STANDARDS COMMITTEE HEARING – 31 JANUARY 2012

A Standards Committee Hearing will be held at **10.00am** on Tuesday 31 January 2012 in the Council Chamber at the Town Hall, Rugby.

Andrew Gabbitas
Executive Director

**A G E N D A**

1. Apologies

   To receive apologies for absence from the meeting

2. Declarations of Interest

   To receive declarations of –

   (a) personal interests as defined by the Council’s Code of Conduct for Councillors;

   (b) prejudicial interests as defined by the Council’s Code of Conduct for Councillors; and

   (c) notice under Section 106 Local Government Finance Act 1992 – non-payment of Community Charge or Council Tax.

   **Note**: Members are reminded that they should declare the existence and nature of their personal interests at the commencement of the meeting (or as soon as the interest becomes apparent). If that interest is a prejudicial interest the Member must withdraw from the room unless one of the exceptions applies.

   **Membership of Warwickshire County Council or any Parish Council is classed as a personal interest under the Code of Conduct. A Member does not need to declare this interest unless the Member chooses to speak on a matter relating to their membership. If the Member does not wish to speak on the matter, the Member may still vote on the matter without making a declaration.**
3. Case Reference of Principal Authority: MCN/ WYATT/ 2011
   To determine these cases.

**Membership of the Panel:**

Mr A Stothard (Chairman), Mrs C Truelove (Vice Chairman)
Borough Councillors: Mrs Bragg, Coles, Gillias, Mrs Hotten, Mistry and Mrs Roodhouse
Parish Councillors: Hall and Wright
Independent Member: Mrs Thornton
## Pre-Hearing Summary – 12 December 2011

### Code of Conduct Complaint against Councillor Pat Wyatt

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<th>Name of Authority:</th>
<th>Rugby Borough Council</th>
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<td>Name of Subject Member:</td>
<td>Councillor Pat Wyatt</td>
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<td>Name of Complainant:</td>
<td>Councillor Keith Rye, Chair of Long Lawford Parish Council</td>
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<td>Case Numbers of Principal Authority:</td>
<td>Rye/Wyatt2011</td>
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<td>Chair of the Hearing:</td>
<td>Mr Alan Stothard</td>
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<td>Veronika Beckova</td>
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<td>Pre-Hearing Meeting:</td>
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<td>Date, time and Place of Hearing:</td>
<td>10.00am on 31st January 2011 at Rugby Borough Council</td>
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### Summary of the Complaint:

On 6th July 2011 the Standards Committee received a complaint from Councillor Keith Rye, the Chairman of Long Lawford Parish Council, concerning the conduct of Councillor Mrs Pat Wyatt of Long Lawford Parish Council and alleging a number of breaches of the Code of Conduct. The nature of the alleged breaches of the Code of Conduct are summarised as follows:

(a) that Mrs Wyatt used her position as a parish councillor improperly by attempting to instruct officers/contractors appointed by the Parish Council to install bollards on land known as the Park Strip at Livingstone Avenue to stop carrying out the work which the Parish Council had authorised but which she disagreed with. Mrs Wyatt failed to treat others with respect;

(b) that during discussions between the Parish Clerk, the contractor and an officer of Rugby Borough Council...
Council, Mrs Wyatt interrupted and was vocal, rude and intimidating to the Clerk;

(c) that Mrs Wyatt obtained a petition signed by several residents of Livingstone Avenue seeking to prevent the installation of the bollards, by giving false information to those residents and misrepresenting the reasons for the Parish Council’s proposal;

(d) that Mrs Wyatt attempted to influence a decision of the Parish Council in which she had both a personal and prejudicial interest.

Findings of fact agreed in the Investigation Report:

Councillor Wyatt agreed with the findings of the report but disagreed with the evidence relied upon by the Investigator. It was agreed during the pre-hearing process meeting that Councillor Wyatt would need to produce evidence to support her assertions that the evidence given to the Investigator was incorrect, in particular the evidence given by the witnesses to events, ie Mr Paul Mernagh.

Will the subject member, Monitoring officer or Investigator be represented at the hearing:

The current position is that Councillor Wyatt is proposing to represent herself at the hearing as will the Investigator and Monitoring Officer.

Names of Witnesses to be called at the hearing:

It is currently proposed that Councillor Wyatt will bring Mr Wyatt. Councillor Wyatt wished to bring Mrs Pallikaropoulos as a witness but this was request was denied by the Monitoring Officer as Mrs Pallikaropoulos was not a witness to the facts of the matter. The independent investigator will call Mr Paul Mernagh.

Outline of proposed procedure

The hearing

A standards committee hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The standards committee should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and members of the authority, have confidence in its procedures and findings.
All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the council and the public. For the subject member, an adverse decision by the committee can result in censure or in suspension for up to six months.

Evidence

The standards committee Chair controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

In many cases, the standards committee may not need to consider any evidence other than the investigation report or the ethical standards officer’s report, and any other supporting documents. However, the standards committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The standards committee can allow witnesses to be questioned and cross-examined by the subject member, the monitoring officer or their representative. Alternatively, the standards committee can ask that these questions be directed through the chair. The standards committee can also question witnesses directly.

Witnesses

Generally, the subject member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. The subject member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing.

The standards committee has the right to govern its own procedures as long as it acts fairly. For this reason, the standards committee may limit the number of witnesses if the number is unreasonable.

The standards committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.
Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be cross-examined. Witnesses as to the character of the subject member, if required, regularly present their evidence in writing and may or may not actually attend the hearing.

Witnesses, especially members of the public, often play an important part in the process and should be treated courtesy and respect. Authorities may wish to consider developing a witness care scheme. At the very least, witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

Standards committees should recognise that subject members also need to be kept fully appraised of the process and any changes to it. Some authorities appoint an officer as a point of contact with the subject member for the duration of the process.
REPORT TO THE STANDARDS COMMITTEE OF RUGBY BOROUGH COUNCIL

BY KEVIN DOUGLAS, INDEPENDENT INVESTIGATOR

31st OCTOBER 2011

SUBJECT – COMPLAINT BY COUNCILLOR K RYE, CHAIRMAN OF LONG LAWFORD PARISH COUNCIL AGAINST PARISH COUNCILLOR MRS P WYATT ALLEGING BREACHES OF THE PARISH COUNCIL’S CODE OF CONDUCT FOR COUNCILLORS (Complaint Reference CC11/002(A)-(D))

1. Executive Summary

1.1 On 6th July 2011 the Standards Committee received a complaint from Councillor Keith Rye, the Chairman of Long Lawford Parish Council, concerning the conduct of Councillor Mrs Pat Wyatt of Long Lawford Parish Council and alleging a number of breaches of the Code of Conduct. The nature of the alleged breaches of the Code of Conduct are summarised as follows:

(a) that Mrs Wyatt used her position as a parish councillor improperly by attempting to instruct officers/contractors appointed by the Parish Council to install bollards on land known as the Park Strip at Livingstone Avenue to stop carrying out the work which the Parish Council had authorised but which she disagreed with. Mrs Wyatt failed to treat others with respect;
(b) that during discussions between the Parish Clerk, the contractor and an officer of Rugby Borough Council, Mrs Wyatt interrupted and was vocal, rude and intimidating to the Clerk;
(c) that Mrs Wyatt obtained a petition signed by several residents of Livingstone Avenue seeking to prevent the installation of the bollards, by giving false information to those residents and misrepresenting the reasons for the Parish Council’s proposal;
(d) that Mrs Wyatt attempted to influence a decision of the Parish Council in which she had both a personal and prejudicial interest.

1.2 In accordance with Section 57A(2) of the Local Government Act 2000, as amended, the Assessment Sub-Committee of the Standards Committee agreed on 3rd August 2011 that the allegations at (a) (b) and (c) above should be referred to the Monitoring Officer for investigation but that no action should be taken in respect of the allegation at (d) above.

1.3 The Assessment Sub-Committee considered that the following paragraphs of the Parish Council’s Code of Conduct could have been breached:
Paragraph 6(a): You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage - Allegation (a)

Paragraph 3(1): You must treat others with respect - Allegations (a) and (b)

Paragraph 5: You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute - Allegation (c)

1.4 In accordance with Section 113 of the Local Government Act 2003, the Monitoring Officer decided to delegate the investigation of this complaint to an independent investigator and accordingly I was appointed to conduct the investigation on 15th August 2011.

1.5 My conclusion from the investigation is that, for the reasons outlined in detail in Section 6 of this report:
   - Allegation (a) - Breach of Paragraphs 5, 6(a) and 3(1)
   - Allegation (b) - Breach of Paragraph 3(1)
   - Allegation (c) - No Breach of Paragraph 5

1.6 My finding, therefore, is that the behaviour complained of in allegation (a) above constitutes a breach of Paragraphs 5, 6(a) and 3(1) of the Code of Conduct; that the behaviour complained of in allegation (b) above constitutes a breach of Paragraph 3(1) of the Code; but that the behaviour complained of in allegation (c) above does not constitute a breach of Paragraph 5 of the Code.

2. Subject of the Complaint – Councillor Mrs Pat Wyatt

2.1 Councillor Mrs Wyatt was re-elected as a member of Long Lawford Parish Council, unopposed, in May 2010 for a further four year term. She signed her Declaration of Acceptance of Office as a Councillor on 11th May 2010 and this included her undertaking to observe the Parish Council’s Code of Conduct for Members.

2.2 Councillor Mrs Wyatt has served on the Parish Council for some 30 years, including a term as Chairman of the Council in 2002. From 2002 to 2006 she was also a member of Rugby Borough Council. From 2006 until 2011, when Long Lawford Parish Council ceased to be a member of the Warwickshire Association of Local Councils (WALC), Mrs Wyatt was a member of the Standards Committee of Rugby Borough Council as a WALC Rugby Area Parish Councils’ representative. As a result of the Parish Council’s resignation from WALC, Mrs Wyatt also had to resign her position as Chairman of the WALC County Committee.
2.3 Mrs Wyatt has attended several training courses on parish council administration provided by WALC and on the Members’ Code of Conduct provided by the Borough Council’s Monitoring Officer.

2.4 An examination of Mrs Wyatt’s most recent entries in the Councillors’ Register of Interests dated 6th June 2011 reveals that, amongst many other bodies, Mrs Wyatt is a member and Secretary and Treasurer of Livingstone Avenue Householders Association.

2.5 On 8th November 2010, a Hearing of the Standards Committee into previous allegations of misconduct against Mrs Wyatt found that she had breached Paragraph 3(1) of the Code of Conduct by failing to treat the Parish Council’s Clerk with respect over a two year period. As a result she was censured by the Committee for her behaviour and was required to attend meetings with the Monitoring Officer and the Chairman and Clerk of the Parish Council with a view to improving her conduct and her relations within the Parish Council. (It should be noted, since Mrs Wyatt has commented upon it, that I conducted the investigation into these previous allegations and submitted the findings to the Standards Committee.)

