



Committee: STANDARDS COMMITTEE
Date: THURSDAY, 21 JANUARY 2010
Venue: LANCASTER TOWN HALL
Time: 10.00 A.M.

A G E N D A

1. **Apologies for Absence**
2. **Minutes**
Minutes of meeting held on 1st October, 2009 (previously circulated).
3. **Items of Urgent Business authorised by the Chairman**
4. **Declarations of Interest**
5. **Whistleblowing Policy** (Pages 1 - 2)
Report of the Monitoring Officer
6. **Work Programme** (Pages 3 - 5)
Report of the Monitoring Officer
7. **Standards Committee Hearings - Public Notices** (Pages 6 - 28)
Report of the Monitoring Officer
8. **Review of the Protocol on Member/Officer Relations** (Pages 29 - 55)
Report of the Monitoring Officer

ADMINISTRATIVE ARRANGEMENTS

(i) Membership

Councillors

Councillors Roger Dennison, Sheila Denwood, Sarah Fishwick, Janie Kirkman, Ian McCulloch, Roger Sherlock and Joyce Taylor

Independent Members

Stephen Lamley (Chairman), Tony James, David Jordison and Sue McIntyre

Parish Council Representatives

Margaret Davey, Paul Gardner, Susan O'Brien and Frank Senior

(ii) Substitute Membership

Councillors

Councillors Keith Budden, John Gilbert, Roger Plumb, Ron Sands and Jude Towers

(iii) Queries regarding this Agenda

Please contact Suzie Smith, Democratic Services - 01524 582074 - email: ssmith@lancaster.gov.uk.

(iv) Changes to Membership, substitutions or apologies

Please contact Members' Secretary, telephone 582170, or alternatively email memberservices@lancaster.gov.uk.

MARK CULLINAN,
CHIEF EXECUTIVE,
TOWN HALL,
DALTON SQUARE,
LANCASTER LA1 1PJ

Published on 7th January 2010.

STANDARDS COMMITTEE**WHISTLEBLOWING POLICY
21st January 2010****Report of the Monitoring Officer****PURPOSE OF REPORT**

To enable the Committee to review the operation of the Council's Whistleblowing Policy.

This report is public

RECOMMENDATIONS

(1) That the report be noted.

1.0 Report

1.1 Members will recall that the Committee reviewed the Council's Whistleblowing Policy at its meeting in January 2009, and approved an amended policy.

1.2 The amended Policy was then relaunched to employees through the Council's "First Brief" procedure, which is a monthly briefing for all employees.

1.3 During the year only one concern has been lodged under the Whistleblowing Policy, and this was anonymous. This was investigated by the Corporate Director (Finance and Performance) as it related to a Service within his directorate. The Corporate Director reported to the Chief Executive and the Monitoring Officer that the concern was unfounded. Clearly because the matter was raised anonymously, it was not possible to respond in accordance with the Whistleblowing Policy.

1.4 When no concerns are raised under the Whistleblowing Policy it is always difficult to assess whether this is because there are no concerns, or because employees do not know how to raise concerns or are reluctant to do so. The amended Policy was drawn to the attention of all employees in February 2009, and it is intended that this will be repeated through First Brief in February 2010.

1.5 The Monitoring Officer will continue to submit annual reports to the Committee on the operation of the Policy.

2.0 Conclusion

3.1 The report is for noting.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None arising from this report.

FINANCIAL IMPLICATIONS

None arising from this report.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

None arising from this report.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her role as adviser to the Standards Committee.

BACKGROUND PAPERS

None

Contact Officer: Mrs S Taylor

Telephone: 01524 582025

E-mail: STaylor@lancaster.gov.uk

Ref:

STANDARDS COMMITTEE**WORK PROGRAMME
21st January 2010****Report of the Monitoring Officer****PURPOSE OF REPORT**

To enable the Committee to consider progress with the current work programme.

This report is public

RECOMMENDATIONS

(1) That the report be noted

1.0 Introduction

1.1 A work programme for 2009 was approved by the Committee in January 2009, and was updated at each meeting during the year.

2.0 Proposal Details

2.1 The work programme has been updated for 2010, and is attached to this report.

2.2 Members will note that at the time of writing this report the government has still not issued any further consultation on or information about the proposed revised Code of Conduct. It is therefore very difficult to plan for any work arising from the proposed revised Code.

2.3 The work programme is a living document and can be updated as and when required.

3.0 Details of Consultation

3.1 There has been no consultation.

4.0 Options and Options Analysis (including risk assessment)

4.1 The report is for noting, although it is open to the Committee to make amendments to the work programme.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None arising from this report.

FINANCIAL IMPLICATIONS

None directly arising from this report.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

None directly arising from this report.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her capacity as adviser to the Standards Committee.

BACKGROUND PAPERS

None

Contact Officer: Mrs S Taylor

Telephone: 01524 582025

E-mail: STaylor@lancaster.gov.uk

Ref:

STANDARDS COMMITTEE – WORK PROGRAMME 2010

NO	ACTION	MEETING DATE	PROGRESS
1.	Consider any further government consultation on proposed revised Code of Conduct	April 2010 (or special meeting to coincide with consultation)	At the time of writing this report, no further consultation had been issued.
2.	Consider revised Code of Conduct and arrangements for implementation	April or June 2010, or special meeting depending on timing	At the time of writing this report, no further information is available about the proposed revised Code of Conduct.
3.	Consider training requirements on new Code of Conduct for city and parish councillors	June 2010 or special meeting depending on timing	Any training should tie in with the adoption of any revised Code of Conduct. Training session for Morecambe Town Council held on 3rd September 2009. All other parish councils invited, and one councillor from Halton attended.
4.	Receive information about number of Code of Conduct complaints received and action taken	April and October 2010	
5.	Annual review of registration of interests	June 2010	
6.	Dealing with requests for dispensations	As & when required	Sub-Committee met on the 8th January 2010
7.	Dealing with Code of Conduct complaints	Sub-Committees as and when required	
8.	Review operation of the Whistleblowing Policy	January 2010 and annually	Revised policy approved January 2009. Report on this agenda.
9.	Review result of ethical governance survey	April 2010	Survey of officers and members undertaken by Internal Audit autumn 2009.
10.	Review of Member/Officer Relations Protocol	January 2010	Report on this agenda
11.	Review complaints and assessment documentation and procedure	October 2010	

STANDARDS COMMITTEE**STANDARDS COMMITTEE HEARINGS – PUBLIC NOTICE
REQUIREMENTS
21st January 2010****Report of the Monitoring Officer****PURPOSE OF REPORT**

To advise the Committee of correspondence from Wyre Borough Council setting out their Standards Committee's concerns about the requirement to publish a notice in a local newspaper following a hearing, and in particular the cost of such requirement.

This report is public

RECOMMENDATIONS

- (1) **That the Committee consider whether it supports the stance taken by Wyre Borough Council concerning the requirement to publish a notice in a local newspaper following a Standards Committee hearing, and if so, to determine what action, if any, it would wish to take in support of Wyre's stance.**

1.0 Introduction

- 1.1 Correspondence has been received from the Monitoring Officer of Wyre Borough Council, which is appended to this report.
- 1.2 The Standards Committee (England) Regulations 2008 set out requirements for a Standards Committee after making a finding at a hearing, to notify the finding to the member concerned, the complainant, the Standards Committee of any other authority concerned, the Standards Board and any parish council concerned. In addition, there is a requirement to publish a summary of the notice of the finding in at least one newspaper circulating in the area of every authority concerned, and, if considered appropriate by the Standards Committee, on the web page of any authority concerned, and, if considered appropriate by the Standards Committee, in any other publication. If the finding is that there has been no failure to comply with the Code of Conduct, the member complained of may request that the notice not be published in a newspaper, web page or other publication. Otherwise, the notice is a legal requirement.
- 1.3 A similar requirement applies where an investigating officer's finding of no failure to comply with the Code of Conduct is accepted by the Assessment Sub-Committee. However, again it is open to the member complained of to request that the notice not be published.

- 1.4 The correspondence from Wyre Borough Council indicates that it is their experience that the cost of a public notice in a newspaper is around £500, and they do not consider this to be value for money, given the other available means of publicising Standards Committee findings. The response from the Department for Communities and Local Government (DCLG) is to the effect that the benefit of advertising in a local newspaper is that it is an impartial publication and is available to and read by those who have an interest in their local community.

2.0 Proposal Details

- 2.1 The Committee is asked to consider the correspondence from Wyre Borough Council, which includes the responses from the DCLG, and to consider whether it supports the stance taken by Wyre Borough Council. If it does, the Committee may wish to consider how it would wish to demonstrate that report.

3.0 Details of Consultation

- 3.1 There has been no consultation. In effect this report has arisen from a consultation being undertaken by Wyre Borough Council with other Councils in Lancashire on the subject.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 The Committee may take the view that it supports the stance of Wyre Borough Council on this issue, or that it does not. If it does support Wyre's stance, it may wish to consider how that support could be demonstrated, and this might include writing to the DCLG and/or the local Members of Parliament.

5.0 Conclusion

- 5.1 The views of the Committee are sought.

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None arising from this report.

FINANCIAL IMPLICATIONS

To date, the Standards Committee has not had any hearings under the 2008 Regulations, and it has not therefore been necessary recently to meet the cost of a public notice. In a recent case where the investigating officer's finding of no breach of the Code of Conduct was accepted, the Member requested that the public notice not be given. There is no specific budget for the cost of such notices. Similar arrangements did however apply under the previous standards regime, and the Democratic Services advertising budget was used on the few occasions when it was necessary to publish a notice in a local newspaper.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

Legal Services have been consulted and have no further comments.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her capacity as adviser to the Standards Committee.

