

# Public Document Pack



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PUBLIC

To: Members of Governance, Ethics and Standards Committee

Monday, 11 January 2021

Dear Councillor,

Please attend a meeting of the **Governance, Ethics and Standards Committee** to be held at **2.00 pm** on **Tuesday, 19 January 2021** in Teams Live Event, the agenda for which is set out below.

Yours faithfully,

A handwritten signature in black ink that reads 'Helen E. Barrington'.

**Helen Barrington**  
**Director of Legal and Democratic Services**

## **A G E N D A**

### **PART I - NON-EXEMPT ITEMS**

1. Apologies for absence (if any)
2. Declarations of Interest (if any)
3. To confirm the non-exempt minutes of the meeting of the Governance, Ethics and Standards Committee held on 22 October 2020 (Pages 1 - 8)
4. Updates to the Constitution (Pages 9 - 22)
5. Committee for Standards in Public Life - New Model Code of Conduct (Pages 23 - 48)

6. Independent Persons (Pages 49 - 52)
7. Activities of the Member Development Working Group (verbal update)

PUBLIC

**MINUTES** of a meeting of the **GOVERNANCE, ETHICS AND STANDARDS COMMITTEE** held on 22 October 2020 at County Hall, Matlock

**PRESENT**

Councillor C Short (in the Chair)

Councillors N Atkin, K Buttery, J Coyle, K Gillott, L Grooby, W Major & C Moesby.

Apologies for absence were received from L Newby MBE (Independent Persons)

**07/20** **MINUTES RESOLVED** that the minutes of the meeting of the Governance, Ethics and Standards Committee held on 02 July 2020 be confirmed as a correct record and signed by the Chairman.

**08/20** **REPORT OF THE EXECUTIVE DIRECTOR ADULT SOCIAL CARE AND HEALTH ON THE REPORT OF THE LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN** At the previous meeting of the Governance, Ethics and Standards Committee on 9<sup>th</sup> January 2020, the Committee considered the report of the Local Government Ombudsman which made a finding of fault against the Council following Mrs C's death whilst in the care of Derbyshire County Council. It had been resolved that Adult Care and Social Health would bring back a further report to the Committee regarding progress in respect of actions taken and lessons learned.

In addition to updating the Governance, Ethics and Standards Committee, Adult Care and Social Health had been required to provide a report to the Scrutiny- People Committee. The first report to the Scrutiny Committee had been provided in February 2020 and a further report was provided in September 2020. This report detailed the progress made against the six workstreams which had been identified as being critical and the Scrutiny Committee noted the report.

Since the last report to the Governance, Ethics and Standards Committee in January 2020, the Local Government Ombudsman had written to the Council and confirmed that they had been satisfied with the Council's response and welcomed the action taken following the report. The complaint was now closed.

**RESOLVED** to note the action which had been taken by the Council following its report to the Governance, Ethics and Standards Committee on 9<sup>th</sup> January 2020 and the response of the Local Government Ombudsman.

**09/20      REPORT OF THE EXECUTIVE DIRECTOR COMMISSIONING, COMMUNITIES AND POLICY ON THE SCRUTINY REVIEW**      The

Scrutiny Review commenced in 2019 at the request of Cabinet and Chairs of Scrutiny and a workshop had been held for the Chairs and Vice Chairs of the four Improvement and Scrutiny Committees. A lack of officer capacity prevented the review from being progressed further at that time, and, to resolve this, a Programme Director was appointed in March 2020 to progress a range of projects, including the scrutiny review.

It had been determined that the Centre for Public Scrutiny (CfPS) were to be commissioned to undertake the review, bringing independence, a substantial experience of scrutiny from across the country and a ready-made scrutiny review methodology. As part of the review process the CfPS undertook two member surveys: one designed for completion by members of Cabinet and members of Improvement and Scrutiny Committees and the other designed for all remaining members. CfPS also carried out a series of one to one meetings and discussion groups with a number of key Members.

A Scrutiny Review Steering Group had been established to lead the review. The Steering Group comprised of the Improvement and Scrutiny Chairs and the Cabinet Member for Corporate Services. It was supported by the Executive Director, Commissioning, Communities and Policy and the Programme Director.

Cabinet considered the Scrutiny Review findings and proposed actions at their meeting on the 8th October 2020 and approved the Scrutiny Review Report, including recommendations and the draft action plan, for consideration at a scrutiny member workshop and by the four Improvement and Scrutiny Committees and Governance, Ethics and Standards Committee. Cabinet noted that this review commenced a programme of continuous review and development of scrutiny at Derbyshire County Council.

The Scrutiny workshop took place on the 12th October 2020. Four Member Break Out Groups, supported by CMT and Democratic and Scrutiny Services Officers considered the Scrutiny Review findings, Action Plan and the following three questions:

- What are the key findings of the review that you believe are the top priorities?
- What are the opportunities and risks to effective implementation of the action plan?
- What does success look like in 12 months' time?

A report would be presented to the Improvement and Scrutiny Committees on the 3rd and 4th November. The final report, action plan and the consultation feedback would be considered by Cabinet on 19th November for approval and recommendation to Council on 2nd December 2020.

Fifteen recommendations had been identified by the Centre for Public Scrutiny (CfPS), as set out in their report: Derbyshire County Council Scrutiny Improvement Review, July 2020, and a further three actions were identified by senior officers and the Scrutiny Steering Group. The Scrutiny Steering Group had prepared a draft Action Plan in response to the recommendations.

**RESOLVED** to (1) consider the Scrutiny Review Report, including recommendations, draft action plan; (2) commit to working in closer partnership with the Improvement and Scrutiny Committees; and (3) note that this review commenced a programme of continuous review and development of scrutiny at Derbyshire County Council.

**10/20 COMPLAINTS RECEIVED AGAINST COUNCILLORS PURSUANT TO THE CODE OF CONDUCT FOR ELECTED MEMBERS FOR THE PERIOD JUNE 2019 TO 30TH JUNE 2020**

The Council's Procedure for considering complaints that Councillors had breached the Code of Conduct provided that the Monitoring Officer, in consultation as appropriate with one of the Independent persons from the Standards Committee, decided how complaints should be dealt with. Decisions were made as to whether or not complaints should be investigated and whether or not they should be referred on to the Standards Committee for consideration.

In order to support the Monitoring Officer with the management of complaints, the Committee was kept informed of complaints received against Councillors on an annual basis.

During the period from 21<sup>st</sup> June 2019 to 30<sup>th</sup> June 2019, the following complaints were received and determined:

	Complaint received from	Substance of the Complaint	Outcome
1.	Member of the Public	Had been spoken to in an unacceptable manner and contrary to the principles of the Code of Conduct for Elected members	Not upheld
3.	District Councillor	Remarks/posts made on Facebook not in accordance with Code of Conduct	Not upheld as the posts were not made from a County Council perspective, but from a party political one.

