

Standards Committee

**Grand Jury Room, Town Hall
25 November 2011 at 2.00pm**

The Standards Committee deals with the local code of conduct for councillors and complaints against individual councillors.

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services.

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The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please refer to Attending Meetings and "Have Your Say" at www.colchester.gov.uk

Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off or switched to silent before the meeting begins and note that photography or audio recording is not permitted.

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**COLCHESTER BOROUGH COUNCIL
STANDARDS COMMITTEE
25 November 2011 at 2:00pm**

Members

**Independent
Members**

Mr Derek Coe (Chairman)
Mr Peter Fitton (Deputy Chairman)
Mr Ian Andrews
Mr Sven Farmer
Mr Steven Roberts-Mee

**Parish
Representatives**

Councillor Bill Anderson
Councillor Malcolm Bartier

Councillors

Councillor Christopher Arnold
Councillor Nigel Chapman
Councillor Ray Gamble
Councillor Henry Spyvee

AGENDA - Part A

(open to the public including the media)

Members of the Public may wish to note that Agenda items 1 to 4 are normally brief

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

3. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

4. Minutes

1 - 3

To confirm as a correct record the minutes of the meeting held on 24 June 2011.

5. Localism

A verbal update to be provided by the Monitoring Officer

6. Review of Ethical and Corporate Governance Arrangements

4 - 35

See report by the Monitoring Officer

7. Local Government Ombudsman - Annual Review 2010/2011 36 - 40

See report by the Monitoring Officer

8. Annual Review of Local Assessment of Complaints Against Members 2010/2011 41 - 54

See report by the Monitoring Officer

9. Review of Training for Members on the Code of Conduct and Local Assessment Process 55 - 56

See report by the Monitoring Officer

10. Exclusion of the Public

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

STANDARDS COMMITTEE

24 JUNE 2011

Present:- Mr D. Coe (Independent Member) Chairman
Councillor Abnett
Councillor Anderson
Councillor Bartier
Councillor Chapman
Mr Farmer (Independent Member)
Mr Fitton (Independent Member)
Councillor Gamble
Councillor Spyvee

1. Appointment of Chairman

RESOLVED that Derek Coe be appointed Chairman for the ensuing municipal year.

2. Appointment of Deputy Chairman

RESOLVED that Peter Fitton be appointed as Deputy Chairman for the ensuing municipal year.

3. Minutes

The minutes of the meeting held on 4 March 2011 were confirmed as a correct record.

4. Standards and the Localism Bill

The Committee considered a report from the Monitoring Officer providing an update on the Government's proposals in relation to Standards contained in the Localism Bill.

The Monitoring Officer reiterated the key elements of the Government's proposals on the Standards regime contained in the Localism Bill. The proposals were in large part based on the Government's view that a Councillor should not be suspended from office on the basis of a breach of a Code of Conduct based on behaviours.

The Committee noted that the work being undertaken by the Public Law Partnership (PLP) to design a replacement framework. The Committee welcomed this as it would provide a consistent approach and prevent duplication of work. The Monitoring Officer stressed that the framework developed by the PLP would be heavily based on the existing system but would be voluntary rather than statutory in nature. Once the PLP had completed its work, this would be reported to the Standards Committee, who could then make a recommendation to Council, if it was considered appropriate.

RESOLVED that:-

(a) the current position in relation to the Standards for England regime and the progress

made towards the development of a replacement Standards Framework be noted;

(b) the Monitoring Officer be requested to submit further reports on the implications of the Localism Bill once they are known.

5. Appointments to Standards Committee Sub-Committees

The Committee considered a report from the Head of Corporate Management recommending the appointments to the Allegations Sub-Committee, Allegations Appeals Sub-Committee and the Hearings Sub-Committee.

RESOLVED that the membership of the Standards Committee sub-committees for the 2011-12 municipal year be as follows:-

Allegations Sub-Committee

Derek Coe (Independent Member) (Chairman)
Malcolm Bartier (Parish Councillor)
Ray Gamble (Borough Councillor)
Nigel Chapman (Borough Councillor)

Allegations Appeals Sub-Committee

Steve Roberts-Mee (Independent Member) (Chairman)
Bill Anderson (Parish Councillor)
Henry Spyvee (Borough Councillor)

Hearings Sub-Committee

Ian Andrews (Independent Member) (Chairman)
Terence Abnett (Parish Councillor)
Christopher Arnold (Borough Councillor)
Sven Farmer (Independent Member)
Peter Fitton (Independent Member)

6. Review of Local Code of Corporate Governance

The Committee considered a report from the Monitoring Officer reviewing the updated Local Code of Corporate Governance.

The entry for paragraph 3.2.2 should be amended to make clear that the Contract Procedure Rules would not be monitored and reviewed by the Standards Committee. Responsibility for the Contract Procedure Rules lay with Cabinet. It was suggested that a reference to the award of Charter Status for Elected Member

Development should be added to paragraphs 5.1.1 and 5.1.3 as this was external validation of the Council's approach to member development and was relevant to the criteria for paragraph 5.1 of the Local Code of Corporate Governance.

RECOMMENDED to Cabinet that the Local Code of Corporate Governance be approved subject to the following amendments:

- (a) an amendment to paragraph 3.2.2 to clarify the arrangements for the monitoring and review of the Contract Procedure Rules;
- (b) the inclusion of a reference to the award of Charter Status for Elected Member Development in paragraphs 5.1.1 and 5.1.3.

7. Standards Committee Work Programme 2010/11 and 2011/12

The Committee considered a report from the Monitoring Officer on the work programme for 2010/11 and 2011/12.

The Monitoring Officer reported that all the items listed in the work programme for the 2010/11 municipal year had been dealt with, with the exception of the adoption of a revised Code of Conduct and the Committee's role in appeals against the designation of politically restricted posts. As regards the revised Code of Conduct, in view of the Government's proposals in the Localism Bill, there was little point in taking this forward. In respect of appeals against the designation of politically restricted posts, proposals in the Localism Bill would transfer this function to the Head of the Paid Service.

In respect of the 2011/12 work programme, It was anticipated that an extra meeting may need to be called to consider the adoption of the voluntary Code of Conduct.

RESOLVED that:-

- (a) progress against the 2010/11 work programme be noted;
- (b) the work programme for 2011/12 be approved.



Standards Committee

Item

6

25 November 2011

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Review of Ethical and Corporate Governance Arrangements		
Wards affected	Not applicable		

This report provides the Committee with a review of the Council's Ethical and Corporate Governance arrangements

1. Decision(s) Required

- 1.1 To approve the revised Ethical and Corporate Governance arrangements detailed at paragraph 7 of this report.
- 1.2 To recommend to Cabinet that it endorses the revised and Ethical and Corporate Governance arrangements and that they be referred to Full Council for adoption in the Council's Policy Framework.

2. Background

- 2.1 Governance is about how the Council ensures that it is doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner. It comprises the systems and processes, and cultures and values, by which such bodies are directed and controlled and through which they account to, engage with and, where appropriate, lead their communities.
- 2.2 The Council strives to meet the highest standards of corporate governance to help ensure it meets its objectives. Members and Officers are responsible for putting in place proper arrangements for the governance of the Council's affairs and the stewardship of the resources at its disposal.
- 2.3 The Council's Ethical Governance arrangements are a key part of good Corporate Governance and two important component parts of this are the Councils Anti-Fraud and Corruption Policy and the Whistleblowing Policy. Both of these policies have been subject to regular review to ensure that they remain fit for purpose. The Committee last reviewed the Anti-fraud and Corruption Policy at its meeting on 4 March 2011 and the Whistleblowing Policy at its meeting on 28 October 2010.
- 2.4 Following the commencement of the Bribery Act 2010 earlier this year the Council is required to ensure that its Anti-fraud and Corruption Policy reflects the requirements of the Act. In addition, the opportunity has been taken to raise fraud awareness generally within the organisation by means of a series of training sessions for staff both face to face and via e-learning.

3. The Bribery Act 2010

- 3.1 The Bribery Act 2010 became effective on 1st July 2011. The aims of the Act are to reduce the levels of corruption across the UK without being burdensome to business.

- 3.2 The Act generally defines bribery as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so.
- 3.3 Genuine hospitality or similar business expenditure that is reasonable and proportionate is allowable and not covered by the Act. However, facilitation payments are considered bribes (payments to induce officials to perform routine functions they are otherwise obligated to perform).
- 3.4 There are four key offences under the Act:
- General Offences:
- bribery of another person (section 1)
 - accepting a bribe (section 2)
- Commercial Offences:
- bribing a foreign public official (section 6)
 - failure of a commercial organisation to prevent bribery (section 7)
- 3.5 All of the offences (save for the section 7 offence) may be dealt with in either the Magistrates' Court or the Crown Court. An individual convicted of an offence in the Magistrates' Court may be liable to a prison sentence of up to 12 months or a fine of £5,000, or both. However, in the Crown Court the maximum sentence significantly increases to a sentence of imprisonment of up to 10 years or an unlimited fine, or both. In respect of any other person (e.g. organisations) the maximum fine in the Magistrates' Court is £5,000 but in the Crown Court the fine is unlimited.
- 3.6 The section 7 offence of failure of a commercial organisation to prevent bribery is indictable only and must therefore be dealt with in the Crown Court where the maximum penalty is an unlimited fine.
- 3.7 Senior officers may also be convicted of an offence if they are deemed to have given their consent/connivance to giving/receiving a bribe or bribing a foreign official.
- 4. Implications for the Council**
- 4.1 The Act supports the Council's principle of free and fair competition in contracting and procurement. However, section 7 of the Act introduces an offence by 'commercial organisations' if they fail to prevent bribery. Commercial organisations are defined as a body or partnership incorporated or formed which carries on a business, or part of a business in the UK. So long as the organisation in question is incorporated (by whatever means) or is a partnership, it does not matter if it pursues primarily charitable or educational aims or purely public functions, it will be caught if it engages in commercial activities.
- 4.2 The Courts will be the final arbiter as to whether an organisation "carries on a business" taking into account the particular facts in individual cases. However, the Council is clearly capable of falling within the definition of commercial organisation and therefore it could be liable if:
- a very senior person in the organisation commits a bribery offence. This person's activities could be attributed to the Council.
 - a person associated with it, e.g. an employee or someone acting on behalf of the Council bribes another person (under section 1 or section 6) to gain a business advantage for the Council.

- 4.3 Section 7 of the Act provides a defence for commercial organisations against prosecution if there are adequate procedures in place to prevent bribery. The Secretary of State has published Statutory Guidance about procedures that relevant commercial organisations can put into place to prevent persons associated with them from bribing.
- 4.4 Council officers and Members are clearly caught by the offences of bribery of another person and accepting a bribe contained in sections 1 and 2 of the Act respectively. This is because these offences are concerned with “performance of a relevant function or activity” which include any function of a public nature, any activity connected with a business, any activity performed in the course of employment and any activity performed by or on behalf of a body of persons (whether corporate or unincorporated).
- 4.5 The extent to which there is a need for such procedures depends on the level of risk of bribery being committed on behalf of the Council. The following paragraphs consider the bribery risks for the Council overall and concludes that the highest risk is that of our staff accepting bribes in exchange for preferential treatment for service users or contract awarding etc.

