

Date: 4 March 2011  
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To: Members of the Standards Committee  
(Cllr P Bowden, Mr E Butt, Cllr G P Chamberlain, Mr R Davison,  
Cllr G K Liverton, Cllr Mrs A E Liverton, Cllr D Mason, Cllr S Pollentine  
Cllr C Richards, Ms A Willan)

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Monitoring Officer  
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Standards Committee  
Tuesday 15 March 2011 at 10.00 am  
Committee Room

**Members of the public are welcome to attend this meeting.**

- A period of 15 minutes has been provided at the beginning of the meeting to allow members of the public to raise questions.
- In addition, the public may speak on items listed on the agenda. After a report has been introduced, the Chairman of the Committee will ask if any member of the public would like to speak in respect of the matter and/or ask questions.
- All individual contributions will be limited to a period of 3 minutes – where there is an interest group of objectors or supporters, a spokesperson should be appointed to speak on behalf of the group.
- The public is advised that the Chairman has the right and discretion to control questions to avoid disruption, repetition and to make best use of the meeting time.

AGENDA

**Part A**

	<b>Page/s</b>
1 <b>Public question time</b> – standard agenda item (15 minutes) Members of the public are invited to put questions to the Committee through the Chairman.	
2 To receive any apologies for absence	
3 To confirm the minutes of the meeting held on 2 November 2010	3 - 5
4 To receive any declarations of interests relating to items on the agenda.	
5 To agree any items to be dealt with after the public (including the press) have been excluded. There are no items which Officers recommend should be dealt with in this way.	

- |   |   |   |         |
|---|---|---|---------|
| 6 | To consider any items which in the opinion of the Chairman, should be dealt with as matters of urgency because of special circumstances. (Note: Such circumstances need to be identified in the minutes. If you wish to raise a matter under this item, please do so in advance of the meeting by notifying the Chief Executive who will then consult with the Chairman). |   |         |
| 7 | 2010/11 Annual Report to the Standards Committee  | Monitoring Officer  | 6 – 33  |
| 8 | To consider the Member Development Programme for any suggestions of improvement and/or additions  | Head of Legal,<br>Licensing and<br>Democratic<br>Services | 34 – 42 |

Members remember!

- ❑ You must declare any personal or prejudicial interests in an item whenever it becomes apparent that you have an interest in the business being considered.
- ❑ Make sure you say the reason for your interest as this has to be included in the minutes.
- ❑ If your interest is prejudicial you must leave the room unless you have obtained a dispensation from the Council's Standards Committee or where Para 12(2) of the Code can be applied. Para 12(2) allows a Member with a prejudicial interest to stay for the purpose of making representations, answering questions or giving evidence relating to the business but only at meetings where the public are also allowed to make representations. If you do remain, you must not exercise decision-making functions or seek to improperly influence the decision; you must leave the meeting room once you have made your representation.
- ❑ You also need to declare when you are subject to the party whip before the matter is discussed.

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- From Exeter – 52A, 52B**
- From Honiton – 52B**
- From Seaton – 52A**
- From Ottery St Mary – 379, 387**

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# **EAST DEVON DISTRICT COUNCIL**

## **Minutes of a Meeting of the Standards Committee held at Knowle, Sidmouth on 2 November 2010**

<b>Present:</b>	Mr E Butt	Independent Chairman
	Cllr P Bowden	EDDC Councillor
	Cllr G P Chamberlain	EDDC Councillor
	Cllr David Mason	Parish Council representative
	Cllr S P Pollentine	Parish Council representative
	Cllr C Richards	Parish Council representative
	Ms A Willan	Independent Member
<b>Officers:</b>	Christopher Holland	Democratic Services Officer
	Denise Lyon	Monitoring Officer
	Rachel Pocock	Head of Legal, Licensing and Democratic Services
<b>Apology:</b>	Mr R Davison	Independent Member
	Cllr Mrs A E Liverton	EDDC Councillor
	Cllr G K Liverton	Chairman, EDDC Council

The meeting started at 10.00 am and ended at 10.55 am

### **\*8 Welcome to Cllr David Mason**

The Chairman welcomed Councillor David Mason of Rockbeare Parish Council to his first meeting of the Standards Committee as a Parish Council representative.

### **\*9 Minutes**

The minutes of the meeting of the Standards Committee held on 6 July were confirmed and signed as a true record.

### **\*10 Changes to Standards Regime**

The Monitoring Officer, Denise Lyon, updated Members on the latest developments from the Coalition Government regarding the imminent abolishment of Standards for England. It was noted that whilst Standards for England no longer required a quarterly report to be submitted to them on the cases being dealt with by the Council, it was considered good practice to continue to provide the Committee with that information.

It was noted that although the Coalition Government would soon be releasing more information on how the Standards Regime would work in the future, the legislation had not altered and cases would continue to be dealt with under the existing rules.

Members of the Committee hoped that whatever new legislation was presented would continue to support the independence and transparency of the Standards Committee.

**RESOLVED** that the report be noted.

**\*11 Update on progress of the Standards Committee Working Group**

The Monitoring Officer, Denise Lyon, presented an update on the actions agreed on the recommendations of the Working Group. She added that the work in raising the profile of the Committee was continuing and the Head of ICT and Organisation Development had been made aware of the need to include information where possible. The Council's Communications team was ready to highlight the work of the Committee whenever the opportunity arose.

The Chairman reported that he had attended meetings of Colaton Raleigh and Newton Poppleford Parish Councils to give a short presentation on the work of the Standards Committee and to remind members of their obligations surrounding the Code of Conduct. He also commented that he would be attending a meeting of Whimple Parish Council in the near future.

It was noted that EDDC was holding an 'information day' for potential Councillors for both District and Parish Councils. It was suggested that the Chairman could attend though there was clearly a need to balance the monitoring regime with the need to attract new Members.

**RESOLVED** that the progress of the Working Group be noted.

**\*12 Update on standards complaints July – October 2010**

Members considered the complaints received since the July committee, with an update on the progress of the outstanding complaints. It was noted that all outstanding cases but one newly received review were being dealt with following the main Committee meeting.

**RESOLVED** that the progress on complaints received be noted.

**\*13 Member Training and Development Update**

The Head of Legal Licensing and Democratic Services, Rachel Pocock reported that the Council had been accredited with the Member Development Charter Mark for good practice regarding Member involvement and leadership.

It was noted that Local Government Election in East Devon for District and Town/parish Councils would take place on the same day as the proposed referendum on voting reform on Thursday 5 May 2010. It was hoped that Members of the District and Parish Councils would lead the various welcome days and programmes being developed for newly elected Councillors. It was envisaged and supported by the Committee that both the Planning system and the Standards regime would feature in the welcome programmes.

**RESOLVED** that the report be noted.

**\*14 New / Amended Legislation**

The Head of Legal Licensing and Democratic Services, Rachel Pocock reported that the new Localism Bill and accompanying detail was expected soon and would affect the way Councils and Standards Committees worked with the abolishment of Standards for England.

It was noted that although the Coalition Government was committed to cut the 'inspection burden' the monitoring functions of both the Standards and Audit and Government Committees would have to continue.

**RESOLVED** that the report be noted.

\*15 **Forward Plan**

Members noted the forward plan, with the next meeting of the Standards Committee scheduled for 25 January 2010 at 10am. It was agreed however that unless there was sufficient business to discuss this meeting slot may be better used for the Assessment and Hearings Sub Committee. Members would be informed in due course.

Chairman ..... Date.....

## Agenda Item 7

Standards Committee

15 March 2011

MO/DL



### 2010/11 Annual Report to the Standards Committee

#### Summary

The purpose of this annual report is to advise Members about what has happened in this financial year in relation to the Standards Committee and its work.

#### Recommendation

**That the Standards Committee recommends that the Council considers and notes the Monitoring Officer's Annual Report for 2010-2011**

#### a) Reasons for Recommendation

It is considered best practice for the Monitoring Officer to produce an annual report on her duties and role throughout the year. The report is necessary to present a summary to the Standards Committee and to Council of the Monitoring Officer's duties for the financial year 2010 to 2011. Whilst there is no legal requirement for such a report it is considered good practice.

#### b) Alternative Options

Members can decide they don't need this report.

#### c) Risk Considerations

None.

#### d) Policy and Budgetary Considerations

Members will be aware of the increasingly tight budget situation and the proposals in the Localism Bill to abolish the standards regime (see Appendix A ). At this point, this is just for information and there will be a further report on how this may impact the Standards Committee.

