

# SCARBOROUGH BOROUGH COUNCIL

## STANDARDS COMMITTEE

At a meeting to be held at **10.00 am** on **Thursday, 25 March 2021**  
<https://www.youtube.com/ScarboroughCouncil>

Because of public health risks associated with the current COVID-19 pandemic, this meeting will be conducted remotely with the participants accessing the meeting through videoconference. The meeting will be available to view online on the Council's website.

If you have any queries regarding this, please contact the Democratic Services Manager.

### AGENDA

- 1. DECLARATIONS OF INTERESTS** (Pages 1 - 2)  
Members are reminded of the need to consider whether they have a disclosable pecuniary, prejudicial or other (personal) interest to declare in any items on this agenda. Details of any interest must be declared at the start of the meeting or as soon as any interest becomes apparent during the meeting. The attached form must also be completed. Any advice required should ideally be sought before the day of the meeting.
- 2. MINUTES** (Pages 3 - 6)  
To approve as a correct record and sign the Minutes of the meeting held on 19 March 2019. (Minutes attached).
- 3. PUBLIC QUESTION TIME**  
Public questions of which due notice has been given and which are relevant to the business of the Committee.
- 4. COMPLAINTS 2019 AND 2020 OVERVIEW** (Pages 7 - 16)  
To note a report by the Director
- 5. REGULATORY AND INVESTIGATORY POWERS ACT (RIPA) ANNUAL REVIEW** (Pages 17 - 90)  
To note a report by the Director
- 6. NEW MODEL CODE OF CONDUCT** (Pages 91 - 238)  
To consider the report by the Director
- 7. VERBAL UPDATE BY THE MONITORING OFFICER**

***(N.B. If you have any questions, need further information about the meeting or require special facilities in order to attend, please contact Petra Jackson, Policy and Governance Manager. Town Hall, St. Nicholas Street, Scarborough – 01723 232347 Fax 0870 238 4159 or e-mail [standards@scarborough.gov.uk](mailto:standards@scarborough.gov.uk) )***

**MEMBERS' DECLARATIONS OF INTERESTS**

Name:	
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Meeting:	
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Date:	
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Agenda No & Item	
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Nature of Interest:	
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*If you are uncertain whether you have an interest, please seek officer advice before the meeting.*

Is the interest:

a disclosable pecuniary interest?

personal and non-prejudicial?

personal and prejudicial?

(Please put an X against the appropriate interest and email to the Clerk for the meeting)

## NOTES

## STANDARDS COMMITTEE

At a meeting held on Tuesday, 19th March, 2019

Present:-

Councillor G W Allanson (Chairman) in the Chair;

Councillors G Coulson and T Randerson

Co-optees: Parish Councillor Richard Thompson and Parish Councillor Bob Marley

Independent Persons: Mr Colin Langley and Ms Richinda Taylor

### 1. **DECLARATIONS OF INTERESTS**

Cllr Coulson declared a personal and prejudicial interest in Item 4-Dispensation Applications: Sneaton Parish Council

### 2. **MINUTES**

The Committee confirmed the minutes of 18 December 2018, be approved as a correct record and signed by the Chairman.

### 3. **PUBLIC QUESTION TIME**

The Chairman reported that no public questions had been received.

### 4. **DISPENSATION APPLICATIONS: SNEATON PARISH COUNCIL**

As Cllr Coulson had declared a personal interest in this tem, the Chair informed the Standards Committee that the meeting was not quorate and therefore this agenda item would not be discussed. This was confirmed by the Deputy Monitoring Officer (DMO). It was agreed that the agenda item would be deferred to the next meeting of the Standards Committee.

### 5. **COMPLAINTS 2018 OVERVIEW**

The DMO explained that the report provided an overview of Standards Complaints received by the Council in 2018. The DMO noted that whilst under the current regime there had been a decline in the amount of complaints generally, there had been a slight increase in the amount of complaints received on the previous year. No complaints had to be referred to the Standards Committee for further investigation.

Cllr Randerson raised a query regarding the General Data Protection Regulations (GDPR) in respect of Standards Complaints. The DMO confirmed that all Standards Complaints are treated as confidential. The details of the complaint are usually the personal information of the Councillor involved. It was ultimately the decision of the individual Councillor if they wished to disclose that a complaint had been made against them, but they should not disclose the identity of the complainant (or others) as this was personal data.

### 6. **RESOLVED;** that the Committee note the information within the report **LOCAL GOVERNMENT ETHICAL STANDARDS - REVIEW OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE**

The DMO provided the Committee with a summary of the report including the key recommendations within the review. The review has concluded that there is not a widespread problem with Standards in

Public Life nationally; however there are some weaknesses within the current regime. The DMO emphasised to the Committee that some of the key recommendations required legislative changes before they could be implemented. It was noted that the Council was aiming to comply with the Best Practice Review Recommendations for Local Authorities by 2020.

Cllr Randerson commented regarding the difficulties in differentiating whether a Councillor is acting in their capacity as a Councillor or as a member of the public. Cllr Randerson stated that he was of the view that a Councillor is on duty at all times and should conduct themselves as such. The DMO confirmed that the review recommended that changes should be made to the Standards Regime which would result in the presumption that Councillors were always acting in their official capacity in their public conduct. The implementation of this recommendation would require legislative change.

Parish Councillor Thompson requested assurances that a copy of the report would be made available to all, including Parish Councils. The DMO confirmed that the report was a publically available document and that it was therefore available to all.

The Chair advised that he thought it would be beneficial for both existing and new Council Members to read and consider the report. He highlighted the fact that Members were aware of the rules and protocols within the Council Chamber but are less aware when in public and further guidance was required.

The Chair made reference to page 83 of the review, and the recommendations relating to the Independent Persons (IP). The Council currently has two Independent Persons working with them to review Standards Complaints. The Chair emphasised the responsible role undertaken by the IPs and expressed his thanks for their commitment.

The report raises concerns that IPs may become too familiar with Councillors if they hold an extended term of office and makes recommendations for a 2 year restriction (with a possible extension of 2 years). Independent Person Mr Colin Langley felt that this was too restrictive, taking into account time required to familiarise yourself with the role. In addition to this, he believed that recruitment to the role would be an issue.

Cllr Randerson stated that he agreed with Mr Langley's comments and that in his experience Members contact with the Independent Persons was very limited. He suggested that a flexible approach to the term of the IPs was required.

The DMO advised the Committee that they were only noting the report at this time and that to change the terms of office of the IPs legislation by central government would be required.

Parish Councillor Mr Bob Marley made enquiries about communications outside of the committee and suggested a publicity officer to speak on behalf of Councillors. Cllr Randerson disagreed with Mr Marley advising that as a Councillor there should be no restrictions on communications.

The Chairman agreed with Cllr Randerson advising that members can express their own opinions on any matter. A discussion took place around the need for Councillors to be aware of the code of conduct when speaking and expressing opinions, particularly at the current time with sensitivities due to Purdah.

The Chairman concluded by suggesting that it would be beneficial for the guide to be made available to new and old Members of the Council in May. This was supported by Cllr Coulson who requested that the review was incorporated into the new Member training which would take place after the election in May. This was confirmed by the DMO.


**RESOLVED that:**

- (i) the Committee note the information within the report;
- (ii) that the concerns regarding the report's recommendation on the length of term of the Independent Persons be noted;
- (iii) that the Local Government Ethical Standards- Review of the Committee on Standards in Public Life be incorporated into training for new Elected Members.

**Chairman**

## NOTES



	<p><b>REPORT TO STANDARDS COMMITTEE</b></p> <p><b>TO BE HELD ON 25 MARCH 2021</b></p>								
<p><b>Corporate Priority: ALL</b></p>	<table style="width: 100%; border: none;"> <tr> <td style="padding: 2px;"><b>Key Decision</b></td> <td style="padding: 2px; text-align: right;"><b>NO</b></td> </tr> <tr> <td style="padding: 2px;"><b>Forward Plan Ref</b></td> <td style="padding: 2px; text-align: right;"><b>N/A</b></td> </tr> <tr> <td style="padding: 2px;"><b>No</b></td> <td></td> </tr> <tr> <td style="padding: 2px;"><b>Cabinet Portfolio Holder</b></td> <td style="padding: 2px; text-align: right;"><b>Cllr J Jefferson</b></td> </tr> </table>	<b>Key Decision</b>	<b>NO</b>	<b>Forward Plan Ref</b>	<b>N/A</b>	<b>No</b>		<b>Cabinet Portfolio Holder</b>	<b>Cllr J Jefferson</b>
<b>Key Decision</b>	<b>NO</b>								
<b>Forward Plan Ref</b>	<b>N/A</b>								
<b>No</b>									
<b>Cabinet Portfolio Holder</b>	<b>Cllr J Jefferson</b>								

## REPORT OF THE DIRECTOR (LD) – 21/52

**WARDS AFFECTED: ALL**

**SUBJECT: STANDARDS COMPLAINTS OVERVIEW 2019 and 2020**

### RECOMMENDATION(S):

That Standards Committee note the content of this report.

### REASON FOR RECOMMENDATION(S):

To inform the Standards Committee of complaints received in respect of the Members' Code of Conduct during 2019 and 2020.

### HIGHLIGHTED RISKS

None

#### 1. INTRODUCTION:

- 1.1 Since July 2012 the Standards Committee has been operating under new arrangements pursuant to the Localism Act 2011. This included the abolition of the Standards Board for England, and the prescribed Code of Conduct.
- 1.2 Under the present regime the Council is required to adopt its own Code of Conduct that when viewed as a whole is consistent with the principles set out at section 28(1) of the Localism Act 2011 (the Nolan Principles).
- 1.3 Section 28(6) of the Localism Act 2011 requires the Council to have in

place arrangements under which allegations of breach of the Code can be investigated, and decisions made upon those allegations. Under section 28(7) of the same Act the Council must also appoint at least one Independent Person whose views are to be sought and taken into account by the Council before it makes a decision on any allegation it has decided to investigate, and whose views may be sought generally.

- 1.4 The Council currently has arrangements in place under which the Council's two Independent Persons meet to consider any complaints and provide their views to the Monitoring Officer. The Monitoring Officer (after having taken into account the views of the Independent Persons), decides whether there is adequate information to suggest that a breach of the Code of Conduct has occurred as alleged.
- 1.5 Where the allegations and information available at that time do not support an allegation that a breach of the Code of Conduct has occurred, there will ordinarily be no further action on the complaint. The Monitoring Officer may however seek further information prior to making a determination.
- 1.6 Where the allegations and information available at that time do suggest that there has been a breach of the Code of Conduct, the Monitoring Officer must determine whether the complaint should be referred for formal investigation, whether alternative action can be taken to resolve the complaint (such as a written apology, mediation, or training), or whether no further action should be taken.

## **2. CORPORATE AIMS/PRIORITIES**

- 2.1 This report supports all of the Council's corporate aims and priorities.

## **3. BACKGROUND AND ISSUES**

- 3.1 The Council updated its Members' Code of Conduct in November 2014.
- 3.2 It should be noted that although the Borough Council continues to deal with complaints against Parish and Town Council Members, it is entirely a matter for each Parish and Town Council to determine the form of the Code of Conduct they adopt, and to which their Members are subject. The vast majority of Parish and Town Councils in this Borough have adopted a code drafted by the National Association of Local Councils (NALC).
- 3.3 Members will also note another report on this agenda relating to the New Model Code of Conduct which has been published by the Local Government Association as part of its Civility in Public Life programme.
- 3.4 This report provides an overview of standards complaints received in both 2019 and 2020. Whilst an annual complaints overview report for

2019 was published as part of the agenda for this Committee in March 2020, Members will be aware that the committee was cancelled due to the COVID-19 pandemic.

#### **4. CONSULTATION**

4.1 Not applicable.

#### **5. ASSESSMENT**

5.1 During 2019 the Council received 23 matters of complaint, 2 of which were subsequently withdrawn.

5.2 During 2020 the Council received 20 matters of complaint, 1 of which was subsequently withdrawn.

5.3 The table set out at Appendix A gives further detail about these matters and their respective outcomes.

5.4 All of the complaints were considered by the Independent Persons and in accordance with the Council's procedure for dealing with Standards Complaints.

5.5 During 2020 one complaint was referred for further investigation however the outcome of that investigation was that no breach of the Members Code of Conduct had occurred and no further action was required.

5.6 A number of the complaints that resulted in no further action did so because the alleged behaviour could not be said to have taken place when the Councillors against whom the complaints were made were acting in their capacity as elected Members. On this matter, section 27(2) of the Localism Act 2011 provides that the Code of Conduct only applies to a Member when they are acting in that capacity. The Council's Members Code of Conduct provides further details of when Members are considered to be acting in their capacity as a councillor.

#### **Other**

5.7 The regime pursuant to the Localism Act 2011 has now been in operation for almost 10 years.

5.8 The regime has worked very well in reducing red tape and the burden upon resources, and has allowed for a more efficient and effective way of dealing with vexatious complaints. The involvement of the Independent Persons has been particularly invaluable.

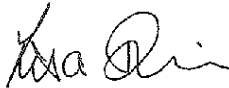
5.9 However, the removal of the statutory sanctions that could (pre Localism Act 2011) be imposed upon those who had been found in breach of the Code continues to be an area of concern and was

highlighted as part of the Review by the Committee on Standards in Public Life which was reported to this Committee in March 2019.

- 5.10 Currently the extent to which the Standards regime is effective in relation to matters is to a large extent dependent upon the willingness and commitment of Members themselves to uphold the principle of the regime.

## **6. IMPLICATIONS**

- 6.1 All relevant implications have been considered in the body of this report.



**Lisa Dixon**  
**Director**

**Author:**

Carol Rehill – Solicitor, Deputy Monitoring Officer

**Background Papers:**

N/A

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT Petra Jackson ON 01723 232323 or e-mail [petra.jackson@scarborough.gov.uk](mailto:petra.jackson@scarborough.gov.uk)

## Risk Matrix

<b>Risk Ref</b>	<b>Risk</b>	<b>Consequences</b>	<b>Mitigation</b>	<b>Current Risk Score</b>	<b>Target Score</b>	<b>Service Unit Manager/ Responsible Officer</b>	<b>Action Plan</b>
1	Failure to update Standards Committee on complaints regime	Reduced oversight of complaints	Report to Standards Committee	B2	A1	Monitoring Officer/Deputy Monitoring Officer	

## Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

## Risk Scoring

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

### Likelihood:

A = Very Low  
 B = Not Likely  
 C = Likely  
 D = Very Likely  
 E = Almost Certain

### Impact

1 = Low  
 2 = Minor  
 3 = Medium  
 4 = Major  
 5 = Disaster

**APPENDIX A – STANDARDS COMPLAINTS RECEIVED DURING 2019 and 2020**


	Complaint Ref No	No. of Complainants	Against		No Further Action	Alternative Action	Year	Comments
			Borough Councillor	Parish/Town Councillor				
1	50727	1	1		Y		2019	
2	50798	1	1		Y		2019	
3	51861	1		1	Y		2019	
4	51883	1	1		Y		2019	
5	52011	1	1		Y		2019	
6	52144	1	1			Y	2019	
7	52277	1	1		Y		2019	
8	52345	1	1		Y		2019	
9	52483	1		1			2019	Withdrawn
10	55208	1		1			2019	Withdrawn
11	55496	1	1		Y		2019	
12	56736	1		1	Y		2019	

	Complaint Ref No	No. of Complainants	Against		No Further Action	Alternative Action	Year	Comments
			Borough Councillor	Parish/Town Councillor				
13	56749	1		1	Y		2019	
14	56762	1		1	Y		2019	
15	56771	1		1	Y		2019	
16	56849	1		1	Y		2019	
17	56861	1		1	Y		2019	
18	57140	1	1		Y		2019	
19	57226	1	1			Y	2019	
20	57448	1	1		Y		2019	
21	57476	1	1		Y		2019	
22	57817	1	1		Y		2019	
23	58040	1	1		Y		2019	
24	58223	1	1		Y		2020	
25	58235	1	1			Y	2020	



	Complaint Ref No	No. of Complainants	Against		No Further Action	Alternative Action	Year	Comments
			Borough Councillor	Parish/Town Councillor				
26	58243	1	1			Y	2020	
27	59042	1		1	Y		2020	
28	59089	1		1	Y		2020	
29	59142	1	1			Y	2020	
30	59409	2	1		Y		2020	
31	59417	1	1			Y	2020	
32	59425	1	1			Y	2020	
33	59457	1		1	Y		2020	
34	59843	1		1	Y		2020	
35	59882	1	2		Y		2020	
36	59890	1		1	Y		2020	
37	59968	1		1	Y		2020	
38	60104	1		2			2020	

	Complaint Ref No	No. of Complainants	Against		No Further Action	Alternative Action	Year	Comments
			Borough Councillor	Parish/Town Councillor				
39	60130	1	1		Y		2020	
40	60295	1	2		Y		2020	
41	60546	1	1				2020	Withdrawn
42	60949	1	1		Y		2020	
43	61123	1	4		Y		2020	

	<p><b>REPORT TO STANDARDS COMMITTEE</b></p> <p><b>TO BE HELD ON 25 MARCH 2021</b></p>	
<p><b>Corporate Priority: ALL</b></p>	<p><b>Key Decision</b></p>	<p><b>NO</b></p>
	<p><b>Forward Plan Ref No</b></p>	<p><b>N/A</b></p>
	<p><b>Cabinet Portfolio Holder</b></p>	<p><b>Cllr J Jefferson</b></p>

## REPORT OF THE DIRECTOR (LD) – 21/53

**WARDS AFFECTED: ALL**

**SUBJECT: RIPA ANNUAL REVIEW 2019/20 and 2020/21**

### RECOMMENDATION(S):

That Standards Committee note the content of this report.

### REASON FOR RECOMMENDATION(S):

To inform the Standards Committee about any instances of directed surveillance, the use of covert human intelligence sources (CHIS), or the acquisition and disclosure of communications data authorised under the Regulation of Investigatory Powers Act 2000 (RIPA) during 2019/2020 and 2020/21.

### HIGHLIGHTED RISKS

None

#### 1. INTRODUCTION:

1.1 In undertaking its functions the Council must comply with the Human Rights Act 1998 (HRA). Article 8 of the HRA sets out the right to respect for private and family life. This is a qualified right and in certain circumstances interference can be justified (as explained within Article 8 itself).

1.2 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a statutory framework under which the Council may seek authorisation to lawfully interfere with this right.

#### 2. CORPORATE AIMS/PRIORITIES

2.1 This report supports all of the Council's corporate aims.

### **3. BACKGROUND AND ISSUES**

3.1 Authorisation can only be granted where interference is:

- (a) in accordance with the law;
- (b) necessary; and
- (c) proportionate.

3.2 Under RIPA the Council may seek authorisation to permit directed surveillance, the use of covert human intelligence sources (CHIS), and the acquisition and disclosure of communications data.

3.3 The Council's use of RIPA is tightly controlled. All authorisations are subject to approval by the Magistrates' Court, and the use of directed surveillance is only permitted for the purpose of:

- (a) the prevention or detection of criminal offences (at least one of which must be punishable by a maximum of at least 6 months imprisonment);
- (b) disorder involving at least one criminal offence (that is punishable by a maximum of at least 6 months imprisonment); or
- (c) prescribed offences relating to the underage sale of alcohol and tobacco.

3.4 This report provides covers 2019/20 and 2020/21. Whilst the Council's annual RIPA compliance report for 2019/20 was published as part of the agenda for this Committee in March 2020, Members will be aware that the committee was cancelled due to the COVID-19 pandemic.

### **4. CONSULTATION**

4.1 Not applicable.

### **5. ASSESSMENT**

5.1 There have been no formal applications for RIPA authorisation during the period in question. This is a continuation of previous practice in that there have been no RIPA applications or authorisations since 2012.

5.2 This not only reemphasises the position that this Council does not rely upon RIPA, but is also a reflection of the effect of the Protection of Freedoms Act 2012 and the RIPA (Directed Surveillance and CHIS) (Amendment) Order 2012 which served to further reduce the areas in which the Council may use such procedures, as well as requiring Magistrates' approval.

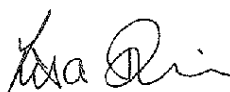
5.3 The Council is inspected every 3 years by the Office of the Surveillance Commissioner (OSC). The last inspection was a desktop based documentary inspection by Mr Graham McCrory MBE. The results of the inspection were reported to Standards Committee on 18 December 2018 (report 18/305 refers), and the policy was updated accordingly.

5.4 The Council's RIPA Policy and Procedure documents are contained within Appendix A of this report.

- 5.5 The RIPA Policy and Procedure are currently being updated to reflect the requirements of the Investigatory Powers Act.
- 5.6 The Investigatory Powers Act 2016 (“IPA”) governs the lawful obtaining of communications data by public authorities. The term communications data includes the ‘who’, ‘when’, ‘where’, and ‘how’ of a communication but not the content, i.e., what was said or written.
- 5.7 The acquisition of communications data was previously covered by RIPA. Under RIPA, local authorities were required to obtain judicial approval in order to acquire communications data. However, the position has now changed and all communications data applications must instead be authorised by the Office for Communications Data Authorisations (“the OCDA”).
- 5.8 A local authority must make a request to obtain communications data via a single point of contact (“SPoC”) at the National Anti-Fraud Network (“NAFN”). In addition to being considered by a NAFN SPoC, an officer within the local authority of the rank of service manager or above should be aware the application is being made before it is submitted to an authorising officer in the OCDA.
- 5.9 The Council has corporate membership of the National Anti-Fraud Network to ensure correct procedures are being followed however must formally update its RIPA policy and procedure to reflect this position. A further report will be presented to the next meeting of this Committee asking Members to approve adoption of the revised policy and procedure.

## 6. IMPLICATIONS

- 6.1 All relevant implications have been considered in the body of this report.



**Lisa Dixon**  
**Director**

### **Author:**

Petra Jackson, Policy and Governance Manager

### **Background Papers:**

N/A

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*A great place to live, work & play*

## **SCARBOROUGH BOROUGH COUNCIL**

**REGULATION OF INVESTIGATORY POWERS ACT 2000  
(RIPA)**

**POLICY AND PROCEDURES**

## DOCUMENT CONTROL

<b>Author</b>	Carol Rehill
<b>Owner</b>	Regulation and Governance Services
<b>Protective Marking</b>	NOT PROTECTIVELY MARKED
<b>Cabinet Approval Date</b>	
<b>Council Approval Date</b>	
<b>Policy Date/Period</b>	
<b>Policy Review Frequency</b>	Annually

## REVIEW HISTORY

<b>Date</b>	<b>Reviewed By</b>	<b>Version</b>	<b>Any Revisions?</b>
25/11/19	Petra Jackson	0.3	no
26 October 2020	Petra Jackson		no

## REVISION HISTORY (only required where changes made)

<b>Date</b>	<b>Revised By</b>	<b>Version</b>	<b>Description of Revision</b>
20 March 2018	David Kitson	0.1	Updated
20 Sept 2018	Petra Jackson	0.2	Updated – to reflect IPCO, delete references to Deputy CE
21 November 2018	Petra Jackson	0.3	Updated to reflect IPCO recommendations

## DOCUMENT REVISION APPROVALS

<b>Version</b>	<b>Approval</b>	<b>Date</b>
	Standards Committee	20 March 2018



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## 1. INTRODUCTION AND BACKGROUND

1.1 This Policy is the framework on which the Council applies the provisions of The Regulation of Investigatory Powers Act 2000 (RIPA) as it relates to covert surveillance. It must be read in conjunction with the statutory codes of practice issued by the Secretary of State and any additional guidance provided by individual Directorates relevant to their respective service areas.

1.2 Article 8 of the Human Rights Act 1998 (HRA) provides the right to respect for private and family life:

*'Everyone has the right to respect for his private and family life, his home and his correspondence.'*

1.3 Article 8 of the HRA goes on to state:

*'There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, **for the prevention of disorder or crime**, for the protection of health or morals, or for the protection of the rights and freedoms of others.'*

1.4 The rights conferred by Article 8 are therefore qualified, meaning that the Council may interfere with these rights providing that such interference is:

- in accordance with the law;
- necessary; and
- proportionate.

1.1 RIPA provides a statutory framework under which the Council may seek authorisation to permit;

- the use of Directed Surveillance;
- the use of Covert Human Intelligence Sources (CHIS); and
- the Acquisition and Disclosure of Communications Data.

1.5 The Council's ability to use RIPA legislation is limited, and in practice only directed surveillance is likely to be relevant, for reasons set out within this Policy.

1.6 Use of a CHIS must never be undertaken without consultation with the Senior Responsible Officer.

1.7 Local Authorities can only authorise the use of directed surveillance

on the grounds of;

- (a) the prevention or detection of criminal offences (that are either punishable by a maximum of at least 6 month's imprisonment OR are related to the underage sale of alcohol and tobacco); or
- (b) the prevention of disorder that involves at least one criminal offence that is punishable by a maximum of at least 6 month's imprisonment.

