

# ESSENTIAL REFERENCE PAPER 'D'

## EHDC01/10: Complainant's submission to the Standards Committee

### Response to the Investigator's Report

#### INTRODUCTION

I would like to thank the Standards Committee for allowing me this opportunity to respond to the Investigator's Report and provide additional information, explanation and clarification. I hope they find it useful in reaching their decision.

#### Nature of complaint

This complaint concerns not just a single event, but a pattern of behaviour. It is likely that Cllr Tindale will seek to provide mitigating circumstances to explain any single breach of the Code of Conduct and portray it as an isolated incident to be dismissed by the Standards Committee. Whilst one episode might be a mistake, two indicate carelessness and repeated episodes show a consistent pattern of behaviour. Although some of the events outlined in my complaint are not recent, their inclusion is helpful in providing a full picture and demonstrating a pattern of behaviour over a considerable period of time.

#### Investigator's Report

During the investigation, I was interviewed only once, on 25th March. Nearly two months elapsed before Cllr Tindale was interviewed - twice - on 11th and 25th May. Cllr Tindale was, quite reasonably, provided with an opportunity between the two interviews to consider the allegations further and provide information to rebut my allegations. However, I was given no similar opportunity to comment on his rebuttal, or provide further evidence.

In addition, although Standards Board guidance for the Investigating Officer highlights that issuing a draft report "gives you the opportunity to check facts and ensure that all aspects of the case have been explored in sufficient detail", no draft report was produced in this case.

According to Standards Board Guidance, an Investigator's Report should contain evidence, findings of fact, reasoning and findings. In this Investigator's Report it is very difficult to identify the "facts". The majority of the report seems to consist of oral evidence and assumptions made, with little regard to documentary evidence or the need to verify claims. In most cases, the findings are not supported by the true facts.

Given the lack of rigour in this report, I hope the Standards Committee will take particular care during the hearing to seek evidence to support claims, check facts, correct errors and explore all matters thoroughly before coming to their decision.

#### Practicalities

I apologise for the length of this response but this is a serious matter and there are many issues to cover. Both for ease of reference (so that members of the Standards Committee do not need to keep swapping between documents) and to ensure that the rationale behind my complaint is clear, I have restated my original complaint on each allegation before responding to the Investigator's comments.

Items in italics are quotes from the Investigator's Report with their associated page references (from the August 2<sup>nd</sup> papers to committee).

**NB.** Being a fellow member of the Executive team, Cllr Parker has been a close colleague of Cllr Tindale over a number of years, I trust that Cllr Parker will wish to declare a personal interest in the case.

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## **EXPLANATION OF COMPLAINT**

### **The basic principles which members should abide by**

The Code of Conduct requires that members must treat others with respect and must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

The Code of Conduct also requires that Members should read the Code of Conduct together with the general principles prescribed by the Secretary of State. As the Code of Conduct clearly states, these principles define the standards that members should uphold and serve as a reminder of the purpose of the Code of Conduct. The principles include

- “Honesty and integrity” – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.
- “Accountability” – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with any scrutiny appropriate to their particular office.
- “Openness” members should be as open as possible about their actions and those of the authority, and should be prepared to give reasons for those actions.
- “Duty to uphold the law” – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.
- “Stewardship” – members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.
- “Leadership” – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Standards Board guidance warns members that a failure to act in accordance with these general principles may amount to a breach of the Code of Conduct, for example where the manner of conduct could reasonably be regarded as bringing the member’s office or authority into disrepute.

### **The role of the portfolio holder**

As a member of the Executive with a key role, Cllr Tindale should be setting a good example. However, for some considerable time, the behaviour of Cllr Tindale, Executive member for Resources and Internal Support has given cause for concern.

### **Reason for not submitting earlier**

I have not submitted a complaint earlier for two reasons:

1. I had hoped that the early examples of Cllr Tindale’s lack of respect and inappropriate behaviour were just “a passing phase” – perhaps part of the learning curve - and they would cease without the need for a formal complaint. Unfortunately, rather than improving with time in office, it seems that Cllr Tindale’s conduct is continuing to deteriorate.
2. This complaint concerns not simply a single event, but also a pattern of behaviour. It is likely that Cllr Tindale will seek to provide mitigating circumstances to explain any single breach of the Code of Conduct and portray it as an isolated incident to be dismissed by the Standards Committee. Whilst one episode might be a mistake, two indicate carelessness and repeated episodes show a consistent pattern of behaviour.

Although some of the events outlined below are not recent, their inclusion is helpful in providing a full picture and demonstrating a pattern of behaviour over a considerable period of time.

## **INVESTIGATOR'S "DISCUSSION"**

### **1. Supporting / relevant documents are not all included**

The Report notes: (*para 4, page 20*) *the Subject member stated that the reports are prepared by the officers and they attach all the supporting/relevant documents to the reports.*

For clarification, sometimes supporting/relevant documents are attached in the form of appendices, and sometimes they are listed in the report under "background papers".

However, relevant documents are not always included. For example, neither the planning brief nor the overage schedule was included in the March 2009 papers to Council when the Causeway deal was approved.

### **2. Proper process**

The suggestion (*para 6, page 20*) that Cllr N Clark and I ask questions simply to *put the Subject member into trouble* is absurd. We ask questions to ensure due process is followed, to explore the rationale for decisions and to uncover factual information we believe is relevant to matters being considered by Council or the Executive.

#### **i) Mandate to seek openness and transparency**

The election manifestos of Cllr N Clark and I stated our clear objective to increase openness at the council by asking more questions and getting more answers, with debates and decisions made in public instead of behind closed doors. We have a firm mandate from the residents of Hunsdon and Sawbridgeworth Wards to ask questions and expect answers from those responsible at East Herts Council.

#### **ii) Subject Member is Portfolio Holder for key area**

The election manifesto also laid out our objective to seek value for money for residents through better budgeting and financial control. Cllr Tindale, as the portfolio holder for finance, is the member of the Council with responsibility for budgeting and financial control. It is therefore unsurprising that many of the questions are directed towards him.

#### **iii) Easy solution available to Subject Member**

The portfolio holder should be prepared to be held to account for his executive responsibilities. Cllr Tindale could deal with questions quite simply by either answering them or asking an officer to do so on his behalf. Regrettably, he frequently does neither.

### **3) Motivation**

The Report notes (*para 7, page 20*): *It is envisaged that the Complainant and the Subject member are going to contest the forthcoming Council election against each other.* It is suggested that this was a driving force in my submitting this complaint and that I wanted to *mar the Subject Member by fair and/or foul means.*

This suggestion has no basis.

#### **i) Not a matter for this hearing**

The Standards Board has confirmed that the motivation of the complainant would have been a matter for consideration at the assessment stage, but is not relevant to the hearing. By this stage, the only question which members of the Standards Committee should be considering is whether or not the Subject Member has breached the Code of Conduct.

For the record:

#### **ii) Cllr Tindale's election ambitions were not known**

The Subject member has only just announced (via a press release on this case) that he is seeking the Conservative nomination to stand against me in Hunsdon Ward. When I submitted my complaint (in January) I had no knowledge of his intentions: the suggestion that I knew he was planning to stand against me has no basis.

iii) No reason to suspect

The idea that Cllr Tindale would want to stand in Hunsdon never occurred to me. In July, when I became aware of his claim that we would be contesting the next election against each other, I assumed he was suggesting I would stand against him in Little Hadham. I live and am well known in Hunsdon where I am the incumbent member, with a significant majority and an excellent relationship with the local parish councils. Cllr Tindale has shown no previous interest in Hunsdon ward or the major issues which face it, Harlow North in particular.

iv) Lack of evidence

Perhaps Cllr Tindale can explain (and provide supporting evidence for) how I was meant to have known of his intention to seek the Conservative nomination for Hunsdon when I submitted this complaint in January.

#### **4) Criteria for answering questions**

The report notes (*para 8, page 20*) the Subject member said *he did not mind answering questions so long as they were relevant, within his knowledge, in time, were in the interest of local residents, and were not asked to hinder the smooth running of the Council's business.* Two simple examples show this not to be the case

i) At the Council meeting which agreed the sale of the Causeway (a major decision which did not go through any scrutiny committee) I asked "why do we need to make a decision tonight, without any further scrutiny?" (see page 31).

This question is clearly relevant, in time, and in the interests of local residents, and it should have been within the knowledge of the portfolio holder. If there was a good reason for making a quick decision without scrutinising the matter, why would an explanation to Council hinder the smooth running of council business? Perhaps Cllr Tindale could explain?

The minutes show Cllr Tindale did not answer the questions but instead offered a written response to be provided after the decision was made (see page 29). In fact, he never supplied an answer.

ii) Cllr N Clark wrote to Cllr Tindale, asking questions about a £250,000 contract with Capita, which had not been through any scrutiny committee. Cllr Tindale did not reply and so Cllr Clark raised them in Full Council. Cllr Tindale boasted that he had not even read the questions, only counted them (see page 43).

a) If Cllr Tindale had not read the questions, how had he ascertained that they did not meet his criteria?

b) The questions were relevant, in time, in the interest of local residents, and had been asked ten days before the meeting so as not to hinder the smooth running of the Council's business. In Cllr N Clark's first email he specifically said "As Council is not the ideal place to examine proposals in detail before voting could you please answer the following questions this week" (see page 41). No response was received.

c) If Cllr Tindale did not know the answers himself, he could (and should) have asked officers to respond on his behalf.

#### **5) Ancillary evidence: contents of press release**

Members of the Standards Committee might like to note that Cllr Tindale's press release stated categorically "Despite a thorough investigation, which she has already called for to be re-examined, the investigating officer could find nothing in the dossier which accounts to my doing anything wrong." (see appendix D, page 36 )

This is incorrect. The Investigator found that Cllr Tindale did treat Cllr N Clark with disrespect (allegation E). Moreover, Cllr Tindale made this misleading public statement whilst the matter is still in due process.

## **A) PROPER PROCESS OR “PROCEDURAL CRAP”?**

### **1. Basis of complaint**

In December 2007, when asked to clarify whether a decision radically changing the waste collection regime would be made at Executive or at Full Council, instead of answering the question, Cllr Tindale responded with an unsigned email saying

“Why do you keep on about this procedural crap?” (see appendix A).

The Forward Plan falls within Cllr Tindale’s portfolio responsibilities.

### **2. Additional information, explanation and clarification**

There is a statutory requirement on the Council to publish its Forward Plan. This monthly report, produced by Cllr Tindale as portfolio holder, outlines the key decisions scheduled to be taken by the Executive over the next four months, and details who is responsible for making these decisions. Rather than “procedural crap”, such controls are designed to ensure proper democratic process.

In this instance, although the Forward Plan had consistently said the decision would be taken by the Executive, officers and Executive members were advising that the decision would be taken by Full Council. Cllr N Clark asked Cllr Tindale to clarify the situation and, if the decisions were to be taken by Council, ensure the statutory documents were correct.

As well as failing to answer the question and using rather abusive language, Cllr Tindale’s response “Why do you keep on about this procedural crap” seems to indicate that he does not understand the purpose or merit of following due process.

It seems to me that Cllr Tindale did not adhere to the general principles prescribed by the Secretary of State:

- Members should be as open as possible about their actions and those of the authority, and should be prepared to give reasons for those actions
- Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with any scrutiny appropriate to their particular office.

I consider that this conduct could reasonably be regarded as bringing his office and the Council into disrepute, breaching the Code of Conduct.

In failing to answer reasonable questions from an elected member and using abusive language, I also believe that Cllr Tindale breached the Code of Conduct by failing to treat others with respect.