3. Conduct of the Investigation

3.1 A copy of Councillor Keith Rye’s original complaint is also included in Schedule 1 (Document 1).

3.2 In the course of my investigation I have held meetings with the Clerk to the Parish Council, Ms. Debbie Groves and Councillor Mrs Wyatt. I also had telephone interviews with Mr Paul Mernagh, a surveyor in the Street Scene Department of the Borough Council, Mr David Cox, the contractor appointed by the Parish Council to install bollards at a piece of public open space known as the Park Strip in Livingstone Avenue, and Mr Mark Cox, brother of David Cox and part-time handyman for the Parish Council; all of whom were present at the Park Strip at the time that the complaints against Mrs Wyatt relate to. Copies of my notes of these meetings and telephone interviews are included in Schedule 1 to this report (Documents 2 to 7).

3.3 It will be noted that accompanying the note of the meeting with Mrs Wyatt on 6th September is her own statement in reply to the allegations against her (Document 4). Moreover, my note of the meeting with Mrs Wyatt includes her own comments on my note (shown in bold type) which I have retained in full for the purpose of accuracy and background. At my meeting with Mrs Wyatt, a great deal of information and background papers were provided regarding the ownership of the Park Strip, Rights of Way and Covenants which represent the essence of a longstanding and current dispute between the Trustees of the Livingstone Avenue Householders Association and the Parish Council. The Parish Council has successfully registered its title to the Park Strip with the Land Registry. I have not included any of this information in this report on the basis that,
other than as background to the incident at the Park Strip and providing reasons for the alleged behaviour by Mrs Wyatt, the information is not pertinent to the actual incident or behaviour itself, which is the subject of the investigation. If the Householders Association has legitimate grounds to dispute the Parish Council’s rights over the Park Strip then they should be pursued through the proper legal channels and not through or by the disruption of or distraction from Parish Council business. (Mrs Wyatt when commenting on the draft report, asked me to reconsider my decision in respect of this information. It remains my view that this information only provides the background to the dispute with the Parish Council and the reasons for Mrs Wyatt’s opposition to the installation of the bollards. It is not pertinent to the alleged behaviour displayed on the day of the incident.)

4. Evidence Gathered

Allegation (a)

4.1 The complainant alleges that Mrs Wyatt used her position as a parish councillor improperly by attempting to instruct an officer/contractor appointed by the Parish Council to install bollards on land known as the Park Strip in Livingstone Avenue to stop carrying out the work which the Parish Council had authorised but which she disagreed with. It is also alleged that Mrs Wyatt failed to treat the men with respect.

4.2 In their evidence, Mr Paul Mernagh, a surveyor with Rugby Borough Council who was scanning the ground to identify the position of underground cables and pipes, and Mr David Cox, the contractor appointed by the Parish Council to install the bollards, have both stated that Mrs Wyatt came over to them, accompanied by Mr Wyatt, to tell them that they had no right to be doing the work. She made it clear that she was a parish councillor and told them that they should stop carrying out the work. Both Mr Mernagh and Mr David Cox have said that initially Mrs Wyatt was very civil and polite with them but that when she realised that they were not going to do as she was telling them, and especially when she was told by Mr Cox that she should contact the Parish Clerk with her concerns, she became aggressive and overbearing. Mr Mernagh said Mrs Wyatt was “ranting and raving” about it. It was then that Mr Mernagh contacted the Parish Clerk and asked her to come to the site.

4.3 In her evidence Mrs Wyatt has stated that when she approached the men working on the Park Strip she was not acting as a parish councillor and that she did not tell anyone to stop working. She said that she and her husband made the approach as residents and as trustee (Mr Wyatt) and Secretary and Treasurer (Mrs Wyatt) of the Livingstone Avenue Householders Association to find out what they were doing. She said that she had politely told them that she was a parish councillor and that she had not been told of the works to be carried out or seen any plans and that the Parish Council was required to consult the Householders Association and its trustees regarding any
proposed works. She said she probably told them also that there was a residents’ petition objecting to the bollards being installed which had not yet been considered by the Parish Council. Mrs Wyatt said that she made no demands of the men and did not tell them to stop doing anything.

4.4 Mrs Wyatt confirmed in her evidence that she was present at the meeting of the Parish Council in January 2011 when it was decided to install the bollards at the Park Strip. Mrs Wyatt voted against the proposal but it was approved by 7 votes to 1. She has also confirmed that she was present at the Parish Council meeting in March 2011 when the lower of two quotes for the installation work was accepted. Mrs Wyatt abstained from voting on that occasion.

**Allegation (b)**

4.5 The complainant alleges that during the ensuing discussions at the Park Strip between the Parish Clerk, Mr Mernagh and Mr David Cox, Mrs Wyatt interrupted and was vocal, rude and intimidating to the Clerk.

4.6 In her evidence the Parish Clerk has stated that when she arrived at the Park Strip she met up with Mr Mernagh and Mr David Cox and in order to avoid Mrs Wyatt stood behind the contractor’s vehicle while they discussed matters. She said that Mrs Wyatt then came over to them and interrupted their discussions, saying “Excuse me, Clerk” and waving some document about covenants and easements regarding the Park Strip and saying they had no right to be installing the bollards. The Clerk stated that Mrs Wyatt was ranting at her. She said she told Mrs Wyatt to go away and let her get on with her job and she was not listening to her. She said that Mrs Wyatt shouted back at her that she could not believe that she as Parish Clerk was not listening to her, a councillor of the Parish and said it was outrageous. The Clerk stated that Mrs Wyatt carried on in the same manner until it was impossible to continue the meeting. She said Mrs Wyatt refused to go away and in the end she and Mr Mernagh and the contractor walked away over to where Mr Mark Cox, the Parish Council’s Handyman, was working. In his evidence, Mr Mernagh has stated that Mrs Wyatt’s language was very insulting to the Clerk and intimidating towards her. He said she kept going on about the Parish Council not owning the land and having no right to do the work. Mr David Cox in his evidence has stated that Mrs Wyatt was shouting at the Clerk and was very rude and aggressive to her. He said she “certainly was not acting in a proper way”. Mr Mark Cox was some way away from the others at first and so he could not hear what was being said but after the Clerk arrived, the shouting got quite loud and he heard Mrs Wyatt saying how outrageous it was that the Clerk was ignoring her, “a councillor of the parish”.

4.7 Mrs Wyatt, in her evidence, has stated that the allegation that she was vocal, rude and intimidating towards the Clerk when she arrived on site and was discussing matters with the men was without foundation. She said that she and her husband were talking
to Mr Cox when the Clerk interrupted and asked Mr Cox to come away. She said they then walked away over to where the vans were parked. Mrs Wyatt claims that she had wanted to try to speak to the Clerk to explain in a civil and respectful way that the plans were incorrect and that the Parish Council had not gone about things in the correct way in accordance with the covenants which still applied. She said she approached the Clerk in a nice manner but was told stridently by the Clerk to go away. She said the Clerk stated repeatedly that she was not listening to her and that she should stop interrupting and preventing the Clerk from doing her job. Mrs Wyatt confirmed that she did respond to the Clerk by saying that it was outrageous that the Clerk should state that she was not listening to her – she a councillor and resident of the Parish.

Allegation (c)

4.8 The complainant alleges that Mrs Wyatt obtained a petition signed by several residents of Livingstone Avenue seeking to prevent the installation of the bollards at the Park Strip, by giving false information to those residents and misrepresenting the reason for the Parish Council’s proposal.

4.9 The Clerk has stated that Mrs Wyatt forwarded a petition on behalf of Livingstone Avenue Householders Association objecting to the bollards. The petition was signed by 29 residents from 15 of the properties on Livingstone Avenue. However, the Clerk said that at least one resident who had signed the petition had since said how pleased she was with the bollards and had asked whether they could be extended nearer to her property. When the resident was asked why then had she signed Mrs Wyatt’s petition she had explained that Mrs Wyatt had told them that the bollards were intended to prevent access to their properties. In their evidence, Mr Mernagh and Mr Mark Cox commented that people passing by the site had commented favourably upon the bollards.

4.10 Mrs Wyatt rejected the allegation that she had obtained signatures to the petition by misrepresenting the Parish Council’s reasons and intentions. She had been told by a local resident on 8th May that the Parish Clerk and Chairman and two Planning Enforcement Officers from Rugby BC had met him on 6th May to tell him that it would be necessary for him to remove property he was storing on the edge of the Park Strip prior to the installation of the bollards commencing and asked her what she was going to do about it. She said that neither she, as secretary/treasurer, nor her husband as trustee, of the Householders Association had been made aware of the proposed installation and no plan had been seen. She very hurriedly composed the terms of the petition and went from door to door that day obtaining the signatures. The petition stated that “We the undersigned object strongly to the proposal being undertaken by the Long Lawford Parish Council to place bollards on the (Designated Open Space) known as the “Park Strip”. The Trustees have not been consulted nor residents. We also strongly object to the waste of money on the suggested spending of £5200 on 48 wooden bollards.” Mrs
Wyatt said that she was so concerned when the petition was presented to the June meeting of the Parish Council and it was claimed that the signatories to the petition had been misled and misinformed by her of the Parish Council’s reasons and intentions, that she organised a questionnaire to go to the signatories seeking confirmation as to whether or not they were misled or misinformed when they were asked to sign the petition. The returned questionnaires revealed that 24 of the 29 signatories confirmed that they were not misled or ill-informed; of the 5 remaining signatories, 2 had since left home for University; Mr and Mrs Wyatt themselves were included in the 29 and the final signatory indicated that it was now immaterial since the bollards had been installed. Mrs Wyatt submitted these returned questionnaires for my examination and verification, together with additional letters and testimonials in support of her actions. They were, she submitted, a fulsome demonstration that the accusations and claims against her were unfounded.

5. Scope and Application of the Code of Conduct

5.1 The critical judgement when assessing these allegations against Mrs Wyatt [viz. that she used her position as a parish councillor improperly in attempting to stop works authorised by the Parish Council from being carried out; that she did not treat the Parish Clerk with respect; and that she brought her office and the Parish Council into disrepute when obtaining signatures to a petition by misleading and misinforming residents] is whether she was acting as a councillor or simply as secretary/treasurer to the Livingstone Avenue Householders Association. The Code of Conduct, in this instance, only applies to a councillor when the member is conducting the business of the Council, which includes the business of the office to which the member is elected or appointed. (Model Code Para 2(1)(a) ) The business of the office to which the member is elected will include a member’s constituency or parish work; representing the interests of parishioners; and having dealings with officers of the Council on parish matters.