- 1.8 The Council cannot therefore authorise the use of directed surveillance to investigate disorder that does not involve criminal offences, or to investigate low-level offences such as littering, dog fouling or fly-posting.
- 1.9 Authorisations for both directed surveillance and CHIS are also subject to judicial approval, meaning that the Council must obtain the approval of the Magistrates' Court for any grant or renewal of a RIPA Authorisation. The Magistrates' Court will only approve an Authorisation where satisfied that the statutory tests have been met, and that the use of the technique is necessary and proportionate. **Authorisation cannot commence until this approval has been obtained.**
- 1.10 Applications to the Magistrates' Court for approval of an Authorisation must be made in accordance with the requirements of the Court.
- 1.11 Through the application of Authorisation procedures and Magistrates' Court approval RIPA ensures that a balance is maintained between the public interest and the human rights of individuals.
- 1.12 If the RIPA procedures are followed correctly the conduct of an investigation will be deemed lawful for all purposes (section 27 RIPA). This protection extends to criminal and civil proceedings, Employment Tribunal hearings and a complaint to either the Local Government Ombudsman or the Investigatory Powers Tribunal. It therefore provides protection both for the Council and any Officer who may have been involved in an investigation.
- 1.13 Unauthorised covert surveillance will likely be a breach of a person's right to privacy under Article 8. Even if surveillance without due Authorisation in a particular instance is not illegal, if Authorisation is not obtained, the surveillance carried out will not have the protection that RIPA affords.
- 1.14 If the correct procedures are not followed;
  - The Authorisation will not take effect as it will not be approved by the Magistrates' Court;

- Court proceedings that rely upon the information obtained by surveillance may be undermined;
  - A complaint of maladministration may be made to the Ombudsman;
  - The Council could be the subject of an adverse report by the Investigatory Powers Commissioner's Office;
  - The HRA provides a cause of action for damages and/or an injunction against the Council should it be proven that the Councils' actions amount to an unwarranted interference with human rights.
- 1.15 Such action would not promote the good reputation of the Council and will undoubtedly be the subject of adverse press and media interest. It is therefore essential that all involved with RIPA comply with this Document and any further guidance that may be issued from time to time.
- 1.16 RIPA does;
- require prior authorisation of directed surveillance;
  - prohibit the Council from carrying out intrusive surveillance;
  - compel disclosure of communications data from telecom and postal service providers;
  - require authorisation of the conduct and use of a CHIS;
  - require safeguards for the conduct and use of a CHIS;
  - Permit the Council to obtain communications records from Communications Service Providers.
- 1.17 RIPA does not;
- make unlawful anything that is otherwise lawful;
  - impose any new statutory duties;
  - Prejudice or dis-apply any existing powers available to the Council to obtain information by any means not involving conduct that is governed by RIPA. (For example it does not affect the Council's current powers to obtain information from the DVLA or the Land Registry).

- 1.18 If the Authorising Officer or any Applicant is in any doubt, they should consult the Senior Responsible Officer BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled or rejected.
- 1.19 The use of the powers conferred by RIPA is subject to scrutiny by the Investigatory Powers Commissioner's Office, which carries out periodic inspections of the Council's practices and procedures. Furthermore, RIPA also provides for the establishment of a Tribunal to determine complaints about the use of RIPA powers. It is therefore essential that surveillance is always carried out in compliance with RIPA, the policies and codes of practice referred to in this document, and any advice or guidance that may be issued from time to time.

## **2. RIPA MANAGEMENT**

2.1 This section sets out the various roles and responsibilities in relation to the use of RIPA. Some of this information is repeated throughout this document, however this is due to the importance in understanding the same.

2.2 Set out at Appendix A is a concise list of roles and the posts to which they are assigned.

### **2.3 Senior Responsible Officer**

2.3.1 The Senior Responsible Officer (SRO) has overall responsibility for the use and operation of RIPA within the Council, and should be a member of the corporate leadership team.

2.3.2 In particular they are responsible for:

- (a) the integrity of the process in place within the Council for the management of CHIS and Directed Surveillance;
- (b) compliance with the Act and with the Codes;
- (c) engagement with the IPCO inspectors when they conduct their inspections, where applicable;
- (d) where necessary, oversight of the implementation of post-inspection action plans approved by the relevant oversight Commissioner;
- (e) ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations in IPCO inspection reports;

- (f) addressing any concerns raised within an IPCO inspection report;
- (g) providing advice to Officers regarding potential RIPA applications; and
- (h) organising a RIPA training programme (together with the Coordinating Officer).

## 2.4 **Coordinating Officer**

2.4.1 The Coordinating Officer (CO) is responsible for:

- (a) maintaining the Central Record of Authorisations;
- (b) collating original applications/authorisations, reviews, renewals and cancellations;
- (c) organising applications for authorisation to the Magistrates' Court;
- (d) oversight of submitted RIPA documentation;
- (e) the provision of advice to Officers considering the use of RIPA;
- (f) the provision of advice to Officers at the stage of authorisation;
- (g) organising a RIPA training programme (together with the SRO); and
- (h) raising RIPA awareness within the Council.

2.4.2 The Coordinating Officer should not be an Authorising Officer, as this would conflict with the primary responsibility of oversight of RIPA documentation.

## 2.5 **Authorising Officer**

2.5.1 Responsibility for authorising the carrying out of directed surveillance or the use of CHIS (both subject to Magistrates Court approval) rests with the Authorising Officer.

2.5.2 Authorising Officers must hold the office of at least Director, Head of Service, Service Manager or equivalent.

2.5.3 Only the Chief Executive and the Council's Monitoring Officer can authorise the use of a juvenile or vulnerable CHIS, or surveillance where confidential information is likely to be acquired, and would only be expected to authorise in these circumstances.

2.5.4 Authorising Officers should not ordinarily be responsible for authorising operations in which they are directly involved, although it is recognised

that this may sometimes be unavoidable, especially in the case of small organisations.

2.5.5 Authorising Officers must complete the relevant part of the application form by hand, and forward the original to the Coordinating Officer within 1 week.

2.5.6 Authorising Officers must regularly review any applications they have authorised, and are responsible for cancellation of the same.

2.5.7 Whilst the Senior Responsible Officer (SRO) has received Authorised Officer training, their use to authorise RIPA applications will only be as a last resort. Their role as SRO is to oversee the use of RIPA powers by the Council employees.

## 2.6 **Covert Human Intelligence Source (CHIS)**

2.6.1 A person is a CHIS if:

- (a) they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- (b) they covertly use such a relationship to obtain information or to provide access to any information to another person;
- (c) they covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

## 2.7 **CHIS Controller**

2.7.1 The Controller is responsible for the management and supervision of the Handler, and general oversight of the use of the CHIS.

## 2.8 **CHIS Handler**

2.8.1 Handlers will usually be of a rank or position below that of Authorising Officer, and will have day-to-day responsibility for:

- dealing with the CHIS on behalf of the Council;
- directing the day-to-day activities of the CHIS;
- recording the information supplied by the CHIS;
- monitoring the CHIS's security and welfare.



2.8.2 The CHIS Handler is responsible for bringing to the attention of the CHIS Controller any concerns about the personal circumstances of the CHIS, insofar as they might affect:

- the validity of the risk assessment;
- the conduct of the CHIS; and
- the safety and welfare of the CHIS.

### 3. **SURVEILLANCE**

3.1 **Surveillance** includes;

- monitoring, observing, or listening to persons, their movements, their conversations or their other activities or communications;
- recording anything monitored, observed, or listened to in the course of surveillance; and
- surveillance by or with the assistance of a surveillance device (meaning any apparatus designed or adapted for use in surveillance).

Surveillance can be either **overt** or **covert**.

#### 3.2 **Overt Surveillance**

3.2.1 Most of the surveillance undertaken by the Council will be done overtly – there will be nothing secretive, clandestine or hidden about it. In many cases, Officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases), and/or will be going about Council business openly (e.g. a market inspector walking through markets)

3.2.2 Similarly, surveillance will be overt if the person or persons subject to the surveillance are aware that it will happen, e.g., where a noisemaker is warned in writing that noise will be recorded if it continues, or where an entertainment licence is issued subject to conditions, and the licensee is told that Officers may visit without notice or without identifying themselves to the owner/proprietor to check that the conditions are being met.

#### 3.3 **Covert surveillance**

3.3.1 Surveillance is covert where it is 'carried out in a manner calculated to ensure that the person or persons subject to the surveillance are

unaware that it is or may be taking place’.

### 3.4 **Directed Surveillance**

3.4.1 Directed surveillance is surveillance which:

- is **covert**;
- is **not intrusive surveillance** (the Council must not carry out intrusive surveillance or interfere with private property (see below));
- is not carried out as an immediate response to events which would otherwise make seeking authorisation unreasonable, e.g. spotting something suspicious and continuing to observe it; and
- is undertaken for the purpose of a **specific investigation** or operation in a manner **likely to obtain private information** about an individual (whether or not that person is specifically targeted for purposes of an investigation).

3.4.2 *Private information* in relation to a person includes any information relating to his private and family life, his home and his correspondence. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her and others that they come into contact or associate with.

3.4.3 The way a person runs his/her business may also reveal information about his or her private life and the private lives of others.

3.4.4 Similarly, although overt town centre CCTV cameras do not normally require authorisation, if the camera(s) are to be directed for a specific purpose to observe particular individual(s), authorisation will be required.

### 3.5 **Intrusive Surveillance**

3.5.1 Intrusive surveillance is surveillance which:

- is covert;
- is carried out in relation to anything taking place on any residential premises or in any private vehicle; and
- involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance

device.

3.5.2 Intrusive surveillance cannot be carried out or approved by the Council. Only the police and other law enforcement agencies are permitted to use such powers. Likewise, the Council has no statutory powers to interfere with private property.

### 3.6 **Necessity**

3.6.1 RIPA requires that the person granting an Authorisation believe that it is necessary in the circumstances of the particular case. Therefore, applicants and Authorising Officers should consider why directed surveillance is **NECESSARY**. In addressing the issues of necessity in any particular case, information should include:

- Why directed surveillance is needed to obtain information that is sought from the operation?
- Why is it necessary to interfere with an individuals' privacy using covert surveillance?
- Why covert surveillance is the best option to obtain the information having considered other alternatives?
- What other methods of obtaining the information have been considered and why have they been discounted?

3.6.2 The Council cannot authorise directed surveillance unless the following conditions are met:

- The surveillance is for the purpose of preventing or detecting conduct which constitutes one or more criminal offences; and
- The criminal offence (or one of the criminal offences) is or would be punishable, whether on summary conviction or on indictment, by a maximum term of at least 6 months of imprisonment.

OR

- The criminal offence is an offence under:
  - section 146 of the Licensing Act 2003 (sale of alcohol to children);
  - section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);

- section 147A of the Licensing Act 2003 (persistently selling alcohol to children);
- section 7 of the Children and Young Persons Act 1933 (sale of tobacco, etc, to persons under eighteen).

### 3.7 **Proportionality**

- 3.7.1 If the directed surveillance is deemed to be necessary, the Authorising Officer must also believe that it is also proportionate to what is sought to be achieved. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person who may be affected) against the need for the activity in investigative and operational terms.
- 3.7.2 The authorisation must not be excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary.
- 3.7.3 No activity should be considered proportionate if the information sought could reasonably be obtained by other less intrusive means.
- 3.7.4 The following elements of proportionality should be considered:
- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
  - explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
  - considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
  - evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

### 3.8 **Confidential Information**

- 3.8.1 Special safeguards apply with regard to confidential information. Confidential information consists of;
- *Communications subject to legal privilege;*  
A substantial proportion of the communications between a lawyer

and his client(s) may be subject to legal privilege.

- *Communications between a Member of Parliament and another person on constituency matters;*

Confidential constituent information is information relating to communications between a Member of Parliament and a constituent in respect of constituency matters. Such information is held in confidence if it is held subject to an express or implied undertaking to hold it in confidence or it is subject to a restriction on disclosure or an obligation of confidentiality contained in existing legislation.

- *Confidential personal information;*

Confidential personal information is information held in confidence relating to the physical or mental health or spiritual counselling concerning an individual (whether living or dead) who can be identified from it. Such information, which can include both oral and written communications, is held in confidence if it is held subject to an express or implied undertaking to hold it in confidence or it is subject to a restriction on disclosure or an obligation of confidentiality contained in existing legislation. Examples might include consultations between a health professional and a patient, or information from a patient's medical records.

- *Confidential journalistic material.*

Confidential journalistic material includes material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking.

3.8.2 Where it is anticipated that confidential information is likely to be collected as part of the surveillance, this can only be authorised by the Chief Executive or Monitoring Officer.

3.8.3 Where there is any doubt as to the handling and dissemination of confidential information, advice should be sought from the Senior Responsible Officer before any further dissemination of the material takes place.

### 3.9 **Collateral Intrusion**

3.9.1 Before authorising applications for directed surveillance, the Authorising Officer should also take into account the risk of obtaining

private information about persons who are not subjects of the surveillance or operation (collateral intrusion).

3.9.2 Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the privacy of those who are not the intended subjects of the surveillance activity.

3.9.3 Those carrying out the surveillance should inform the Authorising Officer if the investigation or operation unexpectedly interferes with the privacy of individuals who are not covered by the Authorisation. When the original Authorisation may not be sufficient, consideration should be given to whether the Authorisation needs to be amended and re-authorised or a new Authorisation is required.

### 3.10 **Retention and Destruction of Material Obtained From Surveillance**

3.10.1 Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements for a suitable period and subject to review.

3.10.2 There is nothing in RIPA which prevents material obtained from properly authorised surveillance from being used in other investigations. Authorising Officers must ensure, therefore, that arrangements are in place for the handling, storage and destruction of material obtained through the use of covert surveillance. Authorising Officers must also ensure compliance with the appropriate data protection requirements and any relevant codes of practice produced by individual authorities relating to the handling and storage of material.

## 4. **COVERT HUMAN INTELLIGENCE SOURCES (CHIS)**

4.1 Whilst it is theoretically possible that the Council may wish to establish a Covert Human Intelligence Source (CHIS) to act undercover, the instances when this will occur will be very rare indeed if ever. No CHIS should be considered without direct consultation with the Senior Responsible Officer.

4.2 Every CHIS must have an appointed Handler and Controller (see below).

4.3 Only the Chief Executive or Monitoring Officer can authorise a juvenile or vulnerable CHIS.

4.4 A risk assessment covering the health and safety of the CHIS must also be carried out.

### 4.5 **What is a CHIS?**

4.5.1 A person is a CHIS if:

- (a) they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- (b) they covertly use such a relationship to obtain information or to provide access to any information to another person;
- (c) they covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

#### 4.6 **What must be Authorised?**

4.6.1 The **conduct** or **use** of a CHIS requires prior authorisation.

4.6.2 **Use** of a CHIS involves any action on behalf of the Council to induce, ask or assist a person to engage in the conduct of a CHIS, or to obtain information by means of the conduct of a CHIS.

4.6.3 **Conduct** of a CHIS is any conduct of a CHIS falling within paragraph 4.5.1 above or is incidental to anything falling within the same.

4.6.4 Most CHIS Authorisations will be for both use and conduct. This is because public authorities usually take action in connection in connection with the CHIS, such as tasking the CHIS to undertake covert action, and because the CHIS will be expected to take action in relation to the public authority, such as responding to particular tasking.

4.6.5 Authorisations are also subject to judicial approval and cannot commence until this has been obtained.

4.7 For the purpose of paragraph (d) of section 29(5) of RIPA, detailed records must be kept relating to each source. These are listed in Regulation 3 of the Regulation of Investigatory Powers (Source Records) Regulations 2000.

#### 4.8 **Management of a CHIS**

4.8.1 Public authorities should ensure that arrangements are in place for the proper oversight and management of CHIS, including appointing individual officers as Controllers and Handlers for each CHIS.

4.8.2 Oversight and management arrangements for undercover operatives, while following the principles of the Act, will differ, in order to reflect the specific role of such individuals as members of public authorities.

- 4.8.3 **Tasking** is the assignment of the CHIS by the Handler or Controller, asking them to obtain, provide access to or disclose information.
- 4.8.4 Authorisations should not be drawn so narrowly that a separate Authorisation is required each time the CHIS is tasked. Rather, an Authorisation might cover, in broad terms, the nature of the CHIS's task.
- 4.8.5 Where it is intended to task a CHIS in a significantly greater or different way than previously identified in the Authorisation, the Handler or the Controller must refer the tasking to an Authorised Officer, who should consider whether the existing Authorisation is sufficient or needs replacing.
- 4.8.6 The **Handler** will usually be of a rank or position below that of Authorising Officer, and will have day-to-day responsibility for:
- dealing with the CHIS on behalf of the Council;
  - directing the day-to-day activities of the CHIS;
  - recording the information supplied by the CHIS;
  - monitoring the CHIS's security and welfare.
- 4.8.7 The **Controller** will be responsible for the management and supervision of the Handler, and general oversight of the use of the CHIS.

#### 4.9 **Security and Welfare**

- 4.9.1 When deploying a CHIS the Council should take into account the safety and welfare of the CHIS when carrying out actions in relation to an Authorisation or Tasking, and the foreseeable consequences to others of that Tasking.
- 4.9.2 Before Authorising the use of conduct of a CHIS, the Authorising Officer must ensure that a risk assessment is carried out to determine the risk to the CHIS of any Tasking and the likely consequences should the role of CHIS become known.
- 4.9.3 The ongoing security and welfare of the CHIS, after the cancellation of the Authorisation, should also be considered at the outset. Also, consideration should be given to the management of any requirement



to disclose information tending to reveal the existence or identity of a CHIS to, or in, court.

4.9.4 The CHIS Handler is responsible for bringing to the attention of the CHIS Controller any concerns about the personal circumstances of the CHIS, insofar as they might affect:

- the validity of the risk assessment;
- the conduct of the CHIS; and
- the safety and welfare of the CHIS.

4.9.5 Where appropriate, concerns about such matters must be considered by the Authorising Officer, and a decision taken on whether or not to allow the Authorisation to continue.

#### 4.10 **Record Keeping**

4.10.1 A centrally retrievable record is held by the Coordinating Officer. These records need only contain the name, code name, or URN reference of the CHIS, and the date the Authorisation was granted, renewed or cancelled. These records must be updated whenever an Authorisation is granted, renewed or cancelled, and will be made available to the Investigatory Powers Commissioner or Inspector from the Investigatory Powers Commissioner's Office upon request. These records should be retained for a period of at least 3 years from the time the Authorisation ends.

4.10.2 While retaining records, the Council must take into consideration the duty of care to the CHIS, the likelihood of future criminal or civil proceedings relating to information supplied by the CHIS or activities undertaken, and any rules relating to data retention, review and deletion under the Data Protection Act etc.

4.10.3 Detailed records must also be kept of the Authorisation and use made of the CHIS. An Authorising Officer must not grant an Authorisation unless they believe that there are arrangements in place for ensuring that there is at all times a person with the responsibility for maintaining a record of the use made of the CHIS. The Regulation of Investigatory Powers (Source Records) Regulations 2000 detail the particulars that must be included.

#### 4.11 **Juvenile Sources**

4.11.1 Special safeguards apply to the use or conduct of juvenile sources (i.e. those under 18 years old). On no occasion can a child under 16 years of age be authorised to give information against his or her

parents. Only the Chief Executive or the Monitoring Officer are permitted to authorise the use of Juvenile CHIS.

- 4.12 The duration of such an Authorisation is four months from the time of grant or renewal (instead of 12 months). The age test is applied at the time of the grant or renewal of the Authorisation.

#### **4.13 Vulnerable Individuals**

- 4.13.1 A Vulnerable Individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation.

- 4.13.2 A Vulnerable Individual will only be authorised to act as a CHIS in the most exceptional circumstances. Only the Chief Executive or the Monitoring Officer are permitted to authorise the use of Vulnerable Individuals as a CHIS, as there are other onerous requirements for such matters, and the potential increased likelihood of harm to the vulnerable individual.

#### **4.14 Human Source Activity Falling Outside of CHIS**

- 4.14.1 Not all human source activity will fall within the definition of a CHIS. For example, a source may be a public volunteer who discloses information out of professional or statutory duty, or has been tasked to obtain information other than by way of relationship.
- 4.14.2 **Test Purchases** – Carrying out test purchases will not require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information, and therefore the purchaser will not normally be a CHIS. For example, Authorisation would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter).
- 4.14.3 By contrast, developing a relationship with a person in the shop to obtain information about the seller's suppliers of an illegal product (e.g. illegally imported products) will require Authorisation as a CHIS. Similarly, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require Authorisation as directed surveillance. A combined Authorisation can be given for CHIS and also directed surveillance.
- 4.14.4 **Anti-Social Behaviour** – persons who complain about anti-social behaviour, and are asked to keep a diary, will not normally be a CHIS, as they are not required to establish or maintain a relationship for a

covert purpose. Recording the level of noise (e.g. the decibel level) will not normally capture private information and, therefore, does not require Authorisation.

4.14.5 Recording sound (with a DAT recorder) on private premises could constitute intrusive surveillance, unless it is done overtly. For example, it will be possible to record if the noisemaker is warned in writing that this will occur if the level of noise continues. Placing a stationary or mobile video camera outside a building to record anti-social behaviour on residential estates will require prior Authorisation.

4.14.6 **Public Volunteers** – In many cases involving human sources, a relationship will not have been established or maintained for a covert purpose. Many sources merely volunteer or provide information that is within their personal knowledge, without being induced, asked, or tasked by a public authority. This means the source is not a CHIS for the purposes of RIPA and no Authorisation is required. For example, a member of the public may contact the Council and volunteer information regarding something they have witnessed in their neighbourhood.

4.14.7 **Professional or Statutory Duty** – Certain individuals will be required to provide information to public authorities or designated bodies out of professional or statutory duty. For example, employees within organisations regulated by money laundering legislation will be required to report suspicious transactions. Similarly, financial officials, accountants or company administrators may have a duty to provide information that they have obtained by virtue of their position to the Serious Fraud Office.

4.14.8 Furthermore, this reporting is undertaken ‘in accordance with the law’ and any action likely to interfere with an individual’s privacy will not engage a person’s human rights under Article 8.

4.14.9 This statutory or professional duty would not extend to a situation where a person is asked to provide information which they acquire as a result of an existing professional or business relationship with the subject but that person is under no obligation to pass it on. For example, a travel agent who is asked by the police to find out when a regular client next intends to fly to a particular destination is not under an obligation to pass this information on. In these circumstances a CHIS Authorisation may be appropriate.

#### 4.15 **Further Information**

4.15.1 Further guidance on CHIS can be found in the Home Office Covert Human Intelligence Sources Code of Practice available at:

## **5. COMMUNICATIONS DATA**

### **5.1 Interception of Postal Items, Telephone Calls and Emails**

5.1.1 Chapter I of Part I of RIPA deals with the interception of postal items, telephone calls and emails. Normally this requires a warrant issued by the Secretary of State. Exceptions exist where both sender and recipient consent, or where one of the parties consents and an authorisation under Part II of RIPA has been granted. Unlawful interception can be a criminal offence.

5.1.2 The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulation 2000 specifically authorise certain interceptions of telecommunications which would otherwise be prohibited by section 1 of RIPA. Regulation 3(1)(a) allows a business (which does include any public authority) to monitor its own internal communications system, including telephone calls, email messages and internet usage, for the following purposes (that are relevant to a local authority):

- To establish the existence of facts;
- To ascertain or demonstrate standards to be achieved (quality control and training);
- To prevent or detect crime;
- To investigate or detect unauthorised use of telecommunication systems; or
- To secure effective system operation.

5.1.3 These are far more wide ranging than the grounds normally available for directed surveillance under Part II of RIPA. It is therefore much easier to use the authority provided by the above stated Regulations, rather than the limited ones available under Part II of RIPA. The Regulations require that the Council make all reasonable efforts to inform potential users that interceptions may be made.

5.1.4 The Council has an Email Policy and Email usage guidelines. These describe the arrangements that the Council has in place for monitoring email communication. Informing members of staff of these policies and potential monitoring arrangements should be addressed within an employee's induction. Consent of the employee is not required for this

monitoring however where employees are given facilities to make private telephone calls they should be given the opportunity to make calls without being monitored.

- 5.1.5 Where the Council monitor or record any telephone conversations the public need to be warned of this. This can be included as a footnote to entries in the telephone directory and on leaflets and advertisements. It can also be addressed through a recorded message or referred to specifically whenever the switchboard answers an incoming call. The purpose is ordinarily explained to be quality control and training. External emails are not normally intercepted during transmission, but are monitored only after they have arrived. Internal emails would be covered by the warning to members of staff. Internet access only involved the individual member of staff.
- 5.1.6 Further information about the interception of communications under RIPA can be found in the Home Office Interception of Communications Code of Practice at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/496064/53659\\_CoP\\_Communications\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/496064/53659_CoP_Communications_Accessible.pdf)

## 5.2 **Acquisition and Disclosure of Communications Data**

- 5.2.1 Chapter II of Part I of RIPA covers the acquisition and disclosure of data held by any postal service or mobile telephone service about their customers. This is not directly relevant to local authorities as the data concerned is not relevant to the Council's functions and powers.
- 5.2.2 Further information about the acquisition and disclosure of communications data under RIPA can be found in the Home Office Acquisition and Disclosure of Communications Data Code of Practice at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/426248/Acquisition and Disclosure of communications Data Code of Practice March 2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/426248/Acquisition_and_Disclosure_of_communications_Data_Code_of_Practice_March_2015.pdf)

## 6. **AUTHORISATION PROCEDURES**

Directed Surveillance and the use of CHIS can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the Authorisation. **Appendix C (Directed Surveillance) and Appendix E (CHIS)** provide flow charts of processes from application/consideration to recording of information and the storage/retention of data obtained.

