

5 September 2008

Our ref: Standards 16.9.08  
Contact: Ian Gourlay  
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To: The Chairman and Members of the Standards Committee of North Hertfordshire District Council

Mr N. Moss (Chairman), Mr P. Chapman (Vice-Chairman), District Councillors A. Bardett, S. Bloxham, Judi Billing, Lee Downie, David Kearns, Bernard Lovewell, M.R.M. Muir and L.W. Oliver, and Parish Councillors M. Goddard and R. Wornham. 2 Independent Member vacancies and 2 Parish Councillor vacancies.

You are invited to attend a

## **MEETING OF THE STANDARDS COMMITTEE**

To be held in the

**COUNCIL CHAMBER, COUNCIL OFFICES,  
GERNON ROAD, LETCHWORTH**

on

**TUESDAY, 16 SEPTEMBER 2008 at 7.30p.m.**

Yours sincerely,



David Miley  
Democratic Services Manager

**AGENDA**  
**PART I**

<b>ITEM</b>	<b>PAGE</b>
<b>1. APOLOGIES FOR ABSENCE</b>	-
<b>2. MINUTES</b> To take as read and approve as a true record the Minutes of the meeting of the Standards Committee held on 29 July 2008.	-
<b>3. NOTIFICATION OF OTHER BUSINESS</b> Members should notify the Chairman of other business which they wish to be discussed by the Committee at the end of the business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency.  The Chairman will decide whether the item(s) raised will be considered.	-
<b>4. CHAIRMAN'S ANNOUNCEMENTS</b> Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a prejudicial or personal interest and are required to notify the Chairman of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a prejudicial interest should leave the room and not seek to influence the decision during that particular item.	-
<b>5. UPDATE ON INTRODUCTION OF THE NEW REFERRALS PROCESS</b> REPORT OF THE DEPUTY MONITORING OFFICER To provide an update on the introduction of the new Referrals process.	<b>REPORT TO FOLLOW</b>
<b>6. WHISTLEBLOWING POLICY</b> REPORT OF THE DEPUTY MONITORING OFFICER To consider a proposed revised Whistleblowing Policy.	<b>REPORT TO FOLLOW</b>
<b>7. INSURANCE AND INDEMNITY ARRANGEMENTS FOR INDEPENDENT MEMBERS</b> REPORT OF THE DEPUTY MONITORING OFFICER To consider insurance and indemnity arrangements for Independent Members.	<b>REPORT TO FOLLOW</b>
<b>8. PLANNING CODE OF GOOD PRACTICE</b> REPORT OF THE DEPUTY MONITORING OFFICER To consider a revised Planning Code of Good Practice.	<b>1</b>
<b>9. UPDATE ON DECLARATIONS OF ACCEPTANCE OF OFFICE</b> REPORT OF THE DEPUTY MONITORING OFFICER To consider an update on Declarations of Acceptance of Office.	<b>REPORT TO FOLLOW</b>
<b>10. REVIEW OF HEARINGS AND FORTHCOMING MATTERS</b> REPORT OF THE DEPUTY MONITORING OFFICER To consider a review of Hearings and forthcoming matters.	<b>REPORT TO FOLLOW</b>

**Next Meeting of Standards Committee – Wednesday, 17 December 2008 (subject to change)**

**TITLE OF REPORT: UPDATE ON INTRODUCTION OF THE NEW LOCAL REFERRALS PROCESS**

REPORT OF THE DEPUTY MONITORING OFFICER

**1. SUMMARY**

A report to advise members of the progress made to introduce the local referrals process, to appoint additional town/parish Council members to the Standards Committee and to advise of the appointment of two further independent members to assist in planning the timetable for the Assessment and Review Sub-Committees.

**2. FORWARD PLAN**

This report is not relevant to the Forward Plan

**3. BACKGROUND**

- 3.1 The Standards Committee (England) Regulations 2008 came into force in May of this year setting out the new processes for dealing with the local referral of complaints against members.
- 3.2 Members will recall that details of the new process were referred to Council in May and to this Committee in June following which the new Assessment and Review Sub-Committees were set up. The report advised that additional recruits to the Standards Committee would assist this authority to comply with the Regulations. Publicity was also to be given to the new process so that members of the public would know how to complain about a Councillor.
- 3.3 Guidance issued by the Standards Board is that the Assessment Sub-Committee should be available to deal with any allegation within 20 working days of receipt of a complaint and that the same members who sit on the Assessment Sub-Committee cannot sit on the Review Sub-Committee. In each case the Sub-Committee must comprise an independent Chair and a town/parish member.
- 3.4 A previous meeting of the Standards Committee concluded that best practice would be to diarise monthly meetings of the Assessment Sub-Committee, to be held only if there is actual business to be conducted. However it is not proposed to do so until a sufficient number of parish and independent members have been appointed to ensure that the workload can be spread evenly.

**4. ISSUES***Recruitment of independent members*

- 4.1 In June the Standards Committee concluded that two additional town or parish members and two independent members should be appointed to the Standards Committee.

- 4.2 Several members of the Standards Committee suggested prospective independent members to Nicholas Moss, the Chair of the Standards Committee, to whom Nicholas Moss made an informal approach in writing in early July. This was followed up by an advert in the local paper in late July and several persons requested application packs.
- 4.3 Under the Council's Constitution independent members of the Standards Committee are interviewed by the Appointments Investigations and Disciplinary Panel who make a recommendation for appointment to Council.
- 4.4 Three application forms have been returned for the two independent posts and interviews are being carried out on the 17 September 2008. The recommendation to Council will be made to its meeting on the 25 September.

*Recruitment of parish/town council members*

- 4.5 On the 25 July 2008 the Council's Senior Committee & Member Services Officer wrote to the parish clerks of each of the town and parish councils within our district inviting them to nominate parish members to the Standards Committee.
- 4.6 Three applications have been received: Councillor Mike Harrison of Royston Town Council, Councillor Bryan Hillan of Codicote Parish Council and Councillor Chris Harlow of Letchworth Garden City Town Council. A further application is expected from Kimpton Parish Council and may be presented at the meeting.
- 4.7 Under Article 4 of the Council's Constitution the Council is responsible for appointing members of all Committees, which includes town/parish members appointed to the Standards Committee. It was reported to the last meeting of this Committee that the Council may '*adopt whatever procedures it thinks fit*' for the appointment of town/parish council members. Whilst the Constitution does contain provisions for the appointment of independent members, it contains no such provisions for Standards Committee or (any other Committee) to recommend candidates to Council for appointment nor provision for selection of candidates where the number applying for appointment exceeds the number of vacancies.
- 4.8 This report therefore proposes an amendment to the Constitution to enable the Standards Committee to select and recommend town/parish members for these, and future appointments, to the Standards Committee. The amendment is recommended as follows:
- "9. To make appropriate arrangements for the selection of town and parish members and to make recommendations to the Council for appointment of a selected town or parish member to the Standards Committee"
- 4.9 If members of the Standards Committee are agreeable to the amendment it is therefore for the Standards Committee to select two town/parish members from the three applicants in Appendix 1.
- 4.10 There are several options for the appropriate means of selection:
- (i) the applicants are interviewed by the Standards Committee (with the Chair taking the lead). If this option is chosen a further meeting must be arranged and the applicants invited to attend
  - (ii) the town/parish members are selected on written application according to a ballot
  - (iii) members are selected on written application according to the town : parish split. The Standards Committee currently comprises two parish members and therefore the town council members should be selected

- (iv) town/parish members are selected on written application to ensure the greatest geographical coverage of the district. If this option were chosen the Letchworth and Codicote members would be selected as current members cover the east and west of the district.

4.11 Independent members of the Standards Committee are to be appointed for a term of 3 years. It is recommended that town/parish members are also appointed for a term of 3 years subject to them remaining in office during that period. Further appointments to the Standards Committee of parish/town members will occur at the end of three years or on the earlier loss of office by, or the retirement of, that member.

