

# Public Document Pack



**Helen Barrington**  
Director of Legal and  
Democratic Services  
County Hall  
Matlock  
Derbyshire  
DE4 3AG

Extension 38324  
Direct Dial 01629 538324  
Ask for Alisha Parker

PUBLIC

To: Members of Governance, Ethics and Standards Committee

Wednesday, 23 February 2022

Dear Councillor,

Please attend a meeting of the **Governance, Ethics and Standards Committee** to be held at **2.00 pm** on **Thursday, 3 March 2022** in Council Chamber, County Hall, Matlock, Derbyshire, DE4 3AG, 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  
To receive apologies for absence (if any)
2. Declarations of Interest  
To receive declarations of interest (if any)
3. Minutes (Pages 1 - 4)

To confirm the non-exempt minutes of the meeting of the Governance, Ethics and Standards Committee held on 18 January 2022.

To consider the non-exempt reports of the Director of Legal and Democratic Services on:

4. Code of Conduct for Elected Members (Pages 5 - 26)
5. Independent Persons (Pages 27 - 32)
6. Annual Report of the Independent Remuneration Panel (Pages 33 - 44)
7. Remuneration of the Independent Remuneration Panel (Pages 45 - 48)
8. Code of Conduct Complaints (Pages 49 - 54)
9. Trading Standards – Legislation Update (Pages 55 - 68)

PUBLIC

**MINUTES** of a meeting of the **GOVERNANCE, ETHICS AND STANDARDS COMMITTEE** held on 18 January 2022 at County Hall, Matlock

## **PRESENT**

Councillor S Swann (in the Chair)

Councillors C Cupit, R Flatley, K Gillott, L Grooby, J Innes, W Major, and D Muller.

Also in attendance – Mr I Orford (Independent Person)

Apologies for absence were received from Councillor B Woods.

**01/22**      **MINUTES RESOLVED** that the minutes of the meeting of the Governance, Ethics and Standards Committee held on 20 October 2021 be confirmed as a correct record and signed by the Chairman.

**02/22**      **REVISIONS TO COUNCIL CONSTITUTION: REVIEW OF COUNCIL PROCEDURE RULES**      The Council had the power to make Standing Orders for the regulation of their proceedings and business and may vary or revoke any such orders under para 42 of Schedule 12 to the Local Government Act 1972. There was no prescribed form for the Standing Orders, but there were certain provisions specified in legislation that the Standing Orders must comply with. These had been set out in the Legal Implications section in Appendix 1 to the report.

The Council's Standing Orders (known as the Council Procedure Rules) had been subject to a detailed review by the Director of Legal and Democratic Services in conjunction with the Chairman of the Council in order to ensure the smooth running of council business and that the procedures at council meetings were effective and efficient. Following the review, revised Council Procedure Rules had been drafted, which appeared at Appendix 2 to the report. The main amendments proposed had been outlined within the report.

A motion was proposed and duly seconded.

Councillor Gillott proposed the following amendment to the original motion, which was duly seconded:

To retain the required notice for questions to Council of 3 days prior to the meeting rather than the new proposal of 10 days.

The amendment to the original motion was duly voted on and declared to have fallen.

The substantive motion was duly voted on and declared to be carried.

**RESOLVED** that the proposed Council Procedure Rules as set out in Appendix 2 to the report be agreed and referred to full Council for approval and inclusion in the Constitution subject to the following additional amendments:

- a) To add clarification that a reasonable period of time should elapse before adjourning a meeting that is not quorate to enable Members to join the meeting.
- b) To add the ability for a Member to withdraw a question.
- c) To ensure that a written response to a question should be sent out as soon as reasonably practicable after the Council Meeting and in any event within ten days.
- d) To tidy up the remaining inconsistencies in terminology and formatting and address any further drafting points.

**03/22      UPDATE REGARDING THE REVIEW OF THE ETHICAL STANDARDS REGIME**

It was agreed at the Governance ,Ethics and Standards Committee on 1st July 2021 that two working groups would be set up to review the standards regime introduced in 2012 under the Localism Act 2011.

The focus of the first working group was the Code of Conduct and the process for granting dispensations in accordance with Section 33 of the Localism Act 2011.

The proposed Code of Conduct and the process for the granting of dispensations was considered at the 22nd October 2021 Governance, Ethics and Standards Committee meeting and it was agreed that a period of consultation with Members would be undertaken in relation to the new proposed code of conduct and the proposed arrangements for the granting of dispensations. The draft Code of Conduct was circulated to all Members in the week commencing 3rd January 2022. The outcome of the consultation and a revised Code of Conduct would be reported to a future meeting of the Committee.

The second working group had been tasked with reviewing the process for managing alleged breaches of the Code of Conduct and for reviewing the arrangements in relation to the Independent Person, including remuneration.

The working group met on two occasions and formulated proposals to amend the Council's current process. Immediately following this the Local Government Association issued updated guidance which was more comprehensive than the version produced by the working group. The working group therefore met on a further occasion to consider the guidance issued by

the Local Government Association. The proposed draft at Appendix 2 to the report reflected the updated Local Government Association guidance.

The second working group also considered the arrangements for the Independent Person. It was agreed at the Committee meeting on 22nd October that the Independent Remuneration Panel would undertake a piece of work to consider options in this regard. The Independent Remuneration Panel had commenced this piece of work and would report its findings to a future meeting of the Governance, Ethics and Standards Committee.

**RESOLVED** that the Committee (1) approves the proposed process for considering complaints that Members had breached the code of conduct at Appendix 2 to the report; and (2) notes the actions which were ongoing in relation to the code of conduct and Independent Persons.

#### **04/22      MEMBER DEVELOPMENT WORKING GROUP UPDATE**

A verbal update was given by Councillor L Grooby on the Member Development Strategy and role of the Member Development Working Group.

During the previous term in February 2020 a workshop was held with Members to consult on the skills matrix, pre-election content on the role of Members and the induction programme. The skills matrix was then approved with the Member Development Strategy in September 2020. Post-election the induction programme had been delivered as well as the Members area being set up on DLO, the online learning management system.

The induction programme had been reviewed due to low attendance. Members had been reminded of this and sent a list of all of their outstanding training. Group leaders and whips were to be sent attendance records so that they could encourage completion of modules. A survey had been sent to all members in December 2021. The survey was being used to gather feedback on immediate training needs, understand views on wellbeing and current ways of working, and also to see if members wanted any support with systems or needed any further information.

A confidential 121 would be arranged with every member and a trained officer from Legal & Democratic Services to understand individual needs against the skills matrix. The training needs identified would form personal development plans and an overall annual development plan from which the best way to commission the training could be decided. A face to face event would also be held in the Spring for all members, to share and explore the survey results and introduce the proposal to identify members' training needs, along with possible key topics such as Modern Ways of Working and Vision Derbyshire.

The next meeting of the Member Development Working Group would be held on 31st January 2022.

DRAFT



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**3<sup>rd</sup> March 2022**

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

**Code of Conduct for Elected Members**

**1. Purpose**

- 1.1 To provide the Committee with an update of the work undertaken by the Working Group regarding the consideration of a new Code of Conduct for Elected Members and to ask the Committee to agree, and to recommend to Council the Code attached at Appendix 3 as a new Code of Conduct for Derbyshire County Council.

