

# Agenda

## Standards and Ethics Committee

**Wednesday, 27 April 2016, 10.00 am**  
**County Hall, Worcester**

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ਪੰਜਾਬੀ। ਜੇ ਤੁਸੀਂ ਇਸ ਦਸਤਾਵੇਜ਼ ਦਾ ਮਸ਼ਹੂਰ ਸਮਝ ਨਹੀਂ ਸਕਦੇ ਅਤੇ ਕਿਸੇ ਅਜਿਹੇ ਵਿਅਕਤੀ ਤੱਕ ਪਹੁੰਚ ਨਹੀਂ ਹੈ, ਜੋ ਇਸਦਾ ਤੁਹਾਡੇ ਲਈ ਅਨੁਵਾਦ ਕਰ ਸਕੇ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ ਮਦਦ ਲਈ 01905 765765 'ਤੇ ਫ਼ੋਨ ਕਰੋ। (Punjabi)

# DISCLOSING INTERESTS

There are now 2 types of interests:  
**'Disclosable pecuniary interests'** and **'other disclosable interests'**

## WHAT IS A 'DISCLOSABLE PECUNIARY INTEREST' (DPI)?

- Any **employment**, office, trade or vocation carried on for profit or gain
- **Sponsorship** by a 3<sup>rd</sup> party of your member or election expenses
- Any **contract** for goods, services or works between the Council and you, a firm where you are a partner/director, or company in which you hold shares
- Interests in **land** in Worcestershire (including licence to occupy for a month or longer)
- **Shares** etc (with either a total nominal value above £25,000 or 1% of the total issued share capital) in companies with a place of business or land in Worcestershire.

**NB Your DPIs include the interests of your spouse/partner as well as you**

## WHAT MUST I DO WITH A DPI?

- **Register** it within 28 days and
- **Declare** it where you have a DPI in a matter at a particular meeting
  - you must **not participate** and you **must withdraw**.

**NB It is a criminal offence to participate in matters in which you have a DPI**

## WHAT ABOUT 'OTHER DISCLOSABLE INTERESTS'?

- No need to register them but
- You must **declare** them at a particular meeting where:  
You/your family/person or body with whom you are associated have a **pecuniary interest** in or **close connection** with the matter under discussion.

## WHAT ABOUT MEMBERSHIP OF ANOTHER AUTHORITY OR PUBLIC BODY?

You will not normally even need to declare this as an interest. The only exception is where the conflict of interest is so significant it is seen as likely to prejudice your judgement of the public interest.

## DO I HAVE TO WITHDRAW IF I HAVE A DISCLOSABLE INTEREST WHICH ISN'T A DPI?

Not normally. You must withdraw only if it:

- affects your **pecuniary interests OR** relates to a **planning or regulatory** matter
- **AND** it is seen as likely to **prejudice your judgement** of the public interest.

## DON'T FORGET

- If you have a disclosable interest at a meeting you must **disclose both its existence and nature** – 'as noted/recorded' is insufficient
- **Declarations must relate to specific business** on the agenda
  - General scattergun declarations are not needed and achieve little
- Breaches of most of the **DPI provisions** are now **criminal offences** which may be referred to the police which can on conviction by a court lead to fines up to £5,000 and disqualification up to 5 years
- Formal **dispensation** in respect of interests can be sought in appropriate cases.

## Standards and Ethics Committee

**Wednesday, 27 April 2016, 10.00 am, County Hall, Worcester, WR5 2NP**

**Membership:** Mrs A T Hingley (Chairman), Mr S R Peters (Vice Chairman), Mr R C Adams, Mr J Baker, Mr P J Bridle, Ms P A Hill, Mr A P Miller, Dr K A Pollock and Mr D W Prodger

Independent Members (Non-voting): Dr M Mylechreest, Mr C Slade (to be confirmed) and Dr P Whiteman