### **3. Investigator’s Report**

#### **i) Similar language not written by both parties**

The Report notes (*bottom, page 21*) the Subject member said *similar sort of sentences may have been exchanged between both the sides on a number of occasions.*

Has the Subject member provided any evidence to support his claim that Cllr N Clark has used vulgar language in Council correspondence?

#### **ii) Treating with disrespect**

The findings say (*top, page 22*) *It does not seem to treat Councillor Clark with disrespect even when read in context of this whole letter.*

This is a matter of opinion. As a matter of fact, Cllr Tindale’s full response (see Appendix A) was:

“Why do you keep on about this procedural crap? If you have a problem with the AWC decision you would be one of the few councillors to say so but you haven’t”

In my opinion, this response, which rudely dismisses Cllr Clark’s reasonable request, does not treat a fellow elected member with respect.

## **B) CONTRADICTORY ANSWERS TO COUNCIL**

### **1) Basis of complaint**

The minutes of Council on 16<sup>th</sup> April 2008 show that Cllr Tindale confirmed that in February 2008, when the capital programme had been agreed, he had not been aware of the need for additional funding at St Andrews car park.

However, the minutes of Council on May 14<sup>th</sup> 2008 show that Cllr Tindale stated that he had been aware of the need for additional funding at the time the capital programme had been agreed in February 2008.

At Council on June 25<sup>th</sup> 2008 Cllr N Clark highlighted that Cllr Tindale had provided contradictory answers and asked which one was correct. Cllr Tindale provided a two word answer "The latter", but offered no apology for misleading Council.

(See appendix B).

### **1. Additional explanation and clarification**

It seems to me that by providing false information to Full Council, and failing to show any sign of regret or contrition for doing so, Cllr Tindale did not adhere to the general principles prescribed by the Secretary of State:

- Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.
- Members should be as open as possible about their actions and those of the authority, and should be prepared to give reasons for those actions
- Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with any scrutiny appropriate to their particular office.
- Members should act in a way that secures or preserves public confidence.

I consider that this conduct could reasonably be regarded as bringing his office and the Council into disrepute, breaching the Code of Conduct.

### **2. Investigator's report**

*The Report states (top, page 23) The monitoring Officer confirmed; sending supporting correspondence in this regard; that this allegation was indeed considered before thus would fall outside the scope of this investigation.*

This complaint has never been referred to or considered by the Standards Committee, the proper body for considering complaints about members. The Monitoring Officer took it upon himself to perform his own "investigation", but due process has never been followed. This is a new allegation for the Standards Committee to consider.



## **C) REFUSAL TO ANSWER SERIOUS QUESTIONS**

### **1. Basis of complaint**

At March 25th 2009 Full Council, I asked ~~ten~~ twelve important questions on the Causeway deal, which falls within Cllr Tindale's portfolio. Although the decision on the Causeway deal was to be made at the meeting, Cllr Tindale suggested that a written response would be provided to my questions after the meeting. I received no written response. When pressed, Cllr Tindale claimed he had not been provided with the questions, although I had provided the Executive with a copy at the meeting. He then refused to provide answers on the basis they were out of date. The questions were not out of date: they were clearly still pertinent to a further paper brought forward to reaffirm the Causeway decisions in June 2009. (See appendix C)

### **2. Additional information, explanation and clarification**

At Full Council, before asking all twelve questions I explained that I was presenting a copy to the Chairman and the Leader for the record. (I can supply a transcript of my exact words if required.) The official minutes note Cllr Tindale responded:

**"In respect of Councillor D Clark's specific questions, he suggested that a written response could be provided"** (see appendix C)

It seems to me that by not answering reasonable questions on his portfolio and not submitting this important recommendation to scrutiny Cllr Tindale did not adhere to the general principles prescribed by the Secretary of State:

- Members should be as open as possible about their actions and those of the authority, and should be prepared to give reasons for those actions
- Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with any scrutiny appropriate to their particular office.
- Members should on all occasions, act in accordance with the trust that the public is entitled to place in them.
- Members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.
- Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence

I consider that this conduct could reasonably be regarded as bringing his office and the Council into disrepute, breaching the Code of Conduct.

I also believe that, in failing to answer reasonable questions from an elected member (despite having made a public commitment to do so), Cllr Tindale breached the Code of Conduct by failing to treat others with respect.

### **3. Investigator's Report**

#### **i) Twelve questions, not ten.**

The Report notes (*page 23, bottom*) that I had referred to ten questions, rather than twelve. Regrettably, this was not brought to my attention by the Investigator. I am happy to confirm that this was an error on my part and my complaint should have referred to the number twelve.

#### **ii) Answers required from Subject member at meeting**

The Report notes (*page 23, bottom*) the Subject member's claim that *these questions were not questions and they were not addressed to him. They were required to be answered by the leader.*

Later the report notes (*page 24, top*) *The Subject member further stated that the Complainant should have asked the questions during the meeting when the matter was under consideration so that, if required, members could vote on the matter.*

Leaving aside that Cllr Tindale apparently changed his view as to whether there were any questions, these claims are not supported by the facts.

a) Real questions

As the Standards committee can see, these clearly were questions (see page 31).

b) Asked during meeting

I did ask the questions during the meeting when the matter was under consideration. Members of the Standards committee who were present at the meeting will remember this and further evidence is provided by the minutes of the May 2009 Council meeting where I proposed an amendment to ensure that the most critical elements of my questions were transparently recorded in the agreed March minutes. Although my proposal failed and the minutes of 25<sup>th</sup> March were approved without amendment, the May minutes note the discussion on the matter:

**"The Executive Member for Resources and Internal Support did not dispute that these questions were asked**, but commented that the purpose of the Minutes was to provide a summary of the meeting and not to be a verbatim record of everything that was said." (see page 32)

c) Not addressed to leader:

The Report notes (*page 23, bottom*) "*The Subject member states that when he had started to answer the questions in the meeting the Complainant had complained, why the Subject member was answering the question when they were asked from the leader and this is incorporated in the minutes of 25<sup>th</sup> March 2009.*"

The entry in the minutes which Cllr Tindale referred to records a different exchange which took place much earlier in the meeting under a different agenda item (6). It relates to a member's question on notice which was specifically addressed to the Leader, seeking a personal statement from him before the debate on the sale of the Causeway (see page 32)

d) Subject member offered written answer

As open questions, they were not addressed to any member in particular, although the two members most likely to respond would have been Cllr Jackson (as Leader) and Cllr Tindale (as portfolio holder).

However, Cllr Tindale took it upon himself to offer a written response: the minutes note Cllr Tindale responded "In respect of Councillor D Clark's specific questions, he suggested that a written response could be provided." (see page 29)

e) Offer of written response prevented discussion

Cllr Tindale's offer of a written response effectively precluded any further discussion or vote on the matters raised.

iii) Questions still relevant after meeting

The Report notes (*page 23, top*) the Subject member's claim "*There was hardly any point in asking questions on a matter after the decision in the meeting.*"

a) If Cllr Tindale takes this view, perhaps he can explain why he offered to provide a written response after the meeting, as noted in the minutes (see page 29).

b) Tax implications unforeseen by the Executive Member resulted in the need for Council to reaffirm the decision to sell the Causeway at a later meeting in June (see page 31). At this June meeting the questions (including the critical "why do we need to make a decision tonight, without any further scrutiny") were still highly relevant. There was indeed a point in asking the questions after the first decision but before the reaffirmation

iv) Straight forward questions

The findings state (*top page 24*) "*The questions asked do not require straight forward relay of information that was readily available to the Subject member.*"

a) I disagree. In particular, the question “Why do we need to make a decision tonight, without any significant scrutiny?” required a straight forward relay of information from the Subject Member (see page 31)

b) I would ask the Standards Committee to consider whether questions to the portfolio holder should be limited to those which involve nothing more than the straight forward relay of information. Is it unreasonable to expect the portfolio holder to answer questions of a political nature and to be prepared to explain and defend the proposals brought to Council for a decision?

The Executive Portfolio Holder job description includes the responsibility “To advocate and defend the policy positions and decisions taken to implement the policy, both at Council and in public.” (see page 35) and the general principles of the Secretary of State require all members to be as open as possible about their actions and those of the authority, and be prepared to give reasons for those actions.

v) No other scrutiny

The findings state (page 24, top) “*The executive that took the decision is accountable to full council and local residents. Their decisions are subject to further scrutiny from the Scrutiny and Review Committee and the auditors.*”

This statement is incorrect and misleading. Firstly, the Executive did not take the decision: the decision was taken by Full Council. Secondly, the decision never went before any of the Council's scrutiny committees.

The audit report into the process behind the decision was highly critical and the auditors have not yet commented on the value for money of the deal.

vi) Not too onerous

The findings state (page 24, top) “*It seems the type of questions asked in the letter of 17<sup>th</sup> May 2009 would be felt too onerous by any member carrying out their duties.*”

This is a matter of opinion not fact.

In my opinion these questions (which had already been raised at Full Council in March) were straight forward and the portfolio holder should have been able to answer them. Moreover he had offered a written response.

vii) Unable or refusing to answer?

The findings say (page 24, top) “*By not being able to answer the said questions the Subject member has not brought his office or local authority into disrepute.*”

The Investigator seems to have made an assumption that Cllr Tindale was unable to answer the questions such as “why do we need to make a decision tonight, without any further scrutiny?” or “would it be reasonable for members to make a decision on the proposed move to Wallfields without any information on the financial, staff and infrastructure implications?” (see page 31).

It seems to me that it is reasonable to assume that Cllr Tindale was capable of answering some questions but chose not to, showing a lack of openness, accountability and a lack of respect for others by refusing to answer reasonable questions posed by a democratically elected member.

However, if Cllr Tindale, as portfolio holder, was unable to answer questions such as “Why does the appraisal fail to provide for anticipated costs” (see page 31) and yet was continuing to recommend an immediate decision on the sale of a major asset without scrutiny, then it seems to me that he did not act in accordance with the trust that the public is entitled to place in him and did not do whatever he was able to do so as to ensure that East Herts Council uses its resources prudently, and in accordance with the law.

Either way, I consider that this behaviour has brought his office and the Council into disrepute.

## **D) INFORMATION WITHHELD FROM MEMBERS**

### **1. Basis of complaint**

Also at the March 25<sup>th</sup> 2009 Council meeting, Cllr Tindale asserted that there was information “below the waterline” (which other members were not privy to) which provided compelling reasons to approve the recommendations. After the meeting, I wrote to Cllr Tindale, asking him for this additional information. He responded that all the information was contained in the papers provided to Council. However, a Freedom of Information request has now revealed that papers were available in March showing that a firm decision to move to Wallfields (the first recommendation in the Causeway paper) would incur additional costs of around £1m. This information was not included in the papers to Council on 25th March. (See appendix D) As I see it there are two possibilities:

Either

a) Cllr Tindale believed that all relevant information was included in the papers to Council yet told Council that he was privy to other compelling information “below the waterline”? If this is true, Cllr Tindale deliberately misled Council - failing to treat others with respect and bringing his office into disrepute.

Or

b) Cllr Tindale believed that there was additional pertinent information yet did not provide it to members as part of the decision making process and went on to deny its existence in his email of 1<sup>st</sup> April 2009. If this is true it would seem that Cllr Tindale failed to abide by the principles of openness and accountability as well as failing to treat others with respect.

I also consider that, regardless of whether a) or b) is the correct analysis, by providing contradictory answers Cllr Tindale did not adhere to the general principles prescribed by the Secretary of State:

- Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.
- Members should act in accordance with the trust that the public is entitled to place in them
- Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence

I consider that this conduct could reasonably be regarded as bringing his office and the Council into disrepute, breaching the Code of Conduct.

