

**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

PRESENT

\*indicates Members present

MEMBERS:	Councillors Diakides*, Rahman Khan, Lister*, Reid, Whyte*, Williams* and Winskill *
----------	---

INDEPENDENT MEMBERS:	Ms I Francis *(Vice-Chair), Mr R. Lovegrove *(Chair), Ms A Loyd* and Ms C. Sykes.
----------------------	---

Apologies                      Councillor Rahman Khan, Reid and Carole Sykes

MINUTE NO.	SUBJECT/DECISION
------------	------------------

<b>STCO30.</b>	<p><b>APOLOGIES FOR ABSENCE</b></p> <p>Apologies were received on behalf of Carol Sykes, and Councillors Rahman Khan and Reid.</p> <p><b>NOTED</b></p>
<b>STCO31.</b>	<p><b>URGENT BUSINESS</b></p> <p>There were no items of urgent business.</p> <p><b>NOTED</b></p>
<b>STCO32.</b>	<p><b>DECLARATIONS OF INTEREST</b></p> <p>There were no declarations of interest.</p> <p><b>NOTED</b></p>
<b>STCO33.</b>	<p><b>MINUTES</b></p> <p>RESOLVED</p> <p>That the minutes of the meeting of the Standards Committee held on 21 October 2008 be confirmed as an accurate record of the proceedings.</p> <p>Matters arising</p> <p>Councillor Whyte referred to STC025 in respect of the draft guidance for the public on complaints against members and commented that the forms for the public to complete were not on line and felt that they should be on line. In response Mr Suddaby commented that this would be possible and that he would ensure that the forms be added together with an explanation and</p>

**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

	<p>guidance for the public.</p> <p>NOTED</p> <p>Mr Suddaby referred to the Council's external auditors - Grant Thornton recent report on probity and reference there to the need for there to be a programme of training set out for the Standards Committee.</p> <p>Mr Suddaby, in response to clarification that a response was required by 5 January 2009, advised that it would be appropriate to state that a report on a training programme would be given to the next meeting, which would meet the required response. Mr Suddaby also advised that he would bring a report to the next Committee detailing such proposals in draft form.</p> <p>NOTED</p> <p>The Chair referred to the next scheduled Standards Committee on 15 January 2009 and that given that there had been a by-election called for that day it would be necessary to reschedule the meeting to the latter part of the Municipal Year. The Clerk advised that he had identified a date in mid March 2009 as a possible alternative – 23 March 2009 at 19.30hrs, and that this date showed little or no member clashes.</p> <p>The Committee felt that this date would be appropriate as an alternative and the Clerk undertook to notify all Members accordingly.</p> <p>The Chair also advised that Jeremy Williams, who had been the Clerk to this Committee, would be leaving Council's service on 24 December 2008. On behalf of the Committee the Chair thanked Mr Williams for all his hard work and efforts and wished Mr Williams the very best for the future. The Committee concurred with the Chair's sentiments.</p> <p>NOTED</p>
<b>STCO34.</b>	<p><b>CHAIR'S ANNOUNCEMENTS</b></p> <p>The Chair advised that he had no announcements to make.</p> <p>NOTED</p>
<b>STCO35.</b>	<p><b>MONITORING OFFICER'S REPORT</b></p> <p>The Monitoring Officer – Mr Suddaby advised that he had no matters to report to the Committee.</p> <p><b>NOTED</b></p>

**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

**STCO36. RESPONSE TO GOVERNMENT CONSULTATION PAPER ENTITLED  
'COMMUNITIES IN CONTROL: REAL PEOPLE, REAL POWER - CODES OF  
CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES  
STANDARDS COMMITTEE - 22 DECEMBER 2008**

The Committee received a brief report from Mr Suddaby in respect of the draft responses that he was suggesting for the Committee to consider and endorse in respect of the Government's consultation paper 'Communities in control'.

Following clarification to Members the Committee then proceeded through the draft responses as detailed in pages 47-53, and commented on each question, and **RESOLVED TO** respond in the following terms:

**RESOLVED**

**Q1 – Do you agree that the Members' Code should apply to a member's conduct when acting in their non-official capacity?**

The Standards committee agrees that some conduct in private life can reflect upon a member's suitability to continue as a member and having to wait until elections give the electorate a chance to remove the member can seriously damage the reputation of an authority and of local government in general. We therefore agree that the Code of Conduct for Members should apply to at least some conduct in a member's private life.