## 6.1 Authorising Officers

- 6.2.1 Forms can only be signed by appointed Authorising Officers. Authorised posts are listed in **Appendix A**. This Appendix will be kept up to date and added to as needs require. If a Chief Officer wishes to add, delete or substitute a post, s/he must refer such request to the Director (LD) for consideration, as necessary. The Director (LD) has been duly authorised to add, delete or substitute posts listed in **Appendix A**.
- 6.2.2 Authorisations under RIPA are separate from delegated authority to act under the Council's Scheme of Delegation and internal departmental Schemes of Delegation. All RIPA Authorisations, save for Authorisations to collect communications data under s22 (3) RIPA, are for specific investigations only, and must be reviewed, renewed or cancelled once the specific surveillance is complete or about to expire. **The authorisations do not lapse with time!**

## 6.3 Training Records

- 6.3.1 Appropriate training will be given (or approved) before Authorising Officers are certified to sign any RIPA Forms. A record of training will be retained and a Central Register of all those individuals who have undergone training (or a one-to-one meeting) on such matters will be kept.
- 6.3.2 If the Senior Responsible Officer feels that an Authorising Officer has not complied fully with the requirements of this Document, or the training provided to him/her, they are duly authorised to retract that Officer's authorisation until s/he has undertaken further approved training or a one- to-one meeting.

## 6.4 Application Forms

- 6.4.1 Application Forms **must be hand written** and not typed.
- 6.4.2 Only the RIPA forms below or contained on the Home Office website are permitted to be used. Any other forms used will be rejected.

6.4.3 **A Forms (Directed Surveillance) – Appendix C**

<b>FORM</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
A1	Application for Authority for Directed Surveillance	43
A2	Review of Directed Surveillance Authority	48
A3	Renewal of Directed Surveillance Authority	52
A4	Cancellation of Directed Surveillance Authority	56

6.4.4 **B Forms (CHIS) – Appendix F**

<b>FORM</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
B1	Application for Authority for Conduct and Use of CHIS	64
B2	Review of Conduct and Use of CHIS	70
B3	Renewal of Conduct and Use of CHIS	74
B4	Cancellation of Conduct and Use of CHIS	78

6.5 **Grounds for Authorisation**

6.5.1 The Council cannot authorise Directed Surveillance unless the following conditions are met:

- The surveillance is for the purpose of preventing or detecting conduct which constitutes one or more criminal offences; and
- The criminal offence (or one of the criminal offences) is or would be punishable, whether on summary conviction or on indictment, by a maximum term of at least 6 months of imprisonment.

OR

- The criminal offence is an offence under:
  - section 146 of the Licensing Act 2003 (sale of alcohol to children);
  - section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);
  - section 147A of the Licensing Act 2003 (persistently selling alcohol to children);
  - Section 7 of the Children and Young Persons Act 1933

(sale of tobacco, etc, to persons under eighteen).

6.5.2 The Council cannot authorise directed surveillance on any other grounds (no other grounds are available to local authorities). There is however no such restriction on the use of CHIS.

## 6.6 Assessing the Application Form

6.6.1 Before an Authorising Officer signs a Form, **they must:**

- (a) Be mindful of this Document, the training provided and any other guidance issued from time to time on such matters;
- (b) Satisfy themselves that:
  - (i) the RIPA Authorisation is in accordance with the law;
  - (ii) the offence falls within the categories listed at 5.5.1;
  - (iii) the Authorisation is necessary in the circumstances of the particular case; and
  - (iv) the Authorisation is proportionate to what it seeks to achieve.
- (c) In assessing whether or not the proposed surveillance is proportionate, consider whether there are any other non-intrusive means of obtaining information, and if there are none, whether the proposed surveillance is no more than necessary to achieve the objective, as the **least intrusive method will be considered proportionate by the courts.**
- (d) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (collateral intrusion). Measures must be taken wherever practicable to avoid or minimise (so far as is possible) collateral intrusion and the matter may be an aspect of determining proportionality.
- (e) Set a date for review of the Authorisation and review on that date using the appropriate form.
- (f) Obtain a unique reference number (URN) for each form in the format: Year/Dept/Number of Application. The Coordinating Officer will supply the URN.
- (g) Ensure that any RIPA Departmental Register is duly completed, and that the original RIPA Forms (and any review / renewal / cancellation of the same) are forwarded to the Coordinating Officer, **within 1 week of the relevant authorisation, review,**



**renewal, cancellation or rejection.**

- (h) If unsure on any matter, obtain advice from the Senior Responsible Officer or the Coordinating Officer before signing any forms.

6.6.2 When Authorising the use or conduct of a **CHIS**, the Authorising Officer **must also**:

- (a) Be satisfied that the **conduct** and/or **use** of the CHIS is proportionate to what is sought to be achieved;
- (b) Be satisfied that **appropriate arrangements** are in place for the management and oversight of the CHIS and this must address health and safety issues through a risk assessment;
- (c) Consider the likely degree of intrusion of all those potentially affected;
- (d) Consider any adverse impact on community confidence that may result from the use or conduct or the information obtained;
- (e) Ensure **records** contain particulars and are not available except on a need to know basis; and
- (f) If unsure on any matter, obtain advice from the Senior Responsible Officer or the Coordinating Officer before signing any forms.

6.7 **Approval by a Justice of the Peace**

6.7.1 The Protection of Freedoms Act 2012 amended RIPA so that **all local authority authorisations are subject to judicial approval**. This means that the Council must obtain an order of a Justice of the Peace (JP) at the Magistrates' Court approving the grant or renewal of an authorisation before it can take effect.

6.7.2 Although it is theoretically possible for local authorities to request judicial approval for the use of more than one technique (i.e. Directed Surveillance, CHIS and Communications Data) at the same time, in practice, as different considerations need to be applied to these different techniques, this would be difficult to perform with the degree of clarity required. Separate Authorisations or notices to use different RIPA techniques should therefore be submitted.

6.7.3 It should be noted that only the **initial application** and any **renewal of the application** require magistrates' approval. Review and cancellation of Authorisations do not require such judicial approval and remain an internal process.

## 6.8 The Role of the Justice of the Peace

6.8.1 The role of the JP is set out in RIPA. Section 23A of RIPA covers this role in relation to communications data, and section 32A covers this role in relation to applications for directed surveillance and CHIS.

6.8.2 These provisions state that the Authorisation (or in the case of communications data the notice) shall not take effect until the JP has made an order approving grant of the Authorisation or notice.

6.8.3 The matters on which a JP must be satisfied before making an order of approval are:

- There were reasonable grounds for believing that the Authorisation is necessary and proportionate and that these grounds remain at the time of consideration by the JP;
- In relation to a CHIS, that there were also reasonable grounds to believe that arrangements exist for the safety and welfare of the source that satisfy section 29(5) RIPA and that these grounds remain at the time of consideration by the JP;
- In relation to a juvenile CHIS, that there were reasonable grounds to believe that the requirements imposed by Regulation of Investigatory Powers (Juveniles) Order 2003 were satisfied and that these grounds remain at the time of consideration by the JP.
- The application has been properly authorised by a designated person;
- The grant of Authorisation (or in the case of communications data the notice) was not in breach of any restrictions imposed pursuant to sections 25(3), 29(7) (a), or 30(3) of RIPA.

## 6.9 Urgent Authorisations

6.9.1 Due to the fact that an authorisation under RIPA cannot take effect until approved by a JP, **urgent oral authorisations can no longer be granted**. There is no exception to this rule.

## 6.10 Duration

6.10.1 The Form **must be reviewed in the time stated, renewed and/or cancelled** once it is no longer needed. The 'Authorisation' to carry out/conduct the surveillance lasts for a maximum of 3 months (from Authorisation) for Directed Surveillance, and 12 months (from Authorisation) for a CHIS (or four months if a juvenile CHIS). However, whether the surveillance is carried out/conducted or not in the relevant

period, does not mean the 'Authorisation' is 'spent'. In other words, **the Forms do not expire!** The forms have to be reviewed, renewed and/or cancelled (once they are no longer required).

6.10.2 Authorisations can be renewed in writing before the maximum period in the Authorisation has expired. The Authorising Officer must consider the matter afresh, including taking into account the benefits of the surveillance to date, and any collateral intrusion that has occurred. An Authorisation cannot be renewed after it has expired. In such event, a fresh Authorisation will be necessary.

6.10.3 The renewal will begin on the day when the Authorisation would have expired.

## 7. WORKING WITH OTHER AGENCIES

7.1 When another Agency has been instructed on behalf of the Council to undertake any action under RIPA, this Document and the Forms in it must be used (as per normal procedure) and the Agency advised or kept informed, as necessary, of the various requirements. They must be made aware explicitly what they are authorised to do.

7.2 Where another Agency (e.g. Police, Customs & Excise, Inland Revenue etc.):-

(a) wish to use the Council's resources (e.g. CCTV surveillance systems), that agency must use its own RIPA procedures and, before any Officer agrees to allow the Council's resources to be used for the other agency's purposes, they must obtain a copy of that agency's RIPA form for the record (a copy of which must be passed to the Coordinating Officer for the Central Register) or relevant extracts from the same which are sufficient for the purposes of protecting the Council and the use of its resources.

(b) wish to use the Council's premises for their own RIPA action, and is expressly seeking assistance from the Council, the Officer should normally co-operate with the same, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other Agency for the Council's co-operation in the Agent's RIPA operation. In such cases, however, the Council's own RIPA forms should not be used as the Council is only 'assisting' not being 'involved' in the RIPA activity of the external Agency.

7.3 In terms of 2(a), if the Police or other Agency wish to use Council resources for general surveillance, as opposed to specific RIPA

operations, an appropriate letter requesting the proposed use, extent of remit, duration, who will be undertaking the general surveillance and the purpose of it must be obtained from the Police or other Agency before any Council resources are made available for the proposed use.

- 7.4 **If in doubt, please consult with the Senior Responsible Officer at the earliest opportunity, and in any case prior to making resources available.**

## **COVERT SURVEILLANCE OF SOCIAL NETWORKING SITES**

- 7.5 The growing popularity of social media (such as Facebook and Twitter) has resulted in more and more people publishing information about themselves and their activities on the internet.
- 7.6 This source of information can be very useful and is relatively easy to access, however caution must be exercised when doing so for the purpose of surveillance activity. In particular, care must be taken to understand how the social networking site being used works. Authorising Officers must not be tempted to assume that one service provider is the same as another or that the services provided by a single provider are the same.
- 7.7 Where the individual has applied privacy controls to the information, so that it is not publicly available, it would be unwise to consider the information as “open source”. The author has a reasonable expectation of privacy if access controls are applied.
- 7.8 Where privacy controls are available but have not been applied, the information may be considered “open source” and an authorisation would not normally be required. That said, in the view of the Surveillance Commissioner repeat viewing of “open source” sites may constitute directed surveillance on a case by case basis and this should be borne in mind.
- 7.9 If it is necessary and proportionate for the Council to covertly breach access controls, the minimum requirement is an Authorisation for directed surveillance.
- 7.10 An Authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained (i.e. the activity is more than mere reading of the site’s content).
- 7.11 In undertaking covert surveillance of this type, the identity of a person known, or likely to be known, to the subject of interest or users of the site should not be adopted without authorisation, without the consent of the person whose identity is used, and without considering the

protection of that person. Consent must be explicit and in writing.

- 7.12 Should an Officer be considering surveillance of this type, they are urged to consult with the Senior Responsible Officer or the Coordinating Officer before taking any further steps.

## **8. RECORDS MANAGEMENT**

- 8.1 The Council must keep a detailed record of all Authorisations, Reviews, Renewals, Cancellations and rejections in Departments, and a Central Register of all original Authorisation Forms and documents will be maintained and monitored by the Coordinating Officer.

### **8.2 Records Maintained by the Department**

- 9.2.1 The Council will retain records for a period of at least three years from the ending of the Authorisation. The IPCO can audit/review the Council's policies and procedures, and individual Authorisations, Reviews, Renewals, Cancellations and rejections. Records must include the following information:

- A copy of the Forms together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- A record of the period over which the surveillance has taken place;
- The frequency of reviews prescribed by the Authorising Officer;
- A record of the result of each review of the Authorisation;
- A copy of any renewal of an Authorisation, together with the supporting documentation submitted when the renewal was requested;
- The date and time when any instruction was given by the Authorising Officer;
- The Unique Reference Number for the Authorisation (URN).

### **9.3 Central Register Maintained by the Director (LD)**

- 9.3.1 For Directed Surveillance, the Central Register is administered by the Coordinating Officer. For CHIS applications, Authorising Officers must forward originals of each Form B to the Coordinating Officer for the Central Register, within 1 week of the authorisation, Review, Renewal, Cancellation or rejection. The Coordinating Officer will

monitor the same and give appropriate guidance, from time to time, or amend this Document as necessary.

## 9. CONCLUDING REMARKS

- 9.1 Where there is an interference with the right to respect for private life and family guaranteed under Article 8 of the European Convention on Human Rights, and where there is no other source of lawful authority for the interference, or if it is held not to be necessary or proportionate to the circumstances, the consequences of not obtaining or following the correct authorisation procedure set out in RIPA and this Document, may be that the action (and the evidence obtained) will be held to be unlawful by the Courts pursuant to Section 6 of the Human Rights Act 1998.
- 9.2 Obtaining an Authorisation under RIPA and following this Document will therefore ensure that the action is carried out in accordance with the law and subject to stringent safeguards against abuse of anyone's human rights.
- 9.3 **Authorising Officers will be suitably trained and they must exercise their minds every time they are asked to consider a Form. They must never sign or rubber stamp Form(s) without thinking about their own personal and the Council's responsibilities. All forms must be hand written.**
- 9.4 **Any boxes not needed on the Form(s) must be clearly marked as being 'NOT APPLICABLE', 'N/A' or a line put through the same.** Great care must also be taken to ensure accurate information is used and is inserted in the correct boxes. Reasons for any refusal of an application must also be kept on the form and the form retained for future audits.
- 9.5 For further advice and assistance on RIPA, please contact the Senior Responsible Officer or the Coordinating Officer. Details are provided on the front of this Document.

## **APPENDIX A**

### **SENIOR RESPONSIBLE OFFICER**

Director of (LD) (Monitoring Officer)

### **AUTHORISING OFFICERS**

Chief Executive

Director (LD) (Monitoring Officer) (as a last resort only)

Director (NE)

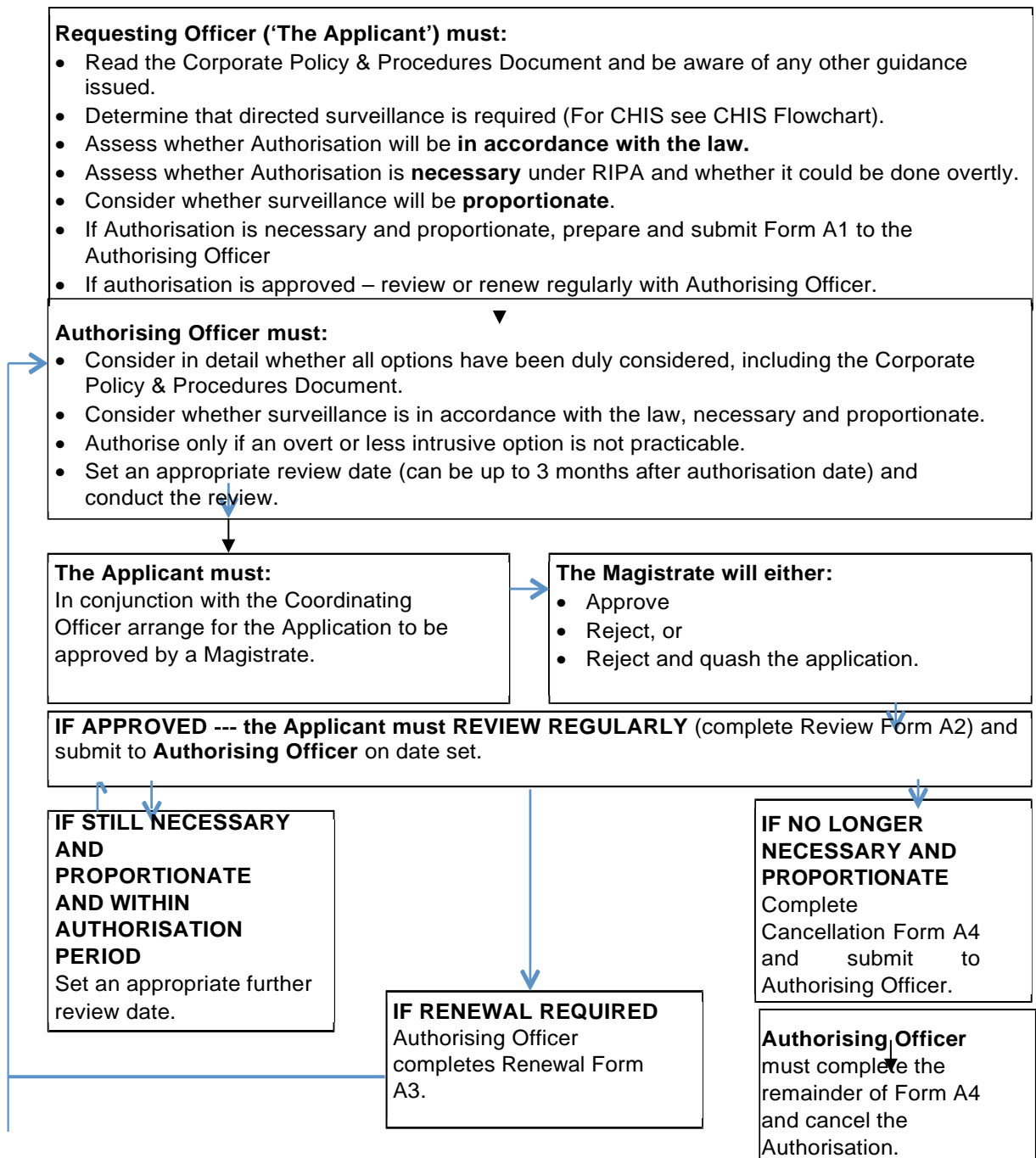
### **COORDINATING OFFICER**

Deputy Monitoring Officer

### **IMPORTANT NOTES:**

- A.** Even if a post is identified in the above list the persons currently employed in such posts are not authorised to sign RIPA Forms (including a review, renewal or cancellation) unless they have been certified by the Director (LD) to do so.
- B.** Only the Chief Executive and the Monitoring Officer are authorised to sign Forms relating to Juvenile Sources and Vulnerable Individuals or where there is any possibility of confidential information being obtained.
- C.** The Director (LD) should only act as an Authorising Officer in exceptional circumstances.
- D.** If a Chief Officer wishes to add, delete or substitute a post, they must refer such request to the Director (LD) for consideration, as necessary.
- E.** If in doubt, ask the Senior Responsible Officer or the Coordinating Officer **BEFORE** any directed surveillance and/or CHIS is authorised, reviewed, renewed, cancelled or rejected.

**DIRECTED SURVEILLANCE FLOW CHART**



**If in doubt, consult the Senior Responsible Officer or the Coordinating Officer BEFORE any directed surveillance and/or CHIS are Authorised, Reviewed, Renewed, Cancelled, or rejected.**



**APPENDIX C**

**RIPA 'A' FORMS – DIRECTED SURVEILLANCE**

<b>Form</b>	<b>Description</b>
<b>A1</b>	Application for Authorisation to carry out directed surveillance
<b>A2</b>	Review of Form A1
<b>A3</b>	Application for Renewal of Form A1
<b>A4</b>	Cancellation of Form A1

**ALL FORMS MUST BE COMPLETED BY HAND**

**FORM A1 – APPLICATION FOR AUTHORISATION TO CARRY OUT DIRECTED  
SURVEILLANCE**

**PART II REGULATION OF INVESTIGATORY POWERS ACT 2000**

**SCARBOROUGH BOROUGH COUNCIL**

**STRICTLY PRIVATE AND CONFIDENTIAL**

**TO BE COMPLETED BY HAND**

<b>Unique Reference Number (URN)</b>	
<b>Subject of Surveillance</b> (including full address)	

**SECTION 1 (TO BE COMPLETED BY APPLICANT)**

<b>Name of Applicant</b>		<b>Unit/Service</b>	
<b>Full Address</b>			
<b>Contact Details</b>			
<b>Investigation/Operation Name (if applicable)</b>			
<b>Investigating Officer (if person other than the Applicant)</b>			

**Details of Application**

<b>1. Give name and job title of Authorising Officer</b>

**2. Describe the purpose of the specific operation or investigation.**

**3. Describe in detail the surveillance operation to be authorised and expected duration, including any premises, vehicles or equipment (e.g. camera, binoculars, recorder) that may be used.**

**4. The identities, where known, of those to be subject of the directed surveillance.**

- Name:
- Address:
- DOB:
- Other information as appropriate:

**5. Explain the information that it is desired to obtain as a result of the directed surveillance.**

**6. Explain why directed surveillance is NECESSARY in this particular case:**

**CRIME(S) BEING INVESTIGATED:**

**MAXIMUM PENAL PROVISIONS (MUST BE MAX OF AT LEAST 6 MONTHS IMPRISONMENT):**

**NB: UNDER SECTION 28 OF RIPA, THE ONLY GROUND AVAILABLE TO THE COUNCIL IS "FOR THE PURPOSE OF PREVENTING OR DETECTING CRIME". THIS APPLICATION MUST BE REJECTED IF THIS GROUND IS NOT RELEVANT TO THE PROPOSED SURVEILLANCE**

**7. Supply details of any potential COLLATERAL INTRUSION and why the intrusion is unavoidable: (Also describe precautions to MINIMISE collateral intrusion)**

<p><b>8. Explain why the directed surveillance is PROPORTIONATE to what it seeks to achieve. How intrusive might it be on the subject of surveillance or on others? And why is this intrusion outweighed by the need for surveillance in operational terms or can the evidence be obtained by any other means?</b></p>	
<p> </p>	
<p><b>9. Confidential information (e.g. confidential legal privilege, personal information and journalistic material) INDICATE THE LIKELIHOOD OF ACQUIRING ANY CONFIDENTIAL</b></p>	
<p> </p>	
<p><b>10. Applicant's Details</b></p>	
<p><b>Name:</b></p>	<p><b>Tel No:</b></p>
<p><b>Job Title:</b></p>	<p><b>Date:</b></p>
<p><b>Signature:</b></p>	
<p><b>11. Anticipated Start Date and Time</b></p>	
<p><b>Date:</b></p>	<p><b>Time:</b></p>

**SECTION 2 (TO BE COMPLETED BY AUTHORISING OFFICER)**

<p><b>12. Authorising Officer's Statement</b>  <b>MUST spell out the "5 Ws" – Who; What; Where; When; Why and HOW</b></p>	
<p><b>I hereby authorise as follows:</b></p> <p><i>Who is authorised to conduct surveillance:</i></p> <p><i>What is authorised for the surveillance:</i></p> <p><i>Where is it to take place and for how long:</i></p> <p><i>Why is it being authorised:</i></p> <p><i>How will the surveillance be conducted:</i></p> <p>This written authorisation will cease to have effect at the end of a period of 3 months unless renewed (see separate form for renewals).</p>	

The Applicant and the **Authorising** Officer will jointly review this authorisation on the date below to see whether the authorisation should continue, be renewed or cancelled.

<p><b>13. Authorising Officer's statement explaining why in his / her view the directed surveillance is necessary and proportionate. This box must be completed and both aspects must be</b></p>	
<p>Why is it necessary?</p> <p>Why is it proportionate?</p>	

**14. Confidential Information Authorisation. Supply details demonstrating compliance with Home Office Codes of Practice relating to this issue.**

<p>Expiry of Authorisation (3 months from date / time of Authorisation unless stated here):</p>	
<p>Date of first review:</p>	
<p>Date of subsequent reviews of this Authorisation:</p>	

Authorising Officer	
Job Title	
Signature	
Date/Time	

**NB: The original copy of this form, once it has been authorised or rejected, must be sent to the Coordinating Officer within 1 week of the authorisation or rejection for placing in the Central Register.**

**FORM A2 – REVIEW OF A DIRECTED SURVEILLANCE AUTHORISATION**

**PART II REGULATION OF INVESTIGATORY POWERS ACT 2000**

**SCARBOROUGH BOROUGH COUNCIL**

**STRICTLY PRIVATE AND CONFIDENTIAL**

**TO BE COMPLETED BY HAND**

<b>Unique Reference Number (URN)</b>	
<b>Subject of Surveillance</b> (including full address)	

**SECTION 1 (TO BE COMPLETED BY APPLICANT)**

<b>Name of Applicant</b>		<b>Unit/Service</b>	
<b>Full Address</b>			
<b>Contact Details</b>			
<b>Investigation/Operation Name (if applicable)</b>			
<b>Investigating Officer (if person other than the Applicant)</b>			
<b>Date of Authorisation or Last Renewal</b>			
<b>Expiry Date of Authorisation or Last Renewal</b>			

**Details of Review**

1. Review Number and Dates of any Previous Reviews	
Review Number	Dates

<b>2. Summary of the investigation/operation to date, including what private information has been obtained and the value of the information so far obtained</b>
<b>3. Detail the reasons why it is NECESSARY to continue with the directed surveillance</b>
<b>4. Explain how the proposed activity is still PROPORTIONATE to what it seeks to achieve</b>
<b>5. Detail any incidents of collateral intrusion and the likelihood of any further incidents of collateral intrusions occurring</b>



<b>6. Give details of any confidential information acquired or accessed and the likelihood of acquiring confidential information</b>	
<b>7. Applicant's Details</b>	
<b>Name:</b>	<b>Tel No:</b>
<b>Job Title:</b>	<b>Date:</b>
<b>Signature:</b>	

**SECTION 2 (TO BE COMPLETED BY AUTHORISING OFFICER)**

<b>8. Authorising Officer's Comments, including whether or not the directed surveillance should continue</b>
<b>9. Authorising Officer's Statement</b>
I [hereby agree that the directed surveillance investigation/operation as detailed above [should/should not] continue [until its next review/renewal][it should be cancelled immediately].