#### e) Date for Review of Decision

N/A

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### 1. Main body of the report

1.1. To date, every Council had to have a Standards Committee and every councillor (including co-opted members and parish councillors) had to comply with the Code of Conduct

- 1.2. The EDDC Standards Committee was set up in 2002 under the Local Government Act 2000. The overall purpose of the Standards Committee is to promote and maintain high standards of conduct throughout the District Council and the Parish and Town Councils within East Devon.
- 1.3. Under the Local Government and Housing Act 1989, all Councils have a duty to appoint a Monitoring Officer to ensure the lawfulness and fairness of Council decision-making.
- 1.4. The Monitoring Officer is responsible for advising the Council on the legality of its decisions, and on the conduct of Councillors under the Local Government Act 2000.
- 1.5. The proposed Localism Bill 2010 - 2011 contains provisions relating to councils that include:
  - giving councils a general power of competence
  - allowing councils to choose to return to the committee system of governance and allowing for referendums for elected mayors in certain authorities
  - abolishing the Standards Board regime and the model code of conduct, and introducing local accountability and a criminal offence of deliberate failure to declare a personal interest in a matter
- 1.6. The Bill was presented to Parliament on 13 December 2010. On 17 January 2011 the House of Commons debated the main principles of the Bill. The Commons decided that the Bill should be given its Second Reading and sent it to a Public Bill Committee for scrutiny. The Localism Bill Committee is now accepting written evidence. It heard oral evidence on Tuesday 25 January on the first sitting and second sitting and on Thursday 27 January on the third sitting and fourth sitting.

## **2. The role, function and membership of the Standards Committee and its sub-committees**

- I. promoting and maintaining high standards of conduct by Councillors, co-opted members and Council officers
- II. considering reports referred to the Committee by ethical standards officers or the monitoring officer and making recommendations concerning the governance and ethical standards of the Council
- III. Where necessary to conduct hearings into allegations of breach of the Code of Conduct and interview officers members and others as required
- IV. assisting the Councillors and any co-opted members to observe the Councils' Code of Conduct for members
- V. advising the Council on the adoption or revision of the Councils' Code of Conduct for members; a Code for officers, and any related codes or protocols
- VI. monitoring the operation of the Councils' Code of Conduct for members
- VII. advising, training or arranging to train Councillors on matters relating to the Councils' Code of Conduct for members
- VIII. To the extent allowed by the law granting dispensations to Councillors from requirements relating to interests set out in the Councils' Code of Conduct for members.

- IX. Referring appropriate cases to the First Tier Tribunal (Local Government Standards in England
- X. the exercise of the above in relation to the parish councils wholly or mainly in its area and the members of those parish councils.
- XI. to appoint sub-committees to undertake these functions

### **3. Monitoring Officer functions**

#### **3.1. Support to the Standards Committee**

The Monitoring Officer, ably assisted by the Deputy Monitoring Officer, is the Lead Officer for the Standards Committee assisting the Committee in its role of promoting and maintaining high standards of the conduct of councillors.

The Standards Committee has met twice a year but in February 2010 the Standards Committee Working Party recommended that the Standards Committee should be meet quarterly .

The new Local Assessment rules came in to force in May 2008 whereby all complaints of councillor misconduct must be referred to the local Standards Committee for consideration. This resulted in us setting up two sub-committees:

#### **3.2. Standards Assessment and Hearings Sub-Committee**

The sub-committee set up by the Standards Committee to deal with the initial assessment of complaints of misconduct and Hearings following an investigation.

#### **3.3. Standards Review Sub-Committee**

The sub-committee set up by the Standards Committee to deal with the review of initial assessments of complaints.

The purpose of an assessment decision (or review) is simply to decide whether any action should be taken on the complaint. The Assessment and Review Sub-committees make no findings of fact.

The Assessment and Hearings sub-committee has met 9 times to consider 20 allegations of misconduct and once to consider a request for dispensation. The Review sub-committee has met 10 times to carry out a review. Appendix B outlines all cases where decisions have been taken in 2010-11. Appendix C gives members complaint information in chart format.

The Monitoring Officer must carry out investigations (or appoint an Investigating Officer) into matters which have been referred for local investigation by the Assessment sub-committee.

### **4. Membership and Appointments to the Standards Committee**

- 4.1. Last year, Committee agreed that Independent members and Parish members appointments will normally be for a term of four years and may be extended by the Council for up to a further four years.



## 4.2. Standards Committee membership (16 March 2010 meeting)

The Monitoring Officer advised that the Committee's Independent Chairman, Ted Butt and Parish Council representative, Simon Pollentine, were coming to the end of their second 3-year term of office. This Council currently appointed for an initial 3-year term with the option for a second term if all parties were in agreement. Guidance now issued from the Standards Board indicated that Councils could appoint independent/parish council representatives for two 4-year terms.

The Chairman and Councillor Pollentine advised that they would be willing for their terms of office to be extended. The Committee asked the Monitoring Officer to progress this arrangement, which would require Council approval.

**RESOLVED** that the Monitoring Officer ask the Head of Legal, Licensing and Democratic Services to draft an amendment to the Council's Constitution, in line with Standards Board guidance, to extend the length of service of Independent and Local Parish representatives on the Standards Committee to two 4-year terms.

(The amendment to be referred to the annual meeting of the Council for approval).

4.3. Nominations for a Parish representative were sought from all the Parish and Town councils within the District of East Devon following the resignation of a Parish representative in December 2009. Cllr D Mason was appointed at the July 2010 full council.

4.4. The Standards committee members for 2010/2011 were:

<b>Independent members</b>	Mr Ted Butt - Chairman	May 2004 6 yrs
	Mr Ray Davison	May 2008 2 yrs
	Ms Alison Willan	May 2008 2 yrs
<b>Parish representatives</b>	Mr S Pollentine	May 2004 6 yrs
	Mr Courtney Richards	May 2008 2 yrs
	Mrs Katherine Tomkins	May 2008 – (Resigned Dec '09)
	Mr David Mason	July 2010
<b>EDDC members</b>	Cllr Chamberlain	May 2007
	Cllr G Liverton	May 2007
	Cllr Mrs A Liverton	May 2007
	Cllr P Bowden	May 2007

4.5. District members are appointed every four years at the Council's annual meeting in May.

## 5. Relevant new legislation, guidance or rules

### 5.1. Abolition of the Standards For England regime

<http://www.communities.gov.uk/documents/localgovernment/pdf/1785879.pdf>

### 5.2. Local Government Association

Maintaining high ethical standards in Local Government (Appendix D)

## 6. Complaints received during the year

### 6.1. Table of complaints

See Appendix B

## 7. Applications for dispensations

7.1. Members of Dalwood Parish Council submitted a request for a dispensation to speak and vote on matters relating to Dalwood Community Shop. The request was made because six of the seven Members of the Parish Council were shareholders of the shop and were proposing to apply for planning permission in relation to the shop. The application was refused as the Sub Committee felt that it would be inappropriate to grant a dispensation to a member who has an interest arising as a result of their personal financial responsibility.

7.2. Advice for Budleigh Salterton Town Council

## 8. Training

8.1. The Monitoring Officer is required to support the Standards Committee in its duty regarding training for both district councillors, co-opted members and parish/town councillors.

8.2. The Chairman of the Standards Committee attended meetings at Colaton Raleigh Parish Council, Newton Poppleford Parish Council and Whimple Parish Council to give a short presentation on the work of the Standards Committee.

Date	Type of training	
14/01/10	Chairmanship training – invitations to all Chairmen and Vice Chairmen of EDDC committees, including the Housing Review Board	External trainer
29/01/10	Standards News <a href="http://www.eastdevon.gov.uk/knowledge_290110_issue_35.pdf">http://www.eastdevon.gov.uk/knowledge_290110_issue_35.pdf</a> (Standing Orders and Dispensations)	The Knowledge 29/01/10
27/04/10	Code of Conduct training for towns and parishes	Internal training
07/05/10	Councillors Guide produced by I&Dea <a href="http://www.eastdevon.gov.uk/knowledge_070510.pdf">http://www.eastdevon.gov.uk/knowledge_070510.pdf</a>	The Knowledge 07/05/10
10/09/10	Standards Board News, The Future of Standards for England and the Standards Framework <a href="http://www.eastdevon.gov.uk/knowledge_10_september_2010_issue_16.pdf">http://www.eastdevon.gov.uk/knowledge_10_september_2010_issue_16.pdf</a>	The Knowledge 10/09/10
24/01/11	Code of Conduct training for Woodbury, Lympstone, Clyst St George, Farringdon, Colaton Raleigh parish councils	Rachel Pocock

## 9. Advice, policy and procedures

### 9.1. Providing advice on standards matters

The Monitoring Officer is statutorily required to provide advice to parish councils as well as the District Council on all standards matters. The Monitoring Officer and Deputy Monitoring Officer have provided advice by personal appointment, telephone and email/letter on a wide range of standards matters, primarily relating to declaring interests and the interpretation of the Code of Conduct. Advice has also included governance issues associated with contentious planning applications at parish council level.

9.2. Chardstock Parish Council sought advice on restructuring their Parish Council.

9.3. Both the Monitoring Officer and Deputy Monitoring Officer have provided individual and detailed advice to Town Councils who have struggled at various times throughout the year.