5. Initial Bribery Risk Assessment

- 5.1 A full bribery risk assessment has yet to be completed and agreed by the Council. However, an initial assessment of the risks is outlined below to determine the extent to which procedures additional to those already in place may be required and make an early assessment of these.
- 5.2 The Council is a large organisation with many members of staff, contractors and service users. Some areas of business in which the Council works bring with them higher bribery risks than others (see below). However, the Council does not do a large amount of business outside of the UK and not with high risk countries in terms of bribery.
- 5.3 A relatively small but increasing amount of commercial work is undertaken by the Council and only a very limited amount is spent on providing hospitality to those outside of the Council.
- 5.4 The Council does work with others in sectors particularly susceptible to bribery - eg the building trade generally is traditionally a high risk sector. Additionally, the Council does undertake some transactions in relation to which officers are more at risk of being offered inducements:
- procurement and awarding of contracts
 - awarding of licences and permits
 - planning applications and building regulations
 - allocation of housing
 - assessment of entitlement to grants, benefits and other entitlements
 - partnership and commissioning of services
- 5.5 The Council if it receives allegations of possible bribery and corruption involving our staff will always investigate such cases via its Anti-fraud and Corruption Policy and report as necessary. It is probable that such cases would indicate that the section 2 risk of our staff being bribed is the highest risk of the bribery offences. Unfortunately, bribery cases are very difficult to prove to a level where a criminal prosecution can take place.
- 5.6 In summary, an initial risk assessment would suggest that there is limited bribery risk across the Council. The most likely offence is that of our staff being bribed. As such, the risk of the Council being prosecuted for failing to prevent our staff/agents bribing others on behalf of the organisation is low.

6. Arrangements to mitigate the risk of bribery

6.1 The procedures in place to mitigate the risk of bribery should reflect the level of risk. The initial risk assessment suggests the main risk is that of our staff being bribed. This offence, if proven, would result in prosecution of the individual rather than the Council. The Council itself is unlikely to face prosecution for not preventing bribery and have a legal need to rely on a defence of 'adequate procedures'. However, the guidance to the Act relating to 'adequate procedures' is soundly based for all bribery risks and in many respects the Council already has such procedures in place. The guidance suggest six principles of good procedures:

- **Risk Assessment** - the initial risk assessment is set out above but further risk assessment will be completed and agreed with Performance Management Board to ensure the above assessment accurately reflect the bribery risks faced by the Council.
- **Top Level Commitment** - those at the top of the organisation are in the best position to foster a culture of integrity in which any type of bribery is unacceptable. This commitment needs to be reflected and communicated in appropriate policies. The Council already has an Anti-Fraud and Corruption Policy and a Whistleblowing Policy and these will continue to be kept under review to ensure they contain the correct messages regarding the Council's zero tolerance towards bribery and the consequences to staff, members and others associated with the Council. At this stage it is not felt a separate policy on Bribery is necessary.
- **Proportionate Procedures** - the Council should have procedures proportionate to the bribery risks it faces.

Preventing bribery of others: (low risk)

- Financial Regulations are in place to control spending and provide for only authorised expenditure. They include provision that individuals and organisations who deal with the Council, internally and externally, will act with integrity and without thoughts or actions of fraud or corruption.
- Recruitment procedures include reference checks of staff before they are offered positions with the Council.
- The Council publishes all transactions over £500 in value to promote transparency of its spending activities.

Preventing Bribery of staff or partners: (higher risk)

- The Council has a Code of Conduct for both Members and staff that prohibits acceptance of financial inducements and details the rules regarding acceptance of Gifts and Hospitality. There is a specific Code for Members involved in planning, etc.
- Financial Regulations make it clear that accepting inducements is not acceptable.
- Contract Procedure Rules are in place to ensure fair competition in awarding of contracts. The regulations and standard documentation used for issuing tenders and awarding of contracts makes it clear that bribery of Council staff

is not acceptable and that contracts will be terminated if there is evidence of this.

- The Council has well defined decision making arrangements which aim to ensure that decisions are made by those free of any conflict of interest including a requirement for Members to declare interests during meetings.
 - The Council's Whistleblowing Policy provides for anyone who suspects bribery to report it.
- **Due Diligence** - in respect of the person(s) who will/do perform services for or on behalf of the Council. This area will be reviewed during 2012/13 to ensure it is sufficiently robust in light of the bribery risks faced by the Council.
 - **Communication** - the Council already has procedures in place to ensure fraud and corruption policies and procedures are communicated and understood by all staff. These will include the provision of e-training in fraud risk. This will include offences under the Bribery Act. Additionally, messages on the Hub will be routinely posted to maintain an awareness of the policies and procedures. The need for targeted release of information to high risk staff (those in a position to be bribed) regarding the provisions of the Bribery Act and a clear message that such activity will not be tolerated is currently being considered. Contract documentation is clear that attempting to bribe Council officials will not be tolerated.
 - **Monitoring and Review** - of the procedures in place to prevent bribery by persons associated with it and making improvements where necessary. It is intended to compare the above approach with that of other local authorities to ensure Colchester's risk assessment and approach is in line with other councils' arrangements.

7. Review of Anti-Corruption, Whistleblowing and Money Laundering Policies

- 7.1 In view of the above, the opportunity has been taken to review the Council's Anti-fraud and Corruption, Whistleblowing and Money Laundering policies. Revised policies are attached for the Committee's consideration. The current version of the Anti-fraud and Corruption Policy contains both the organisational anti-fraud and corruption policy together with the statutory housing benefit fraud sanctions policy. The opportunity has been taken to separate the two policies make the organisational one more clear and to include the Bribery Act provisions.
- 7.2 In addition, both the Whistleblowing and Money Laundering Policies have been reviewed and the only change was to the reporting structure for the reasons detailed below. It was also apparent that whilst the policies are separate there are links and the opportunity has been taken to create an overarching statement of intent in relation to both Ethical and Corporate Governance which gives a high level organisational commitment to zero tolerance to fraud, corruption and bribery. Beneath this are the individual policies. Attached is a diagram which illustrates this.
- 7.3 It became evident when reviewing the policies that whilst they were fit for purpose it was not always very clear to staff how the reporting structures and processes worked in practice. Accordingly the opportunity has been taken to review the whole suite of documents within both the Council Ethical and Corporate Governance arrangements to ensure that reporting lines are clear. Attached is a flowchart which indicates how all allegations will be dealt with in the future. It is proposed that a filtering system be implemented with either the Monitoring Officer or the Section 151 Officer filtering the allegations to ensure that they are dealt with in the most appropriate manner and to

ensure that there is also corporate awareness of potential situations which could affect the organisation.

7.3 These proposals were considered and agreed by the Council's Performance Management board on 16 November 2011.

8. Strategic Plan References

8.1 Governance forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

9. Financial Considerations

9.1 None.

10. Equality, Diversity and Human Rights Implications

10.1 No particular implications.

11. Publicity Considerations

11.1 Any amendments to the Council's policies will be included in the Constitution and will be placed on the Council's website.

12. Consultation Implications

12.1 None.

13. Community Safety Implications

13.1 None.

14. Health and Safety Implications

14.1 None.

15. Risk Management Implications

15.1 The bribery risks faced by the Council are identified and assessed in paragraph 5 above. Actions in place or to manage these risks currently or areas for potential improvement are identified in paragraph 6. In summary, the main bribery risk affecting the council is that of Council Members or staff being bribed.

Ethical Governance Statement

Colchester Borough Council will not tolerate breaches of its ethical governance policies.

The Council is committed to maintaining the highest standards of governance including the elimination of fraud and corruption and to ensuring that all activities are conducted ethically, honestly, openly and accountably so as to protect public safety and public money.

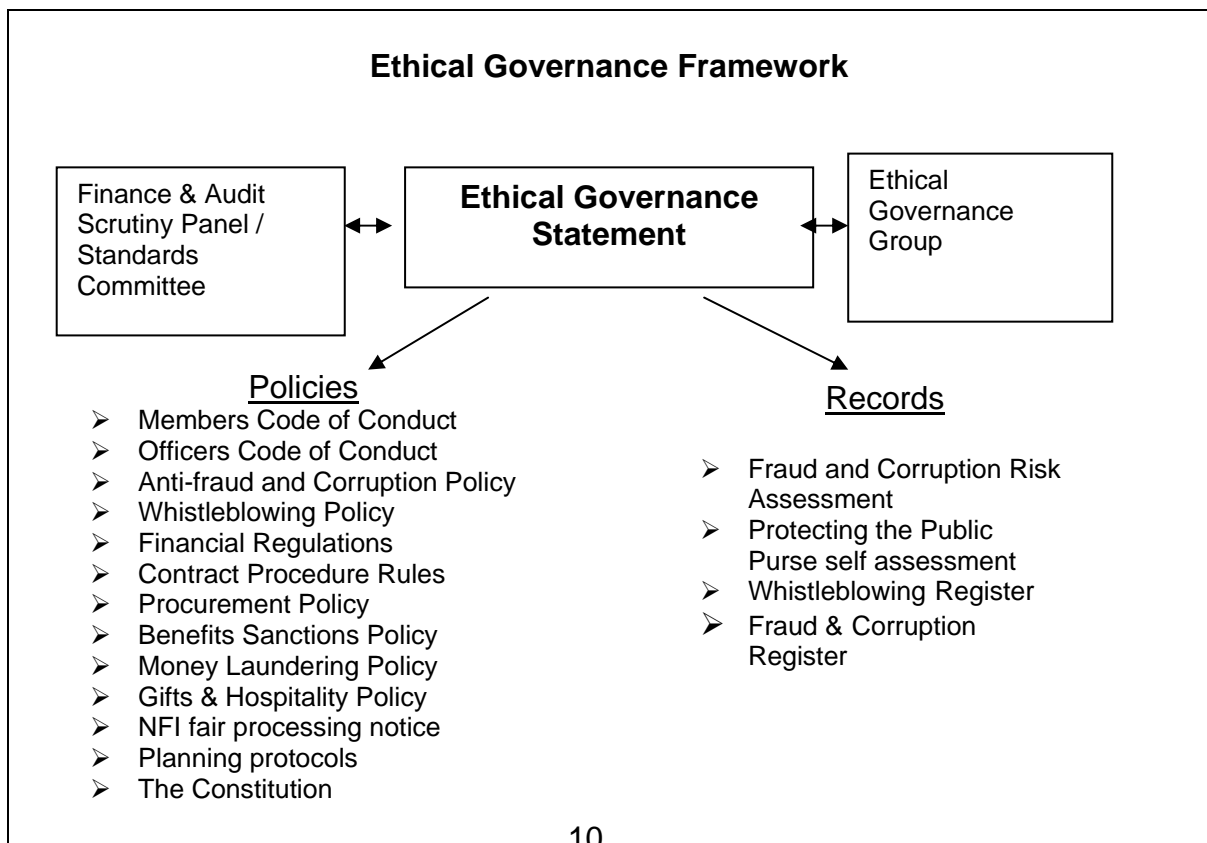
The Council expects the highest standards of conduct and integrity from all that have dealings with it including staff, elected members, suppliers, partners, volunteers and the public. Therefore policies have been put in place to outline the standards required and procedures have been introduced to enable any person to raise genuine concerns they may have about the conduct of anybody acting for or on behalf of the Council.