<b>Authorising Officer</b>	
<b>Job Title</b>	
<b>Signature</b>	
<b>Date/Time</b>	

<b>10. Date of Next Review</b>	
--------------------------------	--

**NB: The original copy of this form, once it has been authorised or rejected, must be sent to the Coordinating Officer within 1 week of the authorisation or rejection for placing in the Central Register.**

**FORM A3 – APPLICATION FOR RENEWAL OF A DIRECTED SURVEILLANCE  
AUTHORISATION**

(Please attach a copy of the original authorisation)

**PART II REGULATION OF INVESTIGATORY POWERS ACT 2000**

**SCARBOROUGH BOROUGH COUNCIL**

**STRICTLY PRIVATE AND CONFIDENTIAL**

**TO BE COMPLETED BY HAND**

<b>Unique Reference Number (URN)</b>	
<b>Subject of Surveillance</b> (including full address)	

**SECTION 1 (TO BE COMPLETED BY APPLICANT)**

<b>Name of Applicant</b>		<b>Unit/Service</b>	
<b>Full Address</b>			
<b>Contact Details</b>			
<b>Investigation/Operation Name (if applicable)</b>			
<b>Investigating Officer (if person other than the Applicant)</b>			
<b>Date of Authorisation or Last Renewal</b>			
<b>Expiry Date of Authorisation or Last Renewal</b>			
<b>Renewal Number</b>			

## Details of Renewal

1. Renewal Number and Dates of any Previous Renewals	
Renewal Number	Dates
2. Detail any significant changes to the information provided in the original authorisation, as it applies at the time of the renewal	
3. Detail the reasons why it is NECESSARY to continue with the directed surveillance	
4. Explain how the proposed activity is still PROPORTIONATE to what it seeks to achieve	
5. Indicate the content and value to the investigation or operation of the information so far obtained by the directed surveillance	

<b>6. Give details of the results of the regular reviews of the investigation or operation</b>	
<b>7. Applicant's Details</b>	
<b>Name:</b>	<b>Tel No:</b>
<b>Job Title:</b>	<b>Date:</b>
<b>Signature:</b>	

**SECTION 2 (TO BE COMPLETED BY AUTHORISING OFFICER)**

<b>8. Authorising Officer's Comments</b> This box must be completed to indicate why the renewal (if agreed) is necessary and proportionate
<b>9. Authorising Officer's Statement</b>
I hereby authorise the renewal of the directed surveillance operation as detailed above. The renewal of this authorisation will last for 3 months unless renewed in writing. This authorisation will be reviewed frequently to assess the need for the authorisation to continue.

<b>Authorising Officer</b>	
<b>Job Title</b>	
<b>Signature</b>	
<b>Date/Time</b>	

<b>10. Date of First Review</b>	
<b>11. Date of Subsequent Reviews of this Authorisation</b>	

**NB: The original copy of this form, once it has been authorised or rejected, must be sent to the Coordinating Officer within 1 week of the authorisation or rejection for placing in the Central Register.**

**FORM A4 – APPLICATION FOR CANCELLATION OF A DIRECTED SURVEILLANCE  
AUTHORISATION**

**PART II REGULATION OF INVESTIGATORY POWERS ACT 2000**

**SCARBOROUGH BOROUGH COUNCIL**

**STRICTLY PRIVATE AND CONFIDENTIAL**

**TO BE COMPLETED BY HAND**

<b>Unique Reference Number (URN)</b>	
<b>Subject of Surveillance</b> (including full address)	

**SECTION 1 (TO BE COMPLETED BY APPLICANT)**

<b>Name of Applicant</b>		<b>Unit/Service</b>	
<b>Full Address</b>			
<b>Contact Details</b>			
<b>Investigation/Operation Name (if applicable)</b>			
<b>Investigating Officer (if person other than the Applicant)</b>			
<b>Date of Authorisation or Last Renewal</b>			
<b>Expiry Date of Authorisation or Last Renewal</b>			

**Details of Cancellation**

<b>1. Explain the reasons for the Cancellation of the Authorisation</b>

<b>2. Explain the value of surveillance in the operation:</b>	
<b>3. Applicant's Details</b>	
<b>Name:</b>	<b>Tel No:</b>
<b>Job Title:</b>	<b>Date:</b>
<b>Signature:</b>	

**SECTION 2 (TO BE COMPLETED BY AUTHORISING OFFICER)**

<b>4. Authorising Officer's Statement</b>
I hereby authorise the cancellation of the directed surveillance investigation/operation as detailed above.

<b>Authorising Officer</b>	
<b>Job Title</b>	
<b>Signature</b>	
<b>Date/Time</b>	

<b>5. Time and Date of when the Authorising Officer instructed the surveillance to cease</b>			
<b>Date:</b>		<b>Time:</b>	

<b>6. Authorisation cancelled</b>	<b>Date:</b>	<b>Time:</b>
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**NB: The original copy of this form, once it has been authorised or rejected, must be sent to the Coordinating Officer within 1 week of the authorisation or rejection for placing in the Central Register.**

## **APPENDIX D COVERT HUMAN INTELLIGENCE SOURCE (CHIS)**

### **Additional Notes (an extract from the Home Office Code of Practice on CHIS) Management of Covert Human Intelligence Sources**

#### **Tasking**

6.1 Tasking is the assignment given to the CHIS by the persons defined at sections 29(5)(a) and

(b) of the 2000 Act, asking him to obtain, provide access to or disclose information. Authorisation for the use or conduct of a CHIS will be appropriate prior to any tasking where such tasking involves the CHIS establishing or maintaining a personal or other relationship for a covert purpose.

6.2 Authorisations should not be drawn so narrowly that a separate authorisation is required each time the CHIS is tasked. Rather, an authorisation might cover, in broad terms, the nature of the source's task. If there is a step change in the nature of the task that significantly alters the entire deployment, then a new authorisation may need to be sought. If in doubt, advice should be sought from the Investigatory Powers Commissioner.

6.3 It is difficult to predict exactly what might occur each time a meeting with a CHIS takes place, or the CHIS meets the subject of an investigation. There may be occasions when unforeseen action or undertakings occur. When this happens, the occurrence must be recorded as soon as practicable after the event, and if the existing authorisation is insufficient, it should either be reviewed and updated (for minor amendments only) or it should be cancelled and a new authorisation should be obtained before any further such action is carried out.

6.4 Similarly, where it is intended to task a CHIS in a significantly greater or different way than previously identified, the persons defined at section 29(5)(a) or (b) of the 2000 Act must refer the proposed tasking to the authorising officer, who should consider whether the existing authorisation is sufficient or needs to be replaced. This should be done in advance of any tasking and the details of such referrals must be recorded. Efforts should be made to minimise the number of authorisations per CHIS to the minimum necessary in order to avoid generating excessive paperwork.

#### **Handlers and controllers**

6.5 Public authorities should ensure that arrangements are in place for the proper oversight and management of CHIS, including appointing individual officers acting as 'controller' and 'handler' for each CHIS (as defined in sections 29(4A) and (4B) and 29(5) (a) and (b) of the 2000 Act).

6.6 The person referred to in section 29(5)(a) of the 2000 Act (the "handler") will have day to day responsibility for:

- dealing with the CHIS on behalf of the authority concerned;
- directing the day to day activities of the CHIS;
- recording the information supplied by the CHIS; and
- monitoring the CHIS's security and welfare.

6.7 The handler of a CHIS will usually be of a rank or position below that of the authorising officer.

6.8 The person referred to in section 29(5) (b) of the 2000 Act (the “controller”) will normally be responsible for the management and supervision of the “handler” and general oversight of the use of the CHIS.

6.9 Oversight and management arrangements for undercover operatives, while following the principles of the Act, will differ, in order to reflect the specific role of such individuals as members of public authorities. The role of the handler will be undertaken by a person referred to as a ‘cover officer’ and the role of controller will be undertaken by a ‘covert operations manager’.

### **Joint working**

6.10 There are many cases where the activities of a CHIS may provide benefit to more than a single public authority. Such cases may include:

- The prevention or detection of criminal matters affecting a national or regional area, for example where the CHIS provides information relating to cross boundary or international drug trafficking;
- The prevention or detection of criminal matters affecting crime and disorder, requiring joint agency operational activity, for example where a CHIS provides information relating to environmental health issues and offences of criminal damage, in a joint police/local authority anti-social behaviour operation on a housing estate;
- Matters of national security, for example where the CHIS provides information relating to terrorist activity and associated criminal offences for the benefit of the police and the Security Service.

6.11 In cases where the authorisation is for the use or conduct of a CHIS whose activities benefit more than a single public authority, responsibilities for the management and oversight of that CHIS may be taken up by one authority or can be split between the authorities. The applicant, controller and handler of a CHIS need not be from the same public authority. In such situations, however, the public authorities involved must lay out in writing their agreed oversight arrangements.

6.12 Management responsibility for CHIS, and relevant roles, may also be divided between different police forces and the National Crime Agency where there is a collaboration agreement under the Police Act 1996 and the collaboration agreement provides for this to happen.

### **Security and welfare**

Any public authority deploying a CHIS should take into account the safety and welfare of that CHIS when carrying out actions in relation to an authorisation or tasking, and the foreseeable consequences to others of that tasking. Before authorising the use or conduct of a CHIS, the authorising officer should ensure that a risk assessment is carried out to determine the risk to the CHIS of any tasking and the likely consequences should the role of the CHIS become known. This should consider the risks relating to the specific tasking and circumstances of each authorisation separately, and should be updated to reflect developments during the course of the deployment, as well as after the deployment if contact is maintained. The ongoing security and welfare of the CHIS,

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after the cancellation of the authorisation, should also be considered at the outset and reviewed throughout the period of authorised activity by that CHIS. Consideration should also be given to the management of any requirement to disclose information which could risk revealing the existence or identity of a CHIS. For example this could be by means of disclosure to a court or tribunal, or any other circumstances where disclosure of information may be required, and strategies for minimising the risks to the CHIS or others should be put in place. Additional guidance about protecting the identity of the CHIS is provided at paragraphs 8.22 to 8.25 below.

6.13 The CHIS handler is responsible for bringing to the attention of the CHIS controller any concerns about the personal circumstances of the CHIS, insofar as they might affect:

- the validity of the risk assessment;
- the conduct of the CHIS; and
- the safety and welfare of the CHIS.

6.14 Where appropriate, concerns about such matters must be considered by the authorising officer, and a decision taken on whether or not to allow the authorisation to continue

## **SENIOR RESPONSIBLE OFFICERS AND OVERSIGHT BY COMMISSIONERS**

### **The Senior Responsible Officer**

9.1 Within every relevant public authority a senior responsible officer must be appointed with responsibility for:

- the integrity of the process in place within the public authority for the management of CHIS;
- compliance with Part II of the Act and with this code;
- oversight of the reporting of errors to the Investigatory Powers Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
- engagement with the Investigatory Powers Commissioner and inspectors who support the Commissioner when they conduct their inspections, ;
- where necessary, oversight of the implementation of post-inspection action plans recommended or approved by the Investigatory Powers Commissioner; and
- ensuring that all authorising officers are of an appropriate standard, addressing any recommendations and concerns in the inspection reports prepared by the Investigatory Powers Commissioner

### **Oversight by Commissioners**

9.2 The Investigatory Powers Act provides for an Investigatory Powers Commissioner (“the Commissioner”), whose remit includes providing comprehensive oversight of the use of the powers to which this code applies, and adherence to the practices and processes described in it. The Commissioner will be, or will have been, a member of the senior judiciary and will

be entirely independent of Her Majesty's Government or any of the public authorities authorised to use investigatory powers. The Commissioner will be supported by inspectors and others, such as technical experts, qualified to assist the Commissioner in his or her work. The Commissioner will also be advised by the 'Technology Advisory Panel'.

9.3 The Commissioner, and those that work under the authority of the Commissioner, will ensure compliance with the law by inspecting public authorities and investigating any issue which they believe warrants further independent scrutiny. The Investigatory Powers Commissioner may undertake these inspections, as far as they relate to the Investigatory Powers Commissioner's statutory functions, entirely on his or her own initiative, or the Commissioner may be asked to investigate a specific issue by the Prime Minister. Section 236 of the 2016 Act also provides for the Intelligence and Security Committee of Parliament to refer a matter to the Investigatory Powers Commissioner with a view to carrying out an investigation, inspection or audit.

9.4 The Commissioner will have unfettered access to all locations, documentation and information systems as necessary to carry out their full functions and duties. In undertaking such inspections, the Investigatory Powers Commissioner must not act in a way which is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, or the economic well-being of the UK (section 229(6) of the 2016 Act). A Commissioner must in particular not jeopardise the success of an intelligence, security or law enforcement operation, compromise the safety or security of those involved, nor unduly impede the operational effectiveness of an intelligence service, a police force, a government department, or Her Majesty's Forces (see section 229(7) of the 2016 Act).

9.5 All relevant persons using investigatory powers must provide all necessary assistance to the Commissioner and anyone who is acting on behalf of the Commissioner. Here, a relevant person includes, amongst others, any person who holds, or has held, an office, rank or position within a public authority (see section 235(7) of the 2016 Act).

9.6 Anyone, including anyone working for a public authority, who has concerns about the way that investigatory powers are being used may report their concerns to the Commissioner. In particular, any person who exercises the powers described in this code must, in accordance with the procedure set out in chapter 7 of this code, report to the Commissioner any relevant error of which they are aware. This may be in addition to the person raising concerns through the internal mechanisms for raising concerns within the public authority.

9.7 Should the Commissioner uncover, or be made aware of, what they consider to be a serious error relating to a person who has been subject to an investigatory power then, if it is in the public interest to do so, the Commissioner is under a duty to inform the person affected. Further information on errors can be found in chapter 8 of this code. The public authority that has made the error will be able to make representations to the Commissioner before the Commissioner decides if it is in the public interest for the person to be informed. Section 231(6) of the 2016 Act states that the Commissioner must also inform the affected person of their right to apply to the Investigatory Powers Tribunal (see chapter 10 of this code for more information on how this can be done).

9.8 The Commissioner must report annually on the findings of their audits, inspections and investigations. This report will be laid before Parliament and will be made available to the public, subject to any necessary redactions made in the public interest. Only the Prime Minister will be able to make redactions to the Commissioner's report.

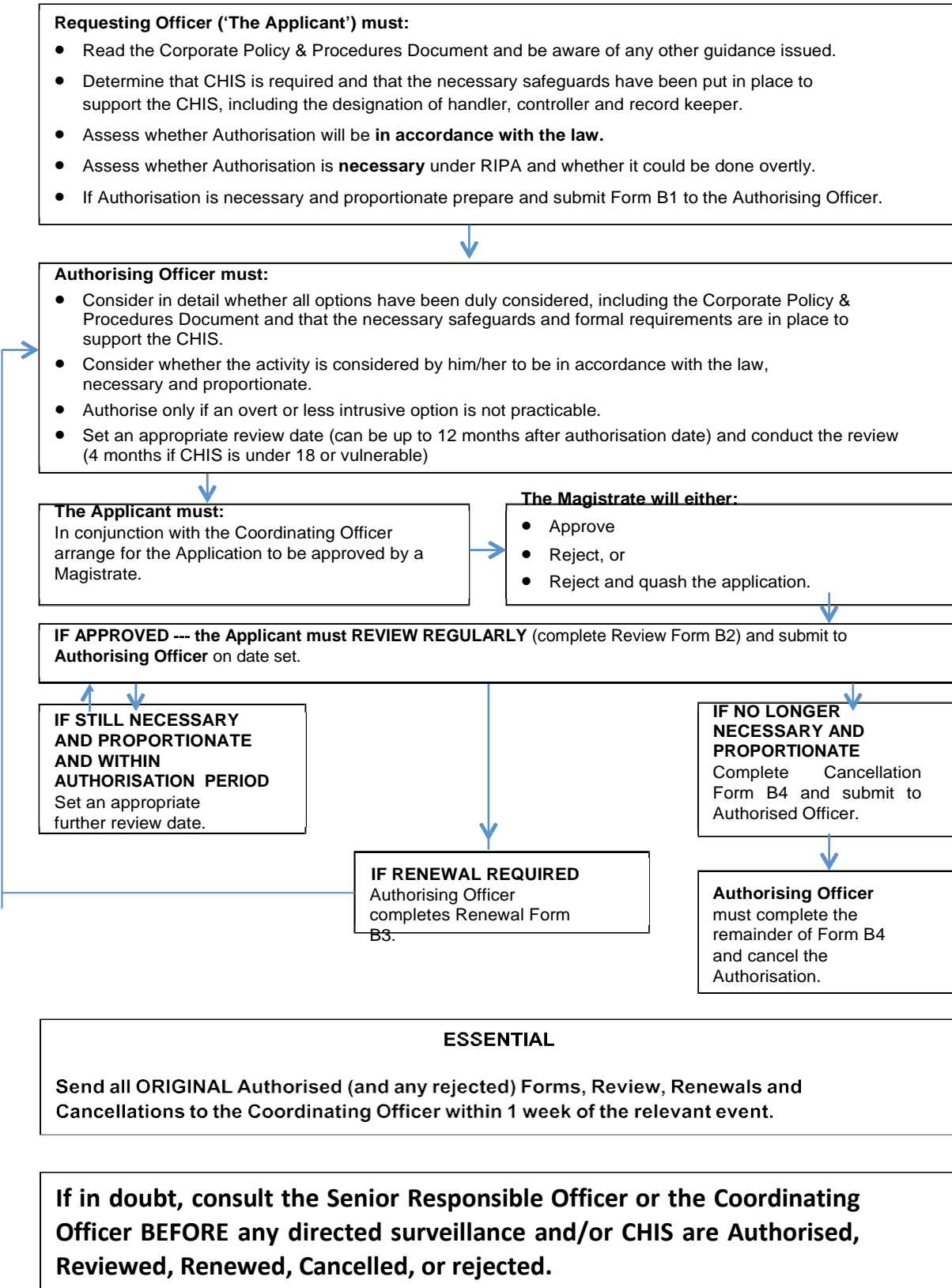
9.9 The Commissioner may also report, at any time, on any of their investigations and findings as they see fit. Public authorities may seek general advice from the Commissioner on any issue which falls within the Commissioner's statutory remit. The Commissioner may also produce whatever guidance they deem appropriate for public authorities on how to apply and use investigatory powers.

9.10 Further information about the Investigatory Powers Commissioner, their office and their work may be found at:[www.ipco.org.uk](http://www.ipco.org.uk)

9.11 Oversight of public authorities in Northern Ireland, whose powers have been conferred by Order of the Northern Ireland Assembly, is a devolved matter.

**APPENDIX E**

**CHIS FLOW CHART**



**APPENDIX F**

**RIPA 'B' FORMS - CHIS**

<b>Form</b>	<b>Description</b>
<b>B1</b>	Application for Authorisation of the use or conduct of a CHIS
<b>B2</b>	Review of Form B1
<b>B3</b>	Application for Renewal of Form B1
<b>B4</b>	Cancellation of Form B1

**ALL FORMS MUST BE COMPLETED BY HAND**

**FORM B1 – APPLICATION FOR AUTHORISATION OF THE USE OR CONDUCT OF A  
COVERT HUMAN INTELLIGENCE SOURCE (CHIS)**

**PART II REGULATION OF INVESTIGATORY POWERS ACT 2000**

**SCARBOROUGH BOROUGH COUNCIL**

**STRICTLY PRIVATE AND CONFIDENTIAL**

**TO BE COMPLETED BY HAND**

<b>Unique Reference Number (URN)</b>	
<b>Subject of Surveillance</b> (including full address)	

**SECTION 1 (TO BE COMPLETED BY APPLICANT)**

<b>Name of Applicant</b>		<b>Unit/Service</b>	
<b>Full Address</b>			
<b>Contact Details</b>			
<b>How will the source be referred to (i.e. what will be his/her pseudonym or reference number)?</b>			
<b>What is the name, rank or position of the person within the relevant investigating authority who will have day to day responsibility for dealing with the source, including the source's security and welfare (often referred to as the Handler)?</b>			

<p>What is the name, rank or position of another person within the relevant investigating authority who will have general oversight of the use made of the source (often referred to as the</p>	
<p>Who will be responsible for retaining (in secure, strictly controlled conditions, with need-to-know access) the source's true identity, a record of the use made of the source and the particulars</p>	
<p>Investigation/Operation Name (if applicable)</p>	
<p>Investigating Officer (if person other than the Applicant)</p>	

**Details of Application**

<p><b>1. Give name and job title of Authorising Officer</b></p>
<p></p>
<p><b>2. Describe the purpose of the specific operation or investigation.</b></p>
<p></p>
<p><b>3. Describe in detail the purpose for which the source will be tasked or used.</b></p>
<p></p>

<b>4. Describe in detail the proposed covert conduct of the source or how the source is to be used</b>
<b>5. Explain why the conduct or use of the source is NECESSARY in this particular case:</b>
<b>6. Supply details of any potential COLLATERAL INTRUSION and why the intrusion is unavoidable: (Also describe precautions to MINIMISE collateral intrusion)</b>
<b>7. Are there any particular sensitivities in the local community where the source is to be used? Are similar activities being undertaken by other public authorities that could impact on the deployment of the source?</b>



<b>8. Provide an assessment of the risk to the source in carrying out the proposed conduct</b>	
<b>9. Explain <u>why</u> this conduct or use of the source is PROPORTIONATE to what it seeks to achieve. How intrusive might it be on the subject(s) of surveillance or on others? How is this intrusion outweighed by the need for a source in operational terms, and could the evidence be obtained by any other means?</b>	
<b>10. Confidential information (e.g. confidential legal privilege, personal information and journalistic material) INDICATE THE LIKELIHOOD OF ACQUIRING ANY CONFIDENTIAL INFORMATION</b>	
<p>References for any other linked authorisations:</p>	
<b>11. Applicant's Details</b>	
<b>Name:</b>	<b>Tel No:</b>
<b>Job Title:</b>	<b>Date:</b>
<b>Signature:</b>	
<b>12. Anticipated Start Date and Time</b>	
<b>Date:</b>	<b>Time:</b>

**SECTION 2 (TO BE COMPLETED BY AUTHORISING OFFICER)**

<p><b>13. Authorising Officer's Statement</b>  <b>MUST spell out the "5 Ws" – Who; What; Where; When; Why and HOW</b>  <b>THE AUTHORISATION SHOULD IDENTIFY THE PSEUDONYM OR REFERENCE NUMBER OF THE SOURCE, NOT THE TRUE IDENTITY.</b></p>	
<p><b>14. Explain <u>why</u> you believe the conduct or use of the source is necessary</b>  <b>Explain <u>why</u> you believe the conduct or use of the source to be proportionate to what is sought to be achieved by their engagement</b></p>	
<p>Why is it necessary?</p>     <p>Why is it proportionate?</p>	
<p><b>15. Confidential Information Authorisation. Supply details demonstrating compliance with Home Office Codes of Practice relating to this issue.</b></p>	
<b>Expiry of Authorisation:</b>	
<b>Date of first review:</b>	
<b>Programme for subsequent reviews of this authorisation. Only complete this box if review dates after first review are known. If not, or inappropriate to set additional review dates, then leave blank.</b>	

<b>Authorising Officer</b>	
<b>Job Title</b>	
<b>Signature</b>	
<b>Date/Time Granted</b>	
<b>Date/Time Ends (12 month period)</b>	

**NB: The original copy of this form, once it has been authorised or rejected, must be sent to the Coordinating Officer within 1 week of the authorisation or rejection for placing in the Central Register.**

**FORM B2 – REVIEW OF A COVERT HUMAN INTELLIGENCE SOURCE (CHIS)  
AUTHORISATION**

**PART II REGULATION OF INVESTIGATORY POWERS ACT 2000**

**SCARBOROUGH BOROUGH COUNCIL**

**STRICTLY PRIVATE AND CONFIDENTIAL**

**TO BE COMPLETED BY HAND**

<b>Unique Reference Number (URN)</b>	
<b>Subject of Surveillance</b> (including full address)	

**SECTION 1 (TO BE COMPLETED BY APPLICANT)**

<b>Name of Applicant</b>		<b>Unit/Service</b>	
<b>Full Address</b>			
<b>Contact Details</b>			
<b>Pseudonym or reference number of</b>			
<b>Investigation/Operation Name (if applicable)</b>			
<b>Operation Number</b>			
<b>Investigating Officer (if person other than the Applicant)</b>			
<b>Date of authorisation or last renewal</b>			
<b>Expiry date of authorisation or last renewal</b>			
<b>Review Number</b>			

## Details of Review

1. Review Number and Dates of any Previous Reviews	
Review Number	Dates
2. Summary of the investigation/operation to date, including what information has been obtained and the value of the information so far obtained	
3. Detail the reasons why it is NECESSARY to continue using a Covert Human Intelligence Source	
4. Explain how the proposed activity is still PROPORTIONATE to what it seeks to achieve	

<b>5. Detail any incidents of collateral intrusion and the likelihood of any further incidents of collateral intrusions occurring</b>	
<b>6. Give details of any confidential information acquired or accessed and the likelihood of acquiring confidential information</b>	
<b>7. Give details of the review of the risk assessment on the security and welfare of using the source</b>	
<b>8. Applicant's Details</b>	
<b>Name:</b>	<b>Tel No:</b>
<b>Job Title:</b>	<b>Date:</b>
<b>Signature:</b>	

**SECTION 2 (TO BE COMPLETED BY AUTHORISING OFFICER)**

<b>9. Authorising Officer's Comments, including whether or not the directed surveillance should continue</b>
<b>10. Authorising Officer's Statement</b> <b>THE AUTHORISATION SHOULD IDENTIFY THE PSEUDONYM OR REFERENCE NUMBER OF THE SOURCE, NOT THE TRUE IDENTITY.</b>
I [hereby agree that the use or conduct of the source for the purpose of the investigation/operation as detailed above [should/should not] continue [until its next review/renewal][it should be cancelled immediately].