## 10. Ombudsman complaints

10.1. This report was presented to the Executive Board 1 December 2010.

[http://www.eastdevon.gov.uk/eb\\_011210\\_item13app.pdf](http://www.eastdevon.gov.uk/eb_011210_item13app.pdf)

[http://www.eastdevon.gov.uk/eb\\_011210\\_item13.pdf](http://www.eastdevon.gov.uk/eb_011210_item13.pdf)

## 11. Budget

Standards work is incorporated in the work of staff within the establishment apart from some investigatory work and occasional external training. These extra costs are:

- Outsourcing fixed cost for LSB27 and LSB29 investigations £4500.00
- Outsourcing fixed cost for LSB36 investigation £3500.00

## 12. Forward Plan

June committee	<ol style="list-style-type: none"><li>1. Election of Chairman</li><li>2. New or amended legislation update</li><li>3. Member training and development update</li><li>4. Complaints update</li><li>5. Forward Plan</li></ol>
November committee	<ol style="list-style-type: none"><li>1. Complaints update</li><li>2. Member training and development update</li><li>3. Ombudsman's annual letter</li><li>4. New or amended legislation update</li><li>5. Forward plan</li></ol>
January committee	<ol style="list-style-type: none"><li>1. New or amended legislation update</li><li>2. Member training and development update</li><li>3. Complaints update</li><li>4. Forward Plan</li></ol>

These are the main items, but there may be other matters arising through the year that members want to include too.

## Background Papers

- ❑ The Council's Constitution (May 2008)
  - ❑ Member Code of Conduct (May 2007)
  - ❑ Standards for England – Guidance document on Dispensations and Bulletin 44
  - ❑ The Local Government Ombudsman's Annual Review for the year ended 31 March 2010
  - ❑ Appendix A  
Localism Bill
  - ❑ Appendix B  
Table of complaints
  - ❑ Appendix C  
Complaint information
  - ❑ Appendix D  
Maintaining High Ethical Standards in Local government
- 

Denise Lyon  
Deputy Chief Executive and Monitoring Officer

Standards Committee  
15 March 2011



Dr. Robert Chilton

**Bob Neill MP**  
*Parliamentary Under Secretary of State*

**Department for Communities and Local  
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A handwritten signature in black ink, appearing to read "Bob Neill".

15 OCT 2010

### **Conduct of local authority members**

Recently Andrew Stunell announced the broad package of changes that we intend to put in place to abolish the Standards Board regime. A press notice relating to this announcement is available on the Department's web-site at:

<http://www.communities.gov.uk/news/corporate/157558411>

When we met on Wednesday 15 September, I undertook to let you have the details of what we are proposing once the package of changes was announced, and accordingly I enclose a short paper setting out the changes we intend to make.

I would of course be very happy to discuss these with you and your Committee. If you would like a meeting, please don't hesitate to get in touch with my office.

A handwritten signature in black ink, appearing to read "Bob Neill".  
A printed name in black ink, appearing to read "BOB NEILL MP".



## Abolition of the Standards Board regime

### The Standards Board regime

The Coalition Agreement *Our Programme for Government* included the commitment to “abolish the Standards Board regime”.

The Government considers that the Standards Board regime, consisting of a centrally prescribed model code of conduct, standards committees with the power to suspend a local authority member and regulated by a central quango was inconsistent with the principles of localism. In addition there is a concern that the regime is a vehicle for vexatious or politically motivated complaints.

The Government considers that it is the right and the responsibility of the electorate to determine who represents them and that the abolition of the regime will restore power to local people.

Accordingly, given the interdependencies of the bodies, requirements and guidance that constitute the Standards Board regime, the Government is proposing to abolish the regime in its entirety.

Subject to Parliament approving the necessary legislation, the changes are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked.
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities, will be revoked.
- The requirement for local authorities to have standards committees will be abolished.
- Standards for England (formally known as the Standards Board for England) will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.

- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members.

It is intended to effect the abolition of the Standards Board regime through the Localism Bill. It is anticipated that the Bill will be laid before Parliament in December and will receive Royal Assent late-2011.

The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards Board for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.

This means that until the appointed day, an allegation of misconduct can be made; after the appointed day, no further allegations of misconduct can be made under the standards board regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures will be put in place to address this.

### **Proposed transitional measures**

Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that their allegations would be properly dealt with. It also enables that if a member has an allegation made against them, they should have the opportunity to clear their name.

The Government propose that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.

Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date.

The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The Government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).

Further, the Government propose that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards

committee could do is, for instance, to issue a councillor with a censure or a request that they undergo training.

### **The conduct regime in a post-Standards Board world**

The Government is committed to maintaining high standards of conduct in office and will ensure that, in the absence of a statutory code of conduct, councillors do not abuse their office for personal gain by putting their personal interests before those of the general community or local area that they represent. Members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The Government intend that wilful failure to comply with these requirements will constitute a criminal offence.

The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.

The requirement to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

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To: Standards Committee Chairs

30 November 2010

Dear colleagues

I would like to draw your attention to a letter sent to me from the Local Government Minister, Bob Neill MP about the Government proposals for the future of standards in local government. This letter has now been published on both our and CLG's website.

As you will know, since the Coalition Government announced its intention 'to abolish the Standards Board regime', there has been little detail available about what this would mean in practice. The letter from the Minister now sets out the proposition in greater detail.

In brief, you will see that the proposal is that, alongside the abolition of Standards for England, the First Tier Tribunal (Local Government Standards in England) would lose jurisdiction over member conduct. The Government also intends to remove the national Code of Conduct for councillors and the requirement to have a standards committee. Instead it would be for councils themselves to choose whether or not they wish to have a local code or a standards committee (which would be an 'ordinary committee' of the authority and therefore not need to have independent representation). Any standards committee would no longer have the power to suspend a member. There would also be a new criminal offence created relating to failure to register or declare interests.

In the meantime, you will see that these proposals will need primary legislation. Our understanding is that the Decentralisation and Localism Bill, which would contain such provisions, will be introduced to Parliament by the end of the year. The current framework will continue in place until such time as the bill receives Royal Assent and the relevant provisions are enacted. Our understanding is that

this is likely to be some time in the summer or autumn next year, although exact timing will obviously depend upon Parliamentary progress of the bill as a whole. Consequently, in the meantime, as the Minister recognises, standards committees will continue to have a legal requirement to operate as now and, in particular, to continue to consider any allegations.

You will see that the Minister's letter sets out, in some detail, the transition arrangements that they intend to apply to any cases which will be in the pipeline at the end of the framework. While these proposals obviously depend on Parliamentary approval, in brief, Standards for England would cease to handle cases from an Appointed Day (likely to be two months after the coming into force of the provisions). At that stage, all cases still open would be passed back to the relevant local authority to complete. Any cases with the Tribunal at that stage would be completed but no further references could be made to it. Any cases being handled locally would need to be completed locally after that date by the standards committee, with no power to pass them to Standards for England or the Tribunal, but no new allegations could be made after the Appointed Day.

I hope that you find this helpful.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'R Chilton', with a stylized flourish at the end.

Robert Chilton  
Chair

Date complaint received and from	District, Town or Parish councillor	Allegation	Sub Committee dates	Outcome and action
12/11/2009 Member of the public LSB19	District Councillor	Alleged breach of code: Para 3(2)(d) -by not acting in an impartial manner while acting in their capacity when chairing the Development Management committee on 25/08/09.	24/11/2009	<b>No action to be taken.</b> The sub-Committee agreed that there was not sufficient evidence to suggest a potential breach of the CoC of the impartiality provisions of the Code at para 43 or the disrepute provisions of para 5. The Sub committee wished to record that the Standards Committee had received a report from the Monitoring Officer on planning protocols, and measures put in place to make the Development Management Committee processes more accessible and clear to the public. Training for all Members of the committee had also been put in place. <b>Review requested 15/12/2009.</b> <b>Review date 02/11/10</b> <b>No further action, original decision upheld.</b>
10/11/2009 Member of the public LSB20	Parish Councillor	Alleged breach of code: Para 5 - by bringing their office into disrepute. Paras 9, 10 , 12 by not declaring a Personal and Prejudicial interest in a planning application and not withdrawing from the meeting while acting in their official capacity as Chairman of the Council at the Parish council meeting held on 21 July 2009.	24/11/2009	<b>Referral for investigation.</b> Following paras may apply: Para 5, Para 10, Para 12, Para 9. As at 03/03/10 investigation deferred due to other pending proceedings which may be influenced by a continuation of evidence-gathering at this time (a Land Registry Adjudication and County Court action). MO has agreed to defer pending the outcome of the proceedings. As at 12/04/10 awaiting outcome of Land Registry arbitration. As at 04/10/10 the investigation is no longer deferred. <b>Hearing date 15/02/11</b> Hearing committee found the following paragraphs of the code had been breached: Paragraph 5 – bringing an office or authority into disrepute Paragraph 9 – disclosure of personal interests Paragraph 10 – prejudicial interests generally Paragraph 12 – effect of prejudicial interests on participation <b>Penalty imposed on parish cllr was censure</b>
23/03/2010 Town councillor LSB21	Town Councillor	Alleged breach of code: Para 5, 3(1), 6(a) that at a meeting of the Town Council on 15 March 2010 the member spoke in an aggressive way about the relocation of the Tourist Information Office and said that if the matter was not resolved by April 2010 the clerk, who was not present, should face a vote of no confidence from the members.	23/04/2010	<b>No further action.</b> Sub Committee asked MO to write to Cllr on their behalf to say that although no breach, they did feel their comments, although falling short of personal abuse, were insensitive and inappropriate.