### Agenda

Item No	Subject	Page No
1	<b>Apologies and Named Substitutes</b>	
2	<b>Declarations of Interest</b>	
3	<b>Public Participation</b> Members of the public wishing to take part should notify the Director of Resources in writing or by e-mail indicating both the nature and content of their proposed participation no later than 9.00am on the working day before the meeting (in this case 26 April 2016). Enquiries about this can be made through the telephone number/e-mail address listed below.	
4	<b>Confirmation of Minutes</b> To confirm the Minutes of the meeting held on 1 July 2015. (previously circulated – pink pages)	
5	<b>Co-option of independent member of the Standards and Ethics Committee</b>	1 - 2
6	<b>Guidance for complaints against members - assessment criteria</b>	3 - 8
7	<b>Conduct of members - Defamation issues</b>	9 - 10
8	<b>Standards case law update</b>	11 - 12

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To obtain further information or a copy of this agenda contact Simon Lewis, Committee Officer on 01905 766621, slewis@worcestershire.gov.uk

All the above reports and supporting information can be accessed via the Council's website at <http://www.worcestershire.gov.uk/cms/democratic-services/minutes-and-agenda.aspx>

Date of Issue: Tuesday, 19 April 2016

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## **STANDARDS AND ETHICS COMMITTEE**

### **27 APRIL 2016**

## **CO-OPTION OF AN INDEPENDENT MEMBER OF THE STANDARDS AND ETHICS COMMITTEE**

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### **Recommendation**

- 1. The Head of Legal and Democratic Services recommends that the Committee confirms the co-option of Mr Cliff Slade as an Independent Member of the Standards and Ethics Committee.**
2. The Committee will recall that it has welcomed the presence of Independent Members (that is members who have no connection with the Council and are not Officers or Elected Members) on the Committee. There was a vacancy for the third Independent Member, which in accordance with the Committee's decision in July 2015 was advertised in the local media and on the Council's website.
3. There were a number of applications received for members of the public interested in the role, including a number of strong candidates. The applications were carefully assessed by the Chairman and Vice-Chairman of the Committee in conjunction with the Head of Legal and Democratic Services.
4. It is recommended that Mr Cliff Slade be co-opted to the Committee as the third Independent Member of it. Mr Slade is a serving Magistrate and is able to apply his experience in this role to structured decision-making processes. Mr Slade is a trained Family Mediator with Counselling training skills as well as having experience in Human Resources and business. Mr Slade has attended County Hall and met the Chairman and Monitoring Officer for preliminary induction subject to the Committee's decision.

### **Contact Points**

#### County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

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#### Specific Contact Points for this report

Simon Mallinson, Head of Legal and Democratic Services

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Email: [smallinson@worcestershire.gov.uk](mailto:smallinson@worcestershire.gov.uk)

## **Background Papers**

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) the following are the background papers relating to the subject matter of this report:

Agenda papers for the meeting of the Standards and Ethics Committee on 1 July 2015.

## **STANDARDS AND ETHICS COMMITTEE**

### **27 APRIL 2016**

## **GUIDANCE FOR COMPLAINTS AGAINST MEMBERS – ASSESSMENT CRITERIA**

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### **Recommendation**

- 1. The Head of Legal and Democratic Services recommends that the Committee:**
  - a) considers the need for continued guidance on the assessment and filtering of complaints that members have breached their Code of Conduct; and**
  - b) authorises the Head of Legal and Democratic Services to continue using the previously adopted assessment criteria as summarised in the report.**

### **Background**

2. The Committee may recall that under the previous centralised Standard and Ethics regime, 'Standards for England' (previously known as the Standards Board) issued national guidance as to the approach to be taken on the filtering of complaints that members had breached their code of conduct. In consistent practice across the country, only a minority of complaints actually went to formal investigation, and most were 'filtered out' on the basis that it was an inappropriate use of public resource to move to formal investigation.
3. It is of course right that certain complaints should be formally investigated, and there is a formal procedure to deal with investigations and hearings. This is not suitable for all complaints and it makes sense to be clear to all concerned about the criteria used for 'filtering' of complaints before reaching investigation to ensure complaints are treated appropriately one way or another.
4. The previous criteria were updated and endorsed by this Committee on 28 March 2013. They have continued to be used in relation to all formal complaints and appear to the Monitoring Officer to remain valid and balanced. It is right that the Committee reviews the position and it is asked to formally consider and endorse their continued use. Members will also recall that the Council's procedure allows an Independent Person to be consulted at this filtering stage, and this has been a useful development.
5. The national and Committee-approved guidance for its assessment/filtering criteria consisted of 3 initial tests:
  - Is the complaint against a person covered by the Council's Code of Conduct?
  - Was he/she in Office at the time of the alleged conduct?

