



Wednesday, 1 June 2011

STANDARDS COMMITTEE

A meeting of **Standards Committee** will be held on

Thursday, 9 June 2011

commencing at **2.30 pm**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Torbay Council

Councillor Doggett Councillor Stocks

Councillor Addis Councillor McPhail

Brixham Town Council

Councillor Boote Councillor Lomas

Councillor Henderson

Independent Members

Mr Heath Mr Dalzell Mr Bastow

Mr Branch Mr Hutchinson

Our vision is for a cleaner, safer, prosperous Bay

Torbay Council recognises the importance of high standards of conduct and ethics from its politicians and officers. The Council strives to ensure that its politicians and officers maintain these standards when representing the Council and the people of Torbay

For information relating to this meeting or to request a copy in another format or language please contact:

**Democratic Services, Town Hall, Castle Circus, Torquay, TQ1 3DR
(01803) 207016**

Email: democratic.services@torbay.gov.uk



STANDARDS COMMITTEE AGENDA

1. **Election of Chairman/woman**
To elect a Chairman/woman of the Committee for the 2010/2011 Municipal Year.
2. **Apologies**
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
3. **Appointment of Vice-Chairman**
To appoint a Vice-Chairman/woman of the Committee for the ensuing Municipal Year.

4. **Minutes**
To confirm as a correct record the Minutes of the meeting of the Committee held on 25 November 2010.

5. **Declarations of interest**

- (a) To receive declarations of personal interests in respect of items on this agenda

For reference: Having declared their personal interest members and officers may remain in the meeting and speak (and, in the case of Members, vote on the matter in question). If the Member's interest only arises because they have been appointed to an outside body by the Council (or if the interest is as a member of another public body) then the interest need only be declared if the Member wishes to speak and/or vote on the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

- (b) To receive declarations of personal prejudicial interests in respect of items on this agenda

For reference: A Member with a personal interest also has a prejudicial interest in that matter if a member of the public (with knowledge of the relevant facts) would reasonably regard the interest as so significant that it is likely to influence their judgement of the public interest. Where a Member has a personal prejudicial interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(Please Note: If Members and Officers wish to seek advice on any potential interests they may have, they should contact Democratic Services or Legal Services prior to the meeting.)

6. **Urgent items**
To consider any other items that the Chairman decides are urgent.
7. **Communications**
To receive any communications or announcements from the Chairman of the Committee.
8. **Terms of Reference of Standards Committee and Appointment of Standards Sub-Committees** (Pages 1 - 4)
To consider a Report on the above.
9. **Finding Against The Council of Maladministration Causing Injustice in Relation to Bankruptcy Proceedings in Response to Council Tax Debt** (Pages 5 - 20)
To consider a report from the Local Government Ombudsman on a finding of maladministration against the Council.
10. **Devon Wide Code** (Pages 21 - 22)
To consider a report that seeks Members views on how they think the code of conduct should operate following the abolition of the standards regime.
11. **Standards Committee Work Programme** (Pages 23 - 26)
To consider a report on the Standards Committee work programme.
12. **Statistics** (Pages 27 - 28)
To consider a report on the above.
13. **Observation Reports** (Pages 29 - 40)
To consider a report on the above.

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Standards Committee

Membership

4 members of Torbay Council (2 Conservative and 2 Liberal Democrat), plus 4 named substitutes (2 Conservative and 2 Liberal Democrat), 3 Brixham Town Council Councillors plus 1 named substitute from Brixham Town Council and 5 independent members.

Terms of Reference

1. To promote and maintain high standards of conduct by the Mayor, councillors, co-opted members and church and parent governor representatives;
2. To assist the Mayor, councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
3. To advise the Council on the adoption or revision of the Members' Code of Conduct;
4. To monitor the operation of the Members' Code of Conduct;
5. To advise, train or arrange to train the Mayor, councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
6. To grant dispensations where permitted by law to the Mayor, councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;
7. To review the Council's local protocols;
8. To consider reports in relation to Ombudsman investigations;
9. To review the Constitution in relation to ethics and probity issues;
10. To advise others on probity and ethics;
11. To appoint sub-committees to deal with appointments of independent members, local assessment, investigation and determination of allegations of breaches of the Code of Conduct for Members; and
12. To share experience with other standards committees.

The Council may arrange for the Standards Committee to exercise such other functions as the Council considers appropriate.

Referrals Sub-Committee

Membership

A pool of members (comprising the members of the Standards Committee and named substitutes) who can be drawn to serve on a sub-committee (normally comprising 2 independent members and 1 Torbay Councillor (and 1 Brixham Town Councillor if the complaint is about a member of the Town Council).

Quorum

3 members of the Sub-Committee including at least 1 independent member and 1 Torbay Councillor (and 1 Brixham Town Councillor if the complaint is about a member of the Town Council).

Review Sub-Committee

Membership

A pool of members (comprising the members of the Standards Committee and named substitutes) who can be drawn to serve on a sub-committee (normally comprising 2 independent members and 1 Torbay Councillor (and 1 Brixham Town Councillor if the complaint is about a member of the Town Council).

(Note: The members who sat on the original Referrals Sub-Committee will not be allowed to sit on the Review Sub-Committee dealing with the same complaint.)

Quorum

3 members of the Sub-Committee including at least 1 independent member and 1 Torbay Councillor (and 1 Brixham Town Councillor if the complaint is about a member of the Town Council).

Hearings Sub-Committee

Membership

A pool of members (comprising the members of the Standards Committee and named substitutes) who can be drawn to serve on a sub-committee (normally comprising 2 independent members and 1 Torbay Councillor (and 1 Brixham Town Councillor if the complaint is about a member of the Town Council.)

Quorum

3 members of the Sub-Committee including at least 1 independent member and 1 Torbay Councillor (and 1 Brixham Town Councillor if the complaint is about a member of the Town Council).

Standards Appointments Sub-Committee

Membership

A pool of members (comprising the members of the Standards Committee) who can be drawn to serve on a sub-committee (normally comprising 3 independent members and 2 Torbay Councillors (1 Conservative and 1 Liberal Democrat.)

Quorum

3 members of the Sub-Committee including at least 1 independent member and 1 Torbay Councillor.