5.2 Mrs Wyatt maintains that she was only ever acting as a resident and secretary/treasurer of the Householders Association. However, she made it clear to the men working on the site that she was a parish councillor. They claim that she did not describe herself or introduce herself to them as a concerned resident nor as secretary/treasurer of the Householders Association. Though this is challenged by Mrs Wyatt, certainly the men regarded her as a parish councillor. Moreover, she was dealing with the business of the parish. In her exchange with the Parish Clerk, Mrs Wyatt expressed her outrage that the Clerk was ignoring her representations and not listening to her, and she, a councillor of the Parish. The collecting of signatures to the petition would also be considered as part of the representative role of a parish councillor.

5.3 Overall therefore I am satisfied that in these matters Mrs Wyatt was acting as a parish councillor and as such that the Code of Conduct applied. Whilst her roles as councillor and secretary/treasurer of the Association may blur somewhat, Mrs Wyatt
was nevertheless on this occasion conducting “the business of the office” to which she was elected and therefore she was obliged to observe the provisions of the Code of Conduct.

6. Evaluation of Evidence and Conclusions

Allegation (a)

6.1 Mr Mernagh and Mr David Cox have said that in their eyes Mrs Wyatt was telling them, as a parish councillor, that the Parish Council had no right to be carrying out the proposed works and they should stop. They said that at first Mrs Wyatt was quite civil and polite but that as it became clear that she was not getting her way, and especially when Mr Cox said that she would have to speak to the Clerk, then she became aggressive and overbearing. Mr Mernagh has said that Mrs Wyatt was ranting and raving at them. As a result of her behaviour towards them he telephoned the Parish Clerk and suggested she should come down to the site.

6.2 Mrs Wyatt disputes this account of her encounter with the two men. Mr Wyatt was present also and he agrees with his wife. Mrs Wyatt said that she did not tell the men to stop the work. Mrs Wyatt has stated that she merely listened to the answers they gave to her questions and the facts concerning the Park Strip, which were intended to establish what their instructions were and who gave them. Mrs Wyatt claims that she was not acting as a parish councillor, though she says she probably told them she was a parish councillor. She told them of the trustees’ responsibility for rights of way across the strip and of the covenant which required the Parish Council to consult residents and trustees of the Householders Association, which it had not done. She told them of the petition to the Parish Council from local residents objecting to the installation of the proposed bollards. She says she was civil and polite.

6.3 From the evidence provided by Mr Mernagh and Mr David Cox and from what Mrs Wyatt has said she told these men, I have drawn the conclusion that Mrs Wyatt did not approach the men simply to find out what they were doing. Mrs Wyatt knew that the Parish Council had decided in January 2011 to install the bollards and that in March 2011 it had accepted the quotation for the work. Ten or eleven days beforehand she had organised and submitted a petition objecting to the installation of bollards on the Park Strip. Therefore, in all that she told the men that morning on site, I believe her motive was to get them to stop what they were doing. I also accept, on the balance of probabilities, that Mrs Wyatt’s manner towards the men changed from a civil and polite approach when making her initial enquiries of them, to a more aggressive and overbearing attitude when they did not comply with her wishes.

6.4 In my opinion, Mrs Wyatt’s purpose in trying to put a halt to the work was to benefit the Livingstone Avenue Householders Association in an attempt to ensure that a supposed
covenant requirement on the Parish Council to consult with residents and the trustees of the Association on the proposed works was fulfilled. It is my view that Mrs Wyatt used her position as a parish councillor to try to achieve this. **My conclusion in this aspect, is that by behaving in this way, Mrs Wyatt was in breach of Paragraph 6(a) of the Model Code of Conduct.**

6.5 The Code of Conduct requires members to treat others with respect. Mr Mernagh and Mr David Cox were undertaking work on behalf of the Parish Council on the instructions of the Clerk, and that fact, coupled with her probable frustration at not putting a stop to the work, resulted in an aggressive and overbearing approach to the men. Mr Mernagh and Mr Cox were entitled to expect a civil, polite and professional approach from a parish councillor. **Therefore, my conclusion is that in speaking to them in the way she did, Mrs Wyatt failed to treat them with respect, and accordingly she was in breach of Paragraph 3(1) of the Code of Conduct.**

6.6 Although not identified as a possible breach of the Code of Conduct by the Assessment Sub-Committee, I have considered whether in this allegation Mrs Wyatt’s behaviour also breached Paragraph 5 of the Code. Paragraph 5 states that “You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into disrepute”. The former Adjudication Panel for England in one of its rulings on a Code of Conduct appeal said, in relation to Paragraph 5 of the Code, that conduct which diminishes public confidence in and harmed the reputation of the member constituted disrepute. Also that anything which diminishes the member’s office or their authority, or which harms or could harm the reputation of an authority, will bring that office into disrepute (Ref APE 0421). To my mind, the actions of a member who is in breach of Paragraphs 6(a) and 3(1), must surely diminish and harm the reputation of the office of councillor and the authority of which the councillor is a member. **Therefore, I consider that Mrs Wyatt has breached Paragraph 5 of the Code of Conduct.**

**Allegation (b)**

6.7 The Parish Clerk has said that when she arrived on site she called David Cox away from Mrs Wyatt and, together with Mr Mernagh; they went over to the vans to discuss the situation. They had wanted to avoid Mrs Wyatt, but Mrs Wyatt came over to the group of officers and interrupted their discussion saying “Excuse me, Clerk” and waving various documents about and going on about covenants and rights of way and the need to consult. The Clerk told her to go away and let her do her job. She said she repeatedly had to tell Mrs Wyatt that she was not listening to her and for her to go away. Mrs Wyatt had remarked that it was outrageous that the Clerk was ignoring her as a councillor of the parish. The Clerk said that it was necessary for them to move away from Mrs Wyatt in order to continue the discussions. Mr Mernagh’s and Mr David Cox’s accounts of the incident concur with the Clerk’s account and they have said that Mrs Wyatt was rude, very vocal and aggressive towards the Clerk. Mr Mark Cox was working some distance away and so for the most part
did not hear what was going on. However, he has said that after the Clerk arrived and Mrs Wyatt went over to them, the exchanges became louder.

6.8 Mrs Wyatt disagrees with these accounts. She said she approached the Clerk and tried to speak to her and to explain in a civil and respectful way the situation regarding the covenant etc. and that the plans were incorrect but it was the Clerk who was aggressive and shouting at her telling her very stridently to go away and that she was not listening to her. Mrs Wyatt agrees that she did say to the Clerk that it was outrageous that she was not listening to her as a resident and councillor of the Parish. Mr Wyatt confirms Mrs Wyatt’s account of the incident. *(In her comments on the draft report Mrs Wyatt has challenged the evidence of Messrs David and Mark Cox in view of their relationship as brothers and the benefits they gain from their work for the Parish Council. Mrs Wyatt has also commented that she did not (and does not) shout, whilst acknowledging that “maybe allowances need to be made for (her) hearing disability” and the fact that she “has always possessed a strong voice and tries to speak clearly at meetings for the benefit of other persons who have difficulty hearing”.)*

6.9 Once again, we are left with conflicting accounts of this incident. There is, however, a history of loud and aggressive exchanges between Mrs Wyatt and the Clerk and it was right that while the Clerk was discussing Parish Council business with a contractor and an officer of the Borough Council, Mrs Wyatt should be told to go away and not interrupt them. I accept the evidence that Mrs Wyatt did not leave immediately and continued to interrupt and shout at the Clerk in the presence of those outside parties which, in my view, was disrespectful to the office of Clerk and the Clerk herself. I am satisfied on the basis of the accounts from the Clerk and Mr Mernagh and David Cox and given the history of relations between Mrs Wyatt and the Clerk, that, on the balance of probabilities, Mrs Wyatt did not treat the Clerk with respect. **My conclusion, therefore, in respect of allegation (b) is that Mrs Wyatt was in breach of Paragraph 3(1) of the Code of Conduct.**

**Allegation (c)**

6.10 The Clerk has said that she received a petition from Mrs Wyatt objecting to the proposed installation of bollards at the Park Strip signed by 29 residents of 15 properties in Livingstone Avenue. The Clerk said that during the installation of the bollards Mr Mark Cox was speaking to one of the residents who had signed the petition and the resident expressed herself very pleased with the bollards and even asked if they could be extended to the boundary of her property. Mark Cox told the Clerk that the lady resident had said she had signed the petition against the bollards because Mrs Wyatt told her that they would prevent access to her property. Other residents are alleged to have given their support subsequently to the erection of the bollards. On this basis, when submitting the petition to the Parish Council meeting in June, it was commented that Mrs Wyatt had obtained the signatures to the petition by misleading and misinforming people of the Parish Council’s intentions. Following this claim at the Parish Council meeting, Mrs Wyatt organised a
questionnaire to go to all those who signed the petition asking them to say whether or not they believed they had been misled and misinformed. *(Mrs Wyatt has said that she did not tell people that the bollards would prevent access to their property, but because she had not seen any plans showing where the bollards would be positioned she had said only that they might – she did not know.)* Mrs Wyatt has shown me the responses to those questionnaires, and, in effect, all but 3 of the 29 signatories responded saying they had not been misled or misinformed by Mrs Wyatt and 2 of these 3 had left home for University and so were not available. She also submitted other letters in support of her and her actions.

6.11 On the basis of this evidence I am satisfied that it was wrong to claim that the petition was obtained through misleading and misinforming the residents about the Parish Council’s intentions. I have concluded therefore that in respect of Allegation (c) Mrs Wyatt did not bring her office or the Parish Council into disrepute and that there was no breach of Paragraph 5 of the Code of Conduct.

7. Findings

7.1 My findings in respect of the three allegations made by Councillor Keith Rye, the Chairman of Long Lawford Parish Council, against Councillor Mrs Wyatt are that in respect of:

**Allegation (a)**

- Mrs Wyatt used her position as a parish councillor improperly in order to confer or secure an advantage for the Livingstone Avenue Householders Association in breach of Paragraph 6(a) of the Model Code of Conduct for Parish and Town Councils;
- Mrs Wyatt failed to treat an officer of Rugby Borough Council and the Parish Council’s contractor with respect in breach of Paragraph 3(1) of the Code; and
- By her actions, Mrs Wyatt conducted herself in a way which could reasonably be regarded as bringing her office as councillor or the Parish Council into disrepute in breach of Paragraph 5 of the Code.

**Allegation (b)**

- Mrs Wyatt failed to treat the Clerk with respect in breach of Paragraph 3(1) of the Code of Conduct.

**Allegation (c)**

- In obtaining the petition against the Parish Council’s proposals, Mrs Wyatt did not conduct herself in a manner which could reasonably be regarded as bringing her office or the Parish Council into disrepute, and therefore did not breach Paragraph 5 of the Code.
My reasons for these findings are outlined in detail in sub-paragraphs 6.1 to 6.11 of this report.