- Would the complaint – if proven – amount to a breach of the Code? Is a potential breach disclosed by the complaint?

6. If the answer is NO to any of those questions, the complaint falls and no further action is taken.

7. The adopted criteria set out that if the initial tests are all satisfied, factors to be born in mind when assessing whether to formally investigate a complaint are:

- It is important that complaints about member conduct are taken seriously
- However, a decision to investigate will cost both public money and time of Officers and Members, which is an important consideration where the matter is relatively minor
- There is unlikely to be any public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious or tit for tat, and in which cases no further action is likely
- Is there insufficient information from the Complainant for a decision whether there should be an investigation? If yes, no further action likely unless further information is obtained
- Is the complaint about someone who is no longer a member of this Council but another? If yes, consider referring to that Authority alone
- Has the complaint already been subject to investigation or other action relating to the Code? If yes, no further action likely
- Is the complaint about something so long ago there is little benefit in taking action now? If yes, no further action likely
- Is the complaint too trivial to warrant further action? If yes, no further action likely.

8. These criteria still appear to be valid, and it is recommended that the Committee formally endorses their continued use in filtering complaints.

9. As a reminder, the Committee is referred to a flowchart of the complaints process attached as an appendix.

10. The Council does not receive large numbers of complaints about the conduct of its members. The last summary report was presented in July 2015, detailing the 5 complaints which had been received since the previous report. On average the Council receives 1-2 formal member conduct complaints per year. There have been no formal complaints since the July 2015 report.

11. It is worth bearing in mind that even if a complaint does not proceed to formal investigation, the procedure allows 'other action' to try to resolve the issue short of formal process. Of the 5 complaints reported to the July 2015 meeting, 3 involved some form of mediation by the Monitoring Officer to help resolve the issues without going through a formal investigation process. This aspect of complaint resolution is seen as an important and valuable facet of the Council's processes to promote good conduct.



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## **Supporting Information**

