall commence on such date, within a period of six months after the imposition of that sanction, as the Committee specifies.

10. THE CLOSE OF THE HEARING

- (a) The Committee will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Member as soon as practicable after the close of the hearing;
- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing;
- (c) Following the close of the hearing, the Committee Support Officer will agree a formal written notice of the Committee's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 20 of the Standards Committee (England) Regulations 2008.

APPENDIX 2

PRIVATE AND CONFIDENTIAL REPORT

MJB/1/2/2012

**REPORT OF AN INVESTIGATION UNDER s60 OF THE LOCAL GOVERNMENT ACT
2000 INTO AN ALLEGATION CONCERNING COUNCILLOR JOHN KILBY OF
HORMEAD PARISH COUNCIL**

CONTENTS

- 1. Executive Summary**
- 2. Councillor John Kilby's official details**
- 3. Summary of allegations and conclusion on whether there have been failures to comply with the code**
- 3. The Code of Conduct**
- 4. Investigating Officer's summary of facts**
- 5. Reasoning as to whether there have been failures to comply with the Code of Conduct**
- 6. Finding**

Appendix A Schedule of evidence taken into account

1.0 Executive Summary

1.1 Allegation

The complaint is that Councillor John Kilby has failed to treat Colin Marks who is the clerk to Hormead Parish Council with respect as an employee and as the proper officer of the clerk to the Parish Council meeting in public.

It is alleged that Councillor Kilby has failed to treat Colin Marks with respect by accusing him of fraud in a public meeting.

I have investigated the complaint made and in doing so have taken email evidence from Councillors Elizabeth Collery, Elaine Harding, Geoff Abbey, David Ginn, ex Councillor Brian Stone and Councillor John Kilby.

1.2 Finding

My finding is that there is evidence that Councillor Kilby failed to comply with the Code of Conduct adopted by Hormead Parish Council.

2.0 Councillor John Kilby's official details

2.1 Councillor Kilby is an elected member of Hormead Parish Council. He was originally co-opted to fill a vacancy in September 2006 and was elected to be a Parish Councillor in May 2007 and again in May 2011. There is no record of Councillor Kilby attending a training course for the Code of Practice.

3.0 Summary of allegations and conclusions on whether there have been failures to comply with the Code of Conduct

3.1 Colin Marks, Clerk at Hormead Parish Council, complained that Councillor John Kilby failed to comply with the Code of Conduct as follows:

- Failed to treat Colin Marks with respect both as an employee and as a proper officer of the Town Council in public.

3.2 Specifically Colin Marks complained that Councillor Kilby who is a Councillor with Hormead Parish Council, failed to comply with the Code of Conduct as follows:

- Councillor Kilby accused Colin Marks of fraud in respect of an expenses claim during a meeting of the Hormead Parish Council on 13th October 2011.

- 3.3 Colin Marks says he did not hear the remarks himself, but Councillors confirmed at the 10th November 2011 meeting that they had heard them, and the minutes of the meeting were subsequently amended to reflect this.
- 3.4 Colin Marks states that he was stunned to hear of this accusation as the matter had been explained and resolved prior to that meeting, and was not relevant to anything on the agenda.
- 3.5 He further states that the public record shows that he has been accused of fraud by a Councillor, an accusation that was unwarranted, totally unjustifiable, unacceptable and is a stain upon his character. Furthermore at no time has he received an apology.
- 3.6 This report investigates whether by his conduct Councillor John Kilby has failed to treat others with respect. The report considers whether Councillor Kilby failed to comply with the paragraph 3 of the Code of Conduct.
- 3.7 I have also considered whether paragraph 5 of the Code has been breached but do not find any evidence of this.
- 3.8 My finding is that there is evidence that Mr Kilby made this accusation on 13th October 2011 against Colin Marks and thereby failed to comply with the Code of Conduct paragraph 3.