Kevin J Douglas

Independent Investigator

31st October 2011

SCHEDULE 1

Background Documents and Evidence

Document 1  Complaint by Cllr K Rye against Cllr Mrs P Wyatt 06/07/11
Document 2  Note of Interview with Mrs D Groves, Parish Clerk 06/09/11
Document 3  Note of Interview with Cllr Mrs P Wyatt 06/09/11 (including comments in bold type made by Mrs Wyatt on draft notes)
Document 4  Statement by Mrs Wyatt in reply to Cllr Rye’s allegations
Document 5  Note of telephone interview with Mr Mernagh 26/09/11
Document 6  Note of telephone interview with Mr David Cox 27/09/11
Document 7  Note of telephone interview with Mr Mark Cox 27/09/11

SCHEDULE 2

References and Bibliography

Model Code of Conduct for Parish and Town Councils

Standards for England Case Reviews and Guidance

(Available on www.standardsforengland.gov.uk)
Standards Board Complaint

Complaint by Cllr. Keith Rye of Long Lawford Parish Council against Cllr. Patricia Wyatt

Following requests by residents of Livingstone Ave. Long Lawford, the Parish Council took a decision to install wooden bollards on the Park Strip Livingstone Ave. to prevent parking and protect the grass area. On 19th May 2011 Paul Mernagh of RBC together with the contractor began carrying out a survey to identify underground cables and pipes on the Park Strip. Shortly after he started the work, Mrs. Wyatt approached the contractor, Mr Cox and demanded to know what he was doing. When he informed her, she told him that he was to stop work immediately as he had no authority to be doing the work. The contractor informed Mrs. Wyatt that he was carrying out the work at the request of the Parish Council. Mrs. Wyatt then stated that she was from the Parish Council and that he should stop work immediately.

This I believe to be a breach of the code of conduct as Mrs. Wyatt is acting outside of her authority as a councillor.

Code of Conduct, Chapter 2, paragraph 6(a)

Mr. Mernagh then contacted the Parish clerk, Miss Groves who then attended the site. On her arrival she spoke to Mr. Mernagh to find out what had happened. During this conversation which also involved our contractor Mr Cox, the clerk was approached by Mrs. Wyatt who interrupted her conversation and became very vocal and rude, demanding that the installation of the bollards be stopped. Mrs. Wyatt began shouting at the clerk stating that the Parish Council had no right to be installing the bollards as the council did not own the Park Strip.

There has been a long running dispute between the Parish Council and the Livingstone Ave. Residents Association – of which Mrs Wyatt is both secretary and treasurer. Her husband is a trustee - regarding ownership of the Park Strip. Following exhaustive enquiries by the legal dept. at Land Registry, the Parish Council were issued with new papers giving ownership to the Council, as the originals had gone missing.

I believe that in this instance Mrs. Wyatt has breached the code of conduct in that her behaviour would be liable to bring the council into disrepute.

Code of Conduct Chapter 2, paragraph 5
The clerk asked Mrs Wyatt to allow her to carry out her duty as Clerk when the Clerk and Mr. Mernagh then moved away to continue their discussions when Mrs. Wyatt said 'This is outrageous that the clerk to this Parish Council is ignoring me, A councillor of this parish.

This I believe to be a breach of the code of conduct in that Mrs. Wyatt is acting outside her authority as a councillor.

**Code of Conduct Chapter 2, paragraph 6(a)**

As she walked away, Mrs. Wyatt began arguing with her husband about the matter. This was done in a loud manner for all to hear.

This I believe to be a breach of the code of conduct in that her behaviour would be likely to bring both her and the council into disrepute.

**Code of Conduct Chapter 2, paragraph 5**

It should also be noted that Mrs. Wyatt obtained a petition signed by several residents of Livingstone Ave. attempting to prevent the installation of the wooden bollards. On talking to some of the residents including those who had signed the petition, our contractor Mr. Cox and our handyman Mark, were told how pleased they were with the work. When asked why they had signed the petition they said that they had been told by Mrs. Wyatt that the bollards were to be so installed as would prevent access to their property. They therefore signed the petition.

This I believe to be a breach of the code of conduct in that Mrs. Wyatt had given false information to influence residents to sign a petition, thus bringing the council into disrepute.

**Code of Conduct Chapter 2, paragraph 5 & 6(a)**

Also that Mrs. Wyatt attempted to influence a council decision in which she had both a personal and prejudicial interest in.

**Code of Conduct Chapter 3**
CODE OF CONDUCT COMPLAINT AGAINST COUNCILLOR MRS P WYATT OF LONG LAWFORD PARISH COUNCIL

NOTE OF MEETING WITH MRS D GROVES, PARISH CLERK HELD ON 6TH SEPTEMBER 2011

The Clerk explained that the land at Livingstone Avenue known as the Park Strip was owned by the Parish Council since 1952 but title deeds had not been available for many years but the land had now been registered with the Parish Council as the registered proprietor by the Land Registry as at 10th May 2010. The Clerk had been provided with an official copy of the register and an official copy of the title plan.

Complaints had been received from a couple of residents about cars parking along the Park Strip. As a result the Parish Council decided to install wooden bollards to prevent parking, whilst ensuring that wide enough gaps were left so that grass cutting equipment could access the land. Unfortunately, there was some scaremongering about the Parish Council wanting to develop the land and it was necessary for the Parish Council to make it clear that there could be no development.

On 9th May 2011 Mrs Wyatt forwarded a petition to the Clerk on behalf of Livingstone Avenue Householders Association objecting strongly to the proposed installation of bollards on the Park Strip; stating that neither the Trustees nor the residents had been consulted; and also objecting to the waste of public money on the expenditure of £5200 on the bollards. The petition was signed by some 29 residents from 15 of the properties on Livingstone Avenue. However, at least one resident who had signed the petition had since expressed how pleased she was with the bollards and had asked if they could be extended to near her property’s boundary. When asked why she had signed Mrs Wyatt’s petition objecting to the bollards she had replied that Mrs Wyatt had said that they were intended to prevent access to their properties.

On 19th May 2011 Mr P Mernagh, a surveyor with the Street Scene Dept of Rugby Borough Council, Mr David Cox, the contractor appointed by the Parish Council to install the bollards, and Mr Mark Cox, the Parish Council’s Handyman, were on site at the Park Strip identifying the lay of cables and pipes and marking out the ground so as to avoid them when installing the bollards.

The Clerk reported that apparently, Mrs Wyatt accompanied by her husband had approached the men to enquire what they were doing and proceeded to tell Mark Cox who was hand digging in preparation for the installation, to stop doing it and that he had no authority to do it.
The Clerk received a call from Mr Mernagh asking her to come down to the Strip to sort out Mrs Wyatt because she was ranting and raving and telling them they couldn’t carry on.

When the Clerk arrived on site she met up with the Contractor, Paul Mernagh to discuss the situation. They had tried to avoid Mrs Wyatt and were having the discussion behind the contractors van. Mark Cox was some 60 – 70 feet away carrying on with his work. As soon as Mrs Wyatt saw the Clerk she stormed over with Mr Wyatt. Whilst Paul Mernagh was explaining the position regarding the cables and the location of the bollards was being agreed, Mrs Wyatt interrupted the meeting, saying “Excuse me, Clerk” and waving some document about regarding some easement or covenant and proceeded to rant at the Clerk.

The Clerk reported that she said to Mrs Wyatt “Please go away and let me get on with my job.” to which Mrs Wyatt replied “I cannot believe – it is outrageous – that you the Clerk are not listening to me a councillor of this Parish. You are not entitled to put these bollards in and have no authority to do so.” The Clerk stated that Mrs Wyatt carried on to the point where it was not possible to continue the meeting. Mrs Wyatt refused to go away and in the end the Clerk walked away over to where the P C’s Handyman was. The Clerk stated that some argument then ensued between Mr and Mrs Wyatt and they went off and watched from the other side.

Work on the bollards was completed.

The Clerk stated that Mrs Wyatt was certainly using her position as a Councillor during these encounters rather than simply as Secretary/Treasurer of the Householders Association or concerned resident. She was throwing her weight about as a councillor trying to prevent the authorised works from proceeding.

For the record, the Clerk confirmed that Mrs Wyatt was re-elected as a parish councillor, unopposed, in May 2010 and that she made her Declaration of Acceptance of Office on 11th May 2010. A new Register of Interests form was completed and submitted on 6th June 2011. Copies of both documents were provided.

Kevin Douglas

Investigating Officer

07/09/11
CODE OF CONDUCT COMPLAINT AGAINST COUNCILLOR MRS P WYATT OF LONG LAWFORD PARISH COUNCIL

NOTE OF MEETING WITH MRS WYATT HELD ON 6TH SEPTEMBER 2011

Also present were Mr J Wyatt and Mrs Pallikaropoulos

Mrs Wyatt provided a statement in response to the allegations made against her, a copy of which is attached to this Note.

In respect of the first allegation that in approaching the men on the Park Strip on 19th May and instructing them to stop work, she was acting as a Parish Councillor, Mrs Wyatt said that this was made without foundation. She was not acting as a Parish Councillor and she had not told anyone to stop doing anything. She said that she and her husband made the approach as residents and trustees of the Householders Association to find out what they were doing. She said that she had politely told them that she was a parish councillor and as such she had not been told of the work or any plan of work by the Parish Council. She stated that she probably told them at that point that the Parish Council was required by covenant to consult the Householders Association and trustees on any proposed works and that she had not received any notification as secretary to the Association. She said that she probably also told them that there was a residents’ petition against the work.

When asked whether she was present at a meeting of the Parish Council on 11th January 2011 when the Parish Council decided to install wooden bollards along the boundary of the Park Strip, Mrs Wyatt agreed that she was. (The minutes note that Mrs Wyatt voted against the proposal, which was nevertheless carried by 7 votes to 1.)

Interesting to note that the description of bollards was demarcation posts. The members who voted in favour are not residents of Livingstone Avenue and none enquired of my thoughts on the proposition showing lack of respect knowing they should have consulted the residents and trustees first.

Similarly, Mrs Wyatt agreed that she was present at a meeting of the Parish Council on 8th March 2011 when the lower of two quotes for the installation of bollards at the Park Strip was accepted by the Parish Council. (The minutes note that Mrs Wyatt abstained from voting but the proposal was carried by 7 votes.)

