

STANDARDS COMMITTEE

Thursday, 10 February 2005

2.00 p.m.

Council Chamber,
Council Offices, Spennymoor

AGENDA and REPORTS

AGENDA

1. APOLOGIES

2. DECLARATIONS OF INTEREST

To notify the Chairman of any items that appear later in the agenda in which you may have an interest.

3. MINUTES

To confirm as a correct record the Minutes of the meeting held on 21st October 2004. (Pages 1 - 2)

4. STANDARDS TRAINING UPDATE

Oral report of the Council's Monitoring Officer.

- 21st January 2005: Standards Event organised by Durham City Council/Wragge and Co: to receive an oral report from Ian Jamieson who attended.
- Planned Member Training by Monitoring Officer: -
 - Standards Update on recent changes, etc to be held on 24th February, 23rd March and 8th April 2005, in each instance at 9.30 a.m. in the Council Chamber, Council Offices, Spennymoor.
- Other Events: -

Standards Board:

- 26th May 2005 : Newcastle : 3 places booked (Chair, Monitoring Officer, plus 1).
- 5th and 6th September 2005 : Fourth Annual Assembly of Standards Committees, Birmingham.

5. COUNTY DURHAM MONITORING OFFICERS GROUP

To receive an oral report from the Monitoring Officer.

6. SUMMARY OF THE CHANGES TO THE LOCAL AUTHORITIES (FUNCTION AND RESPONSIBILITY) REGULATIONS 2000

To consider the attached report of the Solicitor to the Council and Monitoring Officer. (Pages 3 - 6)

7. INTRODUCTION OF CHANGES TO THE ETHICAL STANDARDS ARRANGEMENTS UNDER THE LOCAL GOVERNMENT ACT 2000 - THE LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) (AMENDMENT) REGULATIONS 2004 AND THE STANDARDS BOARD FOR ENGLAND (FUNCTIONS) ORDER 2004

To consider the attached report of the Solicitor to the Council and Monitoring Officer and receive a slide presentation. (Pages 7 - 10)

8. ARRANGEMENTS FOR REVIEW OF THE CONSTITUTION

To consider the attached report of the Chief Executive Officer. (Pages 11 - 22)

9. PROPOSALS FOR LARGE SCALE VOLUNTARY TRANSFER OF COUNCIL HOUSING STOCK

To receive an oral report of the Councils Monitoring Officer regarding the attached reports from the Council's external legal advisers for Members prepared by Trowers and Hamlins:

(a) Conflict of Interest In Decision Making Arrangements

(b) LSVT Consultation: Further Guidance to Members

10. DATE OF NEXT MEETING

7th April 2005 at 2.00 p.m. in Conference room 1, Council Offices, Spennymoor.

11. ANY OTHER ITEMS WHICH THE CHAIRMAN DECIDES ARE URGENT

Members are respectfully requested to give the Chief Executive Officer notice of items they would wish to raise under the heading not later than 12 noon on the day preceding the meeting, in order that consultation may take place with the Chairman who will determine whether the item will be accepted.

N. Vaulks
Chief Executive Officer

Council Offices
SPENNYMOOR
2nd February 2005

L. Petterson (Chairman)

Councillors Mrs. B. Graham, A. Gray, Mrs. L. Hovvels, G.M.R. Howe and J. Wayman J.P

Councillor J. Marr (Spennymoor Town Council)

Mr I. Jamieson (Independent Member)

Background Documents:

List of written advice issued by the Monitoring Officer since the previous meeting:

- MO44 - Update of distribution information
- MO45 - Standards Board Guidance, Lobby Groups and Dual-Hatted Members
- MO46 - To Standards Committee: Local Determinations by Monitoring Officers
- MO47 - Summary of Guidance for Members from the Standards Board
- MO48 - Summary of Guidance from Standards Board to Local Authorities Generally
- MO49 - Presentation, including slides prepared by Monitoring Officer on new arrangements for local investigations of members (first reported to Cabinet on the 9th December 2004)
- MO50 - Notification to all members: bi-annual reminder to review registers of interests and gifts and hospitality
- MO51 - Members Standards: Update/Training Forum
- MO52 - Standards Board Bulletin
- MO53 - Advice to Cabinet/Shadow Board: LSVT Proposed Housing Transfer

- MO/SBC29 - Advice to officers regarding the impact of the Planning and Compulsory Purchase Act 2004
- MO/SBC30 - Qualified persons for the purposes of Section 36 of the Freedom of Information Act 2000

ACCESS TO INFORMATION

Any person wishing to exercise the right of inspection in relation to this Agenda and associated papers should contact **Miss. Sarah Billingham, Spennymoor 816166, Ext 4240**

Item 3

SEDGEFIELD BOROUGH COUNCIL

STANDARDS COMMITTEE

Council Chamber,
Council Offices,
Spennymoor

Thursday, 21 October
2004

Time: 2.00 p.m.

Present: Councillor L. Petterson (Chairman and Independent Member) and
Councillors Mrs. B. Graham, A. Gray, J. Wayman and
D.A. Hall

Independent Member
Mr. I. Jamieson

In

Attendance: Councillor K. Henderson and Mrs. H. Darby

Apologies: Councillors Mrs. L. Hovvels, G.M.R. Howe and
Councillor J. Marr – Spennymoor Town Council

ST.13/04 MINUTES

The Minutes of the meeting held on 17th May, 2004 were confirmed as a correct record and signed by the Chairman. (For copy see file of Minutes).

ST.14/04 STANDARDS TRAINING UPDATE

The Monitoring Officer reported that one training event had been held on 20th July, 2004 at Sedgefield Borough Council offices.

It was also reported that the new website for Standards and Ethics was now complete with the most recent information being made available.

ST.15/04 REVIEW OF CONFIDENTIAL REPORTING POLICY

Consideration was given to a report of the Director of Resources detailing the findings of a review of the Council's Confidential Reporting Policy. (For copy see file of Minutes).

The report considered the current position of the Confidential Reporting Policy detailing that it was in addition to the Council's Complaints and Grievance Procedure. It also considered the current procedure and detailed the review of the current policy, which concluded that it compared favourably with neighbouring authorities and was still the best policy.

It was questioned whether Town and Parish Clerks were kept up-to-date with the new legislation and procedures. The Monitoring Officer stated

that the Clerks were included on a distribution list to receive current information. The completion of the website would also be another source of information.

ST.16/04

DATE OF NEXT MEETING

10th February, 2004 at 2.00 p.m. at the Council Chamber, Council Offices, Spennymoor.