*Publicity for the new local referrals process*

4.12 Following the last meeting of this Committee, Nicholas Moss the Chair of the Standards Committee and Kim Sawyer, the Deputy Monitoring Officer met with the editor of the Comet to explain the changes to the process for complaints about members. It was agreed that the Comet would offer some publicity surrounding the changes when the relevant changes were made to the Council's web-site.

4.13 The Deputy Monitoring Officer has been liaising with the Council's IT team to publish details of the new scheme on the web-site. At present this has meant a review of the existing web page detailing 'How to complain about a Councillor' and drafting a new on-line complaint form. Extracts from the draft web pages are attached at Appendix 2.

4.14 The Deputy Monitoring Officer is working towards development of a 'Governance' area on the web pages which will collect together the various functions of the Monitoring Officer e.g confidential reporting (whistleblowing), and certain audit functions (anti-fraud).

4.15 It has been agreed to publicise the new complaints system on or around the 1 October.

## **5. LEGAL IMPLICATIONS**

5.1 The Council should not be tasked with the selection process for town/parish candidates for the Standards Committee. It is far more practical that this is dealt with by the Standards Committee (in the same way that the Appointments Investigations and Disciplinary Panel deals with selection of independent members). This requires an amendment to the Terms of Reference within the Constitution which can only be approved by Council.

5.2 Members of the Appointments Investigations and Disciplinary Panel and members of the Standards Committee who recommend to Council the appointment of members to the Standards Committee will not be entitled to vote at Council on this matter.

5.3 Failure to select a suitable number of independent and town/parish council members will make the operation of the new local referrals process considerably less efficient. Adoption of the system will ensure that a sufficient number of compulsory members of the Standards Committee are available to undertake hearings, particularly where numbers might be reduced because of conflicts of interest.

5.4 There is a statutory requirement to publicise the new scheme for member complaints.

## **6. FINANCIAL AND RISK IMPLICATIONS**

There are no allowances payable to members of the Standards Committee other than the Chairman and the Vice-Chairman. There are therefore no financial implications arising from these appointments.

## **7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

7.1 None.

## **8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

8.1 None.

## **9. RECOMMENDATIONS**

9.1 That this report is referred to Council with a recommendation for amendment of the Terms of Reference of the Standards Committee as follows:

*“9. To make appropriate arrangements for the selection of town and parish members and to make recommendations to the Council for appointment of a selected town or parish member to the Standards Committee”*

9.2 That the Standards Committee choose the most appropriate means for selection of the town/parish councillors for the two vacancies on the Standards Committee and that either the candidates are interviewed at the next meeting of the Standards Committee or the selected candidates are recommended for appointment by Council.

9.3 That the selected candidates for the town/parish council vacancies are referred to Council for appointment for a term of three years subject to the Councillor remaining in office.

## **10. REASONS FOR RECOMMENDATIONS**

10.1 To ensure an appropriate number of parish/town members of the Standards Committee to meet the requirements of the Standards Committee (England) Regulations 2008.

## **11. ALTERNATIVE OPTIONS CONSIDERED**

11.1 None are possible.

## **12. APPENDICES**

Appendix 1 – Letters of application from Councillor Mike Harrison of Royston Town Council, Councillor Bryan Hillan of Codicote Parish Council and Councillor Chris Harlow of Letchworth Garden City Town Council.

Appendix 2 – Extracts from the draft web pages concerning the local referrals process.

## **13. CONTACT OFFICERS**

Kim Sawyer - Deputy Monitoring Officer x4561

**TITLE OF REPORT: WHISTLEBLOWING POLICY (ALSO KNOWN AS THE COUNCIL'S CONFIDENTIAL REPORTING CODE)**

REPORT OF THE DEPUTY MONITORING OFFICER

**1. SUMMARY**

1.1 A report to consider amendments to the Confidential Reporting Code.

**2. FORWARD PLAN**

2.1 This is not relevant to the Forward Plan.

**3. BACKGROUND**

3.1 The Council's Confidential Reporting Code is a policy which falls within the jurisdiction of the Standards Committee as well as Human Resources. It plays an important part in meeting the Council's commitment to openness, honesty and ethical propriety as set out in the Anti-Fraud and Corruption Policy

3.2 This report recommends that the Confidential Reporting Code should be separated out into an HR policy for internal complaints by employees and a separate policy for reports made by external contractors and members of the public.

3.3 This matter is also to be referred to the Joint Staff Consultative Committee in December 2008.

**4. ISSUES**

4.1 The current Confidential Reporting Policy attempts to cover reports of fraud or malpractice by employees, members of the public and external contractors. This could make the policy rather confusing for members of the public as it refers to other employment policies which can be relied upon to deal with, for example, victimisation arising from the disclosure. This will not apply to non-employees

4.2 The Appendices show two documents which will in future form the Confidential Reporting Code. The first is the employment policy and the second is the Code that will be displayed on the web-site for members of the public and external contractors.

4.3 The main changes to the Confidential Reporting Code are:

- To make this employment policy relevant to employees only and separate out the wider remit of confidential reporting into a separate Code dealing with reports by members of the public concerned about Council activities;

- To make employees and the public aware of the confidential reporting mailbox which is being set up for the Monitoring Officer to receive complaints under the Confidential Reporting Code;
- To include a reference to the recently adopted Anti-Fraud and Corruption Policy.

4.4 It is considered that a Monitoring Officer mailbox would also be a useful means of receiving reports under the Confidential Reporting Code. This should help to reinforce our commitment in the Anti-Fraud and Corruption policy to dealing with all concerns about unethical or unlawful conduct in a discreet and confidential manner.

4.5 The Confidential Reporting Code for the public will form part of the new 'Governance' area which is being created on the Council's website. It is recognised however that the Monitoring Officer will have to work together with the Audit Manager to produce protocols so that complaints can be dealt with effectively and inspire confidence in the process. These protocols will be brought to a successive Standards Committee for approval.

## **5. LEGAL IMPLICATIONS**

5.1 The Council has a commitment in its Anti-Fraud policy to confidential reporting.

## **6. FINANCIAL AND RISK IMPLICATIONS**

6.1 This work already falls within the remit of the Monitoring Officer and requires no further resource to implement.

## **7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

7.1 None.

## **8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

8.1 None.

## **9. RECOMMENDATIONS**

9.1 That the Standards Committee approve the amendments to the Council's internal employment policy for Confidential Reporting.

9.2 That the Standards Committee approve the Confidential Reporting Code for external contractors and members of the public and that this be published on the Council's website at the earliest opportunity.

9.3 That the Monitoring Officer work with the Audit Manager to produce protocols for the processing of confidential reports and that such protocols be referred to a future meeting of this Committee for approval

## **10. REASONS FOR RECOMMENDATIONS**

10.1 To ensure that the Council has effective means of tackling fraud issues.

**11. ALTERNATIVE OPTIONS CONSIDERED**

11.1 None.

**12. APPENDICES**

Appendix 1- The Confidential Reporting Code for employees.

Appendix 2- The Confidential Reporting Code for members of the public and external contractors.

**13. CONTACT OFFICERS**

Kim Sawyer - Deputy Monitoring Officer ext 4561

**14. BACKGROUND PAPERS**

CIPFA / Solace Chapter 5 Summary of the Framework for Good Governance.

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## Confidential Reporting (Whistleblowing)

### Purpose and Scope

As an employee, you are often the first to realise that there may be something seriously wrong within the Council. However, you may not feel able to express your concerns because you feel that speaking up would be disloyal to your colleagues or to the Council. You may also fear harassment or victimisation. In these circumstances you may feel it is easier to ignore the concern than report what may be a suspicion of malpractice.

However, be assured that you can expect the Council to deal with the complaint and not the person(s) raising it.

This policy document represents the Council's commitment [in line with its Anti-Fraud and Corruption Policy](#) to creating an environment in which you can raise a concern without fear of victimisation, subsequent discrimination or disadvantage. It aims to:

- Encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice.
- Provide avenues for you to raise those concerns and receive feedback on any action taken.
- Ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied.
- Reassure you that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made a disclosure in good faith.