BACKGROUND PAPERS

None

Contact Officer: Mrs S Taylor

Telephone: 01524 582025

E-mail: STaylor@lancaster.gov.uk

Ref:

Civic Centre,
Breck Road,
Poulton-le-Fylde,
Lancashire FY6 7PU

Tel: Poulton (01253) 891000
Fax: Poulton (01253) 899000
Textphone: Poulton (01253) 887636
Website: www.wyrebc.gov.uk



INVESTOR IN PEOPLE

Monitoring Officer
Lancaster City Council
Town Hall
Lancaster
LA1 1PJ

Jan Finch MA FCIPD
Deputy Chief Executive and Monitoring
Officer

Please ask for: Jan Finch
Direct Line: 01253 887502
Email: jfinch@wyrebc.gov.uk
Our ref:
Your ref:

26 October 2009

Dear Colleague

Standards Committee Hearings – Public Notice Requirement

In March this year we held our first hearing under the new arrangements. The hearing was open to the press and public and the press were in attendance. An article on the hearing and the sanction imposed appeared in the local press the day after and we published all the details on our website. In line with the guidance we also put a notice in a local newspaper which cost the Council in the region of £500.

When I reported the steps we had taken to bring the outcome to the attention of local people and told them the cost of the public notice the members of the Standards Committee were very concerned that we had had to spend £500 of taxpayer's money on something which, in their view, added no value. They felt that the whole process had been open and transparent and had received wide publicity without having to take the additional step of a public notice. In addition they were aware of the diminishing number of people who actually take a local newspaper and questioned how many of those would read the public notices.

I was therefore asked to write to Communities and Local Government to register the Committee's concern, to seek an explanation of the reasoning behind the requirement and to ask whether there would be any opportunity for the requirement to be reviewed.

The response was disappointing. CLG explained that the requirement ensured that the public had an objective and unbiased report in cases where the press may not report accurately and there were no plans to review the arrangement.

Dissatisfied with this initial response, the Standards Committee agreed that the matter should be pursued and the Chairman therefore wrote to the Secretary of State, John Denham. The letter stressed that the Committee fully supported openness and transparency but, in this day and age, there were better and more cost effective ways to do this than a public notice in a newspaper.

Despite further correspondence CLG remains of the view that no change is required and the Chairman therefore informed CLG that the Committee intended to continue to press for change through other routes. Both local MPs have become involved and have taken it up with the Local Government Minister, Rosie Winterton.

The Chairman intends to raise the matter at the next meeting of the North West Independent Members' Forum and I have been asked to raise it with other Standards Committee's in Lancashire and to write to you to enlist your support.

I am enclosing copies of the correspondence and a press release issued by the Council which has appeared in the local press. I would be grateful if you would bring the matter to the attention of your Standards Committee and, if the Committee supports the stance we have taken, take action to press for change.

Please do not hesitate to contact me if you require any further information.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Jan Finch', written in a cursive style.

Jan Finch
Deputy Chief Executive and Monitoring Officer

Encs



Steve McAllister
Local Governance
Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU

Jan Finch MA FCIPD
Deputy Chief Executive and Monitoring Officer

Please ask for: Jan Finch
Direct Line: 01253 887502
Email: jfinch@wyrebc.gov.uk
Our ref:
Your ref:

28 April 2009

Dear Mr McAllister

Standards Committee Hearings - Public Notice Requirement

I have been asked by my Standards Committee to write to you to ask whether you can explain the reasoning behind the requirement to publish a notice in a local newspaper following a hearing.

We recently had our first hearing under the new arrangements. The meeting was open to the press and public and the press were in attendance. An article on the hearing and the sanction imposed appeared in the local press the day after and we published all the details on our website. In line with the guidance we also put a notice in a local newspaper which cost the Council in the region of £500.

When I reported the steps we had taken to bring the outcome to the attention of local people and told them the cost of the public notice the members of the Standards Committee were very concerned that we had had to spend £500 of taxpayer's money on something which, in their view, added no value. They felt that the whole process had been open and transparent and had received wide publicity without having to take the additional step of a public notice.

I was asked to write to you to register the Committee's concern and to ask whether there is any opportunity for the requirement to be reviewed.

Yours sincerely

A handwritten signature in black ink, appearing to be 'JF', written over a white background.

Jan Finch
Deputy Chief Executive and Monitoring Officer



15 May 2009

Jan Finch MA FCIPD
Deputy Chief Executive and Monitoring Officer
Wyre Borough Council

Our Ref:
Your Ref:

By E-mail to jfinch@wyrebc.gov.uk

Dear Ms Finch,

REQUIREMENT TO PUBLISH A SUMMARY OF A FINDING BY THE STANDARDS COMMITTEE

Thank you for your letter of 28th April 2009 addressed to Steve McAllister asking about the reasoning behind the requirement in regulation 20 of the Standards Committees regulations (S.I.2008 No.1085) to publish a summary of the Committee's findings in a local newspaper. Your letter registers the concern of your Council's Standards Committee about the costs to the Council of this requirement and asks if there will be an opportunity to review the requirement.

The reasons for the requirement are to ensure that:

- i. the process for Standards Committees to deal with complaints about the conduct of local councillors is open and transparent;
- ii. the public has access to a summary of the finding of the Standards Committee that is factually accurate, and
- iii; a summary of the finding is published as soon as possible after it has been made.

Whilst it is noted that the meeting of your Council's Standards Committee at which the hearing took place was open to the public and press, and that all the details were published in the local press the day after and on your website, unfortunately it is not always the case that the local press gives an accurate account to the local community of the proceedings. Inaccurate reporting or a lack of reporting could affect the reputation of local councillors and undermine the public's trust and confidence in their members and in local democracy.

The requirement in regulation 20 has been included in the regulations governing Standards Committees since 2003 and there are no plans at present to review the

requirement. Any amendment to regulation 20 would affect all local authorities in England and I am afraid that it would not be possible to exclude specified authorities.

Yours sincerely,

Rosalind Kendler

The Right Honourable John Denham MP
Secretary of State for Communities and
Local Government
Dept for Communities and
Local Government
Eland House
Bressenden Place
LONDON SW1E ; 5DU

Jan Finch MA FCIPD
**Deputy Chief Executive and Monitoring
Officer**

Please ask for: John Shaw
Direct Line: 01995 603672
Email: johnshaw5@tiscali.co.uk
Our ref: js/rm/letters/jdmp250609
Your ref:

25 June 2009

Dear Mr Denham

Standards Committee Hearings – Public Notice Requirement

Our Standards Committee is somewhat concerned about the requirement to publish the outcome of a hearing against a councillor in a local newspaper . We have had three cases recently, and each notice has cost £500 which members of the Standards Committee consider to be an unnecessary use of Council Taxpayers' money.

The Standards Committee asked the Monitoring Officer to raise this issue formally with the Department for Communities and Local Government with a view to understanding the rationale behind this requirement and, more importantly, whether it could be reviewed. I am afraid she received a rather stock reply, which in summary stated that the rule must stand and there were no plans for review. I attach a copy of this correspondence for your information.

Members of the Standards Committee found this answer to be unsatisfactory and failed to give a credible reason for the requirement. I say this because we consider that in this age of modern communications, our approach is open and transparent and the case details and outcomes are recorded in a way which is fully accessible to the public.

Two of the three cases were held in public, the press were in attendance, and all the details appeared on the Council's website. The third case involved no breach, but the member asked for the outcome to be made public in order to clear his name as the complaint against him had been mentioned in the public arena.

cont'd ..

The Council members of the Committee are also concerned about defending this use of taxpayers' money to their constituents particularly in these cash-constrained times. It is also questionable how many people actually see or read public notices. The Standards Committee recognises the need to put such information in the public domain, but feels current reporting is adequate to the purpose. As an added safeguard, the Standards Committee would be prepared to add a new procedure to its rules of operation by which each case would be reviewed with regard to the quality of reporting and where necessary a specific notice would be published.

As an independent member and Chairman of the Standards Committee, may I ask you to review this requirement with a view to rescinding or modifying it.

Yours sincerely

John Shaw FCIPD
Chairman, Wyre Borough Council Standards Committee

Enc: correspondence

Copies to Ben Wallace MP and Joan Humble MP
Copy to J Finch, Monitoring Officer



9 July 2009

Mr John Shaw
Chairman, Wyre Borough Council
Standards Committee
Tyre Borough Council
Civic Centre
Breck Road
Poulton-le-Flyde
Lancashire
FY6 7PU

Our Ref: JD/16/017928/09
Your Ref: js/rm/letters/jdmp250609

Dear Mr Shaw,

Standards Committee Hearings – Public Notice Requirement

Thank you for your letter of 25 June to John Denham about the public notice requirements arising from standards committee hearings. Your letter has been passed to me for response as I work in the team that has policy responsibility for conduct.

I'd like to begin by giving you my absolute assurance that Rosalind Kendler's letter of 15 May to Jan Finch at Wyre Borough Council was not a 'stock' reply. The original letter from Ms Finch came addressed to me and I asked Rosalind to respond, after we had discussed its contents, and how to respond, at length.

As well as having policy responsibility for conduct my team, which includes Rosalind, has responsibility for the Code of Recommended Practice on Local Authority Publicity. This, as well as our work with the conduct regime, means that the costs and benefits of statutory notices in newspapers is a subject of frequent debate in the team.

I consider the points that Rosalind made in her letter sound and confirm that there are no plans at present to review the requirement to place notices in local newspapers about the findings of standards committees.