Any person wishing to exercise the right of inspection, etc., in relation to these Minutes and associated papers should contact Miss. Sarah Billingham, Spennymoor 816166, Ext 4240

Item 6

REPORT TO STANDARDS COMMITTEE

10TH FEBRUARY 2005

REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

SUMMARY OF CHANGES TO THE LOCAL AUTHORITIES (FUNCTIONS AND RESPONSIBILITIES) REGULATIONS 2000

1. SUMMARY

- 1.1 This Report summarises the effect of a series of changes to the division of responsibilities between Cabinet and Council. These changes will necessitate amendment to the Constitution.
- 1.2 The changes cover a wide range of functions: decisions upon borrowing and capital expenditure, new planning legislation, licensing, highways, Monitoring Officer's resources and overview and scrutiny.

2. RECOMMENDATIONS

- 2.1 That Standards Committee consider the Report and offer recommendations to full Council at its meeting on 25th February 2005.
- 2.2 To note that full Council shall consider the Report and approve the same and delegate to the Monitoring Officer responsibility to amend the Constitution to take account of the changes. (Report at Item 8 refers)

3. DETAIL

- 3.1 This report sets out a summary of recent changes to the regulations which govern the division of functions and responsibilities between the Cabinet and Council, under its executive arrangements.
- 3.2 Part II of the Local Government Act 2000 provides for Local Authority functions to be allocated between the Executive (Cabinet) and the Full Council of an Authority, where the Authority is operating executive arrangements. In general, the approach to the division of functions between the Executive and the Authority is as follows:
 - (i) Determination of the Local Authority's policy framework and budget and other constitutional and quasi legislative functions are to be the responsibility of the Council.
 - (ii) Functions which involve either determining an application from a person for a licence approval, consent, permission or registration, or direct regulation of a person with any related enforcement actions are also to be the responsibility of the Council, and

- (iii) All other functions are to be the responsibility of the Executive (Cabinet).
- 3.3 In addition, Local Authorities are left to determine who, within the Authority, should be responsible for certain specific functions, known as “local choice functions”.
- 3.4 There are also certain specific functions which may not be the sole responsibility of the Executive (Cabinet). These are limited to matters where the Executive will want to have an input but not to have overall responsibility and these include Development Control functions.
- 3.5 **Borrowing and Capital Expenditure:** The Local Authorities (Functions and Responsibilities) (Amendment) Regulations 2004, which came into force on the 19th May 2004 provide that as regards those functions which are not to be the responsibility of the Executive (Cabinet): “in connection with the discharge of the function of formulating a plan or strategy for the control of a Local Authority’s borrowing or capital expenditure, certain actions shall not be the responsibility of the Executive (Cabinet). The designated actions include the giving of instructions requiring the Executive (Cabinet) to reconsider any draft plan or strategy submitted by the Executive for the Authority’s consideration, the amendment of any draft plan or strategy submitted by the Executive for the Authority’s consideration and the adoption (with or without modification) of the plan or strategy. These regulations also apply to the function of formulating a plan or strategy for the control of a Local Authority’s investments.
- 3.6 **Planning:** The Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) Regulations 2004, which came into force on the 28th September 2004, make significant changes to Schedule 1 of the Regulations of 2000, specifically relating to town and country planning and development control. These changes introduce a new paragraph A for the existing paragraph A in Schedule 1 of those regulations, largely to give effect to the introduction of the Planning and Compulsory Purchase Act 2004, parts of which came into force on the 31st October 2004.
- 3.7 The principal amendments are concerned with functions relating to development plan documents of local planning authorities. Local Development Documents include development plan documents and supplementary planning documents. As development plan documents form part of the statutory development plan, which, in turn, forms part of an Authority’s policy framework, development plan documents are not to be the responsibility of the Executive (Cabinet). Supplementary planning documents, however, do not form part of the statutory development plan and are not part of an Authority’s policy framework and so are to be the responsibility of the Executive (Cabinet).
- 3.8 The Local Authorities (Functions and Responsibilities) (Amendment) (No. 3), comes into effect on the 23rd November 2004 and sets out amendments to Schedules 1 and 2 of the 2000 Regulations. These are summarised in the succeeding paragraphs of this report.
- 3.9 **Licensing:** in accordance with the general approach to the division of functions, functions relating to licensing under the Licensing Act 2003 are to be the responsibility of the Authority.

- 3.10 **Highways:** Permissions, etc.: similarly, functions relating to the grant of permission for the provision and maintenance of services and amenities and to the provision, maintenance and operation of facilities for recreation on a highway under the Highways Act 1980 are to be the responsibility of the Authority; the power to stop-up or divert a highway under Section 247 of the Town and Country Planning Act 1990 is also the responsibility of the Authority.
- 3.11 **Staff appointed to support the Monitoring Officer:** duties relating to the delegation of functions of a Monitoring Officer, under Section 82A(4) and (5) of the Local Government Act 2000, are to be the responsibility of the Council. This is because they relate to constitutional matters and, as the full Council has responsibility for the Authority's Constitution, it is considered appropriate that those functions should not reside within the Executive (Cabinet).
- 3.12 **Overview and Scrutiny Committees:** the powers relating to the grant to co-opted members of an Overview and Scrutiny Committee of permission to vote at meetings of the Committee under paragraphs 12 and 14 of Schedule 1 of the 2000 Regulations, also relate to constitutional matters and so are to be the responsibility of the Authority.

4. RESOURCE IMPLICATIONS

- 4.1 No specific implications have been identified.

5. CONSULTATION

- 5.1 Cabinet was appraised of these changes on 9th December 2004. All Heads of Service have also been appraised of these changes prior to consideration by Management Team on 22nd November 2004.
- 5.2 Due account will be taken of views of staff of relevant services.

Contact Officer: Dennis A. Hall
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Email Address: dahall@sedgefield.gov.uk

Background Papers

- The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2004
- The Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2004
- The Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Council's Head of the Paid Service or his representative	<input type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Council's S.151 Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input type="checkbox"/>	<input type="checkbox"/>

Item 7

REPORT TO STANDARDS COMMITTEE

10TH FEBRUARY 2005

REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

INTRODUCTION OF CHANGES TO THE ETHICAL STANDARDS ARRANGEMENTS UNDER THE LOCAL GOVERNMENT ACT 2000 : THE LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) (AMENDMENT) REGULATIONS 2004 AND THE STANDARDS BOARD FOR ENGLAND (FUNCTIONS) ORDER 2004

1. SUMMARY

- 1.1 This Report appraises the Council of further changes to the ethical standards framework for member conduct. New Regulations enable the Standards Board's officers to refer cases to the Council's Monitoring Officer for investigation. Further guidance will be issued as to the procedures to be followed.
- 1.2 Changes are also introduced to the procedure of Standards Committee meetings to facilitate the appropriate consideration of reports under the new arrangements.
- 1.3 It is likely that these changes will have staffing and other resource implications and further reports will follow as guidance becomes available.