**2. Information and Analysis**

- 2.1 Members will recall that two working groups were established from the Governance, Ethics and Standards Committee to review elements of the Standards regime introduced in 2012 under the Localism Act 2011
- 2.2 The focus of the first working group was the Code of Conduct for Elected Members. The publication of a model Code of Conduct by the LGA following the recommendations of the Review of Ethical Standards by the Committee on Standards in Public Life in January 2019, prompted the consideration of Derbyshire County Council's current Code of Conduct.
- 2.3 The working group agreed a proposed Code of Conduct which was presented to the Governance Ethics and Standards Committee at its meeting on 20<sup>th</sup> October 2021. In light of the additional restrictions the revised Code would place on Members in terms of participating in meetings where business in which they have a personal interest is discussed, the Committee resolved that all Members be consulted on the proposed amended Code.

- 2.4 An email was sent to all Members on 4<sup>th</sup> January 2022, requesting comments or thoughts for consideration of the Working Group by 27<sup>th</sup> January. The email is attached at Appendix 2. Only one email was received in response. This was presented to the meeting of the Working Group on 4<sup>th</sup> February 2022 and taken into account in determining a way forward.
- 2.5 Following that meeting of the Working Group, attached at Appendix 3 is the proposed Code of Conduct for Elected Members for Derbyshire County Council. The proposed Code of Conduct is based on the model Code provided by the LGA. However, the Working Group felt that some additions were required. The additional sections which are not in the model Code are highlighted in yellow in Appendix 3. It is proposed that if adopted, the new Code of Conduct should take effect from 1<sup>st</sup> April 2022.
- 2.6 The LGA has committed to reviewing the Code annually to ensure that it remains fit for purpose.

### **3. Consultation**

- 3.1 This is a decision regarding administrative Council arrangements. Therefore, it was not necessary for public consultation or external consultation to take place.
- 3.2 However, all members have been made aware of the proposed changes and invited to comment by way of an email dated 4<sup>th</sup> January 2022.

### **4. Alternative Options Considered**

- 4.1 Whilst legislation requires that an authority must adopt a code dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity, there is no legal obligation or requirement for the Council to adopt the Model Code as drafted by the LGA.
- 4.2 Therefore, the following options were considered:
- (a) retaining the current Code - with or without revisions;
  - (b) adopting the Model Code – with or without revisions;
  - (c) rewriting a new Code, potentially using elements from both the Council's current Code and the Model Code.



## **5. Implications**

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **6. Background Papers**

- 6.1 None

## **7. Appendices**

- 7.1 Appendix 1 – Implications.  
7.2 Appendix 2 – E-mail sent to all Councillors  
7.3 Appendix 3 – Proposed new Code of Conduct

## **8. Recommendation(s)**

That Committee:

- a) supports the adoption of Code of Conduct for Elected Members attached at Appendix 3 from 1<sup>st</sup> April 2022 and agrees that this should be recommended to full Council for approval

## **9. Reasons for Recommendation(s)**

- 9.1 The revised Code of Conduct at Appendix 3 reflects the Model Code of Conduct proposed by the LGA. Therefore, this takes into account and addresses the recommendations made by the Committee for Standards in Public Life.
- 9.2 The revised Code of Conduct at Appendix 3 meets legislative requirements.

**Report Author:**  
Elizabeth Wild

**Contact details:**  
Elizabeth.wild@derbyshire.gov.uk

## **Appendix 1**

## **Implications**

### **Financial**

- 1.1 There are no financial implications

### **Legal**

- 2.1 Section 27 of the Localism act 2011 requires authorities to promote and maintain high standards of conduct by members and co-opted members and that in discharging that duty, 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.
- 2.2 However, there is no legal requirement to adopt the Code proposed by the LGA and there is no legal requirement to revise the Derbyshire's current Code of Conduct.

### **Human Resources**

- 3.1 There are no HR considerations

### **Information Technology**

- 4.1 There are no IT implications

### **Equalities Impact**

- 5.1 Not applicable

### **Corporate objectives and priorities for change**

- 6.1 This report links to the Council Priority of High Performing Value for Money and Resident Focused Services. The changes proposed will enable efficient and up to date functioning of the Council as a corporate body.

### **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

- 7.1 None

## **Alisha Parker (Corporate Services and Transformation)**

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**Subject:** Re: Revised Code of Conduct for Members of Derbyshire County Council  
**Attachments:** Appendix B (Code of Conduct).pdf; Appendix B (Guidance).pdf; Appendix A - DCC's Code of Conduct for Elected Members.pdf; Appendix C - Proposed new code for DCC.docx

Dear Councillor,

Under the Localism Act, Councils are required to “*promote and maintain high standards of conduct by Members and Co-opted Members of the authority*” (Section 27(1) Localism Act 2011). In discharging that duty, Councils are required to adopt a Code stipulating the conduct which is required of Members and Co-opted Members of the Authority when they are acting in that capacity.

Following a review in January 2019, the Committee for Standards in Public Life identified specific areas of concern relating to bullying and harassment and other disruptive behaviour by a minority of councillors. It also 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 Committee made a number of recommendations to improve the standards regime. One of the recommendations was the suggestion for the Local Government Association (LGA) to create an updated Model Code of Conduct, to promote consistency in the quality of local authority codes. The LGA has now completed its work on the Model Code.

A working group comprised of members from the Governance, Ethics and Standards Committee has been considering the model code and the need for any resulting changes to Derbyshire County Council’s current Code.

There is no legal obligation or requirement for the Council to adopt the Model Code as drafted by the LGA. The legal obligation is to have a Code consistent with the principles specified in the Localism Act 2011. In addition, the report by the Committee in Standards for Public Life identified a number of best practice recommendations which it states all local authorities should implement.

Derbyshire County Council’s Code of Conduct for Elected Members is attached at Appendix A.

In considering the new Code, the Council will need to determine whether to;

1. Retain Derbyshire County Council’s current Code – with or without revisions;
2. Adopt the Model Code as drafted by the LGA – with or without revisions;
3. Rewrite a new Code, potentially using elements from both the Council’s current Code and the Model Code of Conduct.

The Working Group is suggesting that the Council adopt the model Code as far as possible. However, it was felt that some additions and modifications were required. A copy of the LGA's model Code and Guidance is attached at Appendix B. At Appendix C a copy of the proposed revised Code is attached.

Members views and comments are now sought on the proposed new Code. In particular, it would be helpful if you could confirm whether or not, in general, you support moving to a Code based as far as possible on the Model Code prepared by the LGA. Any additional specific comments or queries would also be appreciated.

In considering the Code, I would draw your attention to the proposed change in position regarding interests, which limits the ability of members to participate in meetings where they have interests which is not included in the current code.

Please forward any comments or thoughts for consideration by the Working Group to Elizabeth Wild, Principal Solicitor at [Elizabeth.wild@derbyshire.gov.uk](mailto:Elizabeth.wild@derbyshire.gov.uk), or Jane Lakin, Assistant Director of Legal Services at [jane.lakin@derbyshire.gov.uk](mailto:jane.lakin@derbyshire.gov.uk) by Thursday 27<sup>th</sup> January 2022. If you have any queries or wish to discuss any issues in relation to the Code, please do not hesitate to contact me or Jane.