Yours sincerely,

Stephen McAllister

Department for Communities and Local Government
3/J5
Eland House
Bressenden place
London
SW1E 5DU

Tel 020 7944 4277
Email e mail:
stephen.mcallister@communities.gsi.gov.uk

Mr S McAllister
Department for Communities and Local
Government
Eland House
Bressenden Place
LONDON SW1E 5DU

Jan Finch MA FCIPD
Deputy Chief Executive and Monitoring
Officer

Please ask for: John Shaw
Direct Line: 01995 603672
Email: johnshaw5@tiscali.co.uk
Our ref: js/letters/050809
Your ref:

5 August 2009

Dear Mr McAllister

Standards Committee Hearings – Public Notice Requirement

Thank you for your emailed letter of 9 July, the contents of which were discussed at our recent Standards Committee.

The Standards Committee is somewhat disappointed with your reply, which fails to respond to the points and suggestions made. You state that the matter is reviewed within your team, and because the team sees no need to review the matter, the status quo applies. We find that response does scant justice to the serious point being made and had hoped for a more constructive reply.

We had hoped for a fuller justification of the policy and I now make a further request that you do so. In particular, would you kindly address the following points:

1. Has your Department considered other options? If so, what were they and why were they rejected? The Wyre BC Standards Committee argues that it would be more productive to publish the Notice on the internet and via the Council's "Wyre Voice" free paper which is more cost effective and reaches every home. By publishing it in a newspaper such as the Blackpool Gazette, great expense is incurred and we know it does not reach every home in the Borough.
2. As part of your "Conduct Regime" have you consulted the customers (i.e. the local councillors and Standard Committees) regarding the effectiveness and relevance of your policy? If so, what was the outcome? If you have not consulted more widely may we request that you do so?
3. With regard to effective use of taxpayers' money, how would you justify the expense (£500 per notice) to our local taxpayers?

I look forward to a more constructive reply than the previous one, and hope you will re-consider this matter on the broader lines suggested. For our part, we intend raising the matter on a wider front, for example with our local MPs, the North West Independent Members' Forum and with other Standards Committees in order to seek support for a review to what, in our opinion is a flawed policy.

Yours sincerely



John Shaw FCIPD
Chairman, Wyre Borough Council Standards Committee

Copies to Ben Wallace MP and Joan Humble MP
Copy to J Finch, Monitoring Officer



17 August 2009

Mr John Shaw
Chairman, Wyre Borough Council
Standards Committee
Tyre Borough Council
Civic Centre
Breck Road
Poulton-le-Flyde
Lancashire
FY6 7PU

Your Ref: js/letters/050809

Dear Mr Shaw,

Standards Committee Hearings – Public Notice Requirement

Thank you for your letter of 5 August, continuing our correspondence about the requirement to publicise the decision of a standards committee.

Taking your questions in order, you ask first if the Department has considered options other than advertisement in a local newspaper for meeting the requirement to advertise the decision of a standards committee. As well as dealing with policy about the behaviour of councils my team also has policy responsibility for the Code of Recommended Practice on Local Authority Publicity, which we have recently consulted upon and so how a local authority publicises its services, activity and decisions is something we consider very carefully on a continual basis, but particularly at present.

The benefit of advertising in a local newspaper is that it is an impartial publication and is available in the community it serves. The issue of the internet is that it relies not only upon citizens being able to access it, but also upon the information contained on a web site being easy to find. The problem with putting notices in local authority freesheets is that those publications are perceived by some as being local authority 'propaganda' and placing a decision notice about the conduct of a councillor in such a publication may lead to that decision as being perceived as somehow biased.

Turning to the issue of consultation, at the time the details of the conduct regime were being finalised, the Department held 'round table' discussions with the Local Government Association and others. This followed the January 2008 public consultation on the devolved regime, 'Orders and Regulations Relating to the Conduct of Local Authority Members in England'.

Finally you ask how the Department would justify the expense of publicising a decision to your taxpayers. I would explain that good communication between an authority and its community is vital for a healthy local democracy, that it is important to recognise that local newspapers have a part to play in this. The decisions of the standards committee have to be transparent and it is right that they are publicised in a publication that is independent of the authority and, by its very nature, is read by those who have an interest in their local community.

I note your intention to consult more widely. If I may suggest, a consultation about public notice requirements might benefit from input from the public, who are not mentioned in your list of suggested consultees.

As you may know, the Audit Commission is undertaking a study on councils' spending on publicity, which aims to evaluate the value for money of this expenditure. I will be commenting on the Audit Commission's proposals for the study and will ensure that your comments, about the effective use of taxpayers' money, are reflected in my response to the Audit Commission's project outline.

Yours sincerely,

Stephen McAllister

Wyre Borough Council News Release Wyre Standards Committee fights for change in restrictions
From: Nikki Wilcock [NWilcock@wyrebc.gov.uk]
Sent: 21 August 2009 16:10
Cc: Wilcock, Nikki
Subject: Wyre Borough Council News Release: Wyre Standards Committee fights for change in restrictions

Wyre Borough Council PR 1505 21/08/2009 [For Immediate Release]

Wyre Standards Committee fights for change in restrictions

Taxpayers money is being unfairly spent on expensive public notices after councillor conduct hearings.

That's the belief of Wyre Borough Council's Standards Committee, which is spearheading a campaign to change a legal requirement that costs the council around £500 each time there is a hearing.

Under current regulations, a summary of the findings of a Standards Determination Sub-Committee hearing - which decides whether or not a councillor has breached the Code of Conduct - must be advertised in the Public Notices section of an appropriate local newspaper.

And while members of the committee wholeheartedly agree that the results should be published in the interests of openness and transparency, they believe there are more cost effective ways of doing so.

Chairman John Shaw explained: "Our issue isn't about letting the public know the outcomes of these hearings, we don't have a problem with this.

"What members of the committee are asking for is some flexibility to decide on a method of publicity that represents best value for our residents

"We have held four hearings this year alone and at £500 a time it is an added expense that the council could spend on something more worthwhile."

In Wyre, the committee's findings are already widely publicised. The case details and findings appear on the council's website and a summary is posted on noticeboards in the community.

The majority of hearings are held in public and attended by a journalist who subsequently files a report in their newspaper. Standards Committee members are also proposing to publish findings in Wyre Voice, the council newspaper that is delivered to every home in the borough.

Mr Shaw and the council's Monitoring Officer have written to the Department for Communities and Local Government and John Denham, Secretary of State, to argue the case, but on each occasion they were told there were no plans to review the regulations.

Now they are stepping up their campaign, hoping to gain the support of the local MPs, the North West Independent Members' Forum and Standards Committees from neighbouring authorities.

Mr Shaw said: "Realistically our chances of forcing a change to the regulations in the short term are slim, but if we can add weight to our campaign in some way then it might well get looked at as part of a wider review."

ENDS

Notes for editors

In a written response to the council about this issue, the Department for Communities and Local Government stated that the reasons for the requirement were:

Wyre Borough Council News Release Wyre Standards Committee fights for change in restrictions
i. the process for Standards Committees to deal with complaints about the conduct of local councillors is open and transparent;

ii. the public has access to a summary of the finding of the Standards Committee that is factually accurate, and

iii; a summary of the finding is published as soon as possible after it has been made.

For further information please contact:
Nikki Wilcock, Public Relations Assistant
Tel: 01253 887526
Email: NWilcock@wyrebc.gov.uk

[#RL-1505:633864678251097517#]

Mr S McAllister
Department for Communities and Local
Government
Eland House
Bressenden Place
LONDON SW1E 5DU

Jan Finch MA FCIPD
Deputy Chief Executive and Monitoring
Officer

Please ask for: John Shaw
Direct Line: 01995 603672
Email: johnshaw5@tiscali.co.uk
Our ref: js/letters/050809
Your ref:

1 October 2009

Dear Mr McAllister

Standards Committee Hearings – Public Notice Requirement

I refer to your letter of 17 August 2009, the contents of which were discussed at our recent Standards Committee meeting.

Whilst the Committee appreciated your fuller reply to the questions posed, there is still concern about the cost involved in the public notice requirement. However, it was recognised that the complaint of one Standards Committee is unlikely to carry much weight and therefore the Committee resolved to continue to press for change in other ways.

Both local MPs have agreed to pursue this from the political side, and for our part, we shall be raising the matter via the NW Independent Members Forum, and with Standards for England. Our Monitoring Officer will also raise the matter with her peer group.

At a time of national budget constraint, we feel the public notice requirement is a good example of a statutory cost that cannot be justified.

Yours sincerely



John Shaw FCIPD
Chairman, Wyre Borough Council Standards Committee

From: Stephen Mcallister [Stephen.Mcallister@communities.gsi.gov.uk]
Sent: 02 October 2009 12:12
To: Finch, Jan
Cc: johnshaw5@tiscali.co.uk
Subject: RE: Public Notice Requirement
Dear Jan,

Thank you for this. I understand that Rosie Winterton has written to Joan Humble MP with her views on this matter and, that being the case, I will not comment further at this point.

Regards,

Steve McAllister
Local Governance
Department of Communities and Local Government
020 7944 4277

From: Finch, Jan [mailto:JFinch@wyrebc.gov.uk]
Sent: Thursday, October 01, 2009 12:20 PM
To: Stephen Mcallister
Subject: Public Notice Requirement

Please find attached a letter from John Shaw, Chair of the Standards Committee
<<mcallister resp 01 10 09.doc>>

Jan Finch
Deputy Chief Executive and Monitoring Officer
Wyre Borough Council

Telephone 01253 887502
email:jfinch@wyrebc.gov.uk

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LIVE WYRE LOVE WYRE*

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Ms G Stacey
Chief Executive
Standards for England
Fourth Floor
Griffin House
40 Lever Street
Manchester
M1 1BB

Jan Finch MA FCIPD
Deputy Chief Executive and Monitoring Officer

Please ask for: Jan Finch
Direct Line: 01253 887502
Email: jfinch@wyrebc.gov.uk
Our ref:
Your ref:

23 October 2009

Dear Ms Stacey

Standards Committee Hearings – Public Notice Requirement

I am writing at the request of Wyre Borough Council's Standards Committee to bring to your attention the Committee's views on the requirement to publish a public notice following a standards hearing.