2. RECOMMENDATIONS

- 2.1 That Standards Committee consider the Report and offer recommendations to full Council.
- 2.2 That full Council shall consider the Report and approve the same and delegate responsibility to the Monitoring Officer to amend the Constitution to take account of the changes. (Report at Item 8 refers)
- 2.3 That the Monitoring Officer appraise Members of these changes and all subsequent guidance when available.

3. DETAIL

- 3.1 This report considers the major changes implemented with effect from the 4th November 2004 to the Standards framework for Members, originally introduced by Part III of the Local Government Act 2000 (the Act).
- 3.2 Previous reports were made to Council upon the implementation of Part III of the Act which introduced a new regime to govern the standards of conduct expected by members of Local Authorities. The Standards Board for England was established under Section 57 of that Act to carry out statutory functions, including investigations of alleged member misconduct.

- 3.3 The Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, prescribed the procedures that Standards Committees of Authorities must follow in dealing with completed reports referred to them by the Board's Ethical Standards Officers.
- 3.4 These new regulations, the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004, amend the 2003 Regulations further. The effect of the amendments is to prescribe the procedures that Monitoring Officers must follow in dealing with allegations referred to them for investigation by the Board and those procedures that Standards Committees must follow in dealing with reports referred to them by Monitoring Officers.
- 3.5 In effect, these regulations complete the scheme for the local determination of alleged breaches of an Authority's Code of Conduct. In addition, the new Order confers on the Standards Board for England, additional functions relating to the issuing of guidance to Monitoring Officers and to Standards Committees upon the exercise of these new functions.
- 3.6 The policy objective of the Standards Board for England Order 2004 is to enable the Board to issue guidance to Monitoring Officers and to Standards Committees. The Order will also enable the Board to issue guidance to assist Local Authorities' Standards Committees in carrying out their new functions, including the implementation provisions relating to the consideration of reports issued by Monitoring Officers following their investigations.
- 3.7 The key change is that Ethical Standards Officers may now decide not to carry out full investigations of cases referred to them, but instead refer the matters direct to the Monitoring Officer to investigate. He or she will then be required to report to the Authority's Standards Committee.
- 3.8 Since Monitoring Officers are the usual sources of advice to members, the new regulations recognise that conflicts of interest could arise if a Monitoring Officer had to investigate actions taken after he had provided advice to the member on the same issue. Section 82A of the Local Government Act 2000 (which has been added by the Local Government Act 2003) will enable the Monitoring Officer to nominate someone else to carry out such investigations in those instances.
- 3.9 The new regulations also amend the Relevant Authorities (Standards Committee) Regulations 2001 and which relate to access to meetings and documents. The changes specifically relate to meetings of Standards Committees. The 2003 Regulations have already amended the 2001 Regulations so as to apply Part V(A) provisions to meetings where a Standards Committee is considering a report referred to it by an Ethical Standards Officer. The new regulations make further amendment so as to apply the Part V(A) provisions to meetings where a Standards Committee is considering a report referred to it by a Monitoring Officer.
- 3.10 The new regulations also modify the effect of Section 63 of the Act. Section 63 prohibits the disclosure of any information obtained by an Ethical Standards Officer in the course of an investigation, except in certain circumstances. The 2003 regulations modified the section so as to provide that such information may be disclosed for the purposes of enabling a Standards Committee to carry out its

functions. These regulations further modify Section 63 to provide that such information may also be disclosed for the purposes of enabling Monitoring Officers to carry out those functions.

4. RESOURCE IMPLICATIONS

- 4.1 These changes follow on from a series of additional responsibilities assigned to Monitoring Officers since the Act was implemented in 2000: duties in advising the Standards Committee upon its functions increased as a result of the 2003 Regulations. These provisions again add a responsibility to conduct investigations and, where appropriate, nominate a person to substitute for him.
- 4.2 A further Report upon staffing and resource implications will follow once guidance has been issued by the Standards Board.

5. CONSULTATION

- 5.1 This Report has been considered by the Council's Management Team on 22nd November 2004 and Cabinet on 9th December 2004.
- 5.2 It is intended that both Council and Parish Members will be fully apprised of the impact of the new regulations and guidance as it becomes available. Published guidance has been issued to members, including the Standards Committee, and has been posted to the Council's website.

6. OTHER MATERIAL CONSIDERATIONS

- 6.1 These new provisions will give rise to Constitutional changes which will necessitate approvals from the Standards Committee and full Council.

Contact Officer: Dennis A. Hall
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Email Address: dahall@sedgefield.gov.uk

Background Papers

The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004

The Standards Board for England (Functions) Order 2004

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Council's Head of the Paid Service or his representative	<input type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Council's S.151 Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input type="checkbox"/>	<input type="checkbox"/>

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Item 8

REPORT TO STANDARDS COMMITTEE

10TH FEBRUARY 2005

REPORT OF CHIEF EXECUTIVE OFFICER

ARRANGEMENTS FOR REVIEW OF THE CONSTITUTION

1. SUMMARY

- 1.1 The Council's Constitution was adopted on the 24th May 2002 as part of the Council's approach to implementing the Local Government Act 2000. A number of reviews have taken place.
- 1.2 The Constitution itself must necessarily be kept under regular review so as to ensure that it reflects existing law and its operation continues to provide an efficient and effective framework for delivering the Council's aims and objectives. This report is a further review for the purposes of Article 15 of the Constitution.
- 1.3 The recommendations in this report, based on advice from the Council's Monitoring Officer, reflect those areas where it is considered appropriate to make some immediate changes, viz:
 - (1) changes arising from new primary and secondary legislation.
 - (2) significant changes to the Ethical Standards arrangements.
 - (3) a number of changes to update the Constitution in the light of previous regulations and other updates:
 - the Council's powers to designate public places under Section 13 of the Criminal Justice and Police Act 2001.
 - the introduction of an updated Members' Allowance Scheme approved by Council on 26th November 2004.
 - amendments to incorporate Part VA of the Local Government Act 1972 (Access to Meetings and Documents) to apply to meetings of Standards Committee.
 - the function of formulating a plan or strategy for the control of a Local Authority's investments which will be a non-executive function.

2. RECOMMENDATIONS

2.1 That the Standards Committee recommend that Council approves the amendments set out in the Appendix and directs the Council's Monitoring Officer:

- (a) to amend the Constitution accordingly and make all necessary and consequential amendments; and
- (b) to publish an amended version on the Council's website.

3. BACKGROUND

3.1 Work has already begun in reviewing the Constitution. A number of officers have formed a Constitutional Review Group, headed by the Monitoring Officer, and its purpose is to consider proposals for change with a view to reflecting the law and improving the efficiency of decision-taking within the authority.