Following consideration by the Working Group, a report will be presented to the Governance, Ethics and Standards Committee on 3<sup>rd</sup> March 2022.

Regards,

*Liz*

**Elizabeth Wild | Principal Solicitor** | Legal and Democratic Services | Corporate Services and Transformation  
| Derbyshire County Council | County Hall, Matlock, Derbyshire DE4 3AG | Direct Dial via Teams 01629 538235  
| Mobile 07798830897

### **Derbyshire County Council's Code of Conduct for Elected Members (based on the Local Government Association Model 2020/2021)**

#### **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 behaviours 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.

#### **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 subcommittee 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"

#### **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 use of support, training and mediation prior to action being taken using the Code is encouraged. 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.

- 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.

### **Principles:**

- (1) **Selflessness:** Holders of public office should act solely in the public interest. They should not do so in order to gain financial or other material benefits for the themselves, their family, or friends.
- (2) **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;
- (3) **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals or rewards and benefits, holders of public office should make choices on merit.
- (4) **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- (5) **Openness:** Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- (6) **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interests.
- (7) **Leadership:** Holders of public office should promote and support these principles by leadership and example.

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 Derbyshire County Council's requirements and in the public interest.

### **Obligations on Councillors**

As a Member of Derbyshire County Council, your conduct should, in particular, address the statutory principles in the Code by:

1. Championing the needs of residents, including the whole community and, in a special way, your constituents, including those who did not vote for you, and putting their interests first.
2. Dealing with representations or enquiries from residents, members of the community and visitors fairly, appropriately and impartially.
3. Not allowing other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' case work, the interests of Derbyshire County Council or the good governance of Derbyshire County Council in a proper manner.
4. Exercising independent judgement and not compromising your position by placing yourself under obligations to outside individuals or organisations who might seek to influence the way you perform your duties as a Member of Derbyshire County Council.
5. Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
6. Being accountable for your decisions and co-operating when scrutinised internally and externally, including by local residents.
7. Contributing to making Derbyshire County Council's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding you and other Members to account, but restricting access to information when the wider public interest or the law requires its.
8. Respecting the confidentiality of information which you receive as a member by:
  - a. Not disclosing confidential information to third parties unless required by law to do so or where there is a clear and overriding public interest in doing so; and
  - b. Not obstructing third parties' legal rights of access to information
9. Behaving in accordance with all of Derbyshire County Council's legal obligations, with particular regard to:
  - a. The Data Protection Act 2018

- b. The Freedom of Information Act 2000
  - c. The Bribery Act 2010
  - d. The Equality Act 2010
10. Having regard to the principles of Derbyshire County Council's policies, protocols and procedures, including those relating to the use of Derbyshire County Council's resources (which must not be used improperly for political purposes including party political purposes).
  11. 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
  12. Always treating people with respect, including the organisations and public you engage with and those you work alongside
  13. Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within the Council.

Building on these principles and obligations, 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:

### **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.

## **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 Council employees, employees and representatives of partner organisations and those volunteering for the Council 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 Derbyshire County Council's Member and Officers' Relationship 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.**
- 3.2 I take advice as necessary from professional officers in reaching decisions and ensure that all relevant information is taken into account to reach an objective decision based on merit, which is lawful and reached as a result of following a transparent process**

Officers work for Derbyshire County Council 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 take professional advice, including legal advice into account when reaching your decision and you must not try and force officers to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity and the lawfulness of the decision or the process.

## **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 your or your Derbyshire County Council'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 Derbyshire County Council 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 authority 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 Derbyshire County Council's policies regarding their use, including the Protocol for Use of ICT by Members/Use of Resources.

## **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 Derbyshire County Council 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 Derbyshire County Council, 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 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 a pecuniary interest in any business of the Council 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 the financial interest or wellbeing of 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.
7. Where a matter arises at a meeting which **affects** the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), 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

Where the matter **affects** the 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. Otherwise you 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.



Where you have an Other Registerable 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.

## 8. Disclosure of Non-Registerable Interests

Where a matter arises at a meeting which ***directly relates*** to

- a. your own financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1); or
- b. a financial interest or well-being of a relative or close associate, you must disclose the interest.
- c. a financial interest or wellbeing of a body included under Other Registrable Interests as set out in **Table 2**

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you 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.

## 9. Where a matter arises at a meeting which ***affects*** –

- a. your own financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1); or
- b. a financial interest or well-being of a relative or close associate; 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.

## 10. Where a matter ***affects*** the 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. Otherwise you 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.

11..Where you have a Non-Registerable 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 . The [LGA guidance](#) relating to Cabinet confirms that “A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the local authority, yet is seldom due to actual corruption or even consciously favoring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally.”

**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](#).

SUBJECT	DESCRIPTION
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession, or vocation carried on for profit or gain
<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 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>(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, his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners have a beneficial interest</p>

	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 Registrable Interests

You must register as an Other Registerable Interest:

- a) any unpaid directorships
- b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- c) any body
  - (i) exercising functions of a public nature
  - (ii) directed to charitable purposes or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member or in a position of general control or management
- d) membership of other pressure groups, the Freemasons or other influential bodies of which you are a member

And that interest is not a Disclosable Pecuniary Interest



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**3<sup>rd</sup> March 2022**

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

**Independent Persons**

**1. Purpose**

- 1.1 To provide the Committee with an update of the work undertaken by the Working Group regarding Independent Persons and to ask the Committee to agree to recommendations to be put forward to Council regarding the number of and remuneration for Independent Persons.

**2. Information and Analysis**

- 2.1 Members will recall that two working groups were established from the Governance, Ethics and Standards Committee to review elements of the Standards regime introduced in 2012 under the Localism Act 2011.
- 2.2 The working group considering the involvement of independent persons within the process of considering complaints against members, including the level of remuneration has now completed their enquiries.
- 2.3 It was agreed at the meeting of the Committee in October 2021, that the Independent Remuneration Panel (IRP) should be asked to look at the level of remuneration for independent persons in Derbyshire and the matter was subsequently referred to the IRP for consideration.
- 2.4 The IRP considered the matter at its meeting on 26<sup>th</sup> January 2022. A report to the IRP setting out details of the role, details of the time likely to be spent by and Independent Person on this role and the current remuneration arrangements was provided to the IRP. The IRP also considered some benchmarking information.