It is my wish to point out that demarcation bollards were/was not an agenda item on 8th March 2011 when Quotes were accepted. 1. Unauthorised “keep of the grass” signs – Park Strip – Livingstone Ave – Clerk. It is my understanding that quotes cannot be proposed unless the item of expenditure is an agenda item. Please refer to Minutes page
Mrs Wyatt stated that she had tried over a long period to tell the Parish Council about the covenants on the land and the need to consult and that the plan with the deeds was not correct. Her husband had attended meetings of the Parish Council and pointed these same issues out but there had never been any approach about the matters from the Parish Council nor the Clerk. They had gone to the trouble themselves of obtaining copies of the Parish Council’s registered title from the Land Registry and the title plan was wrong.

Mr. Wyatt, as sole surviving trustee read out his Statement dated 14th. September 2010 (see attached to this email) Agenda item No. 5. To consider boundary demarcation request – Livingstone Avenue ParkStrip. (refer to Minutes page 551) Request from whom? These Minutes are incorrect in various parts, but I fail to make any changes continually. Mr. Wyatt did not request the Council to pay the solicitors fees in order for the LAHA to have the decision rescinded by the Land Registry. (see penultimate paragraph of the 14th Sept) “Therefore, will this Long Lawford Parish Council agree to pay the solicitors bill if the registration is successfully rescinded”.

Mrs Wyatt stated that the second allegation that she was vocal, rude and intimidating towards the Clerk when she arrived on site and was discussing matters with the men, was also without foundation. She said that she and her husband were talking to Mr Cox when the Clerk interrupted and asked Mr Cox to come away. They walked away and over to where the vans were parked. Mrs Wyatt stated that she had wanted to try to speak to the Clerk to explain in a civil and respectful way that the plans were incorrect and that the Parish Council had not gone about things in the correct way, according to the covenants which still subsisted. She approached the Clerk in a nice manner but was told stridently by the Clerk to go away, and who stated, repeatedly, that she was not listening to her and that she should stop interrupting her and preventing her from doing her job. Mrs Wyatt said that she did respond to the Clerk saying that it was outrageous that she should state that she was not listening to her and she a councillor and resident of the Parish.

With regard to the third allegation that Mrs Wyatt had obtained a petition against the installation of the bollards signed by Livingstone Avenue residents, by giving false information about the purpose of the bollards, Mrs Wyatt rejected that allegation. She had gone from door to door obtaining the signatures in a very short space of time after one of the residents had told her on 8th May that he had been informed by the Clerk that the Parish Council would be installing the bollards on Monday 9th. May soon be installing the bollards, and asking her what she was going to do about it. She had produced the wording for the petition because the residents were completely unaware of what was being proposed. There had been no consultation with residents or the trustees of the Association and no plans had been shown. The petition contained 29 signatures collected from 15 addresses.
Mrs Wyatt said that at the June meeting of the Parish Council when the petition was reported, the Clerk said that people had signed the petition because they had been misled through Mrs Wyatt’s misrepresentation of the proposals. In the light of the Clerk’s statement, Mrs Wyatt had approached the signatories again and produced a questionnaire in which 20 of the 29 had signified that they were not misled into signing the petition through Mrs Wyatt’s misrepresentation of the proposals. Mrs Wyatt also produced letters in support of her position from residents at 22 and 34 Livingstone Avenue and a statement in support from the resident of 27 Livingstone Avenue.

Please note:- 24 of the 29 signified that they were not misled or ill informed, then adding myself and Mr. Wyatt, two missing from 24 Livingstone Ave (had left for University when Questionnaire was printed) and Mrs. Jacques said that it was immaterial, now that they are in the ground. Another resident at No. 22 Livingstone Avenue signed after the bollards had been erected, he was against the bollards and stated so on Questionnair.

Fact:- No one actually agreed with the accusation made against me within the Minutes Page 615 June 14th. 2011. These accusations were made and proved to be unfounded. Note:- They were also discussed within confidential under the Agenda item 1) Livingstone Avenue, St. Lighting Costs and response to PC letter from MP Mr. Pawsey. No relationship.

[Note:

- A great deal of information was provided during the course of this meeting by Mrs Wyatt with regard to the ownership of the Park Strip; the requirement of covenants and the inaccuracy of the Parish Council’s title plan. This information has been alluded to in this Note only as a means of giving the background behind the disagreements that exist between the Householders Association and the Parish Council. Other than for that purpose, the information is largely irrelevant to my investigation of the allegations and has not been covered in detail.

- At the conclusion of the meeting, Mrs Pallikaropoulos made a statement in support of Mrs Wyatt citing in particular her integrity and her commitment to the service of her community over many years. ]

Kevin Douglas
Investigating Officer
08/09/11

Postscript
Since meeting Mrs Wyatt on 6th September, an e-mail was received from her dated 14th September clarifying certain points with regard to Mrs Wyatt’s confirmation that she was present at the meetings of the Parish Council in January and March 2011 when the Parish Council first agreed to the installation of bollards at the Park Strip and accepted the lowest quotation for the work. The text of that e-mail is copied below:

"I remember you asked me for my acknowledgement, pointing out during our interview that I was present during the following Parish Council meetings. Although I answered ‘yes’, I believe it is very important to point out the following to you if I may?

1. That I was present during the Parish Council meeting when the decision was taken regarding the installation of demarcation posts on the "Park Strip". My answer given to you was ‘yes’.

I would wish to point out that the Agenda 11th. January 2011, Item A. Management/Administration C. Transport, Highways, Drains and Street Lighting, Item 1. Unauthorised “keep off the grass” signs – Park Strip – Livingston Ave – Clerk. Therefore the resolution for bollards/demarcation posts did not appear on the Agenda.

2. That I was present during the Parish Council meeting when the quote was discussed and resolved. My answer given to you was ‘yes’.

I would wish to refer you to Agenda 8th. March 2011, Item A Management /Administration. B Recreation Grounds, 1. Bollards installation quotes – Park Strip, Livingston Avenue, together with the Minutes of that meeting.

1. Bollards installation quotes – Park Strip, Livingston Ave – The Clerk verbally presented two same specification quotes. It was discussed and proposed that the lower quote be accepted.....

I did not have any information on this subject. No details of bollards ie: size and height. No site plan. No quantity. The public recall a mention of two quotes only. One £6,000? And the second was £5,200 and the mention of 48 wooden bollards/posts. The cheapest was voted upon. I was not given any information on the two specifications/maybe identical and in the Minutes the quote price was not written in the Minutes, which I asked for and pointed out during the following meeting. The payment is/was £5,295.00.

I tried to establish where these bollards were going to be installed. As a member, no plan, no report, no consultation, lack of proper procedure in connection with this matter.

Although my LLPC paperwork is not in a ratified format, I am able to attach and send to you by E-mail if you require."
STATEMENT IN REPLY TO ALLEGATIONS MADE BY CLLR. KEITH RYE - CHAIRMAN.

JULY 2011.

COMPLAINT A

1. First and foremost the allegations made are without foundation. I was not conducting myself as a Parish Councillor. When asking the gentleman if he would tell me what he was doing with the instrument he was scanning the ground with he politely said he was identifying any pipework in the ground. I then asked him his name and what company he worked for. He answered his name was Paul Mernagh and he was working for the parish council. I then said that I was a Parish Councillor and that I had not received any notification from the Parish Council of work or plan of work on the “Park Strip”. I probably then said that the Parish Council is required to consult the Livingstone Avenue Householders Association and Trustees. (see clause 2 in Conveyance.) As secretary I had not received any notification and I may even have mentioned that there has been a Petition against such work as he described of placing demarcation posts in the “Park Strip”. I was so shocked to learn that the work was still going ahead especially because the Petition had not been considered by the Council. I did not demand to know nor did I tell anyone to stop doing anything.

COMPLAINT B

2. My husband and I proceeded to speak with the other two workers on the east side of the stream. I went to accompany my husband as secretary to a trustee. The purpose was to ask them what they were about to do. Mr. David Cox introduced himself and introduced us to his helpmate but did not say who he was. I learn from Cllr Rye’s complaint that the helpmate was Mr. Mark Cox, the Parish Council Handyman. Are they brothers or related? However, Mr. Wyatt enquired the reason for the yellow marking on the ground. The reply was that the marks were where they were intending to insert the demarcation posts. Mr. Wyatt then said “Do you realise that where the yellow marks are, there is a five inch thick concrete path of which he as trustee of the roads greens, grass verges and footpaths of the estate he was responsible for in a 1969 conveyance. Mr. David Cox replied that he was aware of the concrete path and was only carrying out the instructions given to him by the Parish Clerk, Ms. Groves. Mr. Wyatt had attended Parish Council meetings and had made
statements informing the council of the procedure laid down in the conveyance. Mrs. Wyatt had never been asked any questions or spoken to the clerk on the matter. The conversation with the two Mr. Cox’s was interrupted by a voice calling David to walk away to where she was standing at the back of us. This he did and proceeded to walk with the clerk to alongside one of their vehicles, from our view. Mr. Wyatt was satisfied that clearly he had been told by the contractors that they were fully aware of what he had pointed out regarding the footpath and that what they had been instructed to do would be wrong. We did not tell the contractors to stop what they were doing, at any time.

3. I then walked to where the clerk was speaking with Mr. Mernagh and Mr. D. Cox. My only intention was to try and speak with the clerk to explain the situation in a civil respectful way when the clerk instructed me to go away. She said that she was not prepared to listen to me and repeatedly said go away, I’m not listening, go away I’m not listening to you. Stop interrupting and attempting to stop me from do my job. I did say to the clerk that it was outrageous for her to state that she was not listening to me as a councillor and resident of the parish.

4. Mr. Wyatt insists, that because he heard the clerk repeating over and over again “I am not listening, how on earth can she claim that she heard what I said or supposedly said if she was not listening.

5. We only approached the workmen, as secretary and trustee as representatives of the residents, to seek what was happening on our “Park Strip” (as is usual practice if anything is going on that we think needs to be investigated, especially if we have no prior knowledge) We were not made aware of the clerk’s instructions, nor that she had been contacted by telephone by Mr. Mernaugh, until the complaint now. I would have welcomed the chance to show the clerk the correct plan of the area from original Deeds dated 1952/3 when the houses were bought from the Land Settlement Association and the 1969 conveyance. If the trustees and residents had been consulted in a lawful manner, these incorrect plans could have been discussed and agreement to the choice of any alterations to our “Park Strip” could have been undertaken. Requests by Mr. Wyatt have been repeatedly ignored by the clerk and chairman, thus it is possible other members of the parish council have not been made aware of the true facts. Matters over the past two years regarding Livingstone Avenue Householders Association have in the main been conducted using the “Privacy and confidential” law, another matter which should be examined as when the public have attended meetings and
asked questions, they are told that the matter will be dealt with later under confidential. The people have reacted to this procedure and have sometimes walked out of the meeting in disgust, never to attend again. (Note: A letter, according to the July minutes was agreed to be written by the clerk to Livingstone Avenue Householders Association. Today, the 2\textsuperscript{nd} September it has not been received by the Trustee to whom correspondence should be sent.)