3.2 Previous reviews are identified in the list of background papers accompanying this Report.

4. LEGAL IMPLICATIONS

4.1 It is intended that the changes shown in Appendix 1 shall have immediate effect.

4.2 The principal changes are as follows :-

- (1) changes arising from amendments to the Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2004 and amendment nos. (2) and (3) of 2004, all of which were reported to Cabinet on the 9th December 2004.
- (2) changes to the Ethical Standards arrangements under the Local Government Act 2000, the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004, and the Standards Board for England (Functions) Order 2004, reported to Cabinet on the 9th December 2004.
- (3) a number of changes to update the Constitution, including a number in the light of previous regulations:
 - Council's powers to designate public places under Section 13 of the Criminal Justice and Police Act 2001.
 - the introduction of an updated Members' Allowance Scheme, approved by Council on 26th November 2004.
 - amendments to incorporate Part VA of the Local Government Act 1972 (Access to Meetings and Documents) to apply to meetings of Standards Committee.

- change to Council functions: Regulation 2 of the 2004/1158 Regulations includes the function of formulating a plan or strategy for the control of a Local Authority's investments which will be a non-executive function.

4.3 Planned areas for future change include the following:-

- (1) the Government intends to further amend Schedule 12A of the Local Government Act 1972 (Access to Information) during January to achieve clarity in the context of Freedom of Information and the Data Protection Acts: further amendments are anticipated..
- (2) further changes are expected in a number of areas including the role and remit of the Development Control Committee and Officer Delegation to take account of the Planning and Compulsory Purchase Act 2004 : further reports will follow; some changes may follow relating to new licensing provisions.

5. CONSULTATIONS

- 5.1 The Cabinet and the Standards Committee will be/have been consulted on this report and their views have been taken into consideration.
- 5.2 All Departments of the Council have been consulted with regard to the amendments suggested in this report.
- 5.3 All approved changes will be forwarded to the Standards Committee and any comments received will be reflected in future constitutional reviews.

Contact Officer: N. Vaulks, Chief Executive Officer
Telephone No: (01388) 816166
Email Address:

Ward(s)

Key Decision Validation

Background Papers

Reports:

- Council - 16th May 2003
- Council - 26th June 2003
- Standards Committee - 4th November 2003
- Council - 26th November 2003
- Council - 21st May 2004
- Cabinet - 25th November 2004

Regulations/Legislation:

Section 36 – Freedom of Information Act 2000 (ODPM letter dated 15th December 2004)

The Standards Board for England (Functions) Order 2004

The Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004

The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2004

The Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2004

The Local Authorities (Functions and Responsibilities) (Amendment) (No. 3) (England) Regulations 2004

The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001

The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2001

The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2000

PROPOSED CHANGES FOR COUNCIL APPROVAL – 25TH FEBRUARY 2005

Page Reference and Proposed Amendment	Basis for Change
<p>Page 8 Article 4.01: Meanings</p> <p>To add to Policy Framework:</p> <ul style="list-style-type: none"> • Corporate Plan • Medium Term Financial Plan <p>Article 4.02: Functions of the Full Council</p> <p>To add to Policy Framework, paragraph (b) after the words, the budget ...:</p> <p>“, the establishment of any reserves ...”</p>	<p>Recently approved corporate documents.</p> <p>In accordance with Local Authority Accounting Panel Bulletin 55.</p>
<p>Page 14 Article 8.01: to delete reference to Welfare Working Party.</p>	<p>No longer meets.</p>
<p>Page 16 Paragraph 9.03: Role and Function to add:-</p> <p>(j) to deal with cases referred to the Standards Committee by the Council’s Monitoring Officer and to conduct a hearing in accordance with the model hearing procedure in Part 4L, as amended, or substitute, where necessary, for that purpose.</p> <p>To add a new paragraph:</p> <p>“Access to Information</p> <p>The provisions of Part 5A of the Local Government Act 1972 (Access to Meetings and Documents) shall apply to Standards Committee meetings when considering a report to it, either:</p> <p>(a) by an Ethical Standards Officer of the Standards Board for England, or</p> <p>(b) the Council’s Monitoring Officer.”</p>	<p>To implement the Standards Board for England (Functions) Order 2004 and the Local Authorities (Code of Conduct) (Local Determinations) (Amendment) Regulations 2004.</p> <p>See above.</p>

Page Reference and Proposed Amendment	Basis for Change
<p>Page 32 To add a new paragraph as follows:</p> <p>“Where one or more officer who is, or whose post is identified in the succeeding schedules for the purposes of delegations, then the authority is vested in each officer whose post is so identified, unless otherwise provided.”</p>	<p>Consequential/clarification.</p>
<p>Page 35 To add new Council functions to Part IIIA as follows:</p> <p>“31. Power to make orders under Section 13 of the Criminal Justice and Police Act 2001.</p> <p>32. Duty to provide staff to a person nominated as Monitoring Officer.</p> <p>33. Responsible for formulating a plan or strategy for the control of the Council’s borrowing, investments or capital expenditure.”</p>	<p>The Local Authorities (Alcohol Consumption in Designated Places) Regulations 2001.</p> <p>Section 82A(4) and (5) of the Local Government Act 2000 in relation to matters referred to him under Sections 60(2), 64(2), 70(4) or 71(2) of that Act.</p> <p>To take into account the introduction of SI2004/1158, the Local Authorities (Responsibilities for Functions) Regulations 2004.</p>
<p>Pages 36 to 38 <i>Development Control Committee</i></p> <p><i>To be deleted in due course and replaced by new provisions reflecting the Planning and Compulsory Purchase Act 2004.</i></p>	<p><i>Schedule 1 amendments as set out in the Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2004.</i></p>
<p>Page 41 Licensing Committee 1</p> <p>29 – to add reference to new officer delegation ref “NS111”.</p>	<p>Request from Neighbourhood Services Department, Head of Environmental Services.</p>
<p>Page 46 <i>Personnel Appeals Panel</i></p> <p><i>To review current remit.</i></p>	<p><i>Request from Resources Department, Human Resources.</i></p>

Page Reference and Proposed Amendment	Basis for Change
<p>Page 53 Part 3B. Responsibility for Functions : B. Cabinet Functions.</p> <p>Add to paragraph 6:</p> <p>“, taking into account the adequacy of reserves and provisions.”</p> <p>Add to paragraph 10:</p> <p>“Save, where delegated to the Director of Resources.”</p>	<p>In accordance with Local Authority Accounting Panel Bulletin 55.</p> <p>Cabinet report dated 23rd December 2004 – consequential changes.</p>
<p>Page 59 Regulation of Investigatory Powers Act 2000</p> <p>To add to existing CE51 as follows:</p> <p>“; that the Solicitor to the Council only shall have authority to appoint designated persons for the purposes of Section 22 of the Act.”</p> <p>Freedom of Information Act.</p> <p>To add:</p> <p>“CE55 Authority to act as a primary qualified (new) person for the purposes of determining exemptions from disclosure under Section 36 of the Freedom of Information Act 2000 and the responsible officer is the Council’s Monitoring Officer.</p> <p>CE56 Authorisation to act as a qualified person (new) for the purposes of Section 36 of the Freedom of Information Act 2000 and the officer is the Chief Executive Officer.”</p>	<p>Cabinet report dated 25th November 2004.</p> <p>See above.</p> <p>See above.</p>
<p><u>Other Matters</u> Amend existing CE35 to CE56 (formerly CE55).</p>	<p>Consequential.</p>