- 2.5 The IRP was concerned that the serious and responsible nature of the role should be reflected, but that the figure set should not discourage or encourage candidates for financial reasons. The IRP also took into account the practical considerations around claiming and paying the remuneration and were of the view that these should be as efficient as possible. The IRP moved that the allowance should be set at £1,200 per annum payable in equal monthly instalments and that this sum would include expenses in order to avoid the need for a separate claim.
- 2.6 The Working Group supported the proposal made by the IRP. The Working Group was also mindful that as this sum was not in direct recompense of specific work undertaken, but a responsibility allowance to reflect the role, that it would be appropriate for the remuneration to be kept under regular review.
- 2.7 Additionally, the Working Group was invited to consider the optimum number of independent persons for the Council. The Council has generally received in the region of 3 or 4 complaints per year, during the period from 2015 to 2021. None of the complaints received during that period have been taken forward for investigation; all have been dealt with by way of informal resolution or rejected.
- 2.8 Legislation requires that the Council has at least one independent person (s28(7) Localism Act 2011). In 2012, in setting up the new standards regime, it was agreed that the Council should have three independent persons. This was based on an analysis of the worst-case scenario so that there would be one independent person to advise at the initial stage; one to support the subject member and one available to support a hearing panel.
- 2.9 To date, no more than one Independent Person has been involved in the consideration of any one complaint.
- 2.10 The Council currently has one serving Independent Person, Mr Ian Orford, who was appointed in February 2021 for a term of 4 years, although the appointment is subject to a review to be conducted by the Council's Monitoring Officer in conjunction with the Chair of the Governance, Ethics and Standards Committee after a period of 12 months. That review has now been undertaken and it has been agreed that Mr Orford should continue in the role of Independent Person for the remainder of the four-year term.

- 2.11 Mr Lloyd Newby's term of office as an independent person expired in December 2021. Mr Newby served as an independent person since the regime was introduced in 2021. He served two terms, with the latter period being extended by 12 months due to an on-going recruitment process and then to provide an element of overlap with Mr Orford to enable the Council to benefit from the knowledge and expertise Mr Newby gained in undertaking the role for such a long period of time.
- 2.12 Mr Newby was prevented from undertaking a further term of office as the Council's arrangements only enable individuals to undertake 2 terms of office in order to preserve independence. It is proposed that a formal letter of thanks from the Civic Chair and Chair of the Governance, Ethics and Standards Committee be sent to him to recognise his service.
- 2.13 In considering the position regarding complaints and the experience of the independent persons, the Working Group was of the opinion that continuing with three was excessive in light of the number of complaints. However, it would be appropriate to have more than one in order to ensure an element of flexibility in the event of conflict or other difficult circumstances. Therefore, the Working Group was of the view that two would be the optimum number of independent persons for the Council.
- 2.14 As the Council currently only has one serving independent person, it would be appropriate to commence a recruitment procedure to appoint a further independent person. Due to the nature of the role, the Working Group felt that it would be appropriate for members to be involved in the appointment process.

### **3. Consultation**

- 3.1 This is a decision regarding administrative Council arrangements. Therefore, it was not necessary for public consultation or external consultation to take place.
- 3.2 However, members have consulted with the IRP and made appropriate enquiries to fully consider the current position.

### **4. Alternative Options Considered**

- 4.1 The arrangements for the involvement of independent persons could remain as it currently stands, with the Council having three independent persons who are remunerated on the current basis of a fee per event

attended/work undertaken and reimbursement of expenses. This meets basic statutory requirements; however, it would not achieve the most efficient and effective service and benefit to the Council.

- 4.2 Consideration could be given to a different number of independent persons to support the Council or to offer an alternative amount or method of remuneration. However, it is asserted that the proposal detailed in the report is the most efficient and effective arrangement for the involvement of independent persons

## **5. Implications**

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **6. Background Papers**

- 6.1 None

## **7. Appendices**

- 7.1 Appendix 1 – Implications.

## **8. Recommendation(s)**

The Committee:

- a) Supports the proposal for the Council to pay independent persons appointed under s28 Localism Act 2011 a fixed-fee of £1200 per annum in 12 monthly instalments from 1<sup>st</sup> April 2022, but that this should be kept under regular bi-annual review by the Committee and recommends this be referred to full Council for approval;
- b) Supports the proposal that the Council should have two independent persons and recommends that this be referred to full Council for approval;
- c) agrees that a recruitment process should be commenced to appoint a second independent person and authorises the Monitoring Officer to commence the recruitment process and make arrangements for a cross-party, politically balanced recruitment panel of 3 members drawn from the Governance, Ethics and Standards Committee to be established to interview candidates



and recommend a candidate for approval, initially to the Committee and then to full Council.

- d) agrees that a formal letter of thanks from the Civic Chair and Chair of the Governance, Ethics and Standards Committee be sent to Mr Lloyd Newby to recognise his service as an independent person.

## **9. Reasons for Recommendation(s)**

- 9.1 To comply with the legislation to have in place independent persons as required by the Localism Act 2011.
- 9.2 To ensure that independent persons are appropriately remunerated

### **Report Author:**

Elizabeth Wild

### **Contact details:**

[Elizabeth.wild@derbyshire.gov.uk](mailto:Elizabeth.wild@derbyshire.gov.uk)

## **Appendix 1**

### **Implications**

#### **Financial**

- 1.1 As only two persons will be undertaking the role of independent person, the total cost to the Council per year will be £2400 which is a minimal consideration. Financial advice provided to the IRP in considering the reasonableness of the proposal was that this was a reasonable amount which the Council could accommodate.

#### **Legal**

- 2.1 Section 28(7) of the Localism Act requires that an authority must include provision for the appointment by the authority of at least one independent person and in accordance with 28(8)(d), is not prevented from being paid an allowance by the appointing authority.

#### **Human Resources**

- 3.1 Independent persons are not employees and there is no contract of employment. Therefore, there are no HR considerations

#### **Information Technology**

- 4.1 There are no IT implications

#### **Equalities Impact**

- 5.1 In accordance with s28(8)(c), the authority must conduct an appropriate appointment procedure. In doing so, the authority must comply with the public sector equality duty and equalities legislation.

#### **Corporate objectives and priorities for change**

- 6.1 This report links to the Council Priority of High Performing Value for Money and Resident Focused Services. The changes proposed will enable efficient and up to date functioning of the Council as a corporate body.

#### **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

- 7.1 None



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**THURSDAY, 3 MARCH 2022**

**Report of the Director - Legal and Democratic Services**

**Annual Report of the Independent Remuneration Panel**

**1. Purpose**

- 1.1 To inform the Committee of the latest report from the Council's Independent Remuneration Panel (IRP), relating to member remuneration for 2022/23 in order to make recommendations to Council.

**2. Information and Analysis**

- 2.1 The Council is required to adopt and publish a Members' Allowances Scheme and to consider recommendations from the IRP. Attached for consideration at Appendix 2, is the report of the Independent Remuneration Panel dated March 2022. The IRP held four virtual meetings in order to prepare their report and a summary of the work carried out is included in the Panel's report at section three.
- 2.2 The findings of the Panel are set out in section four of their report with the recommendations in full provided at section five.
- 2.3 In summary, the Panel is recommending that one change is made to the special responsibility allowance payable to the Chairman of the Council to bring it into line with comparable committee chairs. The IRP is recommending that there should be no further changes, aside from the uplift in line with the pay award to staff, to any member allowances for next year.

- 2.4 The Committee will note that the term of office of three members of the IRP is due to expire in December 2022. It is therefore proposed that approval is given to commence a recruitment exercise during the summer to ensure that the vacancies are filled in December so that the IRP is not left inquorate and unable to fulfil its role. It is also proposed that a cross party interview panel of three members of the Committee be established to interview candidates. It is proposed that the interview panel conduct interviews with applicants following shortlisting of applications by the Head of Democratic & Registration Services in consultation with the Monitoring Officer and S151 Officer. The interview panel will recommend who should be appointed to the IRP, however Full Council will have to formally appoint to these roles.