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Title: **Finding against the Council of Maladministration Causing Injustice in relation to bankruptcy proceedings in response to Council Tax Debt**

Wards Affected: **All**

To: **Standards Committee** On: **9 June 2011**

Contact Officer: **Anthony Butler**

☎ Telephone: **207155**

✉ E.mail: **Anthony.butler@torbay.gov.uk**

1. Key points and Summary

1.1 Following a complaint from Mr Castle (a false name used by the Ombudsman in their report (Appendix 1)) to the Local Government Ombudsman, a finding of maladministration causing injustice has been found against the Council.

2. Introduction

2.1 The Local Government Ombudsman received a complaint that the Council took bankruptcy proceedings against the complainant in response to a Council Tax debt of £2,248 without having proper regard to the personal circumstance of the complainant in particular his mental health.

2.2 The Ombudsman concluded that the Council had not followed due process in making Mr Castle bankrupt. The Ombudsman found the Council failed to document its decision making in respect of the recovery action by way of bankruptcy and failed to reconsider its decision to pursue bankruptcy when information came to light that Mr Castle might be considered suicidal. As such the Ombudsman considered that had such failings not occurred the Council would not have continued with the bankruptcy proceedings against Mr Castle and would not have incurred high punitive costs of some £24,000 associated with that action.

3. Conclusion

3.1 Members of the Standards Committee are requested to discuss the findings of the Local Government Ombudsman and suggest recommendations Members believe to be appropriate to the decision maker.

Anthony Butler
Monitoring Officer

Appendices

Appendix 1 Local Government Ombudsman Report

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Report

on an investigation into
complaint no 10 002 564
against Torbay Council

4 May 2011

Investigation into complaint no 10 002 564 against Torbay Council

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Mr Castle	-	the complainant
Mr Knight	-	bailiff
Mr Ash	-	a process server, employed by the bailiff
Officer A	-	Deputy Head of Customer Contact, at the time of the events complained of
Officer B	-	Senior Exchequer Officer, at the time of the events complained of

Report summary

Local taxation

Mr Castle complains that the Council took bankruptcy proceedings against him in response to a council tax debt of £2,248 without having proper regard to his personal circumstances, in particular his mental health.

The Ombudsman does not consider the Council followed due process in making Mr Castle bankrupt. First, she finds that the Council failed to document its decision-making in respect of the recovery action by way of bankruptcy. Second, she finds that the Council failed to reconsider its decision to pursue bankruptcy when information came to light that Mr Castle might be considered suicidal.

The Ombudsman considers that had such failings not occurred then the Council would not have continued with bankruptcy proceedings against Mr Castle and he would not have incurred the high punitive costs of some £24,000 associated with that action.

Finding

Maladministration causing injustice.

Recommended remedy

In order to put Mr Castle in the position that he would have been in had no maladministration occurred, and taking account of both the financial costs incurred and the distress and time and trouble caused, the Ombudsman recommends that the Council issues Mr Castle with a formal apology and makes him a payment of £25,000.

Introduction

1. Mr Castle complained that the Council took bankruptcy proceedings against him in response to a council tax debt of £2,248 without having proper regard to his personal circumstances, in particular his mental health.

Legal and Administrative Background

My Jurisdiction

2. There are a number of sections of the Local Government Act 1974 (as amended by the Local Government and Public Involvement in Health Act 2007) which fall to be considered in reaching a decision on whether I have jurisdiction to consider Mr Castle's complaint.
3. First, Schedule 5 paragraph 1 of the Act says that a Local Commissioner cannot conduct any investigation into

"the commencement or conduct of civil or criminal proceedings in any court of law".

However, this does not preclude an investigation into administrative actions prior to the issue of court proceedings and, where the Council instructs agents for enforcement of court orders, the actions of those agents (unless they are agents of the Court).

4. Second, Section 26(6) of the Act says that -

"A Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any of the following matters, that is to say,

- (c) any action in respect of which the person affected has or had a remedy by way of proceedings in any court of law:

provided that a Local Commissioner may conduct an investigation notwithstanding the existence of such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect the person affected to resort or have resorted to it."

5. I interpret this to mean that I have no jurisdiction to consider a complaint where court proceedings have been issued by the complainant in respect of the same matter. However, I retain jurisdiction to investigate if such Court proceedings were misconceived; that is where there was no legal basis for bringing the action.

6. Third, S26B of the Act says that a complaint should be made to me within 12 months from the day when the complainant first had notice of the matter. However, S26B(3) provides that I may disapply this requirement.
7. In a previously published report by the Local Government Ombudsman (reference 06B16600) on an investigation into a complaint against Wolverhampton City Council the Ombudsman found that the council made a man bankrupt over non-payment of his council tax, without fully considering all the alternatives. The Ombudsman found that the Council failed to consider the possibility of making a charging order against the man's home. It also gave him inadequate warning of the consequences of bankruptcy before commencing proceedings. The man faced costs of £38,000 for a debt of £1,105. The Ombudsman said: "The Council cannot, it seems to me, turn a blind eye to the consequences to the debtor of any recovery option it pursues. ... The dire and punitive consequences of bankruptcy, involving a multiplication of the original debt many times over and frequently incurring the loss of the debtor's home, must be a factor to be taken into account in deciding that the 'last resort' is indeed appropriate".
8. This decision was applied by the court in *Hunt v Fylde BC* [2008] BPIR 1368. Because of illness, Mr Hunt had withdrawn from the world and adopted an aggressive response to any attempt to assist. The Council had known about the debtor's condition, but District Judge Ashton said this was not the point. He considered that the council's evidence '...conspicuously failed to advise the court of the procedures adopted by the council for making the discretionary decision that bankruptcy proceedings were appropriate. There is no indication that the council had any information about Mr Hunt before the issue of the petition or even sought such information.' He said the onus cannot lie on the debtor to establish lack of either physical or mental capacity, because lack of capacity would itself render the debtor unable to do so.