The Ethical Governance policies form part of the Council's overall Corporate Governance framework and details of all the policies have been published on the Council's website at www.colchester.gov.uk.

We will take all reasonable steps to ensure that concerns are investigated and appropriate action taken where necessary. There will be no distinction made in investigation between cases that generate financial benefits and those that do not.

Anne Turrell
Leader of the Council

Adrian Pritchard
Chief Executive



Ethical Governance Review Group

Suggested Membership

Monitoring Officer
Finance Manager (Audit & Governance)
Human Resources
Procurement & Accounts Payable Manager
Risk & Resilience Manager
Investigation Manager, Revs & Bens
Policy & Projects Officer
Information officer (ICT) (new post proposed under the ICT review)
External Person (to be agreed)

Reporting to

Chief Executive
Annual report to Standards Committee

Objective

To promote and embed a governance culture throughout the organisation.

Remit

To meet quarterly to review the ethical governance framework. Including, but not limited to:

1. Review of relevant policies and procedures
2. Identification and reporting of areas of concern
3. Reporting National Fraud Initiative outcomes
4. Identification of training requirements
5. Information sharing
6. Review of Internal Audit programme and relevant reports and recommendations.



COLCHESTER BOROUGH COUNCIL

ANTI FRAUD AND CORRUPTION POLICY

November 2011

INTRODUCTION

Colchester Borough Council, like every Local Authority, has a duty to ensure that it safeguards the public money that it is responsible for.

The Council expects the highest standards of conduct and integrity from all that have dealings with it including staff, members, contractors, volunteers and the public. It is committed to the elimination of fraud and corruption and to ensuring that all activities are conducted ethically, honestly and to the highest possible standard of openness and accountability so as to protect public safety and public money.

All suspicions or concerns of fraudulent or corrupt practise will be investigated. There will be no distinction made in investigation and action between cases that generate financial benefits and those that do not. Any investigations will not compromise the Council's commitment to Equal Opportunities or the requirements of the Human Rights Act or any other relevant statutory provision.

This policy has been created with due regard to the CIPFA better Governance Forum's Red Book 2 'Managing the Risk of Fraud' and the Audit Commission Publication 'Protecting the Public Purse'.

OVERVIEW

This policy provides an overview of the of measures designed to combat any attempted fraudulent or corrupt act. For ease of understanding it is separated into four areas as below:-

- Culture
- Responsibilities & Prevention
- Detection and Investigation
- Awareness & Monitoring

Fraud and corruption are defined by the Audit Commission as:-

Fraud – “the intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to conceal the misappropriation of assets or otherwise for gain”.

In addition, fraud can also be defined as *“the intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to mislead or misrepresent”.*

Corruption – “the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person”.

The Council also abides by the Bribery Act 2010 which covers, amongst other things, the offences of bribing another person, of allowing to be bribed and organisational responsibility. Such offences include:

- The offer, promise or giving of financial or other advantage to another person in return for the person improperly performing a relevant function or activity

- Requesting, agreeing to receive or accepting a financial or other advantage intending that, in consequence a relevant function or activity should be performed improperly.
- Commercial organisation responsibility for a person, associated with the organisation, bribing another person for the purpose of obtaining or retaining business for the organisation

In addition, this policy also covers “*the failure to disclose an interest in order to gain financial or other pecuniary benefit.*”

CULTURE

The prevention/detection of fraud/corruption and the protection of public money are responsibilities of everyone, both internal and external to the organisation. The Council's elected members and employees play an important role in creating and maintaining this culture. They are positively encouraged to raise concerns regarding fraud and corruption, immaterial of seniority, rank or status, in the knowledge that such concerns will wherever possible be treated in confidence. The public also has a role to play in this process and should inform the Council if they feel that fraud/corruption may have occurred.

Concerns must be raised when members, employees or the public reasonably believe that one or more of the following has occurred, is in the process of occurring or is likely to occur:

- A criminal offence
- A failure to comply with a statutory or legal obligation
- Improper or unauthorised use of public or other official funds
- A miscarriage of justice
- Maladministration, misconduct or malpractice
- Endangering an individual's health and/or safety
- Damage to the environment
- Deliberate concealment of any of the above

The Council will ensure that any allegations received in any way, including by anonymous letter or telephone call, will be taken seriously and investigated in an appropriate manner. The Council has a whistle blowing policy that sets out the approach to these types of allegation in more detail.

The Council will deal firmly with those who defraud the Council or who are corrupt, or where there has been financial malpractice. There is, of course, a need to ensure that any investigation process is not misused and, therefore, any abuse (such as employees/members raising malicious allegations) may be dealt with as a disciplinary matter (employees) or through Group procedures (members).

When fraud or corruption has occurred due to a breakdown in the Council's systems or procedures, Directors will ensure that appropriate improvements in systems of control are implemented in order to prevent a re-occurrence

RESPONSIBILITIES & PREVENTION

Responsibilities of Elected Members

As elected representatives, all members of the Council have a duty to protect the Council and public money from any acts of fraud and corruption. This is done through existing practice, compliance with the National and Local Code of Conduct for Members, the Council's Constitution including Financial Regulations and Standing Orders and relevant legislation. Conduct and ethical matters are specifically brought to the attention of members during induction and include the declaration and registration of interests. Officers advise members of new legislative or procedural requirements.

Responsibilities of the Monitoring Officer

The Monitoring Officer is responsible for ensuring that all decisions made by the Council are within the law. The Monitoring Officer's key role is to promote and maintain high standards of conduct throughout the Council by developing, enforcing and reporting appropriate governance arrangements including codes of conduct and other standards policies.

All suspected instances of fraud or corruption (apart from benefit claim issues) should be reported to the Monitoring Officer.

Responsibilities of the Head of Resource Management

The Head of Resource Management has been designated the statutory responsibilities of the Finance Director as defined by s151 of the Local Government Act 1972. These responsibilities outline that every local authority in England & Wales should:

"make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has the responsibility or the administration of those affairs"

'Proper administration' encompasses all aspects of local authority financial management including:

- Compliance with the statutory requirements for accounting and internal audit;
- Managing the financial affairs of the Council
- The proper exercise of a wide range of delegated powers both formal and informal;
- The recognition of the fiduciary responsibility owed to local tax payers.

Under these statutory responsibilities the Head of Resource Management contributes to the anti-fraud and corruption framework of the Council.

Responsibilities of the Senior Management Team

Managers at all levels are responsible for the communication and implementation of this policy. They are also responsible for ensuring that their employees are aware of the Council's personnel policies and procedures, the Council's Financial Regulations and Standing Orders and that the requirements of each are being met. Managers are expected to create an environment in which their staff feel able to approach them with any concerns they may have about suspected irregularities. Special arrangements may be applied from time to time for example where employees are responsible for cash handling or are in charge of financial systems and systems that generate payments, for example payroll or the Revenues & Benefits computer system. These procedures will be supported by relevant training.

The Council recognises that a key preventative measure in dealing with fraud and corruption is for managers to take effective steps at the recruitment stage to establish, as far as possible, the honesty and integrity of potential employees, whether for permanent, temporary or casual posts and agency staff. The Council's formal recruitment procedure contains appropriate safeguards in the form of written references, the verification of qualifications held and employment history. As in other public bodies Criminal Records Bureau (CRB) checks are undertaken for employees working with or who may have contact with children or vulnerable adults.

Responsibilities of Employees

Each employee is governed in their work by the Council's Standing Orders and Financial Regulations, and other policies on conduct and on IT usage. Included in the Council policies are guidelines on Gifts and Hospitality, and codes of conduct associated with professional and personal conduct and conflict of interest. These are issued to all employees when they join the Council. In addition, employees are responsible for ensuring that they follow any instructions given to them, particularly in relation to the safekeeping of the assets of the Council. Employees are expected always to be aware of the possibility that fraud, corruption and theft may exist in the workplace and be able to share their concerns with management.

Role of Internal Audit

Internal Audit plays a preventative role in trying to ensure that systems and procedures are in place to prevent and deter fraud and corruption. Internal Audit may be requested to investigate cases of suspected financial irregularity, fraud or corruption, except Benefit fraud investigations, in accordance with agreed procedures. Within the Financial Procedure Rules in the Constitution, representatives of Internal Audit are empowered to:

- enter at all reasonable times any Council premises or land
- have access to all records, documentation and correspondence relating to any financial and other transactions as considered necessary
- have access to records belonging to third parties such as contractors when required
- require and receive such explanations as are regarded necessary concerning any matter under examination
- require any employee of the Council to account for cash, stores or any other Council property under his/her control or possession

Internal Audit liaises with management to recommend changes in procedures to reduce risks and prevent losses to the Authority.

Role of the Benefits Investigation

Due to the specialised nature of benefit fraud investigations a separate sanctions policy has been developed that covers all aspects of the benefit investigation process.

Role of the Ethical Governance Review Team

The team consists of various officers whose roles include governance issues and the objective is to promote and embed a governance culture throughout the organisation by implementing policies, reviewing issues, providing training and sharing information.

Role of the Audit Commission

Independent external audit is an essential safeguard of the stewardship of public money. This is currently carried out by the Audit Commission through specific reviews that are designed to test (amongst other things) the adequacy of the Council's financial systems and arrangements for preventing and detecting fraud and corruption. It is not the external auditors' function to prevent fraud and irregularities, but the integrity of public funds is at all times a matter of general concern. External auditors are always alert to the possibility of fraud and irregularity, and will act without undue delay if grounds for suspicion come to their notice. The Council contributes to the bi-annual Audit Commission led National Fraud Initiative which is designed to cross match customers across authorities too highlight areas where there are potential fraudulent claims.

Role of the Public

This policy, although primarily aimed at those within or associated with the Council, enables concerns raised by the public to be investigated, as appropriate, by the relevant person in a proper manner.

Conflicts of Interest

Both elected members and employees must ensure that they avoid situations where there is a potential for a conflict of interest. Such situations can arise with externalisation of services, internal tendering, planning and land issues etc. Effective role separation will ensure decisions made are seen to be based upon impartial advice and avoid questions about improper disclosure of confidential information.

Official Guidance

In addition to Financial Regulations and Standing Orders, due regard will be had to external and inspectorate recommendations.

The Council is aware of the high degree of external scrutiny of its affairs by a variety of bodies such as the Audit Commission (including External Audit and Inspection), other Government Inspection bodies, the Local Government Ombudsman, Standards for England, HM Customs & Excise and the Inland Revenue. These bodies are important in highlighting any areas where improvements can be made.

DETECTION & INVESTIGATION

Internal Audit plays an important role in the detection of fraud and corruption. Included within the audit plans are reviews of system controls including financial controls and specific fraud and corruption tests, spot checks and unannounced visits.

In addition to Internal Audit, there are numerous systems and management controls in place to deter fraud and corruption but it is often the vigilance of employees and members

of the public that aids detection. In some cases frauds are discovered by chance or “tip-off” and the Council will ensure that such information is properly dealt with within its whistle blowing policies.