- Appendix - Code of Conduct Complaints Procedure – flowchart

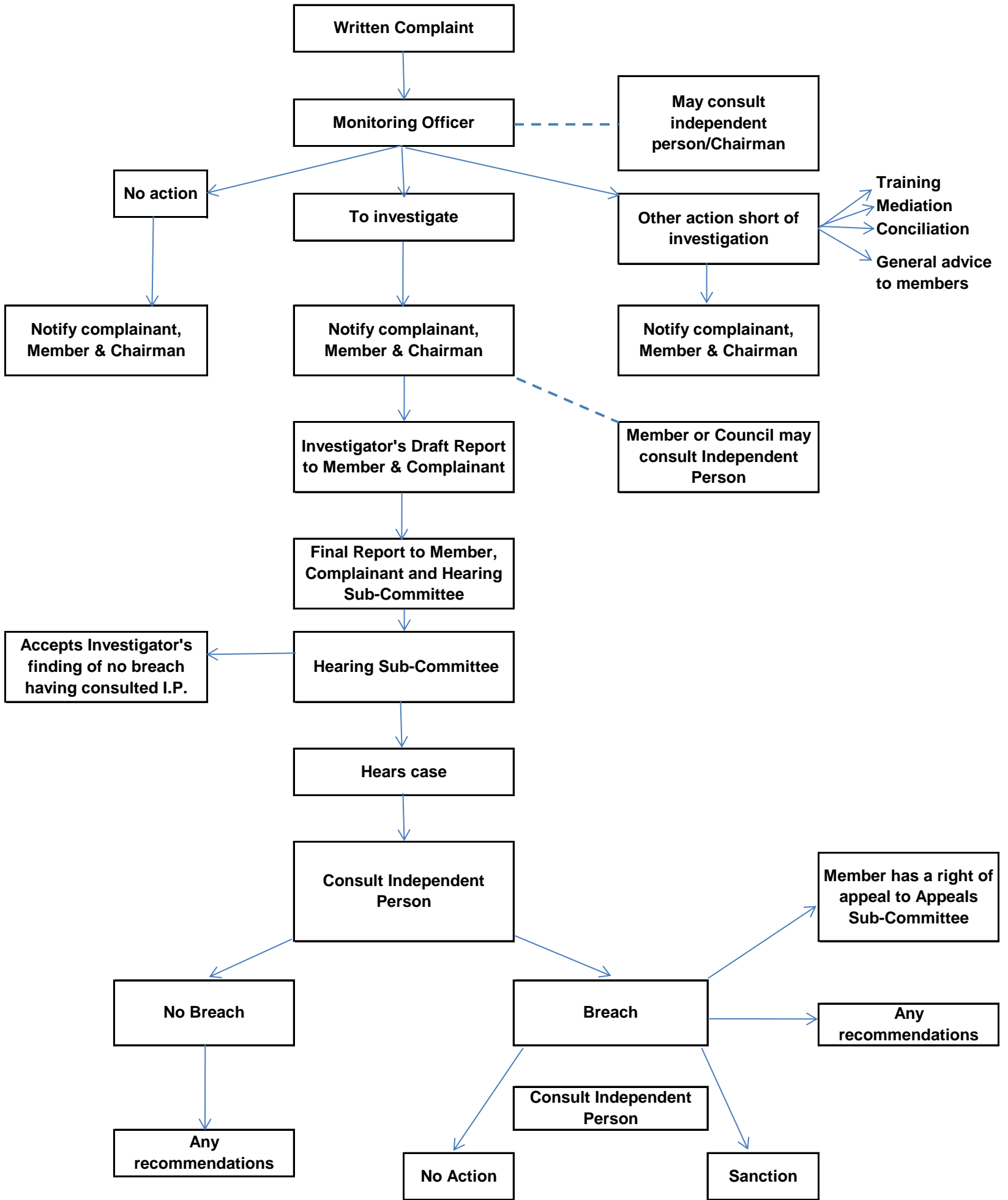
## **Background Papers**

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) the following are the background papers relating to the subject matter of this report:

Agenda papers and Minutes of the Standards and Ethics Committee on 5 June 2008, 28 March 2013 and 1 July 2015

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### Flowchart - Code of Conduct complaints procedure



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## **STANDARDS AND ETHICS COMMITTEE**

### **27 APRIL 2016**

## **CONDUCT OF MEMBERS – DEFAMATION ISSUES**

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### **Recommendation**

**1 The Head of Legal and Democratic Services recommends that the Committee:**

**(a) notes the report; and**

**(b) considers whether any further training or reminder should be circulated to members.**

### **Background**

2. The Committee has the role of promoting and maintaining high standards of conduct by County Councillors and assisting them to observe their Code of Conduct through advice or training as needed.

3. The Committee will recall that the Members' Code of Conduct applies when acting as a member or representative of the Council. This requires members to treat others with respect and also avoid any conduct which brings the office or councillor or the Council into disrepute.

4. A recent national case has underlined the need for members to ensure that comments they make do not breach the Code and are not defamatory. Some other national cases are referred to, which underline the need to ensure that comments in social media do not breach the Code or the law.

### **Comments and defamation**

5. Members will know that they must remain within the Code and the law in their conduct. A member of a council in the north of England has been sued for defamation, with damages to be assessed in May 2016. The member had made comments in a TV interview to the effect that local MPs had been aware of large-scale sex abuse but failed to do anything about it, letting down the children. The court found this was defamatory of the MPs, and the member has been found liable to pay damages at a level to be assessed in May 2016.

6. The law has been codified and updated in the Defamation Act 2013. A statement - which has a wide definition and can be either verbal or in writing, and would cover texts and other social media comments - can be considered defamatory if:

- its publication has caused or is likely to cause **serious harm to a reputation** (serious financial loss if relating to a trading body)

There are defences available:

- the imputation in the statement is substantially true or
- it was an honest opinion which could be reasonably held, not an assertion of fact or
- publication was on a matter of public interest or
- the statement is protected by absolute privilege, or qualified privilege (which applies to honestly believed statements made in relevant Council debate).