**Response –** The Standards Committee **agreed** that there should not be a blanket extension of a Member's conduct when acting in an non official capacity

**Q2 – Do you agree with the definition of "criminal offence" for the purpose of the Members' Code? If not, what other definition would you support? Please give details.**

**Response –** that the Standards Committee **agrees with the definition of "criminal offence" for the purpose of the Members' Code**, not the draft response.

**Q3 – Do you agree with this definition of "official capacity" for the purposes of the Members' Code? If not, what other definition would you support? Please give details.**

**Response –** that the Standards Committee **agrees** with the proposed definition of "official capacity" as "being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority." However our committee suggests that a more precise definition should be used for "representative" such as that the member was "engaged in the business of a body to which he/she has been appointed by, on the nomination of, or with the approval of the authority."

**Q4 – Do you agree that the members’ code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?**

**Response** – that the Standards Committee **agrees** that the Code should apply to criminal offences committed abroad.

**Q5 – Do you agree that an ethical investigation should not proceed until the criminal process has been completed?**

**Response** – The Standards Committee **does not consider** that there should be a limit on making a complaint before conviction. Although this will have to be decided by the Standards Committee on a case by case basis and with the advice of the Monitoring Officer, the Committee believes that there should be no bar on standards investigations and proceedings in advance of conviction. In those circumstances where the Standards Committee decides to proceed with determining a complaint in advance of a criminal trial, evidence of criminal conduct other than a conviction by a criminal court should be admissible as evidence of criminal conduct.

**Q6 – Do you think that the amendments to the Members’ Code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?**

#### 6.1 Registration of Gifts and Hospitality

**Response** – The Standards Committee **agrees** that that Paragraph 8(1)(a)(vii) be amended to clarify that a member is required to register any gift or hospitality with an estimated value of at least £25. The current drafting of Paragraph 8(1)(a)(vii) is different from that of other such outside interests, as it refers to “the interests” of the donor or hospitality provider, rather than referring to the donor or hospitality provider itself. This does not fit with the registration requirement in Paragraph 13, as taken literally it requires the member to register “the interests of” the donor or hospitality provider. Accordingly, Paragraph 8(1)(a)(vii) should be amended by the deletion of the words “the interests of”, and Paragraph 13 should be amended by the addition of a new Paragraph 13(3) as follows – “(3) In respect of a personal interest arising under Paragraph 8(1)(a)(vii), you must register both the identity of the person from whom you have received the gift or hospitality and provide details of the gift or hospitality and its estimated value.”

#### 6.2 Prejudicial Interests

**Response** – The Standards Committee **agrees** that Paragraph 10 (1) and (2) could certainly be clarified if they were re-drafted to avoid the current double-

**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

negative. An amplification of the meaning of “determination” would be helpful. However, this Paragraph would still remain flawed because of the lack of clarity as to when the determination of an approval, consent, licence, permission is “in relation to” the member. The Council suggests that this be changed to say “determination of an application for approval..... made by you or on your behalf.”

The Standards Committee **agreed to delete the following suggestion** ‘The disapplication of Paragraph 10(2)(c) to giving evidence before a Standards Committee would be welcome.

**6.3 Registration of Interests**

**Response** - The Standards Committee **agrees** that that existing registrations of interests should carry forward when the revised Code is introduced.

**6.4 Additional Suggested Amendment - Application to suspended Members**

**Response** - The Standards Committee **agrees** that the majority of the Code as currently drafted does not apply to a member when he/she is suspended. The Council suggests an amendment to Paragraph 2(2) to provide that a member’s conduct in relation to his/her authority shall be treated as being in an official capacity notwithstanding that the member was suspended at the time of the conduct

**6.5 Additional Suggested Amendment - Disclosure and misuse of confidential information in private life.**

The disclosure of confidential information which a member has obtained through their connection with the authority, or its use for personal advantage, in private life, would be an example of serious misconduct, but at present this is not covered by the Code of Conduct. It is necessary to further amend Section 51 of the Local Government Act 2000 to refer to conduct which **does** constitute a criminal offence, rather than “**would**” constitute a criminal offence, so it is relatively simple to provide that non-criminal conduct can amount to a breach of the Code, where this is specified in the Code, and then amend Paragraph 2(3), such that Paragraphs 4 and 6(a) can constitute a breach of the Code even where the conduct occurs in private life and does not amount to a criminal offence.