There are existing procedures in place to enable you to lodge a grievance relating to your own employment. These can be found on the Council's intranet. This Confidential Reporting Code is intended to cover major concerns that fall outside the scope of other procedures such as:

- the unauthorised use of public funds;
- possible fraud and corruption;
- showing undue favour over a contractual or employment matter;
- conduct which is an offence or a breach of law;
- a breach of standing orders, financial regulations or a code of conduct;
- health and safety risks, including risks to the public as well as other employees;
- damage to the environment;
- sexual or physical abuse of clients, or
- other unethical conduct.

Thus, any serious concerns that you have about any aspect of service provision or the conduct of officers or Members of the Council or others acting on behalf of the Council can be reported under the Confidential Reporting Code.



Most cases raised and investigated under this Policy will be dealt with on a confidential basis. However, some serious matters may require disclosure of information to outside agencies, such as the Audit Commission, the Local Government Ombudsman, the Standards Board and the Police.

The policy applies to all employees and Members. ~~It also applies to other contractors for the supply of goods and services to the extent that it provides an avenue for individuals employed by those contractors to raise a concern. How we will treat a contractor's concern will be a matter of judgement by the Authority on a case-by-case basis.~~

These procedures are in addition to the Council's complaints procedure for the referral mechanisms for allegations of breach of the Members Code of Conduct and other statutory procedures that apply to some departments. You are responsible for making service users aware of the existence of these procedures.

This policy has been discussed with the relevant trade unions and has their support.

This policy does **not** replace the corporate Complaints Resolution procedure.

**Applicable to:**

**ALL ( X ) Non-management ( ) Management ( ) Members ( )**

**The role of the Monitoring Officer (Head of Legal & Democratic Services)**

The Monitoring Officer has overall responsibility for the maintenance and operation of this policy. This officer maintains a record of concerns raised and the outcomes of investigative work in a form which does not endanger your confidentiality. Confidential reports are presented to the Standards Committee and the Council as necessary.

To enable this role to be effectively performed, individuals are encouraged to address concerns directly to the Monitoring Officer in the first instance. Other officers who receive information under this policy are required to inform the Monitoring Officer of the matter within three days of it first being raised. On no account should investigative work be commenced before the Monitoring Officer has been informed of a matter.

**Anonymous Allegations**

This policy encourages you to put your name to your allegation whenever possible.

Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.



In exercising this discretion the factors to be taken into account would include:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

### **How to Raise a Concern**

As a first step, you may wish to raise your concerns with your line manager. If this approach is taken, the Monitoring Officer must be informed of the matter within three days of it first being raised. If your concern relates to a serious or sensitive matter or you suspect management is involved, you should approach the Monitoring Officer, the Chief Financial Officer or the Audit Manager. However, in order to preserve the integrity of the investigative process, you are urged in all cases to address your concerns directly to the Monitoring Officer in the first instance.

The above officers can be contacted as follows:

Monitoring Officer (Head of Legal & Democratic Services) – Tel: 4460 [or by email to 'Monitoring.Officer@north-herts.gov.uk'](mailto:Monitoring.Officer@north-herts.gov.uk)

Chief Financial Officer (Strategic Director of Financial and Regulatory Services) – Tel: 4297

Audit Manager – Tel: 4242

If you are unsure about whether or how to use this Code or want independent advice, you may contact the independent charity Public Concern at Work. Their lawyers can give you free confidential advice at any stage on how to raise a concern about serious malpractice at work. Their address is:

Suite 306, 16 Baldwins Gardens, London, EC1N 7RJ  
Tel: 020 7404 6609

If you wish to raise a matter with an independent person, you can contact the Chairman of the Council's Standards Committee. The Chairman is an independent Member of the Council and his details can be obtained from Committee Services.

You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns. In such instances, care should be taken to ensure the confidentiality of the matter.



Concerns may be raised verbally or in writing. If you wish to make a written report you are invited to use the following format:

- set out the background and history of the concern (giving relevant dates);
- explain the reason why you are particularly concerned about the situation.

The earlier you express the concern the easier it is to take action.

Although you are not expected to prove beyond doubt the truth of any allegation, you will need to demonstrate that there are reasonable grounds for your concern and provide sufficient detail to support the commencement of an investigation. Mere allegation is unlikely to be an adequate basis for any action to be taken.

You may invite your trade union representative or a work colleague to be present at any meetings or interviews held in connection with the concerns you have raised.

### **Untrue Allegations**

If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If, however, you make an allegation frivolously, maliciously or for personal gain, consideration may be given to taking disciplinary action against you.

### **How the Council Will Respond**

The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as either accepting or rejecting them.

In order to protect individuals and those accused of misdeeds or possible malpractice, the Monitoring Officer will make initial enquiries to decide whether or not an investigation is warranted by the evidence provided and, if so, what form it should take. The Monitoring Officer's decision to proceed or not will be determined by whether or not it would be in the public interest to do so. The decision taken and the reasons for it will be formally recorded.

As appropriate, the matter raised may be:

- investigated by internal audit;
- investigated by management under a relevant human resources policy;
- referred to the Police;
- referred to the external auditor; or
- subject of an independent inquiry.

Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.

The outcomes of investigations carried out by internal audit or management will be reported back to the Monitoring Officer.

Within ten working days of a concern being received ~~to her~~, the Monitoring Officer will write to you acknowledging that the concern has been received;

If further investigation is to take place the letter will also:

- indicate how it is proposed to deal with the matter;
- ~~give an estimate of how long it will take to provide a final response;~~
- tell you whether any initial enquiries have been made; and
- supply you with information on staff support mechanisms.

If further investigation is not to take place, the letter will outline the reasons for this decision.

The amount of contact you have with the individuals investigating the issued raised will depend on the nature of the matter, the potential difficulties involved and the clarity of the information provided. Contact is, however, likely to be necessary in order to pursue the matter particularly if further detail or clarification is needed.

Where any meeting is arranged, off-site if you so wish, you can be accompanied by a union representative or a work colleague. Colleagues can support you by addressing the meeting. However, they cannot answer and ask questions on your behalf unless this is for a specific reason for doing so (eg disability) which is agreed before the meeting. With your agreement, the meeting might be recorded to ensure that all information given is accurately recorded.

The Council will take steps to minimise any difficulties, which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the Council will arrange for you to receive advice about the procedure.

The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, you will be informed of the process used to address your complaint. Action taken against individuals is unlikely to be given due to duties of confidentiality to relevant individuals but changes to systems and procedures as a result of an investigation will be communicated.

### **How The Matter Can Be Taken Further**

This code is intended to provide you with an avenue within the Council to raise certain concerns. The Council hopes you will be satisfied with any action taken.

If you are unhappy with the outcome of an investigation and can provide additional information not heard before, a review process will be undertaken. If you have no further information to provide or remain unhappy following a review process, you may feel it is right to take the matter outside the Council. The following contact points are available to you:

- 'Public Concern at Work' (see above);
- the Audit Commission – hotline 020 7630 1019;
- your trade union – Unison – 08453 55 08 45;
- your local Citizens Advice Bureau - 08456 88 98 97
- relevant professional bodies or regulatory organisations e.g. Chartered Institute of Public Finance and Accountancy, Association of Accounting Technicians, Institute of Internal Audit, Chartered Institute of Housing ; and
- the police or another appropriate body



If you do take the matter outside the Council, you should be aware of the confidential nature of the information you possess and only divulge what is absolutely necessary to establish the concern. The contact point will advise you on how you might progress the matter. It is strongly recommended that you seek external legal advice or the advice of the advice of the Head of Legal & Democratic Services or a trade union officer before taking this action.

### **Safeguards : Harassment or Victimisation**

The Council is committed to good practice and high standards and seeks to be supportive of employees.

The Council recognises that the decision to report a concern can be a difficult one to make. If what you are saying is true, you should have nothing to fear because you will be doing your duty as an employee and to those for whom you are providing a service.