Page Reference and Proposed Amendment	Basis for Change
<p>Page 66 Part 3 – Responsibility for Functions: C. Officer Delegations.</p> <p>To add:</p> <p>“R51: Director of Resources’ power in respect of land transactions. Power to agree the terms of disposals of land held jointly with any public body or authority where such disposals are to be at market value subject first to consultation with the Cabinet Member for Regeneration; the terms of any such disposal shall be subsequently reported to Cabinet for information.</p> <p>R52 Granting of Rate Relief from Business Rates.”</p>	<p>Cabinet – 23rd December 2004.</p> <p>Recommendation of Director of Resources.</p>
<p>Pages 67 to 71 <i>Town and Country Planning Act 1990 and related matters.</i></p> <p><i>To be amended in the light of above changes arising from the Planning and Compulsory Purchase Act 2004.</i></p>	<p><i>Schedule 1 amendments as set out in the Local Authorities (Functions and Responsibilities) (Amendment) (No. 2) (England) Regulations 2004.</i></p>
<p>Page 87 Part 3 – Responsibility for Functions: C. Officer Delegations.</p> <p>To add:</p> <p>“NS111 Authority to grant but not refuse licence applications under House to House Collections Act 1939 and House to House Collection Regulations 1947 to Director of Neighbourhood Services, Head of Environmental Services, Inspection and Licensing Manager, Principal Licensing Officer.”</p> <p>“NS112 That the Chief Executive and Director of Neighbourhood Services be authorised to give/withdraw necessary consents under Section 31(2) of the Anti-Social Behaviour Act 2004.”</p>	<p>Request from Neighbourhood Services Department, Head of Environmental Services.</p> <p>Management Team : 31st January 2005</p>

Page Reference and Proposed Amendment	Basis for Change
<p>Page 111 Part 4 – Rules of Procedure: B. Access to Information Procedure Rules.</p> <p>To add the following new paragraphs after paragraph 15:</p> <p>“16. Information relating to the personal circumstances of any person.</p> <p>17. Information which is subject to any obligation of confidentiality.</p> <p>18. Information which relates in any way to matters concerning national security.</p> <p>19. The deliberations of a Standards Committee or of a sub-committee of a Standards Committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred to under the provisions of Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000.”</p>	<p>To take account of the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004.</p>
<p>Page 134 Part 4 Rules of Procedure</p> <p>Paragraph 2.6.3</p> <p>To add after * Treasury Management:</p> <ul style="list-style-type: none"> • Advise the Council in formulating a plan or strategy for the control of borrowing, investment or capital expenditure. 	<p>To take into account the introduction of SI2004/1158, the Local Authorities (Responsibilities for Functions) Regulations 2004.</p>
<p>Page 138</p> <p>Paragraph 3.3.7</p> <p>Change heading to “Adequacy of Reserves and Provisions”</p> <p>Add to second line of paragraph after words “Council and Cabinet on”:</p> <p>“The adequacy of reserves and provisions of”</p>	<p>In accordance with Local Authority Accounting Panel Bulletin 55.</p>

Page Reference and Proposed Amendment	Basis for Change
<p>Part 6 Members' Allowance Scheme.</p> <p>To substitute with current scheme.</p>	<p>Update.</p>

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REPORT TO
SEDGEFIELD BOROUGH COUNCIL

CONFLICTS OF INTEREST
AND
DECISION MAKING ARRANGEMENTS

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REPORT TO SEDGEFIELD BOROUGH COUNCIL

ON CONFLICTS OF INTEREST AND DECISION MAKING ARRANGEMENTS

1. PURPOSE OF REPORT

- 1.1 The purpose of this Report is to identify, for the benefit of the Members and Officers of Sedgefield Borough Council (“the Council”), the potential for conflicts of interest arising during the stock transfer process, both generally and, more specifically, for Members, should they choose to sit on the Board of the proposed Registered Social Landlord (“RSL”).

2. EXECUTIVE SUMMARY AND INTRODUCTION

- 2.1 The Office of the Deputy Prime Minister (ODPM) Housing Transfer Guidelines 2005 emphasise the need to ensure an appropriate degree of independence between a disposing authority and the prospective acquiring landlord throughout the transfer process. This is to avoid conflicts of interest or any perception of any such conflicts.
- 2.2 The Guidelines accept that some Members and employees will inevitably have dual roles in the early stages, prior to a ballot, and that there are requirements on Members to declare interests.
- 2.3 Members should be aware of the overriding need for Board Members of the RSL neither to profit from their position nor to put themselves in a position where their personal interest conflicts with their duties as Members.
- 2.4 This Report considers these issues and recommends the adoption of policies and decision making arrangements designed to minimise the risk of conflicts arising.

3. COUNCIL REPRESENTATIVES SITTING ON THE RSL BOARDS

- 3.1 The Council’s representatives on the Board of the RSL will be required under company law (as indeed with all Board Members) to act in the best interests of the RSL at all times. At times, Members may feel that there is potential for these interests to cut across interests in other capacities and their responsibilities to their constituents.
- 3.2 In particular, Members will be required to attend Council meetings at which the RSL or stock transfer process may be discussed. In doing so, Members must comply with the Council’s Code of Conduct, provided it does not conflict with any other lawful obligations of the RSL.

3.3 The Council is bound by the mandatory provisions from the Local Authority (Model Code of Conduct) (England) Order 2001 (“the Model Code”). Set out below is a summary of the disclosure provisions that in our opinion are relevant to Members.

3.4 **The Model Code**

3.4.1 The Model Code deals with the disclosure by Members of their “personal interests” and “prejudicial interests”.

3.4.2 A “personal interest” arises for a Member in the following situations:

- (a) in any matter which relates to a RSL (or similar body) of which the Member is either a Board Member, or holds some management position; or
- (b) where a decision is required on any matter which will promote (to a greater extent than the general public in the area) the well-being or financial position of:
 - (i) the RSL, or
 - (ii) the Member personally; or
 - (iii) any friend or relative (or their associated employment, business or financial interests)

3.4.3 A “prejudicial interest” arises where a “personal interest” could be regarded by the public as so significant that it is likely to prejudice that Member’s judgement of the public interest. However, of the “personal interests” listed above in paragraph 3.4.2, only those at sub-paragraph (b), excluding (i), can become “prejudicial interests”.