4.	Member of the Public	Failure to respond to correspondence and complaints regarding conduct on social media.	The complaints were considered to be ineligible under the code following consultation with the Independent Member.
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One complaint submitted during this time period remained under consideration and details would be provided in the next annual report.

**RESOLVED** to note the contents of the report and to note that further reports would be presented on an annual basis.

**11/20 ANNUAL REVIEW LETTERS OF THE LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN FOR THE YEARS ENDING MARCH 2018, MARCH 2019 AND MARCH 2020**

The terms of reference for the Governance, Ethics and Standards Committee included “to receive regular reports on Local Government Ombudsman referrals”. Therefore, the Committee was invited to receive the Annual Review Letters from the LGSCO, giving details of the total number of complaints for Derbyshire County Council for the years ending 31st March 2018, 2019 and 2020. Unfortunately, letters for 2018 and 2019 had not previously been considered by the Committee. It had been proposed that the Annual Review Letter would be presented to the Committee on an annual basis in future years.

The Council received the Annual Review Letter from the LGSCO for 2017 -2018 from the LGSCO in July 2018. The letter stated that the Ombudsman received 93 complaints in the year ending 31st March 2018 relating to Derbyshire County Council. This compared to 84 complaints in the year ending 31st March 2017 (an increase of 11.7%).

Looking specifically at the decisions made by the LGSCO for the period ending 31 March 2018, there were 16 detailed investigations carried out, of which 8 were not upheld and 8 were upheld. This gave an upheld rate of 50%. In 2016/17 the LGSCO upheld 12 cases following investigation compared to 8 cases in 2017/18. This represented a decrease in cases where there were findings against the Council of 33.3 %. In respect of the 8 complaints upheld by the LGSCO in 2017/18 the LGSCO found fault and suggested a remedy in respect of each case and the remedies were acceptable to the Council. As a result of this there were no reports issued against the Council.

The Council received the Annual Review Letter for 2018-19 from the LGSCO in July 2019. The letter stated that the Ombudsman received 118 complaints and enquiries about the Council last year, an increase from 93 in 2017/18.

Of those 118 complaints, the Ombudsman upheld 12. Of those 12 upheld complaints, 9 required the Council to provide a remedy. The Ombudsman

found that 3 had already been offered a remedy which the Ombudsman considered suitable before the complaint was submitted to the Ombudsman.

The Council received its annual review letter for 2019-2020 from the LGSCO in July 2020. The letter explained that the Ombudsman had changed the way that the statistics were shared and evaluated. The focus was on the outcomes of complaints and what could be learned from them.

During the year ending 31<sup>st</sup> March 2020, the LGO upheld 19 decisions, which equated to 79% of all complaints received. This compared to 66% of complaints being upheld in other similar authorities as compared by the Ombudsman. Compliance with recommendations for Derbyshire County Council was found to be 100%. In 21% of the upheld cases, the Ombudsman found that the Council had provided a satisfactory remedy before the complaint reached the Ombudsman.

The Ombudsman did issue two public reports about Derbyshire County Council. The first highlighted failures in special educational needs and alternative education provision. The Ombudsman had noted that they welcomed the Council's acceptance of the findings that there had been fault leading to a child missing out on education for most of his secondary school years, and its agreement to a substantial payment to reflect the impact of this.

The second report identified multiple failings at The Grange Care Home between November 2015 and March 2016. The Grange Care Home was and continued to be owned and operated by the Council. The report highlighted failings in the care, care planning and falls management of a resident, and subsequent failings in the a safeguarding investigation undertaken by the Council following the death of the resident. However, the Ombudsman were pleased to note that the Council accepted the findings and engaged positively with the recommendations made. In addition to taking action to recognise the impact events had on the complainant, the Ombudsman noted that the Council also agreed to review its procedures to improve audit trails of care assessments and improve the quality of its adult safeguarding investigations.

The Ombudsman had also found that this year, the Council had too long to respond to enquiries during some of the investigations. The Ombudsman noted that nearly half of responses were late and there were five instances where a response was not received for over 30 days. The Ombudsman requested the Council reflect on this and take steps to improve liaison with the Ombudsman's office.

The Council's Channel Shift team had undertaken a review of complaints. It had been found that the current approach did not support a consistent council-wide approach to learning and improving from feedback. It also noted that practice varied across directorates and did not support the corporate reporting of complaints and feedback. The options for moving towards a new corporate

approach were being considered. The interface with the LGSCO had yet to be determined, but the Ombudsman's concerns would be considered as part of that review.

**RESOLVED** to note the annual review letter of the Local Government and Social Care Ombudsman for the years ending 31<sup>st</sup> March 2018, 2019 and 2020.

**12/20**      **UPDATE FROM THE MEMBER DEVELOPMENT WORKING GROUP**      The terms of reference of the Committee, set out that the Committee should receive regular reports from the Member Development Working Group on its work and activities around member development and training.

The main focus of the Working Group's activities during 2020 had been:

### **The Member Development Strategy**

Effective Member development was integral to achieving the Council's ambition and priorities. The strategy aimed to provide clear direction and purpose in respect of learning and development. The Strategy, therefore, set out a planned approach to how the Council would support its Members and provide them with learning and development opportunities to embrace challenges and assist them in effectively fulfilling their individual, collective and community roles.

The Strategy had been developed through the Member Development Working Group and in consultation with Members from across all groups. Each political group had identified a Group Member Development Champion and the Chairman of the Member Development Working Group would undertake the role of Member Development Champion for the whole Council. The Cabinet Member for Corporate Services had responsibility for Member Development and was a member of the Working Group and acted as the Member Development Champion within Cabinet. Member Development was now a standing item on the agenda of political group meetings.

The Strategy was formally adopted by Full Council at its meeting held on 16 September 2020 and work was under way to implement the necessary actions in order to gain Member Development Charter accreditation.

### **Derbyshire Learning Online (DLO)**

Options for the 'architecture' of an Elected Members only area had been considered by MDWG and a preferred model had been agreed. The Members area would create a 'one stop shop' for Member Development courses and resources including the Skills Matrix. Work was now underway to develop content and enable DLO to 'go live' as soon as possible now the Strategy had been adopted. Further developments would be on-going to develop and update content. Training on accessing and using the Member area would be developed and offered to all Members.



### **Member Development Skills Matrix**

The agreed Skills Matrix would be made available to Elected Members via the Members area of DLO. It identified the 'core' skills and knowledge, including specific development that was mandatory, as relevant to the different Member roles. It would provide the template for Member Development Plans, support the Training Needs Discussion process and inform the 2021 post-election induction design. Additional development opportunities, not defined within the skills matrix, would be made available as and when appropriate.

### **Training Needs Discussion**

As part of the implementation of the Strategy, Members would be offered an annual TND. TNDs would be facilitated by trained officers from within Democratic Services and Learning & Development. Facilitator training would be developed, officers/facilitators identified and trained so they could offer and undertake TNDs with Members. The Skills Matrix would be a key tool against which the current and aspirational training needs of Members would be identified. It would be particularly important in the period following the 2021 County Council elections when it would be essential that the training needs of all Members were captured.