<b>Authorising Officer</b>	
<b>Job Title</b>	
<b>Signature</b>	
<b>Date/Time</b>	

<b>11. Date of Next Review</b>	
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**NB: The original copy of this form, once it has been authorised or rejected, must be sent to the Coordinating Officer within 1 week of the authorisation or rejection for placing in the Central Register.**

**FORM B3 – APPLICATION FOR RENEWAL OF A COVERT HUMAN INTELLIGENCE  
SOURCE (CHIS) AUTHORISATION  
(Please attach the original authorisation)**

**PART II REGULATION OF INVESTIGATORY POWERS ACT 2000**

**SCARBOROUGH BOROUGH COUNCIL**

**STRICTLY PRIVATE AND CONFIDENTIAL**

**TO BE COMPLETED BY HAND**

<b>Unique Reference Number (URN)</b>	
<b>Subject of Surveillance</b> (including full address)	

**SECTION 1 (TO BE COMPLETED BY APPLICANT)**

<b>Name of Applicant</b>		<b>Unit/Service</b>	
<b>Full Address</b>			
<b>Contact Details</b>			
<b>Pseudonym or reference number of</b>			
<b>Investigation/Operation Name (if applicable)</b>			
<b>Investigating Officer (if person other than the Applicant)</b>			
<b>Date of authorisation or last renewal</b>			
<b>Expiry date of authorisation or last renewal</b>			
<b>Review Number</b>			

## Details of Renewal

1. Renewal Number and Dates of any Previous Renewals	
Renewal Number	Date
2. Detail any significant changes to the information provided in the original authorisation, as it applies at the time of the renewal	
3. Detail the reasons why it is NECESSARY to continue with the authorisation, including details of any tasking given to the source	
4. Detail why the use or conduct of the source is still PROPORTIONATE to what it seeks to achieve	



<b>5. Detail the use made of the source in the period since the grant of authorisation or, as the case may be, latest renewal of the authorisation.</b>	
<b>6. List the tasks given to the source during that period and the information obtained from the conduct or use of the source</b>	
<b>7. Detail the results of regular reviews of the use of the source</b>	
<b>8. Give details of the review of the risk assessment on the security and welfare of using the source</b>	
<b>9. Applicant's Details</b>	
<b>Name:</b>	<b>Tel No:</b>
<b>Job Title:</b>	<b>Date:</b>
<b>Signature:</b>	

**SECTION 2 (TO BE COMPLETED BY AUTHORISING OFFICER)**

<b>10. Authorising Officer's Comments</b> <u>This box must be completed</u>
Empty space for comments
<b>11. Authorising Officer's Statement</b> <b>THE AUTHORISATION SHOULD IDENTIFY THE PSEUDONYM OR REFERENCE NUMBER OF THE SOURCE, NOT THE TRUE IDENTITY</b>
<p>I hereby [authorise] [reject] the renewal of the conduct/use of the source as detailed above.</p> <p>[The renewal of this authorisation will last for 12 months unless renewed in writing]</p> <p>[This authorisation will be reviewed frequently to assess the need for the authorisation to continue.]</p>

<b>Authorising Officer</b>	
<b>Job Title</b>	
<b>Signature</b>	
<b>Date/Time</b>	

<b>12. Date of First Review</b>	
<b>13. Date of Subsequent Reviews of this Authorisation</b>	

**NB: The original copy of this form, once it has been authorised or rejected, must be sent to the Coordinating Officer within 1 week of the authorisation or rejection for placing in the Central Register.**

**FORM B4 – APPLICATION FOR CANCELLATION OF A COVERT HUMAN  
INTELLIGENCE SOURCE (CHIS) AUTHORISATION**

**PART II REGULATION OF INVESTIGATORY POWERS ACT 2000**

**SCARBOROUGH BOROUGH COUNCIL**

**STRICTLY PRIVATE AND CONFIDENTIAL**

**TO BE COMPLETED BY HAND**

<b>Unique Reference Number (URN)</b>	
<b>Subject of Surveillance</b> (including full address)	

**SECTION 1 (TO BE COMPLETED BY APPLICANT)**

<b>Name of Applicant</b>		<b>Unit/Service</b>	
<b>Full Address</b>			
<b>Contact Details</b>			
<b>Pseudonym or reference number of</b>			
<b>Investigation/Operation Name (if applicable)</b>			
<b>Investigating Officer (if person other than the Applicant)</b>			
<b>Date of authorisation or last renewal</b>			
<b>Expiry date of authorisation or last renewal</b>			

**Details of Cancellation**

<b>7. Explain the reasons for the Cancellation of the Authorisation</b>	
<b>8. Explain the value of the source in the operation:</b>	
<b>9. Applicant's Details</b>	
<b>Name:</b>	<b>Tel No:</b>
<b>Job Title:</b>	<b>Date:</b>
<b>Signature:</b>	

**SECTION 2 (TO BE COMPLETED BY AUTHORISING OFFICER)**

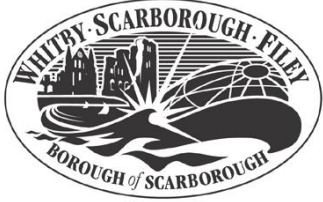
<b>10. Authorising Officer's Statement</b>
<b>THE AUTHORISATION SHOULD IDENTIFY THE PSEUDONYM OR REFERENCE NUMBER OF THE SOURCE, NOT THE TRUE IDENTITY</b>
I hereby authorise the cancellation of the use or conduct of the source as detailed above.

<b>Authorising Officer</b>	
<b>Job Title</b>	
<b>Signature</b>	
<b>Date/Time</b>	

<b>11. Time and Date of when the Authorising Officer instructed the use of the source to cease</b>			
<b>Date:</b>		<b>Time:</b>	

<b>12. Authorisation cancelled</b>	<b>Date:</b>		<b>Time:</b>	
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**NB: The original copy of this form, once it has been authorised or rejected, must be sent to the Coordinating Officer within 1 week of the authorisation or rejection for placing in the Central Register.**

	<p><b>REPORT TO STANDARDS COMMITTEE</b></p> <p><b>TO BE HELD ON 25 MARCH 2021</b></p>	
<p><b>Corporate Priority: ALL</b></p>	<p><b>Key Decision</b></p>	<p><b>NO</b></p>
	<p><b>Forward Plan Ref No</b></p>	<p><b>N/A</b></p>
	<p><b>Cabinet Portfolio Holder</b></p>	<p><b>Cllr J Jefferson</b></p>

## REPORT OF THE DIRECTOR (LD) – 21/54

**WARDS AFFECTED: ALL**

**SUBJECT: MODEL CODE OF CONDUCT**

### RECOMMENDATION(S):

It is recommended that Standards Committee:

- (a) note the publication by the Local Government Association (LGA) of a new Model Code of Conduct for Members;
- (b) note that further guidance on the operation of the code is awaited; and
- (c) approve the establishment of a working group of Members' to review the Council's Code of Conduct and seek the views of Town and Parish Councils in the Borough as to the adoption of a common Code of Conduct.

### REASON FOR RECOMMENDATION(S):

To inform the Standards Committee of a new Model Code of Conduct which has been approved by the Local Government Association.

To ensure that the Council's Code of Conduct for Members supports and promotes high standards of behaviour.

### HIGHLIGHTED RISKS

None

## **1. INTRODUCTION:**

- 1.1 In response to the growing concerns of those in public office in relation to the increasing incidents of public intimidation and abuse, the Local Government Association (LGA) is currently undertaking a programme of work relating to Civility in Public Life.
- 1.2 Further information on the programme of work being undertaken can be found at:  
<https://www.local.gov.uk/sites/default/files/documents/191003%20public%20document%20on%20civility%20in%20public%20life%20%28Autosaved%29.pdf>
- 1.3 As part of this programme of work, the LGA has undertaken a review of the Member Model Code of Conduct, taking into account recommendations made by the Committee on Standards in Public Life in their report on Ethical Standards, which is attached as appendix A.
- 1.4 A final Model Code of Conduct was approved by the LGA in December 2020. The aim was to develop a code that benchmarked a standard for all public office and for those engaged in public discourse and debate. It sets out the duties and expectations of persons in public office as well as their rights, particularly their right to be protected from abuse and intimidation resulting from their undertaking of public office.
- 1.5 A copy of the final Model Code can be found at Appendix B. Whilst the Model Code of Conduct is suggested national good practice, councils can adopt this code, or adopt their own local code. A copy of the Council's current Member Code of Conduct is attached at Appendix C.

## **2. CORPORATE AIMS/PRIORITIES**

- 2.1 This report supports all of the Council's corporate aims.

## **3. BACKGROUND AND ISSUES**

- 3.1 Section 27 of the Localism Act 2011 requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person', and sanctions to be imposed on any councillors who breach the Code.
- 3.2 The 2011 Act also requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the Code of Conduct, and arrangements under which decisions on allegation may be made.

3.3 The LGA Model Member Code of Conduct has been developed in consultation with the sector and is offered as a template for councils to adopt in whole and/or with local amendments. The LGA will undertake an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation.

3.4 The Council's current Code of Conduct for Members is contained within the Constitution.

#### **4. CONSULTATION**

4.1 This report proposes that consultation is undertaken with Members to review the Council's code of conduct, taking into account the model code of conduct developed by the LGA.

#### **5. ASSESSMENT**

5.1 The Model Code developed by the LGA aims to respond to the rising local government concern about the increasing incidence of public, member-to-member and officer/member intimidation and abuse and overall behavioural standards and expectations in public debate, decision making and engagement.

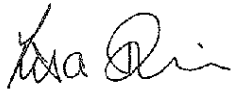
5.2 One of the overriding reasons for a new Code was for all Local Authorities to adopt it, ensuring consistency across many tiers of Local Government, especially for those who represent at both County and Districts levels and even Parish, where different Codes could apply. This can be a cause of confusion for those Members and also the public.

5.3 However, as stated previously in this report, whilst the member model code of conduct is suggested national good practice, councils are not obliged to adopt it. Across the Borough, a number of Parish and Town Councils operate their own member codes of conduct, whilst others have adopted the model code.

5.4 The LGA have confirmed that they are in the process of preparing guidance based upon key areas suggested during the consultation process. Once this guidance is available, it is proposed that a working group of Members of this Committee be established to consider the Council's current Code of Conduct and make recommendations thereon, taking into account the new LGA Model Code of Conduct and recommendations from the review of Local Government Ethical Standards by the Committee on Standards in Public Life. It is also proposed that discussions take place with Parish and Town Councils across the Borough as to the benefits of taking a consistent approach and operating to a common code of conduct.

#### **6. IMPLICATIONS**

6.1 All relevant implications have been considered in the body of this report.



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**Director**

**Author:**

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**Background Papers:**

N/A

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT PETRA JACKSON ON 01723 232323 or e-mail [petra.jackson@scarborough.gov.uk](mailto:petra.jackson@scarborough.gov.uk)



# Local Government Ethical Standards

**A Review by the  
Committee on  
Standards in Public Life**

**Committee on  
Standards in  
Public Life**

January 2019







# Local Government Ethical Standards

Committee on Standards in Public Life

*Chair: Lord Evans of Weardale KCB DL*

January 2019





# The Seven Principles of Public Life

The Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

## **Selflessness**

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

## **Integrity**

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

## **Objectivity**

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

## **Accountability**

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

## **Openness**

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

## **Honesty**

Holders of public office should be truthful.

## **Leadership**

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



Dear Prime Minister,

I am pleased to present the 20th report of the Committee on Standards in Public Life, on the subject of ethical standards in local government.

The Committee has had a long-standing interest in local government, which was the subject of its third report, and which it has considered a number of times since then. This review was not prompted by any specific allegations of misconduct, but rather to assure ourselves that the current framework, particularly since the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public.

Local government impacts the lives of citizens every day, providing essential services to those it serves. Its decisions directly affect the quality of life of local people. High standards of conduct in local government are needed to demonstrate that those decisions are taken in the public interest and to maintain public confidence.

It is clear that the vast majority of councillors and officers want to maintain the highest standards of conduct in their own authority. We have, however, identified some specific areas of concern. A minority of councillors engage in bullying or harassment, or other highly disruptive behaviour, and a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour.

We have also identified a number of risks in the sector: the current rules around conflicts of interest, gifts, and hospitality are inadequate; and the increased complexity of local government decision-making is putting governance under strain.

The challenge is to maintain a system which serves the best instincts of councillors, whilst addressing unacceptable behaviour by a minority, and guarding against potential corporate standards risks.

It is clear from the evidence we have received that the benefits of devolved arrangements should be retained, but that more robust safeguards are needed to strengthen a locally determined system. We are also clear that all local authorities need to develop and maintain an organisational culture which is supportive of high ethical standards. A system which is solely punitive is not desirable or effective; but in an environment with limited external regulation, councils need the appropriate mechanisms in place to address problems when they arise.

Our recommendations would enable councillors to be held to account effectively and would enhance the fairness and transparency of the standards process. Introducing a power of suspension and a model code of conduct will enable councillors to be held to account for the most serious or repeated breaches and support officers to address such behaviour, including in parish councils. Strengthening the role of the Independent Person and introducing a right of



appeal for suspended councillors will enhance the impartiality and fairness of the process, which is vital to ensure that councillors are protected from malicious or unfounded complaints. Greater transparency on how complaints are assessed and decided in a system which is currently too reliant on internal party discipline will also provide a safeguard against opaque decision-making and provide reassurance to the public.

A number of these recommendations involve legislative change which we believe the government should implement. We have also identified 'best practice' for local authorities, which represents a benchmark for ethical practice which we expect that any authority can and should implement.

It is clear to us that local government in England has the willingness and capacity to uphold the highest standards of conduct; our recommendations and best practice will enable them to do so.

I commend the report to you.

**Lord Evans of Weardale**  
**Chair, Committee on Standards in Public Life**







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# Executive summary

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life.

High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.

We are also concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local

authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public office-holders. We recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

## Codes of conduct

Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. There is considerable variation in the length, quality and clarity of codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.



There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. The scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

### **Declaring and managing interests**

The current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

### **Investigations and safeguards**

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically-motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent

Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

### **Sanctions**

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.



## **Town and parish councils**

Principal authorities have responsibility for undertaking formal investigations of code breaches by parish councillors. This should remain the case. This responsibility, however, can be a disproportionate burden for principal authorities. Parish councils should be required to adopt the code of their principal authority (or the new model code), and a principal authority's decision on sanctions for a parish councillor should be binding. Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to parish councils, including in undertaking investigations and recommending sanctions. Clerks should also hold an appropriate qualification to support them to uphold governance within their parish council.

## **Supporting officers**

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

## **Councils' corporate arrangements**

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should

take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

## **Leadership and culture**

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be



written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive.

An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision-making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.



# List of recommendations

Number	Recommendation	Responsible body
1	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association
2	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government
3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government
4	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government
5	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government
6	Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	Government



Number	Recommendation	Responsible body
7	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter”.	Government
8	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government
9	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government
10	A local authority should only be able to suspend a councillor where the authority’s Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government
11	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government / all local authorities
12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government
13	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government



Number	Recommendation	Responsible body
14	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government
15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government
17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government
18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government
19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish councils
20	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.	Government
21	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.	Government
22	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government





Number	Recommendation	Responsible body
23	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government
24	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government
25	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political groups National political parties
26	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association



# List of best practice

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



# Introduction

The Committee on Standards in Public Life (the Committee) was established in 1994 by the then Prime Minister, and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles.<sup>1</sup>

The Committee has had a long-standing interest in local government, which was the subject of its third report in 1997, and which it has considered on a number of occasions since then. Since we last reviewed standards arrangements in local government, the Committee has maintained a watching brief, and has received regular correspondence relating to local government. Our other recent reviews have also received evidence relevant to the maintenance of standards in local government. This review was not prompted, however, by any specific allegations of misconduct or council failure, but rather to review the effectiveness of the current arrangements for standards in local government, particularly in light of the changes made by the Localism Act 2011.

The terms of reference for our review were to:

**1. Examine the structures, processes and practices in local government in England for:**

- a. Maintaining codes of conduct for local councillors
- b. Investigating alleged breaches fairly and with due process
- c. Enforcing codes and imposing sanctions for misconduct
- d. Declaring interests and managing conflicts of interest
- e. Whistleblowing

**2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government**

**3. Make any recommendations for how they can be improved**

**4. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation**

<sup>1</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life>



Our review covered all local authorities in England, of which there are 353 principal authorities, with 18,111 councillors in 2013, and an estimated 10,000 parish councils in England, with around 80,000 parish councillors. We did not take evidence relating to Combined Authorities, metro mayors, or the Mayor of London and so do not address these areas of local government in this report.

The Committee's remit does not extend to the devolved administrations of the UK, and so our review does not cover local government standards outside England, although we have considered the role, remit, and work of the standards bodies in Scotland, Wales, and Northern Ireland for comparative purposes.

As part of this review, we received 319 written submissions to our consultation, from a range of local authorities, representative bodies, stakeholder organisations, officers, councillors, and members of the public. We held two roundtable seminars; one with Monitoring Officers, clerks and Independent Persons, and one with academics and think tanks. We held 30 individual stakeholder meetings. We also visited five local authorities across different regions of England and tiers of local government speaking to councillors, officers, county associations, Independent Persons, and representatives from town and parish councils.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and specific groups of public office holders. Our best practice for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We intend to review the implementation of our best practice in 2020.

The Committee wishes to thank all those who gave evidence to the review, including those local authorities who hosted a visit by the Committee, and in particular Jonathan Gooden of Wilkin Chapman LLP for his support and advice throughout.



# Chapter 1: Overview of standards

## Is there a standards problem in local government?

The evidence we have received does not reveal a widespread standards problem within local government. Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct.

However, there is clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. We have also heard evidence of persistent or repeated misconduct by a minority of councillors.

This misconduct occurs at both principal authority level and at parish or town council level. Our evidence suggests, however, a high volume of complaints arising from a small number of town and parish councils (we refer to both as 'parish councils' for clarity). Under the current arrangements, where principal authorities are responsible for investigating and deciding on allegations of misconduct at parish level, these complaints can take up a disproportionate amount of officer time and are likely to be more difficult to address than complaints at principal authority level.

There is currently no requirement for principal authorities or town and parish councils to collect or report data on the volume of formal complaints they receive, but evidence we received indicates that the number varies widely between local authorities.

We received evidence that for parish councils, around 60% of councils had had no complaints, or only one complaint since the Localism Act 2011 came into force, and

around 10% had had four or more complaints. Of councils that had received complaints, 83% said complaints had been made about disrespectful behaviour, 63% about bullying and 31% about disruptive behaviour.<sup>2</sup>

Throughout this review, we have evaluated the system for upholding high ethical standards in local government as it currently works in practice, to see how far it reflects the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Across the 353 principal authorities in England, where responsibility for ethical standards rests with each individual authority, there is a variety of practice. But there are some common concerns.

At a time of rapid change in local government, not least in response to austerity measures, decision-making in local authorities is getting tougher and more complex. Increased freedoms to work with partners from a variety of sectors runs the risk of putting governance under strain. The importance of ensuring selflessness and integrity by reporting conflicts of interest and eradicating undue influence, in a system which is becoming less transparent and less accountable, is more important than ever. A lack of regulation only heightens the risk of things going badly wrong.

The political landscape is also changing. As we explore in chapter 4, party group discipline is an important ingredient in addressing misconduct, but in some councils the increase in independent members and groups causes additional concerns. The public expect their local representatives to be open and transparent, but it is clear that the increased use of social media has to be handled with

<sup>2</sup> Hoey Ainscough Associates survey for Society of Local Council Clerks, based on 801 responses from Clerks across England and Wales



care and where necessary properly monitored and checked. Many councils told us of ways in which they were trying to address this, often after having had multiple complaints.

The pressures increase to conduct political debate and decision-making at pace, and there can be frustration with formal procedures to handle complaints which are judged to be too cumbersome, bureaucratic or lengthy. Informality has its place, but must be balanced by the safeguard of formal due process, especially for more serious matters. We heard from councillors how important it is for them to have proper procedures, with an appropriate level of independence and objectivity, to protect them from political mischief or worse.

Local authorities are clearly aware of these issues and are tackling them. But officers need appropriate support, especially those officers in parish councils who often work alone. They are developing best practice and understand what works, and they are working together across professional networks to share their experiences. Councillors themselves have confidence in the system and confidence in themselves to ensure high standards. But throughout this review we heard for the need for greater consistency in codes of conduct and for greater enforceable sanctions for serious and repeated breaches.

Such concerns and risks suggest that the current arrangements should be clarified and strengthened to ensure a robust, effective, and comprehensive system. We set out in this report how we believe local government can be supported to achieve this.

### **The current system**

The current system has a number of checks and balances built in to safeguard against poor ethical standards and protect against impropriety.

Each principal authority operates within its constitution. This creates a governance framework to ensure good administration and decision-making which includes, for example, the separation of the duties of officers and members, accountability to full council, and scrutiny and audit processes. These arrangements are overseen by the officers of the council, and particularly by the three senior statutory officers: the Head of Paid Service (Chief Executive), the Chief Finance Officer (sometimes referred to as the Section 151 Officer) and the Monitoring Officer. The leader of the council and other key members also have an important leadership role to play.

Under section 27 of the Localism Act 2011 each local authority must adopt a code of conduct against which councillors' conduct may be assessed. This code, when viewed as a whole, should reflect the Seven Principles of Public Life. A local authority must also make appropriate provision for councillors to register pecuniary and non-pecuniary interests. Any allegations of misconduct are usually considered in the first instance by the Monitoring Officer, a statutory officer of the council who has responsibility for standards and governance (or by their deputy). If the Monitoring Officer considers that there needs to be a formal investigation, this may be undertaken by the Monitoring Officer themselves, a deputy, or by an external investigator.

As a check on the impartiality of the decision-making process, the council must seek and take into account the view of an Independent Person (appointed by the council) before a decision is made on an alleged breach that has been subject to a formal investigation. A decision can be made by the Monitoring Officer, but many councils maintain a standards committee to make decisions on allegations or to review decisions taken by the Monitoring Officer. The authority may impose



a sanction - which cannot include suspension or disqualification - but may be an apology, training, censure, or withdrawal of certain facilities or access to council buildings. There are, however, no means of enforcing sanctions where it requires positive action by the councillor, for example, an apology or training.

Outside the formal standards procedures in a principal authority, party discipline can also be brought to bear. Most councillors will be members of a political group, and also often a national political party. A political group may follow its own procedures to advise members about their behaviour, remove councillors from committees, suspend them from the group, or remove them from positions to which they have been appointed by the group. A national political party may also follow its own procedures and suspend or expel a councillor from the party. These processes may be undertaken in consultation with the Monitoring Officer or other senior officers, or under the group or party's own initiative.

Within the statutory framework, principal authorities have discretion to develop their own standards procedures according to their own needs and resources. For example, some authorities give a more significant role to their Monitoring Officer and only involve a standards committee or Independent Person in the case of a formal investigation, others make extensive use of party discipline to resolve standards issues informally, and some authorities involve Independent Persons and standards committee members in a range of activities aimed at upholding ethical conduct and ethical decision-making within the authority. This means that authorities' standards arrangements, whilst they have commonalities, can in practice be implemented very differently. We discuss these different approaches throughout this report.





# Developments leading to the current framework for local government ethical standards

Much of the framework for local government standards which has been in place since 1997 has been a direct or indirect result of the Committee's recommendations.

Since we first considered local government standards in 1997, the sector has moved from a largely unregulated standards regime to a highly centralised system under the Standards Board, which was subsequently reformed in the mid-2000s and finally abolished in 2012, giving way to the highly devolved system which is currently in place.

**1997** The Committee's third report, *Standards of Conduct in Local Government in England, Scotland and Wales* (1997), made a range of recommendations to improve ethical standards in local government. These included a requirement for local authorities to adopt a code of conduct based on general principles, the creation of public registers of interests, and rules on councillors declaring both pecuniary and non-pecuniary interests and withdrawing from discussion or voting where appropriate. Codes of conduct would be enforced by local standards committees with powers to suspend councillors, with tribunals in England, Wales, and Scotland to hear appeals.

**1998** The Committee's recommendations were considered in detail by the incoming government in *Modernising local government: a new ethical framework* (1998), published by what was then the Department for Environment, Transport, and the Regions. The response, though agreeing with a number of recommendations, went well beyond what the Committee recommended, and proposed the creation of the Standards Board for England, which would investigate and adjudicate on all complaints about councillors except for those which were trivial or technical. The government held that leaving determination to local standards committees "[...] risks that allegations are not handled with that degree of objectivity or fairness" that the government considered an essential principle of the system.<sup>3</sup> The Secretary of State issued a model code of conduct, containing provisions which were required to be included in local codes of conduct, and the Standards Board for England advised councils at the time not to include additional provisions in their codes.