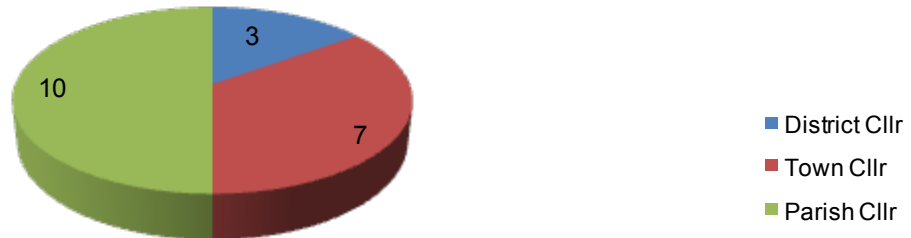
Date complaint received and from	District, Town or Parish councillor	Allegation	Sub Committee dates	Outcome and action
26/03/2010 Parish Residents, LSB22	Parish Councillor	Alleged breach of code: Para 5, 3(1), 6(a) that the member's behaviour breached the code at a meeting of the Parish Council during a heated exchange between the member and parishioners in public question time.	23/04/2010	<b>No further action.</b> Sub Committee agreed that SC Chairman should attend next parish meeting to talk to the councillors about the issue and code of conduct. <b>Review requested 7 May 2010. Review sub committee date 19/07/10. Committee decision, no further action required, original decision upheld.</b>
26/03/2010 Parish Residents, LSB23	Parish Councillor	Alleged breach of code: Para 5, 6(a), that the member's behaviour breached the code, at a meeting of Parish Council during a heated debate between the member and parishioners.	23/04/2010	<b>No further action.</b> Sub Committee agreed that SC Chairman should attend next parish meeting to talk to the councillors about the issue and code of conduct. <b>Review requested 7 May 2010. Review sub committee date 19/07/10. Committee decision, no further action required, original decision upheld.</b>
26/03/2010 Parish Residents, LSB24	Parish Councillor	Alleged breach of code: Para 5 : it was alleged that as Chairman of the Parish Council, the member failed to bring the March 2010 meeting to order and failed to control the behaviour of one of the members during public question time when there was a heated debate between parishioners and one of the members.	23/04/2010	<b>No further action.</b> Sub Committee agreed that SC Chairman should attend next parish meeting to talk to the councillors about the issue and code of conduct. <b>Review requested 7 May 2010. Review sub committee date 19/07/10. Committee decision, no further action required, original decision upheld.</b>
13/05/2010 Member of the public LSB25	Town Councillor	Alleged breach of code: Para 5 that the member breached the code by acting in a dishonest and deceitful manner and bringing the council into disrepute by speaking as an individual when they were Town Mayor and giving information to a reporter that was used in an article of the Guardian newspaper.	19/07/2010	<b>No further action.</b>
05/07/2010 Parish councillors LSB26	Parish Councillor	Alleged breach of code: Para 5, Para 3(1), Para 3 (2)(c): that the member failed to treat others with respect at a meeting of the parish council, that he attempted to intimidate the trustees of a local charity and that he failed to treat others with respect and brought the council and his own office into disrepute at an annual meeting of the parish council and in his dealings with the press.	22/09/2010	<b>No further action.</b> Review request received 29/10/2010. <b>Review date 25/01/11</b> <b>Original decision upheld. No further action.</b>

Date complaint received and from	District, Town or Parish councillor	Allegation	Sub Committee dates	Outcome and action
07/07/2010 Parish councillor LSB27	Parish councillors	<p>Alleged breach of code: Paras 3(1), 3(2)(b), 3(2)(c) and 5 relating to:</p> <ul style="list-style-type: none"> <li>• the nomination of Trustees of a local charity which finances projects for the local community, at the June 2007 Parish Council meeting and the alleged fabrication of minutes of that meeting.</li> <li>• the subject Members covered up the alleged fabrication of the records</li> <li>• the subject Members deliberately made false statements to persuade the Parish Council terminate a contract with an employee of the Council</li> <li>• bullying behaviour by subject Members in order to threaten and silence the complainant.</li> </ul>	22/09/2010	<p><b>Refer to MO for investigation:</b></p> <ul style="list-style-type: none"> <li>• failing to treat others with respect</li> <li>• bullying</li> <li>• intimidating, or attempting to intimidate a person involved in an allegation against you</li> <li>• bringing an office or authority into disrepute</li> </ul> <p><b>Investigation Finding:</b> No breach, pending consideration of the Committee</p>
23/08/2010 Member of the public LSB28	Town Councillor	<p>Alleged breach of code: Para 3(1) 3(2) (b) (c) (i) 5 : that in a written letter to a member of the public, the member failed to treat that member of the public with respect</p>	22/09/2010	<p><b>Refer to Mo for other action:</b></p> <p>Monitoring Officer to provide training and guidance on the Code of Conduct with special reference to Paragraphs 3(1)(b) (treating others with respect) and 3(2)(b) (bullying). The Sub Committee shall re-convene if the subject member refuses to accept the other action.</p> <p>Member did not wish to participate in training, said they would not be standing for re-election. <b>Sub-committee (2/11/10) agreed an outcome of No further action.</b></p>
14/10/2010 Parish councillor LSB29	Parish councillor	<p>Alleged that Cllr used threatening behaviour towards a parish Cllr at the 13 September 2010 parish council meeting.</p>	22/09/2010	<p>Refer to MO for investigation:</p> <ul style="list-style-type: none"> <li>• Para 3(1) failing to treat others with respect</li> <li>• Para 3(2)(b) bullying</li> <li>• Para 3(2)(c) (iii) intimidating, or attempting to intimidate a person involved in an allegation</li> </ul> <p><b>Investigation Finding:</b> No breach, pending consideration of the Committee</p>
16/09/2010 Member of the public LSB30	Parish councillor	<p>Alleged breach of code: Para 3(1), 5 that the member used unacceptable behaviour towards a member of the public.</p>	02/11/2010	<p><b>No further action.</b></p> <p>Review requested 29/11/10 Review date 25/01/11 Original decision upheld. No further action.</p>

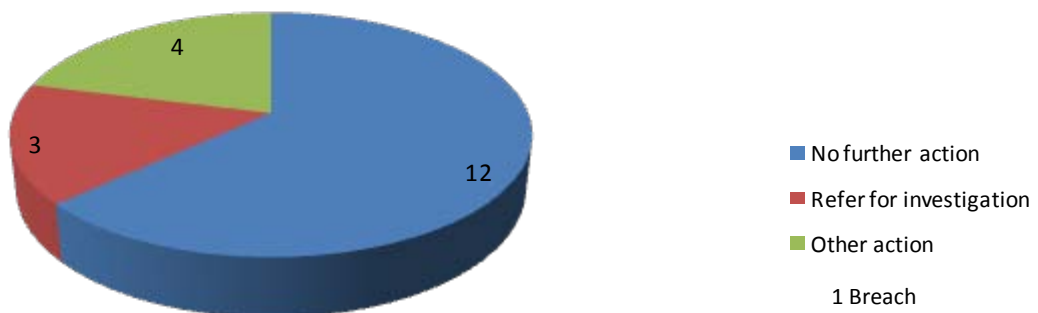
Date complaint received and from	District, Town or Parish councillor	Allegation	Sub Committee dates	Outcome and action
06/10/2010 Town councillor LSB31	Town Councillor	Alleged breach of code: Para 3(1), 5, 10(1), Paras 3(2)(b) and 3(2)(c) Paras 9 and 12 : that at the September 2010 meeting the member failed to show due respect to fellow Councillors <ul style="list-style-type: none"> <li>• that their undated letter, which was sent to persons other than Town Councillors brings the Council into disrepute</li> <li>• that they failed to declare an interest in an agenda item discussed at the Meeting of 27 September 2010</li> <li>• that they failed repeatedly to declare an interest in the management of town Festival of Music and the Arts, despite regular reminders to do so</li> <li>• that they have in various communications tried to intimidate a complainant to the Standards Committee</li> </ul>	02/11/2010	<b>Referral for other action.</b>
12/10/2010 Town councillor LSB32	Town Councillor	Paragraph 3(1), 3(2)(d), 4(b), 6(b), 6(b)(i), 6(b)(ii) and 6(c), 5 that the member, misused the resources of the Town Council and exploited and misused their position as Chairman when making a complaint against another Councillor.	02/11/2010	<b>Referral for other action.</b> The Monitoring Officer is instructed to meet with Members of the Town Council to give guidance on the Code of Conduct and behaviour expected of elected Members and to explore with them the potential for rebuilding relations in order to have a properly functioning Council in the future.
18/10/2010 District councillor LSB33	District Councillor	Alleged breach of code: Para 3(1), 3(2)(b), 3(2)c, 5: that on Wednesday 13 October 2010, the member used unacceptable behaviour towards another councillor	02/11/2010	No further action. Review requested 10/12/10 Review date 25/01/11 Original decision upheld. No further action.
25/10/2010 Town councillor LSB34	Town Councillor	Paragraph 3(1), 5 that at the meeting of the Town Council on 27 September 2010 and in subsequent various letters to Councillors, the member failed to show due respect to fellow Councillors and brought the Council into disrepute	02/11/2010	<b>Referral for other action.</b> The Monitoring Officer is instructed to meet with Members of the Town Council to give guidance on the Code of Conduct and behaviour expected of elected Members and to explore with them the potential for rebuilding relations in order to have a properly functioning Council in the future.
07/11/2010 District councillor LSB35	District Councillor	Paragraph 5 that on 10 July 2009 and on 9 March 2010, the member behaved unacceptably when dealing with a planning application in East Devon.	25/01/2011	No further action.