3.4.4 A “personal interest” must be disclosed by the Member:

- (a) at a Council meeting, either at the start or when the interest becomes apparent; or
- (b) in the written record of an executive decision made by the Member.

3.4.5 A Member with a “prejudicial interest” must, unless a dispensation has been obtained, withdraw from meetings where the matter is being considered, and must not exercise executive functions or improperly influence decisions in relation to the matter. However, a Member on any overview, scrutiny, joint or area committee who has a “prejudicial interest” may still participate in meetings of these committees, provided that no functions of the Council or the Cabinet are being exercised.

4. **THE REQUIREMENTS OF THE OFFICE OF THE DEPUTY PRIME MINISTER (ODPM)**

4.1 The Council’s representatives on the Board will also need to take into account the ODPM’s Guidelines with regard to conflicts of interest in the stock transfer process. It

- is important to note that these Guidelines are additional to the Council's Code of Conduct.
- 4.2 Because the Cabinet/Scrutiny Structure has only recently been introduced in England, the ODPM have not produced full guidance on conflicts of interest specifically designed for this structure.
 - 4.3 However, the Guidelines accept the need for Members to declare interests and authorities are strongly recommended to identify possible conflicts and put in place structures and protocols designed to eliminate, or at least minimise them.
 - 4.4 The Guidelines allow for the possibility of a councillor serving on both the Shadow Board and the Council decision making bodies. This is however subject to the requirements of the Model Code and a Member in this position should satisfy themselves on each of the decisions being made that no prejudicial interests arise.
 - 4.5 For this purpose, the Council should:-
 - 4.5.1 Establish a steering group to oversee the transfer involving the full range of Council interests which the Council has already done. The ODPM's guidelines recommend this steering group be chaired by the officer who will lead the negotiations on behalf of the Council post-ballot. Steering group members should not also serve on the RSL's Shadow Board.
 - 4.5.2 Recognise that many employees may transfer to the new landlord. Accordingly, guidance should be issued to them on how to deal with potential conflicts of interest.
 - 4.5.3 Be particularly careful about conflicts of interest post ballot, when negotiations about the price and terms of sale will take place. The Council will be expected to demonstrate a clear split of responsibilities at this stage. It is therefore important that officers making key recommendations in relation to the transfer are not solely those who would transfer to the new landlord and that officers who are to remain with the Council have a leading role at all times.
 - 4.5.4 Review and update regularly the arrangements for dealing with potential conflicts of interest and ensure that any changes are made known to all those involved in the transfer.
 - 4.6 To satisfy these criteria, we set out below our recommendations with regard to the role of all Members and employees, as well as specific guidance to those Members who sit in Cabinet or in Scrutiny, or who are also Tenants. We also set out procedures for the Council regarding confidential information and requests for further guidance.
 - 4.7 **All Members and Employees**
 - 4.7.1 Conflicts of interest may arise for Members or employees involved in advising, discussing, negotiating, promoting or opposing stock transfer.
-

4.7.2 The ODPM recommend that to guide Members and employees involved in the possible transfer of the housing stock, Councils should adopt a protocol to eliminate or minimise any conflicts of interest. A suggested protocol based on the ODPM Guidelines is annexed to this report.

4.8 **Cabinet Members**

4.8.1 As mentioned above at paragraph 4.4, ODPM Guidelines allow for the possibility of a Member serving both on a Shadow Board and the Council's Executive Cabinet. The Council however should consider carefully whether such an arrangement will be impractical given the frequency with which conflicts may arise and it may therefore decide to avoid Members playing dual roles.

4.8.2 Consideration will need to be given, in due course, to how to deal with conflicts of interest arising after transfer has taken place.

4.9 **Members who are Tenants**

4.9.1 We do not believe that a material conflict of interest will arise for a Member who is also a tenant in situations or matters affecting all or a substantial group of tenants.

4.9.2 However, there is a real risk of a conflict of interest where the matter in question only affects a particular Member in their capacity as a tenant, or only affects a limited group of tenants which includes the Member (e.g. demolition of certain houses, including the Member's house).

4.9.3 It is important, therefore, for any Member who is a tenant to identify such situations where a potential conflict of interest may exist or arise and to ensure they do not participate in any discussions or decisions on the matter.

4.10 **Confidential Information**

4.10.1 In addition to the issues identified above, the Council should also put in place arrangements for handling information which is confidential to the authority during the negotiations with the acquiring RSL on the valuation of the stock and the terms of the contract. In practical terms this will mean that relevant Council (or Cabinet) papers should only be released to those Members and employees who have a need to receive particular documents and information and who are approved by the Chief Executive.

4.11 **Further Guidance**

4.11.1 The Council should ensure that any requests for further guidance regarding conflicts of interest which relate to stock transfer are delegated to the Chief Executive. The types of guidance that could be provided by the Chief Executive include:

- (a) Guidance on exceptional circumstances which might permit a conflict of interest situation to continue. For example:

- (i) where a Board Member did not know of the interest and could not be expected to have known;
 - (ii) where a Board Member is a director or officer of a parent, subsidiary or associate company.
- (b) Guidance on situations where it is unclear whether a conflict of interest might arise or has arisen. For example:
 - (i) where a Board Member is asked to comment upon stock transfer in their capacity as Councillor;
 - (ii) where a Board Member is asked by constituents (who are tenants) to oppose a proposed RSL policy.

5. **CONCLUSIONS**

- 5.1 The ODPM guidance indicates that the Council should put in place arrangements which minimise the risk of conflict of interest at both Councillor and employee level. This report identifies how such arrangements can be achieved and suggests the adoption of a formal protocol for this purpose.

6. **RECOMMENDATIONS**

- 6.1 It is recommended that the protocol attached at Appendix 1 be adopted to guide the Council, Members and employees in dealing with the possible transfer of the Council housing stock to an RSL.