3.0 The Code of Conduct

3.1 Hertford Town Council has adopted the model Code of Conduct.

3.2 The relevant part of the Code of Conduct is as follows:

- Paragraph 3 of the Code states a Member must 'treat others with respect'.
- Paragraph 5 of the Code states that a Member must not 'conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

3.3 The seventh General Principle of the Annexure to the Code states

- Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

4.0 Investigating Officer's findings of fact

4.1 I have relied upon evidence from Councillors Elizabeth Collery, Elaine Harding, Geoff Abbey, David Ginn, ex Councillor Brian Stone, Colin Marks and Councillor John Kilby, together with a copy of the minutes of meetings of Hormead Parish Council held on 13th October, 11th November and 8th December 2011.

- 4.2 Colin Marks was appointed Clerk to Hormead Parish Council in July 2011, the previous clerk having left shortly before. The previous Chairman did not stand for re-election so a new Councillor became Chairman.
- 4.3 On 13th October 2011 Colin Marks was clerking a meeting of the Hormead Parish Council and was asked to leave for an item concerning his contract of employment.
- 4.4 Councillor John Kilby accused Colin Marks of fraud in relation to a previous expenses claim.
- 4.5 A successful application was subsequently made for the minutes of this meeting to be amended to reflect this accusation.

5.0 Reasoning

- 5.1 I must now consider whether the actions of Councillor Kilby failed to comply with paragraph 3 of the Code of Conduct.
- 5.2 Paragraph 1 states that it is the responsibility of a Councillor to comply with the provisions of the code and paragraph 2 confirms that this is whenever a Councillor conducts the business of the Authority in an official capacity. Paragraph 3 of the code states that a Member must treat others with respect.
- 5.3 This paragraph is not intended to stand in the way of lively debate as such discussion is a crucial part of the democratic process. A very clear line has to be drawn between the Code of Conduct and the freedom to disagree with the views and opinions of others. However, I consider that an accusation of fraud goes far beyond this, and is a serious matter, being not only disrespectful but potentially slanderous too, especially when spoken about the Clerk to the Meeting who was not even there to defend himself.
- 5.4 An adjudication Panel in a previous case (APE 0419) has decided that you can be the victim of disrespect even if you did not witness the disrespectful behaviour. Therefore a Member's disrespectful treatment of an officer who is not present may amount to a failure to comply with the Code.
- 5.5 I have found that there is compelling evidence that Councillor Kilby has behaved in a disrespectful manner by accusing the Clerk of fraud in a public meeting. I consider therefore that Councillor Kilby did fail to comply with paragraph 3 of the Code of Conduct.

Finding

My finding on all the circumstances of this case is that in accordance with the Local Government Act 2000 there is evidence of a failure to comply with the code.

Sanctions of the Standards Committee and Sanctions of the Adjudication Panel for England

Sanctions of the Standards Committee

Regulation 19(3) of the Standards Committee (England) Regulations

- (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, provided that those restrictions—
 - (i) are reasonable and proportionate to the nature of the breach; and
 - (ii) do not unduly restrict the person's ability to perform the functions of a member;
- (c) partial suspension of that member for a period not exceeding six months;
- (d) suspension of that member for a period not exceeding six months;
- (e) that the member submits a written apology in a form specified by the standards committee;
- (f) that the member undertakes such training as the standards committee specifies;
- (g) that the member participate in such conciliation as the standards

- committee specifies;
- (h) partial suspension of the member for a period not exceeding six months or until such time as the member submits a written apology in a form specified by the standards committee;
 - (i) partial suspension of the member for a period not exceeding six months or until such time as the member has undertaken such training or has participated in such conciliation as the standards committee specifies;
 - (j) suspension of the member for a period not exceeding six months or until such time as the member has submitted a written apology in a form specified by the standards committee;
 - (k) suspension of the member for a period not exceeding six months or until such time as that member has undertaken such training or has participated in such conciliation as the standards committee specifies.

Sanctions of the Adjudication Panel for England

- (A) Censure
- (B) Suspend, or partially suspend, the member from being a member or co-opted member of the relevant authority concerned for a limited period,
- (C) Disqualify the member, for a period not exceeding five years, for being or becoming (whether by election or otherwise) a member of that or any other relevant authority.

This page is intentionally left blank