Date complaint received and from	District, Town or Parish councillor	Allegation	Sub Committee dates	Outcome and action
10/12/2010 Members of the public LSB36	Parish councillor	Paragraph 5 that on 26 October 2010, the member behaved unacceptably when speaking with the Leader of Devon County Council and subsequently brought their office of Councillor into disrepute at a meeting of the parish Council held on 8 November 2010 by denying the comments were made.	25/01/2011	Referred for investigation.

**Number of complaints (where decisions have been taken in 2010/11) made against District, Town or Parish councillors**

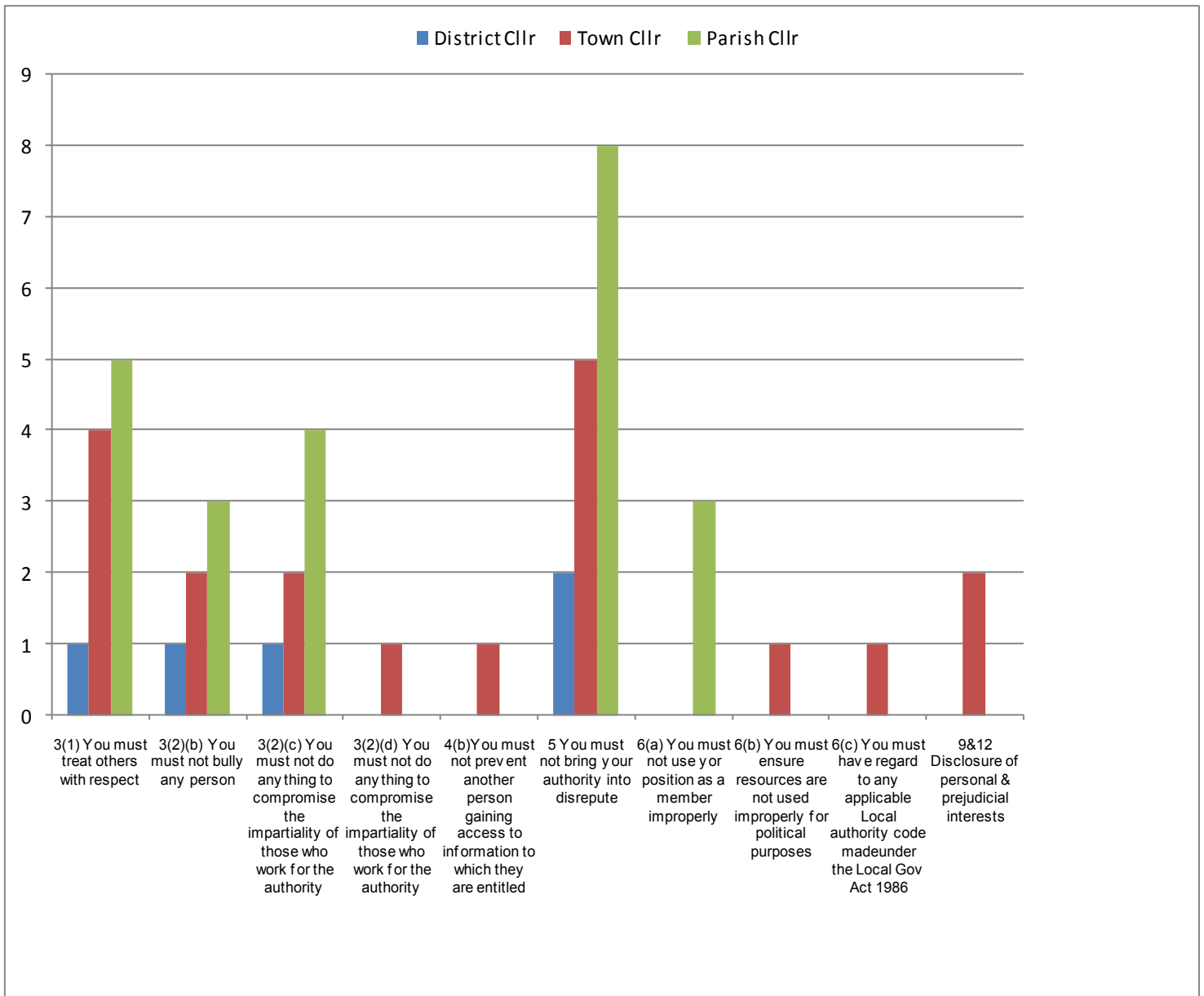


**Outcome of initial assessment of these same cases**





Number of allegations received by the Standards Committee during 2010





### **MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT**

The Localism Bill published on 13<sup>th</sup> December contains proposals to abolish the Standards for England regime. Whilst subject to Parliament approving the necessary legislation, the changes can be summarised as Standards for England (formally the Standards Board for England) ceasing to operate, councils no longer being required to have a local standards committee, the national code of conduct for elected members being dispensed with and council's being allowed to adopt voluntary codes of conduct.

Following the abolition of the standards regime, councils will no longer have a single body of law to refer to for dealing with elected member conduct but will, instead, be able to call upon a range of remedies, including existing criminal and civil law provisions and those provisions contained in the Localism Bill. This paper seeks to summarise the proposals contained within the Bill and outline those provisions available to authorities to call upon. The paper covers the following:

- Summary of changes proposed in the Bill
- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences
- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

The Local Government Group acknowledges the valuable contributions of the senior members of the Association of Council Secretaries and Solicitors (ACSeS) in helping to produce this paper.

## **SUMMARY OF CHANGES PROPOSED IN THE BILL**

The proposals outlined in the Bill are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities will be revoked
- The requirement for local authorities to have standards committees will be abolished
- Standards for England will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.
- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members
- Elected members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The government intends that wilful failure to comply with these requirements will constitute a criminal offence.
- The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.
- The requirement for councils to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

It is anticipated that the Bill will receive Royal Assent in late 2011. The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.

This means that until the appointed day, an allegation of misconduct can be made but that after the appointed day no further allegations of misconduct can be made under the Standards for England regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures are to be put in place to address this and the way in which they will operate is detailed in the following paragraphs:

- Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that these would be properly dealt with. It also provides an elected member who has had an allegation made against them with the opportunity to clear their name.
- The government proposes that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.
- Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date. The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).
- The government proposes that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do, for instance, is to issue a councillor with a censure or a request that they undergo training.

### **THE NOLAN PRINCIPLES**

The **Committee on Standards in Public Life** is an advisory non-departmental public body established in 1994. The Committee's landmark First Report published in 1995 established ***The Seven Principles of Public Life*** often described as the Nolan Principles.

The Seven Principles of Public Life are:-

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** - Holders of public office should promote and support these principles by leadership and example.

Whilst it is anticipated that the statutory principles will be repealed, they have the potential to continue to be utilised more informally by people looking to develop their understanding of the standards expected of those in public office.

### **FIDUCIARY DUTY OF COUNCILLORS**

A councillor is treated as a trustee of council assets, with a fiduciary duty to apply those assets in the public interest. Where a councillor abuses that trust, for example by disposing of those assets for personal gain, he/she can be held liable for the resulting loss - as with the House of Lords landmark ruling against Dame Shirley Porter in her capacity as Leader of Westminster City Council.

### **REGISTERING INTERESTS**

The Local Government Act 2000 requires each councillor to make a declaration of his or her interests and to ensure that any addition or amendment to that declaration is made within 28 days of any change occurring in relation to his or her interests. The Bill intends to strengthen this by making it a criminal offence for a councillor to fail to register a relevant interest or withdraw for a personal interest, although the scope of this offence awaits Regulations.

### **CIVIL LAW**

As councillors do not enjoy legal privilege they are subject to the same laws of **libel and slander** as the rest of the population. However, a council cannot itself be libelled so this remedy would only be available for the individual claiming they have been libelled or defamed rather than the authority itself.

**Misfeasance in public office** is a cause of action in the civil courts. It is an action against the holder of a public office, alleging in essence that the office-holder has misused or abused his power. There are two types of misfeasance in public office. One, known as 'targeted malice', occurs when a public office holder intentionally abuses his or her position with the motive of inflicting damage upon the claimant. The second is termed 'untargeted malice' and is committed by a public office holder who acts knowing that he/she has no power to undertake the act complained of.

## **EQUALITIES AND DISCRIMINATION LAW**

Other civil law remedies would be available to individuals, but not councils, in the area of **equalities and discrimination law** for unlawful discrimination.

Discrimination law governs the right of individuals not be treated less favourably than others on grounds that include sex, race, religion, sexual orientation, age and disability. It also deals with the duty of public bodies to promote equality although the coalition government have announced that they are to repeal the social-economic duty on council's enacted in the Equalities Act 2010.

Councillors may, of course, be specifically named as a party to proceedings by claimants in discrimination proceedings.