Recovery of Council Tax

9. The primary legislation governing the administration of council tax is the Local Government Finance Act 1992. The Council Tax (Administration and Enforcement) Regulations 1992 SI 613 govern collection and recovery. Council tax is payable by monthly instalments. If payment is not made on the due date, the Council can start recovery proceedings. The Council must issue at least one reminder but if a payment is not made the full sum for the year becomes due and the Council can commence proceedings to recover that sum plus its reasonable costs in the Magistrate's Court. Once a liability order is made by the court, the council may instruct bailiffs, commence insolvency proceedings, seek a charge over the debtor's property or seek the debtor's commitment to prison. The Courts have held that while recovery action for a council tax debt can be

coercive, it is not unlawful if it becomes punitive because of the debtor's failure to pay.¹

The use of bailiffs

10. Bailiffs can be instructed to collect outstanding debts, if necessary through securing a levy against certain goods that might be owned by the debtor. However, in most circumstances bailiffs cannot take such a levy unless they have gained peaceful entry into a debtor's home or premises. If a debtor has insufficient assets to cover the debt, and cannot or will not agree to repay, other options for recovery would need to be considered.

Committal hearings

11. If the Council has attempted, but failed, to collect a debt through the use of bailiffs then it can request that the debtor appear before the Magistrates Court to consider if they should be committed to prison for wilful refusal or culpable neglect in the non-payment of their council tax. Magistrates must conduct a means enquiry to establish the reason for non-payment. They are given options including committing the debtor to prison, suspending any committal on terms (such as ordering a fresh payment arrangement) or remitting some of the debt (i.e. writing it off).

Charging orders

12. Another method of collection available to a Council is to seek a charging order against a debtor.² This is a way of securing a debt through the County Court against a debtor's property, so that in the event that the property is sold, the creditor must be paid from the proceeds of sale. For a Council to be able to pursue this course of action it must hold a liability order against the debtor and the debtor must owe at least £1,000. The Courts can consider suspending a Charging Order on repayment terms. Where a creditor holds an outright Charging Order or any payment terms are not adhered to, then the creditor can seek an Order for Sale. This too, can be suspended at the Court's discretion; for example on the basis of an order that regular repayments are made. A Charging Order can only be made in respect of the property upon which the council tax debt was owed.³

¹ R v Cannock Justices ex parte Ireland (Court of Appeal) (1995)

² Council Tax (Administration and Enforcement) Regulations 1992, regulations 50 and 51

³ Regulation 50, Council Tax (Administration and Enforcement) Regulations 1992 SI no 613/1992

The bankruptcy process

13. Bankruptcy can be used as a means to try and recover a debt where a creditor is owed at least £750. The aim of bankruptcy is to recover the debts due, ultimately by selling the debtor's property. The Insolvency Rules 1968 govern the process. The creditor must serve a document known as a statutory demand. This should explain the debt the Council is seeking to recover. The Insolvency Rules lay down detailed requirements for a creditor to take exhaustive steps to seek to serve the demand personally. Only if such steps have failed can postal service be used. It is for the court to be satisfied, at the application for a bankruptcy petition, that the statutory demand has been properly served. A council may use its own staff for service of bankruptcy proceedings or contract the process out to a private firm.
14. If a statutory demand is served and the debt remains unpaid after a further 21 days (or no arrangement has been made to the satisfaction of the creditor), then a bankruptcy petition can be served. The petition requests that the County Court (or High Court in London) make an order that the debtor be declared bankrupt. A debtor may oppose the making of a bankruptcy order on the grounds that the debt is not owed, and the Courts have the power to stay proceedings if it appears likely that the debt may be settled in a short period of time.
15. Where a bankruptcy order is made the Official Receiver will be appointed to act as Trustee of the debtor to manage their assets. If there are any assets it is likely that the Receiver will appoint a private insolvency practitioner to act as Trustee to manage the assets. The Trustee's role is to act in the creditor's interest by realising all assets and clearing all debts and costs owed. The Receiver and the Trustee may charge fees for their work. These fees can be substantial but as the Receiver and Trustee are officers of the court complaints about these fees are not within the Ombudsman's jurisdiction. A creditor or the bankrupt can apply to the court to have the bankruptcy annulled. If it is annulled the court will decide whether the Receivers' and Trustees' costs will be paid by the creditor or the debtor.

Investigation

What happened in this case

16. Mr Castle has lived at his present address for more than 40 years. He has lived alone since 1992 and before that with his mother, for whom he was the carer during the last year of her life. At that time he was also in full time employment. Mr Castle was made redundant in 1995. He lived off his savings and a small income from his membership of a musical band for the next 10 years or so. He paid all his bills including council tax until about 2006. From that time he describes himself as having followed 'a gradual descent into chronic

introspection' and 'mental instability'. He reports that he subsisted on less and less money, not replacing worn out household items or clothing and spending two winters largely without heating or hot water. His failure to pay electricity bills resulted in his electricity supplier installing a slot meter. He stopped opening his mail in 2004. He left it on the doormat for months at a time, visible through his glass panelled door. He thought it would give the impression to callers that nobody was home. He used the back door to access the property and stayed out of sight if callers came.

17. In 2006 Mr Castle's council tax account fell into arrears. After the application of a 25% sole occupier discount, Mr Castle's bill for the 2006 / 2007 financial year was £953.08 and the Council issued a bill for this sum on 15 March 2006 with provision to pay by ten monthly instalments. On 4 May 2006 the Council issued a reminder for the overdue April instalment of £98.08, and when it was not paid on 26 May a final notice was issued requesting payment of £953.08 being the total sum due for the year. Mr Castle again made no payment and on 6 June 2006 a Magistrate's Court summons was issued against him. On 30 June 2006 the Council obtained a Liability Order in the Magistrate's Court for £953.08 plus £50 costs.
18. The Council instructed certificated bailiffs to try to recover the debt. Certificated bailiffs are employed by private companies and enforce a variety of debts on behalf of organisations such as local authorities. They can seize and sell goods to cover the amount of the debt owed. They also hold a certificate, which permits them (and no-one else) to levy distress for rent, road traffic debts, council tax and non-domestic rates. Certificated bailiffs are required to gain peaceable entry into property before a levy of goods inside a property can take place. The bailiff's log shows that a first visit was made to Mr Castle's home on 14 August 2006. The bailiff's notes from that visit say 'effects appear poor - as seen via window'. Further visits were made on 24 August 2006, on 4 September 2006 and on 21 September 2006: on the two later visits a bailiff's van was sent but no goods were collected. The first enforcement attendance by bailiffs took place on 11 October 2006 when it was noted there were cobwebs over the front door and a large pile of post behind it. A further 'van visit' was made on 19 October 2006 when the bailiff knocked on the windows at the back of the house but received no reply. On 16 November 2006, a second enforcement visit was made. Again it was noted that mail was piled up behind the door. Further visits were made on 8 and 13 December 2006. The accumulation of mail was noted each time, as were the cobwebs over the front door. The bailiff noted there were no signs of food or cups visible through the window; he also noted there were no flies. A neighbour was spoken to and told the bailiff the resident was 'elderly' (Mr Castle was born in 1949) and said he had not been seen for some time. Further unsuccessful visits were made on 22 February 2007 (when a neighbour confirmed Mr Castle was still resident at the property), on 5 March 2007 and on 5 April 2007. The bailiffs returned the liability order to the Council on 25 April