**Response** - The Standards Committee **does not agree** with the suggested amendment.

**6.6 Additional Suggested Amendment – Value of Shareholdings**

The current volatility in the share market makes the present £25k nominal value somewhat arbitrary. The Council therefore suggests that it would be appropriate to amend Paragraph 8(1)(a)(vi) to provide that a member has a personal interest in “any person or body who has a place of business or land in your authority’s area, and in whom you have a beneficial interest in the securities of that person or body that exceeds a nominal value of £25,000, a current market value of £25,000 or 1/100th of the total issued share capital”.

**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

**Response** - The Standards Committee **does not agree** with the suggested amendment.

**6.7 Additional Suggested Amendment – Gifts and Hospitality**

To update the current £25 threshold for declaration of gifts and hospitality to restore its real value and to conform with the new requirement to declare relevant gifts and hospitality at meetings, it is suggested that the threshold be set at £100, reflecting a level which might possibly influence the member's decision on a matter.

**Response** - The Standards Committee **does not agree** with the suggested amendment.

**6.8 Additional Suggested Amendment – Close Association**

Whether in the Code or in supporting Guidance it is necessary to make it clear that this provision only covers people with whom the member has such a close continuing relationship that a member of the public might reasonably conclude that it is likely to influence the member's perception of the public interest on matters which affect that individual.

**Response** - The Standards Committee **does not agree** with the suggested amendment.

**6.9 Additional Suggested Amendment – the majority of council tax payers, ratepayer or inhabitants of the electoral division or ward affected by the decision.**

The present Paragraph 8(1)(b) is unclear as to whether the comparator in any particular case is **either** council tax payers, ratepayers or inhabitants, **or** the aggregate of all three categories. In practice, it must be the category which the member comes within for this purpose, otherwise the relatively higher numbers of "inhabitants" would always dominate and make the mention of the other categories redundant. The Council suggests that Paragraph 8(1)(b) be amended to read "... Than the majority of either the council tax payer, ratepayers or inhabitants of the ..... , in any case being a category of which you or the relevant person is a member."

**Response** - The Standards Committee **does agree** with the suggested amendment.

**6.10 Additional Suggested Amendment – Disclosure of Personal Interests**

Paragraph 9(1) requires disclosures "at the commencement of consideration (of the matter)". In practice most authorities have disclosures of interest at the start of the meeting, which is advantageous in drawing to members' attention the need to make disclosures, allowing officers to remind individual members where a member may have forgotten to make such disclosure, and allowing the meeting then to discharge its business without frequent interruption. The Council suggests that Paragraph 9(1) should be amended to reflect this practice, to read "... at the commencement of the meeting or at such later

**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

occasion during the meeting as is prescribed by the authority for this purpose, or when the interest becomes apparent.”

**Response** - The Standards Committee **does agree** with the suggested amendment.

**6.11 Additional Suggested Amendment – Registration of Sensitive Information**

The Council suggests that to formalise the registration of such information, Paragraph 14(1) be amended to read as follows – “When you notify your authority’s Monitoring Officer in writing that you consider that particular information relating to any of your personal interest is sensitive information, and your authority’s Monitoring Officer has notified you in writing that he/she agrees that it is sensitive, you need not.....”

**Response** - The Standards Committee **does agree** with the suggested amendment.

**Q7 – Are there any aspects of conduct currently included in the Members’ Code of Conduct that are not required? If so, please could you specify which aspects and the reasons why you hold this view?**

**7.1 Additional Suggested Amendment – Disclosure of Public Service Interests**

The Council has not found any benefit from the introduction of Paragraph 9(2) in the 2007 revisions, which also introduced a problem in respect of prejudicial interests, in that by the time a member would come to disclose such an interest, he/she would already have been required to leave the room, thus preventing them from making any disclosure of such interests. Accordingly, we suggest that Paragraph 9(2) be deleted.

**Response** - The Standards Committee **does not agree** with the suggested amendment.

**Q8 – Are there any aspects of conduct in a member’s official capacity not specified in the Members’ Code of Conduct that should be included? Please give details.**

**8.1 Additional Suggested Amendment – Application to informal meetings, Site Visits and Correspondence**

The definition of “meetings” in Paragraph 1(4) is currently very limited. There is public concern at the possible undue influence applied by members in informal meetings and correspondence, for which there is no public access. The Welsh Code for Members has addressed this by extending the definition of “meetings” to include “informal meetings between a member and one or more other members or officers of the authority, other than group meetings”, and by requiring members to disclose that they are members in any correspondence with the authority, even if that correspondence is in a private capacity. This makes the position absolutely clear. It can readily be checked by inspection of

**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

correspondence and disclosure of officers' notes of meetings as background papers when formal decisions come to be taken.