## **CRIMINAL LAW**

A councillor sentenced to a term of imprisonment of not less than 3 months is disqualified from office by virtue of **Section 80 of the Local Government Act 1972**.

A councillor using their position to support or influence a planning application for a project or venture that they have a financial interest in or otherwise using their position for self financial gain would be committing an offence under the **Fraud Act 2006**. Conviction under this Act carries a maximum penalty of 10 years imprisonment or an unlimited fine or both

The **Bribery Act 2010** provides a legal framework to combat bribery in the public (or private) sectors. It replaces the fragmented and complex offences at common law and those previously contained in the Prevention of Corruption Acts 1889-1916

The new Act creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage in a public office. Again, the maximum penalty for individuals is 10 years' imprisonment or a fine, or both

The Crown Prosecution Service, rather than councils, would decide whether there was sufficient evidence to prosecute for criminal offences.

## **ELECTORAL OFFENCES**

The relevant legislation relating to electoral offences can be found in the:

- The Representation of the People Act 1983 (the Act)
- The Representation of the People Act 1985
- The Political Parties, Elections and Referendums Act 2000
- The Electoral Administration Act 2006 ("EAA")

There are a number of electoral offences specified in the Representation of the People Act 1983 and 1985, with the key ones being:

**Undue influence:** Where an individual, directly or indirectly, makes use of or threatens to make use of force, violence or restraint; or inflicts or threatens to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. This offence has been modified by the Electoral Administration Act to extend the effect of it to include intention and not just where an act has taken place. A

person may be guilty of undue influence if they impede or prevent, or intend to impede or prevent, the free exercise of the franchise of an elector.

**Bribery:** Where any individual, directly or indirectly, gives any money to any voter, in order to induce any voter to vote or not to vote for a particular candidate, or to vote or refrain from voting.

**Treating:** Where either before, during or after an election, any person, directly or indirectly, gives or provides (or pays wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence corruptly any voter to vote or refrain from voting.

**Personation:** Where any individual votes as someone else (whether that other person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or proxy. Further, the individual voting can be deemed guilty of personation if they vote on behalf of a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force.

**Postal and proxy voting:** Where an individual applies for a postal or proxy vote as some other person, otherwise makes a false statement in connection with an application for a postal or proxy vote, requests an Electoral Registration Officer or a Returning Officer to send a postal vote or associated communication to an address which has not been agreed by the person entitled to vote, or causes a postal or proxy voting communication not to be delivered to the intended recipient.

**False information in nomination papers:** Where a person gives false information in a nomination paper or in their consent to nomination, they are guilty of a corrupt practice.

**False information in relation to registration:** Where an individual, for any purpose in connection with the registration of electors, provides false information to the Electoral Registration Officer in connection with the registration of electors, that person is guilty of offence.

**The Electoral Administration Act 2006** created two new offences which are:

**Supplying false information to the Electoral Registration Officer, and**

**Making fraudulent application for a postal vote**

The majority of electoral offences carry a maximum penalty of 1 or 2 years imprisonment or an unlimited fine.

### **AUDIT COMMISSION FOR LOCAL AUTHORITIES**

Whilst powers of surcharge were abolished under the **Local Government Act 2000** an auditor appointed by the Audit Commission under the **Audit Commission Act 1998** will continue to play their role in investigating financial impropriety in local government and can recover financial losses from individuals councillors on the basis that he or she is responsible for the authority incurring unlawful expenditure. It is yet to be seen whether this power will be transferred to another body given the government's announced abolition of the Audit Commission.

## **LOCAL GOVERNMENT OMBUDSMAN**

The Local Government Ombudsman was set up to investigate maladministration causing injustice. The law does not define maladministration but the Local Government Ombudsman currently defines its' mandate as follows:

*“We can consider complaints about things that have gone wrong in the way a service has been given or the way a decision has been made, if this has caused problems for you”*

Individual or collective actions or failings of councillors may amount to maladministration.

The government has announced that it intends to give the Local Government Ombudsman, the established body for investigating public complaints over the way they have been treated by their council, greater influence. For the first time local authorities will be legally compelled to implement the Ombudsman's findings.

## **BIAS, PREDISPOSITION AND PREDETERMINATION**

This is a complex area of common law (i.e. judge-made law) that has implications for councillors individually and councils. It is wrong, therefore, to associate such matters exclusively as having been caused by Standards for England or as a direct result of the introduction of the standards regime under the Local Government Act 2000.

The long established legal position is that a councillor may not be party to decisions in relation to which he/she either is actually biased (in the sense that he/she has a closed mind and has pre-determined the outcome of the matter to be decided irrespective of the merits of any representations or arguments which may be put to him/her) or gives an appearance of being biased, as judged by a reasonable observer.

A finding of bias and/or predetermination can make a decision unlawful with costs and reputational implications for councils and the First-tier Tribunal (Local Government Standards, England (formerly the Adjudication Panel for England) has held that such a finding could be a breach of Paragraph 5 of the current code of conduct which could lead to the disqualification of a councillor.

The Localism Bill aims to clarify the rules on pre-determination and bias: the Bill provides that an indication by a councillor that he takes a particular view on a matter is not to be taken as evidence of a closed mind. The intention is that the normal activities of a councillor, such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge. The government claims that that this will give councillors the assurance that they can campaign, discuss and vote on issues with confidence and so encourage more people to stand in local elections. In practice, the Court of Appeal has already asserted that such activities will not preclude participation in decision-making, unless the councillor is so committed that they are not even prepared to listen to the evidence, but courts may fret that, where a councillor says that he has a closed mind on a matter, the court cannot take this assertion into evidence;

The government previously announced that a power of electoral recall of councillors is also being proposed to allow for the removal of councillors mid term for cases of 'serious misconduct'; although this has also not been included in the Localism Bill.



**MISCELLANEOUS**

It will remain open to councils to agree local arrangements whereby councillors could be censured for breaching local codes of conduct and other local protocols; including other activity regarded as inappropriate and to remove councillors from committees, outside bodies and other appointments, when appropriate. Whilst there will be a need for local authorities to reflect constitutional changes as a result of abolition of the current standards regime, other local protocols covering, for example, member/officer relations and guidelines regarding use of council resources, will continue to have effect and be subject to any local sanctions adopted by individual councils, though there will be no statutory sanctions against an offending member and therefore no powers to suspend or disqualify councillors.

**FURTHER CONTACT**

Chris Bowron, Local Government Group e-mail – [chris.bowron@local.gov.uk](mailto:chris.bowron@local.gov.uk)

**Aims of Welcome/Refresher Programme are:**

- to welcome newly elected Councillors to the organisation and provide opportunities for networking with experienced councillors and key officers,
- to provide a strategic overview of how the Council works – its aims and priorities, practices and procedures (what it does, why it does it and how it is organised)
- to help and support members in their new roles and help provide the skills and knowledge that these roles will demand.

Re-elected Councillors are encouraged to take advantage of the Welcome/Refresher Programme to support the new Councillors and refresh their own knowledge.

<p><b>Saturday 7 May 2011</b> (Day of District Election Count)</p>	<p>Sign Acceptance of office book</p> <p>Councillor photo (for ID badge, notice board at Knowle reception, publicity and website).</p> <p>Complete forms re personal and contact details</p> <p>Issue East Devon car park pass plus fob for access to Knowle</p> <p>Collect information file (to include IT questionnaire, bank detail form, questionnaire about areas of interest/committee preferences, expenses claim forms, form to proof re car insurance/licence/MOT details to enable private car travel expenses to be claimed, and Register of Interest form plus list of key contacts including those of the Democratic Services Team).</p>
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**Councillors are encouraged to arrange a meeting with a member of the Democratic Services Team (01395 517546) prior to 17 May to go through the information file issued, hand in completed forms, for an introduction to website and relevance of Members' Page and to discuss any areas of concern including political representation and allocation to committees.**