If Cllr Tindale was aware of the cost implications of a firm decision to move to Wallfields, which were included in the report obtained under the Freedom of Information request, yet failed to inform Council, the situation is much more serious.

### **2. Additional information, explanation and clarification**

To begin with, my main concern had been that Cllr Tindale might once again have provided incorrect information to Council, as it seemed unlikely that he would withhold information which supported the deal. However, the Freedom of Information papers opened up a new area of concern. It seemed that Cllr Tindale had been privy to information which showed his proposal in a less favourable light, but had not informed members. When this complaint was submitted I was still trying to assimilate the information I had received. The position is now clearer.

Information obtained under the Freedom of Information Act clarified:

- In December 2008 a report by The Executive member for Resources and Internal Support (Cllr Tindale) presenting  
“indicative costs for the property and ITC infrastructure issues associated with locating our back office functions on a single site”  
was prepared for the Executive meeting on 6<sup>th</sup> January 2009.
- This paper showed that a firm decision to move to Wallfields would incur additional costs of around £1m (see page 33)

- This paper was withdrawn from the January Executive agenda as a result of a “Joint decision of Executive and CMT at Executive pre meeting 16<sup>th</sup> December 2008”. (see page 34)

It seems that Cllr Tindale was aware of this paper and its contents when he brought forward his recommendations to formally approve the decision to move to Wallfields and sell the Causeway on 25<sup>th</sup> March 2009.

However, information on the costs for the property and infrastructure issues associated with locating to Wallfields was not provided to members until August 2009, after the Causeway deal had been signed.

### **3. Response to the Investigator’s Report**

#### **i) Wording of denial**

The Report notes (*page 25, para 4*) *The Subject member said I never said there was information which compels to do the deal*”

This is a “red herring”. I have never suggested that Cllr Tindale used those precise words.

#### **ii) Additional information was available to Executive**

The Report states (*page 25, para 2*) *the Complainant believed that the Subject member and the leader had the privilege of this information but the majority of other members did not...The Complainant states in her complaint that the members were not aware that there would be an additional cost of around £1million to move to Wallfields”*

There is evidence to support my concern.

The December 2008 report obtained in November 2009 under the FOI Act, shows that a move to Wallfields was expected to incur additional costs to the council of around £1m (see page 33).

An FOI request to identify who gave authority to withdraw this report from the agenda of the executive meeting on 6th Jan 2009 identified that the paper had been discussed and the withdrawal agreed at a pre-meeting at which Cllr Tindale was present (see page 34).

It seems that Cllr Tindale was aware of this information, pertinent to the decision but not disclosed to backbench members.

#### **iii) Portfolio holder has responsibility**

The Report notes (*page 25, para 3*) the Subject member claimed *officers write reports and attach supporting documents to these reports. His job was to present the papers.*

a) The portfolio holder job description shows that the responsibilities of a portfolio holder extend a little further (see page 35).

b) The Council website says “The Executive, which comprises 7 Members including the Leader of the Council, is responsible for most day to day decisions.”

c) The recommendation approved by Council on March 25<sup>th</sup> 2009 included:

“the Director of Internal Services in consultation with the Executive Member for Resources and Internal Support be authorised:

- (A) to complete negotiations with the Council’s Landlord of The Causeway offices in Bishop’s Stortford, to enable the Council to effect the surrender of the Council’s lease of The Causeway;
- (B) to effect the surrender of the Council’s lease of The Causeway as soon as practicable subject to satisfactory advice being received on the accounting treatment of the transactions involved;
- (C) to secure alternative premises in Charrington House, Bishop’s Stortford for the ongoing provision of a face to face customer service area, a civic and democratic meeting suite and facilities and working space for members and officers”

d) In his press release Cllr Tindale actually claimed credit for overseeing all the work to exit the lease at the Causeway (see page 36).

e) In addition to his basic member allowance, the portfolio holder receives a special responsibility allowance of 2.5 times the basic allowance to compensate for the additional responsibility and time requirement of his executive responsibilities.

The responsibilities of a portfolio holder go beyond simply presenting papers prepared by officers.

iv) Contrasting explanations

The Report notes (*page 25, para 3*) the Subject member *reiterated that he had no more information than what was available in the requisite report and its attachments*

but goes on to say

*there were several meetings and discussions with the consultants before the committee and Below the waterline information was the information that was exchanged verbally and not in writing during the said discussions.*

Cllr Tindale seems to suggest he was privy to “below the waterline information” which had been obtained in private meetings with the consultants, but not recorded; yet at the same time says all the information is in the papers.

Note: In their recent report on the process leading to the sale of the Causeway, the external auditors criticised the council for not keeping signed minutes of meetings with consultants.

“It is important that the constitution is applied to manage both actual risks of inappropriate activity, and also the reputational risks associated with how such transactions are managed. We recommend that signed minutes of all meetings for all future property negotiations are produced and retained, in line with the Council’s current constitution”

v) Auditors have not commented

The Report notes (*page 25, para 3*) that Cllr Tindale stated *The auditors had found the Council’s decision right and the Complainant’s complaint has been found to be untrue.*

This is incorrect.

The auditors have not commented on whether the Council’s decision was “right”.

It is not clear what “the Complainants complaint has been found to be untrue” is referring to.

vi) Available evidence was not sought

The findings state (*page 25, para 5*) *Besides above, there was no further evidence available in this regard”.*

This is incorrect.

Whilst the Subject member was interviewed twice, in May, I was only interviewed once, in March. I was never given the opportunity to provide further information or clarify the Investigator’s understanding of the facts. Appendix C contains significant additional information.

## **E) REFUSAL TO ANSWER QUESTION & USING OFFENSIVE LANGUAGE**

### **1. Basis of complaint**

In May 2009, Cllr N Clark wrote to Cllr Tindale asking which property investment and disinvestment decisions for the Changing the Way We Work programme have been the subject of a full options appraisal as required by the Council's Asset Management policy. Cllr Tindale declined to answer, saying

"just too busy to answer pointless questions from someone with an ill-concealed agenda. You can note what you like, I can suggest where you put that note as well" (See appendix E)

### **2. Additional information, explanation and clarification**

Following an external audit recommendation, Cllr Tindale presented a new Asset Management Strategy at the April 2009 Executive, stating:

"Major investment decisions, are the subject of options appraisal using whole life costing techniques. Projects involving the investment of more than £500,000 in property assets are appraised by external consultants. The property investment and disinvestment decisions for the Changing the Way We Work programme have been the subject of a full options appraisal by external consultants in 2008. Investment options relating to car park buildings will be appraised in 2009"

At the Executive meeting Cllr N Clark asked which C3W decisions had been the subject of a full options appraisal. Cllr N Clark's recollection is that Cllr Tindale offered a written response whilst Cllr Jackson claimed the question was outside the scope of the report.

It seems to me that Cllr Tindale did not adhere to the general principles prescribed by the Secretary of State:

- Members should be as open as possible about their actions and those of the authority, and should be prepared to give reasons for those actions
- Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with any scrutiny appropriate to their particular office.

I consider that this conduct could reasonably be regarded as bringing his office and the Council into disrepute, breaching the Code of Conduct.

I also consider that, in failing to answer reasonable questions from an elected member and using abusive language, Cllr Tindale breached the Code of Conduct by failing to treat others with respect.

### **3. Response to the Investigator's Report**

#### **i) Information requested was not included in the papers**

The Report says (*page 25, bottom*) *the Subject member denies such a promise and states that all the information was included in the papers at the time.*

The Investigator seems to have accepted Cllr Tindale's claim that "all the information was included in the papers at the time" without checking the facts. The papers did not identify which C3W decisions had been the subject of a full options appraisal.

It is not clear what basis the investigator has to support his statement "*the matter should have ended there*" (*top page 26*)

#### **ii) Failed to respond as promised**

Whether or not a response was promised at the meeting, Cllr Tindale certainly wrote in his email of 23<sup>rd</sup> April "I said it was stated in the papers at the time. Perhaps you can refer to the papers and come back to me if there is anything you don't understand". (in his email of 23<sup>rd</sup> April - see page 38)

When Cllr Clark did return as suggested, Cllr Tindale still did not answer the question and instead became abusive.

iii) Members should be accountable

The findings state (page 26, bottom) *"The letters requiring information from the Subject member are agitating, irritating and putting undue pressure upon the Subject member.*

a) The Investigator seems to believe that the Subject Member is agitated and irritated by the questions, yet it is not clear why a portfolio holder should be so distressed by reasonable questions or why it is considered to be "undue pressure" to ask an Executive Member questions on his portfolio.

b) Cllr Tindale could easily have avoided this "pressure" by answering the original question or asking an officer to do so. It is not clear why he did not do so.



## **F) OFFENSIVE REFUSAL TO ANSWER SERIOUS QUESTIONS**

### **1. Basis of complaint**

Minute 289 of Full Council on 30<sup>th</sup> September 2009 (see attached F) records that when Cllr N Clark raised important questions concerning a proposed £1m investment at Wallfields, Cllr Tindale refused to provide any explanations, saying he  
“reserved the right to ignore Councillor Clark”.

Clearly, as a member of East Herts Council, Cllr Tindale has no such right. Under the Code of Conduct Cllr Tindale has a duty to treat others with respect. The minutes show that I reminded Cllr Tindale of the Code of Conduct.

### **2. Additional information, explanation and clarification**

It seems to me that in failing to answer reasonable questions from a democratically elected member Cllr Tindale did not adhere to the general principles prescribed by the Secretary of State:

- Members should be as open as possible about their actions and those of the authority, and should be prepared to give reasons for those actions
- Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with any scrutiny appropriate to their particular office.

I also consider that, in failing to answer reasonable questions from an elected member and suggesting that he had a right to ignore a democratically-elected member of Council, Cllr Tindale breached the Code of Conduct by failing to treat others with respect.

In addition, I consider that by not submitting an appropriate business model for this important recommendation to scrutiny and not answering questions, Cllr Tindale did not adhere to the principles prescribed by the Secretary of State:

- members should on all occasions act in accordance with the trust that the public is entitled to place in them.
- members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.
- members should act in a way that secures or preserves public confidence.

I consider that this conduct could reasonably be regarded as bringing his office and the Council into disrepute, breaching the Code of Conduct.

### **3. Response to the Investigator's Report**

#### **i) Complaint submitted in good faith**

The Report notes (*page 27 para 6*) the Subject member said *Their allegations are vexatious and She is aware of the additional costs to the local authority due to her unnecessary complaints “and this is not appropriate use of the public money and the council resources.”*

a) I have raised this complaint in good faith and in the public interest because I am deeply concerned by the conduct of Cllr Tindale. Investigation of a genuine complaint, such as this, is a proper use of public funds.

b) As part of the initial assessment procedure, Members of the Standards Committee considered whether it was in the public interest to spend council funds on an investigation and decided it was.

ii) Debate naturally includes questions, suggestions and criticism

The Investigator's findings include a quote from the minutes which describes Cllr Clark's contribution to the debate and then states (*page 27, bottom*) *The above paragraph is not simply a question; in addition it is a suggestion, a criticism and a direction.*

a) The minutes do not record any "direction".

b) It is not clear what point the Investigator is trying to make – it is normal and appropriate for members to contribute to debate by providing suggestions and criticism.

iii) Relevant and necessary groundwork had not been done

The findings say (*page 27, bottom*) *At this stage when the matter was before the Full Council all relevant and necessary groundwork would have been completed by the officers and members.*

This is an assumption with no basis in fact. Amongst the matters raised by Cllr N Clark were

- why an independent whole life cost appraisal had not been carried out as required by the Asset Management Policy ( see allegation E)
- the absence of a consolidated financial model for the whole C3W programme

The absence of a consolidated financial model was a recurring criticism in the recent external auditor's report "lessons to be learned from C3W"

iv) Council is the proper forum for holding the Executive to account

The findings say (*top page 28*) *The Subject Member is member of the majority party who would be accountable individually and collectively to the electorate for any anomalies and/or wrongdoings.*

As a democratically-elected ward member, I have a mandate to hold the Subject Member to account on behalf of my electorate. By refusing to be held to account, the Subject Member is frustrating proper democratic process.

v) Code of conduct sets boundaries

The findings say (*page 28, para 2*) *members ought to have some degree of freedom of speech in such meetings so that they can have their say without fear of being challenged on anything they say and the manner in which they say.*

The Code of Conduct exists to set boundaries on what is acceptable.