### **Pre and post-Election Induction**

A key element of the Strategy was the development of an effective pre and post-election induction for Members.

In terms of pre-election induction, the Working Group was currently working on enhancing the existing information provided to potential candidates on the Council's website. Plans were also in hand to include a number of case studies of current county councillors. A video was also being produced to explain what the work of a county councillor entailed.

The Working Group was also overseeing the development of a postelection induction programme. Taking on board the feedback from the Member Development Day held in February 2020, the intention was to develop a programme which was flexible and best met the differing needs of Members.

### **Elected Member Well-being Pulse Survey**

The Council had recently undertaken a Pulse Survey of Members which followed a similar exercise for officers. The purpose was to capture the experiences of Members as they fulfilled their Council duties in Covid lockdown conditions. The results were being considered by MDWG, and this would identify areas where the Council could offer greater support to elected Members in discharging their role going forward.

**RESOLVED** to note the report.

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**Agenda Item 4**

**DERBYSHIRE COUNTY COUNCIL**

**19 JANUARY 2021**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**UPDATES TO THE CONSTITUTION**

**Report of the Director of Legal Services and Monitoring Officer**

**1. Purpose of the Report**

To seek agreement to amendments to the Council's Constitution and referral to Full Council for formal approval.

**2. Information and Analysis**

A review of the Constitution is being undertaken which has initially identified several provisions where change should be considered. If Members are minded to recommend the revisions detailed below, a report will be prepared for Council in February 2021 to make these amendments to the Constitution. A further report will be presented to the Committee in due course on additional amendments which are identified as part of the review.

**2(a) Council Procedure Rules**

**(i) Cabinet Report to Council**

There is a provision in the constitution at Appendix 3, Council Procedure Rules, Section 9B Questions by members on the Report from Cabinet as follows:

“9B. Questions by Members on the Report from Cabinet

(a) After giving written notice to the Director of Legal and Democratic Services by 12 noon on the Friday before the Council meeting, a Member of the Council may ask a member of the Executive a question on items in the report.

(b) A Member asking a question under this Standing Order may ask one supplementary question without notice of the Member to whom the first question was asked. The supplementary question must arise directly out of the original question or the reply.”

It is to be noted that after February 2019, the Cabinet Report to Council was no longer presented to Council. However, this change has not been ratified by Council or considered by the Governance, Ethics and Standards Committee and the provision remains in the Constitution. When this issue was identified, a Report from Cabinet was submitted to the Council meeting held on 2 December 2020 which rectified the position for the period March 2019 to December 2020.

Members are asked to consider removing the requirement for a Cabinet Report to Council from the Council Procedure Rules.

If these provisions are removed, any Member will continue to have the right to ask a question at Council of a member of the Executive under Standing Order 8.1. In addition, under the Access to Information Procedure Rules the Executive will still be required to submit quarterly reports to the Council on the cabinet decisions taken in the circumstances set out in Rule 15 of the Access to Information Procedure Rules (special urgency) in the preceding three months.

#### **(ii) Receipt of Minutes of Committees, Joint Committees and the Fire Authority**

There is a provision in the Constitution at Appendix 3, Council Procedure Rules, Section 4, Order of Business, item (n) Receive the minutes of committees, joint committees and the Fire Authority. These minutes were last presented to Council in February 2019. As with the Cabinet Report to Council detailed above, it is understood that when the Constitution was reviewed in 2019, there had been some consideration by Members to remove this provision from the Council Procedure Rules. However, this amendment was not reported to Council in May 2019 and therefore the Constitution was not amended.

To rectify this issue, the minutes of the meeting of the Fire Authority were presented to the December 2020 Council meeting, as part of the Cabinet Report to Council.

Again, Members are asked to consider removal of the requirement for these minutes to be presented to Council from the Council Procedure Rules.

If this provision is removed, any Member will continue to have the right to ask a question at Council of the nominated representative of the Derbyshire Fire Authority on the discharge of the functions of the Fire Authority under Standing Order 8.4.

#### **(iii) Member/Public Questions**

The Constitution (Appendix 3, Council Procedure Rules, Section 10.5) sets out the scope of public questions as detailed below:

“The Director of Legal and Democratic Services may reject a question if it:

- Exceeds 200 words in length;
- is not about a matter for which the Council has a responsibility, or which affects Derbyshire;
- is defamatory, frivolous or offensive;
- is substantially the same as a question which has been put at a meeting of the Council in the past six months; or
- requires the disclosure of confidential or exempt information.”

However, there is no such provision for Member questions (Council Procedure Rules, Section 8) and the Committee is asked to consider whether these should be now be included in the Rules relating to Member questions.

Similarly, Council Procedure Rules in relation to public questions, state that in the absence of the questioner, the Chairman may ask the question on the questioner’s behalf, indicate that a written reply will be given, or decide that the question will not be dealt with. No such provision is made for Member questions and it is proposed that this now be added.

#### **(iv) Order of Business**

The Council Procedure Rules (Appendix 3, Section 4) set out the order in which the business of a Council meeting should be considered. Should the Committee agree to remove the provisions of the Constitution as detailed in (i) and (ii) above, the following existing provisions would be removed from the Constitution:

- 4(k) Report from the Cabinet and Members’ Questions on the Report
- 4(n) Receive the minutes of committees, joint committees and the Fire Authority

The revised order of business would be as follows:

- (a) If necessary, the appointment of the Chairman
- (b) Apologies
- (c) Declarations of interests
- (d) Chairman’s announcements
- (e) Minutes of the previous meeting
- (f) Report of the Leader of the Council and Members’ Questions
- (g) Questions submitted by the public
- (h) Petitions

- (i) Questions submitted by Members
- (j) Reports of officers
- (k) Presentations
- (l) Motions

**(v) Section 2 – General Meetings**

There is currently no provision in the Constitution to provide for the cancellation of a scheduled meeting of the Council as a result of a lack of business or in exceptional circumstances (such as the Covid-19 Pandemic). It is therefore proposed that an additional section be added to the Council Procedure Rules as 2.2 to read:

*“The Chairman may cancel a scheduled meeting of the Council due to lack of business or in exceptional circumstances after consultation with the Leader of the Council and the Leader of the Main Minority Group.”*

**(vi) Substitutes**

Section 17.2 of the Council Procedure Rules sets out the arrangements for allowing substitutes at standing committees and sub-committees. The provision is however, somewhat limited and it is considered that the wording be expanded to provide greater clarity and detail. It is therefore suggested that the section be amended to read as below:

*“(a) For each of the standing Committees and Sub-Committees for the Council there shall be appointed a pool of members not greater than one quarter of the total number of members allocated to each of the duly constituted political groups on that committee who will be permitted to attend that Committee or Sub-Committee as a substitute in accordance with this Standing Order.*