The Council will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern in good faith. Should harassment or victimisation occur, the Council will take action under its Bullying and Harassment Policy. The Council will not apply pressure on you to withdraw a concern nor should you fear detrimental treatment as a result of raising a concern.

Any investigation into allegations of potential malpractice should not influence or be influenced by any disciplinary or redundancy procedures that already affect you. Should you require support during an investigation you can contact ppcworldwide the Council's

### **Confidentiality and Respect**

All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. At the appropriate time, however, you may need to come forward as a witness. You are reminded, however, that you have a duty to maintain the confidentiality of the matter under investigation.

Whilst every effort will be made to respect the requirements of the Human Rights Act Article 6, it may in some cases be necessary to disclose information to the Police, District Audit, the Standards Board or other outside agencies.



**Links to relevant information:**

**Policies:**

**Standard documentation:**

**Employment Law:**

Local Government Act 1972

**Other:**

**For further advice contact :**

Directorate Partner  
Employee Relations Officer  
Head of HR  
Head of Legal &  
Democratic Services

**Last Updated :**

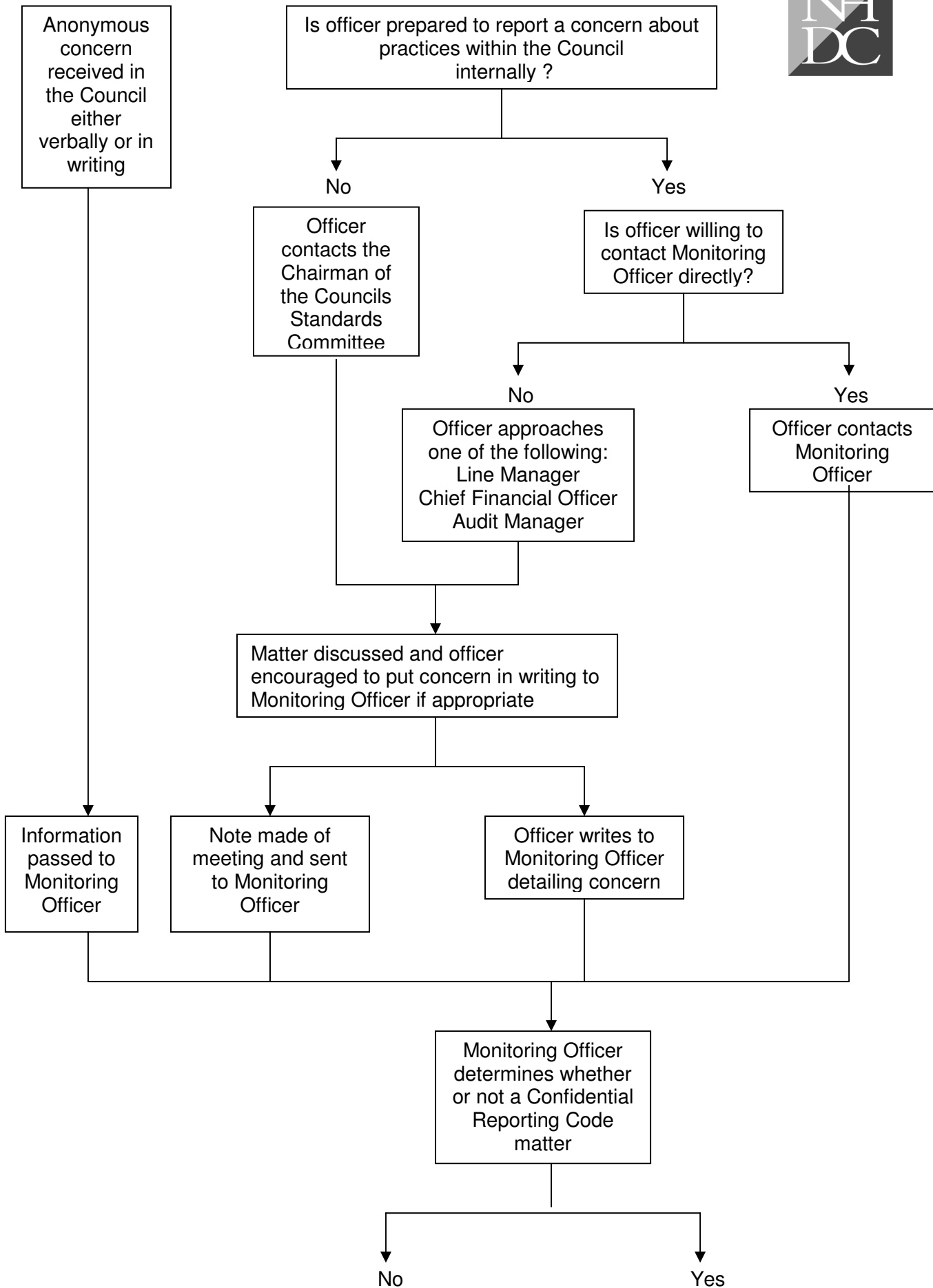
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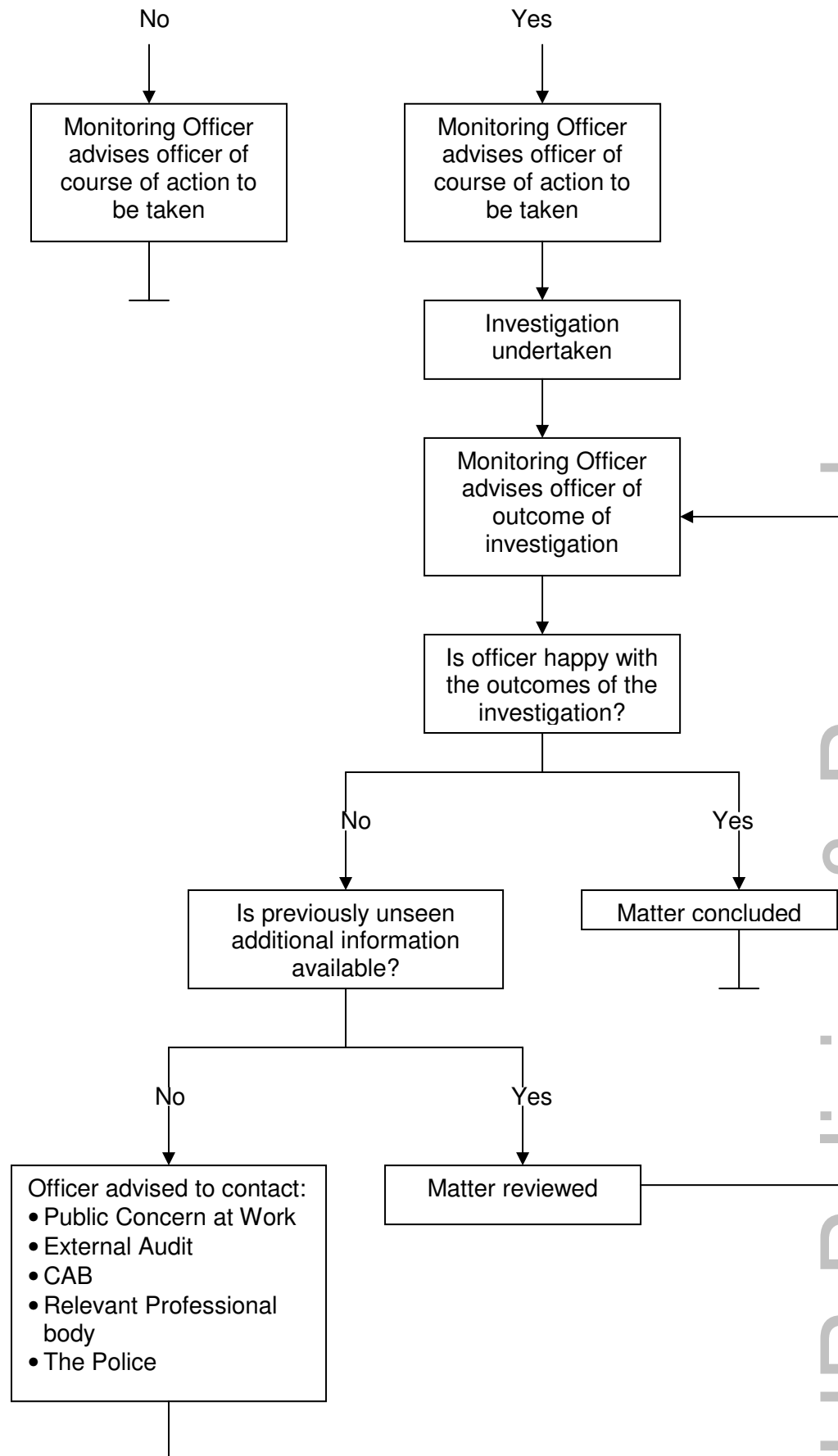
**To be reviewed no later than :**