### **3. Consultation**

- 3.1 The Panel held a meeting with the Leader, Civic Chair and Chair of the Council to seek their views on the level of allowances that should be payable to the Civic Chairman and Council Chairman in order to make their recommendations.

### **4. Alternative Options Considered**

- 4.1 The Committee could decide not to support the recommendations made by the Panel and make their own alternative recommendations for presentation to Council.

### **5. Implications**

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

### **6. Background Papers**

- 6.1 None identified

### **7. Appendices**

- 7.1 Appendix 1 – Implications  
Appendix 2 – Report of the Independent Remuneration Panel

### **8. Recommendation(s)**

To consider the report and recommendations of the Independent Remuneration Panel, as set out in Appendix Two to the report, and recommend them to Council for approval.

8.2 To approve the commencement of a recruitment exercise for IRP members as detailed in the report and agree the composition of the interview panel.

## **9. Reasons for Recommendation(s)**

To ensure that the Council has an up to date and robust scheme for the payment of allowances to members.

To ensure that the impending vacancies are filled in December so that the IRP is not left inquorate and unable to fulfil its role.

**Report Author:** Alec Dubberley    **Contact details:** [alec.dubberley@derbyshire.gov.uk](mailto:alec.dubberley@derbyshire.gov.uk)  
Tel: 01629 539035

**Implications**

**Financial**

- 1.1 Should Council accept the Panel's recommendations, then costs can be accommodated from within existing budgets.

**Legal**

- 2.1 The Local Authorities (Members' Allowances) (England) Regulations 2003 (as amended) set out that local authorities must establish a panel to review and advise on the level of allowances payable to members. The Council must have regard to the recommendation made by the Panel.
- 2.2 Adopting the Members' Allowances Scheme and approval of amendments to the Constitution are both matters which are reserved to full Council. However, under its terms of reference at Article 11 of the Constitution, the Governance, Ethics and Standards Committee is required to advise the Council on any matters in connection with the Members' Allowance Scheme, taking into account the recommendations of the Independent Remuneration Panel.

**Human Resources**

- 3.1 None.

**Information Technology**

- 4.1 None.

**Equalities Impact**

- 5.1 There are no equalities implications arising from this report.

**Corporate objectives and priorities for change**

- 6.1 Not applicable.

**Report of the Independent Remuneration Panel**  
**Derbyshire County Council**  
**January 2022**

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1. Background
2. Terms of Reference
3. Process of the Review
4. Results of the Review
5. Recommendations
6. Work Programme for 2022-2023

**Annex A**

Recommended Amounts Payable to Members under the Members Allowances Scheme 2022-2023



## 1. Background

- 1.1 The Independent Remuneration Panel is established under the Local Authorities (Members' Allowances) (England) Regulations 2003 (as amended) to provide advice and recommendations to the Council on its Members' Allowances Scheme and amounts to be paid under it.
- 1.2 Relevant guidance was issued by the Office of the Deputy Prime Minister "EIM65960 - Local Government Councillors and civic dignitaries in England: ODPM guidance: Part One: members' allowances.
- 1.3 Panel members are appointed for a period of four years and no member may serve for more than two terms of office of four years. Three current members' terms of office end in December 2022.
- 1.4 Panel members are recruited by public advertisement and should be of good standing in the community either as a resident and/or a stakeholder in the County. Ideally members should have sound knowledge of employment and financial matters with an understanding of the operations of a local authority. To maintain independence political appointments, and appointments which are made through friendship or any other personal association of any members of the council must be avoided.
- 1.5 The current Derbyshire County Council Independent Remuneration Panel comprises five members, none of whom are members of the Council or any of its committees, nor an employee of the Council. The members are:
  - a) **Mr. Simon Westwood - elected by the panel as Chair for 2021-22** Independent Chair of the Safeguarding Children Partnership for the City of Stoke on Trent. Independent Scrutineer for Safeguarding Children at Salford City Council. Worked for the County Council until 2000, having held the posts of Head of Planning and Projects and Head of Planning and Strategic Development. Member since December 2014. Term ends December 2022.
  - b) **Mr Denis Heaney** - Former Investigations Manager HMRC, previously an Independent Member of the Derbyshire Police Authority Standards Committee and the County Council's Standards Committee. Member since December 2014. Term ends December 2022.
  - c) **Mr Andrew Sharpe** - Clerk and Responsible Financial Officer for a number of Parish Councils in Derbyshire. Former Head of Democratic Services and Deputy Monitoring Officer with

Erewash Borough Council. Member since December 2014.  
Term ends December 2022.

- d) **Mr Peter Clifford** - Retired Magistrate having served 17 years (including 6 years as a Chair). Former Pensions Manager at Coalite Group and Rolls-Royce. Bachelor of Law degree from the University of London. Member since December 2021.
- e) **Mr Peter Clay** - Former Banker, Retired Magistrate, Non-Executive Director NHS, Audit Chair and former Chair of Lincolnshire IRP. Member since December 2021.

- 1.6 During 2021-22 having served two terms, Mrs. Pat Boyle's term office expired. The Panel would like to thank Mrs. Boyle for her valuable and astute contributions to the Panel over the last eight years. Following a public advertisement and recruitment exercise two new members, Mr Peter Clay and Mr Peter Clifford, were appointed to the Panel by the Council with effect from 2 December 2021.
- 1.7 The Secretary to the Panel is the Head of Democratic and Registration Services. The Director of Legal and Democratic Services (Monitoring Officer), Director of Finance and ICT (Chief Finance Officer) and Principal Solicitor also attend the meetings to provide advice and support.
- 1.8 The Panel is advisory in nature and the recommendations it makes are not binding on the authority. However, the Local Authorities (Members' Allowances) (England) Regulations 2003 (as amended) requires Council to "have regard" to the Panel's recommendations when setting its allowances.

## 2. **Terms of Reference**

The purpose of the Independent Remuneration Panel is as follows:

- a) To make recommendations to the authority as to the amount of basic allowance that should be payable to its elected members.
- b) To make recommendations to the authority about the responsibilities or duties which should lead to the payment of a special responsibility allowance and as to the amount of such an award.
- c) To make recommendations to the authority about the duties for which a travelling and subsistence allowance can be paid and as to the amount of this allowance.

- d) To make recommendations as to the amount of co-optees' allowance.
- e) To make recommendations as to whether the authority's allowances scheme should include an allowance in respect of the expenses of arranging for the care of children and dependents and if it does make such a recommendation, the amount of this allowance and the means by which it is determined.
- f) To make recommendations on whether any allowance should be backdated to the beginning of a financial year in the event of the scheme being amended.
- g) To make recommendations as to whether annual adjustments of allowance levels may be made by reference to an index, and if so, for how long such a measure should run.
- h) The IRP will make its recommendations in the form of a report to Council.

### **3. Process of the Review**

The Panel held four meetings during the year in June, September, December and January. All were virtual due to the Covid restrictions.