2007 having been unable to gain access or recover property. The bailiffs had not seen or spoken to Mr Castle at any time.

19. For the 2007 / 2008 financial year Mr Castle's council tax bill after the application of a 25% sole occupier discount was £995.97 and the Council issued a bill for this sum on 12 March 2007. On 4 May 2007 the Council wrote to Mr Castle to say the liability order had been returned by the bailiffs as they had been unable to secure any payment from him and the debt of £1,182.08 remained outstanding. The letter advised Mr Castle that committal proceedings for non-payment could now be commenced, in which case a summons would be issued, or alternatively the Council might instruct an insolvency practitioner to commence bankruptcy proceedings against him. The letter advised that if Mr Castle was declared bankrupt, the Official Receiver (or a Trustee appointed by his creditors) would be able to sell his assets, including his property, to settle the debt.
20. In the meantime the Council continued to follow its usual procedures in respect of the council tax liability for the current billing period. On 8 May 2007 the Council issued a reminder for the overdue April instalment of £95.97, and on 25 May a final notice was issued for the total sum due for the year, £995.97. Mr Castle made no payment and on 5 June 2007 a summons was issued for this sum. On 29 June 2007 the Council obtained a Liability Order for the sum with an additional £70 costs. Bailiff fees of £179.00 were added to Mr Castle's council tax account on 3 December 2007.
21. The Council's written procedure for dealing with cases which have been returned without payment or goods in lieu having been secured by the bailiff required it to consider the possibility of recovering the debt by way of a charging order, committal proceedings or bankruptcy proceedings. The Council decided first to make enquiries with Land Registry to ascertain whether Mr Castle was the owner of the property in which he lived, with a view to registering a charge against the property if he was. Mr Castle was the owner of the property, which had been left to him following his mother's death. But the property was not registered with the Land Registry and so the Land Registry was unable to advise the Council about ownership. The Council did not make any further investigations to seek to establish ownership of the property. The Council next considered committal proceedings but decided that given the difficulties in making contact with Mr Castle he would be unlikely to respond to the court if proceedings were instigated, and such proceedings might become protracted. The Council therefore considered that it would be appropriate to pursue the debt by way of bankruptcy proceedings.
22. Solicitors acting on behalf of the Council issued a pre-action letter to Mr Castle on 9 January 2008 but received no response. A statutory demand was then served personally by a process server, Mr Ash, on 1 February 2008, giving 21 days for compliance. The notes made by Mr Ash stated that he told Mr Castle how to comply with the statutory demand and had suggested he seek legal advice. No

response was received and the Council's Senior Exchequer and Benefits Manager agreed jointly that the solicitor should proceed with action in respect of bankruptcy.

23. A bankruptcy petition was therefore obtained on 12 March 2008. On the following day Mr Ash attended Mr Castle's home in order to personally serve the bankruptcy petition. Mr Castle reports that the only face to face contact he had had with any representative from the Council was with this process server. Mr Castle says that Mr Ash approached quietly to the kitchen window and was invited in. Mr Castle was, in his own words, in an agitated and emotional state. The Council's notes in respect of Mr Ash's visit record that Mr Ash had some doubts about Mr Castle and had not been able to reach a view on whether Mr Castle was being evasive or was in fact suffering illness. He reported that he had not been able to establish much about Mr Castle's personal circumstances, except that he was not currently in employment. Mr Ash telephoned the solicitors to report service of the petition. The solicitor's notes state: "D [debtor] has been personally served with the bankruptcy petition today - D stated that he only had £800 to live on and couldn't afford to pay".
24. My investigator has interviewed Mr Ash and his manager, Mr Knight, the bailiff for whom Mr Ash worked at the time. Mr Ash told my investigator that his recollection was that Mr Castle had been extremely distressed and upset at the second visit. Mr Knight told my investigator that he recalled Mr Ash reporting that Mr Castle was suicidal and that he was very worried about him. Mr Knight also told my investigator that he had reported this to the Council verbally at a regular liaison meeting, at which the Council and bailiffs discussed their position in respect of ongoing debt recovery actions. At interview Officer A and Officer B were both asked about this. Officer A said he had never heard anyone refer to Mr Castle as suicidal, and Officer B said that he could not recall any conversation with Mr Knight in which any reference was made to Mr Castle being suicidal. The Council's minutes from the liaison meeting are very general and make no reference to any individual cases discussed.
25. Mr Knight provided my investigator with a copy of his invoice to the Council's solicitor dated 1 April 2008. That contains the following note: 'Please note the defendant is suicidal and I have raised this with [Officer A] at the Council'. An examination of the solicitor's file revealed the original copy of that invoice together with a record of a telephone call on 2 April 2008 from the Council to the solicitor in which the solicitor noted that the Council had concerns about Mr Castle's mental health. The note said 'Could be suicidal - Council to investigate other enforcement options'.
26. According to the Council's procedure, where bankruptcy proceedings are considered the most appropriate method of recovering a debt, any arrangement should be reviewed and discussed by senior officers, Officer A and Officer B. The Council says that following the concerns raised by Mr Ash, the case was

discussed by Officer A and Officer B on 2 April 2008. There is no record of the discussion. At interview both officers told my investigator that they had not been aware of any reference to Mr Castle potentially being suicidal. Officer A said he would not have pursued bankruptcy if it was stated that the debtor was suicidal. He said that consideration would be given to writing off the debt in such circumstances. Both officers said that they were aware of earlier cases where bankruptcy proceedings had been halted in such circumstances.