December 2010

**Policy Sponsor :**

~~Head of Legal & Democratic Services~~  
Monitoring Officer







## **Confidential Reporting Whistleblowing Code for members of the public**

This Confidential Reporting Code is intended to give you the means to report any concerns about the activities of the Council which are ethically or legally questionable, such as:

- the unauthorised use of public funds;
- possible fraud and corruption;
- showing undue favour over a contractual or employment matter;
- conduct which is an offence or a breach of law;
- a breach of standing orders, financial regulations or a code of conduct;
- endangering the health and safety of any individual;
- damage to the environment;
- abuse of clients, or
- other unethical conduct.

Thus, any serious concerns that you have about any aspect of service provision or the conduct of officers or Members of the Council or others acting on behalf of the Council can be reported under this Confidential Reporting Code.

The Council has a commitment to creating an environment in which you can raise a concern without fear of victimisation, subsequent discrimination or disadvantage. Our commitment is re-inforced in the [Council's Anti-fraud and Corruption Policy](#). It aims to:

- Encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice.
- Provide avenues for you to raise those concerns and receive feedback on any action taken.
- Ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied.
- Reassure you that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made a disclosure in good faith.

Individuals are encouraged to address concerns directly to the Monitoring Officer in the first instance. The Monitoring Officer can be contacted in confidence on [monitoring.officer@north-herts.gov.uk](mailto:monitoring.officer@north-herts.gov.uk) or alternatively by calling (01462) 474561.

### **Anonymous Allegations**

This policy encourages you to put your name to your allegation whenever possible.

Concerns expressed anonymously are much less powerful and the Monitoring Officer may decide to investigate an anonymous complaint only after considering:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from other sources.



If you would prefer to raise a matter with an independent person, you can contact the Chairman of the Council's Standards Committee. The Chairman is an independent Member of the Council and his details can be obtained from Committee Services.

Although you are not expected to prove beyond doubt the truth of any allegation, you will need to demonstrate that there are reasonable grounds for your concern and provide sufficient detail to support the commencement of an investigation. Mere allegation is unlikely to be an adequate basis for any action to be taken.

### **How the Council Will Respond**

In order to protect individuals and those accused of misdeeds or possible malpractice, the Monitoring Officer will make initial enquiries to decide whether or not an investigation is warranted by the evidence provided and, if so, what form it should take. The Monitoring Officer's decision to proceed or not will be determined by whether or not it would be in the public interest to do so. The decision taken and the reasons for it will be formally recorded.

As appropriate, the matter raised may be:

- investigated by internal audit;
- referred to the Police;
- referred to the external auditor; or
- subject of an independent inquiry.

Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.

The outcomes of investigations carried out by internal audit or management will be reported back to the Monitoring Officer.

Within ten working days of a concern being received, the Monitoring Officer will write to you to;

- indicate how it is proposed to deal with the matter;
- give an estimate of how long it will take to provide a final response;
- tell you whether any initial enquiries have been made; and
- supply you with information on staff support mechanisms.

If the Monitoring Officer decides not to investigate, the letter will outline the reasons for this decision.

The amount of contact you have with the individuals investigating the issues raised will depend on the nature of the matter, the potential difficulties involved and the clarity of the information provided. Contact is, however, likely to be necessary in order to pursue the matter particularly if further detail or clarification is needed.

The Council will take steps to minimise any difficulties, which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the Council will arrange for you to receive advice about the procedure.



## **Confidentiality and Respect**

All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. At the appropriate time, however, you may need to come forward as a witness. You are reminded, however, that you have a duty to maintain the confidentiality of the matter under investigation.

Whilst every effort will be made to respect the requirements of the Human Rights Act Article 6, it may in some cases be necessary to disclose information to the Police, District Audit, the Standards Board or other outside agencies.

**TITLE OF REPORT: INSURANCE AND INDEMNITY ARRANGEMENTS FOR INDEPENDENT MEMBERS**

REPORT OF THE DEPUTY MONITORING OFFICER

**1. SUMMARY**

- 1.1 A report to consider insurance cover for co-opted independent members of the Standards Committee

**2. FORWARD PLAN**

- 2.1 This is not relevant to the Forward Plan.

**3. BACKGROUND**

- 3.1 During the course of a previous hearing the Monitoring Officer was asked to advise the independent members of the Standards Committee if they are indemnified for decisions made whilst acting in the course of the Council's business.

**4. ISSUES**

- 4.1 Members and officer have a statutory indemnity for any personal liability they may incur whilst carrying out the business of the authority. Section 265 of the Public Health Act 1875 states that

*“No matter or thing done...by any member...of by any officer of such authority or other person whomsoever acting under the direction of the authority shall if the matter or thing were done ...bona fide... subject them or any of them personally to any action liability claim or demand whatsoever...”*

- 4.2 There are a number of other minor statutes which offer similar protection relating to specific functions of the Council.

- 4.3 The Council's Insurance Officer has confirmed that the policy currently held offers an indemnity for 'any voluntary worker or any person co-opted to assist the Council to carry out its work.' The Insurance Officer has confirmed that this includes independent members of the Standards Committee, who are co-opted members of the Council.

**5. LEGAL IMPLICATIONS**

- 5.1 Individual members of local authorities are not personally liable for the actions of the Council as a body corporate. The view is sometimes expressed that if a Council expressly authorises an act which is beyond its powers (ultra vires) and the members who authorised it acted wilfully, knowing it to be unlawful, or maliciously, then personal liability may be incurred. Similarly members who act fraudulently will probably be personally liable for their acts.

5.2 However members, including co-opted members, acting in the ordinary course of business in good faith will be able to rely upon the indemnity and insurance arrangements put in place by the Council.

## **6. FINANCIAL AND RISK IMPLICATIONS**

6.1 None.

## **7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

7.1 None.

## **8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

8.1 None.

## **9. RECOMMENDATIONS**

9.1 That the Standards Committee note the arrangements for insurance and indemnity of their actions

9.2 That the independent members of the Standards Committee be advised on an annual basis that the insurance arrangements in place by the Council are sufficient to cover their participation in the governance arrangements of this Council.

## **10. REASONS FOR RECOMMENDATIONS**

10.1 To ensure that the independent members can continue to act in the best interests of the Council.

## **11. ALTERNATIVE OPTIONS CONSIDERED**

11.1 None.

## **12. APPENDICES**

Appendix 1 – Email from the Insurances Officer

## **13. CONTACT OFFICERS**

Kim Sawyer - Deputy Monitoring Officer ext 4561

## **14. BACKGROUND PAPERS**

Extract from insurance policy held by Council

<b>STANDARDS COMMITTEE</b> <b>16 SEPTEMBER 2008</b>
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<b>*PART 1 – PUBLIC DOCUMENT</b>	<b>AGENDA ITEM No.</b>  <b>8</b>
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**TITLE OF REPORT: THE PLANNING CODE OF GOOD PRACTICE**

REPORT OF THE DEPUTY MONITORING OFFICER

**1. SUMMARY**

A report to review and suggest amendments to the Planning Code of Good Practice.