In March this year we held our first hearing under the new arrangements. The hearing was open to the press and public and the press were in attendance. An article on the hearing and the sanction imposed appeared in the local press the day after and we published all the details on our website. In line with the guidance we also put a notice in a local newspaper which cost the Council in the region of £500.

When I reported the steps we had taken to bring the outcome to the attention of local people and told them the cost of the public notice the members of the Standards Committee were very concerned that we had had to spend £500 of taxpayer's money on something which, in their view, added no value. They felt that the whole process had been open and transparent and had received wide publicity without having to take the additional step of a public notice.

I was therefore asked to write to Communities and Local Government to register the Committee's concern, to seek an explanation of the reasoning behind the requirement and to ask whether there would be any opportunity for the requirement to be reviewed.

Dissatisfied with the initial response, the Standards Committee agreed that the Chairman (Mr John Shaw) should pursue the matter and he has been in correspondence with Stephen McAllister of CLG on this matter over the past months. I must stress that the Committee supports the principle of making findings public but

argues that a public notice which few people read and comes at a significant cost to the taxpayer is not the way to do it.

In October Mr Shaw wrote to Mr McAllister to inform him of the Committee's intention to continue to press for change through other routes. Both local MPs (Ben Wallace and Joan Humble) have become involved and have taken it up with the Local Government Minister, Rosie Winterton.

The Chairman intends to raise the matter at the next meeting of the North West Independent Members' Forum and I have been asked to raise it with other Standards Committee's in Lancashire and to write to you to enlist your support.

I am enclosing both correspondence and a press release issued by the Council which has appeared in the local press.

I would be grateful for your views and any support you can give to abolish this outdated requirement.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J Finch', written in a cursive style.

Jan Finch
Deputy Chief Executive and Monitoring Officer

STANDARDS COMMITTEE

**REVIEW OF THE PROTOCOL ON MEMBER/OFFICER
RELATIONS
21st January 2010
Report of the Monitoring Officer**

PURPOSE OF REPORT

To enable the Committee to review the Protocol on Member/Officer Relations, and to recommend any changes to the Council Business Committee.

This report is public

RECOMMENDATIONS

- (1) **That the Committee consider the amended Protocol on Member/Officer Relations appended to the report, and recommend the Council Business Committee to approve it for inclusion in the Council's Constitution.**

1.0 Introduction

- 1.1 A review of the Protocol on Member/Officer Relations is included in the Work Programme for this meeting.

2.0 Proposal Details

- 2.1 The Monitoring Officer has made some suggested amendments to the Protocol, as set out in the document appended to this report at Appendix 1. For reference, the current Protocol is appended at Appendix 2.
- 2.2 The most substantial amendments are to former Section 6, now re-numbered 8, on access to information. The amendments follow the recommendations of the Overview and Scrutiny Committee at its meeting on the 9th December 2009. The report considered by that Committee and the relevant minute are attached to this report at Appendix 3. The Committee had requested a report from the Monitoring Officer on Members' rights of access to information, after it had heard at its meeting on the 9th September 2009 from the Chief Executive regarding his decision to reject a request from a ward councillor for sight of a document concerning a development in his ward. The proposed new procedure set out in Section 8 is more streamlined and enables Members' requests for information to be dealt with without the need for a separate Freedom of Information request to be made.
- 2.3 The Monitoring Officer has made a number of other amendments to the Protocol to ensure that it reflects the current Code of Conduct and general good practice.

3.0 Details of Consultation

3.1 In addition to the involvement of the Overview and Scrutiny Committee, the Monitoring Officer has consulted with the Chief Executive, Corporate Directors, and the Head of Democratic Services on the proposed amendments.

4.0 Options and Options Analysis (including risk assessment)

4.1 The options open to the Committee are to recommend the proposed amendments to the Council Business Committee, to suggest other amendments, or to recommend that the Protocol not be amended at all. The Monitoring Officer would recommend the amendments as set out in the appendix.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None arising from this report.

FINANCIAL IMPLICATIONS

None directly arising from this report.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

None directly arising from this report.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her capacity as adviser to the Standards Committee.

BACKGROUND PAPERS

None

Contact Officer: Mrs S Taylor

Telephone: 01524 582025

E-mail: STaylor@lancaster.gov.uk

Ref:

Part 7, Section 6

Protocol on Member/Officer Relations (Draft)

1. INTRODUCTION

- 1.1 The purpose of this protocol is to guide Members and Officers in their relations with one another, to define their respective roles and to provide guidance for dealing with particular issues that may most commonly arise or cause concern.
- 1.2 However, given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or exhaustive. It is hoped that the general approach set out in the protocol will serve as a guide in dealing with other issues that may not be specifically covered.
- 1.3 The protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and Officers. The shared object of these Codes is to enhance and maintain the integrity of local government and they therefore demand very high standards of personal conduct.

2. ROLE OF MEMBERS AND OFFICERS

- 2.1 Both Members and Officers are servants of the public and they are indispensable to one another, but their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council as a whole, and they are accountable to the Chief Executive. Their job is to give advice to Members and the Council, and to carry out the Council's work under the direction and control of the Council and Cabinet, and the various Committees.
- 2.2 The Council's Constitution sets out the clear distinction between the roles of Members and Officers. Members will perform roles on the Cabinet, and on the Regulatory and Overview and Scrutiny and other Committees, in addition to sitting as members of the full Council. They may also represent the Council on outside bodies. Officers are employed by and serve the whole Council, and are accountable to the Chief Executive. They provide support to the executive, scrutiny and regulatory functions of the Council, providing impartial advice and implementing the decisions of the Council, the Cabinet and Committees. They may also make decisions under powers delegated to them.
- 2.3 Members should not get involved in the day to day operational management of services. Equally, Officers should not get involved in politics.
- 2.4 Officers are responsible for advising on and implementing policies, and for the delivery of services in the manner that they consider is most appropriate given their managerial and professional expertise. Members would not be expected to be involved in the detail of implementation, but can expect reports on progress, and in certain circumstances, at Overview and Scrutiny meetings, can require Chief Officers to account for their decisions.
- 2.5 It is appropriate, however, for Members to propose initiatives and ideas about how things can be done better. It is essential that existing ways of doing things are challenged and reviewed. This needs to be done in a professional and constructive environment. The Constitution sets out the procedures for both the Cabinet and Overview and Scrutiny to review existing policies and bring forward new policy initiatives. The procedural rules also set out the process for Officer involvement with the Cabinet, the Regulatory Committees and the Overview and Scrutiny.

2.6 Mutual respect between Members and Officers is essential to good local government. It is important in all dealings between Members and Officers that both should observe reasonable and consistent standards of courtesy and that neither party should seek to take advantage of their position. Close personal familiarity between individual Members and Officers can damage this relationship and prove embarrassing to other Members and Officers.

2.7 The general obligations in the Members' Code of Conduct include a requirement to treat others with respect, and not to do anything which compromises or is likely to compromise the impartiality of those who work for or on behalf of the authority. There is also a requirement for Members in making decisions to have regard to any advice provided by the Council's Section 151 Officer and the Monitoring Officer.

3. OFFICER ADVICE TO GROUPS OF MEMBERS

3.1 It is common practice for political groups to give preliminary consideration to matters of Council business in advance of such matters being considered. As an example, the Council's four-month Forward Plan will identify the Key Decisions that the Cabinet will be considering in that time. Individual Members and/or groups of Members may properly call upon Officers to support and provide factual advice to their deliberations. The support provided by Officers can take many forms, ranging from a briefing meeting prior to a committee meeting, to a presentation to a full group meeting. Briefing of political groups should only be undertaken by the Chief Executive, Corporate Directors or Service Heads, or with the approval of the Chief Executive.

3.2 Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:

(a) Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of a 'political' nature. Officers are not expected to be present at meetings, or parts of meetings, where matters of political business are to be discussed.

(b) Similarly, where Officers provide information and advice to a group of Members meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the Cabinet, Overview and Scrutiny or other Committee meeting when the matter in question is considered.

3.3 Officers must respect the confidentiality of any group discussions at which they are present in the sense that they should not relay the content of any such discussion to another group of Members.

3.4 Any particular cases of difficulty or uncertainty in this area of Officer advice to groups of Members should be raised with the Chief Executive or, in his absence, the Council's Monitoring Officer, who will discuss them with the relevant Group Leader(s).

4. OFFICER/MEMBER RELATIONSHIPS

4.1 It is clearly important that there should be a close working relationship between Cabinet members and Committee members, including their Chairmen, and the relevant Chief Officers. However, such relationships should never be allowed to become so close, or

appear to be so close, as to bring into question an Officer's ability to deal impartially with other Members.

4.2 Whilst the Cabinet Leader and Committee Chairs will routinely be consulted as part of the process of drawing up agenda items for a forthcoming meeting, it must be recognised that in some situations an Officer will consider it his/her duty to submit a report on a particular matter. In these circumstances, an Officer will always be fully responsible for the contents of any report submitted in his/her name. Similarly, a Member will also be fully responsible for that part of any report submitted in his/her name. Any issues arising between a Member and an Officer in this area should be referred to the Chief Executive for his resolution. Where individual Members wish to place an item on a Cabinet agenda, they should notify the Chief Executive in accordance with Part 4 Section 4 of the Constitution.