The Panel were advised that, in May 2021, the Council had approved the addition of a new committee, the Improvement and Scrutiny Committee, Climate Change, Biodiversity and Carbon Reduction. The new roles created (Chair and Vice-Chair of the Committee) attracted additional Special Responsibility Allowances (SRAs). The Panel were advised that this cost could be met within existing resources.

The Panel received and considered information on comparative allowances from 13 other Council areas and all of the District Councils in Derbyshire and concluded there was no case for changing these for 2022-2023.

In respect of SRAs the Panel were informed of additional Cabinet Member roles that had been established and were advised that the costs of the SRAs for these was containable within the existing budget.

The Panel met with the Leader of the Council, the Chair of the Council and the Civic Chair of the Council to review the balance of responsibilities of these role after the role of Chair was initially introduced in 2019/20. These were due for review in 2020/2021 but due to the pandemic the activity of the role of the Civic Chair was particularly affected.

We considered the Role Profiles for these roles and received information from officers on previous Civic duties. We also considered the allowances paid in other Councils for these roles. We felt that the role of the Chair of the Council should be remunerated in line with other committee chairs.

We did not feel that there was enough recent information to decide on any change to the Civic Chair remuneration for this year but that we would undertake a full review of that role in 2022/23.

In December 2021, the Panel were asked by the Governance, Standards and Ethics Committee to propose an appropriate rate of remuneration for Independent Persons appointed under the Localism Act within the standards regime for Derbyshire County Council.

We considered the report of Director of Legal and Democratic Services, the role profile for an Independent Person, benchmarking information from other Councils and reflected on the similarity between the IRP Panel members role and the Independent Persons role. As a result of that we provided our independent view to the working group considering this.

#### **4. Results of the Review**

##### **4.1 Basic Allowance**

On the issue of Basic Allowance the Panel agreed that there should be no change to the allowance for 2022-2023 other than the addition of any increase in the pay award due to employees covered by the NJC Pay Rates for Local Government Services as of the 1<sup>st</sup> April each year. This is currently agreed within the scheme.

##### **4.2 Special Responsibility Allowance**

On the issue of Special Responsibility Allowance the Panel, having considered the importance, level of accountability and work required to prepare and manage lengthy meetings and managing public interaction with the Council, consider that the allowance for the Chair of the Council should be brought into line with the special responsibility allowance for other Council Committee Chairs of Derbyshire County Council and should be 25% of the full allowance for the year 2022/23. The Panel agreed that there should be no change to the other SRAs for 2022-2023 other than the addition of any increase in the pay award due to employees covered by the NJC Pay Rates for Local Government Services as of the 1st April each year. This is currently agreed within the scheme.

4.3 That we advised the Governance, Standards and Ethics Committee on suitable remuneration for Independent Persons appointed under the Localism Act and also advised officers that they consider if any similar Independent Person roles in the Council should also be considered.

4.4 A revised Members' Allowances Scheme incorporating the recommended amendments is attached at Annex A.

- 4.5 In preparing this report, and the recommendations contained herein the Panel wants to thank the Members and Council Officers who contributed to the discussions and assisted the Panel in its work.

## **5. Recommendations**

- 5.1 The Panel therefore recommends to Council that:

The basic allowance payable to all Members from 1<sup>st</sup> April 2022 should remain at the 2021-2022 level uplifted by any increase in the pay award due to employees covered by the NJC Pay Rates for Local Government Services as of 1<sup>st</sup> April each year. This is currently agreed within the scheme.

- 5.2 The Special Responsibility Allowances payable from 1<sup>st</sup> April 2022 for the Chair of the Council should be 25% of the full allowance.

- 5.3 There should be no change to the Civic Chair allowance during 2022-2023.

- 5.4 All other Special Responsibility Allowances payable from 1<sup>st</sup> April 2022 should remain at the 2021-2022 level uplifted by any increase in the pay award due to employees covered by the NJC Pay Rates for Local Government Services as of 1<sup>st</sup> April each year. This is currently agreed within the scheme.

- 5.5 The Members' Allowances Scheme should be amended to adjust the SRA for the Chair of the Council.

- 5.6 The revised Members' Allowances Scheme at Annex A is approved.

- 5.7 In recognition of the expiry of the term of office of three members of the Panel in December 2022, Council agrees to commence a recruitment exercise during 2022 so that it is in a position to appoint to the vacant positions.

## **6. Work Programme for 2022-23**

- 6.1 The Panel intends to continue to keep under review all aspects of the allowances paid to Members and review the role of the Civic Chair. An open invitation is extended to all Members of Council to ask questions or raise issues with the Panel at any time.

### **Report Author**

**Simon Westwood**  
**Independent Chair**  
**Derbyshire County Council Independent Remuneration Panel**

## Amounts Payable to Members under the Members Allowances Scheme

No Claim Required. These Allowances will be paid Automatically.

		Relative Responsibility %	Annual Amount 2022-23 £
<b>Special Responsibility Allowances</b>			
Council	Chairman	25	9,252
	Civic Chairman	25	9,252
	Civic Vice-Chairman	10	3,696
Cabinet	Leader	100	36,996
	Deputy Leader	75	27,744
	Cabinet Member	50	18,492
Leader of the Main Opposition Group		45	16,644
Leader of a Minority Opposition Group (with at least 10% of Council Members)		15	5,544
Cabinet Support Member		25	9,252
Improvement and Scrutiny Committee-Resources	Chairman	25	9,252
Improvement and Scrutiny Committee-Places	Vice-Chairman	10	3,696
Improvement and Scrutiny Committee-People			
Improvement and Scrutiny Committee-Health			
Improvement and Scrutiny Committee-Climate Change, Biodiversity and Carbon Reduction			
Planning Committee (Regulatory)			
Governance, Ethics and Standards Committee			
Audit Committee			
Pensions and Investments Committee			
Appointments and Conditions of Service Committee			
Basic Allowance			11,196
Co-optees Allowance			744
Fostering Panel			1,956

NB - A Member cannot be in receipt of more than two SRAs at any one time



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**3 March 2022**

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

**Remuneration of the Independent Remuneration Panel**

**1. Purpose**

- 1.1 To seek agreement from the Governance, Ethics and Standards Committee for the remuneration to be paid to members of the Independent Remuneration Panel and referral to Council to formal approval.

**2. Information and Analysis**

- 2.1 The Council is required to establish an Independent Remuneration Panel (IRP) under the Local Authorities (Members' Allowances) (England) Regulations 2003 (as amended) to provide advice and recommendations to the Council on its Members' Allowances Scheme and amounts to be paid under it.
- 2.2 By virtue of regulation 20 (3), the Council may pay the expenses incurred by the IRP in carrying out its functions and may pay the members of the panel such allowances or expenses as it may determine. The Local Government Councillors and civic dignitaries in England: ODPM guidance: Part One: members' allowances does not indicate what level of allowance should be paid but confirms "These allowances are a matter for the local authority to determine".
- 2.3 Currently members of the IRP are entitled to receive £125 per meeting (plus expenses). This is conditional upon the panel member attending the meeting. The Chair is also entitled to an additional £250 chair's

allowance. All payments are made following the submission of a claim from the Panel member.

2.4 The current process is not as efficient as possible and it is therefore proposed that the Council moves to a fixed fee arrangement payable in equal monthly instalments. This will enable the administrative burden of submitting and processing individual claims to be removed and the process of making payments to be streamlined.