27. The Council says that when Mr Ash raised concerns about Mr Castle a telephone call was made to the social services department to check whether Mr Castle was known to them, but that department had no record of him. No record was made of the telephone call. The Council also then contacted the Citizen's Advice Bureau and made an appointment for Mr Castle to attend for specialist debt advice on 18 April 2008. Officers A and B decided that notification of that appointment, together with a council tax benefit application form and a means enquiry form, should be personally delivered to Mr Castle by Mr Ash. At interview Officer B advised my investigator that Mr Ash was given a specific instruction to get Mr Castle to read the letter and confirm he had understood it, and that he reported back afterwards that this had been done. But there is no documentary evidence to support this. Mr Castle reports that the letter delivered by the process server on 7 April 2008 remained unopened. He was not therefore aware of and did not attend the appointment which had been arranged for him at the Citizen's Advice Bureau. He reports feeling that his position was hopeless and that 'there was no point in solving this one particular problem'. In mid-April, a further letter was posted to Mr Castle advising him that it was not too late to make contact with the Council with a view to resolving matters. That letter also remained unopened.
28. On 2 May 2008 a bankruptcy order was made against Mr Castle in the County Court. The debt owed to the Council at this time was £2,336.57, made up as follows:

Council tax charges:	2006/07	£953.08
	2007/08	£995.97
	2008/09	£ 88.52
Liability order costs	30 June 2006	£ 50.00
	29 June 2007	£ 70.00
Bailiff fees	3 December 2007	£179.00

29. The Council was advised by the Insolvency Service on 15 September 2008 that as Mr Castle had not surrendered to the bankruptcy proceedings the Official Receiver would therefore appoint an insolvency practitioner to deal with his assets.
30. In November 2008 Mr Castle approached the Department for Work and Pensions to apply for benefits. He was asked to obtain a medical certificate, which he subsequently did. His doctor diagnosed anxiety and depression.

31. In January 2009 Mr Castle was visited by a solicitor from Bristol who was his Trustee in Bankruptcy. Before this visit Mr Castle had no knowledge of the fact that he had been made bankrupt by the Council in May 2008. With the help of a neighbour and following a meeting arranged with the Trustee, Mr Castle cleared the debt in full by taking a loan against his home. Mr Castle reports that after clearing the debt of £2,248.05 he owed to the Council and £3,940.99 owed to a utility company, the additional costs he incurred as a result of the bankruptcy action amounted to some £24,000.
32. Following contact by Mr Castle's neighbour, a meeting was set up with a representative from the Council's corporate debt team on 11 February 2009. Mr Castle's neighbour advised the Council that Mr Castle had not opened his post for some time and may have mental health issues. The Council agreed to hold further recovery on the sum of £1,028.74 owed in respect of the financial year 2008 / 2009 which had not been covered by the bankruptcy order. Mr Castle then completed a claim form for council tax benefit and a request for backdating of any entitlement to August 2008.

Conclusions

33. I accept that the Council has a duty to all its tax payers to try to recover money owed to it. I recognise that, having obtained liability orders and having tried to collect its debts through the use of bailiffs, the Council was short of options as to how it could collect the money it was due. It is clearly not the case that bankruptcy should never be contemplated, but the consequences bankruptcy can impose upon a debtor are severe and in selecting options for recovery the impact on the individual debtor should be taken into account.
34. The Council satisfied itself that there was no means other than bankruptcy by which the debt could be recovered in a realistic timescale. Because Mr Castle's home was not registered with Land Registry it could not pursue a charging order. But it seems to me that the facts about Mr Castle's ownership of the property could have been elicited through conversation with him if the Council had visited him. A charging order on the property would have been a less punitive option than bankruptcy.
35. In making decisions about debt recovery, I expect that Council officers should make reasonable efforts to contact the debtor in person. It is clear that the Council had difficulties engaging with Mr Castle. But it seems to me that there were warning signs noted by the bailiffs which might reasonably have alerted the Council to the possibility that Mr Castle was unwell: it was known that he did not open his post but left it to accumulate over a long period. None of the Council's own officers visited Mr Castle at home. He was seen only by the process server, who reported that he was unsure whether Mr Castle was unwell or was being evasive.

36. I expect that decisions about debt recovery should be recorded with evidence that the decision-maker is satisfied that the debtor can adequately defend themselves against the Council's actions. Although Mr Castle had in the past settled his debts, that payment history alone was not grounds for the Council to conclude that he was able to do so on this occasion. Once the process server reported that he had doubts about Mr Castle's health, the Council should have conducted a review of the case file in light of that information and that review should have been documented. The failure of the Council to document the action taken to review the case was maladministration.
37. The Council had a further opportunity to review the decision to proceed with bankruptcy action when its solicitor was advised that Mr Castle was considered suicidal. The failure to do so was maladministration, and it had significant consequences.
38. As a consequence of the maladministration identified above I consider Mr Castle has been caused an injustice. I consider that if the Council had properly reviewed the case in light of the information that Mr Castle was possibly suicidal it would not have continued with the bankruptcy action. The Council might have been able to engage with Mr Castle and to discuss and pursue an alternative way of securing payment of the arrears.

Finding

39. As explained above, I find maladministration by the Council. As a consequence of the Council's actions in pursuing bankruptcy Mr Castle incurred costs amounting to some £24,000 after his original debt had been cleared. In addition, he has been caused considerable distress, and has been put to time and trouble in trying to resolve the matter. I now seek to put Mr Castle in the position that he would have been in had no maladministration occurred. Taking account of both the financial cost and the distress and time and trouble, I recommend therefore that the Council issues Mr Castle with a formal apology and makes him a payment of £25,000.

Dr Jane Martin
Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB



4 May 2011



Title: **Devon Wide Code**

Wards Affected: **All wards in Torbay**

To: **Standards Committee** On: **9 June 2011**

Contact Officer: **Anthony Butler**
☎ Telephone: **01803 207155**
✉ E.mail: **anthony.butler@torbay.gov.uk**

1. **Key points and Summary**

- 1.1 In light of the imminent abolition of the standards regime but the possibility of having a 'local' code of conduct discussions are ongoing with other local authorities within Devon to have a 'Devon wide' code.