4.3 In relation to action between meetings, it is important to remember that the Council's Constitution allows not only for decisions (relating to the discharge of any of the Council's functions) to be taken by the Cabinet, other Committees of Council or an Officer, but also allows for an individual Cabinet Member to take a non-key decision.

4.4 It must be remembered that Officers within a Service are accountable to their Corporate Director and/or Service Head, and ultimately to the Chief Executive, and that whilst Officers should always seek to assist any Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Corporate Director or Service Head. Officers should also refer to Part 3 (Responsibility for Functions) and Part 7, Section 1 (Officers' Code of Conduct) in the Council's Constitution for clarification about the bounds of their responsibility.

5. **UNDUE PRESSURE**

5.1 A Member should not apply undue pressure on an Officer to do anything which he/she is not empowered to do, or which is against the Officer's professional judgement, or to undertake work outside normal duties or normal hours.

5.2 Similarly, an Officer must not seek to influence an individual Member to make a decision in his/her favour, nor raise personal matters relating to his/her job, nor make claims or allegations about other employees, except in accordance with any agreed Council procedure or in accordance with law. Members who receive any such approach from an Officer should advise the Chief Executive immediately.

6. **CRITICISM / COMPLAINTS**

6.1 It is important that there should be mutual courtesy between members and officers.

6.2 Members and officers should not criticise or undermine respect for each other at Council meetings or at any other meeting they attend in their capacity as a Member or officer, or in any other public forum.

6.3 Members should not raise matters relating to the conduct or capability of an individual officer or officers collectively at meetings or in any other public forum. Any such complaints should be made to the Chief Executive.

7. **SUPPORT SERVICES TO MEMBERS AND PARTY GROUPS**

7.1 Previously, the only basis on which the Council could lawfully provide support services (e.g. stationery, typing, printing, e-mail, internet, photocopying, transport, etc.) to Members was to assist them in discharging their role as Members of the Council. However the current Code

of Conduct does allow limited private use of Council resources by Members provided that when using or authorising the use by others of the resources they must -

- (i) act in accordance with the Authority's reasonable requirements; and
- (ii) ensure that such resources are not used improperly for political purposes (including party political purposes)

Any uncertainty about compliance with these requirements should be referred to the Council's Monitoring Officer for determination.

- 7.2 The Members' Services Section in Democratic Services should be the first point of contact in all aspects relating to Member support.

8. MEMBERS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

- 8.1 Members are free to approach the appropriate Service to provide them with such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as Members of the Council. This can range from a request for general information about some aspect of a Service's activities to a request for specific information on behalf of a constituent. Such approaches should be directed to the Service Head or nominated representative. If Members wish to visit officers, they should contact the Service Head to make arrangements whenever possible.

- 8.2 With respect to the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.

- 8.3 Under Section 100F of the Local Government Act 1972, any Member may inspect any document in the possession or control of the Council which contains material relating to any business to be transacted at a meeting of the Council, Cabinet, a Committee or Sub-Committee. This right applies irrespective of whether the Member is a member of the relevant committee, and extends not only to reports but also to background papers.

However, the right does not apply if a document discloses "exempt" information as defined in Schedule 12A of the Local Government Act 1972, unless the information falls within paragraph 3 (the financial and business affairs of any particular person), except to the extent that it relates to any terms proposed by or to the authority in the course of negotiations for a contract, or within paragraph 6 (that the authority proposes to give a notice or order under any enactment, by virtue of which conditions or requirements are imposed on a person). These exceptions mean that a Member's right of access to information under the Local Government Act 1972 is slightly wider than the public right under that Act.

- 8.4 The common law right of Members is much broader and is based on the principle that any member has a prima facie right to inspect council documents so far as his/her access to the documents is reasonably necessary to enable the member to carry out his/her duties as a member. This is referred to as the "need to know" principle. If a Member is a member of Cabinet or a committee, then he/she has the right to inspect documents relating to the business of Cabinet or the committee. If a Member is not a member of the relevant Committee, then he/she has to demonstrate why sight of the document is necessary to enable the performance of his/her duties as a member. This could be by reference to the role as ward member. Members have no right to a "roving commission" to examine documents of the Council. Mere curiosity is not sufficient. If the Member's motive for seeing the documents is indirect, improper or ulterior, then there would be no right of access at common law.

- 8.5 A Member has the same rights of access to information under the Freedom of Information Act 2000 as any member of the public. A request must be in writing and describe specifically the information requested. The exemptions set out in the Act would be applied whoever is requesting the information. Once information has been made available in response to a Freedom of Information request, it becomes public.
- 8.6 From a procedural point of view, if a Member makes a request for information that is not routine, the request should be made to the relevant Service Head, who will consider first whether all the information would be made available as a matter of course to a member of the public making a similar request. If so, the information will be provided to the Member.
- 8.7 If the request is such that the information would not automatically be provided to a member of the public, the Service Head will consider whether the information can be provided under Section 100F of the Local Government Act 1972 or under the common law “need to know”. The Service Head should consult with the relevant Corporate Director, and should seek advice from the Monitoring Officer. The final determination as to whether there is a “need to know” will be made by the Monitoring Officer. The Overview and Scrutiny Committee may hold the Monitoring Officer to account in accordance with Rule 14 of the Overview and Scrutiny Procedure Rules.
- 8.8 If neither Section 100F nor the “need to know” are met, then the request will be dealt with as a Freedom of Information Act request, but without the need for the Member to make a specific FOI request. The FOI request will be dealt with in the normal way with advice from Legal Services. This may result in the information being provided in part, with an exemption applying to the remainder, or the request being refused in its entirety as a result of an exemption. The Member will be informed that the request has been considered under the Freedom of Information Act and that there is a right of internal review which will be carried out by the Monitoring Officer. Following such a review, the Member will be advised of the right to pursue the matter with the Information Commissioner.
- 8.9 Any information provided under the Freedom of Information Act can be made public by the Member. Information provided under the “need to know” will be provided with the caveat that it is provided to the Member in his/her capacity as member, and is only to be used for the purpose of exercising his/her functions, and should not be made public.
- 8.10 The Code of Conduct provides that a Member must not disclose information given to the Member in confidence by anyone, or information which the Member believes or ought reasonably to be aware is of a confidential nature except where
- the Member has the consent of a person authorised to give it;
 - the Member is required by law to do so;
 - the disclosure is made to a third party for the purposes of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - the disclosure is reasonable and in the public interest and made in good faith and in compliance with the reasonable requirements of the authority. These are set out in Part 7 Section 3 of the Constitution.

9. CORRESPONDENCE

- 9.1 Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. Where exceptionally it is necessary to copy the correspondence to another Member, this should be made clear to the original Member.

9.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate Officer, rather than over the name of a Member. It may be appropriate in certain circumstances (eg representations to a Government Minister) for a letter to appear over the name of a Member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out over the name of a Member.

10. INVOLVEMENT OF WARD COUNCILLORS

10.1 Whenever a public meeting is organised either by the Council or where the Council has been invited to attend, to consider a local issue, all the Members representing the ward or wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise. In addition, whenever significant Council organised events or works or other activity are taking place in a locality, all the Members representing the ward or wards should as a matter of course be notified. Ward Members should be copied into correspondence relating to particular ward issues, save where the correspondence is confidential and/or includes personal information about a third party.

11. MEETINGS WITH THIRD PARTIES

11.1 On occasions, Members may be approached by individuals or companies who have proposals affecting the area or functions of the Council, and which they wish to discuss with Members. Members are reminded that, as individual Members, they cannot commit the Council to any contract or other agreement or course of action. Members are advised to make this clear to any third party with which they may have contact. Should Members be asked to attend a meeting with third parties, they are recommended to arrange for the meeting to take place at Council offices and with a relevant officer present. This will enable the officer to explain to the third party the proper decision making process, and will protect Members against any subsequent claim by the third party. Normal routine activities are not intended to be subject to this recommendation.

11.2 More detailed guidance about meetings relating to planning issues is set out in the Protocol on Planning in Part 7 Section 5 of the Constitution

12.. MEDIA RELATIONS

12.1 The Council has agreed Press and Media Guidelines which set out the Council's procedures for dealing with the press and media. The guidelines are subject to review from time to time, and can be found in Part 7 Section 7 of the Constitution.

13. ARBITRATION

13.1 The Protocol is intended to act as a guide for both Members and Officers. The Corporate Director and/or Service Head should deal with difficulties that arise in the first instance with the Member(s) concerned. The Monitoring Officer and then the Chief Executive should then consider any continuing difficulties.

13.2 Serious difficulties or breakdowns in relations that cannot be resolved through the above route should be referred to the Standards Committee for determination in accordance with the protocol. This will be very much a last resort. Every effort should be made to resolve difficulties at any early stage.

14. **REVIEW OF PROTOCOL**

- 14.1 The protocol is intended to provide Members and Officers with guidelines to determine their roles and their relations with each other.
- 14.2 It is intended to be a “live” document and will be reviewed from time to time to reflect changing circumstances. The Standards Committee is the lead Committee.
- 14.3 Members or Officers with queries about the Protocol should contact the Council’s Monitoring Officer.

Part 7, Section 6

Protocol and Member/Officer Relations (Current)

1. INTRODUCTION

- 1.1 The purpose of this protocol is to guide Members and Officers on their relations with one another. The document has been adopted to reflect the specific arrangements in Lancaster City Council, and is based on the Council's new Constitution and the anticipation of how these new arrangements will operate.
- 1.2 Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise.