Detailed guidance on the investigation process is available separately.

Disciplinary Action

The Council’s Disciplinary Procedures will be used to facilitate a thorough investigation of any allegations of improper behaviour by employees. Theft, fraud and corruption are serious offences which may constitute gross misconduct against the Council and employees will face disciplinary action if there is evidence that they have been involved in these activities, including Benefit fraud. Disciplinary action will be taken in addition to, or instead of, criminal proceedings depending on the circumstances of each individual case.

Members will face appropriate action under this policy if they are found to have been involved in theft, fraud and corruption against the Authority. Action will be taken in addition to, or instead of criminal proceedings, depending on the circumstances of each individual case but in a consistent manner. If the matter is a breach of the Code of Conduct for Members then it will also be referred to Standards for England - the national standards organisation.

Prosecution

In terms of proceedings the Council will endeavour to take action in relevant cases to deter others from committing offences against the Authority.

Publicity

The Council will optimise the publicity opportunities associated with anti-fraud and corruption activity within the Council. Wherever possible, where the Council has suffered a financial loss action will be taken to pursue the recovery of the loss.

All anti-fraud and corruption activities, including the update of this policy, will be publicised.

AWARENESS & MONITORING

The Council recognises that the continuing success of this policy and its general credibility will depend in part on the effectiveness of training and awareness for members and employees and will therefore take appropriate action to raise awareness levels.

The Monitoring Officer will provide an annual report to senior management and members outlining investigations undertaken during the year.

This policy and associated procedures will be reviewed at least annually and will be reported to senior management and committee.

COLCHESTER BOROUGH COUNCIL

FRAUD SANCTIONS POLICY



AMENDED 01.04.10

1. Introduction

- 1.1 Colchester Borough Council aims to provide a modern, customer focused, efficient, effective and secure Housing Benefit service that is continuously seeking to improve. This document sets out the policy of Colchester Borough Council towards sanctions, including criminal prosecutions, for offences relating to benefit fraud.
- 1.2 This policy has been developed with the aim of providing a framework to ensure a fair and consistent approach to the use of formal sanctions. It refers to criteria relating to the offence, offender, value and duration of the fraud which have to be taken into account before considering whether a sanction is appropriate, and if so, which sanction to apply.
- 1.3 This policy needs to be considered in conjunction with the council's Anti-Fraud and Corruption Policy Statement which sets out the commitment to prevent, detect and investigate benefit fraud.
- 1.4 Housing and Council Tax Benefits are administered by a local authority on behalf of the Department of Work and Pensions (DWP) as part of the statutory local government functions. Our policy is therefore a matter for our members. In practice, the policy broadly follows the approach of the DWP.

2.0 General Principles

- 2.1 Colchester Borough Council is committed to the prevention, detection, correction, investigation and, where appropriate, prosecution of fraudulent benefit claims.
- 2.2 The aim is to prevent criminal offences occurring by making it clear to our customers that they have a responsibility to provide accurate and timely information about their claims; to punish wrongdoing; and to deter offending.
- 2.3 This policy supports the DWP Public Service Agreement to reduce losses from fraud and error by 15% by 2010. It also provides a full response to the need to be effective against fraud in the full range of welfare benefits.
- 2.4 Each potential fraud is assessed against local criteria by Colchester Borough Council's Housing and Council Tax Benefits Investigation Team. This assessment will result either in cases being investigated further under criminal investigation standards or referred to the Housing and Council Tax Benefits Review Team. Review action usually comprises of an interview regarding any changes in circumstances and the allegation concerned. Further action will depend upon the outcome of the interview but they will be reminded of their responsibilities and may be advised about their future conduct and required to rectify or withdraw their claim.
- 2.5 Each case that is subject to criminal investigation is considered on its own merits, having regard to all of the facts, before an appropriate sanction is administered.

3. Organisation

3.1 Criminal investigations are undertaken in accordance with:

- Police and Criminal Evidence Act 1984 and its code of practice
- Criminal Procedures and Investigation Act 1996 and its code of practice
- all other relevant legislative and common law rules
- Departmental Policy
- advice from internal legal department

3.2 Fraud Investigators receive Professionalism in Security (PINS) training which is accredited by Portsmouth University. Additional guidance is provided by the Fraud Procedures and Instruction Manual which is regularly updated to ensure that:

- investigations are conducted in a legal and professional manner
- policy and legislation is correctly applied, and
- approved working methods are applied

3.3 Colchester Borough Council has a legal team who provide advice and guidance to investigators throughout the investigative and prosecution process if required. They do not conduct any part of the investigation but advise on the investigator's obligations, evidential requirements and any appropriate charges. Colchester Borough Council's legal team are also responsible for identifying those cases which are not suitable for criminal prosecution for evidential reasons.

3.4 Colchester Borough Council also has access to free technical support and/or legal advice from the DWP prosecution division.

3.5 Colchester Borough Council also works closely with the DWP Fraud Investigation Service (FIS) team operating under similar prosecution practices and has a Fraud Partnership Agreement (FPA) with them to support joint working activity such as joint interviews under caution and investigations, to aid in the tackling of fraud in the full range of welfare benefits.

4. Sanction Process

Where an offence has been committed the Investigation Team can consider administering a caution, offering an administrative penalty, or instigating a prosecution. The choice will depend on the factors below and taking into account the criteria within section 4.4.1.

Cautions:

4.2.1 A formal caution is an administrative sanction that a local authority in England and Wales is able to offer as an alternative to a prosecution as long as specific criteria are met, and the case is one that Colchester Borough Council could take to court if the caution was refused.

4.2.2 Cautions are usually aimed at the less serious benefit frauds and those where the overpayment is under £2,000. It also provides an additional tool for the Investigation Team to use in those cases where the deterrent effect is considered a sufficient and suitable alternative to prosecution or an administrative penalty.

4.2.3 The offender must admit to the offence in an Interview Under Caution (IUC) and provide informed consent to being cautioned. To be able to offer a caution requires the same standard of criminal evidence as for a prosecution and should only be offered if the authority could prosecute should the caution be refused.

4.2.4 If the customer is consequently prosecuted for another benefit offence the caution can be cited in court.

4.3 Administrative Penalties

4.3.1 An Administrative Penalty is the offer to the customer to agree to pay a financial penalty where the customer has caused benefit to be overpaid to them, by either an act or omission. The amount of the penalty is currently stipulated at 30 percent of the amount of the gross overpayment.

4.3.2 These penalties will be offered where the case is deemed to be not so serious to deserve any other sanction and an Administrative Penalty is considered to be a suitable alternative to prosecution and where the gross overpayment is less than £2,000. Unlike cautions, no admission of guilt is required from the customer before offering an administrative penalty, although there is a statutory requirement for investigators to ensure that there are grounds for instituting criminal proceedings for an offence relating to the overpayment.

4.4 Prosecutions

4.4.1 If there is sufficient evidence Colchester Borough Council will refer the case to the solicitors internally for consideration of criminal prosecution where one or more of the following criteria are met:

- the gross adjudicated overpayment is £2,000 or over
- false identities or other personal details have been used
- false or forged documents have been used
- official documents have been altered or falsified
- the person concerned is in a position of trust
- the person concerned assisted or encouraged others to commit offences
- there is evidence of premeditation or organised fraud
- the person concerned has relevant previous convictions
- the customer had previously been convicted of benefit fraud
- the amount of the adjudicated overpayment is under £2,000 and the offer of an administrative penalty or formal caution is not accepted.
- Is the person in sound mind and in good physical position?
- Are there any social factors (eg death in the family)?

4.4.2 In all cases, including those which do not fall within any of the above criteria, Colchester Borough Council retains discretion as to whether criminal proceedings are started.

5. Proceeds of Crime Act (POCA)

5.1 Colchester Borough Council Investigation Officers must consider in all suitable cases the ability for a court to obtain restraint and/or confiscation orders of identified assets. A restraint order will prevent a person from dealing with specific assets. A confiscation order will enable the council to recover losses from assets which are found to be the proceeds of crime.

6. Loss of Provision:

Social security (Loss of Benefit) Regulations 2001 as amended by the Social Security (loss of benefit) Amendment Regulations 2010 allow for reduction or withdrawal of Social Security benefits and allowances in payment to individuals and their partners who have accepted the offer of a caution or administrative penalty. This includes both DWP and Local Authority benefits, such as Council Tax and Housing benefit.

This provision allows the DWP and local authorities to apply a sanction in the form of a 4 week benefit sanction period where a person accepts an Administrative Penalty, caution or is convicted of benefit fraud on one occasion. Benefits can be withdrawn for the 4 week period.

7. Recovery of Debt:

7.1 Where an overpayment arising from fraud is identified Colchester Borough Council will take steps to recover the resultant debt, including taking action in the civil courts if necessary, in addition to any sanction it may impose in respect of that fraud. The council has an overpayment policy which is updated regularly.

8. Summary

8.1 This policy sets out the main areas that the council takes into consideration when investigating potentially fraudulent claims for benefits. As well as the above, the council is working towards achieving the performance standards set by the DWP for its counter fraud work.

8.1.2 Whilst the council appreciates that the majority of customers are honest, it will continue to fight abuse of the system by those who falsely claim benefits to which they are not entitled. All investigations will be completed by trained staff who will respect the rights of all customers.

Dec 2010

Colchester Borough Council

Whistleblowing Policy and Procedure

1. Introduction

- (1) Employees or Councillors are often the first to realise that there may be some form of inappropriate conduct within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of misconduct, but this can have serious consequences if wrongdoing goes undetected.
- (2) The Council is committed to the highest possible standards of openness, probity, accountability and honesty. In line with that commitment we expect employees, councillors and others that we deal with who have serious concerns about any aspect of the Council's work to come forward and voice those concerns.
- (3) This policy document makes it clear that employees and councillors can do so without fear of victimisation, subsequent discrimination or disadvantage. This Whistleblowing Policy and Procedure is intended to encourage and enable employees and councillors to raise serious concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside. With the exception of employment related grievances, this policy will apply to any act of Whistleblowing, as defined by the charity Public Concern at Work to mean;" A disclosure of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the workplace, be it of the employer or of its employees." Examples of these matters are given below in paragraph 2.2.
- (4) This policy and procedure applies to all employees, councillors, partners, volunteers and contractors. It also covers suppliers and members of the public.
- (5) These procedures are in addition to the Council's complaints procedures and other statutory reporting procedures. Officers are responsible for making customers aware of the existence of these procedures.
- (6) This policy has been discussed with the relevant trade unions and has their support.

2. Aims and Scope of this Policy

2.1 This policy aims to:

- (a) encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice without fear of recrimination.
- (b) provide avenues for you to raise those concerns and receive feedback on any action taken
- (c) ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied
- (d) reassure you that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure in good faith.
- (e) advise you of the support that the Council will provide if you raise concerns in good faith.

2.2 There are existing procedures in place to enable you to lodge a grievance relating to your own employment. This Whistleblowing Policy and Procedure is intended to cover major concerns that fall outside the scope of other procedures. These include:

- (a) conduct which is an offence or a breach of law
- (b) disclosures related to miscarriages of justice
- (c) health and safety risks, including risks to the public as well as other employees
- (d) damages to the environment
- (e) the unauthorised use of public funds
- (f) possible fraud and corruption
- (g) other unethical conduct
- (h) unacceptable business risks.