<p><b>Tuesday 17 May 2011</b></p> <p><b>Welcome/Refresher Day</b></p> <p><b>(Summarised programme for the evening for the benefit of elected Members unable to attend the day session. Town and Parish Councillors (and clerks) plus members of Housing Review Board, and Tenant Scrutiny Panel, Standards Committee and Independent Remuneration Panel to be invited)</b></p>	<p>See separate programme for the day for detail but includes:</p> <p>Opportunity to meet Chief Executive, Deputy Chief Executives, Group Leaders and re-elected Councillors.</p> <p>Council purpose/priority</p> <p>Roles of Councillors</p> <p>Decision making process</p> <p>Introduction to Members' page</p> <p>Tour of building and function rooms</p> <p>Council service display and information stands (including payroll re expenses claims and IT helpdesk).</p> <p>Briefings will cover:</p> <ul style="list-style-type: none"> <li>➤ Standards in Public Life (Code of Conduct)</li> <li>➤ Council's current financial position and budget</li> <li>➤ Licensing and the role of the Licensing authority</li> <li>➤ Introduction to planning portal and how to influence planning decisions</li> </ul>
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<p><b>Thursday 19 May</b></p> <p><b>6.00 pm</b></p>	<p><b>ALL – ICT Workshops/surgery</b></p> <ul style="list-style-type: none"> <li>➤ IT – e mail system, importance of passwords, sending attachments, navigation of EDDC website including Members’ Page.</li> <li>➤ Introduction to the Council’s website and Members’ Page and how to use the A-Z portal and access information</li> <li>➤ ICT surgery – for you to raise any IT problems/issues</li> </ul>
<p><b>Wednesday, 25 May 2011 – 5.30 pm</b></p>	<p><b>ALL – Chief Executive briefing in the Council Chamber prior to the annual meeting of the Council at 6.30 pm. The briefing will include amongst other issues:</b></p> <ul style="list-style-type: none"> <li>➤ Election of Chairman and Appointment of Vice Chairman</li> <li>➤ Purpose of annual meeting</li> <li>➤ Seating arrangements</li> <li>➤ Protocol including start of meeting, speaking to Council and making a declaration of interest</li> <li>➤ Explanation of Part B (Not for Publication – Orange Paper reports).</li> </ul> <p>(Councillors are encouraged to invite a guest to this first meeting of the new Council as observers. Councillors and guests will join the newly elected Chairman of the Council for a buffet which will follow the annual meeting of the Council).</p>
<p><b>Wednesday, 1 June</b></p> <p><b>All day – timings to be confirmed</b></p>	<p><b>ALL – Councillors who are allocated to serve on the DEVELOPMENT MANAGEMENT COMMITTEE (Planning) are required to undertake Committee specific training. The sessions will benefit all Councillors and will include procedures, the role of Ward Members, planning policy (including the relevance of the Local Development Framework) and practice with input from experienced Councillors and the Design Champion.</b></p>
<p><b>Thursday, 2 June</b></p> <p><b>Morning – licensing seminar</b></p>	<p><b>ALL – Councillors who are allocated to serve on the LICENSING AND ENFORCEMENT SUB COMMITTEE are required to undertake Committee specific training. The session will benefit all Councillors and will include relevant legislation and procedures with input from experienced Councillors.</b></p> <p>Meetings of the Sub-Committee are scheduled weekly in case they are required – please check in the Knowledge (weekly newsletter) whether or not these meetings are to be held.</p>
<p><b>Tuesday, 7 June</b></p> <p><b>Morning – planning policy training</b></p> <p><b>Afternoon – delegations scheme</b></p>	<p><b>ALL - Development Management (Planning) – understanding the planning delegations scheme and observing and taking part in a mock delegations exercise to better understand process and procedures of decision-making and the information/submissions which are taken into account.</b></p> <p><b>The invitation to this all day event will be extended to town and parish councils.</b></p>

<p><b>Thursday, 9 June</b> <b>6.30 pm</b></p>	<p><b>ALL</b> – the first meeting of the Overview and Scrutiny Committee. Members who have not been appointed to this Committee are encouraged to attend as observers. A session on good scrutiny will be included in the next meeting of this Committee on Thursday 7 July.</p>
<p>Date to be agreed</p>	<p><b>NEWLY APPOINTED CHAIRMEN AND VICE CHAIRMEN</b> – session in respect of the role of Chairmen and necessary skills.</p>
<p><b>Wednesdays 5.30 pm</b> <b>15 June</b> <b>13 July (6.30 pm)</b> <b>3 August (if required)</b> <b>7 September</b> <b>5 October</b> <b>2 November</b> <b>30 November</b></p>	<p><b>ALL COUNCILLORS ENCOURAGED TO ATTEND MEETINGS OF THE EXECUTIVE BOARD</b> – the Executive Board makes operational decisions and recommends new policies to Council. Observing meetings of the Board is a useful way to keep up to date in respect of the business of the Council. In addition, the Board monitors the Council's budget and performance monthly.</p>
<p><b>Tuesdays at 2.00 pm</b> <b>14 June</b> <b>26 July</b> <b>23 August</b> <b>20 September</b> <b>18 October</b> <b>15 November</b> <b>6 December</b></p>	<p><b>ALL COUNCILLORS ARE ENCOURAGED TO ATTEND A MEETING OF THE DEVELOPMENT MANAGEMENT COMMITTEE</b> to help understand how planning applications are determined and what is taken into account. Ward Members are able to comment on applications within their own Ward.</p> <p>Planning briefing sessions will be scheduled during the year to cover key areas including good design, landscape issues, sustainability and conservation.</p>
<p><b>Tuesday 21 June 2011</b> <b>(10 am)</b></p>	<p><b>ALL COUNCILLORS ARE ENCOURAGED TO ATTEND A MEETING OF THE STANDARDS COMMITTEE</b> where Members discuss Council Governance issues and up-holding standards in public life.</p>
<p><b>Thursdays, at 6 pm</b> <b>23 June</b> <b>8 September</b> <b>1 December</b></p>	<p><b>ALL MEMBERS ARE ENCOURAGED TO ATTEND MEETINGS OF THE HOUSING REVIEW BOARD</b> – this is an Overview and Scrutiny Committee and its membership includes Councillors, Tenants and/or leaseholders and independent community representatives. The Board considers matters relating to the Council's landlord and housing management functions.</p> <p>Meetings of the Housing Review Board will include learning sessions to explore the role of housing and how the Council is working to deliver its key priority (sustainable communities). The June meeting will include a briefing on the current housing policies and priorities, Council stock and the Council's landlord role.</p> <p><b>The invitation to this meeting will be extended to the Tenant Scrutiny Review Panel.</b></p>

<p><b>Tuesday 28 June 6-8 pm</b></p>	<p><b>ALL</b> – Building Control Service (the benefits of the service to EDDC including control of demolition, support to Land Charges and local solicitors, technical expertise from planning and the out-of-hours dangerous structures service.) The aim of this session is for elected members to understand how Building Control is different and separate from the Council's planning function but where the services can work together and achieve benefits. Building Control is also well placed to lead EDDC in terms of sustainability.</p> <p>Building control (Anna Thompson, Director of Training LABC) <a href="mailto:anna.thompson@labc.uk.com">anna.thompson@labc.uk.com</a> (01395 233967)</p>
<p><b>Thursday, 30 June 2011- 2.30 pm</b></p> <p><b>Future 2011 meetings:</b></p> <p><b>22 September</b> <b>10 November</b></p>	<p><b>ALL MEMBERS ARE ENCOURAGED TO ATTEND A MEETING OF THE AUDIT AND GOVERNANCE COMMITTEE</b> – this Committee reviews the Council's governance arrangements – reviews risk management, policy and audit arrangements. The June meeting will include a learning session on good governance and how the Council polices itself.</p>
<p><b>Thursday 7 July 6.30 pm</b></p> <p><b>Future 2011 meetings:</b></p> <p><b>28 July</b> <b>1 September</b> <b>29 September</b> <b>27 October</b> <b>24 November</b></p>	<p><b>ALL</b> – this scheduled Overview and Scrutiny Committee meeting will include an learning session to help all Members to understand the role and significance of scrutiny in the decision making process and how good scrutiny works in practice. It will also include the purpose and use of Task and Finish Forum. Please stay on after the meeting to discuss the meeting with the Chairman and key officers and ask any questions.</p> <p><b>Tenant Scrutiny Panel Members to be invited to attend.</b></p>
<p><b>Wednesday 13 July 5.30 pm</b></p>	<p><b>ALL</b> - Budget workshop – how to read, understand and question budget papers (Head of Finance)</p> <p>This briefing session will be followed by the scheduled meeting of the Executive Board (6.30 pm start).</p> <p><b>An invitation to this training session will be extended non-Councillor members of the Housing Review Board and the Tenant Scrutiny Panel</b></p>
<p><b>Wednesday 20 July 2011</b></p> <p><b>(6.00 – 8.30 pm)</b></p>	<p><b>ALL</b> – Exploring the role of housing and how the Council is working to delivery its key priority (sustainable communities). This session to include the Council's role in homelessness prevention, provision of housing advice, Devon Home Choice, Home Safeguard, Affordable housing delivery, the Council's landlord role (including estate management, repairs, improvement, adaptations, allocations, rent management and supported housing), and details of the housing budget/Housing Revenue Account.</p> <p>The session will be led by the Portfolio Holder – Communities</p>

	<p>and Head of Housing and Social Inclusion.</p> <p><b>The invitation to this session will be extended to non-Councillor members of the Housing Review Board and the Tenant Scrutiny Panel.</b></p>
<p><b>Wednesday 27 July 2011 – 5.30</b></p> <p><b>Future 2011 meetings:</b></p> <p><b>12 October</b> <b>7 December</b></p>	<p><b>ALL</b> - Chief Executive briefing in the Council Chamber prior to the meeting of the Council at 6.30 pm. The briefing will include amongst other issues:</p> <ul style="list-style-type: none"> <li>➤ Purpose of meeting</li> <li>➤ Role of Chairman, Vice Chairman and Leader</li> <li>➤ Protocol of start of meeting, speaking to Council and making a declaration of interest</li> <li>➤ Rules of debate</li> <li>➤ Questions</li> <li>➤ How to 'call a minute'</li> <li>➤ Presentation of minutes by Chairmen</li> <li>➤ Relevance of starred and unstarred minutes</li> </ul>

#### **Footnote**

If you are unable to attend any of these sessions due to other unavoidable commitments, please advise and we will arrange alternative opportunities for you.