2. ROLE OF MEMBERS AND OFFICERS

- 2.1 The protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and Officers. The shared object of these Codes is to enhance and maintain the integrity of local government and they therefore demand very high standards of personal conduct.
- 2.2 Both Councillors and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Councillors and the Council and to carry out the Council's work under the direction and control of the Council and Cabinet, their Committees, and also Overview and Scrutiny.
- 2.3 Mutual respect between Councillors and Officers is essential to good local government. Close personal familiarity between individual Councillors and Officers can damage this relationship and prove embarrassing to other Councillors and Officers."
- 2.4 A relevant extract from the current Members' Code of Conduct is re-produced below:

"2 A member must –

- (a) promote equality by not discriminating unlawfully against any person;
- (b) treat others with respect; and
- (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.

6 (1) A member must when reaching decisions –

- (a) have regard to any relevant advice provided to him/her by –
 - (i) the Authority's Chief Finance Officer acting in pursuance of his/her duties under Section 114 of the Local Government Finance Act 1988; and
 - (ii) the Authority's Monitoring Officer acting in pursuance of his/her duties under Section 5(2) of the Local Government and Housing Act 1989;"

2.5 The City Council's new Constitution sets out the clear distinction between the roles of Members and Officers:

- The Council is responsible for setting policies, service and performance targets and the Cabinet, Regulatory Committees and Overview and Scrutiny for ensuring that they are delivered. They are accountable to the electorate for the delivery of policies and services.
- Officers are accountable to the Cabinet, Overview and Scrutiny and Committees for the implementation of policies and the delivery of services. Members should not get involved in the day to day management of services. Equally, Officers should not get involved in politics.

Officers are responsible for advising Council, Cabinet, Overview and Scrutiny and Committees on policy and its implementation. They have a duty to give impartial advice to all Members and are accountable to the whole Council. Exceptions to this are set out elsewhere in this Protocol.

2.6 The guidelines set out broad boundaries between Members and Officers. There is an acceptance that Officers are responsible for the implementation of policies and delivery of services in the manner that they consider is most appropriate given their managerial and professional expertise. Members would not be expected to be involved in the detail of implementation, but can expect reports on progress, and in certain circumstances, at Overview and Scrutiny meetings, can require Chief Officers to account for their decisions.

2.7 It is appropriate, however, for Members to propose initiatives and ideas about how things can be done better. It is essential that existing ways of doing things are challenged and reviewed. This needs to be done in a professional and constructive environment. The Constitution sets out the procedures for both the Cabinet and Overview and Scrutiny to review existing policies and bring forward new policy initiatives. The procedural notes also set out the process for Officer involvement with the Cabinet, the Regulatory Committees and the Overview and Scrutiny.

3. OFFICER ADVICE TO GROUPS OF MEMBERS

3.1 It is common practice for political groups to give preliminary consideration to matters of Council business in advance of such matters being considered. As an example the Council's four-month Forward Plan will identify the Key Decisions that the Cabinet will be considering in that time. Individual Members and/or groups of Members may properly call upon Officers to support and provide factual advice to their deliberations. Briefing of political groups should only be undertaken by Chief Officers or with the approval of the Chief Officer.

3.2 Certain points must, however, be clearly understood by all those participating in this type of process, Members and Officers alike. In particular:

- (a) Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of a 'political' nature.
- (b) Similarly, where Officers provide information and advice to a group of Members meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to Committees the Cabinet or Overview and Scrutiny meeting when the matter in question is considered.

3.3 Officers must respect the confidentiality of any group discussions at which they are present in the sense that they should not relay the content of any such discussion to another group of Members.

3.4 Any particular cases of difficulty or uncertainty in this area of Officer advice to groups of Members should be raised with the Chief Executive or, in his absence, the Council's Monitoring Officer, who will discuss them with the relevant Group Leader(s).

4. OFFICER/CABINET RELATIONSHIPS

4.1 It is clearly important that there should be a close working relationship between Cabinet Members and Committees including their Chairmen and the relevant Chief Officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question an Officer's ability to deal impartially with other Members.

4.2 Whilst the Cabinet Leader and Committee Chairs will routinely be consulted as part of the process of drawing up agenda items for a forthcoming meeting, it must be recognised that in some situations an Officer will consider it their duty to submit a report on a particular matter. In these circumstances, an Officer will always be fully responsible for the contents of any report submitted in his/her name. Similarly, a Member will also be fully responsible for that part of any report submitted in his/her name. Any issues arising between a Member and an Officer in this area should be referred to the Chief Executive for his resolution. Where individual Members wish to place an item on a Cabinet agenda, they should notify the Chief Executive in accordance with Part 4 Section 4 of the Constitution.

4.3 In relation to action between meetings, it is important to remember that the Council's Constitution allows not only for decisions (relating to the discharge of any of the Council's functions) to be taken by the Cabinet, other Committees of Council or an Officer, but also allows for an individual Cabinet Member to take a non-key decision.

4.4 Finally, it must be remembered that Officers within a Service are accountable to their Corporate Director and/or Service Head and that whilst Officers should always seek to assist any Member, they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Corporate Director or Service Head. Officers should also refer to Part 3 (Responsibility for Functions) and Part 5, Section 2 (Officers' Code of Conduct) in the Council's new Constitution for clarification about the bounds of their responsibility.

5. SUPPORT SERVICES TO MEMBERS AND PARTY GROUPS

5.1 Previously, the only basis on which the Council could lawfully provide support services (e.g. stationery, typing, printing, e-mail, internet, photocopying, transport, etc.) to Members is to assist them in discharging their role as Members of the Council. However the new Code of Conduct does allow limited private use of Council resources by Members provided that when using or authorising the use by others of the resources they must -

- (i) act in accordance with the Authority's requirements; and
- (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Authority or of the office to which the Member has been elected or appointed.

Any uncertainty about compliance with these requirements should be referred to the Council's Monitoring Officer for determination.

5.2 The Members' Services Section in Democratic Services should be the first point of contact in all aspects relating to Member support.

6. MEMBERS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

6.1 Members are free to approach the appropriate Service to provide them with such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as Members of the Council. This can range from a request for general information about some aspect of a Service's activities to a request for specific information on behalf of a constituent. Such approaches should be directed to the Service Head or nominated representative. If Members wish to visit offices, they should contact the Service Head to make arrangements whenever possible.

6.2 With respect to the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law. Guidance is also given in Part 4 Section 2 of the new Constitution.

6.3 Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted at a Council, Cabinet, Regulatory Committee or Overview and Scrutiny meeting. This right applies irrespective of whether the Member is a Member of the Cabinet, Regulatory Committee or Overview and Scrutiny concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not, however, apply to documents relating to certain items or part of items which may appear on the 'exempt' agenda for meetings. The items in question are those which contain exempt information.

6.4 The common law right of Members is much broader and is based on the principle that any Member has a *prima facie* right to inspect Council documents so far as his/her access to the documents is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Council. This principle is commonly referred to as the "need to know" principle.

6.5 The exercise of this common law right depends, therefore, upon the Member's ability to demonstrate that they has the necessary "need to know". In this respect a Member has no right to "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the "need to know". The particular Service Head who holds the document in question must initially determine this question. In the event of dispute, the question falls to be determined by the Council's Monitoring Officer.

6.6 In some circumstances (eg a Cabinet Member wishing to inspect documents relating to the functions of the Cabinet) a Member's "need to know" will normally be presumed. In other circumstances (eg a Member wishing to inspect documents which contain personal information about third parties) a Member will normally be expected to justify the request in specific terms.

6.7 Whilst the term "Council document" is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a Member of one party group will not have a "need to know" and, therefore, a right to inspect, a document which forms part of the internal workings of another party group.

6.8 Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer.

- 6.9 Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, ie in connection with proper performance of the Member's duties as a Member of the Council. This point is emphasised in the Members' Code of Conduct in the following terms:

"A member must not disclose information given to him/her in confidence by anyone, or information acquired which they believes is of a confidential nature, without the consent of a person authorised to give it, or unless they is required by law to do so."

7. **CORRESPONDENCE**

- 7.1 Correspondence between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. Where exceptionally it is necessary to copy the correspondence to another Member, this should be made clear to the original Member.
- 7.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate Officer, rather than over the name of a Member. It may be appropriate in certain circumstances (eg representations to a Government Minister) for a letter to appear over the name of a Member, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out over the name of a Member.

8. **INVOLVEMENT OF WARD COUNCILLORS**

- 8.1 Whenever a public meeting is organised either by the Council or where the Council has been invited to attend, to consider a local issue, all the Members representing the Ward or Wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise. In addition, whenever significant Council organised events or works are taking place in a locality, all the Members representing the ward or wards should as a matter of course be notified.

9. **MEETINGS WITH THIRD PARTIES**

On occasions, Members may be approached by individuals or companies who have proposals affecting the area or functions of the Council, and which they wish to discuss with Members. Members are reminded that, as individual Members, they cannot commit the Council to any contract or other agreement or course of action. Members are advised to make this clear to any third party with which they may have contact. Should Members be asked to attend a meeting with third parties, they are recommended to arrange for the meeting to take place at Council offices and with a relevant officer present. This will enable the officer to explain to the third party the proper decision making process, and will protect Members against any subsequent claim by the third party. Normal routine activities are not intended to be subject to this recommendation.

10. **MEDIA RELATIONS**

- 10.1 The Council has agreed Press and Media Guidelines which set out the Council's procedures for dealing with the press and media. The guidelines are subject to review from time to time.

11. **ARBITRATION**

- 11.1 The Protocol is intended to act as a guide for both Members and Officers. The Corporate Director and/or Service Head should deal with difficulties that arise in the first instance with the Member(s) concerned. The Monitoring Officer and then the Chief Executive should then consider any continuing difficulties.
- 11.2 Serious difficulties or breakdowns in relations that cannot be resolved through the above route should be referred to the Standards Committee for determination in accordance with the protocol. This will be very much a last resort. Every effort should be made to resolve difficulties at any early stage.