2.4 It is important that the fee is set at an appropriate level to reflect the responsible nature of the role of the IRP, but that is a justifiable payment from public funds. This year the IRP met on 4 occasions (virtually) and prior to the Covid-19 pandemic, the IRP also met on 4 occasions during 2018/19. It is reasonable to expect that on average the IRP will meet in the region of 4 times a year. It is proposed that:

- (a) The allowance paid to IRP members be set at £600 per annum payable in equal monthly instalments and that this sum would include attendance at meetings, reading time and expenses in order to avoid the need for a separate claim;
- (b) The Chair should continue to be paid an additional allowance of £250 to recognise the additional responsibilities of the role; and
- (c) Payments shall be made in equal monthly instalments.

### **3. Consultation**

3.1 Not applicable.

### **4. Alternative Options Considered**

4.1 To maintain the status quo and continue to make the current payments to the IRP members. However this would result in the continuation of the administrative burden of submitting and processing individual claims.

### **5. Implications**

5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

### **6. Background Papers**

6.1 None identified.

### **7. Appendices**



7.1 Appendix 1 – Implications.

## **8. Recommendations**

That Committee:

- a) agrees that the Independent Remuneration Panel members should be paid a fixed-fee of £600 per annum and the Chair should receive an additional chair's allowance of £250 per annum payable in 12 monthly instalments from 1st April 2022; and
- b) refers the proposals to full Council for formal approval.

## **9. Reasons for Recommendations**

- 9.1 To ensure that the IRP is appropriately remunerated and the process for payment is efficient and streamlined.

**Report Author:** Helen Barrington

**Contact details:** [helen.barrington@derbyshire.gov.uk](mailto:helen.barrington@derbyshire.gov.uk)

**Implications**

**Financial**

- 1.1 Payment of the allowances for the IRP members can be accommodated within existing resources.

**Legal**

- 2.1 As set out in the report.

**Human Resources**

- 3.1 The members of the IRP are not employees and there is no contract of employment, therefore, there are no HR considerations.

**Information Technology**

- 4.1 None.

**Equalities Impact**

- 5.1 Members of the IRP will be entitled to the fixed fee irrespective of any protected characteristics.

**Corporate objectives and priorities for change**

- 6.1 None.

**Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

- 7.1 Currently the £125 payment is conditional upon the panel member attending a meeting. Moving to a fixed fee arrangement creates a small risk that a panel member will receive a payment notwithstanding the fact they have not attended a meeting. Conversely, if additional meetings are attended, the panel member will not be entitled to an increased payment under a fixed fee arrangement.



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**3<sup>rd</sup> March 2022**

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

**Complaints Received against Councillors pursuant to the Code of Conduct for Elected Members for the Period 1<sup>st</sup> October 2021 to 31<sup>st</sup> January 2022**

**1. Purpose**

- 1.1 To inform the Committee of complaints against Councillors received during the period of 1<sup>st</sup> October 2021 to 31<sup>st</sup> January 2022.

**2. Information and Analysis**

- 2.1 In accordance with the Council's procedure for considering complaints, the Monitoring Officer, in consultation as appropriate with one of the Independent persons from the Governance, Ethics and Standards (GES) Committee, decides how complaints should be dealt with. Decisions are made as to whether or not complaints should be investigated and whether or not they should be referred on to the GES Committee for consideration.
- 2.2 In order to support the Monitoring Officer with the management of complaints, the Committee is kept informed of complaints received against Councillors on a bi-annual basis. The last report was presented to the Committee in October 2021 for the period up to 30<sup>th</sup> September 2021.
- 2.3 During the period from 1<sup>st</sup> October 2021 to 31<sup>st</sup> January 2022, one complaint has been received and resolved.

2.4 Two complaints remained outstanding at the time of the previous report and have now been resolved. One of those has since been deemed not to be a complaint which falls under the remit of the Code of Conduct and the complainant was advised that the complaint was not accepted as such.

2.5 Details of the complaints are provided on the table attached at Appendix 2.

### **3. Consultation**

3.1 None required

### **4. Alternative Options Considered**

4.1 This is a report provided for information in order to fulfil the requirements of the Terms of Reference for the Governance, Ethics and Standards Committee contained within the Constitution at Article 11.

### **5. Implications**

5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

### **6. Background Papers**

6.1 Confidential files held by the Director of Legal and Democratic Services.

### **7. Appendices**

7.1 Appendix 1 – Implications.

7.2 Appendix 2 – Table detailing complaints received

### **8. Recommendation(s)**

That Committee:

- a) is asked to note the complaints made that Members' have breached the Code of Conduct.

### **9. Reasons for Recommendation(s)**

- 9.1 That the Committee be aware of complaints made under the Code of Conduct for Elected Members to support the Monitoring Officer in dealing with complaints against Elected Members and to promote a culture of openness, ready accountability and probity as required by the Terms of Reference for the Committee.

**Report Author:**

Elizabeth Wild  
Principal Solicitor, Legal Services

**Contact details:**

[Elizabeth.wild@derbyshire.gov.uk](mailto:Elizabeth.wild@derbyshire.gov.uk)

## **Implications**

### **Financial**

1.1 None

### **Legal**

- 2.1 The Council is required to publish a Member Code of Conduct and a complaints procedure. In accordance with its terms of reference, the Governance, Ethics and Standards Committee supports the Monitoring Officer in taking any action required on the receipt, management and investigation of any Code of Conduct Complaint against an Elected Member.
- 2.2 The terms of Reference also require the Committee to promote a culture of openness, ready accountability and probity in order to ensure the highest standards of conduct of Councillors.
- 2.3 As the Committee will appreciate, the details of the individual Councillors against whom the complaints were made cannot be disclosed since this would be in breach of data protection legislation.

### **Human Resources**

3.1 None

### **Information Technology**

4.1 None

### **Equalities Impact**

5.1 None

### **Corporate objectives and priorities for change**

6.1 None

### **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

7.1 None

## Appendix 2

Complainant	Summary of complaint	Outcome	Date complaint made	Final Response sent
Member of the public	Inappropriate email response containing reference to an unrelated matter	Apology given and no further action	August 2021	22.10.21
Member of the public	Complaint regarding the involvement of the Councillor in condoning poor treatment of the complainant and poor behaviour by officers, as well as displaying a lack of transparency in decision making.	No further action	5.11.21	8.02.22

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Agenda Item

**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**GOVERNANCE, ETHICS AND STANDARDS COMMITTEE**

**18 January 2022**

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

**Minor change to the Constitution: Trading Standards – Legislation Update**

**1. Purpose**

- 1.1 To notify Committee of minor amendments to the Constitution to update the list of legislation under which the Council's Trading Standards Service can take enforcement action.

**2. Information and Analysis**

- 2.1 On 5 January 2022, the Director of Legal and Democratic Services under delegated authority from Cabinet agreed to update the existing list of legislation for Trading Standards enforcement and under delegated authority from Council agreed to include that updated list of legislation in Appendix A to Appendix 1 of the Constitution – Responsibility for Functions.
- 2.2 A copy of the report which was approved by the Director of Legal and Democratic Services is attached at Appendix B with the updated list of legislation attached at Appendix 2 to that report.
- 2.3 Under its terms of reference, the Governance, Ethics and Standards Committee is required to advise the County Council on the monitoring, amendments to and overall operation of the Constitution and the delegation to the Director of Legal Services requires any agreed

amendment to be reported retrospectively to the Governance, Ethics and Standards Committee and full Council for noting.