*(b) Where a member (the original member) of a standing Committee or Sub-Committee of the Council is unable to attend a meeting of that Committee or Sub-Committee the original member may request the member appointed as a substitute pursuant to Standing Order 17 (a) (the substitute member) for that Committee or Sub-Committee for the political group to which the original member belongs to attend the Committee or Sub-Committee on behalf of the original member. The attendance of the substitute shall be notified in writing to the Director of Legal and Democratic Services no later than 5 pm on the day before the meeting. The substitute member shall announce at the start of the meeting which member they are substituting for under the item “Apologies for Absence and Substitutions”.*

*(c) A substitute member shall not be permitted to attend meetings of the Regulatory Planning Committee unless (s)he has previously received appropriate training to the satisfaction of the Monitoring Officer.*

*(d) The substitute member attending the Committee or Sub-Committee shall declare his/her presence as substitute at the commencement of the business of the Committee or Sub-Committee. The substitute member shall then act for all purposes, for the duration of that meeting only, as though he were the original member of the Committee or Sub-Committee.*

*(e) If the original member of the Committee or Sub-Committee is the Chairman or Vice-Chairman of that Committee or Sub-Committee the substitute member shall not be entitled to act in that office.”*

## **2(b) Article 11 – The Governance, Ethics and Standards Committee**

As members of the Committee will be aware, the Council is required to appoint an ‘Independent Person’ who has a role in dealing with Code of Conduct complaints. Section 28(8) of the Localism Act 2011 provides that a person is not ‘*independent*’ if the person is—

- (i) a member, co-opted member or officer of the authority,*
  - (ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority, or*
  - (iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii);*
- (b) a person may not be appointed under the provision required by subsection (7) if at any time during the 5 years ending with the appointment the person was—*
- (i) a member, co-opted member or officer of the authority, or*
  - (ii) a member, co-opted member or officer of a parish council of which the authority is the principal authority;*

The remit of the GES Committee as detailed in Article 11 of the Constitution, implies that the Independent Persons are members of the Governance, Ethics and Standards Committee. However, in practice they have not been formally co-opted onto the Committee or paid a co-opted member allowance. To provide clarity therefore, it is proposed that the wording on the composition of the Committee be amended to read;

*“The Governance, Ethics and Standards Committee will comprise of 8 Elected Members.”.*

## **2(c) Appendix 1 - Responsibility for Functions**

- (i) Under the responsibility for functions of the Director of Legal and Democratic Services (Section 20), there is provision for them;*

*“To appoint an independent person of another authority’s Standard Committee, where necessary because of a conflict of interest or non-availability, to serve a temporary member of the Standards Committee.”*

In light of the fact that the Independent Person is not a member of the Governance, Ethics and Standards Committee as set out above, it is proposed that the delegation is removed.

(ii) As the Committee will be aware, Council approved a revised leadership model at its meeting on 2 December 2020. As a result, there are various changes required to Appendix 1 of the Constitution to reflect the new role of Managing Director with effect from 1 January 2021. It is proposed that the Director of Legal and Democratic Services be authorised to make the necessary changes to the Constitution to reflect the new role.

(iii) Attached at Appendix A to this report is a revised list of legislation under which the Director – Community Services can authorise enforcement and administrative duties to be undertaken. On 9<sup>th</sup> December 2020, the Director of Legal and Democratic Services authorised the inclusion of this revised list in accordance with delegation 18 of the delegations to the Director of Legal and Democratic Services to *“undertake any revisions or amendments to the Constitution required as a consequence of amendments or variations to legislation, or the implementation of new legislation. Such amendments to be retrospectively approved by the Council.*

## **2(d) Article 20 – Officers**

(i) Section 20.1(b) - Corporate Management Team

The Section should include the following list of officers:

- Managing Executive Director – Commissioning, Communities and Policy
- Executive Director – Children’s Services
- Executive Director – Adult Social Care and Health
- Executive Director - Place
- Director of Finance and ICT
- Director of Legal and Democratic Services
- Director of Organisation Development and Policy
- Director of Public Health

(ii) Section 20.1(c) – ‘Head of Paid Service, Monitoring Officer and Chief Finance Officer’ requires amendment so it is clear that the Managing



Executive Director – Commissioning, Communities and Policy is the Head of Paid Service.

## **2(e) Appendix 7 – Budget and Policy Framework Rules**

Section (I) requires amendment to reflect the current provisions in the Local Authorities (Standing Orders) (England) Regulations 2001. The section should read as follows:

*“(I) Where, before 8th February in any financial year, the Cabinet submits to the Council for its consideration in relation to the following financial year:*  
*(i) estimates of the amounts to be aggregated in making a calculation (where originally or by way of substitute) in accordance with any of sections 31A, 31B, 34 to 36A, 42A, 42B, 45 to 49, 52ZF, 52ZJ, of the Local Government Finance Act 1992;*  
*(ii) estimates of other amounts to be used for the purposes of such a calculation;*  
*(iii) estimates of such a calculation; or*  
*(iv) amounts required to be stated in a precept under Chapter IV of I of the Local Government Finance Act 1992,*

*and following consideration of those estimates or amounts, the Council has any objections to them, it must follow the procedure in paragraph 7 to 9 of Part II of Schedule 2 to the Standing Order Regulations.”*

## **3. Legal Considerations**

In accordance with the Council’s Constitution, approval by the full Council is required for any change to the Constitution. However, under its terms of reference at Article 11 of the Constitution, the Governance, Ethics and Standards Committee is required *to advise the County Council on the monitoring, amendments to and overall operation of the Constitution.”* Therefore, prior to the amendments being considered by the full Council, they must be considered by the Governance, Ethics and Standards Committee.

Additionally, delegation 18 of the delegations to the Director of Legal and Democratic Services enables the Director to *“undertake any revisions or amendments to the Constitution required as a consequence of amendments or variations to legislation, or the implementation of new legislation”*. However, such amendments must be retrospectively approved by the Council. Consequently, as outlined above, prior to the amendments being considered by the full Council, this amendment should also be considered by the Governance, Ethics and Standards Committee.

Full Council has the power to arrange for the discharge of any of its functions by a committee. By virtue of section 102 of the Local

Government Act 1972, it is for full Council to make appointments to Committees. The proposed amendment to the Constitution set out in the report will ensure that appropriate process is in place in respect of appointment of substitute members to a Committee.

#### **4. Other Considerations**

In preparing this report, the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality and diversity, human resources, human rights, environmental, health, property and transport considerations.

#### **5. Background Papers**

The Constitution and the file held by the Director of Legal and Democratic Services

#### **6. Officer Recommendation**

That the Committee considers the proposed amendments to the Constitution as detailed in the report to Council and recommends them to Council for approval.