**Response** - The Standards Committee **does not agree** with the suggested amendment.

**8.2 Additional Suggested Amendment – Application to Ward Councillor Decision-Making**

Section 236 of the Local Government and Public Involvement in Health Act 2007 enabled local authorities to arrange for the discharge of functions by a ward Councillor within that ward. It made no provision for the application of the Members' Code to such discharge of functions. The normal rules on disclosure of personal and prejudicial interests do not apply in this case as there is no "meeting", yet the potential for conflicts of interest are greatly increased where a Councillor is taking decisions in the area in which he/she lives, where his/her family go to school and have their friends, or where he/she has his/her business. The obvious amendment would be to apply Paragraphs 9(6) and 12(1)(b) and (c) to any decision-making under Section 236, and require the recording of any personal interest in the record of the decision.

**Response** - The Standards Committee **does not agree** with the suggested amendment.

**8.3 Additional Suggested Amendment – Private Representations**

A dilemma arises where a member wishes to make representations to his/her own authority in a private capacity, for example as a householder in respect of a neighbouring planning application. On the one hand, disclosing in the representation the fact that he/she is a member risks an accusation of improper use of the member's position to influence the decision. On the other hand, as the officers are probably well aware of the identity of the correspondent, failing to disclose this fact can risk an opposite accusation that the member is acting in an underhand manner. The Welsh Members' Code has taken a robust approach and simply provided that a member must disclose the existence and nature of your personal interest when he/she makes representations to the authority on a matter in which he/she has a personal interest and, if the representations are made verbally, must then confirm that interest in writing within 14 days. This satisfactorily resolves this dilemma, enabling the fact of the member's interest to be recorded in the correspondence.

**Response** - The Standards Committee **does not agree** with the suggested amendment.

**8.4 Additional Suggested Amendment – Acting in the Public Interest and having regard to Officers' Advice**

The current Code contains no requirement to act in the public interest, as this fundamental requirement is relegated to the General Principles. Equally, the requirement in Paragraph 7(1) to have regard to officer advice is limited to the statutory reports of the Chief Finance Officer and the Monitoring Officer. These provisions are much better covered in the current Welsh Code of Conduct as



**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

follows:

“8. In participating in meetings and taking decisions on the business of the authority, you must –

(a) do so on the basis of the merits of the circumstances and in the public interest

(b) have regard to any relevant advice provided by the authority’s officers – in particular by:

(i) the Chief Finance Officer

(ii) the Monitoring Officer

(iii) the Chief Legal Officer, who should be consulted whenever there is any doubt as to the authority’s powers to act, or as to whether the action proposed lies within the policy framework agreed by the authority; where the legal consequences of action or failure to act by the authority might have important repercussions.”

**Response** - The Standards Committee **does agree** with the suggested amendment.

**Q9 – Does the proposed timescale of two month, during which a member must give an undertaking to observe the Members’ Code of Conduct, starting from the date on which the authority adopts the Code, provide members with sufficient time to undertake to observe the Code?**

Firstly, it has been suggested that the provisions of Section 183(7) of the Local Government and Public Involvement in Health Act 2007 cannot alter the historic fact that when members gave an undertaking to observe the Code of Conduct, they could not have given a valid undertaking to observe those parts of the Code of Conduct which were at the time ultra vires the Local Government Act 2000. Accordingly, it would appear to be necessary for a member to give a new undertaking before the revised Code can apply to events in the member’s private life.

Note, however, that as set out above, it is suggested that the wording of Section 51(4B) of the Local Government Act 2000 (“which would constitute a criminal offence”) needs to be amended before the Members’ Code of Conduct can apply to conduct which does constitute a criminal offence, and that amendment would be required before members gave such a new undertaking.

Further, it is suggested that the current wording of Section 52(1)(a) of the Local Government Act 2000, requiring members to give an undertaking to observe the authority’s Code of Conduct “for the time being”, is capable of interpretation as meaning that it is only an undertaking to observe the Code of Conduct which is adopted by the authority at the time that the undertaking is given. If that interpretation is correct, then a historic undertaking to observe the authority’s Code of Conduct would not automatically carry forward to a revised Code of Conduct.