**2. FORWARD PLAN**

This report is not relevant to the Forward Plan

**3. BACKGROUND**

3.1 The Planning Code of Good Practice has been part of the Constitution since its first adoption. It is not a statutory code of practice but was drafted by the Association of County Secretaries and Solicitors (ACSeS) to provide guidance to members dealing with planning applications where the Code of Conduct is often at its most active. The Planning Code is not prescribed and many authorities have adapted it to suit their authority.

3.2 In 2004 the Government embarked on a series of reforms to the planning system designed, amongst other things, to speed up the process for approval of applications, in particular applications for major developments. There followed the Barker 'Review of Housing Supply' which produced factual information about member involvement in the planning process.

3.3 This led to the Government commissioning a study into whether member involvement in the planning process had an impact on the speed of the process and the extent to which member decisions accorded with officer decision. This is referred to in this report as the Arup study.

**4. ISSUES**

4.1 The Arup study in Chapter 4 'Early member involvement' found that there was a considerable variation in the advice given to members by Monitoring Officers through the Planning Code of Good Practice. Some Council's encouraged members to meet with applicants prior to the planning application whilst others did not allow it at all.

- 4.2 One of the suggestions in the report was that perhaps a shift in attitude was required amongst Monitoring Officers who encouraged an 'over cautious approach' so that members could feel confident to allow a limited amount of pre-application involvement
- 4.3 This provoked the following response from ACSeS:  
**"Planning decisions are being challenged increasingly through judicial review proceedings. There are allegations that councillors are biased because of some prior involvement with one or other of the interested parties or have made some statement which shows that they have made up their minds on an application before hearing all the evidence. Councillors could also be accused of having breached their Council's Code of Conduct by incurring disrepute through apparent bias."**
- 4.4 What ACSeS are saying is that the Arup study had failed to take into account the public law issues of bias and pre-determination which stand outside of the Code of Conduct. Claims of bias and pre-determination are challenged through judicial review proceedings which may bring the validity of the planning decision into question and this potentially has more serious consequences for the Council.
- 4.5 Following this response DCLG and the LGA met together to agree a mutually accepted position on the advice to be given to Councillors. A recent paper entitled 'Positive Engagement – a Guide for Planning Councillors' was updated in July 2008 and endorsed by ACSeS, the Standards Board, the Planning Officers Society and the Planning Advisory Service. The Guide is attached at Appendix 1 to this report.
- 4.6 The Guide is very short and comprises a list of 'do's & don'ts'. It is generally reflective of matters within the Code of Conduct ('keep your register of interests up to date') and some good common sense ('inform officers of any approach made to you and seek advice'). What it does reinforce however is that bias and pre-determination are just as important for a planning member to consider as the Code of Conduct, but that this should not stop them from engaging in discussions with developers or their constituents about planning matters. Provided that members know the rules for engaging with these parties there should not be a problem.
- 4.7 In brief the rules are
- that members should always preface any discussions with disclaimers, keep a note of meetings and calls and make clear at the outset that discussions are not binding on the member or the planning committee. You must have and be seen to have an open mind at the point of making your decision.
  - recognise the distinction between giving advice on the process and negotiating on the application
  - recognise that you can lobby and campaign but that this will probably remove you from the decision making process.
- 4.8 One of the principle points that all parties are agreed upon is that members should only seek to engage in discussions prior to the planning application having been considered. Whilst this is very sensible advice where developers are involved (where pre-application discussions are normal), this is unlikely to be the case for householder applications. The observations made by Councillor Needham at the last Standards Committee in relation to householder applications were very useful. As a result it is proposed to propose a Code of Conduct which does not discourage members from engaging with their constituents after a householder application has been made but the same rules will still apply.

- 4.8 An amended NHDC Code of Good Practice is therefore attached at Appendix 2. This is much simplified version of the current Code of Good Practice. As a result of the Guide for Planning Councillors, ACSeS have agreed to look again at the model Code of Good Practice and it is likely that further amendments to the Code might be expected. These however can be dealt with as part of the annual Constitution Review in February – April 2009.

## **5. LEGAL IMPLICATIONS**

- 5.1 The legal issues are identified in the Planning Code of Good Practice attached.

## **6. FINANCIAL AND RISK IMPLICATIONS**

- 6.1 There is risk of legal challenge if members fail to appreciate the implications of not understanding the legal issues outlined in the Code of Good Practice.

## **7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

- 7.1 None.

## **8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 8.1 None.

## **9. RECOMMENDATIONS**

- 9.1 That members recommend the attached Code of Good Practice for adoption by Council

## **10. REASONS FOR RECOMMENDATIONS**

- 10.1 To minimise the risk of challenge to planning decisions

## **11. ALTERNATIVE OPTIONS CONSIDERED**

- 11.1 None.

## **12. APPENDICES**

Appendix 1 – Positive Engagement – A Guide for Planning Councillors  
Appendix 2 – Planning Code of Good Practice

## **13. CONTACT OFFICERS**

Kim Sawyer Corporate Legal Manager x4561

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# positive engagement

a guide for planning councillors  
updated version



'The engagement of local councillors as leaders and representatives of the community is vital in the delivery of positive outcomes from the planning process.'

**STANDARDS (16.9.08)**

# positive engagement

## a guide for planning councillors


A message from **Iain Wright MP Parliamentary Under Secretary of State, DCLG** and **Paul Bettison, Environment Board Chairman, LGA**.

There have been some considerable changes over the last few years in how the planning process is delivered within England with a move away from an often adversarial, reactive and conflict based system towards a more pro-active, inclusive and creative approach.

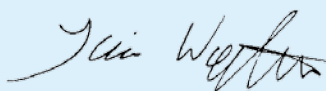
As a local councillor involved in planning matters, whether as a ward councillor representing your area's constituents as a councillor responsible for drawing up the spatial plan for your area, or as a councillor responsible for deciding upon application you have a crucial role to play in both making the planning system work and ensuring the best possible outcomes for your community for both now and in the future. The engagement of local councillors as leaders and representatives of the community is vital in the delivery of positive outcomes from the planning process.

However, concerns are sometimes expressed about the compatibility of councillors meeting developers and interest groups and then taking decisions on an impartial basis.

This leaflet is an updated version of the positive engagement for elected members launched in 2005. It is intended to summarise the principles that should be observed to enable you to both participate in and lead the system.'



Paul Bettison  
STANDARDS (16.9.08)



Iain Wright

In broad terms, the success of the planning system will depend on:

- establishing and taking forward a clear spatial vision for the area based on the sustainable community strategy
- effective dialogue between applicants, local authority, local people and other interests to help define and realise the vision
- ensuring that the spatial plan for an area embodies the aspirations of the community
- effective communication and ownership of policy between executive and planning committee
- the planning service being focused on outcomes
- early and effective community engagement in discussions on plans and development proposals, in accordance with the authority's Statement of Community Involvement.
- upholding the ACSeS Model Members Planning Code

As a community leader and local representative you will want to be involved in relevant public meetings, pre-application discussions and policy production. However, this may create some risks for councillors, particularly those who are members of the planning committee, and for the integrity of the decision making process. You should familiarise yourself with guidance found in the LGA guide *Probity in Planning (update)* – the role of councillors and officers, guidance from the Standards Board for England which provides an overview of the Model Code of Conduct which applies to all members and co-opted members of local authorities and the ACSeS Model Members Planning Code. (see the weblinks at the end of this leaflet).