## **G) FAILED TO READ QUESTIONS**

### **1. Basis of complaint**

In November 2009, Cllr N Clark sent Cllr Tindale a number of important questions concerning a proposed £1/4m contract with Capita, a matter within Cllr Tindale's portfolio. Cllr Tindale failed to respond. Having given notice, Cllr N Clark sought answers to the questions at Full Council on 8<sup>th</sup> December, when the Portfolio Holder was seeking approval for the contract. Cllr Tindale refused to answer the questions on the grounds that he considered them threatening. He boasted to Council that he had not read the questions, he had only counted them. To date Cllr Tindale has not indentified how he found the questions threatening despite being asked to explain his statement.

(See appendix G)

### **2. Additional information, explanation and clarification**

This proposal for a £250,000 contract with Capita had not been through any scrutiny committee. Concerned by the haste in which the proposal had been brought forward and the lack of scrutiny, Cllr Clark had written to the Executive Member, seeking assurance that basic questions, not covered in the report, had been addressed.

It seems to me that by not even bothering to read serious questions on the proposals, let alone answer them, Cllr Tindale did not adhere to the general principles prescribed by the Secretary of State:

- members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with any scrutiny appropriate to their particular office.
- members should be as open as possible about their actions and those of the authority, and should be prepared to give reasons for those actions.
- members should on all occasions, act in accordance with the trust that the public is entitled to place in them.
- members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.
- members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence

I consider that this conduct could reasonably be regarded as bringing his office and the Council into disrepute, breaching the Code of Conduct.

In addition, it seems to me that by failing to respond to reasonable questions from a democratically elected member, Cllr Tindale failed to treat others with respect.

### **3. Response to the Investigator's Report**

#### **i) Council is the proper forum to raise unanswered questions**

The Report says (*page 28, bottom*) the Subject member referred to *repeated threats embedded in the letters, suggesting that if he did not answer the questions they will be asked at Full Council.*

a) The proposal for a £250,000 contract with Capita was not considered by any scrutiny committee. As a result, the only opportunity for backbench members to debate the matter was at Full Council. It is therefore not clear why a reminder that unanswered questions would need to be asked at Full Council should have been seen as a threat (see page 41).

b) It is, of course, in the interests of the Council and the residents of East Herts that all relevant matters are considered before proposals are approved.

c) After the meeting, when the decision had been made, officers advised Cllr Clark that they could not readily answer his questions. Officers did not respond to these basic questions, some fundamental to a proper understanding of the recommendations, until several weeks later.

d) In relation to the Capita project, the latest report to Corporate Business Scrutiny on 24<sup>th</sup> August notes

“The proposed savings in revenues and benefits are a result of the investment in additional modules for the existing ICT application which was approved by the Executive in November 2009. .... new applications, changes of circumstances reported and case load in payment are all continuing to increase putting at risk the delivery of savings in 2011/12.”

If questions had been read by Cllr Tindale, and the Capita proposals scrutinised, this risk might have been foreseen and mitigated.

ii) Interpretation presented as direct quote

The Report says (page 28, bottom) *“The Complainant states in her interview “No one seems to answer our questions, even the officers; sometimes we have to ask under the Freedom of Information Act. We have not exposed the Council but if the press came during (Full) Council then we would.”*

a) I believe this is simply the Investigator’s interpretation of my meaning rather than an accurate representation of my words during the interview: it should not appear in inverted commas.

b) In particular, the final sentence is misleading. Cllr N Clark and I were both elected on a platform of openness and transparency. We have a mandate to ask questions and seek answers. The minutes will confirm that we ask questions and seek answers whether or not the press is present. When the press comes to Full Council they can see the lack of accountability for themselves, we would not need to do anything further to “expose” anyone.

## **H) INCORRECT PUBLIC STATEMENT**

### **1. Basis of complaint**

Back in August 2009, the Leader of the Council claimed that EHC had avoided refurbishment costs of £1.7m by selling the Causeway offices. However, Longmore's summary of the deal shows this to be incorrect: the Council paid Hendersons a sum of £1.9m for delapidations. The Council has not avoided the costs, it has simply paid someone else to carry out the work on its behalf. Reports in the local press highlighted to the public that the refurbishment costs had not been avoided and the Executive was reminded of the true state of affairs by email and at Full Council.

Nevertheless on 15<sup>th</sup> December 2009 a press release was issued by the Council (see attached M) quoting Cllr Tindale:

“Staying at The Causeway was not an option for us; we were faced with a £1.7m bill to bring the building up to scratch and it's not economical to spend that sort of money on a building we don't own. ...”,

once again implying that the Council avoided costs of £1.7m by selling the Causeway offices. (see appendix H)

### **2. Additional clarification**

It seems to me that in making this public statement and implying that the Council had avoided refurbishment costs when a sum had been paid to Hendersons for dilapidations, Cllr Tindale did not adhere to the general principles prescribed by the secretary of State

- members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.
- members should act in a way that secures or preserves public confidence.

I consider that this conduct could reasonably be regarded as bringing his office and the Council into disrepute, breaching the Code of Conduct.

### **3. Response to Investigator's Report**

#### **i) Interpretation presented as direct quote**

The Report says (*page 29, bottom*) *The complainant said* “We don't have a specific agenda to hassle him but he has to disclose the information we ask as he is a portfolio holder. He should be able to answer our questions but he refuses. We believe that the only power we have is to expose the Council but they are trying to exclude us from such information. We have been excluded from the main governance committees”.

I believe this is simply the Investigator's interpretation of my meaning rather than an accurate representation of my words during the interview: it should not appear in inverted commas.

#### **ii) Statement should be read in context**

The findings say (*page 30, para 2*) “If the press release is read as above it in isolation of any other information it still does not convey that the Council was making savings of £1.7million by not spending the refurbishing costs.

However, the press release was not read as above in isolation of other information. Along with the quotation above from Cllr Tindale, the press release included the statement “The move to Charringtons House will mean that taxpayers will avoid a hefty bill for refurbishments on a building the Council does not own and no longer meets our needs.” (see page 44).

In this context, I consider that Cllr Tindale's quote does imply the Council avoided costs of £1.7m by selling the Causeway Offices.

#### **iii) Lack of legal challenge not relevant**

The Report says (*page 30, para2*) *there has been no legal challenge to the validity of above deal.*

It is difficult to see the relevance of this comment by the Investigator.

## **U) DECLARATION OF INTERESTS**

### **1. Basis of complaint**

On October 23<sup>rd</sup> 2007 the Executive minutes record

“Councillor M J Tindale declared a personal and prejudicial interest in the matter referred to at Minute 331 – Treasury Management Strategy 2006/07 and Prudential Code Review, in that Scottish Widows, one of the Council’s fund managers, were a client of his business. He left the chamber whilst this matter was considered.”

A similar declaration was made at the Executive meeting in September 2008.

However, when papers which included matters relating to Scottish Widows were brought forward to the Executive in February 2008 and February 2009 Cllr Tindale did not declare any personal and prejudicial interest: he remained in the room and commented on the papers. Similarly, although Cllr Tindale was absent from the Executive meeting in October 2009, as the Executive Member for Resources and Internal Support, he submitted a paper including matters relating to Scottish Widows. The meeting was not informed of any personal interest.

If Scottish Widows was a client of Cllr Tindale’s business in October 2007 and September 2008, was it not a client in February 2008? If so, why did Cllr Tindale not declare an interest and leave the room?

If Scottish Widows is still a client of Cllr Tindale’s business a prejudicial interest should also have been declared when he brought forward papers to the meetings in February 2009 and October 2009.

It is difficult to see how Cllr Tindale could carry out his responsibilities as Executive Member for Resources and Internal Support, which includes the whole area of Treasury Management, whilst holding a personal and prejudicial interest in relation to the fund managers without breaching the Code of Conduct.

### **2. Response to Investigator’s Report**

#### **i) Clarification of references**

The Report states (*page 30, bottom*) *Part 2 of the Council’s Constitution deals and defines the members’ interests. The personal interest is defined under Paragraph 8 and the relevant provisions are contained under sub-paragraphs 8 (1) (a) (iii) and 8 (1) (b).*

For clarification, Part 5 of the Council’s Constitution (Codes and Protocols) deals with and defines members’ interests.

The paragraph references provided by the Investigator relate to the numbering of the paragraphs in the Councillors Code of Conduct, which lies within this section.

#### **ii) Documentary evidence of business interest**

The Report (*pages 31 and 32*) provides information about Cllr Tindale’s business interests. It is not clear whether any written evidence has been provided to support this: the background documents do not seem to include any information in this respect.

#### **iii) Meetings made decisions, not just noting reports**

The Report notes (*page 31, bottom*) *the Subject member stated that all three meetings where he did not declare his interest were just to note the performance of the Council’s investment with SWIP.*

(For clarity, my complaint referred to two meetings, in Feb 2008 and Feb 2009, not three.)

This statement is not supported by the facts (see appendix U page 45):

##### **a) Meeting approved strategy**

The report brought forward in February 2008 was not simply for noting: it contained a

recommendation

“that the 2008/09 Treasury Management Strategy Statement and Annual Investment Strategy and Prudential Indicators for East Herts Council be approved.”

The report to the Executive in February 2009 contained the same recommendation to approve strategy.

b) Strategy related to Fund Managers

The Feb 2008 report (see page 45) states:

“The strategy covers... the investment strategy; (including fund manager review)”. Paragraph 11 “Summary of Strategy” includes:

“11.3 Fund Managers to trade gilts and Certificate of Deposit, Treasury Bills, Money Market Funds with objective of maximising yields.

11.5 Agreement with Fund Managers to be kept under review.”

The strategy specifies the work to be carried out by the Fund Managers and, by stating that the agreement with the Fund Managers should be kept under review, includes an implicit decision to continue current arrangements with SWIP.

c) Subjective performance review of Fund Manager

In addition, Section 10 of the February 2008 report includes a performance review of SWIP. The report does not simply note the factual performance of SWIP, but presents a subjective appraisal.

“Scottish Widows performance is improving as the year progresses due to tactically moving in and out of gilts, with the bulk of the monies being held in SWIP money market fund.”

Similarly, paragraph 10 of the February 2009 report includes the subjective appraisal:

“SWIP made good returns on the gilt holdings held over from the first quarter.

The violent swings in the gilt market made them nervous about re-entering the market. Their money market funds performed relatively well as SWIP added some duration at higher levels.”