12. **REVIEW OF PROTOCOL**

- 12.1 The protocol is intended to provide Members and Officers with guidelines to determine their roles and their relations with each other.
- 11.2 It is intended to be a “live” document and will be reviewed from time to time to reflect changing circumstances. The Standards Committee is the lead Committee.

Members or Officers with queries about the Protocol should contact the Council’s Monitoring Officer.

OVERVIEW AND SCRUTINY COMMITTEE**MEMBERS' ACCESS TO INFORMATION
9th December 2009****Report of the Monitoring Officer****PURPOSE OF REPORT**

To report on the arrangements and protocols for making information available to Members, following the Committee's debate at its meeting on the 9th September 2009.

This report is public

RECOMMENDATION

- (1) That the Committee approve the proposed procedure for dealing with Member requests for information as set out in this report, and request the Standards Committee to include this procedure in its recommendations to the Council Business Committee following its scheduled review of the Member/Officer Protocol in January 2010.
- 1.0 Introduction
 - 1.1 At its meeting on the 9th September 2009, the Committee heard from the Chief Executive regarding his decision to reject a request from a ward councillor for sight of a document concerning a development in his ward.
 - 1.2 The Committee, in Minute 15, resolved as follows:
 - (1) That the Monitoring Officer be requested to prepare a report for the Overview and Scrutiny Committee setting out options to revise the Council's existing protocol for dealing with the rights of Councillors in relation to access to information and Council documents, taking into account the issues raised at today's meeting, namely:
 - (a) ensuring that, in considering requests for information made by Councillors, the provisions of Freedom of Information legislation are taken into account alongside the 'need to know' rather than requiring Councillors to submit a separate FOI request as a member of the public;

- (b) the division of responsibilities for considering the merits of a Councillor's case for a 'need to know' separately from the determination of the decision on whether or not a piece of information should be provided;
 - (c) the potential for the scrutiny function to play a role in viewing information which it has been determined should not be provided to an individual Councillor.
- (2) That having considered the report of the Monitoring Officer, the Committee submit its recommendations on the matter to enable the Monitoring Officer to report to the Council Business Committee on proposed amendments to the Council's existing protocol for inclusion in Part 7, Section 6 of the Constitution.
 - (3) That, once any amendments are made or the existing protocol confirmed, the Head of Democratic Services be requested to ensure that all Councillors are made aware of the guidelines relating to access to information and the process to be followed should they wish to request additional information over and above that made publicly available.
- 1.3 This report is presented to the Committee in accordance with the first part of that resolution.

2.0 Constitutional and Legal Position

- 2.1 The Council's Constitution currently contains provisions relating to Members' access to information in paragraph 21 of the Access to Information Rules (Part 4 Section 2), and in paragraph 6 of the Protocol on Member/Officer Relations (Part 7 Section 6). Copies of these provisions are set out in Appendix 1.
- 2.2 The legal position with regard to the right of Members to have access to information is based both in statute and in common law.
- 2.3 Local Government Act 1972 Any Member may inspect any document in the possession or control of the Council which contains material relating to any business to be transacted at a meeting of the Council, Cabinet, or a Committee or Sub-Committee. This right applies to reports and background papers. The right does not apply where the document discloses "exempt" information as defined in paragraphs 1,2,4,5 and 7 of Schedule 12 A of the 1972 Act. Documents falling within paragraphs 3 (business and financial information) and 6 (proposal to give a notice or order under any enactment) are open to inspection by Members except to the extent that the paragraph 3 information relates to any term proposed in the negotiation of a contract. This means that a Member's right of access to information under the Local Government Act 1972 is slightly wider than the public right under that Act.
- 2.4 Common Law Any Member has a prima facie right to inspect council documents so far as his/her access to the documents is reasonably necessary to enable the Member to carry out his/her duties as a Member. This is referred to as the "need to know". If a Member is a member of Cabinet or a committee, then he/she generally has the right to inspect documents relating to the business of Cabinet or the committee. Otherwise, the Member has to demonstrate why sight of the document is necessary to enable the performance of his/her duties as a member. This could be by reference to the role of ward member. Members have no right to a "roving commission" to go and examine documents of the Council; mere curiosity is not

sufficient. If the Member's motive for seeing the documents is improper or ulterior, then there would be no right of access at common law.

- 2.5 Freedom of Information Act 2000 A member has the same rights of access to information under the Freedom of Information Act 2000 as any member of the public. A request must be in writing and describe specifically the information requested. The exemptions set out in the Act apply whoever is requesting the information. Once information has been made available in response to a Freedom of Information request, it becomes public – information could not be given to one person and refused to another. The person receiving the information is at liberty to make it public. Where information is refused under the FOI, there is a right of internal review, which is undertaken by the Monitoring Officer. If the person making the request is still not satisfied, the Act provides for a complaint to be made to the Information Commissioner.

3.0 Current Practice

- 3.1 In response to routine requests from Members, information is often provided informally, and without specifically identifying under what provision the information is being provided. In many cases such requests clearly relate to a committee that the Member is on, or to routine information that would readily be provided to any member of the public without the need for a formal request under the Freedom of Information Act.
- 3.2 Where there is any doubt as to whether a Member is entitled to the information, the request is generally passed to the relevant Service Head, Corporate Director or the Chief Executive. Indeed, in some cases, the request will have been made at this level. In these circumstances, the officer generally seeks advice from the Monitoring Officer as to whether the common law "need to know" is satisfied. If it is, the information is provided; if it is not the Member is advised accordingly.
- 3.3 A Member request that has been rejected under the "need to know" has not in the past automatically then been considered under the Freedom of Information Act, although there have been occasions when a Member, who has been denied on the ground of "need to know" has subsequently made a Freedom of Information request which has been considered in the light of the relevant exemptions. In some cases this has resulted in the request being partially allowed, for example with some information redacted. It is difficult to generalise, but it is more likely that information, or more of the information, will be available under the "need to know" than under FOI.

4.0 Proposal

- 4.1 It is proposed that if a Member makes a request for information that is not routine, the request should be made to the relevant Service Head. The first consideration would be whether the information would be made available to a member of the public making a similar request. If so, the information would be provided.
- 4.2 If the request is such that the information would not automatically be provided to a member of the public, then the Service Head should consider whether the information can be provided under Section 100F of the Local Government Act 1972 or under the common law "need to know". The Service Head may consult with the relevant Corporate Director, and should seek advice from the Monitoring Officer.
- 4.3 If the Service Head is not satisfied that either Section 100F or the "need to know" are met, then the request should be dealt with as an FOI request, without the need for

the member to make a specific FOI request. The FOI request should be dealt with in the normal way, with advice being sought from the relevant Service's allocated solicitor within Legal Services. This would result in the information being provided in part, with an exemption applying to the remainder, or the request being refused in its entirety as a result of an exemption. The Member should be informed that the request has been considered under the Freedom of Information Act and that there is a right of internal review by the Monitoring Officer. Following such a review, the Member would be advised of the right to pursue the matter with the Information Commissioner. The Member would be informed that any information provided under the Freedom of Information Act can be made public.

- 4.4 With regard to Minute 15(1)(b), the consideration of whether there is a "need to know" a piece of information is inextricably linked to the decision whether or not to provide that information under the "need to know". If a need is established then the information must at common law be provided; if a need is not established then the information cannot be provided under common law, and it is necessary to consider any statutory provision for the disclosure of the information. It is not possible to separate consideration and determination.
- 4.5 With regard to Minute 15(1)(c), the Member/Officer Protocol currently provides for the relevant Service Head to determine whether there is a "need to know", with the Monitoring Officer determining the matter in the event of dispute. The Protocols of many other local authorities make similar provision, although in some cases the decision is to be made by the Chief Executive, and in a few cases there is provision, in the event of dispute, for the matter to be referred for determination by the Standards Committee or by the member body in connection with whose functions the document is held. It is recommended that the final determination should continue to be made by the Monitoring Officer. The Overview and Scrutiny Committee may hold the Monitoring Officer to account in accordance with Rule 14 of the Overview and Scrutiny Procedure Rules.
- 4.6 With regard to Member requests that are dealt with under the Freedom of Information Act, the Monitoring Officer would recommend that the standard procedure for internal review with the subsequent statutory right to pursue the matter with the Information Commissioner should apply, in the same way as to any other FOI request.
- 4.7 The Standards Committee has in its work programme for January 2010 a review of the Member/Officer Protocol. This will be a review of the whole document. With regard to Minute 15(2), Members may feel that it would be preferable for this Committee's views on any amendments that should be made to paragraph 6 of the Protocol in the light of this report, to be considered by the Standards Committee, with recommendations from both this Committee and the Standards Committee then being referred to the Council Business Committee. This would avoid any piecemeal amendment of the Protocol. Clearly once any amendments to the Protocol have been confirmed, it will be recirculated to both members and officers and advice given on the procedures to be followed to comply with it.

CONCLUSION OF IMPACT ASSESSMENT
(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None arising from this report.

FINANCIAL IMPLICATIONS

There are no additional financial implications. The only costs of the review and proposed procedure for the Member/Officer Protocol is in officer and committee time, which can be met from within existing budgets.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

Legal Services have been consulted and have no further comments.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer as requested by the Committee. The Deputy Monitoring Officer has also been consulted in its preparation.