#### **Bite sized learning sessions to be covered in future programme will include:**

- Equalities and diversity.
- Being a good Ward Councillors and dealing with difficult and sensitive situations
- IT Security briefing
- Relevance of Data Protection and Freedom of Information.
- Basic principles of administrative law – including how to use the Constitution.
- Effective partnership working and community leadership
- Briefings on current issues (such as Big Society, Local Development Framework, localism agenda) as appropriate
- Economic issues briefing
- Leisure East Devon – an explanation and Council responsibility.

Following 3 month welcome/refresher programme, newly elected Councillors to meet the Member Development Working Party to evaluation the programme and discuss further learning needs. What can we learn from May elected Councillors from their newly elected perspective? To help us learn for the future, what did you wish you had known from the start?

**August** – Democratic Services Team to set up personal development 121 sessions with all Councillors through September and October.

**REMINDER – PLEASE MAKE SURE THAT YOU CHECK YOUR PIGEON HOLES WHENEVER YOU CALL INTO THE OFFICES AT KNOWLE TO REDUCE POST COSTS.**

**Aims of Welcome/Induction/Refresher Programme are:**

- to welcome newly elected Councillors to the organisation and provide opportunities for networking with experienced councillors and key officers,
- to provide a strategic overview of how the Council works – its aims and priorities, practices and procedures (what it does, why it does it and how it is organised)
- to support members in their new roles and help provide the skills and knowledge that these roles require.

Re-elected Councillors are encouraged to take advantage of the Welcome/Refresher Programme to support the new Councillors and refresh their own knowledge.

**Please confirm your attendance at events included in the programme to help us with room layout and any catering arrangements.**

**Welcome and Refresher Day – Tuesday, 17 May 2011**

**Sessions:**

**10.15 am – 4.00 pm** All Councillors are invited. Experienced Councillors are encouraged to attend and network with newly elected Councillors.

**6.00 pm – 8.50 pm** For Councillors unable to attend during the day. Invitation also extended to town and parish council representatives and members of the Standards Committee, Independent Remuneration Panel, Housing Review Board and Tenant Scrutiny Panel.

**Daytime programme:**

Tea/coffee will be available in the Members' Area from 9.00 am. This is an opportunity to informally meet the Chief Executive, Deputy Chief Executives and Heads of Service.

The Democratic Services and Payroll Teams will also be available in the Members' Area to answer any questions about the paperwork which you have already received and any other concerns. Please collect photographs of all Councillors and your name badge.

**Note** – the Welcome Day is an overview of the Council, further details and development opportunities will be available during the 3 month welcome programme and beyond.

**Morning presentations:**

10.15 am Welcome by Leader who will outline structure of day. Introduction to explain the Leader's role, the Council's vision and priorities and the challenges it faces – what the Council is trying to achieve, how all Councillors can contribute to the decision making process and the importance of engaging with all members of the community.

10.30 am EDDC's structure and decision making process, including political balance, with particular reference to the work of the Executive Board and the Scrutiny Committee – Chief Executive

11.00 am The role of scrutiny (including Housing Review Board) – Councillor Ray Bloxham

11.15 **Break for tea/coffee**

11.30 am The three roles of Councillors.

**Local** (experienced Councillor – Mike Green?) – ward work and how to deal with local issues including planning, recycling, dog bins and being a community leader. How to deal with sensitive issues, giving all (including hard to reach groups) a voice.

**Political** (representative of opposition group – Derek Button? Roger Giles?) – party politics and the role of the opposition group

**Corporate** (Portfolio Holder - Economy) – responsibility to the Council and district and promotion of local parish, county, organisational and neighbouring authority partnerships. Importance being able to see the bigger 'district-wide' picture.

plus tips on how to survive the early months and the pitfalls to watch out – from the 'horse's mouth'.

- 11.50 am **Councillor Development** (Ann Liverton – Member Champion) - Outline the welcome/refresher programme and its value to all Councillors, the need for Councillors appointed to quasi-judicial committees to under-take specific training, the value of the Councillor skills register and what the Council gains from its elected members.
- 12.00 pm **Standards in Public Life** (Code of Conduct) – overview with introduction by independent Chairman of Standards Committee. Will also include Councillor: Parish/Town Council relationship.
- 12.30 pm **Celebration of Council's achievements** – examples of what the Council has achieved in recent years and how performance has improved through the customer feedback - 'you said, we did' initiative (Deputy Chief Executive with Cllrs Paul Diviani (Chairman Development Management) and Jill Elson (Portfolio Holder – Communities).
- 1 pm **Light lunch** – Re-elected Councillors are encouraged to attend during the day but particularly to come in for lunch and networking opportunities. The Council's Management Team will also be available to discuss their priorities and achievements.

There will be staffed stands set up in the Council Chamber and Members' Area at **lunchtime and throughout the afternoon** (and in the evening **until 7 pm**) to showcase Council services.

### Afternoon briefings

- 2.00 pm **Council finances and budget setting process** – Introduction by Portfolio Holder – Resources and presentation by Head of Finance
- 2.30 pm **Licensing** – overview of processes and procedures, role of Licensing Authority, promotion of Licensing objectives, Gambling legislation, Human Rights Act 1998, work of Licensing and Enforcement Committee. Introduction by Chairman of Licensing and Enforcement and presentation by Head of Legal, Licensing and Democratic Services.
- 3.00 pm **Tea and biscuits**
- 3.15 pm **Overview of Planning** and introduction to the planning portal – Head of Planning and Planning Practice Manager – briefing to include how to see planning applications on line, role of Ward Member in planning matters, how to comment, reliance on planning reasons and objections, protocols of site visits, timescales, role of case officer.
- 4.00 pm **Close**



The following staffed stands will be set up in the Council Chamber and Members' Area to showcase the Council's services. These will include. **(those who have agreed to date are in bold)**

Countryside (Charlie Plowden)	AONB Partnership (Chris Woodruff)
Development Control & Planning on-line (Nick)	Local Dev Framework & Conservation (J M)
Building Control	Streetscene Services (Andrew Hancock)
Home Safeguard	Environmental Health
Housing	Licensing
Housing Benefits	Culture and Leisure (poss include manager of Manor Pavilion and Thelma Hulbert Gallery)
<b>Communications (Nick)</b>	
<b>Community Engagement (Jamie – space for 2 x 4panel displays)</b>	
ICT - Customer Service Centre	
Link to EDDC website	
Setting up appointments for Councillor IT training and installation of computer kits	

Democratic Services helpdesk. The team will show you how to access your Members' Page on the website and are happy to offers of tours of offices (Members' area phone, how to access grounds, pigeon holes, canteen, reception, planning, etc).

**REMINDER – PLEASE MAKE SURE THAT YOU CHECK YOUR PIGEON HOLES WHENEVER YOU CALL INTO THE OFFICES AT KNOWLE TO SAVE POST COSTS.**

### **Evening Programme**

5.30 pm Coffee and networking. Town and Parish Council representatives and members of the Standards Committee, Independent Remuneration Panel, Housing Review Board and Tenant Scrutiny Panel invited to attend the evening session.

The Democratic Services and Payroll Teams will also be available in the Members' Area to answer any of questions about the paperwork which you have already received and any other concerns. Please collect photographs of all Councillors and your name badge.

Delegates will be encouraged to visit the staffed service displays in the Members' Area and Council Chamber, as above.

### **Evening presentations:**

6.00 pm **Welcome by Leader** and outline of structure of evening. Introduction to explain the Leader's role, the Council's vision and priorities – what the Council is trying to achieve, how all Councillors can contribute to the decision making process and by engaging all members of the community.

6.15 pm **EDDC's structure and decision making process**, including political balance, with particular reference to the work of the Executive Board and the Scrutiny Committee – Chief Executive

6.30 pm **Celebration of Council's achievements** – examples of what the Council has achieved in recent years and how performance has improved through the customer feedback - 'you said, we did' initiative. (Deputy Chief Executive with Cllrs Paul Diviani (Chairman Development Management) and Jill Elson (Portfolio Holder – Communities).

7.00 pm **Coffee break and opportunity to network with Councillors and the Council's Management Team.**

### **Essentials that new Councillors need to know:**

- 7.40 pm      **Standards in Public Life** (Code of Conduct) – introduction by Chairman of Standards Committee - overview and sign posting. Will also include Councillor: Parish/Town Council relationship.
- 7.50 pm      **Council budget and priorities** – Overview by Portfolio Holder – Resources and Head of Finance
- 8.00 pm      **Licensing** – overview of processes and procedures – Head of Legal, Licensing and Democratic Services with invitation to observe Licensing and Enforcement Committee.
- 8.10 pm      **Overview of Planning** and introduction to the planning portal – Head of Planning and Planning Practice Manager – briefing to include how to see planning applications on line, role of Ward Member in planning matters, how to comment, how to question, reliance on planning reasons and objections, protocols of site visits, timescales, role of case officer, role of consultees including town and parish councils, conflict of interest, Planning Inspection Committee and decisions contrary to Officer recommendations.
- 8.50 pm      **Close**