### **3. Consultation**

3.1 Not applicable

### **4. Alternative Options Considered**

4.1 The decision has been made by the Monitoring Officer and Director of Legal Services. The Committee is asked to note the decision. Therefore, there are no appropriate alternatives to consider. Alternatives were considered in the making of the decision as outlined in the report attached at Appendix B.

### **5. Implications**

5.1 Appendix A sets out the relevant implications considered in the preparation of the report.

### **6. Background Papers**

6.1 None identified

### **7. Appendices**

7.1 Appendix A – Implications.

7.2 Appendix B – Report to the Monitoring Officer and Director of Legal Services with Appendices 1 and 2.

### **8. Recommendations**

That Committee notes:

- a) the decision made by the Director of Legal Services to amend the Constitution and include the updated list of legislation to enable the Trading Standards Service to undertake necessary enforcement action; and
- b) that this decision will also be reported to full Council.

### **9. Reasons for Recommendations**

9.1 To comply with the provisions of the Constitution.

**Report Author:** Elizabeth Wild

**Contact details:** [Elizabeth.wild@derbyshire.gov.uk](mailto:Elizabeth.wild@derbyshire.gov.uk)

**Implications**

**Financial**

1.1 None.

**Legal**

2.1 None.

**Human Resources**

3.1 None.

**Information Technology**

4.1 None.

**Equalities Impact**

5.1 None.

**Corporate objectives and priorities for change**

6.1 None.

**Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

7.1 None.

**List of Legislation as at 31 October 2021**

**Part 1**

**Authorisation for officers enforcing legislation generally.**

Agriculture (Miscellaneous Provisions) Act 1968  
Air Quality (Domestic Solid Fuels Standards)(England) Regulations 2020  
Animal Health Act 1981  
Animal Welfare Act 2006  
Animals Act 1971  
Anti-social Behaviour Act 2003  
Birmingham Commonwealth Games Act 2020  
Botulinum Toxin and Cosmetic Fillers (Children) Act 2021  
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), and Biofuel Labelling Regulations.  
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:  
    Advanced Television Services Regulations 2003  
    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 2006  
    Beef and Veal Labelling Regulations 2010  
    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  
 Medicines and Medical Devices Act 2021  
 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 Regulation Act 1984  
 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  
 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  
 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

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

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

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**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**REPORT TO THE MONITORING OFFICER AND DIRECTOR OF LEGAL  
AND DEMOCRATIC SERVICES**

**4<sup>th</sup> January 2022**

**Report of the Principal Solicitor**

**Minor change to the Constitution: Trading Standards – Legislation  
Update**

**1. Divisions Affected**

1.1 County- wide

**2. Key Decision**

2.1 This is not a key decision

**3. Purpose**

3.1 To seek approval to updated the list of enforcement legislation for trading standards enforcement for inclusion in the Constitution.

**4. Information and Analysis**

4.1 The Trading Standards Service subscribes to a vetted facility which provides an updated list of legislation on a six-monthly basis. A new and updated list has recently been provided and it is proposed that this update replaces the list currently included at Appendix A to Appendix 1 – Responsibility for Functions of the Council's Constitution.

4.2 Due to the regularity of the updates the updating of the list of legislation, on 14 October 2021, Cabinet agreed to delegate authority to the Director

of Legal and Democratic Services to update the Constitution as necessary and in response to changes in relevant legislation regarding Trading Standards enforcement or administration and, in particular, to update the list of legislation attached at Appendix A to Appendix 1 of the Constitution – Responsibility for Functions, as necessary.

- 4.3 In accordance with paragraph 2 of Article 22 of the Constitution – Review and Revision of the Constitution, the Monitoring Officer is authorised to make changes to the Constitution which:
- amount to legal or technical amendments that do not materially affect the Constitution; or
  - are required to be made so as to put into effect any decision of the Cabinet, Cabinet Member, Committee, sub-Committee or Officer exercising delegated powers
- 4.4 Delegation 18 to the Director of Legal and Democratic Services also authorises 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.
- 4.5 Any such amendments must be reported retrospectively to the Governance, Ethics and Standards Committee and to Full Council for noting.

## **5. Consultation**

- 5.1 Not applicable

## **6. Alternative Options Considered**

- 6.1 Not to approve the updated list and include it within the Constitution. If the updated list of legislation is not included within the Constitution, then the Council's Trading Standards Service would not have the authorisation to undertake its statutory duties in relation to the whole range of consumer protection legislation. This would create a situation where the trading Standards Service was unable to exercise powers under the legislation, could not undertake enquiries or investigation into non-compliance and fail to take formal action, including prosecution against rogue businesses. Such a situation would create unacceptable risks to Derbyshire consumers and legitimate Derbyshire businesses.

## **7. Implications**

7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **8. Background Papers**

8.1 None identified

## **9. Appendices**

9.1 Appendix 1- Implications.

9.2 Appendix 2 – Updated list of legislation

## **10. Recommendation(s)**

That the Monitoring Officer and Director of Legal and Democratic Services agrees to:

- a) update the existing list of legislation within the Council's Constitution as set out in Appendix 2;
- b) include this updated list of legislation in Appendix A to Appendix 1 of the Constitution – Responsibility for Functions;
- c) report the amendment to the Governance, Ethics and Standards Committee and full Council for noting.

## **11. Reasons for Recommendation(s)**

11.1 To ensure that the relevant part of the Council's Constitution remains accurate and current.

11.2 To enable the County Council to meet its statutory duties and to enable the Council's Trading Standards Service to protect residents and businesses under various pieces of criminal and/or civil legislation.

## **12. Is it necessary to waive the call in period?**

12.1 No

**Report Author:** Elizabeth Wild – Principal Solicitor

**Contact details:** [Elizabeth.wild@derbyshire.gov.uk](mailto:Elizabeth.wild@derbyshire.gov.uk)

**Implications**

**Financial**

- 1.1 There are no significant implications for the Council as this does not involve any expenditure or budgetary changes.

**Legal**

- 2.1 As described within the report.

**Human Resources**

- 3.1 This is an administrative decision and as such, there are no Human Resources implications

**Information Technology**

- 4.1 This is an administrative decision and as such, there are no Information Technology implications

**Equalities Impact**

- 5.1 This is an administrative decision and as such, there are no equalities implications

**Corporate objectives and priorities for change**

- 6.1 The Council Plan includes specific priorities linked to Trading standards work. These cover the protection of vulnerable residents susceptible to scams and fraud, and the support for local businesses due to the EU exit process. There would be implications for progress against these priorities if associated enforcement to this work were hampered due to the lack of authorisation to Trading Standards staff.
- 6.2 This also links to the Council Priority of High Performing Value for Money and Resident Focused Services. The changes proposed will enable efficient and up to date functioning of the Council as a corporate body.

**Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

- 7.1 None