2.3 This concern may be about something that:

- (a) makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the Council subscribes to; or
- (b) is against the Council's Procedure Rules and policies; or
- (c) falls below established standards of practice; or
- (d) amounts to improper conduct.

3. Safeguards

Harassment or Victimisation

- 3.1 The Council is committed to good practice and high standards and wants to be supportive of employees and councillors.
- 3.2 The Council recognises that the decision to report a concern can be a difficult one to make. If what you are saying is true, you should have nothing to fear because you will be doing your duty to the Council and those for whom you are providing a service. In these situations you are a witness and not a complainant.
- 3.3 The Council will not tolerate the harassment or victimisation of any person who raises a concern. The Council's disciplinary procedures will be used against any employee who is found to be harassing or victimising the person raising the concern and such behaviour by a councillor will be reported under the Members' Code of Conduct.
- 3.4 Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect you if you are an employee.

Confidentiality

- 3.5 All concerns will be treated in confidence and the Council will do its best to protect your identity if you do not want your name to be disclosed. If investigation of a concern discloses a situation that is sufficiently serious to warrant disciplinary action or police involvement, then your evidence may be important. Your name will not however be released as a possible witness until the reason for its disclosure at this stage has been fully discussed with you.

Anonymous Allegations

- 3.6 This policy encourages you to put your name to your allegation whenever possible.
- 3.7 Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.
- 3.8 In exercising this discretion the factors to be taken into account would include the:
 - (a) seriousness of the issues raised;
 - (b) credibility of the concern; and
 - (c) likelihood of confirming the allegation from attributable sources.

Untrue Allegations

3.9 If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If however, you make an allegation maliciously or for personal gain, disciplinary action may be taken against you, or if you are a councillor a complaint may be made under the Members' Code of Conduct.

4. How to raise a concern

4.1 You should normally raise concerns with the Monitoring Officer or the Section 151 Officer. However if your concern relates to one of these officers you should raise your concerns with the Chief Executive

4.2 Concerns may be raised verbally or in writing. Employees or councillors who wish to make a written report are invited to use the following format:

- (a) the background and history of the concern (giving relevant dates);
and
- (b) the reason why you are particularly concerned about the situation.

4.3 The earlier you express the concern the easier it is to take action.

4.4 Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern.

4.5 Advice and guidance on how matters of concern may be pursued can be obtained from:

Chief Executive, Adrian Pritchard ☎ 282211

Monitoring Officer, Andrew Weavers ☎282213

Section 151 Officer, Sean Plummer ☎282347

Finance Manager Audit and Governance, Elfreda Walker ☎282461.

Risk & Resilience Manager, Hayley McGrath ☎508902

4.6 You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns.

4.7 If you are an employee you may invite your trade union or a friend to be present during any meetings or interviews in connection with the concerns you have raised. If you are a councillor you may be accompanied by your group leader.

4.8 Further guidance on protection for anyone raising a concern can be found in the Public Interests Disclosure Act 1998.

5. How the Council will respond

- 5.1 The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as rejecting them.
- 5.2 Where appropriate, the matters raised may be:
- (a) investigated by management, internal audit, or through the disciplinary process
 - (b) referred to the police
 - (c) referred to the Council's external auditor
 - (d) the subject of an independent inquiry.
- 5.3 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle, which the Council will have in mind, is the public interest.
- 5.4 Some concerns may be resolved by agreed action without the need for investigation.
- 5.5 Within **five** working days of a concern being raised, one of the Officers named at 4.5 above will write to you:
- (a) acknowledging that the concern has been received
 - (b) indicating how it is proposed to deal with the matter
 - (c) giving an estimate of how long it will take to provide a final response
 - (d) informing you whether any initial enquiries have been made
 - (e) supplying you with information on staff support mechanisms, and
 - (f) informing you whether further investigations will take place and if not, why not.
- 5.6 The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from you.
- 5.7 Where any meeting is arranged, off-site where appropriate, if you so wish, you can be accompanied by a union or professional association representative or a friend, or the group leader if you are a councillor.
- 5.8 The Council will take steps to minimise any difficulties, which you may experience as a result of raising a concern. For instance, if you are required to

give evidence in criminal or disciplinary proceedings the Council will arrange for you to receive advice about the procedure and will help you with the preparation of statements.

- 5.9 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, you will receive information about the outcomes of any investigation.

6. The Responsible Officer

- 6.1 The Monitoring Officer has overall responsibility for the maintenance and operation of this policy. That officer maintains a record of concerns raised and the outcomes (but in a form which does not endanger your confidentiality) and will provide an annual report on the operation of the policy to the Standards Committee.

7. How the matter can be taken further

- 7.1 This policy is intended to provide you with an avenue to raise concerns within the Council. The Council hopes you will be satisfied with any action taken. If you are not, and if you feel it is right to take the matter outside the Council, the following are possible contact points:

- (a) your local Citizens Advice Bureau
- (b) relevant professional bodies or regulatory organisations
- (c) the police
- (d) Local Government Ombudsman
- (e) the Council's Standards Committee.

- 7.2 If you are considering taking the matter outside of the Council, you should ensure that you are entitled to do so and that you do not disclose confidential information. An independent charity, Public Concern at Work, can offer independent and confidential advice. They can be contacted on ☎ 020 7404 6609 or by email at whistle@pcaw.co.uk

8. Questions regarding this policy

- 8.1 Any questions should, in the first instance, be referred to the Monitoring Officer.

9. Review

- 9.1 This policy will be reviewed on an annual basis.

Colchester Borough Council

Anti-Money Laundering Policy

1. Introduction

Although local authorities are not directly covered by the requirements of the Money Laundering Regulations 2007, guidance from CIPFA indicates that they should comply with the underlying spirit of the legislation and regulations.

Colchester Borough Council is committed to the highest possible standards of conduct and has, therefore, put in place appropriate and proportionate anti-money laundering safeguards and reporting arrangements.

2. Scope of the Policy

This policy applies to all employees, whether permanent or temporary, and Members of the Council.

Its aim is to enable employees and Members to respond to a concern they have in the course of their dealings for the Council. Individuals who have a concern relating to a matter outside work should contact the Police.

3. Definition of Money Laundering

Money laundering describes offences involving the integration of the proceeds of crime or terrorist funds into the mainstream economy. Such offences are defined under the Proceeds of Crime Act 2002 as the following 'prohibited acts':

- Concealing, disguising, converting, transferring or removing criminal property from the UK
- Becoming involved in an arrangement which an individual knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
- Acquiring, using or possessing criminal property
- Doing something that might prejudice an investigation e.g. falsifying a document
- Failure to disclose one of the offences listed in a) to c) above, where there are reasonable grounds for knowledge or suspicion
- Tipping off a person(s) who is or is suspected of being involved in money laundering in such a way as to reduce the likelihood of or prejudice an investigation

Provided the Council does not undertake activities regulated under the Financial Services and Markets Act 2000, the offences of failure to disclose and tipping off do not apply. However, the Council and its employees and Members remain subject to the remainder of the offences and the full provisions of the Terrorism Act 2000.

The Terrorism Act 2000 made it an offence of money laundering to become concerned in an arrangement relating to the retention or control of property

likely to be used for the purposes of terrorism, or resulting from acts of terrorism.

Although the term 'money laundering' is generally used to describe the activities of organised crime, for most people it will involve a suspicion that someone they know, or know of, is benefiting financially from dishonest activities.

Potentially very heavy penalties (unlimited fines and imprisonment up to fourteen years) can be handed down to those who are convicted of one of the offences above.

4. Requirements of the Money Laundering Legislation

The main requirements of the legislation are:

- To appoint a money laundering reporting officer
- Maintain client identification procedures in certain circumstances
- Implement a procedure to enable the reporting of suspicions of money laundering
- Maintain record keeping procedures

5. The Money Laundering Reporting Officer (MLRO)

The Council has designated the Monitoring Officer as the Money Laundering Reporting Officer (MLRO). He can be contacted on 01206 282213 or at andrew.weavers@colchester.gov.uk

In the absence of the MLRO or in instances where it is suspected that the MLRO themselves are involved in suspicious transactions, concerns should be raised with the Section 151 Officer.

6. Client Identification Procedures

Although not a legal requirement, the Council has developed formal client identification procedures which must be followed when Council land or property is being sold. These procedures require individuals and if appropriate, companies to provide proof of identity and current address.

If satisfactory evidence is not obtained at the outset of a matter, then the transaction must not be progressed and a disclosure report, available on the Hub, must be submitted to the Money Laundering Reporting Officer.

All personal data collected must be kept in compliance with the Data Protection Act.

7. Reporting Procedure for Suspicions of Money Laundering

Where you know or suspect that money laundering activity is taking/has taken place, or become concerned that your involvement in a matter may amount to a prohibited act under the Act, you must disclose this as soon as practicable to the MLRO. The disclosure should be within "hours" of the information coming to your attention, not weeks or months later.

Your disclosure should be made to the MLRO using the disclosure report, available on the Hub. The report must include as much detail as possible including

- Full details of the people involved
- Full details of the nature of their/your involvement.
- The types of money laundering activity involved
- The dates of such activities
- Whether the transactions have happened, are ongoing or are imminent;
- Where they took place;
- How they were undertaken;
- The (likely) amount of money/assets involved;
- Why, exactly, you are suspicious.

Along with any other available information to enable the MLRO to make a sound judgment as to whether there are reasonable grounds for knowledge or suspicion of money laundering and to enable him to prepare his report to the Serious Organised Crime Agency (SOCA), where appropriate. You should also enclose copies of any relevant supporting documentation.

If you are concerned that your involvement in the transaction would amount to a prohibited act under sections 327 – 329 of the Act, then your report must include all relevant details, as you will need consent from SOCA, via the MLRO, to take any further part in the transaction - this is the case even if the client gives instructions for the matter to proceed before such consent is given. You should therefore make it clear in the report if such consent is required and clarify whether there are any deadlines for giving such consent e.g. a completion date or court deadline;

Once you have reported the matter to the MLRO you must follow any directions he may give you. You must NOT make any further enquiries into the matter yourself: any necessary investigation will be undertaken by the SOCA. Simply report your suspicions to the MLRO who will refer the matter on to the SOCA if appropriate. All members of staff will be required to co-operate with the MLRO and the authorities during any subsequent money laundering investigation.

Similarly, at no time and under no circumstances should you voice any suspicions to the person(s) whom you suspect of money laundering, even if the SOCA has given consent to a particular transaction proceeding, without the specific consent of the MLRO; otherwise you may commit a criminal offence of “tipping off”.

Do not, therefore, make any reference on a client file to a report having been made to the MLRO – should the client exercise their right to see the file, then such a note will obviously tip them off to the report having been made and may render you liable to prosecution. The MLRO will keep the appropriate records in a confidential manner.

8. Consideration of the disclosure by the Money Laundering Reporting Officer

Upon receipt of a disclosure report, the MLRO must note the date of receipt on his section of the report and acknowledge receipt of it. He should also advise you of the timescale within which he expects to respond to you.