**Helen Barrington**  
**Director of Legal and Democratic Services and Monitoring Officer**

**Part 1****Authorisation for officers enforcing legislation generally.**

Agriculture (Miscellaneous Provisions) Act 1968  
 Animal Health Act 1981  
 Animal Welfare Act 2006  
 Animals Act 1971  
 Anti-social Behaviour Act 2003  
 Brucellosis (England) Order 2015  
 Cancer Act 1939  
 Children and Families Act 2014  
 Children and Young Persons (Protection from Tobacco) Act 1991  
 Children and Young Persons Act 1933  
 Clean Air Act 1993 – Motor Fuel (Composition and Content) Regs.  
 Companies Act 2006  
 Consumer Credit Act 1974  
 Consumer Protection Act 1987  
 Consumer Rights Act 2015  
 Copyright, Designs and Patents Act 1988  
 Criminal Justice Act 1988  
 Criminal Justice and Police Act 2001  
 Customs & Excise Management Act 1979  
 Education Reform Act 1988  
 Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015  
 Enterprise Act 2002  
 Environmental Protection (Microbeads)(England) Regulations 2017  
 Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020  
 Estate Agents Act 1979  
 European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:
 

- African Horse Sickness (England) Regulations 2012
- Animal By-Products(Enforcement)(England) Regulations 2013
- Avian influenza (Preventative Measures)(England) Regulations 2006
- Avian Influenza (Vaccination)(England) Regulations 2008
- Biofuel Labelling Regulations 2004
- Bluetongue Regulations 2008
- Business Protection from Misleading Marketing Regulations 2008
- Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008
- Cattle Identification Regulations 2007
- Construction Products Regulations 2013
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- Consumer Protection from Unfair Trading Regulations 2008
- Consumer Rights (Payment Surcharges) Regulations 2012
- Cosmetic Products Enforcement Regulations 2013 and the EU Cosmetic Products Regulation 1223/2009
- Crystal Glass (Descriptions) Regulations 1973
- Detergents Regulations 2010
- Diseases of Swine Regulations 2014
- EC Fertilisers (England and Wales) Regulations 2006
- Eggs and Chicks (England) Regulations 2009
- Electrical Equipment (Safety) Regulations 2016
- Electromagnetic Compatibility Regulations 2016

Energy Information Regulations 2011  
Energy Performance of Buildings (England and Wales) Regulations 2012  
Equine Identification (England) Regulations 2018  
Financial Services (Distance Marketing) Regulations 2004  
Fluorinated Greenhouse Gases Regulations 2015  
Foot-and-Mouth Disease (Control of Vaccination)(England) Regulations 2006  
Footwear (Indication of Composition) Labelling Regulations 1995  
Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018  
General Product Safety Regulations 2005  
Package Travel and Linked Travel Arrangements Regulations 2018  
Packaging (Essential Requirements) Regulations 2015  
Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations 2001  
Personal Protective Equipment (Enforcement) Regulations 2018  
Pressure Equipment (Safety) Regulations 2016  
Products of Animal Origin (Disease Control)(England) Regulations 2008  
Pyrotechnic Articles (Safety) Regulations 2015  
Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018  
Radio Equipment Regulations 2017  
REACH Enforcement Regulations 2008  
Recreational Craft Regulations 2017  
Registration of Establishments (Laying Hens)(England) Regulations 2003  
Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013  
Simple Pressure Vessels (Safety) Regulations 2016  
Supply of Machinery (Safety) Regulations 2008  
Textile Products (Labelling and Fibre Composition) Regulations 2012  
Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010  
Tobacco and Related Products Regulations 2016  
Toys (Safety) Regulations 2011  
Trade in Animals and Related Products Regulations 2011  
Transmissible Spongiform Encephalopathies (England) Regulations 2018  
Veterinary Medicines Regulations 2013  
Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012  
Welfare of Animals at Time of Killing (England) Regulations 2015  
Zoonoses (Monitoring) (England) Regulations 2007

Fireworks Act 2003

Fraud Act 2006

Hallmarking Act 1973

Health Act 2006

Knives Act 1997

Legal Services Act 2007

Licensing Act 2003

Motor Cycle Noise Act 1987

Offensive Weapons Act 2019

Olympic Symbol etc. (Protection) Act 1995

Prices Act 1974

Protection of Animals Act 1911

Psychoactive Substances Act 2016

Registered Designs Act 1949

Road Traffic Acts 1988 and 1991

Single Use Carrier Bags Charges (England) Order 2015

Tenant Fees Act 2019

and the Housing and Planning Act 2016 as it relates to Client Money Protection Schemes

Theft Act 1968

Tobacco Advertising and Promotion Act 2002  
Trade Descriptions Act 1968  
Trade Marks Act 1994  
Unsolicited Goods and Services Acts 1971 and 1975  
Video Recordings Act 1984  
Vehicles (Crime) Act 2001

## **Part 2**

### **Additional List of Legislation for officers with qualification/competency in:**

#### **Food Law**

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

Animals and Animal Products (Examination for Residues and Maximum Residue Limits)(England and Scotland) Regulations 2015  
Beef and Veal Labelling Regulations 2010  
Country of Origin of Certain Meats (England) Regulations 2015  
Food for Specific Groups (Food for Special Medical Purposes for Infants, Infant Formula and Follow-on Formula) (Information and Compositional Requirements) (Amendment etc.) (England) Regulations 2020  
Food for Specific Groups (Information and Compositional Requirements)(England) Regulations 2016  
Food Information Regulations 2014  
Food Safety and Hygiene (England) Regulations 2013  
Genetically Modified Organisms (Traceability and Labelling)(England) Regulations 2004  
Infant Formula and Follow-on Formula (England) Regulations 2007  
Materials and Articles in Contact with Food (England) Regulations 2012  
Novel Foods (England) Regulations 2018  
Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019 *in so far as it relates to food law*  
Official Feed and Food Controls (England) Regulations 2009 *in so far as it relates to food law*  
Olive Oil (Marketing Standards) Regulations 2014  
Organic Products Regulations 2009  
Poultrymeat (England) Regulations 2011  
Quick-frozen Foodstuffs (England) Regulations 2007  
Scotch Whisky Regulations 2009  
Specified Products from China (Restrictions on First Placing on the Market)  
(England) Regulations 2008  
Spirit Drinks Regulations 2008  
Wine Regulations 2011

Food Act 1984

Food and Environment Protection Act 1985 [Note: Authorisation must be issued directly to the officer by the FSA.]