6. Mr. Wyatt, after making repeated requests of the clerk and chairman to supply him with a copy of the title and plan, which he had seen displayed from a distance when shown in the air by the chairman during the parish council meeting on the 13\textsuperscript{th} July 2010, have been ignored. We had to learn how we could make the same request of the Land Registry. (see our copy showing register of title on the 15 September 2010 at 09:23:26. with an inaccurate plan attached.)

7. You will see from my photographs, the total destruction of the said footpath. (see photographs of the destruction of the footpath, together with the 12ft. right of way.) A clause in the conveyance is made regarding an easement of 15ft to be left available at all times in order to facilitate the periodic cleaning of the Clay Hill brook. In the past, occasions have occurred needing the use of large JCB to remove, in the middle of the night, blockage/dam, thus causing the area to flood.

8. It is also very important to observe that at C : Charges register. The deeds and documents of title having been lost the land is subject to such restrictive covenants as may have been imposed thereon before 1 February 2010 and are still subsisting and capable of being enforced.

End of register.

9. I can supply a copy of the Statement of Truth ST3, which I purchased at the time of my visit to the Gloucester Land Registry offices earlier this year. I request that you note the clerk failed to carry out the suggestion made by Borough Councillor Claire Watson to contact the Chairman of Livingstone Avenue Householders Association, I was not contacted both as a councillor or as the secretary of LAHA and also that the trustees of LAHA were not contacted. (see 1969 conveyance which gives instructions to the Parish Council.)
The conversation with the contractors had revealed to Mr. Wyatt that the clerk had not listened or paid any attention to the statements which had been verbally made by himself during the parish council meetings.

THE PETITION.

10. This was a very hurried effort to notify the Parish Council that I was made aware by a resident, Sunday afternoon, May 8th 2011 that he had been informed by the clerk and chairman they were proceeding with the installation of bollards in the “Park Strip” and what was I going to do about it. Immediately I produced the wording of the petition and called upon residents who were totally unaware of what might happen. I, as secretary, had not been informed, nor my husband as a trustee. I was unable to tell the residents exactly where the bollards were to be installed, because I had not been informed as a Parish Councillor and no plan had been given to me. I am concerned within the minutes where the clerk claims that the petition was gained by misleading and ill informed people. However, I proceeded to allow all petitioners to agree with the clerk by producing a questionnaire. You will see that 98% of petitioners have signed to say that I did not mislead or ill inform them. Where is the evidence on which the clerk relies upon when she produces the minutes?
Mr Mernagh stated that he was a surveyor in the Borough Council’s Street Scene Department. He was on site at Livingstone Avenue Park Strip on 19th May really as a favour to the Parish Council to scan the ground where it was proposing to erect bollards to ensure that the contractor did not cut through any cables or pipes underground.

Mr Mernagh said that Mrs Wyatt came over to him and the contractor, David Cox, accompanied by her husband. He said she definitely said that she was a Parish Councillor and that she knew what they were doing and that she did not agree with it. He commented that, funnily, Mrs Wyatt asked a local resident who was passing by what she thought and the lady said that she agreed with the bollards going in.

Mr Mernagh said that initially Mrs Wyatt was very civil towards them but that once she could see that she wasn’t getting her own way with them she began ranting and raving. She wouldn’t listen to them and was telling the contractor to stop working. He said she was aggressive and overbearing.

Mr Mernagh said he rang the Clerk, Debbie Groves. When she arrived and was discussing things with him and the contractor, Mrs Wyatt came over to them. He said it was like “a red rag to a bull”. He said Mrs Wyatt’s language was very insulting to the Clerk and, in a way, intimidating towards her. He said Mrs Wyatt was going on about the Parish Council not owning the land and having no right to do the work. The Clerk told her to go away and that she was not listening to her.

26th September 2011
Mr Cox said that he was appointed by Long Lawford Parish Council to install bollards on the Park Strip at Livingstone Avenue. He was present on site with Mr Paul Mernagh of Rugby Borough Council on 19th May surveying the land for underground cables and pipes.

Mr Cox said that Mrs Wyatt came over to him and Mr Mernagh and was polite and civil at first. He said she was speaking with a lot of authority; talking about a right of way and telling them that they had no authority to do what they were doing. He said she was trying to get them to stop their work.

Mr Cox said he told Mrs Wyatt that he was just a contractor and that she wold have to speak to the Clerk, Debbie Groves. She became a little bit rude in a way after that and didn’t accept it when they said she’d have to speak to Debbie Groves – she became a lot louder and antagonistic. He said that he was not the type to be intimidated – particularly by an elderly woman – but that if you were easily intimidated then Mrs Wyattt would put you off.

Mr Cox said that at that point Mr Mernagh rang Debbie Groves to tell her about the situation.

When Debbie Groves arrived on site and while she was discussing matters with him and Mr Mernagh, Mrs Wyatt came across to her and was shouting at her and was very rude and aggressive to her – potentially intimidating. He said she certainly wasn’t acting in a proper way.

27th September 2011
Mr Mark Cox said that he was the part-time handyman for the Parish Council and so had come across Mrs Wyatt before.

On the day in question he said he was helping David Cox, his brother and the contractor appointed by the Parish Council, and was doing some of the digging for the bollards.

When Mrs Wyatt came over to Mr Mernagh and David Cox he was about 50 meters away working and so couldn’t hear what she was saying. Later, after Debbie Groves arrived on site and the shouting got quite loud he said he could hear Mrs Wyatt saying how outrageous it was that Debbie Groves should ignore her, a councillor of the Parish.

Mr Cox said he was aware that there had been clashes between Mrs Wyatt and other parish councillors and the Clerk. He said she had been like that for years and thought she was bombproof because she got away with it.

Mr Cox said that the work on the bollards went on for the best part of the week and that after people saw what was going on they were happy with the work.

27th September 2011
THE MODEL CODE OF CONDUCT
FOR PARISH AND TOWN COUNCILS

Part 1
General provisions

Introduction and interpretation

1.—(1) This Code applies to you as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State (see Annexure to this Code).

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

"meeting" means any meeting of—

(a) the authority;
(b) any of the authority’s committees or sub-committees, joint committees or joint sub-committees;

“member” includes a co-opted member and an appointed member.

(5) References to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or
(b) on any other body, you must, when acting for that other body, comply with your authority’s code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.
General obligations

3.—(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,
(ii) a witness, or
(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority’s code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority’s reasonable requirements; and

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes).

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7. Paragraph 7 does not apply to your authority.
Part 2
Interests

Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority’s area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority’s area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority’s area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

(ii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority’s area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (5), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority’s register of members’ interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

Prejudicial interest generally

10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) this sub-paragraph does not apply to your authority;

(ii) this sub-paragraph does not apply to your authority;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

11. Paragraph 11 does not apply to your authority.
Effect of prejudicial interests on participation

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—
   (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
   (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;
   unless you have obtained a dispensation from your authority’s standards committee; and

(b) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3
Registration of Members’ Interests

Registration of members’ interests

13.—(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority’s register of members’ interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority’s monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority’s monitoring officer.

Sensitive information

14.—(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority’s monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority’s monitoring officer asking that the information be included in your authority’s register of members’ interests.

(3) In this Code, “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.
Annexure - The Ten General Principles

The general principles governing your conduct under the Relevant Authorities (General Principles) Order 2001 are set out below:

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.
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2 STANDARDS COMMITTEE DETERMINATIONS
This guidance is designed to help members and officers in relevant authorities who are involved in the determination of complaints that a member may have breached the Code of Conduct. It reflects the Standards Committee (England) Regulations 2008 (the regulations). These regulations are mandatory and this guidance must be taken into account by your authority.

It details each stage of the determination of complaints process and offers suggestions for effective practice. In addition, it provides a toolkit of useful document templates that may be used or adapted by authorities as required.

The guide is aimed primarily at members of standards committees and monitoring officers, but will also provide a useful reference tool for all members and officers involved in the determination of complaints.

It applies to:

- district, unitary, metropolitan, county and London borough councils
- English police authorities
- fire and rescue authorities (including fire and civil defence authorities)
- the London Fire and Emergency Planning Authority
- passenger transport authorities
- the Broads Authority
- national park authorities
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

Each authority must develop effective procedures to fulfil its legislative requirements. Members and officers involved in the determination of complaints must take this guidance into account when doing so.

Any reference in this guidance to a standards committee includes a reference to sub-committees established to consider a monitoring officer’s investigation report and to consider determination hearings. Any reference to the “subject member” is a reference to the member who is the subject of the complaint that the Code of Conduct may have been breached.
introduction

You can contact the Standards Board for England on 0845 078 8181 or email enquiries@standardsboard.gov.uk

Regulations

The Standards Board for England has issued this guidance to reflect the Standards Committee (England) Regulations 2008 (the regulations) in respect of holding determination hearings. These regulations derive from the Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007.

The regulations set out the framework for the operation of a locally based system for the assessment, referral, investigation and hearing of complaints of member misconduct. Under the regulations, standards committees must take this guidance into account.

The regulations do not cover joint working between authorities. The government plans to issue further regulations to provide a framework for authorities to work jointly on the assessment, referral, investigation and hearing of complaints of misconduct by their members.

Background

The main purpose of the standards committee’s determination hearing is to decide whether a member has breached the Code of Conduct and, if so, to decide if a sanction should be applied and what form the sanction should take. All complaints that a member may have breached the Code are assessed by the relevant authority’s standards committee.

The standards committee must establish a sub-committee (the assessment sub-committee) which is responsible for assessing complaints that a member may have breached the Code. A complainant may make a request for a review of the standards committee’s decision where it decides to take no further action on a complaint. The standards committee must establish a review sub-committee which is responsible for carrying out these reviews.

The standards committee should appoint a sub-committee (the consideration and hearing sub-committee) to consider a monitoring officer’s investigation report and to hold determination hearings. This sub-committee must be chaired by an independent member of the standards committee.

On completion of an investigation the monitoring officer must make one of the following findings:

- There has been a failure to comply with the Code.
- There has not been a failure to comply with the Code.

They must write an investigation report and send a copy of it to the subject member. Alternatively, where a Standards Board ethical standards officer has completed an investigation and decided that a complaint should be determined by the standards committee, they will refer their report to the monitoring officer.

The monitoring officer must refer the report to the standards committee. A consideration and hearing sub-committee
should be appointed to receive and consider such reports. If the investigator, in their report, finds no failure to comply with the Code of Conduct, the standards committee must decide whether to accept that recommendation. The standards committee must also decide whether it or the First-tier Tribunal should hear the case. This preliminary decision must be formally made and recorded.