APPENDIX 1

SEDGEFIELD BOROUGH COUNCIL

CODE OF CONDUCT – PROTOCOL

1. The purpose of this protocol is to guide Members and employees to avoid any conflicts of interest, both actual and perceived, before, during and after the ballot of tenants in connection with the possible establishment of a Registered Social Landlord (RSL).
2. The Guidance in this protocol does not take the place of the Council's Code of Conduct or conditions of employment of Members and employees. It is intended as supplementary guidance to clarify roles and responsibilities. It recognises Members' corporate responsibilities and that they represent the interests of their constituents. The Council believes, therefore, that Members should be free to discuss the issue with their constituents but that they should only assist the stock transfer process in a balanced way based on agreed accurate information.
3. The protocol should help to ensure that at all stages before, during or after the tenants and Council have determined a way forward on the possible stock transfer, Members and staff will be seen to have maintained high standards of integrity and personal conduct.
4. In order to achieve and maintain standards:-
 - 4.1 The Council will:-
 - 4.1.1 Establish a Shadow Board for the RSL made up of Council, Tenant and Independent representatives.
 - 4.1.2 Only appoint the Councillor nominees on the Shadow Board from amongst those Members who are not members of the stock transfer steering group or equivalent.
 - 4.1.3 Appoint or continue the appointment of an independent consultant to act as tenants' adviser who shall be independent from, and not seen as representing, the views of the Local Authority, the proposed RSL or tenant groups.
 - 4.1.4 Ensure that timely and complete information is supplied to tenants to enable them to be best informed prior to the formal ballot.
 - 4.1.5 Restrict circulation of documents containing confidential information to only those Members who have a "need to know" for the performance of their duties on behalf of the Council. Any determination as to what information is to be classified as confidential and which Members are eligible to receive such information shall be made by the Chief Executive.

- 4.1.6 Ensure that appropriate stock transfer decisions are delegated to the Chief Executive where a potential conflict of interest exists or might arise for a Member or employee.
- 4.2 Members will:-
 - 4.2.1 Ensure that confidential information obtained by them, whilst acting on behalf of the Council, is not disclosed to Members, officers or other persons representing the Shadow Board of the RSL or to tenants.
 - 4.2.2 Not act in an advisory capacity, either formally or informally, to both the Council and the Shadow Board.
 - 4.2.3 Not undertake any formal role on behalf of tenants in connection with the possible establishment of the RSL.
 - 4.2.4 Not accept any paid office with the Shadow Board.
 - 4.2.5 Comply with the Council's Code of Conduct.
 - 4.2.6 Discuss stock transfer issues with constituents in a balanced way based on agreed accurate information.
- 4.3 Employees will:-
 - 4.3.1 Ensure that confidential information obtained by them, whilst acting on behalf of the Council, is not disclosed to Members, other employees or persons representing the Shadow Board of the RSL or to tenants.
 - 4.3.2 Not, without the prior approval of their Director, promote the retention or disposal of the housing stock prior to any formal recommendation being made by the Council and approved by the ODPM.
 - 4.3.3 Not, without the express consent of their Director, act in a formal or informal advisory capacity to both the Council and the Shadow Board.
 - 4.3.4 Not undertake any formal role on behalf of tenants in connection with the possible transfer of the stock other than such duties as may be required under their Terms and Conditions of Employment by the Council.
 - 4.3.5 Not accept, except for any secondments of Officers approved by the Council, any paid office or other appointment with the Shadow Board.
 - 4.3.6 Comply with statutory rules and regulations relating to the Council's Code of Conduct and their Contracts and Terms and Conditions of Employment.

SEDGEFIELD BOROUGH COUNCIL

REPORT ON LSVT CONSULTATION

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Date: December 2004

REPORT ON LSVT CONSULTATION

1. BACKGROUND

- 1.1 The Council is currently in the pre-ballot stage of an intended transfer of its homes to a Registered Social Landlord pursuant to a Large Scale Voluntary Transfer (“LSVT”).
- 1.2 The Secretary of State of the Office of the Deputy Prime Minister publishes a “Housing Transfer Manual” (the “Manual”), which provides guidance on housing transfer. The Manual sets out various procedures which need to be adopted by the Council when seeking Secretary of State consent to the transfer following a positive tenant ballot.
- 1.3 The Manual does not have the effect of legislation but, in respect of those elements of the Manual which provide guidance on suggested procedures, it is expected that the Council will follow the Manual in order to ensure that those procedures enable the Council properly to discharge its duties (legal and otherwise) to its tenants.
- 1.4 This report provides guidance on a number of issues relating to the proposed LSVT, particularly in relation to the provision of information during the consultation process.

2. CONSULTATION MATERIAL

2.1 The Transfer Manual

- 2.1.1 The latest Manual (for the 2005 programme) at paragraph 10.15 states:

An authority must present an accurate picture to the tenants about the transfer proposal and the implications of staying with the Council, but it should not seek to persuade tenants to vote one way or the other. The prospective new landlord and tenants groups can, however, explain to tenants the benefits of transfer, providing its material is fair and accurate....

In Annex N (at paragraph 5) Councils are required to ensure that the information provides a “*full and fair*” picture of the proposed transfer. Later paragraphs refer variously to “*accurate and balanced*” (paragraph 8), “*balanced and informative*” (paragraph 57) and so on.

- 2.1.2 The term “authority” used in Section 10.15 of the Guidance applies to the Council as a corporate body so as to ensure that all information, informal and formal, issued during the LSVT consultation process by the Council is fair and accurate and does not seek to persuade tenants to vote one way or the other. However the term “authority” would also apply to the Council’s employees and elected members, who respectively comprise the workforce and decision-making “parts” of the Council. This would also apply to any information used in an opposition campaign.
- 2.1.3 Such a “constraint” on the provision of information (if constraint it is) should not be seen as stifling political debate. It must, rather, be seen in the context of providing fair and accurate material to tenants to enable them to make up their own minds.

2.1.4 The Council must ensure that employees and all elected members are aware of and comply with the requirements of the Guidance in relation to the provision of fair and accurate information (i.e. which is not calculated to persuade tenants to vote one way or the other).

2.1.5 Staff could usefully be reminded of their conditions of employment which are likely to include provisions relating to carrying out such duties as the Council appropriately directs and not to do anything which could be regarded as bringing the Council into disrepute.

2.2 **Codes of Conduct**

2.2.1 The Members Code of Conduct, which the Council will have based upon the Model Code, will no doubt require that a member must not in his/her official capacity, or any other circumstances, conduct him/herself in a manner which could reasonably be regarded as bringing his/her office or the Council into disrepute.

2.2.2 A failure to comply with properly notified guidance on the provision of fair and accurate information (i.e. not seeking to persuade tenants) might be regarded as bringing the Council into disrepute.

2.2.3 In addition, a failure to comply with the requirement to consult tenants in a fair and accurate way would render the outcome of a tenant ballot susceptible to legal challenge (e.g. by way of a judicial review of the Council's decision to ballot tenants or transfer its stock).

2.2.4 The Council has established, through its constitutional decision-making procedures, a policy to pursue LSVT, which is regarded by the Council to be in the best interests of the tenants. Opposition members are of course entitled to hold a politically opposed view to that policy. However, such opposition should not to be directed in such a way as to breach the requirements of the Guidance as outlined above.

3. **CONFLICTS OF INTEREST**

3.1 **Generally**

3.1.1 The model Members Code of Conduct deals with interests of a personal and of a prejudicial nature. A Member with a politically opposing view of the Council policy to pursue stock transfer does not have a personal interest as defined by the Code. In those circumstances there will be no prejudicial interest under Clause 10 of the model Code by mere fact of the opposition to the policy, no matter how vehemently held that opposition may be.