It is reasonable to expect a Treasury Management report to contain subjective appraisal of the fund managers. However, when Cllr Tindale is the portfolio holder who brings forward the report, this may lead people to believe Cllr Tindale has had input into or perhaps even control over the assessment of SWIP performance and recommendations regarding investment parameters presented to Council.

iv) Influence over decisions taken

The Report notes (*page 31, bottom*) Cllr Tindale said: *There was no decision taken on these meetings and the Subject member could not influence any decision taken by the Council*

a) Portfolio holder's role to influence

As shown above, decisions were taken and the Strategy to continue working with SWIP was approved. It seems to me it would be perfectly reasonable to assume that, as portfolio holder, Cllr Tindale was in a position to influence the content of these Treasury Management reports and thus influence the decisions taken by Council. Is this not precisely the role of an Executive Member?

b) Concerns raised before

In September 2008, I tried to raise concerns about Cllr Tindale's involvement in the treasury management paper. The Executive minutes state:

“Councillor D Clark asked whether, in view of the Executive Member's stated interest, future reports on this matter should be submitted by the Leader.

The Leader responded by stating that that this may be appropriate. He also advised that as part of the close monitoring of the position, it might be appropriate to submit further reports at more regular intervals.”

c) Monitoring officer acknowledged implicit decisions

After the meeting, I wrote an email to Cllr Tindale entitled “A word of advice” (this is included in the Background documents to the Investigator's Report):

“You were out of the room when the Treasury paper was discussed this evening. Perhaps Tony has already updated you but, just in case it has slipped his mind, I suggested that it might be better in future if Treasury papers referring to Scottish Widows had his name on the bottom and were presented by him in future, to avoid you getting into any difficulties. You may have thought that the paper this evening contained no decision and so presented no risk, but, as Simon said, there was an implicit decision not to do anything. There was also a performance appraisal of SW in para 4.8.4. The paper could lead people to believe you have input into or perhaps even control over the assessment of SW performance and recommendations regarding investment parameters being presented to Council. If SW are a client, you should make sure there can be no doubt that you are not involved in such things.”

In this context “Simon” refers to Mr Drinkwater, the Monitoring Officer.

v) Remote connection

The Report notes (*page 31, bottom*) Cllr Tindale said *He had such a remote connection with SWIP that he did not consider the decisions taken during the above said meetings did affect his business. His income from direct dealing with SWIP was so low that no-one could reasonably consider that it would affect his own financial position or well-being to a greater extent than other tax payers. The Subject member firmly believed that he did not have any personal interest to declare.*

a) Previously declared personal and prejudicial interest

It is hard to reconcile Cllr Tindale’s claim (that no-one could reasonably consider that he had a personal interest) with his own actions in September 2007 and September 2008, when he himself declared a personal and prejudicial interest in SWIP. Clearly, at those times Cllr Tindale did consider that he had a personal interest and it would be reasonable for a member of the public to assume that the interest had continued throughout the year between September 2007 and Sept 2008, during which time the February 2008 meeting was held.

b) Interest appeared, disappeared, appeared and then disappeared again

Cllr Tindale claims that in February 2008 and February 2009 his connection with SWIP was so remote as to not require any declaration of interest at all. It is difficult to understand how Cllr Tindale’s circumstances could have changed backwards and forwards so often in an 18 month period. The Committee may have seen evidence to support this but if not perhaps Cllr Tindale could explain?

vi) Unaware of interest?

The Report goes on to find (*page 32, para 2*) that even if Cllr Tindale did have a personal interest, he did not have to declare it in the meetings because *he did not consider at the time that he did have any personal interest.*

Once again it is hard to reconcile this with Cllr Tindale’s declarations of personal and prejudicial interest 6 months before and 6 months after the event. It would be helpful to understand how Cllr Tindale could be so confident that he had no personal interest when he had reached such different conclusions in such a short time period.

vii) 4% can have major impact

The findings state (*page 32, top*) *Only 4% of the Directors deals’ business comes from SWIP annually.* However:

a) Percentages give no indication of the monetary value. Perhaps the Committee has seen evidence of the monetary value of SWIP’s business, but the report does not mention it.



b) For context, members are required to declare any gifts or hospitality received with an estimated value of £25 or over.

b) Although 4% sounds like a small figure, it does not necessarily follow that the business it represents is insignificant. A small percentage increase in turnover can make a big difference to a company, for example:

- If the fixed costs have already been covered and variable costs are low, additional turnover becomes almost pure profit.
- If the business is struggling, 4% of turnover can mean the difference between success and failure.
- It may be that a “big-name” customer adds kudos to the company’s reputation and helps attract other customers.
- It may be that there is an aspiration to increase turnover with the client.
- If each customer contributes a similar amount to turnover eg where the income is of a subscription nature, 4% represents one of only 25 customers.

It is generally much harder to gain customers than to lose them and there are many reasons why a small turnover might have a big impact on a small company.

#### viii) Personal interest

The findings continue (page 32, top) *it is hard to accept.. that the Subject member had a personal interest which affected his well-being or financial position to a greater extent than the majority of other council tax payers It looks that the subject member did not have a personal interest..*

It is a matter of fact that the Subject Member did have a personal interest which affected his financial position to a greater extent than the majority of other council taxpayers.

The majority of taxpayers do not have SWIP as a client of their own business.

#### ix) Prejudicial interest

Paragraph 10 of the Code of Conduct outlines how a personal interest might be a prejudicial interest

“where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.”

To identify whether a personal interest is a prejudicial interest it is necessary to have sound knowledge of the relevant facts.

Cllr Tindale has previously declared a personal and prejudicial interest twice. One must presume he had a reason to do so. It is not clear what documentary evidence Cllr Tindale has provided to the Committee to support his claims that these interests have come and gone at six monthly intervals.

## **SUMMARY**

I do not consider that the Investigator's report presents a full and fair reflection of the facts of the case. It seems to me that the Investigator has not fully understood and/or taken due regard of the documentary evidence I provided, or sought to verify other information provided to him. In addition, the conclusions do not seem to be built on reasoned argument. In summary, I do not believe the Investigator's Report is sound.

I consider that, taken together, these examples highlight a continued pattern of behaviour over a considerable period of time, with a marked deterioration of late. I believe Cllr Tindale has demonstrated a blatant lack of respect for others and failed to act in accordance with the general principles prescribed by the Secretary of State and as a result has brought his office and East Herts Council into disrepute.

Finally, Standards Board guidance says "In most cases, the public interest in transparent decision-making by the Standards Committee will outweigh the subject member's interest in limiting publication of an unproven allegation that has not yet been determined". I believe the public interest will be best served if these matters are considered in public and the report and associated documents made available for public information. I would welcome full disclosure of all related papers.

Cllr Deborah Clark

August 23<sup>rd</sup> 2010

**Email stream relating to proper procedure at Council**

-----Original Message-----

**From:** Cllr Michael Tindale [mailto:michael.tindale@eastherts.gov.uk]  
**Sent:** 05 December 2007 21:33  
**To:** 'Cllr Nigel Clark'  
**Subject:** RE: Proposed Non-Key Decision - 07/37- East of England Plan

Nigel

**Why do you keep on about this procedural crap?** If you have a problem with the AWC decision you would be one of the few councillors to say so but you haven't yet

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**From:** Cllr Nigel Clark [mailto:nigelclark4change@btinternet.com]  
**Sent:** 04 December 2007 18:44  
**To:** Councillor Haysey Linda); alan.warman@eastherts.gov.uk; allen.burlton@eastherts.gov.uk; andrew.dearman@eastherts.gov.uk; Andy.Graham@eastherts.gov.uk; anthony.jackson@eastherts.gov.uk; Beryl.Wrangles@eastherts.gov.uk; bob.parker@eastherts.gov.uk; colin.woodward@eastherts.gov.uk; David.Andrews@eastherts.gov.uk; deborah.clark@eastherts.gov.uk; diane.hollebon@eastherts.gov.uk; dorothy.hone@eastherts.gov.uk; duncan.peek@eastherts.gov.uk; giles.scrivener@eastherts.gov.uk; graham.Lawrence@eastherts.gov.uk; graham.mcandrew@eastherts.gov.uk; jeanette.taylor@eastherts.gov.uk; jill.demonti@eastherts.gov.uk; Jim.Ranger@eastherts.gov.uk; John.hedley@eastherts.gov.uk; john.warren@eastherts.gov.uk; keith.barnes@eastherts.gov.uk; Kim.Darby@eastherts.gov.uk; malcolm.alexander@eastherts.gov.uk; Mark.Pope@eastherts.gov.uk; michael.mcmullen@eastherts.gov.uk; michael.tindale@eastherts.gov.uk; mike.carver@eastherts.gov.uk; mike.wood@eastherts.gov.uk; mione.goldspink@eastherts.gov.uk; nicholas.Wilson@eastherts.gov.uk; nigel.copping@eastherts.gov.uk; nigel.poulton@eastherts.gov.uk; Pam.Grethe@eastherts.gov.uk; peter.ruffles@eastherts.gov.uk; phyllis.ballam@eastherts.gov.uk; ralph.gilbert@eastherts.gov.uk; robert.taylor@eastherts.gov.uk; Roger.Beeching@eastherts.gov.uk; Rosemary.Cheswright@eastherts.gov.uk; Russell.Radford@eastherts.gov.uk; stan.bull@eastherts.gov.uk; suzanne.rutland-barsby@eastherts.gov.uk; tony.dodd@eastherts.gov.uk; Will.Quince@eastherts.gov.uk; william.ashley@eastherts.gov.uk  
**Subject:** Proposed Non-Key Decision - 07/37- East of England Plan

Dear Councillor,

Further the Cllr Carver's formal response from Council to the public consultation on the further proposed changes to the draft East of England Plan, I would like to thank those councillors who have personally responded to the consultation via the STOP Harlow North website where the campaign group has simplified the documentation and automated the process

If you have not yet responded it only takes a moment via this link

[http://www.stopharlownorth.com/response\\_3.htm#form](http://www.stopharlownorth.com/response_3.htm#form)

You can follow the campaign at [www.stopharlownorth.com](http://www.stopharlownorth.com) or at our Facebook group "STOP Harlow North".

The campaign is also featured on Mark Prisk's website

<http://www.markprisk.com/record.jsp?type=news&ID=52>

Regards

Nigel Clark

*Campaigning for openness and transparency in public life*

***(Please note that Cllr Tindale's response related to the email below – he attached it to the wrong email.)***

**From:** Cllr Nigel Clark [mailto:nigelclark4change@btinternet.com]  
**Sent:** 05 December 2007 09:57  
**To:** michael.tindale@eastherts.gov.uk; anthony.jackson@eastherts.gov.uk  
**Cc:** malcolm.alexander@eastherts.gov.uk; martin.ibrahim@eastherts.gov.uk;  
Jeff.Hughes@eastherts.gov.uk; Cliff.Cardoza@eastherts.gov.uk;  
George.A.Robertson@eastherts.gov.uk; terence.milner@eastherts.gov.uk;  
Will.Quince@eastherts.gov.uk  
**Subject:** Decison Maker on waste collection regime

Dear Mike and Tony,

I understand that there was some debate at Environmental Scrutiny Committee as to whether the decision to radically change the waste collection regime would be made by the Executive or Full Council.

I understand assurances were given that the decision would be made by Full Council, after a full debate, on a recommendation from the Executive.

This of course is in line with the answer provided to me in Full Council in May by Cllr Alexander

"As a supplementary question, Councillor N Clark asked if the Executive Member would commit to a full and transparent debate on this matter at Council before any changes were made so that all the arguments could be heard.

In reply, the Executive Member confirmed that Council would have the opportunity to debate any recommendation of the Policy Development Scrutiny Committee."

The fact that the paper before the committee last night was designated a "D", or delegated, decision to the Executive was, I understand, explained as an error.

Could I ask that you therefore update the Forward Plan, without delay, to show the correct Decision Maker?

The Forward Plans of July, August, September and October all show the decision on this matter was to be made at the Executive on 23rd October.