BACKGROUND PAPERS

None

Contact Officer: Mrs S Taylor
Telephone: 01524 582025
E-mail: STaylor@lancaster.gov.uk
Ref:

Appendix 1

Part 4, Section 2

Access to Information Procedure Rules

21. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

21.01 Material relating to previous business

All members will be entitled to inspect any document which is in the possession or under the control of the Cabinet or its committees and contains material relating to any business previously transacted unless either (a) or (b) below applies:

- (a) it contains exempt information falling within paragraphs 1, 2, 4, 5, or 7 of the categories of exempt information; or
- (b) it contains the advice of a political adviser, if any.

21.02 Material relating to Key Decisions

All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or its committees which related to any Key Decision unless paragraph (a) or (b) above applies.

21.03 Nature of Rights

These rights of a member are additional to any other right they may have in statute or at common law.

Part 7, Section 6

Protocol and Member/Officer Relations

6. MEMBERS' ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

- 6.1 Members are free to approach the appropriate Service to provide them with such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as Members of the Council. This can range from a request for general information about some aspect of a Service's activities to a request for specific information on behalf of a constituent. Such approaches should be directed to the Service Head or nominated representative. If Members wish to visit offices, they should contact the Service Head to make arrangements whenever possible.
- 6.2 With respect to the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law. Guidance is also given in Part 4 Section 2 of the new Constitution.

- 6.3 Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted at a Council, Cabinet, Regulatory Committee or Overview and Scrutiny meeting. This right applies irrespective of whether the Member is a Member of the Cabinet, Regulatory Committee or Overview and Scrutiny concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not, however, apply to documents relating to certain items or part of items which may appear on the 'exempt' agenda for meetings. The items in question are those which contain exempt information.
- 6.4 The common law right of Members is much broader and is based on the principle that any Member has a *prima facie* right to inspect Council documents so far as his/her access to the documents is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Council. This principle is commonly referred to as the "need to know" principle.
- 6.5 The exercise of this common law right depends, therefore, upon the Member's ability to demonstrate that they has the necessary "need to know". In this respect a Member has no right to "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the "need to know". The particular Service Head who holds the document in question must initially determine this question. In the event of dispute, the question falls to be determined by the Council's Monitoring Officer.
- 6.6 In some circumstances (eg a Cabinet Member wishing to inspect documents relating to the functions of the Cabinet) a Member's "need to know" will normally be presumed. In other circumstances (eg a Member wishing to inspect documents which contain personal information about third parties) a Member will normally be expected to justify the request in specific terms.
- 6.7 Whilst the term "Council document" is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a Member of one party group will not have a "need to know" and, therefore, a right to inspect, a document which forms part of the internal workings of another party group.
- 6.8 Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Monitoring Officer.
- 6.9 Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, ie in connection with proper performance of the Member's duties as a Member of the Council. This point is emphasised in the Members' Code of Conduct in the following terms:
- "A member must not disclose information given to him/her in confidence by anyone, or information acquired which they believes is of a confidential nature, without the consent of a person authorised to give it, or unless they is required by law to do so."

**OVERVIEW AND SCRUTINY
COMMITTEE**

6.00 P.M.

9TH DECEMBER 2009

PRESENT:- Councillors John Gilbert (Chairman), Susan Bray (Vice-Chairman), Sarah Fishwick (substitute for Val Histed), Emily Heath (substitute for Jude Towers), Karen Leytham, Roger Plumb and Morgwn Trolinger

Apologies for Absence:-

Councillors Bob Roe and Roger Sherlock

Also present:-

Councillors Jon Barry, Tony Johnson (part) and Ron Sands (part)

Officers in attendance:-

Sarah Taylor	Head of Legal and Human Resources and Monitoring Officer (part)
Mark Davies	Head of City Council (Direct) Services (part)
Ged McAllister	Senior Engineer (part)
Stephen Metcalfe	Principal Democratic Support Officer
Liz Bateson	Senior Democratic Support Officer

33 MINUTES

The Minutes of the meetings held on 4th November and 30th November 2009 were signed by the Chairman as a correct record.

34 CONSIDERATION OF ANY REQUESTS FOR COUNCILLOR CALL FOR ACTION (IN ACCORDANCE WITH THE PROCESS)

It was noted that there had not been any requests for items to be considered in accordance with the Councillor Call for Action.

35 MEMBERS' ACCESS TO INFORMATION

The Chairman welcomed the Monitoring Officer to the meeting. The Monitoring Officer presented a report on Members' Access to Information and advised the meeting that this had been prepared following on from the Committee's discussions with the Chief Executive at the Overview and Scrutiny Committee meeting on 9th September 2009.

It was noted that the legal position with regard to the right of Members to have access to information was based in statute (Local Government Act 1972 and the Freedom of Information Act 2000) and in common law (need to know) and the report included proposals for improved procedures for considering all these aspects when a request for information was received. It was reported that the Member/Officer Relations Protocol, Part 7, Section 6 of the Constitution would need to be updated to reflect the proposals within the report and that this would be considered by the Standards Committee in January as part of that Committee's review of the Protocol as a whole. Any proposed

amendments would then be considered by the Council Business Committee. Members were requested to agree to the proposals or suggest any revisions which would then be forwarded to the Standards Committee.

Members sought clarification on aspects of the proposals and the Monitoring Officer responded. It was noted that once any amendments to the Protocol had been confirmed it would be re-circulated to members and officers with advice on the procedures to be followed to comply with it.

It was proposed by Councillor Bray and seconded by Councillor Fishwick and agreed unanimously:-

"That the Committee approve the proposed procedure for dealing with Member requests for information as set out in the proposal appended to these minutes, and request the Standards Committee to include this procedure in its recommendations to the Council Business Committee following its scheduled review of the Member/Officer Protocol in January 2010."

Resolved:

- (1) That the Committee approve the proposed procedure for dealing with Member requests for information as set out in the proposal appended to these minutes, and request the Standards Committee to include this procedure in its recommendations to the Council Business Committee following its scheduled review of the Member/Officer Protocol in January 2010.
- (2) That the Monitoring Officer be thanked for attending.

The Monitoring Officer left the meeting at this point

36 PRESENTATION REGARDING WASTE DISPOSAL ARRANGEMENTS

Councillor Fishwick declared a personal interest in the following item in view of her position as a county councillor.

The Chairman welcomed Mark Davies, the Head of City Council (Direct) Services, to the meeting. He delivered a presentation outlining the waste management strategy for Lancashire 2008-2020, 'Rubbish to Resources.' Details were provided of current waste management and the main drivers for change including waste hierarchy, wasted resources, climate change, waste legislation and the vision to promote a culture whereby waste was recognised as a resource with an acceptance of responsibility for minimising its production and maximising its recovery.

Members were informed of the clear and realistic objectives of the strategy and how these objectives would be met. This included a segregated collection service to all households to include collection of food waste for composting, a review of bring sites, provision of recycling litter bins in town and the provision of a trade waste recycling service. Targets were challenging and the success of the strategy was dependent on partnership working.

Reference was made to the Mechanical Biological Treatment and Waste Technology Parks, the woodland from waste initiative and targets to divert municipal waste from landfill, rising from 80% by 2010 to 88% by 2020. The role of the community sector was

MEMBERS' ACCESS TO INFORMATION - APPENDED MINUTE 35

That the Committee approve the proposed procedure for dealing with Member requests for information as set out in the proposal appended to these minutes and request the Standards Committee to include this procedure in its recommendations to the Council Business Committee following its scheduled review of the Member/Officer Protocol in January 2010.

4.0 Proposal

- 4.1 It is proposed that if a Member makes a request for information that is not routine, the request should be made to the relevant Service Head. The first consideration would be whether the information would be made available to a member of the public making a similar request. If so, the information would be provided.
- 4.2 If the request is such that the information would not automatically be provided to a member of the public, then the Service Head should consider whether the information can be provided under Section 100F of the Local Government Act 1972 or under the common law "need to know". The Service Head may consult with the relevant Corporate Director, and should seek advice from the Monitoring Officer.
- 4.3 If the Service Head is not satisfied that either Section 100F or the "need to know" are met, then the request should be dealt with as an FOI request, without the need for the member to make a specific FOI request. The FOI request should be dealt with in the normal way, with advice being sought from the relevant Service's allocated solicitor within Legal Services. This would result in the information being provided in part, with an exemption applying to the remainder, or the request being refused in its entirety as a result of an exemption. The Member should be informed that the request has been considered under the Freedom of Information Act and that there is a right of internal review by the Monitoring Officer. Following such a review, the Member would be advised of the right to pursue the matter with the Information Commissioner. The Member would be informed that any information provided under the Freedom of Information Act can be made public.
- 4.4 Consideration of whether there is a "need to know" a piece of information is inextricably linked to the decision whether or not to provide that information under the "need to know". If a need is established then the information must at common law be provided; if a need is not established then the information cannot be provided under common law, and it is necessary to consider any statutory provision for the disclosure of the information. It is not possible to separate consideration and determination.
- 4.5 The Member/Officer Protocol currently provides for the relevant Service Head to determine whether there is a "need to know", with the Monitoring Officer determining the matter in the event of dispute. The Protocols of many other local authorities make similar provision, although in some cases the decision is to be made by the Chief Executive, and in a few cases there is provision, in the event of dispute, for the matter to be referred for determination by the Standards Committee or by the member body in connection with whose functions the document is held. It is recommended that the final determination should continue to be made by the Monitoring Officer. The

Overview and Scrutiny Committee may hold the Monitoring Officer to account in accordance with Rule 14 of the Overview and Scrutiny Procedure Rules.

- 4.6 With regard to Member requests that are dealt with under the Freedom of Information Act, the Monitoring Officer would recommend that the standard procedure for internal review with the subsequent statutory right to pursue the matter with the Information Commissioner should apply, in the same way as to any other FOI request.