Councillors can involve themselves in discussions with developers, their constituents and others about planning matters. However, difficulties can be avoided if you follow these useful general hints:

## do

- ✓ always involve officers and structure discussions with developers
- ✓ inform officers about any approaches made to you and seek advice
- ✓ familiarise yourself with your authority's Code of Conduct and follow it when you are representing your authority
- ✓ keep your register of interests up to date
- ✓ follow your local authority's planning code
- ✓ be aware of what predisposition, predetermination and bias mean in your role – ask your monitoring or planning officer and refer to the Standards Board Occasional Paper on Predetermination, Predisposition and Bias if unsure
- ✓ be prepared to hold discussions with an applicant and your officers before a planning application is made, not just after it has been submitted to your authority
- ✓ preface any discussion with disclaimers; keep a note of meetings and calls; and make clear at the outset that discussions are not binding
- ✓ be aware of what personal and prejudicial interests are – refer to your monitoring officer and the Standards Board's website if you are unsure
- ✓ recognise the distinction between giving advice and engaging in negotiation and when this is appropriate in your role
- ✓ stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning
- ✓ use meetings to show leadership and vision
- ✓ encourage positive outcomes
- ✓ ask for training from your authority in probity matters
- ✓ recognise that you can lobby and campaign but that this may remove you from the decision making process
- ✓ feed in both your own and your local community's concerns and issues
- ✓ be aware that you can engage in discussions but you must have and be seen to have an open mind at the point of decision making

# do not

- X use your position improperly for personal gain or to advantage your friends or close associates
- X meet developers alone or put yourself in a position where you appear to favour a person, company or group – even a ‘friendly’ private discussion with a developer could cause others to mistrust your impartiality
- X attend meetings or be involved in decision-making where you have a prejudicial interest under the Model Code of Conduct – except when speaking when the general public are also allowed to do so
- X accept gifts or hospitality
- X prejudge or be seen to prejudge an issue if you want to be a decision maker on a proposal
- X seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application
- X compromise the impartiality of people who work for your authority
- X invent local guides on probity in planning which are incompatible with current guidance – look for commonly held and common sense parallels in other authorities or the principles set out in national guidance

This simple guide has been produced by a number of organisations who have shared interest in maximising the effectiveness of councillor involvement in planning.

They include: the Local Government Association, Association of Council Secretaries and Solicitors, the Standards Board for England, Planning Advisory Service and The Department of Communities and Local Government and Planning Officers Society.

# weblinks

## **The Association of Council Secretaries and Solicitors**

Model Members Planning Code  
[www.acses.org.uk/documents/category/4](http://www.acses.org.uk/documents/category/4)

## **Department of Communities and Local Government**

[www.communities.gov.uk](http://www.communities.gov.uk)

## **Local Government Association**

Probity in planning (update): the role of councillors and officers  
[www.lga.gov.uk/planning](http://www.lga.gov.uk/planning)

*A LGA update to the highly successful original guidance (published in 1997) on preparing a local code of good practice for those dealing with planning matters will be available shortly*

## **National Planning Forum**

Pre-application advice for town and country planning:  
National Planning Forum good practice note 2 one of a series of 'inspiring planning' good practice notes  
[www.natplanforum.org.uk/good%20practice.html](http://www.natplanforum.org.uk/good%20practice.html)

## **Planning Advisory Service**

Member development modules  
[www.pas.gov.uk/membertraining](http://www.pas.gov.uk/membertraining)

## **Planning Officers Society**

Members and Planning  
[www.planningofficers.org.uk/article.cp/articleid/176](http://www.planningofficers.org.uk/article.cp/articleid/176)

## **The Standards Board for England**

Guidance on the Model Code of Conduct, including personal and prejudicial interests  
[www.standardsboard.gov.uk/TheCodeofConduct/Guidance/](http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/)

Fact sheets and Frequently Asked Questions  
[www.standardsboard.gov.uk/TheCodeofConduct/Factsheetsandfrequentlyaskedquestions/](http://www.standardsboard.gov.uk/TheCodeofConduct/Factsheetsandfrequentlyaskedquestions/)

Paper on predisposition, predetermination or bias, and the Code  
[www.standardsboard.gov.uk/Publications/OccasionalPaper/](http://www.standardsboard.gov.uk/Publications/OccasionalPaper/)

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## APPENDIX 2

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### NORTH HERTFORDSHIRE DISTRICT COUNCIL'S PLANNING CODE OF GOOD PRACTICE

*When should I use this Code?*

This Code applies to members

- involved in making decisions on planning applications,
- involved in drawing up documents for the local development framework
- representing constituents views to the Council

This Code applies at meetings of the Planning Control Committee & to consultative meetings with the public

*What is it intended to cover?*

Your role as a Member of the Planning Authority is to make decisions on planning policy and planning applications openly, impartially, with sound judgement and for justifiable reasons.

Your role as a Ward Member is to represent and respond to the views of your Ward residents.

This Code will guide you to take appropriate action when carrying out those roles. It ensures that you act ethically and with good governance.

*What is it not intended to cover?*

This Code cannot replace training on planning law. Training for members of the Planning Control Committee is mandatory. You should also attend any other specialist training provided.

No advice is given in this Code on planning issues (such as material considerations)

## **Introduction**

This guidance offers practical advice on how members involved in planning issues can carry out their duties in a way which takes proper account of the special, quasi-judicial responsibilities which apply to planning issues. Because of the overriding obligation to make impartial decisions, it is inevitable that there are some constraints on what you can say or do.

The guidance is based on four principles:

1. *That land suitable for development is in short supply*
2. *That any development is likely to have a significant impact on the community in, or near, which it takes place.*
3. *That all planning decisions must be made fairly in the public interest. This means you should:*
  - *approach planning applications with an open mind and in accordance with the law.*
  - *ensure that information you have about an application is available to all parties involved.*
4. *That you can be held to account legally and politically for your decisions.*

## **Relationship with the Members' Code of Conduct**

You should consider the Members' Code of Conduct first and then this guidance, which explains and supplements the Members' Code.

## **Risk awareness**

The legal advice in this Code is intended to make you risk aware not risk averse. If you need to seek legal advice please do so. A Monitoring Officer and Deputy Monitoring Officer are available to advise on Code issues. A legal officer attends every Planning Control Committee to offer advice on planning issues and the Code. S/he is available prior to each meeting to discuss issues with you.

There is a risk of proceedings on the legality or maladministration of any planning decision and risk of you being named in a report made to the Standards Committee for breach of the Code of Conduct, but because of training that risk is fairly small. Following this Code will help to keep that risk at a minimum.

## SECTION 1: **The two main issues**

Whilst the whole of the Code of Conduct is relevant to your role as a member, there are two main legal issues that you must have a particular understanding of when dealing with planning matters

- (1) Declaring personal and prejudicial interests
- (2) Pre-determination and bias

### **Personal and prejudicial interests**

These are outlined in the Members Code of Conduct which you received when you signed your declaration of office.

Personal interests are dealt with in paragraph 8 of the Code and prejudicial interests in paragraph 10. The Code is available on the Standards Board web-site and on NHDC's web-site in the 'Governance' section.

The Standards Board website also contains guidance for members to help them interpret the Code.

If you have a personal interest this must be declared at any meeting that you attend in an official capacity. If you have a prejudicial interest you must also declare this and may be entitled to address the meeting but must leave before the debate and vote on the issue.

This applies to any member regardless of whether they are a member of the Planning Control Committee or not.

If you act in a personal capacity, not as a Councillor, then the Code will not always apply to you. For example, if you wanted to make written representations about your neighbour's planning application you could do this without having to declare an interest provided your representations are only made in writing. If however you act in an official capacity or attend any meeting of the Council to put your views forward in person the Code will again apply to you.

### **Pre-determination and bias**

This is based on the rules of natural justice. It is never fair to the applicant if you appear to have made up your mind on any application before you have heard all the representations. You must always keep an open mind.

Having an open mind means:

- you reserve your judgement and your independence to make up your mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish and,
- you hear all of the relevant information; and
- you do not commit yourself as to how you or others may vote

It is perfectly acceptable to have a pre-disposition to a particular view, i.e a tendency towards a particular opinion provided that you have not committed yourself

unequivocally to that opinion prior to any formal consideration of the matter. Your own political views or the Council's Corporate Plan may encourage an opinion on a particular matter. This perfectly acceptable and provided that you do not make unequivocal statements about how you will vote on an issue prior to hearing the matter it should not prevent you from deciding a planning issue.

Ask yourself before consideration of any matter whether you have an open mind.

Remember that it is not necessary to actually be biased towards a particular view, the appearance of being biased could lead to proceedings against the Council for an unlawful decision being made. As for prejudicial interests, you need to ask yourself what the public perception of you conduct would be.