<sup>3</sup> Department for Environment, Transport and the Regions (1998), *Modernising local government: a new ethical framework*



**2005** In the Committee's 10th report, *Getting the balance right* (2005), the Committee accepted that the standards framework had improved since 1997. However, it criticised the centralised method for handling complaints and argued that, both on proportionality grounds and in order to embed an ethical culture in individual local authorities, the framework should move to locally-based arrangements for all but the most serious cases. It argued for substantial reform of, but not the abolition of, the Standards Board.

**2007** Responding to the Committee's 10th report, the government agreed that the Standards Board should become a more strategic regulator, and accepted that there were benefits "[...] in moving towards the promotion of more locally-based decision making in conduct issues, which would encourage local ownership of standards within local authorities". The Standards Board became 'Standards for England' and its role and relationship to local standards committees was altered accordingly by the Local Government and Public Involvement in Health Act 2007, with local authorities given the power to determine all but the most serious allegations. The Standards Committee (England) Regulations 2008 gave standards committees the ability to suspend councillors for up to six months following the finding of a breach.



**2010** In 2010, the coalition government proposed significant reform of the local government standards regime, centred on the abolition of Standards for England, which ministers described as “[...] bureaucratic standards arrangements...which so often led to petty or politically motivated complaints”.<sup>4</sup> The government proposed devolving responsibility for standards to individual local authorities, though without the ability to suspend or disqualify councillors. The initial proposals did not require councils to adopt a code of conduct, nor to have an independent check on deciding breaches.

The Committee welcomed responsibility for standards being held at a local level, noting that this was what it had originally recommended in 1997. However, the then Chair of the Committee, Sir Christopher Kelly KCB, expressed concerns that “[...] the proposals go well beyond the abolition of Standards for England. They involve the abolition of the national code of conduct for local authority members and remove the obligation on local authorities to maintain standards committees, chaired by independent people, to monitor standards and sanction aberrant behaviour. In future it appears that the only way of sanctioning poor behaviour between elections will be the criminal law or appeals to the ombudsman where someone’s interests are directly affected by a decision.”<sup>5</sup>

In response, the government included in the Localism Act 2011 a requirement for councils to adopt a code of conduct which, when viewed as a whole, was: consistent with the Seven Principles of Public Life; required the views of an Independent Person to be sought and taken into account when deciding on breaches of the code of conduct; and put a requirement for pecuniary interests to be registered and declared on the face of the Bill, which passed into law in November 2011.

4 Letter from Bob Neill MP to all local authority leaders, 28 June 2012, Available online at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5657/2169997.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5657/2169997.pdf)

5 “Public confidence in local government standards is at risk”, Committee on Standards in Public Life Press Notice, 14 September 2010



## Responsibility for standards

Whilst we consider each element of the standards process within this report, we have also considered the system as a whole; in particular, the question of where responsibility for standards in local government should lie – whether locally or with a national, centralised body. Any system needs to be able to support and protect councillors, officers, and members of the public.

There are clear benefits to local authorities having responsibility for ethical standards.

First, ownership of ethical standards – local responsibility for ethical standards ensures that the application and implementation of the Seven Principles of Public Life in local government is fully ‘owned’ by the sector. Ethical standards should not be seen as something that can be outsourced to another organisation; a highly centralised system for codes of conduct, investigations and sanctions risks implying that maintaining an ethical culture is somebody else’s responsibility. The evidence we received strongly indicates that local authorities want to keep responsibility for setting standards, based on the Seven Principles, and maintaining an ethical culture in their own authorities; and want to be given the tools and resources to do so.

Second, flexibility – our evidence suggests that flexibility is a major strength of the current standards arrangements. Local government involves working in close proximity. A system which is overly formal, as a centralised system would tend to be, can actually inhibit high ethical standards as it precludes light-touch, informal action to address potential issues at an early stage, and to resolve them in a way which takes account of the culture and needs of the authority and its existing working relationships.

Third, reduction in vexatious complaints – the evidence we have seen also suggests that the vexatious and politically-motivated complaints that existed under the centralised regime, prior to 2011, and about which we expressed concern in 2005, have significantly reduced.

We have carefully considered the arguments in favour of a centralised body responsible for overseeing standards in local government, as is the case for example in the devolved administrations of the UK.

The obvious benefit would be that it would improve consistency of standards across England. We have considered in particular the argument that members of the public in one area of the country will have the same expectations of the standards upheld by local councillors as members of the public in another area of the country. We suggest, however, that it is possible in general to enhance consistency without centralisation.

We have also considered how increased centralisation may make the process of setting codes, and investigating and deciding upon standards breaches, more independent and objective. It is important that there is independent input and oversight in any standards system, not least to provide councillors with support and adequate protection from unwarranted politically motivated allegations or unfair treatment, and to maintain the confidence of the public. The evidence we received suggests that it is possible to strengthen independent safeguards – through strengthening the role of independent members on standards committees and the Independent Person – within a framework of local responsibility for maintaining standards.



Overall, we do not favour a return to a centralised system and recommend that responsibility for ethical standards should remain with local authorities. While consistency and an independent element are important aspects of the standards framework, the recommendations we make throughout this report would enhance the consistency of standards across England and increase the independence of the relevant processes, whilst retaining local authorities' ownership of ethical standards and the flexibility this allows.



## Chapter 2: Codes of conduct and interests

Clear, relevant, and proportionate codes of conduct are central to maintaining ethical standards in public life. Codes of conduct were identified by the Committee as one of the essential ‘strands’ in maintaining ethical standards in public life in its first report in 1995, at a time when many public sector organisations did not have them.

Codes of conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

As we stated in our 2013 report, *Standards Matter*:

Organisations need their ethical principles to be elaborated in codes which contextualise and expand on their practical implications. Holders of public office can then be clear what is expected of them, particularly in grey areas where the application of principles may not be self-evident.<sup>6</sup>

Currently, local authorities have a statutory duty to adopt a code of conduct which, when viewed as a whole, is consistent with the Seven Principles of Public Life, and which includes provisions for registering and declaring pecuniary and non-pecuniary interests.

The intention was not that the Seven Principles could be treated as if a self-contained code, but instead that the principles should be used to underpin a well-drafted, practical and locally-relevant guide to behaviour.

As part of our evidence-gathering, we reviewed a sample of 20 principal authority codes of conduct. We have also drawn on the evidence received through our public consultation, visits and roundtables.

### **Variation, consistency, and clarity**

There is considerable variation in local authority codes of conduct. Some of this is straightforward variation in structure and wording, but there is also considerable variation in length, breadth, clarity and detail.

We heard evidence that variation between codes, even where the codes do not differ in quality, is problematic. It creates confusion among councillors who are simultaneously serving in councils at multiple tiers of local government (for example, on both a parish and a district council, known as ‘dual-hatting’), particularly when requirements for declaring and registering interests are different. It also creates confusion among members of the public over what is required of different councillors in different areas and tiers of local government.

<sup>6</sup> Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.4



The main problem I have experienced as Monitoring Officer...is the lack of consistency across codes... In district council areas, as Monitoring Officer, you have oversight of both district and parish council complaints. Each council can have their own version of the code (meeting the minimum provisions under the Localism Act 2011). It makes life difficult for councillors who are 'twin' or 'triple' hatters having to abide by different codes, and potentially inconsistent in the advice you can provide on each different version of a code.<sup>7</sup>

**Monitoring Officer, North Hertfordshire District Council**

In Ashford, a 'Kent model' code of conduct and arrangements for dealing with complaints were developed based on the previous national code as this was considered preferable to ensure consistency, continuity and clearly defined expectations.<sup>10</sup>

**Ashford Borough Council**

The issue of parish councils' codes of conduct is closely related; we discuss this in detail in chapter 5.

### **Model code of conduct**

A model code of conduct would create consistency across England, and reflect the common expectations of the public regardless of geography or tier. It would also reduce the potential for confusion among dual-hatted or triple-hatted councillors. As we discuss below, areas such as gifts and hospitality, social media use, and bullying and harassment have all increased in salience, and are not regularly reflected in local authority codes of conduct. All local authorities need to take account of these areas, and a model code of conduct would help to ensure that they do so.

In light of these problems, it is of little surprise that some councils have taken voluntary steps to agree mutual codes of conduct. For example, all of the principal authorities in Worcestershire have agreed a 'pan-Worcestershire' code. This also meant that common training could take place across authorities.<sup>8</sup>

In order to ensure a consistency of standards and expectations of both councillors and the public (and not least because we have a lot of dual-hatted members), the eight principal authorities co-operated in advance of the new regime to create a 'pan-Worcestershire' Code of Conduct which was adopted by all eight, and we understand a majority of town and parish councils in the county as well.<sup>9</sup>

**Worcestershire County Council**

Whilst the principle of localism is set to facilitate greater local determination on practices best suited to each authority, this may result in inconsistencies of rigour in application of cases from one authority to another...we recommend that model codes of conduct be developed for use by authorities.<sup>11</sup>

**INLOGOV, University of Birmingham**

7 Written evidence 22 (Jeanette Thompson)

8 Written evidence 173 (Worcestershire County Council)

9 Written evidence 173 (Worcestershire County Council)

10 Written evidence 138 (Ashford Borough Council)

11 Written evidence 160 (INLOGOV)



We recognise that there are benefits to councils being able to amend their own codes. For example, a council may provide more detail on appropriate use of social media, relationships with officers, or conduct during council meetings, depending on its own culture and the specific issues it may face. Local authorities can also revise their codes of conduct where they find them difficult to apply in practice, and to learn from best practice elsewhere. A mandatory code set by central government would be unlikely to be updated regularly or amended in light of learning experiences.

A council having final ownership of its code of conduct solidifies the ownership of ethical standards within an authority. There are benefits to a conversation within a council of what high ethical standards would look like in their own context. For example, Uttlesford District Council told us during our visit that the process of rewriting their code and standards process played a positive role in setting an effective ethical culture and making councillors aware of the behaviour expected of them.<sup>12</sup> A mandatory national code would take away ‘ownership’ of ethical standards from local authorities, since those standards would be set centrally, from outside of local government. The Committee commented on the national code in place before 2000 that it had become something which was “[...] done to local authorities; rather than done with them”.<sup>13</sup> We would not want to return to such a state of affairs.

We therefore consider that there should be a national model code of conduct, but that this should not be mandatory, and should be able to be adapted by individual authorities.

The existing model codes available to local councils compare unfavourably to bespoke

codes, with little detail on important areas such as social media use and bullying and harassment. Therefore, a new model code would be needed. The updated model code should be drafted by the Local Government Association, given their significant leadership role in the sector, in consultation with representative bodies of councillors and officers of all tiers of local government. The Ministry of Housing, Communities and Local Government should ensure that they are given the necessary resources and support to undertake this work.

**Recommendation 1: The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.**

### **Bullying and harassment**

The evidence received by the Committee suggests that most allegations of code breaches relate to bullying and harassment. This is an area of ethical standards that is much better recognised since the Committee last undertook a review of local government.

Our code of conduct sampling found that most codes of conduct do not cover this behaviour effectively. Whilst most codes sampled had a specific prohibition on bullying and specifically prohibited intimidation in respect of any allegations of wrongdoing, only two out of twenty codes sampled included specific behaviours that would amount to bullying, and five had only a broad provision such as ‘showing respect for others’. Given that the Nolan Principles are not a code of conduct, and so are not prohibitory in character, codes

<sup>12</sup> Uttlesford District Council Standards Committee, Visit to Uttlesford District Council, 10 September 2018

<sup>13</sup> Committee on Standards in Public Life (2005), *Getting the balance right*, Cm 6407, 3.10





which do not elaborate on them will lack these provisions, although we consider that such prohibitions rightly fall under the Nolan principle of leadership.

### Example of a bullying provision

Extract from Newcastle City Council code of conduct<sup>14</sup>

You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.

(Note: Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.)

Bullying and harassment can have a significant impact on the wellbeing of officers and councillors who are subject to it. Such behaviour is not acceptable in the workplace, particularly from public office-holders with responsibilities to show leadership.

It is also a broader standards issue, given that individuals subject to bullying or harassment

may be pressured to make decisions or act in ways which are not in the public interest. As such, it is important that bullying and harassment are dealt with effectively, and that a local authority's code of conduct makes provisions to address these matters.

### Broader standards failure arising from bullying

In several high-profile cases of standards failures in local government, bullying behaviour which was not challenged or addressed enabled other, more serious misconduct to take place, including the failure of scrutiny and governance structures or financial misconduct.

The Gowling WLG report into Sandwell Metropolitan Borough Council in 2016 considered allegations of a councillor improperly influencing the sale and purchase of council property and attempting to gain favours for their family members.

The report found that the councillor at the centre of allegations of financial impropriety had bullied and coerced a senior housing officer over a long period.

Senior officers did not take steps to prevent the bullying from taking place, which the report stated “[...] left a vulnerable employee horribly exposed to undue pressure, and, more corrosively, perpetuated the culture within the department of ignoring governance”.<sup>15</sup>

<sup>14</sup> Newcastle City Council Code of Conduct. Available at: [https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part\\_5\\_2a\\_-\\_members\\_code\\_of\\_conduct.pdf](https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/your-council-and-democracy/how-council-works/standards-issues/part_5_2a_-_members_code_of_conduct.pdf)  
<sup>15</sup> Gowling WLG (2016) *Report to the Chief Executive, Assistant Chief Executive, Monitoring Officer and Chief Financial Officer of Sandwell Metropolitan Borough Council*. Available online at: [http://www.sandwell.gov.uk/downloads/file/24029/gowling\\_wlg\\_report](http://www.sandwell.gov.uk/downloads/file/24029/gowling_wlg_report)



The Committee heard from Monitoring Officers and independent investigators that the broad ‘respect’ provision upon which many councils rely is not suitable for dealing with allegations of bullying and harassment. Broad provisions are difficult to adjudicate on with consistency, particularly in the absence of additional, more detailed guidelines of what the provision entails. They also tend to give rise to further disputes over whether behaviour is captured by that provision.

Whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (Acas) have codified a helpful definition: “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”.<sup>16</sup>

Examples of bullying behaviour include:

- spreading malicious rumours, or insulting someone by word or behaviour
- copying memos that are critical about someone to others who do not need to know
- ridiculing or demeaning someone – picking on them or setting them up to fail
- exclusion or victimisation
- unfair treatment
- overbearing supervision or other misuse of power or position
- unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and constant criticism
- preventing individuals progressing by intentionally blocking promotion or training opportunities<sup>17</sup>

<sup>16</sup> Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>

<sup>17</sup> Advisory, Conciliation and Arbitration Service (Acas), *Bullying and harassment in the workplace: a guide for managers and employers*. Available online at: <http://www.acas.org.uk/media/pdf/c/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>



Harassment is defined in the Equality Act 2010 as “unwanted conduct related to a relevant protected characteristic”, which has the purpose or effect of violating an individual’s dignity or “creating an intimidating, hostile, degrading, humiliating or offensive environment” for that individual”.<sup>18</sup>

These definitions make clear that bullying and harassment are instances of serious misconduct. By their nature they are likely to be persistent behaviour, rather than one-off instances. A councillor should not be considered to be bullying or harassing an officer or another councillor simply by making persistent enquiries or requests for information, nor by saying something that the individual concerned simply dislikes or with which they disagree strongly. Genuine instances of bullying and harassment will fall outside the limits of legitimate free expression; but equally accusations of such behaviour should not be used as an attempt to restrict legitimate inquiries or free expression. We discuss the enhanced protection that is afforded to political expression and the appropriate limits of free speech by councillors in more detail below.

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

Half of the codes sampled by the Committee made reference to a separate protocol on councillor-officer relations. Whilst many of these protocols focussed on the duties of

officers, particularly in respect of impartiality requirements, we did see protocols laid out reasonable expectations of a good working relationship, which provides better support to the maintenance of a good ethical culture. The requirements of protocols can be enforced through the formal standards process where councils include a specific requirement to act in accordance with the protocol in the main code of conduct.

### **Intimidation of councillors**

During our review, we received evidence relating to the intimidation of councillors, which we undertook to collect as a result of representations received from the local government sector during our 2017 review, *Intimidation in Public Life*.<sup>19</sup>

The evidence we received suggests that intimidation of councillors is less widespread than intimidation of Parliamentary candidates and MPs, but, when it does occur, often takes similar forms and is equally severe and distressing. In line with our 2017 findings, it is particularly likely to affect high-profile women in local government.

Instances of councillors being attacked and harassed, notably on social media, is an increasing trend and a very serious issue. There is anecdotal evidence from across the country that female leaders and councillors are subject to more abuse than their male counterparts.<sup>20</sup>

### **Local Government Association**

Although they do not otherwise fall within the scope of our review, we also heard concerning evidence of intimidation of Police and Crime Commissioners.

<sup>18</sup> Equality Act 2010, section 26

<sup>19</sup> Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543

<sup>20</sup> Written evidence 170 (Local Government Association)



On a Sunday afternoon at my home address I was visited by a person who over many years has been a serial complainer about the police and my office. The person is believed to have mental health issues and refused for some time to say who she was or what she wanted. The visit was distressing to my wife and daughter.

My intimidation all related to the release of my home address, with people calling unannounced, one of the three above had an injunction against him.<sup>21</sup>

### **Association of Police and Crime Commissioners**

Given the generally similar pattern of evidence we received in relation to intimidation by social media, we consider that our 2017 recommendations, where implemented, should help to address the intimidation of local councillors.

One aspect in which the intimidation of councillors is distinct from that of MPs and Parliamentary candidates is in relation to home addresses. Unlike MPs and candidates, councillors' addresses are often public, for example, on a council website or on a register of interests. The nature of local democracy means that those who are likely to engage in intimidation of a councillor are likely to live nearby. We heard of cases of councillors being confronted in public whilst in a private capacity, for example, whilst with their family or shopping. Whilst this may not always be intimidatory as such, we heard that councillors are highly aware that they have a high profile in their immediate local area, and so the fear of physical intimidation is much greater. The fact that individuals' home addresses are public

can also make any threats made through electronic means, such as social media, more distressing.

We therefore welcome the government's commitment to bring forward secondary legislation to implement our 2017 recommendation that the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper should be removed.

In *Intimidation in Public Life*, we recommended that Monitoring Officers draw councillors' attention to the sensitive interest provisions in the Localism Act 2011, that permit the non-disclosure of details in the register of interests where the member and Monitoring Officer agree that their disclosure could lead to violence or intimidation.<sup>22</sup> We received evidence, however, that often these provisions would only be invoked after a councillor had experienced intimidation or harassment, in which case their address was already publicly available.

Given the experience of intimidation by too many in public life, we do not believe it is justifiable to require any candidate standing for or taking public office to make their home address public, whether on a ballot paper or a register of interests. The general principle should be that an individual's home address should be kept confidential and not disclosed publicly or beyond the necessary officials without the individual's consent.

Some authorities have a blanket policy that home addresses will be recorded on the register of interests but omitted from the published version.

21 Written evidence 307 (Association of Police and Crime Commissioners)

22 Committee on Standards in Public Life (2017), *Intimidation in Public Life*, Cm 9543, 62



### Example of local authority policy on home addresses

In accordance with the arrangements for the placing of Register of Interests on the City Council's website agreed by the Standards Committee details of members' home addresses will be omitted from the version placed on the website.<sup>23</sup>

**City of Westminster, *Guidance note to members on Register of Interests.***

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to make clear that the 'land' category does not require a councillor to register their home address.

**Recommendation 2: The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.**

### Scope of the code of conduct

At the moment, codes of conduct can only apply to local councillors when they are acting in their capacity as a councillor.<sup>24</sup> This means that in practice a councillor cannot breach a code of conduct by, or be sanctioned for, objectionable behaviour in a private context (for example, the way they conduct themselves in a private dispute with a neighbour).

Numerous complaints are made about councillors' conduct on social media or at events, which in some cases are well-founded. However, if the councillor is not acting in their official capacity then Monitoring Officers are limited in their ability to deal with such conduct. This undermines the public confidence in the standards regime as the public expect higher standards of conduct from their elected representatives.<sup>25</sup>

### Lawyers in Local Government

Our evidence suggests that the current narrow scope of the code of conduct makes it difficult to effectively deal with some instances of poor behaviour, particularly in relation to social media use.

The question of public and private capacity raises significant questions about the privileges and responsibilities of representatives. Democratic representatives need to have their right to free speech and expression protected and not unduly restricted; but equally the public interest demands that they meet certain responsibilities in that role.

<sup>23</sup> City of Westminster, *Guidance note to members on Register of Interests*. Available online at: <https://www.westminster.gov.uk/register-members-interests>

<sup>24</sup> Localism Act 2011, section 27(2): "...a relevant authority must, in particular, 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*"

<sup>25</sup> Written evidence 228 (Lawyers in Local Government)



Some public sector codes of conduct cover behaviour which could purport to be in a personal capacity, but which would inevitably bear on the individual's public role. For example, government ministers are prohibited from acting as patrons of certain organisations or nominating individuals for awards, even if this would purport to be in their personal capacity.<sup>26</sup>

This suggests to us that the question is not whether behaviour in a personal capacity can impact on an individual's public role, but when it does so.

We took evidence from the standards bodies in Northern Ireland, Scotland and Wales in order to consider their approaches to this issue.

The devolved standards bodies take one of two approaches: either restricting the scope of the code to apply only when a councillor is acting in an official capacity (Scotland), or allowing that a councillor may engage in behaviour in a purely private capacity, which is serious enough to bring their office or authority into disrepute (Wales and Northern Ireland).

In Scotland, the code of conduct only applies to councillors where a member of the public would reasonably consider that the member was acting in their capacity as a councillor. Factors such as whether the behaviour took place on council property, or through a social media account identifying the individual as a councillor, would be taken into account in deciding whether the code of conduct applied. Even if the councillor behaved in a seriously inappropriate way, the code would not apply if there was no suggestion that they were acting as a councillor when they did so.

In Northern Ireland, four provisions of the code of conduct explicitly apply to councillors in all circumstances, not just when they are carrying out their role as a councillor, including a provision not to bring the office of councillor into disrepute.

In Wales, the code of conduct applies both when a councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a councillor behaves in a way that could "[...] reasonably be regarded as bringing [their] office or [their] authority into disrepute".<sup>27</sup> This includes any time a councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. The Welsh Ombudsman has also issued guidance of the application of the code of conduct to social media use.

### Public Service Ombudsman for Wales social media guidance

"If you refer to yourself as councillor, the code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the code."<sup>28</sup>

26 Ministerial Code, paras 7.13, 7.18

27 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 2(c)

28 Public Service Ombudsman for Wales (2016), *The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales*. Available online at: <https://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-CC-CBC-NPA-August-2016.pdf>



The widespread use of social media presents a particular challenge to determining whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, it is clear to us that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This would be the case even if the individual posts a 'disclaimer' to suggest that the account is a personal one.

However, a number of recent cases also suggest to us that high standards are expected of public office holders in their use of social media, even when this purports to be in a personal capacity. What is relevant is not just whether an individual is acting in a official capacity or a personal capacity, but also whether the behaviour itself is in public or in private. Restrictions on what an individual may do or say in public are different in kind from restrictions on an individual's private life.

There is a need to balance the rights and responsibilities of democratic representatives. The sort of public behaviour that is relevant to a public office and its code of conduct therefore depends on the scope and nature of the public role in question: the requirements for civil servants will rightly be different to the requirements for teachers, for example. Roles representing the public, such as MPs or councillors, have particular privileges that need to be protected, but also need to acknowledge a greater responsibility, given the scope and public visibility of the role.

Inevitably, councillors carry their council 'label' to some extent in their public behaviour. What counts as relevant public behaviour for the purpose of the councillor code of conduct should therefore be drawn more broadly.

An individual's private life – that is, private behaviour in a personal capacity – should rightly remain out of scope. This includes, for example, what is said in private conversations (where those conversations are not in an official capacity), private disputes and personal relationships. But those in high-profile representative roles, including councillors, should consider that their behaviour in public is rightly under public scrutiny and should adhere to the Seven Principles of Public Life. This includes any comments or statements in print, and those made whilst speaking in public or on publicly accessible social media sites.

This does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, taking into account the enhanced protection afforded to political expression.



### Article 10: Rights to freedom of expression

Article 10 of the European Convention on Human Rights states that “everyone has the right to freedom of expression”, although this right is not absolute, and is subject to “such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society...for the protection of the rights and interests of others”.<sup>29</sup>

The *High Court, in Heesom v Public Service Ombudsman for Wales*,<sup>30</sup> considered the application of Article 10 to local councillors, taking into account judgments by the European Court of Human Rights.

It found that “Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.”

It added that politicians, including councillors, have “enhanced protection as to what they say in the political arena” but by the same token are “expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”.

A councillor’s Article 10 rights extend to “all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others” but do not extend to “gratuitous personal comments”.

We do not consider that the approach taken by Wales and Northern Ireland, in extending the code of conduct to any behaviour that is sufficiently serious as to bring the office of councillor or the council into disrepute, could easily be replicated in England. Broad provisions are likely to create disputes about what falls within their scope, particularly when there is not a central authoritative body to rule on those provisions and disseminate previous cases.

We therefore propose that, given their significant representative role, there should be a rebuttable presumption that a councillor’s behaviour in public is in an official capacity. An individual’s behaviour in private, in a personal capacity, should remain outside the scope of the code.