2. **Introduction**

- 2.1 The Localism Bill contains provision for the scrapping of the current standards regime, including Standards for England. It does however provide that local authorities can still have a voluntary code and that if they have such a code they must adhere to it
- 2.2 Other local authorities in Devon have suggested having a code agreed between them to be adopted by all the local authorities in Devon. The benefits of this include:-
- officers from each authority are able to carry out investigations for other authorities as they will be familiar with the Devon wide code
 - the possibility of joint working between each authorities standards committee and possibly a joint 'Devon wide' standards committee in the future
 - consistency for 'dual hatted' members (i.e. those members who are members of more than one local authority)
- 2.3 No 'Devon wide' code has yet been agreed and discussions are still at an early stage. It is understood that AcSES (Association of County Secretaries and Solicitors) are due to produce a draft code as are the London Boroughs and it is likely that the Devon wide code will be based on one or both of these two models.

3. Proposals

3.1 Members are asked to provide any suggestions as to how they think the code of conduct should operate in the future so that these can be fed into future discussions. Comments would be particularly welcome on the following:-

- Do you agree with the principle of a 'Devon wide' code?
- Would you like to see a Standards Committee for the whole of Devon?
- Should the Council's Standards Committee continue to have independent members as well as councillors? If not, should all members be independent or councillors?
- The council will have no responsibility for Standards within Brixham Town Council anymore. Should Brixham Town Council be advised to adopt a local code and if so how should its standards committee be made up?
- What will be done if having adopted the code, councillors are not willing to abide to it?
- Is there any part of the current code of conduct that members would not wish to see in any voluntary code, whether regulatory or procedural?

Anthony Butler
Monitoring Officer



Title: **Standards Committee Work Programme**

Wards Affected: **All wards in Torbay**

To: **Standards Committee** On: **9 June 2011**

Contact Officer: **Anthony Butler**
Telephone: **01803 207155**
E.mail: **anthony.butler@torbay.gov.uk**

1. Key points and Summary

1.1 Each year the Standards Committee needs to agree its work programme and how to implement it. Due to the success of last years work programme and the imminent changes to the standards regime it is suggested that the work programme and plans to implement it are retained from last year.

2. Introduction

2.1 The Standards Committee agreed the Outline Work Programme at its meeting of 11 March 2010 and the Working Group consisting of Cllr Stocks, Peter Dalzell, Mike Branch and Anthony Butler met to discuss how the work programme could be implemented.

2.2 The ideas of the Working Group for the implementation of the Work Programme were produced to the Standards Committee at its meeting of 3 June 2010 and it accepted the proposals made by the Working Group without amendment.

2.3 Members are asked to consider whether they wish to continue with last year's work programme or if they would like changes to it. If they do require changes members are also asked whether they would wish to do this as a whole committee or for a working party to be created to consider what the work programme should be and report back.

3. Proposals

Last year's Standards Committee Work Programme is shown at Annex A.

Anthony Butler
Monitoring Officer

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Standards Committee Work Programme 2010/2011

- **Encourage Members and Officers to put high ethical standards at the heart of their work;**
 - **Promote current high standards of professionalism and make high ethical standards central to the objectives, behaviours and culture of the Authority and encourage proactive leadership of these themes by members and officers.**
 - A 'tag line' decided by the Standards Committee will be added to all strategic documents issued by the Council. A suggested 'tag line' is 'Torbay Council recognises the importance of high standards of conduct and ethics from its politicians and officers. The Council strives to ensure that its politicians and officers maintain these standards when representing the Council and the people of Torbay'
 - Continue monitoring and feedback reporting on member meetings
 - The programme for the Council's meetings over the coming year will be provided to each of the independent members of the Standards Committee. The independent members are asked to let Lisa Warrillow know as soon as possible either what meetings they are likely to be available for or what meetings they are definitely not available. Lisa will then produce a list of meetings to be monitored and the independent members who will be asked to attend those meetings. No independent member will be expected to attend more than 3 meetings over the course of the year. The total number of meetings to be attended by independent members will be as follows:-
 - Planning – 3 out of 12
 - Licensing – 1 out of 3 'full meetings' and 2 meetings of its sub-committees
 - Overview and Scrutiny – 3 out of 12
 - Full Council – 2 out of 5
 - Torbay Strategic Partnership – 1 meeting
 - Brixham Town Council - 2 or 3 meetings over the course of the year
 - Harbour Committee – 1 meeting
- If particular problems are identified at any meetings independent members may be asked to attend the immediately subsequent meetings if considered necessary. It is suggested that a box be added the end of the form to be completed by independent members monitoring meetings to request with reasons that the subsequent meeting should also be monitored
- It is intended that all reports from independent members will be released to the press whether requested or not. The names of the independent members who completed the reports will be removed from them before they are released.

	<ul style="list-style-type: none"> □ Increasing Trust in Local Democracy; □ Encourage the publication of internal and external communications which promote the value of high ethical standards, <ul style="list-style-type: none"> □ Independent members reports on meetings will be released to the press and to the elected members of the Council □ Independent members will be asked to ask members of the public present at the meetings they are monitoring about their opinions of the meeting. A questionnaire will be provided and members of the Standards Committee are asked to provide ideas for the questions that should be asked on such a questionnaire □ Inform the public and external organisations of the Principles of Good Conduct in Public Life and demonstrate how the Council complies with them, <ul style="list-style-type: none"> □ Further articles will be provided to Torbay View and The Info promoting the work that the Standards Committee undertakes □ The Committee will seek to consult with local communities and organisations on their perceptions of ethical standards in the Authority and how public trust can be improved. □ Letters will be sent by the chair of the Standards Committee to the heads of partner organisations on the TSP introducing himself and promoting the work that the Standards Committee undertakes and asking for suggestions on who the Council may be able to improve public trust in it 												
	<ul style="list-style-type: none"> □ Promoting Effective Governance of Partnerships □ The Committee will carry out a programme of visits to partner organisations to assist with, and learn from, practices and ideas on how transparency, integrity and accountability can be improved and public trust enhanced. <ul style="list-style-type: none"> □ Anthony Butler is to speak with his counterpart at Plymouth City Council to see if their standards committee would like to meet to discuss issues they have faced □ Anthony Butler will provide the Standards Committee and future meetings real case studies or investigations he has performed for other local authorities □ The Committee will engage with other local organisations to promote ways of publicising clearly and comprehensively the range of governance arrangements in the Bay in order to promote transparency and accountability. □ As stated above the Chairman will be asked to send letters out to the heads of organisations present at the Torbay Strategic Partnership to ask for their views on the governance arrangements in Torbay and how transparency and accountability can be improved □ The Committee will endeavour to promote the values inherent in the Code of Conduct and the Statutory General Principles of Conduct amongst other organisations in the Bay. □ As stated above requests will be made for the 'tag line' to be added to documents going out to the public from the Council 												