The MLRO will consider the report and any other available internal information he thinks relevant e.g.:

- reviewing other transaction patterns and volumes;
- the length of any business relationship involved;
- the number of any one-off transactions and linked one-off transactions;
- any identification evidence held;

And undertake such other reasonable inquiries he thinks appropriate in order to ensure that all available information is taken into account in deciding whether a report to the SOCA is required (such enquiries being made in such a way as to avoid any appearance of tipping off those involved). The MLRO may also need to discuss the report with you.

Once the MLRO has evaluated the disclosure report and any other relevant information, he must make a timely determination as to whether:

- there is actual or suspected money laundering taking place; or
- there are reasonable grounds to know or suspect that is the case; and
- whether he needs to seek consent from the SOCA for a particular transaction to proceed.

Where the MLRO does so conclude, then he must disclose the matter as soon as practicable to the SOCA on their standard report form and in the prescribed manner, unless he has a reasonable excuse for non-disclosure to the SOCA (for example, if you are a lawyer and you wish to claim legal professional privilege for not disclosing the information).

Where the MLRO suspects money laundering but has a reasonable excuse for non-disclosure, then he must note the report accordingly; he can then immediately give his consent for any ongoing or imminent transactions to proceed.

In cases where legal professional privilege may apply, the MLRO must liaise with the Section 151 Officer to decide whether there is a reasonable excuse for not reporting the matter to the SOCA.

Where consent is required from the SOCA for a transaction to proceed, then the transaction(s) in question must not be undertaken or completed until the SOCA has specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from the SOCA.

Where the MLRO concludes that there are no reasonable grounds to suspect money laundering then he shall mark the report accordingly and give his consent for any ongoing or imminent transaction(s) to proceed.

All disclosure reports referred to the MLRO and reports made by him to the SOCA must be retained by the MLRO in a confidential file kept for that purpose, for a minimum of five years.

The MLRO commits a criminal offence if he knows or suspects, or has reasonable grounds to do so, through a disclosure being made to him, that another person is engaged in money laundering and he does not disclose this as soon as practicable to the SOCA.

9. Training

Officers considered likely to be exposed to suspicious situations, will be made aware of these by their senior officer and provided with appropriate training.

Additionally, all employees and Members will be familiarised with the legal and regulatory requirements relating to money laundering and how they affect both the Council and themselves.

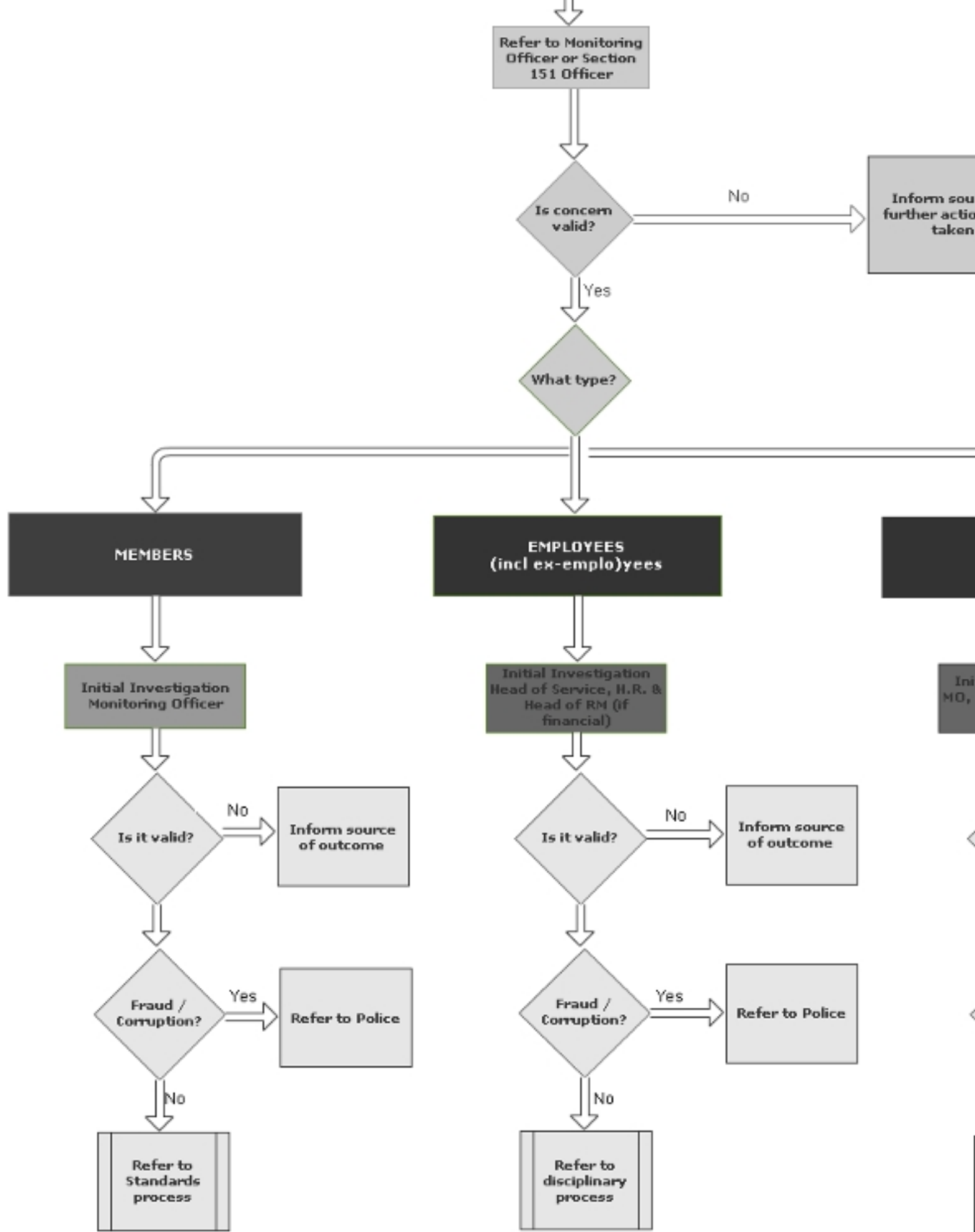
Notwithstanding the paragraphs above, it is the duty of officers and Members to report all suspicious transactions whether they have received their training or not.

10. Conclusion

Given a local authority's legal position with regard to the legislative requirements governing money laundering, the Council believes that this Policy represents a proportionate response to the level of risk it faces of money laundering offences.

11. Review

This policy will be reviewed annually.





Standards Committee

Item
7

25 November 2011

Report of	Monitoring Officer	Author	Andrew Weavers
Title	Local Government Ombudsman – Annual Review 2010/2011		
Wards affected	Not applicable		

This report request the Committee to note the Local Government Ombudsman’s Annual Review for 2010/2011

1. Decision Required

- 1.1 To note the contents of the Local Government Ombudsman’s Annual Review for 2010/2011.

2. Reasons for Decision(s)

- 2.1 To inform the Committee of the number and type of decisions made by the Local Government Ombudsman in relation to Colchester during 2010/2011.

3. Alternative Options

- 3.1 No alternative options are presented.

4. Supporting Information

- 4.1 The Local Government Ombudsman issues an Annual Review to each local authority. The Annual Review for Colchester for the year ending 31 March 2011 is attached to this report at Appendix 1. The information provided is divided between the Advice Team, which deals with initial assessments of enquiries and/or complaints and the Investigative Team which actually investigates complaints.
- 4.2 It is worth noting that anyone can choose to make a complaint to the Local Government Ombudsman. Accordingly, the number of complaints is not an indicator of performance or level of customer service. In most instances there was no case to answer. The Local Government Ombudsman will normally insist that the Council has the opportunity to resolve the complaint locally through its own complaints procedure before commencing its own investigation.
- 4.3 The Standards Committee has within its terms of reference an overview of Local Government Ombudsman investigations and the contents of the Annual Review. The contents of this report were initially reported to Cabinet on 7 September 2011 when Cabinet noted the report.

5. Key Headlines

- 5.1 There were no findings of maladministration against the Council and no formal reports were issued.

- 5.2 Last year 54 enquires were received by the Advice Team a 63% increase from the 34 received in the previous year. Of these 23 were classed as premature complaints and referred back to the Council to be considered through its own complaints procedure. A further 7 enquiries were dealt with by the Ombudsman providing advice and the remaining 24 were referred to the Investigative Team for consideration.
- 5.3 The main subject area covered by the Advice Team which had an increase was Planning and Development which saw an increase to 19, a 53% increase from the 10 received in the previous year. This was due to a number of linked complaints being made regarding one planning application which subsequently led to procedures being changed. Of the total figure for Planning and Development 9 cases were referred for investigation. They also received 10 enquires in relation to benefits and tax an increase of 10% on the previous year. Of these 3 were referred for investigation.
- 5.4 The Investigative Team decided 23 complaints against the Council which is a 10% increase from the 21 decided in the previous year. A total of 6 local settlements were agreed (where the Council agreed to take action which the Ombudsman considered was a satisfactory response to a complaint) which is an increase from the previous years total of 4. The Council paid a total of £965 in compensation which was met from service budgets. This is an increase of 68% from the previous year's total of £575. The service areas involved have learnt from the circumstances of the particular complaints and have improved their procedures accordingly.
- 5.5 The Council's average response time to the Ombudsman's written first enquiries was 29.6 days which is a slight reduction in improvement from the previous year's figure of 29.3 days. The Ombudsman's target is 28 days. Steps are being taken to continue to improve the response times in order to meet the Ombudsman's target.
- 5.6 During the past year we took the opportunity to provide a training session for services which was delivered by an assistant ombudsman. The session was well received and provided beneficial advice to services on dealing with complaints.

6. Financial Considerations

- 6.1 No direct implications other than mentioned in this report.

7. Strategic Plan References

- 7.1 The lessons learnt from complaints to the Ombudsman link in with our Customer Excellence element of the Strategic Plan by constantly learning and putting lessons learnt into practice. This will in turn lead to improved customer service as we continue to meet and exceed our customers' expectations

8. Equality, Diversity and Human Rights Implications

- 8.1 No direct implications.

9. Publicity Considerations

- 9.1 Details of the Annual Review will be posted on the Council's website.

10. Consultation Implications

- 10.1 No direct implications.