A meeting of the standards committee to consider the monitoring officer’s investigation report must be convened under Regulation 17 of the regulations. Regulation 8(6) allows the consideration of any information presented for that purpose to be considered as exempt information. As with all exempt information decisions, the standards committee must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. When advising on this matter the monitoring officer should consider the effect of Regulation 17(4). This regulation allows the subject member to prohibit the publication of a notice, stating that the standards committee has found that there has been no failure to comply with the Code.

Despite the ability of the subject member to prohibit the publication of a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a meeting. It also does not always have to result in excluding details of the complaint from the report sent out in advance of the meeting. In most cases, the public interest in transparent decision-making by the standards committee will outweigh the subject member’s interest in limiting publication of an unproven allegation that has not yet been determined.

A member of the standards committee who considers and overturns a monitoring officer’s finding that there has been no failure to comply with the Code may participate in a subsequent hearing.

This meeting to consider the monitoring officer’s investigation report provides a useful opportunity for the standards committee to consider the potential issues which might arise during the pre-hearing process.

This consideration meeting is separate to the meeting at which the hearing is conducted. If the investigation report finds that there has been a failure to comply with the Code a hearing must take place – unless the standards committee decides that the matter should be referred to the First-tier Tribunal for determination.
hearings

Timing of the standards committee hearing

Under Regulation 18 of the regulations, a standards committee must hear a complaint within three months of the date on which the monitoring officer’s report was completed. If the investigation was carried out by an ethical standards officer, the standards committee must hear the complaint within three months of the date that the monitoring officer received the ethical standards officer’s report.

As with a meeting to consider a monitoring officer or ethical standards officer’s report, when the standards committee is convened for a hearing under Regulation 18 it is also subject to Regulation 8(6).

When assessing whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information, monitoring officers similarly need to consider the effect of Regulation 20(2). This allows the subject member to prohibit normal publication of the committee’s notice of the finding of no failure to comply with the Code of Conduct.

As before, despite the ability of the subject member to prohibit the publication of a notice, the decision as to whether to maintain an exemption does not always have to result in the public being excluded from a hearing. It also does not always have to result in excluding details of the complaint from the report sent out in advance of the hearing. In most cases, the public interest in transparent decision-making by the standards committee will outweigh the subject member’s interest in limiting publication of an unproven allegation that has not yet been determined.

In most cases all parties will agree that the hearing should take place in public. It is sensible to seek the views of the relevant parties as early as possible to allow for legal advice to be sought if required.

If the standards committee decides that a hearing is appropriate they should give a copy of the report to:

- the subject member
- the clerk of any relevant town or parish council
- the standards committees of any other authorities concerned

The hearing must take place at least 14 days after the subject member receives a copy of the report from the monitoring officer. However, the hearing can be held sooner than 14 days after the member receives a copy of the report if the subject member agrees.

The standards committee may consider the report in the subject member’s absence if the subject member does not go to the hearing. If the standards committee is satisfied with the subject member’s reasons for not being able to come to the hearing, it should arrange for the hearing to be held on another date.

If the standards committee does not hear the matter within three months of receiving the completed report, it must ensure that the matter is heard as soon as possible after that.
Scheduling a hearing

Except in the most complicated cases, standards committees should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

When scheduling hearings, standards committees should bear in mind that late-night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to important matters being forgotten.

The pre-hearing process

The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself.

Other than in very straightforward cases, authorities should use a pre-hearing process to:

- Identify whether the subject member disagrees with any of the findings of fact in the investigation report
- Identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
- Identify whether evidence about those disagreements will need to be heard during the hearing
- Decide whether there are any parts of the hearing that are likely to be held in private
- Decide whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain ‘exempt’ material

The pre-hearing process should usually be carried out in writing. However, occasionally a meeting between the standards committee, the relevant parties and their representatives may be necessary. It is important for the monitoring officer advising the standards committee to consider pre-hearing matters carefully.

Some matters in the pre-hearing process may be decided only by the standards committee or consideration and hearing sub-committee (if one is appointed). Therefore, if it is necessary for the standards committee to meet, they will have to do so formally as with any other council committee meeting. However, it is usually more appropriate for the majority of the pre-hearing process to be dealt with by the monitoring officer or other suitable officer.

Key points for the pre-hearing process

The officer providing administrative support to the standards committee should write to the subject member proposing a date for the hearing, and they should do this in consultation with the chair of the standards committee.
They should also outline the hearing procedure, the member’s rights and they should additionally ask for a written response from the subject member within a set time. This is to find out whether the subject member:

- wants to be represented at the hearing by a solicitor, barrister or any other person
- disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements
- wants to give evidence to the standards committee, either verbally or in writing
- wants to call relevant witnesses to give evidence to the standards committee
- wants any part of the hearing to be held in private
- wants any part of the investigation report or other relevant documents to be withheld from the public
- can attend the hearing

This is because attention to the factual issues will save valuable time later on in the determination process.

The standards committee should start this process by requesting that the subject member makes clear precisely what findings of fact in the report it disagrees with and why.

It should invite the monitoring officer or ethical standards officer to comment on the subject member’s response within a set time period. This is to ensure that all parties are clear about the remaining factual disputes and can prepare to deal with those issues on the appointed day.

The standards committee should also ask the relevant parties to provide outlines or statements of the evidence their witnesses intend to give. This will allow the standards committee to decide how many witnesses may reasonably be needed and to identify the issues they will be dealing with at the hearing.

It should only allow the relevant parties to raise new disagreements over factual matters in the investigation report at the hearing in exceptional circumstances, such as new evidence becoming available that the parties could not have produced before. The standards committee should make clear to the subject member that unless they comply with the above procedure, it may rule that it will not allow the new evidence to be presented at the hearing.

It is important for standards committee members involved in the pre-hearing process to bear in mind the distinction between the essential facts of the case and any inferences based on those facts. A critical part of the pre-hearing process should be an attempt to focus the relevant parties’ attention on isolating all relevant disputes of facts between them.
Members of the standards committee should consider the evidence provided to them before the hearing to identify any potential conflicts of interest.

In addition they should consider the evidence to identify any connection with the people involved or any other doubts they have over the integrity of the hearing. If they have such concerns, they should seek advice from the monitoring officer as soon as possible. For example, they may know a witness who will be giving controversial evidence or they may have an interest in an important element of the case.

The determinations toolkit features model forms that can help the member respond to the standards committee. It includes a form to identify any findings of fact that the member disagrees with – **Form A**. It also includes a form to outline any further evidence for the standards committee – **Form B**.

The standards committee may also arrange for any other witnesses to be present who they feel may help in determining the case. This may include the complainant. However, the standards committee cannot order witnesses to appear or give evidence.

**Pre-hearing process summary**

The standards committee’s clerk should consult with the committee’s legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks before the hearing. This should be done after the standards committee has received responses from the subject member and from the investigating officer. The pre-hearing process summary should:

- set the date, time and place for the hearing
- summarise the allegation
- outline the main facts of the case that are agreed
- outline the main facts which are not agreed
- note whether the subject member or investigating officer will go to the hearing or be represented at the hearing
- list those witnesses, if any, who will be asked to give evidence, subject to the power of the standards committee to make a ruling on this at the hearing
- outline the proposed procedure for the hearing

You can find a checklist for this pre-hearing process summary document in the toolkit – **Form F**.
hearings

The hearing

Members should bear in mind that a standards committee hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities. The standards committee should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and members of the authority, have confidence in its procedures and findings.

The standards committee should bear in mind the need to maintain public confidence in the council’s ethical standards. This requires that the standards committee’s decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the council and the public. For the subject member, an adverse decision by the committee can result in censure or in suspension for up to six months.

Representatives

The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish. If the subject member concerned wants to have a non-legal representative, the subject member must obtain the consent of the standards committee.

The standards committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Evidence

The standards committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

In many cases, the standards committee may not need to consider any evidence other than the investigation report or the ethical standards officer’s report, and any other supporting documents. However, the standards committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The standards committee can allow witnesses to be questioned and cross-examined by the subject member, the monitoring officer, the ethical standards officer or their representative. Alternatively, the standards committee can ask that these questions be directed through the chair. The standards committee can also question witnesses directly.
Witnesses

Generally, the subject member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. The subject member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing.

The standards committee has the right to govern its own procedures as long as it acts fairly. For this reason, the standards committee may limit the number of witnesses if the number is unreasonable.

The standards committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.

Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be cross-examined. Witnesses as to the character of the subject member, if required, regularly present their evidence in writing and may or may not actually attend the hearing.

Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect. Authorities may wish to consider developing a witness care scheme. At the very least, witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

Standards committees should recognise that subject members also need to be kept fully apprised of the process and any changes to it. Some authorities appoint an officer as a point of contact with the subject member for the duration of the process.

Sanctions

If the standards committee finds that a subject member has failed to follow the Code of Conduct and that they should be sanctioned, it may impose any one or a combination of the following:

- censure of that member
- restriction for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) of that member’s access to the premises of the authority or that member’s use of the resources of the authority, provided that those restrictions meet both the following requirements:
  i) They are reasonable and proportionate to the nature of the breach.
  ii) They do not unduly restrict the person’s ability to perform the functions of a member.
- partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)
- suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008)
that the member submits a written apology in a form specified by the standards committee

that the member undertakes such training as the standards committee specifies

that the member participates in such conciliation as the standards committee specifies

partial suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met either of the following restrictions:

i) They have submitted a written apology in a form specified by the standards committee.

ii) They have undertaken such training or has participated in such conciliation as the standards committee specifies.

Suspension of that member for a period not exceeding six months (three months for complaints received by the Standards Board before 8 May 2008) or until such time as the member has met either of the following restrictions:

i) They have submitted a written apology in a form specified by the standards committee.

ii) They have undertaken such training or has participated in such conciliation as the standards committee specifies.

Suspension or partial suspension will normally start immediately after the standards committee has made its decision. However, if the standards committee chooses, the sanction may start at any time up to six months following its decision. This may be appropriate if the sanction would otherwise have little effect on the subject member. For example, in the case of a suspension or partial suspension where there are no authority or committee meetings which the subject member would normally go to in the period after the hearing has finished. The standards committee should also confirm the consequences, if any, for any allowances the subject member may be receiving.

Periods of suspension or partial suspension set by a standards committee do not count towards the six-month limit for absences from authority meetings, after which a member would normally be removed from office under section 85 of the Local Government Act 1972.

Considering the sanction

When deciding on a sanction, the standards committee should ensure that it is reasonable and proportionate to the subject member’s behaviour. Before deciding what sanction to issue, the standards committee should consider the following questions, along with any other relevant circumstances:

- What was the subject member’s intention? Did the subject member know that they were failing to follow the Code of Conduct?
Did the subject member get advice from officers before the incident? Was that advice acted on or ignored in good faith?