The Forward Plans for November and December both show the decision is to be made at the Executive of 18th December

It seems this error has been repeated throughout the Council's documentation.

Clearly if the decision is to be made at the Executive on 18th December with only a resolved item being brought to Council the paperwork is all in order. Cllr Alexander's answer to me at Council in May may have to be corrected though.

Could you please advise as a matter of urgency?

Regards

Nigel Clark

*Campaigning for openness and transparency in public life*

**Extract from minutes of Full Council on 16<sup>th</sup> April 2008**

“In response to Minute 607 – Castle Hall – St Andrews Street Car Park Pedestrian Bridges Improvements, Councillor N Clark sought clarification on when the Executive Member for Resources and Internal Support had become aware of the requirement for additional funds, given that the capital programme had only been agreed in February 2008.

In reply, the Executive Member confirmed that he had not been aware of this matter at the time that the capital programme had been agreed in February 2008.

Councillor N Clark asked whether the Executive Member had attended an Asset Management Sub-Group meeting on 28 January 2008. In reply, the Executive Member stated that, offhand, he could not recall.”

**Extract from minutes of Full Council on 14<sup>th</sup> May 2008**

“Councillor N Clark referred to the Executive Member for Resources and Internal Support chairing the Asset Management Sub Group meeting on 28 January 2008, when it had been agreed that a report be submitted, seeking further funding in relation to the new St Andrews Street car park pedestrian bridge because tenders had doubled. At Council on 16 April 2008, Councillor N Clark had asked the Executive Member whether he had been aware of the potential for an increase in the cost of this project at the time he had presented the capital budget in February 2008. The Executive Member had answered that he had not been aware and that it seemed as though Councillor Tindale had, once again, given the wrong information to Council. Councillor Clark had written to the Leader on 17 April 2008, to ask what action he, as Leader of the Council, would be taking over this matter but had received no response. He asked the Leader what action he had taken or would be taking over this matter.

The Leader referred the question to the Executive Member for Resources and Internal Support. The Executive Member stated that he had been aware of the need for additional funding at the time the capital budget had been agreed. However, he did not wish to predetermine an Executive decision, as he was aware that a report on this matter had been scheduled for the Executive meeting on 1 April 2008.

The Executive Member referred to Capital Strategy papers that had been made available to Councillor N Clark on request and refuted any suggestion that the matter had been swept under the carpet. In respect of his answer to Councillor N Clark’s question at the previous meeting, he queried whether anyone could remember where they were on a given day some weeks before.

Finally, the Executive Member commented that the Leader did not need to take any action as he along with his Executive colleagues, was getting on with the real business of the Council.”

**Extract from minutes of Full Council on 25<sup>th</sup> June 2008**

“Councillor N Clark referred to the item on additional funding for the St Andrews Street Car Park Pedestrian Bridge Improvements. The Minutes of Council on 16 April 2008, stated that “the Executive Member confirmed that he had not been aware of this matter at the time that the capital programme had been agreed in February 2008.” The Minutes of Council on 14 May 2008 showed that “the Executive Member stated that he had been aware of the need for additional funding at the time the capital budget had been agreed”. Councillor N Clark stated these answers were mutually exclusive and contradictory and could not both be true. He asked the Executive Member for Resources and Internal Support which one was correct.

In reply, the Executive Member for Resources and Internal Support replied that the latter was correct.”

**Extract from minutes of Full Council on March 25<sup>th</sup> 2009 (agenda item 7)**

“The Executive Member reminded Council of the different roles of the Council’s advisers. Lambert Smith Hampton had been engaged to look after the overall deal, whilst Grant Thornton had been asked to examine the assumptions made by LSH and the accounting treatment of the sums involved. **In respect of Councillor D Clark’s specific questions, he suggested that a written response could be provided.**”

**Email stream relating to unanswered questions at Full Council**

**From:** Cllr Michael Tindale [mailto:michael.tindale@eastherts.gov.uk]  
**Sent:** 20 May 2009 06:35  
**To:** ' Deborah Clark'  
**Subject:** RE: Questions on the Causeway

What is the point, the item has already been agreed by council. To be frank this has become a bit of a bore - I am not on the exec to act as your secretary

Most of the answers you seek are in the papers anyway and if you can ask me some more concise and up to date questions I will endeavour to shed light. I made no commitment to answer these and none was minuted, the debate on the night was rigorous enough.

I am happy to have this exchange with you directly but I will not conduct it in the full glare of all members who became bored with it long ago.

Deborah, if you ask me real questions about the business of the council in a friendly manner I will of course endeavour to answer them where I can. A list of 12 questions of this nature on one paper which has already been debated is not appropriate. Where the volume of questions gets out of hand I will cease to answer them as I have for another member.

I realise that you are still smarting from Wednesday's humiliation and I look forward to your latest salvo in tomorrow's Observer.

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**From:** Deborah Clark [mailto:clark\_deborah@btinternet.com]  
**Sent:** 18 May 2009 22:22  
**To:** michael.tindale@eastherts.gov.uk  
**Cc:** '\_Councillors'  
**Subject:** RE: Questions on the Causeway

Dear Mike,

Naturally, I think carefully before copying all members. Unfortunately, as a result of your response, I am obliged to do so again to avoid them being left with an inaccurate and incomplete picture of events. I apologise to those members who may be bored by this correspondence but of course this would not be necessary if my questions had been answered.

Do you really think that I would not have read the minutes?

The real question is, have you?

My questions were all raised verbally at the meeting and directed at the Executive in response to the recommendations made in your paper to Council, as is clear from the wording. I simply provided a written copy to the Leader and the Chairman for reference purposes for the records and to make sure none got lost along the way. I apologise for not having given you a personal copy – I thought you and Tony could share.

I don't know if you are suggesting that the Leader should have provided the answers – he does sometimes field questions raised about your portfolio. However, on this occasion, the minutes note that you responded to the matters raised by the opposition (minutes page 9)

“The Executive Member for Resources and Internal Support responded to the many comments made”.

Including on page 10:

“The Executive Member reminded Council of the different roles of the Council's advisers. Lambert Smith Hampton had been engaged to look after the overall deal, whilst Grant Thornton had been asked to examine the assumptions made by HSH and the accounting treatment of the sums involved. **In respect of Councillor D Clark's specific questions, he suggested that a written response could be provided.**”

You now have your own copy of the questions in writing (see below). Will you honour this commitment?

Regards

Deborah

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**From:** Cllr Michael Tindale [mailto:michael.tindale@eastherts.gov.uk]  
**Sent:** 18 May 2009 11:00  
**To:** 'Deborah Clark'  
**Cc:** '\_Councillors'  
**Subject:** Questions on the Causeway

Hi Deborah

I have no issue with getting these questions answered but they were not asked of me at the time nor was I given a written copy of them. Your statement below says:

The minutes confirm that you promised to provide a written response to my specific questions but, nearly two months later, none has been received.

Yet this is what was minuted and is consistent with my recollection of the meeting:

Councillor D Clark expressed her concerns that there had been no external consultation or scrutiny of the proposals. She believed that a number of questions remained unanswered and listed these in a tabled document copies of which were provided to the Chairman and the Leader.

You have never provided me with these written questions until your email of yesterday accusing me of a failure to respond. I cannot respond to questions I have not been supplied with and will not respond to questions asked of other people unless invited to do so.

Did you read the minutes before you copied all councillors with your latest accusation?

I apologise to councillors who are not interested in this issue but I felt compelled to copy all in my reply to be consistent with the original email. Deborah can I ask that you think more carefully about copying all councillors when it is not necessary.

**From:** Deborah Clark [mailto:clark\_deborah@btinternet.com]  
**Sent:** 17 May 2009 15:50  
**To:** mike Tindale  
**Cc:** '\_Councillors'  
**Subject:** Questions on the Causeway

Dear Mike,

I have still not received a written response to the questions I raised at Full Council on 25th March, namely:

1. Why is the Leader presenting this as an isolated property transaction concerning only the causeway site when the first recommendation in the paper is for Council to formally approve the move to Wallfields?
2. Last July the Executive agreed that an appraisal of the detailed financial and property issues would be brought forward so that a firm decision could be made on the move to Wallfields. Why has no business case, containing such an appraisal been brought forward as agreed?
3. The paper contains no facts and figures to support a firm decision to move to Wallfields. Would it be reasonable for members to make a decision on the proposed move to Wallfields without any information on the financial, staff and infrastructure implications?
4. Given the economic downturn and its impact on the property market, why has the Council not re-visited the availability of alternative accommodation?
5. The NPV calculations make assumptions about the future value of the car parks. Does the Leader believe the value of real estate in the centre of Bishop's Stortford will fall or rise in the next fifteen years?
6. Legal costs and stamp duty are not included in the financial calculations. Why does the appraisal fail to provide for anticipated costs?
7. Why is the proposed new lease at Charringtons good value when the operating costs are 50% more per square foot than for the Causeway?
8. Will the Leader acknowledge that the recommended course of action has not been appraised by Grant Thornton?
9. Why is there no assessment of buying out the Causeway lease without selling the car parks?
10. Why will the Landlord not consider other alternatives? Is he making a killing on this deal?
11. Will the Leader recognise the need for some due diligence before a decision is made?
12. Why do we need to make a decision tonight, without any significant scrutiny?

These are important questions which should have been answered before Council took its decision. The minutes confirm that you promised to provide a written response to my specific questions but, nearly two months later, none has been received. I look forward to an answer to these questions without further delay.

Regards

Deborah

### **Recommendation brought to June Full Council by Cllr Tindale**

(D) in the light of the advice referred to in (C) above, the agreement reached with Henderson and the supplementary information from the Council's property advisers, Lambert Smith Hampton, as set out in Appendix 2 of the additional papers circulated, the authority for the Director of Internal Services, in consultation with the Executive Member for Resources and Internal Support, to complete the transactions for The Causeway properties proposal, including following Counsel's advice with regard to the election to tax the properties being disposed of but without recourse to a special purpose vehicle, be confirmed; a



## **Extract from minutes of Full Council on 13<sup>th</sup> May 2008**

“Councillor D Clark referred to Minute 661 and the element that related to Implications of the Changing the Way We Work Programme (Options for The Causeway Offices Site). She proposed an amendment to the 9<sup>th</sup> paragraph as follows:

1<sup>st</sup> bullet point – add after “costs”, “and whether it was reasonable for Council to make a decision without this information”

Add 6<sup>th</sup> bullet point – “the need to make a rapid decision, without any significant scrutiny.”

Councillor D Clark reminded Members that she had tabled 12 questions in writing.

The Executive Member for Resources and Internal Support did not dispute that these questions were asked, but commented that the purpose of the Minutes was to provide a summary of the meeting and not to be a verbatim record of everything that was said.

After being put to the meeting, and a vote taken, the proposed amendment was declared LOST.

Council approved the Minutes of the meeting held on 25 March 2009 as a correct record.

RESOLVED – that the Minutes of the Council meeting held on 25 March 2009, be approved as a correct record and signed by the Chairman.

(Note – Councillor D Clark and N Clark asked that their dissent from this decision be recorded.)”

## **Extract from minutes of Full Council on 25<sup>th</sup> March 2008 (agenda item 6)**

### **660 MEMBERS' QUESTIONS**

“Councillor D Clark stated that the Council had been told that the proposal to dispose of the Causeway site was the culmination of four years work, yet there had been no consultation with residents, the Civic Federation, the Chamber of Commerce or even Bishop’s Stortford 2020 and that the related paper, released to Members only two weeks ago, was being rushed through Council tonight. She asked the Leader of the Council if he was worried that this was a lousy deal for Bishop’s Stortford and for the council taxpayer and that it would not stand up to scrutiny.