Food Safety Act 1990

### **Part 3**

#### **Additional List of Legislation for officers with qualification/competency in: Feed Law**

Agriculture Act 1970

Animal Feed (Composition, Marketing and Use)(England) Regulations 2015

Animal Feed (Hygiene, Sampling etc and Enforcement)(England) Regulations 2015

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

Animal Feed (Basic Safety Standards) (England) Regulations 2019

Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019 *in so far as it relates to feed law*

Official Feed and Food Controls (England) Regulations 2009 *in so far as it relates to feed law*

### **Part 4 Additional List of Legislation for officers with qualification in: Weights and Measures Law**

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

Measuring Container Bottles (EEC Requirements) Regulations 1977

Measuring Instruments Regulations 2016

Non-automatic Weighing Instruments Regulations 2016

Weights & Measures (Packaged Goods) Regulations 2006

Weights and Measures Act 1985

### **Part 5**

#### **A separate authorisation is required under the Health and Safety at Work etc Act 1974 referring to the following:**

i) Sections 20, 21, 22 and 25 of the 1974 Act;

ii) The following Regulations made under the 1974 Act:

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

The Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013

The Chemicals (Hazard Information and Packaging for Supply) Regulations 2009

The Dangerous Substances and Explosive Atmospheres Regulations 2002,

The Explosives Regulations 2014,

The Petroleum (Consolidation) Regulations 2014, and

iii) The provisions of the following Acts mentioned in Schedule 1 to the 1974 Act;

Explosives Act 1875  
Public Health Acts 1936 and 1961

**Part 6**

**A**

**List of Legislation falling to be enforced by Unitary Authorities and NOT County Councils**

The Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018  
The Ozone-Depleting Substances Regulations 2015  
Redress Schemes for Letting Agencies Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014

**B**

**List of Legislation falling to be enforced by London Borough Councils, District Councils and County Councils where there is no District Council**

Sunbeds (Regulation) Act 2010

## **Part 7**

### **List of Extracted Legislation appropriate to specialist Animal Health and Welfare Officers ONLY**

Agriculture (Miscellaneous Provisions) Act 1968

Agriculture Act 1970

Animal Health Act 1981

Animal Welfare Act 2006

Animals Act 1971

Brucellosis (England) Order 2015

Companies Act 2006

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

African Horse Sickness (England) Regulations 2012

Animal By-Products (Enforcement)(England) Regulations 2013

Animals and Animal Products (Examination for Residues and Maximum Residue Limits)(England and Scotland) Regulations 2015

Avian influenza (Preventative Measures)(England) Regulations 2006

Avian Influenza (Vaccination)(England) Regulations 2008

Bluetongue Regulations 2008

Business Protection from Misleading Marketing Regulations 2008

Cattle Identification Regulations 2007

Consumer Protection from Unfair Trading Regulations 2008

Diseases of Swine Regulations 2014

EC Fertilisers (England and Wales) Regulations 2006

Eggs and Chicks (England) Regulations 2009

Equine Identification (England) Regulations 2018

Food Safety and Hygiene (England) Regulations 2013

Foot-and-Mouth Disease (Control of Vaccination)(England) Regulations 2006

Genetically Modified Organisms (Traceability and Labelling)(England) Regulations 2004

Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019

Official Feed and Food Controls (England) Regulations 2009

Products of Animal Origin (Disease Control)(England) Regulations 2008

Registration of Establishments (Laying Hens)(England) Regulations 2003

Trade in Animals and Related Products Regulations 2011

Transmissible Spongiform Encephalopathies (England) Regulations 2018

Veterinary Medicines Regulations 2013

Welfare of Animals at Time of Killing (England) Regulations 2015

Zoonoses (Monitoring) (England) Regulations 2007

Food and Environmental Protection Act 1985

Food Safety Act 1990

Protection of Animals Act 1911

Trade Descriptions Act 1968



**Agenda Item 5**

**DERBYSHIRE COUNTY COUNCIL**

**19 JANUARY 2021**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**UPDATES TO THE CONSTITUTION**

**Report of the Director of Legal Services and Monitoring Officer**

**1. Purpose of the Report**

To inform the Governance, Ethics and Standards Committee of the response submitted on behalf of Derbyshire County Council to the Committee on Standards in Public Life (CSPL) regarding the best practice recommendations made in the Committee's review completed in January 2019; to inform the Committee of a new Model Code of Conduct published by the LGA and to request that the Committee consider proposals regarding the review of the Council's current Code of Conduct.

**2. Information and Analysis**

At its meeting on 25<sup>th</sup> February 2019, the Committee (then the Standards Committee) considered the findings of the review of the Committee on Standards in Public Life dated January 2019. The purpose of the Review was for the CSPL to assure themselves that the current standards framework was conducive to promoting and maintaining the high ethical standards expected by the public.

The Review identified some specific areas of concern and identified a number of risks in respect of the current rules around conflicts and declaring of interests, gifts and hospitality and the increased complexity of local government decision-making.

The CSPL made 26 recommendations and identified 15 recommendations of best practice to improve ethical standards in local government. The recommendations included the suggestion for the LGA to create an updated mode code of conduct to enhance consistency and the quality of local authority codes.

In autumn 2020, the CSPL wrote to local authorities seeking an update regarding progress against those recommendations and what steps have been taken to put those recommendations in place. A copy of the

response sent to the CSPL on behalf of the Council is attached at Appendix 1.

It is proposed that further action should be taken in respect of recommendation 5 *“Local Authorities should update their gifts and hospitality register at least once per quarter and publish it in an accessible format”*, with immediate effect and it is proposed that the Gifts and Hospitality Register be published on the website.

However, the Committee will note that further areas of the Code require review in accordance with the best practice recommendations.

As required, the LGA has now developed a model code of conduct and a copy of the model code is attached at Appendix 2 and consideration will need to be given as to whether the Council wishes to adopt the new model Code.

Therefore, the Committee may wish to convene a working group to review the current Code in accordance with the best practice recommendations of the CSPL and to consider the new model Code to recommend whether this should be adopted by the Council.

### **3. Legal Considerations**

In accordance with section 27 Localism Act 2011, the Council must adopt a Code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. However, it is a matter for the Council to determine the terms and requirements of the Code, subject to that Code complying with the requirements regarding disclosing and registering of interests and being consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honest and leadership. Therefore, whilst the Council is required to adopt a Code, it is not required to adopt the model proposed by the LGA, but may implement its own Code or amend the proposed model.

In accordance with the Council’s Constitution, approval by full Council is required to adopt or revise the Code of Conduct. However, under its terms of reference at Article 11 of the Constitution, the Governance, Ethics and Standards Committee is required *“to design, implement, monitor, approve and review the standards of ethics and probity of the Council, both for Elected Members and officers. The Committee’s powers shall include responding to consultation documents and the promulgation of Codes of Conduct.....”*

### **4. Other Considerations**

In preparing this report, the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality and diversity, human resources, human rights, environmental, health, property and transport considerations.

## **5. Background Papers**

The Constitution and the file held by the Director of Legal and Democratic Services.

## **6. Officer Recommendation**

That the Committee:

1. notes the response submitted to the CSPL regarding progress against the best practice recommendations;
2. agrees that the Gifts and Hospitality Register should be published on the Council's website;
3. determines whether to establish a working group to review the current Code in accordance with the best practice recommendations of the CSPL and to consider the new model Code to recommend whether this should be adopted by the Council; and
4. should the Committee determine to establish such a working group, to agree the membership of that group

**Helen Barrington**  
**Director of Legal and Democratic Services and Monitoring Officer**

## CSPL local government ethical standards 15 best practice recommendations

1. Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

### Progress:

The Code for Derbyshire County Council at paragraph 3(11) requires Members' conduct to address the statutory principles in the Code of conduct by "valuing other Members and officers and engaging with them in an appropriate manner and in a manner which underpins the mutual respect between individuals that is essential to good local government and respecting and not bullying any person"

Whilst a list of examples is not included, this paragraph defines the standards of behaviour expected.