11. Community Safety Implications

11.1 No direct implications.

12. Health and Safety Implications

12.1 No direct implications.

13. Risk Management Implications

13.1 No direct implications.

Appendix 1: Local Authority Report -Colchester BC

For the period ending -31/03/2011

(Figures in brackets for the period ending 31/03/2010)

LGO Advice Team

Enquiries and complaints received	Adult care services	Benefits & Tax	Corporate and other services	Education & Children's services	Environmental Services & Public Protection & Regulation	Highways & Transport	Housing	Other	Planning & Development	Total
Formal/informal premature complaints	0 (0)	6 (0)	0 (0)	0 (0)	1 (0)	0 (0)	4 (0)	0 (3)	12 (3)	23 (6)
Advice given	0 (0)	1 (1)	1 (0)	2 (0)	1 (0)	0 (0)	1 (2)	1 (2)	0 (1)	7 (7)
Forwarded to investigative team (resubmitted)	0 (0)	1 (0)	0 (0)	0 (0)	2 (0)	1 (0)	0 (3)	0 (1)	2 (2)	6 (7)
Forwarded to investigative team (new)	0 (0)	2 (0)	1 (0)	0 (0)	0 (0)	4 (0)	5 (6)	1 (2)	5 (4)	18 (14)
Total	0 (0)	10 (1)	2 (0)	2 (0)	4 (0)	5 (0)	10 (11)	2 (8)	19 (10)	54 (34)

Investigative Team

Decisions	Reports: Maladministration and injustice	Local Settlements (no report)	Reports Maladministration No injustice	Reports: no Maladministration	No Maladministration (no report)	Ombudsman Discretion (no report)	Outside Jurisdiction	Total
2010 / 2011	0	6	0	0	13	4	0	23
2009 / 2010	0	4	0	0	10	6	1	21

Appendix 1: Local Authority Report -Colchester BC

For the period ending -31/03/2011

Average local authority response times 01/04/2010 to 31/03/2011

Response times	First enquires	
	Number of first enquires	Average number of days to respond
2010 / 2011	12	29.6
2009 / 2010	11	29.3
2008 / 2009	16	34.5

Types of authority	<= 28 days %	29 -35 days %	> = 36 days %
District Councils	65	23	12
Unitary Authorities	59	28	13
Metropolitan Authorities	64	19	17
County Councils	66	17	17
London Boroughs	64	30	6
National Parks Authorities	75	25	0



Standards Committee

Item

8

25 November 2011

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Annual Review of Local Assessment of Complaints Against Members 2010/11		
Wards affected	Not applicable		

**This report provides the Committee with a review of
the local assessment process**

1. Decision(s) Required

- 1.1 To note the contents of this report and to suggest whether any amendments to the local assessment process are necessary.

2. Introduction

- 2.1 The Committee will recall that since 8 May 2008 the function of making an initial assessment of allegations that members may have breached the members Code of Conduct was transferred from Standards for England to Standards Committees.
- 2.2 The Committee received a series of reports in 2008 which established how the Committee would meet the challenges posed by the new regime. The Committee considered a report at its meeting on 5 December 2008 which contained a review of our experience of the process. This further report brings the Committee up to date.

3. The Local Assessment Process

- 3.1 The Council at its meeting on 14 May 2008 agreed revised terms of reference for the Standards Committee and these are attached at Appendix 1. The Standards Committee subsequently established 3 sub-committees; the Allegations Sub-Committee, the Allegations Appeals Sub-Committee and the Hearings Sub-Committee. The Standards Committee approved each of the Sub-Committees terms of reference and these are attached at Appendix 2.
- 3.2 Standards for England issued guidance and Regulations which the Committee is bound to follow. Our procedures are compliant with both.
- 3.3 The Allegations Sub-Committee comprises one independent member, one parish representative and one Borough councillor. The Allegations Appeals Sub-Committee comprises one independent member, one parish representative and one Borough councillor (none of whom are members of the Allegations Sub-Committee). The Hearings Sub-Committee comprises three independent members and three Borough councillors in relation to Borough council matters and two independent members, two Borough councillors and one parish representative in relation to parish matters.

3.4 The Committee also approved Local Assessment Criteria against which all allegations are assessed. This has been used by both the Allegations Sub-Committee and the Allegations Appeals Sub-Committee. The criteria are attached at Appendix 3.

4. Our Experience so far

4.1 The following is a summary of our experience of implementing the local assessment process to date.

Allegations Sub-Committee

The Sub-Committee has met on six occasions in 2010/11. All allegations received were assessed against the Local Assessment criteria.

Allegations	May 08 – Dec08	Jan 09 – Nov 09	Dec 09- Nov 10	Dec 10- Nov 11	Total
No. of allegations received	5	11	3	6	25
Borough Councillors	2	7	1	5#	15 (55%)
Parish Councillors	3	4	2	3	12 (45%)

One complaint was against three Borough Councillors

Source of complaints	May 08 – Dec 08	Jan 09 – Nov 09	Dec 09- Nov 10	Dec 10- Nov 11	Total
Members of the public	3	7	2	6	18 (72%)
Borough Councillors	1	2	1	0	4 (16%)
Parish Councillors	1	1	0	0	2 (8%)
County Councillors	0	1	0	0	1 (4%)

4.2 The Allegations Sub-Committee has made the following findings:

Findings	May 08 – Dec 08	Jan 09 – Nov 09	Dec 09- Nov 10	Dec 10- Nov 11	Total
No further action	2	10	3	5	20 (80%)
Referred for investigation	2	1	0	0	3 (12%)
Referred to Standards for England	1	0	0	1	2 (8%)

4.3 Monthly meetings of the Allegations Sub-Committee have been included in the municipal diary and are utilised when necessary. This arrangement seems to be working well. Both the Allegations Appeals Sub-Committee and the Hearings Sub-Committee meetings are scheduled as and when necessary. Monthly meetings are included in the municipal diary for 2012/2013. However this will be subject to change once the full implications of the Localism Act 2011 are understood.

4.4 Allegations Appeals Sub- Committee

The Sub-Committee has met on one occasion in 2010/11 to determine review a request following a finding of no further action by the Allegations Sub-Committee. The Sub-Committee upheld the decision of no further action on the case.

4.5 Hearings Sub-Committee

The Hearings Sub-Committee did not meet during 2010/11.

5. Publicity

5.1 Publicity is a key part of the Local Assessment process and this reflected both in the legislation and Standards for England guidance.

5.2 The Borough Council's web site has a dedicated page on Standards. This includes details of the Local Assessment process, the Committee, the Annual report and includes a link to an electronic version of the complaint form. This can be found at www.colchester.gov.uk/standards. Most complaints received are following the advice given on the web site.

5.3 In addition there are also links to Parish and Town Councils and Borough Councillors. The Committee is required to keep its publicity arrangements under review however, it appears that the current arrangements are working satisfactorily.

6. Performance Monitoring

6.1 The Committee will recall that the Monitoring Officer was previously required by Standards for England to provide quarterly performance monitoring information on how we are implementing the local assessment process. This was done online. All cases were required to be logged with Standards for England together with key dates and outcomes in the process.

6.2 Regulations do not specify statutory targets however Standards for England's Guidance recommends 20 working days for the initial assessment of a complaint from the date of its receipt.

6.3 The Guidance also recommends that any appeals are determined by the Allegations Appeals Sub Committee within three months of a decision by the Allegations Sub Committee of no further action. Any hearings must be completed within three months of a decision by the Allegations Sub Committee that it agrees with a Monitoring Officers finding that a member has breached the code of conduct. The table at paragraph 6.5 confirms our performance to date against these targets.

6.4 Although the targets are no longer monitored and Standards for England no longer publish up to date national statistics, we have strived to continue to meet the performance targets. It has proved difficult on a minority of occasions to convene a meeting which has led to a longer timeframe than preferable.

6.5

Allegation No.	Date Received	Allegations Sub - date	20 working day target met?	Allegations Appeals Sub -date	3 month target met?	Hearings Sub date	3 month target met?
CBC001.08	10/06/08	04/07/08	✓	05/09/08	✓		
CBC002.08	07/08/08	05/09/08	x				
CBC003.08	10/09/08	03/10/08	✓			30/09/09	x
CBC004.08	27/10/08	14/11/08	✓				
CBC005.08	28/10/08	14/11/08	✓				
CBC001.09	07/01/09	06/02/09	x				
CBC002.09	26/01/09	06/02/09	✓				
CBC003.09	02/06/09	12/06/09	✓				
CBC004.09	15/06/09	10/07/09	✓	17/08/09	✓		
CBC005.09	26/06/09	10/07/09	✓				
CBC006.09	06/07/07	10/07/09	✓				
CBC007.09	05/10/09	22/10/09	✓	16/12/09	✓		
CBC008.09	05/10/09	22/10/09	✓	19/12/09	✓		
CBC009.09	10/12/09	08/01/10	✓				
CBC010.09	15/12/09	08/01/10 05/02/10	✓	18/09/10	✓		
CBC011.09	27/10/09	08/01/10	x	02/03/10	✓		
CBC001.10	22/02/10	05/03/10	✓				
CBC002.10	24/06/10	23/07/10	x				
CBC003.10	21/09/10	05/11/10	x				
CBC001.11	10/02/11	04/03/11	✓				
CBC002.11	12/04/11	21/04/11	✓				
CBC003.11	02/06/11	24/06/11	✓				
CBC004.11	26/07/11	17/08/11	✓	03/10/11	✓		
CBC005.11	16/08/11	16/09/11	x				
CBC006.11	30/09/11	01/11/11	x				

7. Conclusions

- 7.1 It would appear that our process continues to perform well. Our Local Assessment Criteria appears to be fit for purpose and we should continue to use it but keep it under review.
- 7.2 An important part of the local assessment process is communication, and all parties are informed as to progress of the allegations. This includes ensuring that Parish/Town Clerks are also informed.
- 7.3 The terms of reference for all the Sub-Committees appear to be fit for purpose however should be kept under review in the light of further experience.
- 7.4 Monthly meetings of the Allegations Sub-Committee should continue to be diarised. The Allegations Appeals Sub-Committee and the Hearings Sub-Committee meeting should be called when necessary.
- 7.5 Publicity arrangements in relation to the Local Assessment process have been appropriate to date but need to be kept under review.

8. Standards Committee

8.1 Meetings of the Standards Committee have been currently scheduled in the Municipal Diary for 2012/2013 on 22 June 2012, 14 September 2012, 30 November 2012 and 1 March 2013.

9. Strategic Plan References

9.1 The arrangements underpin the Council's commitment to quality services and customer excellence.

10. Financial Considerations

10.1 None other than the ongoing cost of investigations which have to be borne by the Council.

11. Equality, Diversity and Human Rights Implications

11.1 No specific implications.

12. Publicity Considerations

12.1 These are dealt with above.

13. Consultation Implications

13.1 None.

14. Community Safety Implications

14.1 None

15. Health and Safety Implications

15.1 None

16. Risk Management Implications

16.1 None.

Colchester Borough Council Standards Committee Terms of Reference
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1. To promote and maintain high ethical standards of conduct for elected and co-opted Members.
2. To help elected and co-opted Members to observe the Members' Code of Conduct.
3. To give the Council advice on adoption or revision of the Members' Code of Conduct and on informal codes/protocols covering matters such as planning and Member/officer relations.
4. To monitor the effectiveness of the Members' Code of Conduct.
5. To train or arrange training for elected and co-opted Members on matters relating to the Members' Code of Conduct.
6. To assess and review complaints that elected and co-opted Members have breached the Members' Code of Conduct and in connection with this function:
 - 6.1 To develop and adopt:
 - (a) Assessment Criteria for dealing with complaints;
 - (b) Policies for dealing with vexatious, persistent and anonymous complaints and requests by complainants for confidentiality;
 - (c) Arrangements for dealing with complaints and publicising the arrangements;
 - (d) Procedures for dealing with local investigations and
 - (e) Such other provisions and procedures as may be required.
 - 6.2 To establish and maintain the following 2 sub-committees each with their own terms of reference:
 - An Allegations Sub-Committee
 - An Allegations Appeal Sub-Committee
7. To conduct Hearings and make determinations in respect of complaints that elected and co-opted Members have breached the Members' Code of Conduct in accordance with relevant statutory requirements and guidance issued by the Standards Board for England and in connection with this function:
 - 7.1 To develop and adopt procedures for dealing with such Hearings; and
 - 7.2 To establish and maintain a Hearings Sub-Committee with its own terms of reference.
8. To grant dispensations to elected and co-opted Members with prejudicial interests.
9. To grant exemptions from politically restricted posts.
10. To maintain an overview of the Council's arrangements for dealing with complaints and Local Government Ombudsman investigations.