The Leader referred the question to the Executive Member for Resources and Internal Services. The Executive Member stated that in respect of the consultation issue, he had already answered this and referred the questioner to Minute 659 above. As for the remainder of the question, he commented that he was not worried.

As a supplementary question, Councillor D Clark stated that the original question had been addressed to the Leader and asked him to reply. In reply, the Leader stated that he did not disagree with the comments of the Executive Member.”

**Email stream relating to information not disclosed to members**

**From:** Cllr Michael Tindale [mailto:michael.tindale@eastherts.gov.uk]  
**Sent:** 01 April 2009 11:27  
**To:** 'Deborah Clark'  
**Subject:** RE: Below the water line

its all in the papers provided to council

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**From:** Deborah Clark [mailto:clark\_deborah@btinternet.com]  
**Sent:** 31 March 2009 21:58  
**To:** mike Tindale  
**Cc:** 'Madin Alan'  
**Subject:** Below the water line

Dear Mike,

During the Causeway debate at Council last week, you commented that work on the deal had been going on for years, officers had done lots of work and we shouldn't be surprised if we were only able to see the tip of the iceberg –there were lots of things going on “under the water line” that others had looked at but that we couldn't see.

Could you please provide details of those background papers that informed the decisions on the Causeway which were not made available to all members?

Regards

Deborah

**Extracts from draft report to the Executive meeting of 9<sup>th</sup> January 2009  
(obtained in November 2009 through a Freedom of Information request)**

Purpose/Summary of Report

- 1.1 This report commences the Changing the Way We Work Programme (C3W) outlining the financial implications of delivering the programme. It presents to the Executive indicative costs for the property and ITC infrastructure issues associated with locating our back office functions on a single site, as previously agreed by the Executive.

Recommendation

(B) Indicate how they feel the capital shortfall of £1.059m, one off revenue costs of £50k and on-going revenue costs of £47.6k per annum should be funded

*Please note: this information was available in March 2009 when Council formally approved the move to Wallfields. Council was not informed of these costs until August 2009 after the Causeway deal was finalised.*

## **Freedom of Information – Information Request F09/278**

The work programme for 12th December 2008 identified two agenda items for the Executive on 6th January 2009: C3W Infrastructure Implications; and C3W - Options for The Causeway Offices site. The agenda deadline was 11th December 2008. These scheduled agenda items were withdrawn.

Could you please:

**Question 1.** Confirm that one or more of the reports you supplied under FO9/237 was created for the scheduled Executive agenda item C3W Infrastructure Implications.

**Answer** - Yes

**Question 2.** Confirm whether or not one of the reports you supplied under FO9/237 was submitted to Democratic Services in December 2008.

**Answer** - Yes

**Question 3.** Send me copies of any and all reports, draft or otherwise, relating to the scheduled agenda item C3W - Options for Causeway Offices site.

**Answer** – Reports attached.

**Question 4.** Confirm which, if any, of the reports relating to the scheduled agenda item C3W - Options for Causeway Offices site was submitted to Democratic Services in Dec 2008.

**Answer** – Report\_Causeway Site Dec 08 (7)

**Question 5.** Identify on whose authority the agenda items were withdrawn.

**Answer** – Joint decision of Executive and CMT at Executive pre meeting 16<sup>th</sup> December 2008

### **Response to Freedom of Information request re: withdrawal of report from Executive agenda**

“At the pre meeting on 16<sup>th</sup> December recollections are there was a consensus of those present that more work was needed before the report came to the Executive and which was unlikely to be able to be done in time to take the report at the planned meeting in January.

There is no recollection that the Leader or Portfolio holder raised any objection to deferring the report at that point. Neither the Leader nor the Portfolio holder commented on the absence of the report when the Executive meeting was held. On this basis, I think it is reasonable to conclude that both agreed or at least accepted the deferral of the report.

Unfortunately, with the elapse of time, how the outcome of the pre meeting was communicated to Democratic Services is unclear but in the absence of any traceable email record I conclude this was orally by one of the officers at the meeting.”

## **Executive Portfolio Holder Job description**

**Purpose of the role:** To take responsibility for the political direction of a portfolio of issues and activated within the Executive.

**Reporting to:** Leader of the Council and Council

### **Key Accountabilities:**

1. To set out for Officers a clear statement of the policies to be pursued in respect of the issues falling within their Portfolio;
2. To work with Officers in constructing an Action Plan to implement and advance these policies;
3. To take decisions, as appropriate, in the light of advice received;
4. To advocate and defend the policy positions and decisions taken to implement the policy, both at Council and in public.

### **Other Tasks:**

1. To meet with special interest groups across the District area and to consider whether or not to adjust the policy position in the light of their requests;
2. To advocate the budgetary needs and policy links for the portfolio at meetings of the Executive;
3. To defend Executive decisions at Call-In Scrutiny Committee when called upon so to do;
4. To build support for the policy position within the political group and across the Council;
5. To offer comment in the Press, on TV or radio, as needed, on portfolio issues;
6. To review, in conjunction with the other members of the Executive, the

### **As a Ward Member**

1. To carry out the duties of a Ward Member;
2. To participate in the appropriate Area Forum;

### **Key Contacts**

1. Other Executive Members;
2. Executive Directors and Service Heads;
3. Special Interest Groups;
4. Public within Ward and across the District as a whole (within Portfolio remit);
5. Other Local Authorities and Regional and Central Government.

## **Press Statement from Cllr Tindale regarding Standard Board investigation**

“Cllr Deborah Clark recently brought a case to the Standard’s Board which included around a dozen gripes about my behavior as executive member for finance, these were made public this week. Despite a thorough investigation, which she has already called for to be re-examined, the investigating officer could find nothing in the dossier which accounts to my doing anything wrong.

Objecting to my style and approach is not a reason to run to the Standards Board, not everyone appreciates Cllr Clark’s modus operandi but nobody has wasted council tax-payers money complaining about it.

Although the Standards Board have yet to pass judgment, members of that board have already voiced their concern over the cost of the investigation, not to mention the time that they are required to give up to deliberate over it. A bill has yet to be submitted by the external authority which carried it out and although we don’t know the amount yet, it will run into several thousands of pounds which the council tax-payers of East Herts will have to pay.

Concern has also been expressed over Cllr Clark’s motive for bringing forward a series of petty complaints. Since we are likely to contest the same seat in the Council elections next May, it seems incredulous to claim that this did not influence her decision. I am seeking the Conservative nomination to stand as member for Hunsdon, the seat in which Deborah is the incumbent.

Despite the varied and desperate nature of the breaches of the Member Code that were alleged, I note that misuse of public funds was not among them - a phrase expressly used in the Member Code. During my tenure as executive member for finance, I have overseen measures such as investments in our leisure centres, a 10 per cent cut in member’s allowances, and exited an £80million lease on a building we no longer need. These measures are all saving the council money now, yet every one of them was opposed by Deborah Clark. I was put in this position to reduce costs and ensure that resources are not wasted. Whilst I have achieved that I recognize that there is more work to do - but the task has been made more difficult by constant sniping from Cllr Clark who claims to promote ‘openness and transparency’. Perhaps she could be open and transparent with council tax-payers over her involvement with the ‘public questions’ which were asked of the District Auditor last year – these resulted in a £9,000 charge to the authority.

Regular readers will be aware that Cllr Clark often writes letters to The Observer/Mercury, those that have been published have invariably been critical of me over some twisted recollection of events. Whilst I am flattered that she hangs on my every word, I only wish my children paid so much attention to what I say.

Despite the recent 10 per cent cut in member’s allowances, opposed by Deborah Clark, her £4,746 allowance for this year might be enough to cover the unnecessary cost of this investigation. I therefore call on her to settle the invoice from the investigator out of her annual allowance. Such a gesture would ensure that everybody else does not pay the cost of her indulgences.

Whilst I never sought for this dispute to become public, it was Deborah who called for that, I am happy to stand by my actions and my record. Although I recognise that most readers will be disinterested in this, at least the electors of Hunsdon will be given the opportunity to judge who is most fit to represent their interests as council tax-payers. Their decision could affect everyone in East Herts after next May.”

**Email stream re refusal to answer questions and offensive response**

-----Original Message-----

**From:** Cllr Michael Tindale [mailto:michael.tindale@eastherts.gov.uk]  
**Sent:** 06 May 2009 14:13  
**To:** 'Cllr Nigel Clark'  
**Subject:** Dark Places

No nerves involved, just too busy to answer pointless questions from someone with an ill-concealed agenda.

You can note what you like, I can suggest where you put that note as well

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**From:** Cllr Nigel Clark [mailto:nigelclark4change@btinternet.com]  
**Sent:** 06 May 2009 13:14  
**To:** michael.tindale@eastherts.gov.uk  
**Subject:** Re: Asset Management Strategy

Dear Mike,  
Your nervousness in answering a straight question is noted.  
Regards

Nigel Clark

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**From:** Cllr Michael Tindale <michael.tindale@eastherts.gov.uk>  
**To:** Cllr Nigel Clark <nigelclark4change@btinternet.com>  
**Sent:** Tuesday, 5 May, 2009 1:12:31 PM  
**Subject:** RE: Asset Management Strategy

Well it is not a straightforward answer because the property decision which has already been taken by council was considered by external consultants in the round, no individual element can be considered in isolation. That's as far as I am willing to engage in the matter since this is not a genuine request for information. Council has already made its decision.

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**From:** Cllr Nigel Clark [mailto:nigelclark4change@btinternet.com ]  
**Sent:** 03 May 2009 22:27  
**To:** michael.tindale@eastherts.gov.uk  
**Subject:** RE: Asset Management Strategy

Dear Mike,  
The e-mail copied below (23 April 2009 17:56) is when I reverted to you.

*"Despite your assurances that the answer to my question "which property investment and disinvestment decisions for the Changing the Way We Work programme have been the subject of a full options appraisal by external consultants in 2008" is in the papers, I have been unable to find the information.*

*Can you please provide me with a paragraph reference(s)?"*

I simply need you to tell me which property investment and disinvestment decisions for the Changing the Way We Work programme have been the subject of a full options appraisal by external consultants in 2008 or tell me where I can find the information in the paper you presented to the Executive.

If you are unable to do so perhaps you can say so.

Regards  
Nigel

-----Original Message-----

**From:** Cllr Michael Tindale [mailto:michael.tindale@eastherts.gov.uk]  
**Sent:** 03 May 2009 20:19  
**To:** 'Cllr Nigel Clark'  
**Subject:** RE: Asset Management Strategy

I have not received any further emails from you on this subject except the one copied below

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**From:** Cllr Nigel Clark [mailto:nigelclark4change@btinternet.com]  
**Sent:** 03 May 2009 17:22  
**To:** michael.tindale@eastherts.gov.uk  
**Subject:** RE: Asset Management Strategy

Dear Mike

I came back to you as you suggested ("and come back to me if there is anything you don't understand") but you have not replied. Could you please do so?

Regards

Nigel

-----Original Message-----

**From:** Cllr Nigel Clark [mailto:nigelclark4change@btinternet.com]  
**Sent:** 23 April 2009 17:56  
**To:** michael.tindale@eastherts.gov.uk  
**Cc:** anthony.jackson@eastherts.gov.uk  
**Subject:** Re: Asset Management Strategy

Dear Mike,

Despite your assurances that the answer to my question "*which property investment and disinvestment decisions for the Changing the Way We Work programme have been the subject of a full options appraisal by external consultants in 2008*" is in the papers, I have been unable to find the information.

Can you please provide me with a paragraph reference(s)?

I thought the Leader said my question was actually outside the scope of the report.