**Recommendation 3: Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.**

### Purporting to act as a member or a representative

The 2007 model code for local government stated that its scope included not just when a councillor was “conducting the business of the authority”, but also if a councillor was to “act, claim to act or give the impression you are acting as a representative of your authority”.<sup>31</sup> The Localism Act 2011 does not include this qualification. As a result, some cases where

29 European Court of Human Rights and Council of Europe, European Convention on Human Rights, Article 10

30 *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin)

31 The Local Authorities (Model Code of Conduct) Order 2007





an individual is improperly purporting to act as a councillor do not fall within the scope of the code, even though the councillor in question would clearly be misusing their office. For example, a councillor may threaten to cause someone a detriment by implying they would do so through their influence as a councillor.

The issue [of public and private capacity] needs to be looked at more in the round, including serious matters which do not lead to a criminal conviction or where a councillor, though not acting as a councillor, has purported to misuse his or her office through threats of the ‘don’t you know who I am’ variety.<sup>32</sup>

#### **Hoey Ainscough Associates**

*MC v Standards Committee of LB Richmond*<sup>33</sup> drew a distinction between a member purporting to act as a member and purporting to act as a representative of the local authority, stating that one would not necessarily imply the other. Both of these seem to us to be sufficient conditions for the code of conduct to apply to an individual. Given this established case law, any change to the current legislation governing codes of conduct should include both conditions.

**Recommendation 4: Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.**

### **Compliance with standards processes**

Complying with standards investigations, and not seeking to misuse the standards process, is an important aspect of ethical conduct. This is for three reasons. First, there is a strong public interest in an effective standards process that is not subject to disruption or abuse. Secondly, councillors should seek to maintain an ethical culture in their authority, and showing appropriate respect for the process contributes to this. Thirdly, non-compliance and misuse wastes public money and the time of officers.

Councillors should not seek to disrupt standards investigations by, for example, not responding to requests for information, clarification or comment in a timely way, or refusing to confirm their attendance at a standards hearing. Nor should councillors seek to misuse the standards process, for example, by making allegations against another councillor for the purposes of political gain.

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

### **Writing codes of conduct**

The Committee has previously outlined criteria for an effective code of conduct:

- seen as relevant every day and not exceptional
- proportionate – giving enough detail to guide actions without being so elaborate that people lose sight of the underlying principle

<sup>32</sup> Written evidence 212 (Hoey Ainscough Associates)

<sup>33</sup> *MC v Standards Committee of LB Richmond* [2011] UKUT 232 (AAC) (14 June 2011)



- adapted to the needs and context of each organisation
- clear about the consequences of not complying with the code, both for the individual and others
- wherever possible, framed positively<sup>34</sup>

We have seen evidence that some councils have adopted a minimal code of conduct which amounts to a restatement of the Seven Principles of Public Life. We were concerned to note that DCLG's illustrative code would fall into this category.<sup>35</sup> The Seven Principles of Public Life are not a code of conduct: codes of conduct specify what the principles demand in a specific context in order to guide behaviour. Using principles, rather than rules, in a code of conduct can also lead to protracted arguments about what sort of behaviour falls under a particular principle in the absence of specific guidance.

In terms of codes, as an investigator I encounter a variety of codes. They tend to fall into some broad families, ranging from those authorities that adopted the previous statutory code almost unchanged at one end to the extreme other end of the spectrum, which is only the Nolan Principles. That is the whole code. We have great difficulty in working with 'Nolan-only' codes.<sup>36</sup>

**Jonathan Goolden,  
Wilkin Chapman LLP**

Drawing up a code is an important process for an authority: it involves the members of that authority considering what the Seven Principles of Public Life demand in their own context.

A failure to create or adopt a substantive code means that the potential benefits of devolved standards are not being realised.

Many authorities have not yet revisited their codes in the light of learning experiences.<sup>37</sup>

**Jonathan Goolden,  
Wilkin Chapman LLP**

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

Codes of conduct should be written in plain English and be accessible for councillors and members of the public. They cannot be written to cover every eventuality, and attempts to do so may actually make codes less effective. They should therefore not be 'legalistic' in tone, or overly technical in style.

A code of conduct is not a values or vision statement for an organisation. It therefore needs to state clearly what is required of councillors rather than an aspiration or aim. Often this will mean phrasing requirements in terms of what councillors 'must not' do.

The requirements should also be enforceable: codes should not include provisions such as 'councillors must be aware of...'.<sup>37</sup>

<sup>34</sup> Committee on Standards in Public Life, *Standards Matter* (Cm 8519, January 2013), 4.9

<sup>35</sup> DCLG (2016), *Illustrative Text for Local Government Code of Conduct*. Available online at: <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

<sup>36</sup> Jonathan Goolden, Roundtable, 18 April 2018

<sup>37</sup> Jonathan Goolden, Roundtable, 18 April 2018



Where detailed provisions or guidance are required (for example, guidance about social media, or guidance on officer-member relations) these should ideally be kept in a separate document.

Codes of conduct are central to upholding high standards in public life. They should not be inaccessible on a local authority's website, or as an annex to an authority's constitution.

### Example of a clear code of conduct

Extract from Plymouth City Council code of conduct<sup>38</sup>

#### *Disrepute*

Councillors must not act in a manner which could be seen to bring the council or the role of councillor into disrepute.

#### *Misuse of position*

Councillors must not try to use their position improperly to gain an advantage or disadvantage for themselves or others.

#### *Use of council resources*

When councillors use the council's resources or let other people use them, they must follow any reasonable rules set by the council and make sure that resources are not used improperly for political purposes (including party political purposes).

#### *Advice of Monitoring Officer and Responsible Finance Officer*

Councillors must consider any advice given by the Monitoring Officer or Responsible Finance Officer when taking decisions.

#### *Giving reasons for decisions*

Councillors must give reasons when required to by the law or by any council procedures.

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

### Councillors' interests

The Nolan principle of integrity is based upon protecting the public interest. Where there is undue influence on a public office-holder, including through conflicts of interest, this can lead to decisions which are not made in the public interest.

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

A system for managing conflicts of interest should distinguish between the requirements for *registering* interests and *declaring or managing interests*. Not all interests that are registered would necessarily present a conflict such that they would need to be managed. Equally, a councillor may have a very specific conflict of interest in relation to a matter, which it would be disproportionate to register given the improbability of that conflict arising in the future.

38 Available online at: <https://www.plymouth.gov.uk/sites/default/files/Code%20of%20Conduct%20and%20Rules%20of%20Debate.pdf>



The purpose of a register of interests is to make transparent an individual's financial and non-financial interests and relationships that are the most likely to lead to a potential conflict. This includes for example, paid employment, significant investments, trusteeships, and directorships. This enables an individual to be held to account for the way in which they manage these interests where necessary.

An interest needs to be managed only where it is reasonable to suppose that an individual's participation in a discussion or decision could be unduly influenced by a particular relationship or personal interest.

How an interest should be managed depends on three factors: the degree of involvement of the individual in the decision or discussion; how directly related the interest or relationship is to the decision or discussion in question; and how significant the interest or relationship is to the individual. Where these factors are minor, then simply declaring the interest may be sufficient. Where the factors are significant, an individual should recuse themselves from the discussion and decision; and should leave the room in the most serious cases.

Where the arrangements necessary to manage an interest or relationship prevent the individual properly from discharging their role (for example, if restrictive arrangements would very regularly have to be put in place), then either the interest should be disposed of or the role relinquished.

### **The Disclosable Pecuniary Interests (DPI) arrangements**

The evidence we have received is that the current Disclosable Pecuniary Interests (DPI) arrangements are not working: the requirements for declaring and managing interests are too narrow; they are unclear both to councillors and the public; and they do not require the registration of important interests such as unpaid directorships and gifts and hospitality.

Strengthening and clarifying the system for declaring and managing interests is all the more important in light of increasingly complex decision-making in local government. To ensure and to demonstrate openly that the principle of integrity is being upheld, it is important to have comprehensive and robust arrangements in place for managing potential conflicts of interest.

We appreciate that the DPI requirements as set down in the Localism Act 2011 and in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are drafted in such a way that a breach of those requirements constitutes a criminal offence. However, as we explain in chapter 4, we have concluded that the criminal offences in the Localism Act 2011 are not fit for purpose and we recommend that they should be repealed. Our conclusions and recommendations in this section therefore do not take these offences into account.



## Registering interests

The requirements for a register of interests should be based on the principle we lay out above, that the purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest.

Currently, local authorities are required by law only to make arrangements for registering and declaring pecuniary interests of a councillor and their spouse or partner.

The current list contains manifest omissions such as hospitality deriving from a councillor's position, unpaid employment (including directorships), interest in land outside of a council's area, pecuniary interests of close family members who are not spouses, and memberships of lobby or campaign groups.<sup>39</sup>

### Cornerstone Barristers

We received evidence from a number of legal practitioners and local authorities to suggest that the current list of interests required to be registered is drawn too narrowly.

The narrow requirements of the current law are partly a result of the DPI regime not distinguishing between requirements for registering interests on the one hand, and for declaring and managing interests on the other, which we address below.

## Pecuniary interests

Currently, councillors must register their and their spouse or partner's pecuniary interests within the following categories:

- employment, office, trade, profession or vocation carried on for profit or gain
- sponsorship towards election expenses or expenses incurred in carrying out duties as a member
- contracts between the authority and the individual, or a body in which the individual has a beneficial interest
- land in the local authority's area
- securities where the firm has land or a place of business in the local authority's area, and the holding is worth more than £25,000 or the individual holds more than 1% of share capital
- licences to occupy land in the local authority
- corporate tenancies where the landlord is the local authority

Based on the evidence we received, the current list of pecuniary interests required to be registered is satisfactory.

## Non-pecuniary interests

Local authorities are not required by law to include specific non-pecuniary interests on their register of interests, although many do so. The Committee's sampling of codes of conduct found most codes had a provision on registering and declaring non-pecuniary interests, although there was some variation in what was required. Four codes out of twenty had no provisions relating to non-pecuniary interests. Some had a broad provision of

39 Written evidence 281 (Cornerstone Barristers)



declaring when a matter might affect a councillor more than the majority of people in the affected area. One authority required councillors only to declare if they were a member of a trade union. Most opted for a form of words that included any management roles in a charity, a body of a ‘public nature’, or an organisation seeking to influence opinion or public policy. Some codes created a category of personal interests or other interests (some of which pecuniary) which, whilst not registrable, should be declared under certain circumstances.

Where councils only comply with the disclosable pecuniary interest requirements and a code of conduct that does little more than comply with the Nolan Principles, it was felt that the regime was too light touch to maintain public confidence.<sup>40</sup>

#### **Mid Sussex District Council**

The purpose of a register is to make transparent those interests and relationships which would be most likely to lead to a conflict of interest. Based on this principle, two additional categories of interests should be required to be included in a local authority’s register of interests. First, relevant commercial interests of a councillor and their spouse or partner which may be unpaid – for example, an unpaid directorship (even if non-executive). Secondly, relevant non-pecuniary interests of a councillor and their spouse or partner such as trusteeships or membership of organisations that seek to influence opinion or public policy.

As members increasingly become involved in voluntary and third sector bodies, the issue of conflicts is more prominent and it is not a matter in respect of which there is adequate provision in the code of conduct [...] although there are some provisions within the Localism Act in relation to predetermination it is not considered that it is adequately dealt with in the ethics context beyond DPis.<sup>41</sup>

#### **London Borough of Croydon**

At a local level, it is perhaps even more likely that non-pecuniary interests – for example, being an unpaid trustee of a local sports club – would lead to a conflict of interest than a councillor’s ordinary paid employment. As the Monitoring Officer of Camden Council stated in evidence to us: “[...] we expect that the public would consider that a member who was a long-serving unpaid trustee of a charity may not be able to consider a potential grant award by the council to the charity entirely fairly and objectively”.<sup>42</sup>

As we explain in more detail below, the test for whether a councillor should have to register an interest should nevertheless be separate from the test for whether a councillor should have to withdraw from a discussion or vote. Under our recommendations, even if a councillor would have to register an interest for the sake of transparency, they would not have to withdraw from a discussion or vote unless there was a conflict of interest, based on the ‘objective test’ in recommendation 7 below.

40 Written evidence 50 (Mid Sussex District Council)

41 Written evidence 166 (London Borough of Croydon)

42 Written evidence 151 (Andrew Maughan, Camden Council)



**Recommendation 5: The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.**

### Gifts and hospitality

Currently, there is no legal requirement for local authorities to maintain a gifts and hospitality register, nor for individual councillors to register or declare gifts and hospitality they receive as part of their role.

Most codes sampled by the Committee required councillors to register gifts and hospitality in some way. Six out of twenty of the codes sampled had no provision for this. Among codes providing for a gifts and hospitality register, there was variation in the value threshold, which was variously set at £25, £50, or £100. Gifts and hospitality were also treated in a number of different ways: some codes established a straightforward register, some stated that gifts or hospitality were an 'other interest' which should be registered alongside non-pecuniary interests, and others defined the giver of a gift or hospitality over a certain value effectively as an 'associate' of the councillor, whose interest should be declared if a matter would affect them.

In London, we found £79,000 had been spent by more than 200 developers, lobbyists and others involved in the property industry on 723 lunches, dinners and all-expenses paid trips for 105 councillors.<sup>43</sup>

### Transparency International UK

The Committee has seen evidence that the accessibility and timeliness of local authorities' registers of interest varies widely. Many are reported in a non-standard format, and some registers are not updated for long periods. Independent oversight and inspection is important to maintaining high ethical standards, and local authorities should facilitate this by ensuring that their registers are accessible to those who would wish to inspect them.

We are also concerned about the use of high thresholds for reporting gifts and hospitality even where registers exist. An individual threshold of £100 could allow a councillor to accept significant gifts and hospitality from a single source on multiple occasions, without needing to register the fact that they have done so. £50 is the registration threshold for gifts or donations during election campaigns, which would then provide a consistent declaration threshold both during and outside election periods.<sup>44</sup>

**Recommendation 6: Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.**

<sup>43</sup> Written evidence 315 (Transparency International UK)

<sup>44</sup> Available online at: [http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0005/141773/ca-part-3-locals-ew.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0005/141773/ca-part-3-locals-ew.pdf), 20



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

We are aware of helpful guidance from the Cabinet Office for civil servants on the broader principles surrounding gifts and hospitality. They propose three principles that should guide whether an individual should accept gifts or hospitality:

**Cabinet Office principles for accepting gifts or hospitality**

- Purpose – acceptance should be in the interests of departments and should further government objectives.
- Proportionality – hospitality should not be over-frequent or over-generous. Accepting hospitality frequently from the same organisation may lead to an impression that the organisation is gaining influence. Similarly, hospitality should not seem lavish or disproportionate to the nature of the relationship with the provider.
- (Avoidance of) conflict of interest – officials should consider the provider’s relationship with the department, whether it is bidding for work or grants or being investigated or criticised, and whether it is appropriate to accept an offer from a taxpayer-funded organisation.<sup>45</sup>

The principles of proportionality and avoiding conflicts of interest are particularly important to safeguard the principle of integrity.

The Committee has considered the issue of gifts and hospitality offered by lobbyists in particular, in its report *Strengthening transparency around lobbying*. We concluded that public officer holders accepting significant gifts and hospitality “[...] risks creating a conflict of interest by placing them under an obligation to a third party, which may affect them in their work including when they take decisions, which is relevant to the Nolan principle of integrity”.<sup>46</sup>

In February 2018, it was reported in the press that the chairman of Westminster City Council planning committee received gifts and hospitality 514 times in three years, worth at least at a total of £13,000. The councillor subsequently stood down following an internal inquiry.

The evidence we have received suggests that acceptance of gifts and hospitality is of most concern when it comes to planning. Planning is an area of decision-making where a small number of councillors can have a significant impact on the financial interests of specific individuals or firms. Councillors involved in planning decisions should therefore generally not accept over-frequent or over-generous hospitality and should always ensure that acceptance of such hospitality does not constitute a conflict of interest.

45 Cabinet Office (2010), *Guidance on civil servants receiving hospitality*. Available online at: <https://www.gov.uk/government/publications/guidance-on-civil-servants-receiving-hospitality>

46 Committee on Standards in Public Life (2013), *Strengthening transparency around lobbying*, 3.18





## Partner and family interests

Under the DPI arrangements, any relevant pecuniary interests of a councillor's spouse or partner are considered as a DPI of the councillor.

We heard concerns during the review that the DPI arrangements infringe on the privacy of a councillor's spouse or partner. We recognise these concerns, though note that, where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved.

Under the Localism Act 2011, however, councils are not required to register spouse or partner interests separately from those of the councillor, although many do so. The DCLG guidance on DPIs states that: “[...] for the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is your disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.”<sup>47</sup>

## Declaring and managing interests

The evidence we received suggests that the DPI requirements for declaring and managing interests are currently unclear. The current wording in the Localism Act 2011 requires that a councillor must not participate in a discussion or vote in a matter (or take any further steps in relation to it) where they are present at a meeting and they have “[...] a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting”. The test of having a ‘disclosable

pecuniary interest *in* any matter’ is ambiguous, as strictly speaking under the Act a councillor's DPI is the employment, land, or investment (for example) itself. The Act does not specify how closely related an interest must be to the matter under consideration to count as an interest ‘in’ that matter. Recent case law has not settled this issue decisively, which means that there is little authoritative guidance for councillors or those who advise them.

Despite the regulations and DCLG guidance, there is still a dispute regarding what would be a Disclosable Pecuniary Interest – for example, in situations where the interest is the subject of the meeting or affected by the decision – such as in planning applications. This can make declarations of interests problematic.<sup>48</sup>

**North Hertfordshire District Council**

The fundamental problem is in the wording of the Localism Act which requires members to declare interests (and not participate at meetings) when they have a DPI ‘in any matter to be considered at a meeting’. Under the former regime, the situation was much clearer as an interest arose where where a matter under consideration ‘relates to or is likely to affect’ the interest, thus creating a nexus between the item of business and the incidence of interest. This nexus is absent from the Localism Act regime and it creates significant uncertainty as to when a DPI exists in certain situations.<sup>49</sup>

**Ashford Borough Council**

47 Department for Communities and Local Government (2013), Openness and transparency on personal interests: A guide for councillors

48 Written evidence 22 (North Hertfordshire District Council)

49 Written evidence 138 (Ashford Borough Council)



The current declaration and withdrawal requirements are also too narrow. Currently, a councillor would not need to declare an interest or recuse themselves where a close family member was affected by a decision, nor a close associate (whether a personal friend or a business associate). This should be addressed by a more demanding test for declaring and managing interests, separately to registration requirements.

We have seen that the standards arrangements in Scotland, Wales and Northern Ireland usually rely upon an ‘objective test’ for determining whether an interest needs actively to be managed (for example, the individual recusing themselves).

### Tests for actively managing interests in the devolved codes

#### Scotland

“Whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.”<sup>50</sup>

#### Wales

“[...] if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.”<sup>51</sup>

#### Northern Ireland

“An interest will be considered significant where you anticipate that a decision on the matter might reasonably be expected to benefit or disadvantage yourself to a greater extent than a other council constituents.”<sup>52</sup>

(Councillors must also declare any registered interest in a matter under consideration.)

We propose the introduction of an objective test, in line with practice in Wales and Scotland, for whether a councillor should recuse themselves from a discussion or vote. We heard from the Standards Commission for Scotland and the Public Service Ombudsman for Wales that this test works well in practice. We note that a practical division between the requirements for registering interests and managing interests, with an objective test for the latter, is in line with the categories of personal and prejudicial interests under the

50 Scotland Code of Conduct for Councillors, para 5.3

51 The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 12

52 Northern Ireland Local Government Code of Conduct for Councillors, para 6.3



Local Government Act 2000. We heard that officers and councillors generally considered these to be clearer and easier to understand than the DPI arrangements.

In line with the principles we set out for declaring and managing interests above, councillors should declare an interest where an interest in their register relates to a matter they are due to discuss or decide upon, but they do not need to recuse themselves unless the objective test is met.

We note that section 25 of the Localism Act 2011, which draws a firm distinction between predisposition and predetermination, is relevant to the participation of councillors in certain decisions or votes. A councillor should not be considered to have a significant interest in a matter, and therefore have to withdraw from a discussion or vote, just by virtue of having previously expressed a prior view, even a strong view, on the matter in question. This includes if they are, for example, a member of a relevant campaigning group for that purpose.

**Recommendation 7: Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision-making in relation to that matter”.**

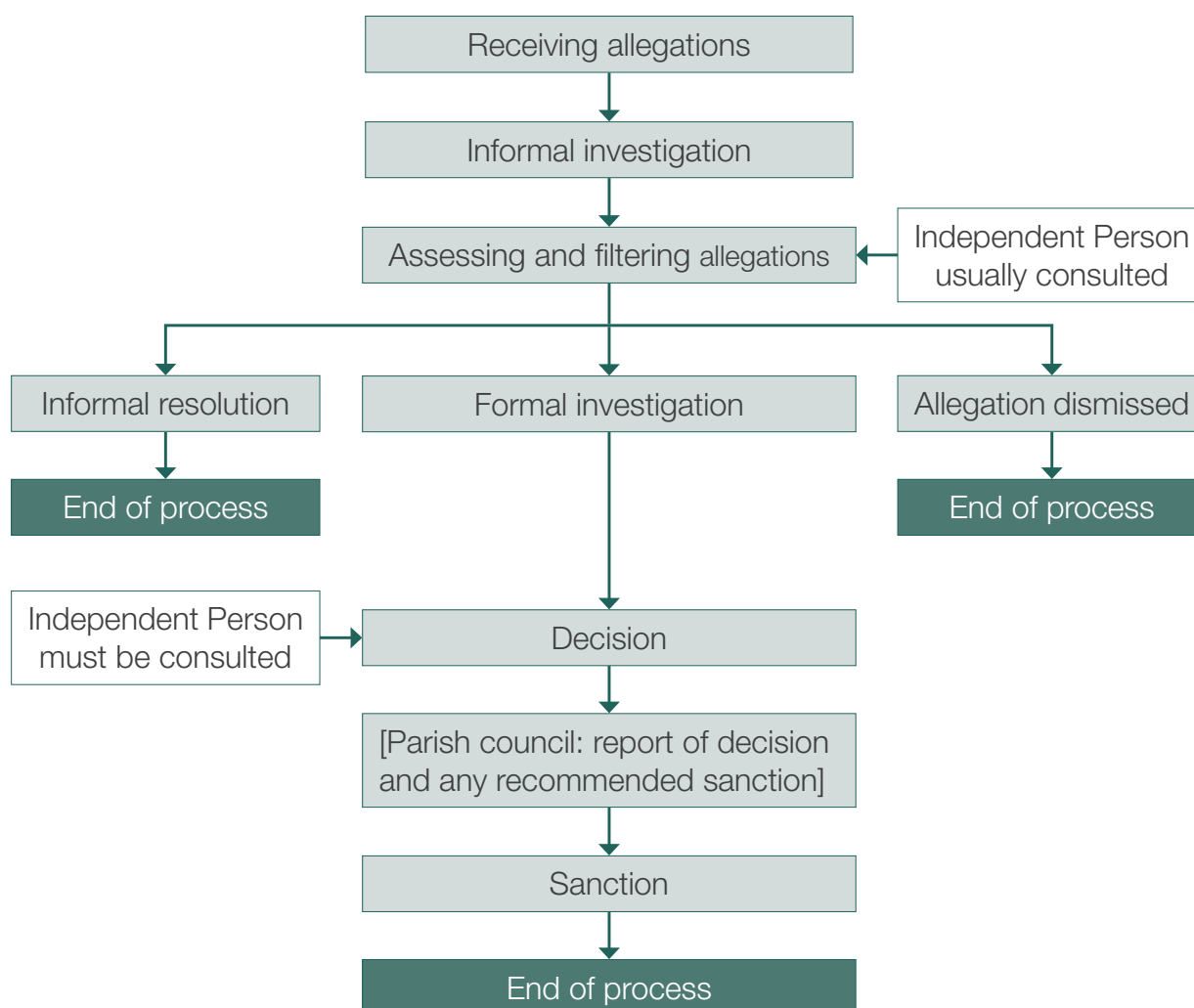


# Chapter 3: Investigations and safeguards

## Investigations

An authority must have an effective, fair, impartial, and transparent complaints and investigation procedure, in which both councillors and the public can have confidence. Sanctions should be imposed in a consistent way, and only where there is a genuine breach.

### The current investigation process





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

An investigation process needs to be proportionate and fair. The process must have an independent element as a check on the impartiality of decision-making. The more significant the sanctions that can be imposed, the more robust the independent element needs to be in order to safeguard the fairness of the process. At the moment, this element is primarily fulfilled by the Independent Person. Whilst the Monitoring Officer has the power under current legislation to investigate and make decisions on allegations, many principal authorities have standards committees to decide on allegations and impose sanctions.

### Filtering complaints

The Monitoring Officer usually filters complaints about councillor conduct and judges if the complaints are trivial or vexatious, or whether they should proceed to a full investigation. Usually this filtering is based on the judgment of the officer, often against a formal policy, though the Monitoring Officer may seek the advice of an independent person or members of a standards committee when they do so.

The standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. The tests do not necessarily need to be detailed. For example, the Northern Ireland Local Government Commissioner for Standards provides a simple two-stage test, which asks whether they 'can' investigate the complaint, and whether they 'should'.

### Northern Ireland Local Government Commissioner for Standards public interest test

#### 1 'CAN' we investigate your complaint?

- Is the person you are complaining about a councillor?
- Did the conduct occur within the last six months?
- Is the conduct something that is covered by the code?