Has there been a breach of trust?

Has there been financial impropriety, for example improper expense claims or procedural irregularities?

What was the result of failing to follow the Code of Conduct?

What were the potential results of the failure to follow the Code of Conduct?

How serious was the incident?

Does the subject member accept they were at fault?

Did the subject member apologise to the relevant people?

Has the subject member previously been warned or reprimanded for similar misconduct?

Has the subject member failed to follow the Code of Conduct before?

Is the subject member likely to do the same thing again?

How will the sanction be carried out? For example, who will provide the training or mediation?

Are there any resource or funding implications? For example, if a subject member has repeatedly or blatantly misused the authority’s information technology resources, the standards committee may consider withdrawing those resources from the subject member.

Suspension may be appropriate for more serious cases, such as those involving:

- trying to gain an advantage or disadvantage for themselves or others
- dishonesty or breaches of trust
- bullying

Sanctions involving restricting access to an authority’s premises or equipment should not unnecessarily restrict the subject member’s ability to carry out their responsibilities as an elected representative or co-opted member.

The following is an extract from useful guidance published by the First-tier Tribunal on aggravating and mitigating factors they take into account when assessing an appropriate sanction:

"Examples, but not an exhaustive list, of mitigating factors are:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice."
hearings

- A member’s previous record of good service.

- Substantiated evidence that the member’s actions have been affected by ill-health.

- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.

- Compliance with the Code since the events giving rise to the determination.

- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

Examples, but again not an exhaustive list, of aggravating factors are:

- Dishonesty.

- Continuing to deny the facts despite clear contrary evidence.

- Seeking unfairly to blame other people

- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.

- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

The First-tier Tribunal also advises the following:

In deciding what action to take, the Case Tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Case Tribunal should be designed both to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others.

Case Tribunals should take account of the actual consequences which have followed as a result of the member’s actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

This guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code. Any such tariff would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.
Notice of the standards committee’s findings

The standards committee should announce its decision at the end of the hearing. It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day, before people’s memories fade. The officer providing administrative support to the standards committee will normally also draft minutes of the meeting.

The standards committee must give its full written decision to the relevant parties as soon as possible after the hearing. In most cases this should be within two weeks of the hearing.

The relevant parties are:

- the subject member
- the complainant
- the standards committees of any other authorities concerned
- any parish or town councils concerned
- the Standards Board for England

Making the findings public

The standards committee must arrange for a summary of the decision and reasons for it to be published in at least one newspaper that is independent of the authorities concerned. The newspapers where the decision and reasons are published should be circulated in the area of the authorities involved. A summary of the decision may also be published on the website of any authorities concerned, and in any other publication if the standards committee considers it appropriate.

If the standards committee finds that the subject member did not fail to follow the authority’s Code of Conduct, the public summary must say this and give reasons for this finding. In such cases, the subject member is also entitled to decide that no summary of the decision should be passed to local newspapers.

If the standards committee finds that the subject member failed to follow the Code but that no action is needed, the public summary must:

- say that the member failed to follow the Code, but that no action needs to be taken
- outline what happened
- give reasons for the standards committee’s decision not to take any action
- state that the member may appeal against that finding

If the standards committee finds that a member failed to follow the Code and it imposed a sanction, the public summary must:

- say that the member failed to follow the Code
- outline what happened
findings

- explain what sanction has been imposed
- give reasons for the decision made by the standards committee
- state that the member may appeal against that finding

The standards committee’s reports and minutes should be available for public inspection for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

Written decision format

For consistency and thoroughness, standards committees should use the following format for their full written decisions.

The front cover of the standards committee’s full written decision should include the name of the:

- authority
- subject member
- complainant
- standards committee member who chaired the hearing
- standards committee members who took part in the hearing
- monitoring officer
- ethical standards officer who referred the matter (if applicable)
- local investigator who investigated the matter (if applicable)
- clerk of the hearing or other administrative officer

It should also include:

- case reference numbers from the principal authority and from the Standards Board for England, (if applicable)
- the date of the hearing
- the date of the report

The standards committee’s full written decision should include:

- a summary of the complaint
- the relevant section or sections of the Code of Conduct
- a summary of the evidence considered and representations made
- the findings of fact, including the reasons for them
- the finding as to whether the member failed to follow the Code, including the reasons for that finding
- the sanctions imposed, if any, including the reasons for any sanctions
- the right to appeal.
The Local Government Act 2000 enables the First-tier Tribunal and standards committees to suspend and partially suspend members found to be in breach of the Code of Conduct. But, it does not specify exactly what members can and cannot do in their official capacity during the term of suspension.

This has led to confusion in some authorities as to what representative roles, if any, a suspended member can perform. It has also led to confusion over what council facilities they are allowed to use and what entitlements they can continue to receive as a suspended member. This section clarifies what representative roles, if any, a suspended member can perform.

### Full suspensions

Members under full suspension should not:

1) **Take part in any formal business of the authority**

A member who is fully suspended may not exercise any of the functions or responsibilities of membership of the authority. Section 83(9) of the Local Government Act 2000 further provides that a suspended member should not participate in any committee or sub-committee of the authority.

2) **Have access to council facilities**

Suspended members should not use or have access to council facilities. As the member is under suspension and unable to conduct council business, it follows that any use of council facilities by a suspended member would not be conducive to the discharge of the functions of the authority. This is because the member would not be performing council business while suspended.

3) **Receive their council allowance**

Under Regulation 4(3) of the Local Authorities (Members Allowances) Regulations 2003, councils may specify in their member allowance schemes that:

> Where a member is suspended or partially suspended from his responsibilities or duties as a member of an authority in accordance with part III of the Local Government Act 2000 or regulations made under that Part, the part of basic allowance payable to him in respect of the period for which he is suspended or partially suspended may be withheld by the authority.

It is recommended that members should not receive their allowance while under suspension because they are not performing their role as a member. But, the decision to withhold a member’s allowance is ultimately at the discretion of the individual authority.
Members under suspension, should:

1) **Make their suspended status clear**

While suspended members remain councillors, they should put 'suspended' after their name when referring to themselves in writing as members. They should also notify constituents of this when contacted by them on constituency business. This is to ensure that all concerned are aware that the member is under suspension and unable to perform council duties.

2) **Make arrangements for another member to handle their constituency work**

With help from their council officers, suspended members can arrange for other ward members to handle their constituency work. Or, in the case of a single-member ward, suspended members can arrange for neighbouring ward members to take over their constituency work for the duration of the suspension. This ensures that constituents continue to be democratically represented.

**What responsibilities remain for suspended members?**

The Code of Conduct does not apply to a person who has been suspended in respect of a relevant function of office for a relevant period of time, so long as the member makes it clear that they have been suspended and does not purport to act as a representative of their authority.

However, when amendments to section 52 of the Local Government Act 2000 come into effect, three paragraphs under the Code of Conduct will apply, “at any other time, where that conduct constitutes a criminal offence”. As such, these paragraphs will still apply to members who are suspended. These paragraphs will be:

- paragraph 3(2)(c) – intimidation of certain persons in relation to an allegation under the Code of Conduct
- paragraph 5 – disrepute
- paragraph 6(a) – improperly conferring or securing an advantage or disadvantage

**Partial suspensions**

Members can be partially suspended under sections 83(9) and (10) of the Local Government Act 2000. While members who are fully suspended cannot take part in any formal business of the authority during the period of suspension, members who are partially suspended are restricted only from certain activities or business.

The terms of a partial suspension must be set by the standards committee during sentencing. It will often involve suspension from certain committees, or restricted access to certain areas or individuals.

A partial suspension enables the committee to tailor a sanction to the particular breach, while still allowing the member to carry out other functions. For instance, a member who failed to uphold
suspensions

the Code of Conduct at a planning committee could be suspended from taking part in planning committee meetings for a certain period. Or a member who bullied licensing officers about an application might be barred from contact with officers of the licensing department for a certain period. Again we recommend that members should not receive allowances relating to areas in which they are suspended from for the duration of their suspension.

Officers and members of the authority should be informed of a member's suspension and advised of the suspended member's rights and obligations, as detailed earlier. The council should also help the member make arrangements for another member, either from their ward or a neighbouring ward, to take over constituency work.

It may also notify the public in the authority's area that the member is suspended and unable to perform official council duties until the end of the suspension. Once the suspension has ended, the member is free to resume their duties in full as a member of the authority.
appeals

**Appeal to the First-tier Tribunal**

Where a standards committee decides that a member has failed to comply with the Code of Conduct, the member may within 28 days of being notified of that decision, seek permission to appeal to the First Tier Tribunal and if appropriate, apply to the First-tier Tribunal for the suspension of any sanction imposed until such time as any appeal is determined.

In deciding whether to give permission to appeal, the First-tier Tribunal will consider whether, in its opinion, there is a reasonable prospect of the appeal being successful (either in whole or in part).

Permission to appeal or to suspend a sanction may be given in relation to the whole or any specified part of the finding or sanction.

**References to the First-tier Tribunal for action in respect of misconduct**

An Ethical Standards Officer may refer the matters which are subject to the investigation to the First-tier Tribunal for adjudication.

A standards committee may refer a case to the First-Tier Tribunal for determination where it considers that the action it could take against a member is insufficient and the First-tier Tribunal agrees to accept the referral.

**Appeals to the Upper Tribunal**

**Member appeal** - Where the First-tier Tribunal decides that a member has failed to comply with the Code of Conduct, the member may, within 28 days of being notified of that decision seek permission to appeal against that decision to the Upper Tribunal (Administrative Appeals Chamber). The member must first apply to the First-tier Tribunal for permission to appeal.

**Appeal by Others** - Either party can seek to appeal the decision of the First-tier Tribunal to the Upper Tribunal (Administrative Appeals Chamber) if they can show there was an error of law made in that decision. The party wishing to appeal must first apply to the First-tier Tribunal for permission to appeal. This must be made in writing within 28 days after the First-tier Tribunal has sent written reasons for its decision.

On receiving an application for permission to appeal the First-tier Tribunal may decide to review its decision, if it is satisfied there was an error of law. If the First-tier Tribunal decides not to review its decision, it will then consider whether to give permission to appeal the decision to the Upper Tribunal.
If the First-tier Tribunal refuses permission to appeal to the Upper Tribunal the party has a right to make an application directly to the Upper Tribunal for permission to appeal no later than a month after receiving that refusal decision.

Additionally, where the First-tier Tribunal decides that a member has failed to comply with the Code of Conduct, the member may also within 28 days of being notified of that decision seek permission to appeal against the finding of failure to comply with a code of conduct or the imposition of any sanction. Again the member must first apply to the First-tier Tribunal for permission to appeal.