3.1.2 The Manual allows a Councillor to serve on both the Shadow Board of the RSL and the Council decision-making bodies. This is subject to the requirements of the Model Code of Conduct and Members in this position should satisfy themselves on each of the decisions being made that no prejudicial interests arise. We shall be pleased to advise further on specific issues. There is an important distinction between general housing issues and issues which relate directly to the proposed landlord.

3.1.3 The Manual also allows a Member to serve on both the Shadow Board and the Council's Cabinet. The Council however should consider carefully whether such an arrangement

will be impractical given the frequency with which conflicts may arise and it may therefore decide to avoid Members playing dual roles.

- 3.1.4 The Standards Board for England issued guidance in September 2004 entitled “Lobby Groups, dual-hatted members and the Code of Conduct”. If it has not already been circulated all Council Members should be provided with a copy of this. The guidance acknowledges that it would be wholly unreasonable to expect an elected member to be devoid of general views about a range of local issues and that in fact members may have been elected because of their particular views on those issues. However the guidance does make it clear that Councillors who are members of lobby or campaigning groups (whether membership is formal or informal) need to ensure that the Council can even-handedly decide matters on their merit – and can be seen to be doing so. Members are reminded in the guidance that:

.....You must also act in accordance with the General Principles which underpin the Code of Conduct. So, for example, you should not place yourself in situations where your honesty and integrity may be questioned, and you must reach your own conclusions on the issues before you. The law requires you to take decisions fairly, on the merits known to you at the time you make the decision. You should not reach a final conclusion before you come to a decision on an issue.....

.....Your statements and activities should not create the impression that your views on a matter are fixed, and that you will not fairly consider the evidence or arguments presented to you when you are making a decision. Public confidence in the probity of decision making is paramount.....

- 3.1.5 Each individual member will need to consider at the appropriate time whether a personal prejudicial interest arises owing to the membership of a lobby or campaign group (e.g. any “No” campaign). The guidance emphasises that the public would appreciate that those involved in local government are likely to have strong views on a range of issues, based on their experiences and outlook and in many cases opinions of that kind may not amount to a prejudicial interest “*even if you belong to a campaign or lobby group*”. The guidance makes it clear that it is only possible to decide whether a personal prejudicial interest arises when all the facts are considered and each case is determined on its own merits.

- 3.1.6 Consideration will need to be given, in due course, to how to deal with conflicts of interest arising after transfer has taken place.

3.2 **Members on the Shadow Board Opposed to the Stock Transfer**

- 3.2.1 All Board Members have a legal duty to act in the best interests of the Company. This is a fundamental fiduciary duty that all Board Members must accept and abide by. This is true even during the period when the Board is acting in a shadow capacity only. All decisions of the Shadow Board will, upon conversion from shadow to full capacity, be ratified by the full Board so that valid decisions taken in shadow capacity will be valid decisions of the full Board.

- 3.2.2 The RSL has been established as the delivery vehicle for the implementation of the Council’s policy to pursue the LSVT. Board Members are therefore sitting on the Shadow

Board in order to ensure that the Company is established in order to take the transfer of the Council's housing stock should the tenants vote in favour of the proposal in the forthcoming ballot. As the RSL is being established as the delivery vehicle for the Council policy to pursue stock transfer to it, a Board Member who is opposed to the transfer of the stock to the Company will not be acting in the best interests of the Company. That Board Member will therefore be in breach of his/her fundamental fiduciary duty to the Company.

4. **CONDUCT OF THE CONSULTATION PROCESS**

4.1 **The Publicity Code**

4.1.1 The Code of Recommended Practice on Local Authority Publicity was first published in 1988 and updated most recently in 2001.

4.1.2 Clauses 18 and 19 of the Code provide as follows:-

18. Publicity campaigns by local authorities are appropriate in some circumstances: for example, as part of consultation processes where local views are being sought, or to promote the effective and efficient use of local services and facilities, or to attract tourists or investment. Publicity campaigns may also be an appropriate means of influencing public behaviour or attitudes on such matters as health, safety, crime prevention or equal opportunities.

19. Legitimate concern is, however, caused by the use of public resources for some forms of campaigns which are designed to have a persuasive effect. Publicity campaigns can provide an appropriate means of ensuring that the local community is properly informed about a matter relating to a function of the local authority and about the authority's policies in relation to that function and the reasons for them. But local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.

4.1.3 These issues have been rehearsed in well-publicised District Audit reviews of the Bath & North East Somerset LSVT consultation process. It is generally accepted that the District Auditor took an unjustifiably narrow view.

4.2 **Campaigning**

4.2.1 The ODPM Guidance explicitly rules out "campaigning" in the sense of persuading tenants to take a view for or against transfer.

4.2.2 This applies to the Council as a corporate body and to Councillors individually – whether as party/group members or as individuals. For officers or councillors to participate in a "No" campaign which would by implication be designed to persuade tenants to vote against the proposed transfer, would be a breach of the ODPM Guidance.

4.2.3 Any opposition councillors who are proposing a "No" campaign should be mindful of their responsibilities under the Code of Conduct.

4.2.4 Opposition councillors should be encouraged to ask for expert advice on the form and content of any material they are proposing to circulate. The over-riding aim must be to ensure that tenants only receive material which is “fair and accurate”. The same standards of fairness and accuracy should be applied to all material, whether “Council” or “Opposition”.

5. COMMENTS AT CONSULTATION EVENTS

5.1 It is a common feature of the LSVT consultation process that Council officers attend meetings, roadshows, information days etc. When the proposed new landlord is a newly established company (i.e. not part of an existing group) it is only existing Council staff who can attend such information sessions to provide answers to questions raised by tenants about the proposals. When the LSVT is proposed to be to a new landlord within an existing group (as is the case here), it is again appropriate for Council officers to attend these sessions, alongside officers from the new landlord. Not to do so would mean that potentially many of the questions that tenants may wish to have answered which can only be answered by the Council would not be addressed.

5.2 Officers and members can legitimately reply to queries raised along the lines that: *“the Council considers the transfer is in the best interests of tenants but that it is for the tenants to decide themselves once they have received all the information”*. Officers and members should refrain from setting out their own personal view of what is or is not in the best interests of the tenants, because such personal remarks could be interpreted as a means of persuasion and thus taint the fairness and accuracy of the consultation process. It is legitimate to re-emphasise that the Council has settled on a policy which it considers to be in the best interests of the tenants to pursue stock transfer and that the proposed landlord has been chosen to deliver the improvements in the housing stock and in the housing services that the Council is unable to deliver itself.

TROWERS & HAMLINS

17 December 2004