Further information is available on the Standards Board website.

## SECTION 2: GUIDELINES

This section contains guidelines on how the legal issues may arise whilst carrying out your role as a member.

### **Attending Planning Control Committee**

#### *Personal & prejudicial interests*

You must disclose the existence and nature of any personal and prejudicial interest under the Code of Conduct at any relevant meeting. You should aim to make any disclosure at the beginning of the item or when it becomes apparent during discussion.

Where your interest is prejudicial you should consider whether an exemption applies. If it does, you must declare a personal interest and may participate in the item. (The exemptions are set out at paragraph 10.2 c of the Code).

If no exemption applies you may make representations, answer questions or give evidence on an item at a meeting if you register to speak in the same way as a member of the public. Once you have made these representations you must withdraw from the room until the item is concluded.

#### *Pre-determination*

You need to come to a meeting with an open mind and demonstrate that you are open-minded. Making up your mind, or appearing to do so, for example by allying yourself to a lobby group or interest group on any planning matter before the Committee considers it and before you have heard the officer's presentation and all the evidence and arguments will mean you may be seen to have fettered your discretion.

Where the Council is the landowner, developer or applicant and you act as, or could be thought to be the chief advocate for the proposal, you are likely to be perceived as partial and unable to determine the application on its merits

You *can* consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of a town or parish Council, for example, or both a District and County Councillor), provided that you do not have a prejudicial interest, you have an open mind and you disclose your personal interest regarding membership of the consultee body when the matter comes before the Council

If you could be seen to have committed yourself, you must decide whether you wish to address the Committee or not. If you want to represent the views of your ward you should advise the Proper Officer or Chairman that you wish to speak in this capacity before commencement of the item and remove yourself from the Members' seating area for the duration of that item. If you do not wish to speak you explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or are reserving the right to judge) the matter elsewhere, so that this may be recorded in the minutes. You do not then have to withdraw (unless you also have a prejudicial interest) but you may prefer to do so for the sake of appearances. You should sit in the public area if you do remain.

If you have not committed yourself there is nothing which prevents you speaking at the meeting as a Ward Member, provided you explain your actions at the start of the

meeting/item and make it clear that, having expressed the opinion or Ward view, you will make up your own mind having heard all the facts and listened to the debate.

Don't allow members of the public to communicate with you in any form during the Committee's proceedings, unless they have complied with the public speaking procedure, as this may give the appearance of bias.

You should reach your decision at the Committee meeting on the application only after due consideration of all of the information presented to the Committee during consideration of the item at the meeting. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, ask for more. If necessary, ask the Committee to defer the application until you feel you know enough about it. In these circumstances, you should ask for the reasons for the Committee's decision to defer any proposal to be recorded.

You should not take part in the meeting's discussion on a proposal or vote unless you have been present to hear the entire debate, including the officer's introduction and any representations from the public.

### **Prejudicial interests for members not on Planning Control Committee**

If you have a prejudicial interest you should not get involved in the processing of an application or consideration of a planning policy or planning policy proposal.

Be aware that the public could think you are receiving preferential treatment because of your position as a Member if you discuss an application with officers in which you have a personal and prejudicial interest when other members of the public would not have the opportunity to do so.

You are not prevented from seeking to explain and justify a proposal in which you have a prejudicial interest to an appropriate officer in writing, in the way a private individual would.

Where you wish to make a planning application, either for yourself or on behalf of someone else, remember to notify the Monitoring Officer in writing no later than submission of the application. In the interests of openness, these applications will always be reported to the Committee as main items. They will not be dealt with by officers under delegated powers.

### **Lobbying of and by Councillors**

You should explain to those lobbying or attempting to lobby you that, while you can listen to them, you cannot give them your view because it could mean you would be unable to take part in Committee discussion or vote, or the decision of the committee may be seen to be compromised

You should copy and pass on any lobbying material, such as correspondence or leaflets you receive to the Planning Control and Conservation Manager

You should not attempt to persuade fellow Members how they should decide to vote in advance of the meeting at which any planning decision is to be taken.

Avoid accepting gifts or hospitality wherever possible. If a degree of hospitality is unavoidable, remember to register the details of any gift or hospitality offered or accepted in your Register of Financial Interests. Remember this interest must be

declared where relevant for the next 3 years.

Remember to tell the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality). The Monitoring Officer will advise the appropriate officers to follow the matter up.

You are free to join general interest groups which reflect your areas of interest and which concentrate on issues beyond specific planning proposals, such as the Victorian Society, CPRE, Ramblers' Association or a local civic society however you should disclose a personal interest where an organisation to which you belong has made representations on a particular proposal. If you have vocalised or helped formulate the groups views, you are likely to be considered biased and should withdraw from the matter for this reason.

If you become a member of an organisation whose primary purpose is to lobby to promote or oppose planning proposals, it is likely that you will have a prejudicial interest and will only be able to take limited role in expressing an opinion on the proposals

### **Visits to the Site of a Planning Application**

A site visit involves entering the site which is the subject of an application. Merely passing by the site and having a casual look is not normally regarded as a visit.

You are likely to be asked to attend several small householder application sites by your constituents. When dealing with householder applications you may be invited to discuss the application with the applicant or neighbouring constituents. Provided that you do not commit yourself to any particular point of view, keep an open mind and advise that you have also to listen to the officer's views, keep notes of the meeting where possible and make clear that any discussions are not binding you can involve yourself in such visits with your constituents.

When dealing with developers you should always try to involve officers in the discussions. Ask the Planning Control and Conservation Manager to structure any discussions or site visits for major applications.

Failing that you should report any significant contact with a developer and explain the nature and purpose of the contacts and your involvement in them. A note of your report can be kept on the planning file.

Request a site visit only if you feel it is strictly necessary. Such reasons should include one or more of these grounds:

- particular site factors are significant in terms of the weight attached to them relative to other factors and the difficulty of assessing them in the absence of a site inspection; or
- there are significant policy or precedent implications and specific site factors need to be carefully addressed.

### **Officers**

You should not seek to persuade officers to put forward a particular recommendation. This does not prevent you from asking questions or giving views to the Head of Planning and Building Control or other managers. Answers to questions or your views may be reflected in any report to the Committee.

Please remember that officers involved in processing and determining planning matters have an overriding obligation of professional integrity and independence. Inevitably, that means their professional judgements may sometimes be at odds with the views, opinions or decision of the Committee or its Members.

### **Officer Reports**

All applications and planning policy issues submitted to a Committee for decision will have a full written report from officers including the applicable policies of the Development Plan, a reasoned assessment of the proposal, relevant planning considerations and a justified recommendation.

Any oral presentation raising significant new matters and updates by officers to a Committee will be minuted.

In circumstances where there is a material change to a recommendation in the published report, this will be made available in written form as soon as practicable before the meeting.

All reports on planning applications will omit reference to financial implications as this is not normally a material planning consideration.

Where an application is recommended for approval a summary of reasons for approval will be given in the report. The Committee must indicate if it approves the application for the reasons stated or otherwise give the material planning grounds on which it adds to or removes any of the reasons. All reasons for approval will be minuted.

Where an application is refused in accordance with the officer's recommendation the reasons will be set out in the report along with any additional reasons expressed by the Committee. Any such additions must be clear, given at the time, and must be relevant in material planning terms.

Any application which is refused contrary to officer recommendations must be supported by clear and relevant reasons for refusal taking into account only relevant material planning considerations. All reasons for refusal of applications will be minuted in full. You may have to justify the reasons for refusal at an inquiry.

### **Planning Obligations**

Where appropriate, officers will negotiate with developers about securing planning obligations through legal agreements.

Reports to Committees should include the 'Heads of Terms' for an Agreement and such other information as appropriate to enable the Committee to decide whether to grant permission subject to the satisfactory completion of such an Agreement, in order to ensure that all relevant matters have been considered.

Copies of any concluded legal agreements will be available for public inspection at the Council Offices in conjunction with the statutory planning register.