Title: Statistics
Wards Affected: All Wards in Torbay
To: Standards Committee On: 9 June 2010
Contact Officer: Anthony Butler
 Telephone: **01803 207155**
 E.mail: Anthony.Butler@torbay.gov.uk

- 1.1 As Members are aware the Annual Report set out basic statistics regarding the number of complaints received and the result.
- 1.2 In order to aid further comparison these statistics have been broken down further to enable the Committee to affectively monitor its performance.
- 1.3 The figures below cover the period of April 2010 to April 2011 and includes figures for April 2009 to April 2010:

	April 2009 to April 2010	April 2010 to April 2011
Number of complaints received	9	11
Number of Referral Sub-Committees held within 20 days of receiving complaint	2 within 20 days 1 within 29 days	10 1 delayed due to the election
Number of complaints deemed no further action by Referral Sub-Committee	3	6
Number of complaints referred for further investigation	0	5
Number of Reviews requested	3	1
Number of Reviews deemed no further action by Review Sub-Committee	3	1
Number of Decision Notices sent within 5 days	5	11

Anthony Butler
 Deputy Monitoring Officer

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Title: **Observation Reports**

Wards Affected: **All Wards in Torbay**

To: **Standards Committee** On: **9 March 2011**

Contact Officer: **Anthony Butler**
Telephone: **01803 207155**
E.mail: **Anthony.butler@torbay.gov.uk**

- 1.1 As Members are aware the Annual Report set out the work programme within which the Standards Committee sought to encourage Members and Officers to put Ethical Standards at the heart of their work.
- 1.2 The Standards Committee Independent Members observed the following meetings:
 - Development Management Committee 4 October 2010
 - Licensing Committee 2 December 2010
 - Harbour Committee 6 December 2010
 - Council 14 December 2010
 - Development Management Committee 20 December 2010
- 1.3 At present Independent Members have completed five scheduled observations with nine remaining such as the Torbay Strategic Partnership and Overview and Scrutiny.

Anthony Butler
Monitoring Officer

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Standards Committee Observations of Council Meetings

Meeting Attended: Development Management Committee

Date: 4 October 2010

Venue: Ballroom Oldway

Agenda Item	Chair's Action	Members Action(s)	Remarks
1, 2, 3(a), 3(b), 4.	Absolutely by the book.	Appropriate where declarations of interest and/or personal prejudicial interest were necessary.	Started spot on time. Proceedings easy to hear and follow. Sequence of published agenda amended to accommodate those members of the public who had attended to support or dispute applications. An excellent procedure which ensured people were not kept waiting unnecessarily.
N1, N2, N5/N6, N7, N8, N9.	Fully in control, ensuring non-committee speakers kept to their time limits and orchestrating questions, debate, proposals and voting to allow all councillors to have their say.	Sensible questions, calm debate and no (observable) party politics.	I cannot imagine that any member of the public could have much cause for complaint as to the procedures which were followed – even if an application or objection was refused, the grounds on which the decision was reached were made very clear.
N3, N4, N10, S1, S2, S3, S4, S5	Not observed	Not observed	A very long agenda!

General Comments:

Probably a bit outside the remit of observing code of conduct, nevertheless:

1. Full marks to the organisation; sound and visual aids were excellent. The latter were essential in allowing all present to understand what the issues were. I really enjoyed the experience.
2. It became obvious to me on my first acquaintance with the planning process that the explanation of each item by the Planning Officer(s) was vital, and I was very impressed by the very clear guidance given. I was equally

impressed by the clear response to any councillors' questions – obviously not rehearsed and displaying a very professional knowledge of each application/objection.

3. The fact that the committee had visited the site(s) of some of the items showed that decisions were not being taken lightly.
4. In view of the vital roles of the officers and the secretarial support from Democratic Services would it not be appropriate, as is normal elsewhere, to acknowledge their being "In attendance" in the minutes?

Standards Committee Observations on Council Meetings

Meeting Attended Licensing Committee

Date 2nd December 2010

Venue Town Hall

Agenda Item - Draft Statement of Licensing Policy for Sex Establishments

Members considered a report which sought agreement for the commencement of a 12 week consultation period.

The Senior Environment health Officer advised the Committee.

The Chair took control well from the start of the meeting. Everyone was introduced to me.

There was good discussion; all members were attentive and participated in constructive debate.

The members had obviously read and had full comprehension the papers.

The needs of equality issues as in the requirement for rules to be given out in large print were taken into account

I felt that the members promoted a very professional stance, the chair keep the meeting moving along and the members kept their comments relevant and focused, taking advice from the Environmental Health Officer.