7. Members will note that comments on social media can lead to legal liability. In Autumn 2015 a North-East businessman won defamation damages against 2 local councillors after 1 made comments about his business dealings on a Facebook site hosted by the other, suggesting he had bought a school site at an improper undervalue from the local authority. The 2 councillors had to pay £32k costs (plus their own) and £15k damages.

8. In 2011 a Welsh county councillor had to pay £3k and costs to a political rival for posting a defamatory post on Twitter, wrongly claiming that he had to be forcibly removed from a polling station. The imputation that he had to be removed for criminal or disreputable electoral conduct was defamatory as it was damaging to his reputation. The councillor said *'this case will no doubt act as a warning to people, including politicians, to be extremely careful when using Twitter and other social media such as blogs'*.

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## Background Papers

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) there are no background papers relating to the subject matter of this report.

## **STANDARDS AND ETHICS COMMITTEE**

### **27 APRIL 2016**

## **STANDARDS CASE LAW UPDATE**

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### **Recommendation**

- 1. The Head of Legal and Democratic Services recommends that the Committee notes the recent case law and considers whether there are any lessons to be drawn from it.**

### **Case summary**

2. A recent case relating to Wiltshire Council led to a Planning Committee decision being quashed. The grant of Planning Permission for a Residential Development including affordable housing had to be quashed as it was tainted by 'apparent bias'. One of the Councillors who had voted in favour of the development was a Director of the Housing Association likely to be awarded the contract to provide the affordable housing by the applicant developer.

### **Case details**

3. The decision was successfully attacked by way of judicial review due to the actions of the Member in question. The developers had identified a local Housing Association as a prospective partner to provide the affordable housing element. One of the Councillors at the Planning Committee was a Director of that Association. He declared his Membership of the Board but decided to remain and vote on the planning application because the Association was only a prospective partner rather than the actual applicant. The planning application was passed by one vote, and he voted in favour. Had he withdrawn, the application apparently would have been refused. The Housing Association subsequently became the preferred bidder for the affordable housing element.

4. The court found that the Councillor did not have a Disclosable Pecuniary interest in the planning application - the Association was not the applicant and at the point of the decision it had no contract with the developers. The Councillor was therefore not disqualified under the DPI provisions.

5. However, the common law rule against bias or apparent bias continued to be relevant in Local Government decision making. The legal test was whether the fair-minded and informed observer, having regard to all material facts, would conclude that there was a real possibility of bias. The Councillor's participation in the planning application gave rise to an appearance of potential bias. It was plainly in the Association's interests, and those of the Councillor as a Director (although not for his personal benefit) for the planning application to be approved. The Association had committed a lot of resource to working with the developers and clearly believed it was likely to get the contract. It was therefore wrong for the Councillor to participate in the meeting, and the Committee's decision to grant Planning Permission was quashed because of his involvement.

## Application of Code

6. The case is a useful reminder of how participation by Councillors in matters they should steer clear of can invalidate the decision. The case was not about the local Code of Conduct but the administrative law principles of bias, but there is a clear cross-over with Code issues.

7. Applying our own local Code of Conduct to the facts of the case, at this Council the Councillor would have had an Other Disclosable Interest - because an organisation with which he was associated had either a pecuniary interest or close connection with the matter under discussion. This would have required a declaration of that interest, as indeed happened in Wiltshire. Interestingly, the Worcestershire Code requires withdrawal from a meeting in some circumstances where the member has an ODI. Our Code at paragraph 12 (4) says that:

- if the interest affects your pecuniary interest or relates to the determination of a Planning or Regulatory matter and
- is one which a member of the public knowing these circumstances would reasonably regard as being likely to prejudice your judgement of what is in the public interest
- then the Member must leave the meeting and take no part.

8. It would seem from the Wiltshire case that the Worcestershire Code would have required the Member to remove himself from the meeting and avoid the difficulty Wiltshire found themselves in. It would have been a breach of our Code to have remained, even if the Member did not have a DPI in the matter.

9. The Committee is invited to consider the case and its implications and whether any action is needed to promote good conduct by our Councillors.

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## Background Papers

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) there are no background papers relating to the subject matter of this report.