Colchester Borough Council
Standards Committee Terms of Reference

11. To undertake the functions set out at 1. to 8. above in respect of all Parish and Town Councils wholly or mainly within the Borough of Colchester and the members of those Parish or Town Councils.

**Colchester Borough Council
Standards Committee
Allegations Sub-Committee Terms of Reference**

1. Terms of Reference

- (a) The Allegations Sub-Committee is established to receive allegations that a member of the Authority (including a member of a town or parish council situated within the Borough of Colchester) has failed, or may have failed, to comply with the Authority's Code of Conduct.
- (b) Upon receipt of each allegation and any accompanying report by the Monitoring Officer, the Sub-Committee shall make an initial assessment of the allegation and shall then do one of the following:
- (i) refer the allegation to the Monitoring Officer, with an instruction that he/she arrange a formal investigation of the allegation, or directing that he/she arrange training, conciliation or such appropriate alternative steps as permitted by Regulations;
 - (ii) refer the allegation to the Standards for England;
 - (iii) decide that no action should be taken in respect of the allegation; or
 - (iv) where the allegation is in respect of a person who is no longer a member of the Authority, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority;
- and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.
- (c) Upon completion of an investigation by the Monitoring Officer, the Sub-Committee shall be responsible for determining whether:
- (i) it accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct;
 - (ii) the matter should be referred for consideration at a hearing before the Hearings Sub-Committee of the Standards Committee; or
 - (iii) the matter should be referred to the Adjudication Panel for determination.
- (d) Where the Sub-Committee resolves to do any of the actions set out in Paragraph 1(b) or 1(c) above, the Sub-Committee shall state its reasons for that decision.
- (e) Where the Sub-Committee resolves that no action should be taken and the Councillor concerned is a member of a Town or Parish Council it shall inform their Town and parish council of its decision.

**Colchester Borough Council
Standards Committee
Allegations Sub-Committee Terms of Reference**

- (f) The Sub-Committee shall consider any application received from any officer of the Authority for exemption from political restriction under Sections 1 and 2 of the Local Government and Housing Act 1989 in respect of the post held by that officer and may direct the Authority that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the Authority under Section 2(2) of that Act.
- (g) The Sub-Committee shall, upon the application of any person or otherwise, consider whether a post should be included in the list maintained by the Authority under Section 2(2) of the 1989 Act, and may direct the Authority to include a post in that list.

2. Composition of the Allegations Sub-Committee

The Allegations Sub-Committee shall comprise three members, of whom one shall be an independent member of the Standards Committee who shall chair the Sub-Committee, one elected member of the Authority and one Parish representative. The membership shall be rotated from the membership of the Standards Committee.

3. Quorum

The quorum for a meeting of the Sub-Committee shall be three members, with an independent member as Chairman, one elected member of the Council and one Parish representative.

4. Frequency of Meetings

The Sub-Committee shall only meet where one or more allegations has been received which require to be assessed at that meeting.

Colchester Borough Council
Standards Committee
Allegations Appeals Sub-Committee Terms of Reference

1. Terms of Reference

- (a) The Allegations Appeals Sub-Committee is established to review, upon the request of a person who has made an allegation that a member of the Authority (including a member of a town or parish council situated within the Borough of Colchester) has failed, or may have failed, to comply with the Authority's Code of Conduct, a decision of the Allegations Sub-Committee that no action be taken in respect of that allegation.
- (b) Upon receipt of each such request and any accompanying report by the Monitoring Officer, the Sub-Committee shall review the decision of the Allegations Sub-Committee and shall then do one of the following:
 - (i) refer the allegation to the Monitoring Officer, with an instruction that he/she arrange a formal investigation of the allegation, or specifying that he/she take an alternative action as permitted by Regulations;
 - (ii) refer the allegation to the Standards for England;
 - (iii) decide that no action should be taken in respect of the allegation; or
 - (iv) where the allegation is in respect of a person who is no longer a member of the Authority, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other relevant authority;

and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.

- (c) Where the Sub-Committee resolves to do any of the actions set out in Paragraph 1(b) above, the Sub-Committee shall state its reasons for that decision.
- (d) Where the Sub-Committee resolves that no action should be taken and the Councillor concerned is a member of a Town or Parish Council it shall inform their Town or Parish Council of its decision.

2. Composition of the Allegations Appeals Sub-Committee

The Allegations Appeals Sub-Committee shall comprise three members, of whom one shall be an Independent member of the Standards Committee who shall chair the Sub-Committee. One shall be an elected member of the Council and the other a Parish representative. The members shall be rotated from the members of the Standards Committee provided that the members shall not have been involved in the initial assessment of a complaint by the Allegations Sub-Committee.

3. Quorum

The quorum for a meeting of the Sub-Committee shall be three members, with an independent member as Chairman, one elected member of the Council and one Parish representative.

Colchester Borough Council
Standards Committee
Allegations Appeals Sub-Committee Terms of Reference

4. Frequency of Meetings

The Allegations Appeals Sub-Committee shall meet as and when required to enable it to undertake the review of any decision of the Allegations Sub-Committee within three months of the receipt of the request for such a review from the person who made the allegation.

**Colchester Borough Council
Standards Committee
Hearings Sub-Committee Terms of Reference**

1. Terms of Reference

To conduct Hearings and make determinations in respect of complaints that elected and co-opted Members have breached the Members' Code of Conduct in accordance with relevant statutory requirements and Guidance issued by Standards for England

2. Composition of the Hearings Sub-Committee

The Hearings sub-Committee shall comprise five members.

- In respect of hearings into complaints against Colchester Borough Councillors, the Sub-Committee shall comprise two Borough Councillors and three members drawn from the Independent Members on the Standards Committee, all members to be selected in rotation on the basis of availability;
- In respect of hearings into complaints against Parish or Town Councillors, the Sub-Committee shall comprise two Borough Councillors and two members drawn from the Independent Members and one Parish representative, all members to be selected in rotation on the basis of availability.

The members shall be rotated from the members of the Standards Committee provided that the members shall not have been involved in the initial assessment of a complaint by the Allegations Sub-Committee or a review by the Allegations Appeals Sub-Committee.

3. Quorum

The quorum for a meeting of the Sub-Committee shall be three members who must be present for the duration of the meeting. At least one Independent member must be present in order to act as Chairman. At least one elected member of the Council must be present when the matter relates to a Colchester Borough Council member. At least one Parish representative must be present when the matter relates to a Town or Parish Council member.

4. Frequency of Meetings

The Hearings Sub-Committee shall meet as and when required within three months following a decision by the Allegations Sub-Committee that it agrees with a Monitoring Officers finding that a member has breached the code of conduct.

Standards Committee Local Assessment Criteria

The following criteria shall be followed by the Allegations Sub-Committee and the Allegations Appeals Sub-Committee when considering allegations that a member of Colchester Borough Council or member of any Town or Parish Council situated within the Borough of Colchester has failed to follow the Members Code of Conduct:

A. If an allegation discloses a potential breach of the Code of Conduct then the Allegations Sub-Committee and the Allegations Appeals Sub-Committee will consider what action to take using the following criteria and Standards for England's Guidance:

CRITERIA	
1	Is there prima facie evidence of a breach of the Code?
2	Is it serious enough to warrant sanction?
3	Is this part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and are there no other avenues left to deal with it except investigation?
4	In considering the case the Sub-Committee will take into account the time that has passed since the alleged conduct occurred.
5	Would an investigation serve a useful purpose?
6	Is this a case where alternative action such as training or mediation would be more appropriate?
7	Would an apology be appropriate?
8	It is malicious, relatively minor or tit for tat?
9	The same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained by seeking the sanctions available to the Adjudication Panel or the Standards Committee.
10	The complaint concerns acts carried out in the Member's private life, when he/she are not carrying out the work of the authority or have not misused their position as a Member.
11	It appears that the complaint is really about dissatisfaction with a council decision.
12	There is not enough information currently available to justify a decision to refer the matter for investigation.

B. Circumstances when the Allegations Sub-Committee or the Allegations Appeals Sub-Committee will refer a complaint to Standards for England:

CRITERIA	
1	Complaints concerning the Leadership of the Council or in some cases the opposition.
2	Complaints from the Chief Executive and Monitoring Officer.
3	Instances where a large number of key people are conflicted out or there is a risk of successful judicial review for any other reason.
4	Instances where there has been national attention, or where the Standards Committee feels that the matter turns on an important point of interpretation of the Code (a test case).

(NB. if there is any conflict between Standards for England's Guidance and these criteria then Standards for England's Guidance shall prevail)

November 2011



Standards Committee

Item

9

25 November 2011

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Review of Training for Members on the Code of Conduct and Local Assessment Process		
Wards affected	Not applicable		

This report provides the Committee with an update of training for Members on the code of conduct and the local assessment process

1. Decision(s) Required

- 1.1 To consider what training should be provided in the coming year.

2. Introduction

- 2.1 The Committee's terms of reference state that it will:

“Train or arrange training for elected and co-opted Members on matters relating to the Members' Code of Conduct.”

This requirement is both for Borough and Town and Parish Councillors.

- 2.2 The Committee last considered Member training at its meeting on 26 November 2010. The Committee whilst acknowledging the future uncertainty regarding the Code of Conduct agreed that training should continue to be provided on the Code whilst it remained in force. There probably will be an ongoing requirement for training under the Localism Bill once it is finally enacted which the Committee will continue to play a role.

3. Update

- 3.1 A training session covering both the Code of Conduct and the Local Assessment process was provided by the Monitoring Officer for all new Borough Councillors following their election in May 2011. In addition, the Monitoring Officer provided a training update on the Localism Bill proposals for both the Town and Parish Clerks Forum and the Colchester Association of Locals Councils.
- 3.2 I would suggest that the Committee should consider organising a number of training sessions which could be either generic or adapted specifically if required. The subjects covered should continue to be the Code of Conduct, Local Assessment and Localism Bill requirements (once known) .

4. Strategic Plan References

- 4.1 The arrangements underpin the Council's commitment to quality services and customer excellence.

5. Financial Considerations

5.1 No direct implications.

6. Equality, Diversity and Human Rights Implications

6.1 No direct implications.

7. Publicity Considerations

7.1 No direct implications.

8. Consultation Implications

8.1 No direct implications.

9. Community Safety Implications

9.1 No direct implications.

10. Health and Safety Implications

10.1 No direct implications.

11. Risk Management Implications

11.1 No direct implications.