For all of these reasons, the Council agrees that it is appropriate to require members to give a fresh undertaking to observe the revised Code of Conduct

**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

following its adoption by the authority of which they are a member. The two month period for such undertakings was applied in 2001, when the Code of Conduct was first adopted by each authority and is perfectly reasonable, but it is equally certain that in some authorities there will be members who fail to give such undertaking within that time. We therefore suggest that it would be appropriate, if the opportunity exists to amend the 2000 Act, to provide a basic requirement to give an undertaking within two months, and that if an undertaking is not given within that period then the member concerned is not disqualified but is prohibited from acting as a member of that authority until he/she has given such an undertaking.

**Response - The Standards Committee agreed that the proposed timescale of two months, during which a member must give an undertaking to observe the Members' Code of Conduct, starting from the date on which the authority adopts the Code, provide members with sufficient time to undertake to observe the Code**

**Q10 – Do you agree with the addition of a new General Principle, applied specifically to conduct in a member's non-official capacity, to the effect that a member should not engage in conduct which constitutes a criminal offence?**

The General Principles are supposed to be the enduring principles which underlie the Code. As such they should not be changed unless there are overriding reasons for doing so. Whilst this exhortation is clear well-intended, it is much wider than the Members' Code of Conduct, which is supposedly limited to criminal conduct which relates in some manner to the member's position as a member. In addition, the core principle is already substantially covered by General Principles 2 (Honesty and Integrity) and 8 (Duty to uphold the Law). Accordingly the Council is of the view that adding a general and unrestricted Principle of not engaging in criminal conduct is unnecessary.

**Response - The Standards Committee does not agree.**

**Q 11. Do you agree with the broad definition of "criminal offence" for the purpose of the General Principles Order? Or do you consider that criminal offence should be defined differently?**

As set out above, the Council does not consider that it is necessary or helpful to change the General Principles for this purpose. However, if a change is to be made it should be limited to criminal conduct "which compromises the reputation of the member's office or authority, or their ability to perform their functions as a member".

**Response - The Standards Committee does not agree.**

**Q 12. Do you agree with this definition of "official capacity" for the purpose of the General Principles Order?**

The Consultation Paper suggests that this new General Principle should be

**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

	<p>limited to conduct when “you are engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority.”</p> <p>This is completely at odds with the intention as set out above to implement the provisions of the Local Government and Public Involvement in Health Act 2007 in order to apply the Code of Conduct to criminal conduct in private life. If implemented as suggested, it would mean that the General Principles were narrower than the Code of Conduct which is supposed to give effect to them. Accordingly, the Council considers that the new General Principle, if adopted, should apply to criminal conduct “which compromises the reputation of the member’s office or authority, or their ability to perform their functions as a member”.</p> <p><b>Response - The Standards Committee does not agree.</b></p>
<p><b>STCO37.</b></p>	<p><b>RECRUITMENT OF INDEPENDENT MEMBER</b></p> <p>The Chair advised that the recruitment process for the independent vacancy would commence in early 2009 with the intended filling of the existing vacancy. The Chair commented that it may be for the Committee to consider whether it viewed that an increase in Independent Members was appropriate by one additional Independent member, given the possible increase in the number of Assessment Sub-Committees and the draw of members to sit on each.</p> <p>Mr Suddaby responded that it was within the Council ’s powers to amend the constitution to make such changes and that this could be reported to the next full Council in January 2009 as a recommendation of the Standards Committee.</p> <p>RESOLVED</p> <p>That the Independent Membership of the Standards Committee be increased to 5 Independent Members and that this recommendation be put to full Council in January 2009 and that the Council’s constitution be amended to reflect this increase accordingly.</p>
<p><b>STCO38.</b></p>	<p><b>NEW ITEMS OF URGENT BUSINESS</b></p> <p>The Chair advised that there were no items of unrestricted urgent business.</p> <p>NOTED</p>

**MINUTES OF THE STANDARDS COMMITTEE  
MONDAY, 22 DECEMBER 2008**

<b>STCO39.</b>	<b>EXCLUSION OF PRESS AND PUBLIC</b>  <b>RESOLVED</b>  That the press and public be excluded the from the meeting for consideration of Item 11 as it contains exempt information as defined in Section 100a of the Local Government Act 1972 (as amended by Section 12A of the Local Government Act 1985); paras 1 & 2 ; namely information relating to any individual, and information likely to reveal the identity of an individual.  <b>SUMMARY OF EXEMPT PROCEEDINGS</b>
<b>STCO40.</b>	<b>RECENT DETERMINATION BY STANDARDS BOARD INTO COMPLAINT NUMBER SBE21513.08</b>  Agreed recommendations as moved by Committee

There were no items of urgent business.

NOTED

The meeting ended at 21.52hrs

ROGER LOVEGROVE

Chair