Further consideration as to whether prohibitions on bullying and harassment need to be made more specific will be given to this following the anticipated guidance from the LGA in the New Year.

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2. Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

### Progress:

Provision is not made in the Code of Conduct requiring Councillors to comply with formal investigations. However, the status of the Code and expectations are made clear through training.

The Code itself doesn't specifically prohibit trivial or malicious allegations by councillors. However, the Council has a procedure for dealing with complaints which enables the Monitoring Officer, in consultation with an Independent Person to decide that the complaint should not be investigated because it is vexatious, malicious or obsessive.

Further consideration as to whether the requirement to comply should be made more explicit within the Code will be considered by the Council's Governance, Ethics and Standards Committee in response to the Model Code and LGA Guidance in the New Year.

3. Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

**Progress:**

Since its implementation, a number of revisions have been made to the Code. However, this has not been made as required and it has not been the Council's practice to conduct an annual review.

Currently, the Council's ability to consult is limited by Covid-19. However, the Code will be reviewed in response to the Model Code and LGA Guidance in the New Year.

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4. An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

**Progress:**

The Council's Code of Conduct is contained within the Constitution. The Constitution is available on the website. A hard copy of the Code is available upon request.

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5. Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

**Progress:**

The Gifts and Hospitality Register is currently updated on an ad-hoc basis and is not published. However, this is currently under review and will be further considered by the Council's Governance, Ethics and Standards Committee in response to the Model Code and LGA Guidance.

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6. Councils should publish a clear and straightforward public interest test against which allegations are filtered.

**Progress:**

A specific public interest test is not detailed in the Code or published by the Council. However, in accordance with the Council's procedure for dealing with complaints, the Monitoring Officer, in consultation with an Independent Person may decide that the complaint should not be investigated because it is not in the public interest to investigate it.

Further consideration as to whether a public interest test should be published will be considered by the Council's Governance, Ethics and Standards Committee in response to the Model Code and LGA Guidance in the New Year.

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7. Local authorities should have access to at least two Independent Persons.

**Progress:**

It is the Council's practice to have three independent persons. Unfortunately due to two recent resignations, the Council only has one independent person. A recruitment exercise has now commenced and the closing date for applications is 10<sup>th</sup> December.

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8. An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

**Progress:**

This is currently undertaken in accordance with the Council's Procedure for dealing with a complaint brought under the Code of Conduct for Elected Members.

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9. Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

**Progress:**

The Council has not found itself in the position of having to make a decision on an allegation of misconduct. However, any such decision would be reported to the Governance, Ethics and Standards Committee. This would be an appropriately redacted version and so would be a public document and published on the website.

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10. A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

**Progress:**

There is a page on the Council's website detailing how to make a complaint and providing a link to the form. The link is below.

<https://www.derbyshire.gov.uk/council/complaints/complaints-about-councillors/complaints-about-councillors.aspx>

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11. Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

**Progress:**

N/A

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12. Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

**Progress:**

N/A

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13. A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

**Progress:**

The Council's Procedure for dealing with Complaints against Elected Members specifies that where the MO is unable to perform his role, his deputy will do so. This would include areas of conflict. The Council does only receive a small number of complaints per year and currently, the Council is able to consider areas of conflict on an individual basis. Whilst not expressly mentioned. The Council has liaised with MO's from neighbouring authorities to both undertake investigations on behalf of another authority where there has been a conflict, and to seek similar support in return.

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14. Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

**Progress:**

The Council has recently established three joint ventures. The reporting arrangements have not yet been finalised. A further report regarding governance of the joint ventures will be considered by Cabinet in January 2021.

15. Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

**Progress:**

It is already the Council's practice for meetings between senior officers and political group leaders to take place to discuss standards issues. However, these arrangements will be formalised as one of the outcomes of a review into Scrutiny with the Council has recently concluded.





## **Local Government Association**

### **Model Councillor Code of Conduct 2020**

#### **Joint statement**

The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviors and responsibilities associated with the role. Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to. We also want individuals from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area; taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

## **Introduction**

The Local Government Association (LGA) has developed this Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance. It is a template for councils to adopt in whole and/or with local amendments.

All councils are required to have a local Councillor Code of Conduct.

The LGA will undertake an annual review of this Code to ensure it continues to be fit-for-purpose, incorporating advances in technology, social media and changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code and the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

## **Definitions**

For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who

- a) is a member of any committee or sub-committee of the authority, or;
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

## **Purpose of the Code of Conduct**

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

## **General principles of councillor conduct**

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the [Seven Principles of Public Life](#), also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

## **Application of the Code of Conduct**

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

## **Standards of councillor conduct**

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

### **General Conduct**

#### **1. Respect**

##### **As a councillor:**

**1.1 I treat other councillors and members of the public with respect.**

**1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

## **2. Bullying, harassment and discrimination**

### **As a councillor:**

**2.1 I do not bully any person.**

**2.2 I do not harass any person.**

**2.3 I promote equalities and do not discriminate unlawfully against any person.**

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

### **3. Impartiality of officers of the council**

**As a councillor:**

#### **3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### **4. Confidentiality and access to information**

**As a councillor:**

#### **4.1 I do not disclose information:**

- a. given to me in confidence by anyone**
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
  - i. I have received the consent of a person authorised to give it;**
  - ii. I am required by law to do so;**
  - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
  - iv. the disclosure is:**
    - 1. reasonable and in the public interest; and**
    - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
    - 3. I have consulted the Monitoring Officer prior to its release.**

#### **4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.**

#### **4.3 I do not prevent anyone from getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

## **5. Disrepute**

**As a councillor:**

### **5.1 I do not bring my role or local authority into disrepute.**

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

## **6. Use of position**

**As a councillor:**

### **6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

## **7. Use of local authority resources and facilities**

**As a councillor:**

### **7.1 I do not misuse council resources.**

### **7.2 I will, when using the resources of the local or authorising their use by others:**

- a. act in accordance with the local authority's requirements; and**
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

## **8. Complying with the Code of Conduct**

### **As a Councillor:**

**8.1 I undertake Code of Conduct training provided by my local authority.**

**8.2 I cooperate with any Code of Conduct investigation and/or determination.**

**8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**

**8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

## **Protecting your reputation and the reputation of the local authority**

### **9. Interests**

#### **As a councillor:**

**9.1 I register and disclose my interests.**

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority .

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.



## **10. Gifts and hospitality**

**As a councillor:**

- 10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
  
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
  
- 10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

## **Appendices**

### **Appendix A – The Seven Principles of Public Life**

The principles are:

#### **Selflessness**

Holders of public office should act solely in terms of the public interest.

#### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

#### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

#### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

#### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

#### **Honesty**

Holders of public office should be truthful.

#### **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## Appendix B Registering

### interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

**"Disclosable pecuniary interest"** means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

**"Partner"** means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

### Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

### Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it

is a 'sensitive interest', you do not have to disclose the nature of the interest.

## Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which **affects** –
  - a. your own financial interest or well-being;
  - b. a financial interest or well-being of a friend, relative, close associate; or
  - c. a body included in those you need to disclose under Disclosable Pecuniary Interests as set out in **Table 1**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter **affects** your financial interest or well-being:
  - a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
  - b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest.

**Table 1: Disclosable Pecuniary Interests**

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

<b>Subject</b>	<b>Description</b>
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain. [Any unpaid directorship.]
<b>Sponsorship</b>	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
<b>Contracts</b>	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the

	<p>councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council —</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
<b>Land and Property</b>	<p>Any beneficial interest in land which is within the area of the council.</p> <p>'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
<b>Licenses</b>	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
<b>Corporate tenancies</b>	<p>Any tenancy where (to the councillor's knowledge)—</p> <p>(a) the landlord is the council; and</p> <p>(b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.</p>
<b>Securities</b>	<p>Any beneficial interest in securities* of a body where—</p> <p>(a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were</p>

	spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.
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\* 'director' includes a member of the committee of management of an industrial and provident society.

\* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

**Table 2: Other Registerable Interests**

<p>You have a personal interest in any business of your authority where it relates to or is likely to affect:</p> <ul style="list-style-type: none"> <li>a) any body of which you are in general control or management and to which you are nominated or appointed by your authority</li> <li>b) any body <ul style="list-style-type: none"> <li>(i) exercising functions of a public nature</li> <li>(ii) any body directed to charitable purposes or</li> <li>(iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)</li> </ul> </li> </ul>
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## Appendix C – the Committee on Standards in Public Life

The LGA has undertaken this review whilst the Government continues to consider the recommendations made by the Committee on Standards in Public Life in their report on [Local Government Ethical Standards](#). If the Government chooses to implement any of the recommendations, this could require a change to this Code.

The recommendations cover:

- Recommendations for changes to the Localism Act 2011 to clarify in law when the Code of Conduct applies
- The introduction of sanctions
- An appeals process through the Local Government Ombudsman
- Changes to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
- Updates to the Local Government Transparency Code
- Changes to the role and responsibilities of the Independent Person
- That the criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished

The Local Government Ethical Standards report also includes Best Practice recommendations. These are:

**Best practice 1:** Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

**Best practice 2:** Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.

**Best practice 3:** Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

**Best practice 4:** An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

**Best practice 5:** Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

**Best practice 6:** Councils should publish a clear and straightforward public interest test against which allegations are filtered.

**Best practice 7:** Local authorities should have access to at least two Independent Persons.

**Best practice 8:** An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to



review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

**Best practice 9:** Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

**Best practice 10:** A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

**Best practice 11:** Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council, rather than the clerk in all but exceptional circumstances.

**Best practice 12:** Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

**Best practice 13:** A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

**Best practice 14:** Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.

**Best practice 15:** Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

***The LGA has committed to reviewing the Code on an annual basis to ensure it is still fit for purpose.***

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**DERBYSHIRE COUNTY COUNCIL**

**19 JANUARY 2021**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**INDEPENDENT PERSONS**

**Report of the Director of Legal Services and Monitoring Officer**

**1. Purpose of the Report**

To consider proposals for the recruitment of Independent Persons.

**2. Information and Analysis**

S27 Localism Act requires that the arrangements under which decisions on allegations made that a Councillor has breached the Code of Conduct must include provision for the appointment of at least one independent person. The views of the independent person must be sought and taken into account by the authority before it makes its decision on an allegation that it has decided to investigate. The views of the independent person may also be sought by the Council in relation to any allegation made against a member or by a member against whom an allegation has been made.

In addition, the Local Authorities (Standing Orders) (England) Regulations as amended in 2015 extended the remit of independent persons in that they are now also required to sit on the Panel which is convened as necessary to consider disciplinary allegations against the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer to advise and make recommendations to the Council.

Until recently, the Council had three independent persons. However, two have resigned during the course of their second term of office and the third, Mr Lloyd Newby, is approaching the end of his second 4-year term of office.

Consequently, the Council must now appoint at least one independent person. In considering independence, the Act specifies that a person is not considered to be independent if the person is –

- (i) a member, co-opted member or officer of the authority, or
- (ii) a relative or close friend of a person who is a member or co-opted member or officer of the authority

In addition a person may not be appointed as an independent person if at any time during the 5 years ending with the appointment, the person was a member, co-opted member or officer of the authority.

Independent persons must be appointed through a process of public advertisement and application. Therefore, a recruitment process was commenced at the end of November 2020. An advertisement was placed on the Council's website and also within the local press. Potential applicants were required to submit an application form detailing their suitability for the role. An appointment to the role of independent person must also be approved by a majority of the members of the authority.

One applicant, Mr Ian Orford, was shortlisted and was successfully interviewed by the Director of Legal and Democratic Services, the Director of Finance and ICT and the Director of Organisational Development and Policy on 8<sup>th</sup> January 2021. Following that interview it is proposed that Mr Orford be recommended for appointment as an Independent Person, subject to obtaining satisfactory references. As Mr Orford is new to the role of independent person, the Interview Panel does recommend that the appointment should be subject to a review after twelve months. It is proposed that the review would be conducted by the Monitoring Officer in consultation with the Chair of the Governance, Ethics and Standards Committee.

Additionally, as Mr Orford is a new appointment, it is proposed that Mr Newby's term of office be extended for a further 12 months in order to retain the knowledge and experience he has gained. It has been reported to the Committee that the current Code of Conduct for Elected Members will be reviewed, and these appointments will provide the Committee with the opportunity to review the current arrangements for independent persons and consider whether further recruitment is required.

It is proposed that each Independent Person should be paid an allowance of £125 per session for attendance at meetings, hearings or events.

### **3. Legal Considerations**

As set out in the report with regard to the requirements for the appointment of at least one independent person.

Section 27 (8) (c ) (iii) Localism Act requires that the appointment of an independent person must be approved by the majority of the members of the authority. Under its terms of reference at Article 11 of the Constitution, the Governance, Ethics and Standards Committee is required *"to design, implement, monitor, approve and review the*

*standards of ethics and probity of the Council, both for Elected Members and officers. The Committee's powers shall include responding to consultation documents and the promulgation of Codes of Conduct....."* Therefore, the Committee's view in recommending the appointment to Council is sought.

**4. Other Considerations**

In preparing this report, the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality and diversity, human resources, human rights, environmental, health, property and transport considerations.

**5. Background Papers**

The Constitution and the file held by the Director of Legal and Democratic Services.

**6. Officer Recommendation**

That the Committee agrees:

- (i) to recommend to the Council the appointment of Ian Orford as an Independent Person under the Localism Act for a term of office of four years, but subject to a review after 12 months;
- (ii) to delegate the review referred to at (i) above to the Monitoring Officer in consultation with the Chair of the Governance, Ethics and Standards Committee; and
- (iii) to recommend that the Council extends the term of office for Mr Lloyd Newby for a further 12 months.

**Helen Barrington**  
**Director of Legal and Democratic Services and Monitoring Officer**

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