Regards

Nigel Clark

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**From:** Cllr Michael Tindale <michael.tindale@eastherts.gov.uk>  
**To:** Cllr Nigel Clark <nigelclark4change@btinternet.com>  
**Cc:** Alan.Madin@eastherts.gov.uk; Hamberger Philip <Philip.Hamberger@eastherts.gov.uk>; Councillor Jackson (Anthony) <Anthony.Jackson@eastherts.gov.uk>  
**Sent:** Thursday, 23 April, 2009 12:40:28 PM  
**Subject:** RE: Asset Management Strategy

I didn't agree to this, I said it was stated in the papers at the time. Perhaps you can refer to the papers and come back to me if there is anything you don't understand. I think the leader said that officers might give a response to you, I suggest you chase them for it

If you have got a point to make regarding this please make it but I am not really interested in your cat and mouse game

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**From:** Cllr Nigel Clark [mailto:nigelclark4change@btinternet.com]  
**Sent:** 21 April 2009 22:07  
**To:** michael.tindale@eastherts.gov.uk  
**Cc:** 'Madin Alan'; 'Hamberger Philip'  
**Subject:** Asset Management Strategy

Dear Mike

The Asset Management Strategy discussed by the Executive this evening stated: "3.3 Major investment decisions, are the subject of options appraisal using whole life costing techniques. Projects involving the investment of more than £500,000 in property assets are appraised by external consultants. The property investment and disinvestment decisions for the Changing the Way We Work programme have been the subject of a full options appraisal by external consultants in 2008. Investment options relating to car park buildings will be appraised in 2009"

You agreed to provide a written response to explain which property investment and disinvestment decisions for the Changing the Way We Work programme have been the subject of a full options appraisal by external consultants in 2008.

I look forward to receiving your written answer without undue delay  
Regards  
Cllr Nigel Clark



**Extract from minutes of Full Council on 30<sup>th</sup> September 2009**

“Councillor N Clark also expressed his opposition to the proposals. He referred to the Wallfields refurbishment costs and the absence of a consolidated financial model for the whole C3W programme. He believed this raised questions about how the programme was being managed and what cost controls were in place. He referred to his own model based on official figures which indicated that the overall C3W programme would increase costs by up to £250k a year and one-off costs approaching £1m.

Councillor N Clark commented that the Executive’s proposals did not guarantee any savings as efficiency gains could not be translated into cashable savings. He stated that these could only be achieved through job losses and that this had been confirmed to him by Officers. He questioned why internally discussed targets had not been shared with Members.

Councillor N Clark also questioned why an independent whole life cost appraisal had not been carried out as required by the Asset Management Policy. Finally, he suggested that the C3W programme should be halted immediately and an external review of the decisions taken to date be undertaken.

The Executive Member for Resources and Internal Support reserved the right to ignore Councillor N Clark. Councillor D Clark reminded the Executive Member of the Code of Conduct.”

**Email stream re failure to read questions**

**From:** Cllr Nigel Clark [mailto:nigelclark4change@btinternet.com]  
**Sent:** 09 December 2009 23:06  
**To:** michael.tindale@eastherts.gov.uk  
**Cc:** cllrs@eastherts.gov.uk  
**Subject:** FW: Question on Revenues and benefits proposals

Dear Mike,  
In my e-mails below could you please highlight the text which you found threatening?  
Regards  
Nigel

-----Original Message-----

**From:** Cllr Nigel Clark [mailto:nigelclark4change@btinternet.com]  
**Sent:** 07 December 2009 09:27  
**To:** 'michael.tindale@eastherts.gov.uk'  
**Cc:** 'Councillor A P Jackson'; Councillor Stan Bull (stan.bull@eastherts.gov.uk); Councillor Bob Parker (bob.parker@eastherts.gov.uk)  
**Subject:** FW: Question on Revenues and benefits proposals

Dear Michael,  
In the absence of any substantive reply to my questions below could you please bring a copy to Full Council on Wednesday so we can work through them one by one. It may extend Council but this topic has not been subject to any scrutiny.

I have copied the Chairman so he is aware of the business we need to cover  
Regards  
Nigel

-----Original Message-----

**From:** Cllr Nigel Clark [mailto:nigelclark4change@btinternet.com]  
**Sent:** 29 November 2009 21:22  
**To:** 'michael.tindale@eastherts.gov.uk'  
**Cc:** 'cllrs@eastherts.gov.uk'  
**Subject:** Question on Revenues and benefits proposals

Dear Mike,  
The report on the "invest to save" proposals for Revenues and Benefits that went to Executive last week has not been to a scrutiny committee.

I am concerned by the haste in which this proposal has been brought forward without scrutiny, the lack of alternatives, the robustness of the savings and whether any of them are cashable – if so when and how.

As Council is not an ideal place to examine proposals in detail before voting could you please answer the following questions this week?

I have copied all councillors in case any can help with the answers or have further questions.

My questions are:

1. What work was carried out by the Council (rather than Capita) to verify the scope and value of the potential savings? Can you explain how savings will actually be achieved?
2. The assumed savings assume a very high use of the internet. What proportion of benefits claimants do you consider have ready access to the internet in their home? What evidence can you supply to support your answer?
3. What proportion of benefit claimants do you expect to use the on-line access in the Council offices? How many visits a day does this equate to and how much staff time?
4. What take-up rates do you expect the Council to achieve in each area of Table 1 within the first 5 years?
5. The examples provided on page 9.17 indicate reward payments could be made at take up rates of only 15% (council tax) and 30% (new benefits claims). What take-up rates are assumed for the 75% and 50% savings breakeven analysis provided at 2.10 and 2.11?
6. What is the payback period at the take-up rates used in the risk and reward examples?
7. The greatest potential savings are credited to "mobile". Can you explain what this is? Will there be risk and reward payments associated with this area of work?
8. Will there be risk and reward payments associated with the 5 greatest potential saving areas?
9. What additional hardware will be required (e.g. servers) and at what cost?
10. Can you confirm that the software works with our partners and other Pathfinder initiatives?
11. Have the new elements of the software been tried and tested elsewhere? What references has the Council taken up?
12. What attempts were made to look for alternative solutions or suppliers? Was an in-house solution studied and if so what was proposed?
13. How was the proposed contract negotiated? Were signed minutes kept of all meetings?
14. Can you confirm there has been no competitive tendering for this £1/4m contract?
15. Can you confirm that the procurement process has complied with the Financial Regulations and relevant legislation?
16. What does the "implementation support" comprise – how many man hours over what time period? On site or by phone?
17. What is Council's assessment of the in-house IT workload to support users and problem solve during and after implementation?
18. What data protection and security issues have been considered?
19. In the current economic climate what risks to business continuity in the benefits service have been considered? How have these been dealt with?

20. Have you considered the potential impact of any change of government on contractual commitments to Capita?

Hopefully the answers should be readily to hand.

Obviously I will pose any unanswered questioned at Full Council. Please take this e-mail as notice.

Regards  
Cllr Nigel Clark

### **Extract from minutes of Full Council on 9<sup>th</sup> December 2009**

In respect of Minute 380 – Increasing the Efficiency of the Revenues and Benefits Service, Councillor N Clark commented that there had been no scrutiny of this item and that he had raised 20 questions with the Executive Member for Resources and Internal Support, but had not received a response. He invited the Executive Member to respond now.

The Executive Member for Resources and Internal Support remarked that Councillor N Clark again seemed more interested in process. He had not read his list of questions, but had counted that, in fact, 30 questions had been asked. He had declined to answer them as they had been asked in a threatening manner and stated that he would not respond now.

**Extract from Longmore's summary of Agreement with Henderson**

3. On the completion date the Council must pay to Henderson the VAT on the reverse premium of £3.1 m in respect of the surrender of the existing Causeway Office Lease and Henderson must pay to the Council the VAT due on the premiums payable on the grant of the four 999 year leases (£1.150m in respect of the Waitrose 999 year lease, £3.7m in respect of the Causeway Car Park 999 year lease, £1.1m in respect of the Causeway Office Building 999 year lease and £1.4m in respect of the Charringtons House 999 year lease). The premiums less the total of the reverse premium (£3.1 m) and **the dilapidations compensation (£1.9m) payable** on the surrender of the Causeway Office lease will be paid on the date 2 years after the completion date when a balancing payment of £2,350,000 will be payable to the Council by Henderson.

**Press release**

**Small Move Means Big Changes**

**(Article date: December 15, 2009) Twenty steps will soon mean a great leap forward for East Herts Council services in Bishop's Stortford now that work is underway on the council's new service centre, Charringtons House.**

We're working to create a new customer base next door from our current offices at The Causeway – just 20 steps away. The new premises will be much better for our modern needs but, most importantly, they will allow us to provide better access to the services customers tell us are important.

The move complements the council's Changing the Way We Work project, that seeks not only to improve customer service in Bishop's Stortford, but also to make smart investments for the future. **The move to Charringtons House will mean that taxpayers will avoid a hefty bill for refurbishments on a building that the council does not own and no longer meets our needs.**

At Charringtons House, we will be able to offer all the services that we do now plus some more. This is to ensure that customers will be able to get face-to-face help whether they are in our Stortford or Hertford offices.

Executive member for resources and internal support, Cllr Michael Tindale said: "Charringtons House will be a modern, purpose built customer service centre. We will be providing access to planning services, more interview rooms for privacy – including a meeting room for staff, as well as automated machines to make payments quicker and more convenient – to name just some of the improvements."

We will be sharing the space at Charringtons House with Circle Anglia Housing Association. "This makes sense as we share many customers," said Cllr Tindale, "and it will be more convenient for residents as they will be able to access both services in the same place. It's a good example of partnership working.

"Staying at The Causeway was not an option for us; **we were faced with a £1.7m bill to bring the building up to scratch and it's not economical to spend that sort of money on a building we don't own.** The move to Charringtons House will help safeguard council funds in this difficult financial climate, while keeping the council firmly rooted in Stortford."

Treasury Report

AGENDA ITEM 11

EAST HERTS COUNCIL

THE EXECUTIVE – 5 FEBRUARY 2008

REPORT BY THE EXECUTIVE MEMBER  
FOR RESOURCES AND INTERNAL SUPPORT

11. TREASURY MANAGEMENT STRATEGY STATEMENT  
AND ANNUAL INVESTMENT STRATEGY 2008/09

WARD(S) AFFECTED: None

RECOMMENDATION - that the 2008/09 Treasury Management Strategy Statement and Annual Investment Strategy and Prudential Indicators for East Herts Council be approved.

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1.0 Purpose of Report

1.1 The Local Government Act 2003 requires the Council to 'have regard to' the Prudential Code and to set Prudential Indicators for the next three years to ensure that the Council's capital investment plans are affordable, prudent and sustainable.

1.2 The Act therefore requires the Council to set out its treasury strategy for borrowing and to prepare an Annual Investment Strategy (included as paragraph 9); this sets out the Council's policies for managing its investments and for giving priority to the security and liquidity of those investments.

2.0 Contribution to the Council's Corporate Objectives

2.1 The financial effects of Treasury Management decisions are significant in relation to the Council's overall budgets and subsequent ability to spend against corporate objectives.

3.0 Report

3.1 The suggested strategy for 2008/09 in respect of the following aspects of the treasury management function is based upon the Treasury officers' views on interest rates, supplemented with leading market forecasts provided by the Council's treasury advisor. The strategy covers:

- treasury limits in force which will limit the treasury risk and activities of the Council;
- Prudential Indicators;
- the current treasury position;
- the borrowing requirement;
- prospects for interest rates;
- the borrowing strategy;
- debt rescheduling;
- the investment strategy; (including fund manager review)
- Minimum Revenue Provision