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Standards Committee Observations of Council Meetings

Meeting Attended: The Harbour Committee

Date: Monday 6/12/2010

Venue: Berry Head Hotel, Brixham

Agenda Item	Chair's Action	Members Action(s)	Remarks
1. Apologies	Minute silence for deceased member	Respectful silence	Pity the chairman did not arrange for background pipe music to be switched off. This was done later.
2. Minutes		Issue raised by member which should have been matter arising.	Put the agenda slightly out of kilter which affected item 3.
3. Declarations of interest	Nearly forgot these declarations before entering the business of the day but recovered well.		This issue was caused by the issue at item 2 above.
4. Urgent items	Dealt with well by chairman.		Good focus by chairman.
5. Torquay/Paignton and Brixham harbour liaison forum	Good chairing	Well debated by committee members	Chairman clearly knowledgeable and clarified issues as required.
6. Review of existing harbour powers	Good chairing	Relevant questions put by members.	Good succinct summary by chairman.
7. Performance Marine services	Good summary by chairman	Very valid questions and points raised for clarification re targets.	Well chaired
8. Port Marine Safety Code – Annual Compliance audit	Good clear summary by chairman	Mistakes in documentation highlighted by members	It was clear that committee members had read their briefs.
9. Budget monitoring	Well chaired but see remarks	Attention paid by all members	There was a debate re asking a speaker to attend. No formal

			proposer or seconder, just general agreement. It was not clear to me at the end of the debate as to whether the person was going to be asked to attend or not.
10. Budget and harbour charges	Focused chair	Healthy debate by members	Vote at end of proceedings well executed by chairman.
11. Vessel traffic services and LPS policy statement	Well chaired	Members interested	Chairman kept discussions relevant to the point.
12. Old fish market canopy	Well chaired	Constructive debate	As 11. above

General Comments:

Overall a meeting where the chairman kept the business focused and discussions relevant to the pertinent business.

A little more attention to basic agenda processes and voting procedures would have shown the meeting to be extremely professional. Having said that, the chairman was well in control and clearly had the respect of all committee members. All those attending were clearly engaged and well read on the issues of the day.

The chairman in particular had a good knowledge of all substantive agenda items and was able to summarize, clarify and progress the meeting with confidence and authority.

In my opinion, the conduct and progress of the meeting was a credit to Torbay Council.

Standards Committee Observations of Council Meetings

Meeting Attended: Council Meeting

Date: 14 December 2010

Venue: Ballroom, Oldway

Agenda Item	Chair's Action	Members Action(s)	Remarks
1 – 4. Prayer, Apologies, Minutes & Declaration of Interest	By the book	Appropriate	No problems
5. Communications & Announcements	By the book	N/A	A bit optimistic on anticipated timing, but understandable given Government announcement on funding cuts.
6. Petition	By the book	N/A	Petitioner advised as to what would happen next
7. Questions	Firm control	Appropriate	Chair showed his teeth for the first time, by reminding members to stand whilst addressing the assembly.
8. Motions	Took very firm control of a debate that was getting out of hand. Used such phrases as "Frivolity" and "Out of control"	Whole episode descended into farce. Some members did not appear to understand the issue.	One has to agree with the subsequent Herald Express view that it was turning into an unedifying pantomime before intervention of the Chair.
9. Enterprise Centre at Bishop's Place.	By the book	Drifted off the subject a bit, but otherwise OK.	
10. Capital Strategy	By the book, and with firm rebuke to any member out of order.	Reasonable	All good stuff
11. Licensing	By the book	All very quiet	
12. Economic Strategy	Good control, including "timing out" one over-enthusiastic speaker.	Appropriate	
13. Council Tax	By the book	Some members getting restless at this point with a few private	

		conversations going on	
14. Remuneration Committee.	By the book	Appropriate	
15. Standards Committee Annual Review	By the book	N/A	

General Comments:

1. As usual, these comments are outside the strict remit of the Standards Committee as we did not observe any flagrant breach of the Members' Code of Conduct.
2. The guidance notes/script was again obviously very useful to the Chair, but he clearly had a very good grasp of Standing Orders and appropriate protocols and was not afraid to use them on several occasions.
3. The behaviour of members during Agenda Item 8 has been accurately described in the local press and possibly verged on bringing the assembly into disrepute. However, apart from the petitioner, the few members of the public present appeared to be "political" observers and probably enjoyed the spectacle.

Standards Committee Observations of Council Meetings

Meeting Attended: Development Management Meeting

Date: 20 December 2010

Venue: Ballroom, Oldway

Agenda Item	Chair's Action	Members Action(s)	Remarks
New members, Apologies, Minutes of last meeting.	Appropriate	As required	Started on time
Declarations of interest	Appropriate	As required	Chair and others declared an interest in certain items
T6. Stoodley Green Children's' Play Area	Proper control of speakers, including timing. Controlled questions and debate.	Sensible questions and debate with no discernable party politics	As observed previously, an articulate and balanced presentation on the part of the Planning Officer – stating both sides of the case. He also provided prompt and clear responses to councillors' questions. Approved 7:2
T3. "Viewpoint" Dwelling planning permission	As for T6	As for T6	As for T6. Approved 8:1
P1 – P7. Miscellaneous conditions concerning block of flats Marine Drive Paignton	Vice Chair assumes role of Chair. Immediately slapped councillors for not listening.	Dealt with rapidly with no problems	Chair left room having declared an interest. Item deferred for S106 issues.
T1. Hollicombe Gas Works Development	An unenviable task for the Vice Chair in dealing with this one, but very well handled. Explained new speaking rule i.e. each side 15 minutes each – anti had 5X3minutes and pro had 3X5 minutes. Controlled timing, questions and debate well and took a strong line with what	Some understandable concern about not having received all the documentation on time due to adverse weather. Very uneasy about their legal liability if they approved something which ultimately proved hazardous to health and safety.	Again an excellent introduction on the part of the planning officer, but full marks to the Head of Spatial Planning who gave the clearest possible explanations during the Q&A session. Item ultimately deferred for a Quantitative Risk Analysis to be undertaken.

	might have been a very noisy public gallery.		
Subsequent items not observed.			

General Comments:

1. From a purely standards point of view the meeting was well conducted by both Chair and Vice Chair in front of a very large, partisan and potentially noisy audience. There were no observed breaches of the Code of Conduct on the part of any member.
2. The excellent sound and visual aids were essential in helping everyone present to understand the issues.
3. The members' reluctance to decide on an issue without the full information is understandable and fully supported in respect of the late delivery of key documents. The application was a complex and sensitive subject and councillors are entitled to the best information available in timely fashion if they are to make an informed decision.
4. Somewhat less convincing was the members' apparent inability to understand the relationship between "Quantitative Risk Assessment" and "Qualitative Remediation". This relationship was clearly explained by the Head of Spatial Planning, but possibly less clearly defined by the Council's consultants.