#### 2 'SHOULD' we investigate your complaint?

- Is there evidence which supports the complaint?
- Is the conduct something which it is possible to investigate?
- Would an investigation be proportionate and in the public interest?<sup>53</sup>

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

### Safeguards

A certain level of independent oversight is crucial to any standards arrangement. The inclusion of an independent element in the process of deciding on code breaches is important to ensure that the process is fair and impartial, and that councillors are protected against politically-motivated, malicious or unfounded allegations of misconduct.

53 Available online at: <https://nipso.org.uk/nilgcs/making-a-complaint/how-we-deal-with-your-complaint/>



In the current local government standards system, this element is provided by the Independent Person. We believe that this safeguard should be strengthened and clarified. Other safeguards should also be put in place to ensure the fairness of the process, by enabling independent members of standards committees to vote, and a provision for councillors to appeal a decision to suspend them following the finding of a breach.

Our councillors feel safe with the standards committee because they know any allegation will be dealt with fairly and impartially. As group whips, we know that if something goes through the process it will have the confidence of our members.<sup>54</sup>  
**Cllr Dan Cohen, Leeds City Council**

### Independent Persons

The role of the Independent Person has become a distinctive office in its own right. The provisions in the Localism Act 2011 give councils considerable flexibility over what sort of person performs the role (with only the criteria for 'independence' specified) and how the role is performed, subject to the requirement that their views must be able to be sought by members and complainants and that their views must to be sought and taken into account before deciding on an allegation that has been subject to a formal investigation.

We have met some exceptional Independent Persons in the course of our review, who give their time and expertise to maintain high standards in local authorities. We have been impressed by the diligence and commitment of those we have met. The role is often unpaid or subject to a nominal payment or honorarium.

The Independent Person has no formal powers, and whilst their views must be 'taken into account', they do not have a decisive say on the outcome of an investigation. As such, the nature and effectiveness of the role in any individual instance depends both upon the appointee and the attitude of the local authority.

The title 'Independent Person' creates a false impression with the public, who believe that I have real decision-making powers. In reality I have no powers at all, the role is wholly advisory and weak [...]<sup>55</sup>  
**Richard Stow, Independent Person**

We have seen a number of different approaches taken by local authorities and by the office-holders themselves towards the Independent Person rules. Some are simply consulted as required over email by a Monitoring Officer, or attend standards committees in an observer capacity; others play an active role in reviewing an authority's code or processes, offering training to councillors or even forming an authority-wide ethics panel to advise on all aspects of ethical practice and decision-making.

Regardless of the approach taken, it is clear that a positive relationship with the local authority's Monitoring Officer is crucial to being able to perform the role effectively. This relationship involves a mutual recognition of roles: on the one hand, recognising that the Monitoring Officer has specific responsibility and accountability for the standards process in an authority, and on the other that the Independent Person can bring a valuable external and impartial perspective that can assure and enhance the fairness of the process.

54 Cllr Dan Cohen, Visit to Leeds City Council, Tuesday 18 September 2018

55 Written evidence 209 (Richard Stow)



We do agree that the Independent Persons provide a valuable objective voice in the standards process. It is incredibly useful for the Monitoring Officer to have this support and advice from an external perspective, and it offers a great opportunity for local residents to bring a wide variety of experience and expertise to the process.<sup>56</sup>

### **London Borough of Sutton**

Local authorities use Independent Persons in different ways, and we have seen evidence of a range of good practice. Many authorities will appoint two or more Independent Persons. Some authorities will, in any given case, have one Independent Person offer a view to members or complainants, and another to offer a view to the local authority, so as not to be in a position where they may be forced to prejudge the merit of an allegation. Other authorities will consult with one Independent Person on whether to undertake a formal investigation, and another to advise on that investigation. Many local authorities consult an Independent Person at all points of the process, including when filtering complaints.

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

We heard that many Monitoring Officers appreciate the impartial view that the Independent Person can offer, both to improve the quality of decision-making itself and as a visible check on the process to reassure councillors and complainants that their decisions are made fairly. We have also heard evidence, however, of councils failing to make

good use of their Independent Person, and of an antagonistic or dismissive attitude towards their role.

The evidence we received suggests that the Independent Person role needs to be clarified, strengthened, and better supported.

The years since the passage of the Localism Act have seen a more defined role for the Independent Person emerge. This role should now be formalised. In our view, an Independent Person needs not just to be independent according to the requirements of the Localism Act 2011 but should also show an ability to:

- offer authoritative and impartial advice
- maintain independence in a politically sensitive environment
- gain the confidence of councillors, officers, and the public
- make decisions on an impartial basis, grounded in the evidence
- work constructively with the local authority and senior officers

The Independent Person should be seen primarily as an impartial advisor to the council on code of conduct matters. They should provide a view on code of conduct allegations based on the evidence before them, and whilst being aware of the political context, should be politically neutral. Local authorities should make use of their perspective and expertise when reviewing their code of conduct and processes. Their advice should also be able to be sought from subject members and members of the public, in line with the requirements of the Localism Act.

56 Written evidence 311 (London Borough of Sutton)



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

The role should also be strengthened. Security of tenure is important in order to protect Independent Persons from being removed from their role for unpopular advice or recommendations. Equally, however, restricted tenure can ensure that the Independent Person's judgment and independence is not compromised by a long period of involvement in a single authority.

There is a tendency to recruit IPs on a four-year basis and that is eminently sensible; it makes it less possible for IPs to be accused of becoming too close to council members. I think it is important to ensure that IPs are seen as remaining independent and continuing to reach their own conclusions on issues where their views are sought.<sup>57</sup>

**Dr Peter Bebbington,  
Independent Person**

We therefore recommend that Independent Persons should be appointed for a fixed term of two years, with the option of a single re-appointment. The terms of multiple Independent Persons should ideally overlap, to ensure a level of continuity and institutional memory.

**Recommendation 8: The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.**

Currently, there is no requirement for the Independent Person's view on a case to be formally recorded, for example, in a formal decision issued by the Monitoring Officer or a standards committee. Whilst there may be reasons that the decision-maker ultimately reaches a different view from the Independent Person, the safeguard that they provide would be stronger if their view was always made transparent.

Although the law requires them to give views on matters under investigation and for the council to have regard to those views, in practice they are often invisible from the process to an outsider – the public whom they are meant to represent. It is not clear to us where their views are published so that the public can have confidence that the council has had regard to them and that the process has been independently verified.<sup>58</sup>

**Hoey Ainscough Associates**

**Recommendation 9: The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.**

<sup>57</sup> Dr Peter Bebbington, Roundtable, 18 April 2018

<sup>58</sup> Written evidence 212 (Hoey Ainscough Associates)





Were councils to be given the ability to suspend councillors, as we recommend in chapter 4, more safeguards would need to be put in place to ensure that this sanction is imposed fairly and that councillors are properly protected from potential misuse of the standards process. We suggest that the Independent Person would have to confirm that, in their view, a breach of the code had taken place, and that they agree that suspension would be proportionate, in order for the local authority to impose suspension for that breach.

**Recommendation 10: A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.**

We have noted recent First Tier Tribunal cases<sup>59</sup> which have found that it will often be, on balance, in the public interest to disclose the view or advice of the Independent Person under the Freedom of Information Act 2000. As above, we support the Independent Person's advice being made public, which could enhance openness and accountability. However, we are concerned that Independent Persons would not automatically enjoy indemnity if a councillor or member of the public were to take legal action against them, in the same way that a member or officer of an authority would. Local authorities should take steps to provide legal indemnity to Independent Persons if their views are disclosed, and the government should confirm this through secondary legislation if needed.

**Recommendation 11: Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.**

We have seen the benefits of strong networks among Monitoring Officers and senior officers, in order to share best practice, undertake professional development, and learn from each other's experiences. We would support the creation of a network of Independent Persons, which, despite the potential benefits it could offer, is currently lacking at present.

59 Bennis v ICO & Stratford [2018] UKFTT 2017\_0220 (GRC)



## Strengthening and clarifying the role of the Independent Person

Current role	Proposed role
No role specification	Clarified role specification
No requirements for term	Fixed-term appointment, renewable once
Required only to be consulted by the authority on an allegation subject to a formal investigation	Best practice also includes being consulted on allegations the MO is minded to dismiss, and on whether to undertake a formal investigation
No formal powers	Must agree with the finding of a breach and that suspension is proportionate for a councillor to be suspended
No disclosure requirements	The view of the IP is recorded in any formal decision notice or minutes
No legal protection	Legal indemnity provided by local authority

### Standards committees

Under the Localism Act 2011, local authorities are not required to have standards committees to adjudicate on breaches and decide upon sanctions, but a large number of authorities in England choose to do so.

Local authorities should maintain a standards committee. A standards committee can play a role in deciding on allegations and sanctions, or in monitoring standards issues in the local authority and reporting back to full council, or a combination of these.

We have come across a range of different ways in which standards committees operate as part of our review. Leeds City Council produce a valuable annual report to council from the standards committee. Cornwall Council include representatives from town and parish councils and a town clerk, in addition to independent members and members of the principal authority. The Independent Persons who observe the Uttlesford District Council

standards committee have also led training workshops and the redrafting of the code of conduct. Each of these, in their own way, harness the knowledge and observations of the standards committee to elevate issues or significant trends to the notice of the council.

Under the current legislative framework, a standards committee may be advisory (only advising the council as a whole on what action to take, and unable by itself to exercise any of the council's formal powers) or decision-making (having the council's formal powers to decide on allegations and to impose sanctions where a breach is found delegated to it). If the standards committee is a decision-making committee, it is permitted to have independent members (members who are not councillors) appointed to it, but those members are not allowed to vote. Advisory standards committees may have voting independent members. Under the current legislation, Independent Persons in an authority cannot also be members of its standards committee.<sup>60</sup>

<sup>60</sup> Localism Act 2011, sections 27(4) and 28(8)



A number of respondents to our consultation considered that the system would be strengthened by allowing independent members of decision-making standards committees to vote. We suggest that the current requirements for an Independent Person, with the necessary amendments, should apply to such members (that the individual is not a member, not otherwise co-opted on to a committee of the authority, not an officer in the authority or a dependent parish within the last five years, nor a relative or close friend of such an individual).

The Member Conduct Committee at Wychavon is broadly happy with the existing processes and structures, but feels that it was a retrograde step to remove the voting rights of independent members, who are a cornerstone of an objective conduct committee. The committee would also suggest that the ability to invite parish council representatives to take part in investigations should be restored.<sup>61</sup>

#### **Wychavon Borough Council**

We have also seen evidence of the advantages of including parish representatives on standards committees, who under the current arrangements, could not be voting members unless on an advisory committee. Including parish representatives on a principal authority standards committee can build a more effective relationship between their respective councils and enable the committee to take the perspective and views of the parish into account.

**Recommendation 12: Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.**

Even where a local authority includes independent members on a standards committee, they would still be required to retain an Independent Person. In line with our best practice above, although the independent members of standards committee would enhance the independence of a formal decision-making process on an allegation, an Independent Person would still be required to advise subject members on allegations and advise the Monitoring Officer on allegations they are minded to dismiss and on whether to undertake a formal investigation.

#### **Appeals and escalation**

A means of appeal is an important aspect of natural justice, and as a safeguard for councillors to ensure that the standards process operates fairly and impartially. Whilst the Local Government and Social Care Ombudsman (who we refer to as the “Local Government Ombudsman”) can consider complaints about the investigation and decision process followed by a local authority where there is evidence of injustice, there is currently no means of appeal against the finding of a breach by a local authority within the local government standards system.

A formal appeal system would be disproportionate in relation to the most commonly imposed sanctions, such as censure or training. However, we recommend

<sup>61</sup> Written evidence 211 (Peter Purnell)



in chapter 4 the introduction of a power to suspend councillors for up to six months. As an aspect of natural justice, such a sanction would require a right of appeal.

The lack of a right of appeal (either by the complainant/subject member) is often criticised.<sup>62</sup>

### Lawyers in Local Government

We have considered a range of options for how a right of appeal could be included within the local government standards arrangements, including internal appeals within a principal authority. However, we consider that an appeals process should ideally be independent. As we set out in chapter 1, we do not believe that a new, external standards body should be created, and so consider that giving a role for appeals to the Local Government Ombudsman would be the most appropriate way to enable an independent, external appeal process.

If these more serious sanctions were available to standards committees, we accept that this could require some kind of external/independent appeal process to be available to the member complained about. This could be organised through the LGA or regional associations such as London councils, and need not require a return to the much criticised national statutory arrangements of the Standards Board, although some additional resource would be required. An alternative would be for the Ombudsman to consider or hear appeals if they met a certain threshold, as we understand the Welsh LGO does in their role.<sup>63</sup>

### London Borough of Sutton

Currently, the Local Government Ombudsman can investigate a local authority's decision-making process in undertaking a standards investigation or imposing a sanction on grounds of maladministration where there is some evidence of injustice, for example, if there is an unreasonable delay or evidence of a conflict of interest. This avenue is open both to complainants and to subject councillors. The Ombudsman could then recommend a remedy to the local authority (though this is not legally enforceable). The Local Government Ombudsman stated in evidence to us that it has investigated the standards process in a local authority in a small number of cases, usually recommending a remedy of re-running a standards investigation.<sup>64</sup> This is an under-appreciated safeguard within the current system.

### Common issues with local authority standards processes considered by the Local Government Ombudsman<sup>65</sup>

- unreasonable delays in councils taking action to investigate a complaint
- councils failing to take into account relevant information in reaching its decision
- councils not following their own procedures in investigating the complaint (e.g. not involving an independent person) or not having proper procedures in place

The Ombudsman cannot, however, adjudicate on the substantive question of whether a breach actually took place and what the appropriate sanction would be, as this lies outside their remit.

62 Written evidence 228 (Lawyers in Local Government)

63 Written evidence 311 (London Borough of Sutton)

64 Written evidence 126 (Local Government and Social Care Ombudsman)

65 Written evidence 126 (Local Government and Social Care Ombudsman)



Our powers enable us to investigate the council's handling of the complaint, and where there is evidence of injustice, we will be able to make recommendations for how the issues can be remedied. However, we cannot consider the substantive issues that form the complaint itself and do not provide a right of appeal against a council's decision whether there has been a breach of standards of conduct.<sup>66</sup>

### **Local Government Ombudsman**

The Local Government Ombudsman indicated in evidence to us that they considered that adjudicating on substantive standards issues would complement their existing work. Given that standards failings are often linked to broader institutional issues, giving the Ombudsman a greater role in considering ethical standards issues could improve their oversight of the sector as a whole.

In order to provide a genuine appeal function, the Ombudsman's decision would need to be legally binding on the local authority – rather than a non-binding recommendation, which is the formal status of the Ombudsman's decisions on cases of maladministration. This would likely require a separate legislative basis. We note that the Public Service Ombudsman for Wales also has a separate legislative basis for their investigations into breaches of the code of conduct to their broader ombudsman role.

In order to ensure that the appeal function would be used proportionately, we consider that it should only be available for councillors who have had a sanction of suspension imposed. The right of appeal should be time-limited, and the Ombudsman should issue

a decision within a specified, reasonable timeframe. The Ombudsman should be able to apply their own public interest test in deciding whether to investigate a case on appeal by a councillor. Complainants should not be permitted to appeal against a finding, but, as now, could complain to the Ombudsman on grounds of maladministration if they consider that the process followed was flawed; if, for example, there was evidence that was provided that was not taken into account.

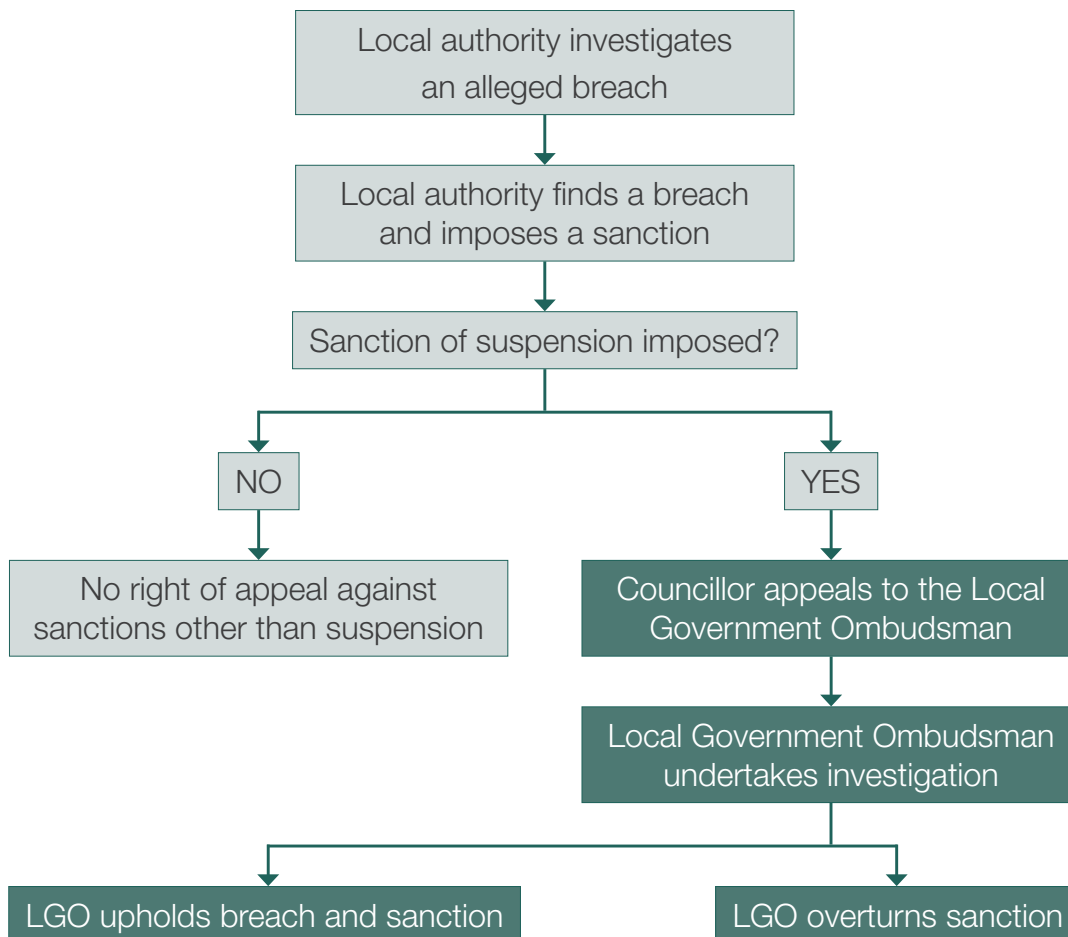
Whilst the Ombudsman's remit does not extend to town and parish councils, under the Localism Act, sanctions can only be imposed on parish councillors following the finding of breach and a recommended sanction by the principal authority, which we recommend below should become a binding decision by the principal authority. We therefore consider that parish councillors who are subject to a suspension should be able to appeal to the Local Government Ombudsman as the decision is taken by a principal authority, who already fall within the Ombudsman's remit.

The role of the Local Government Ombudsman would then be similar, on the one hand, to the role performed by the Adjudication Panel for Wales, which hears appeals of decisions by local standards committees; and on the other, to the Public Service Ombudsman for Wales and the Northern Ireland Public Services Ombudsman who have a combined local government standards and local government ombudsman role. A role limited to appeals against a decision to impose a period of suspension would mean that local authorities would retain primary responsibility for local standards and would avoid the creation of a centralised standards body.

66 Written evidence 126 (Local Government and Social Care Ombudsman)



## Proposed appeals process





**Recommendation 13: Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.**

The Nolan principle of openness demands that councils should be taking decisions, including decisions on standards issues, in an open way. The experience of the Committee is that whilst transparency does not automatically increase public trust in a process, it is nevertheless essential to enabling public scrutiny and accountability.

**Recommendation 14: The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.**

We have seen examples of both good and bad practice in how open councils' standards processes are. The best examples involved a single, easily accessible page on an authority's website explaining in straightforward terms how a member of the public can make a complaint under the code of conduct, what their complaint needs to include, the process for handling complaints, and the expected timescales for investigations and decisions. That page would also include links to recent decisions on allegations that came before the standards committee.

### Promoting openness and transparency

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

Openness and transparency are important secondary safeguards, to ensure that the process can be scrutinised by other councillors and by the public. We heard evidence that many councils do not publish data and decisions on standards issues in a regular or open way. Councils should be free to make their own arrangements for whether they maintain a public list of pending investigations. However, councils should be recording allegations and complaints they receive, even if they do not result in an investigation, and should certainly publish decisions on formal investigations.

**Recommendation 15: The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.**



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

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

## **Avoiding legalisation**

It is vital to get the balance right between the privileges and responsibilities of democratic representatives. Whilst councillors have a responsibility to uphold high standards, in particular by upholding their council's code of conduct, it would be concerning if they could easily be made subject to an expensive legal process, which could then make the standards system open to misuse. The standards arrangements in England should therefore remain based on 'lay justice', where the requirements and processes are sufficiently clear and straightforward so that no councillor subject to an investigation would be disadvantaged by lacking formal legal representation.

Updating and clarifying the Localism Act 2011 to address the practical problems of interpretation that have come to light in recent years – particularly regarding conflicts of interests – would help in this regard, as would a greater role for the Local Government Ombudsman, by allowing councillors to appeal a sanction of suspension without having to resort to the civil courts for review or remedy.

More broadly, the focus should remain on individual local authorities maintaining high standards in their own councils. Councils need not be tied up with long-running standards investigations; they should put in place strong filtering mechanisms to make sure that only allegations with real merit begin a formal process of investigation. Likewise, use of the most serious sanctions should remain rare. For those subject to an investigation or sanctions process, councils should also provide clear, plain English guidance on how the process works and councillors' responsibilities within it.





# Chapter 4: Sanctions

Any system designed to uphold standards of ethical behaviour needs to include ways to address and redress behaviour which falls seriously and/or repeatedly short of what is expected. Under the current arrangements when a councillor has been found to have broken the code of conduct there is no requirement to comply with remedial action. Whilst it is recognised that early, informal resolution of minor misdemeanours can be the most effective, the evidence we received demonstrated overwhelmingly that this lack of enforcement authority is a weakness in the system which may also deter genuine concerns being raised. The questions remain, however, as to what sanctions are appropriate and proportionate, and who should enforce them.

Throughout this review it has become clear that ethical principles must be embedded in organisational culture through training and leadership, and codes of conduct should guide the behaviour of individuals by spelling out what those principles require. When misconduct does occur, however, sanctions play an important role in maintaining standards.

Sanctions are also needed to give credibility to an ethical culture, so that the culture is not engaged with cynically or lightly. As one academic commentator on local government standards has pointed out, “[...] although there is a tension between ‘rules-based’ and ‘cultural’ strategies it does not follow that they are mutually exclusive. Rather, the challenge is to find the balance between a system that supports self-motivation and trust whilst still being credible in the face of examples of persistent misconduct and cynical motivation.”<sup>67</sup>

As we have stated previously, “[...] people need to see poor behaviour punished as well as good behaviour rewarded, although it is, of course, better for people to internalise the principles behind the right behaviour, and to want to do the right thing, than to do so only because of the fear of getting caught and punished.”<sup>68</sup>

## The purpose of sanctions

Sanctions serve four purposes in a standards framework: motivating observance of standards arrangements, deterring damaging behaviour, preventing further wrongdoing, and maintaining public confidence.

Sanctions help to ensure that individuals engage with an ethical standards regime. Our predecessor Committee noted in its first report that “[...] unless obligations are routinely and firmly enforced, a culture of slackness can develop with the danger that in due course this could lead on to tolerance of corruption”.<sup>69</sup> In this review we heard of a small but significant number of individual councillors who appeared to have no respect for a standards regime without cost or consequence and whose continued poor behaviour demonstrated their ‘opting out’.

Punitive sanctions can act as a deterrent to behaviour which is seriously damaging to the public interest. Sometimes a lapse in good conduct can be a genuine oversight, often due to lack of understanding or awareness, and any sanction should be appropriate and proportionate. But the more damaging behaviour requires a greater deterrent, particularly where it brings local democracy into disrepute or otherwise harms the public good.

67 Stephen Greasley (2007) “Maintaining ethical cultures: Self-regulation in English local government”, *Local Government Studies*, 33:3, 451-464

68 Committee on Standards in Public Life (2013), *Standards Matter*, Cm 8519, 4.25

69 Committee on Standards in Public Life (1995), *Standards in Public Life*, Cm 2850-I, para 97



Some sanctions are needed to prevent further wrongdoing where a breach occurs. These sanctions will typically involve curtailing or restricting an individual's activity in relation to council business, especially where the form of the breach suggests that a repeat offence is likely, or where council business would be inhibited by an individual's continued involvement.

The credibility of any standards regime is undermined without the option to resort to sanction when needed. Sanctions help to maintain public confidence that something can be done when things go badly wrong. When used correctly, the application of appropriate sanctions give reassurance that the expectations of the public of high standards of conduct are being observed, and that wrongdoing is taken seriously. Public confidence will, however, only be maintained if sanctions are sufficient to deter and prevent further wrongdoing, and are imposed fairly and in a timely way.

### **The current sanctions arrangements**

The Localism Act 2011 removed the ability for councillors to be suspended or disqualified (except for the statutory disqualification requirements which we discuss below). As a result, councils have become increasingly creative in their approach to using sanctions. Sanctions used by local authorities include censure, apology and training, as well as the removal from committee responsibilities by a party and in some cases, the withdrawal of access to facilities and resources (for example laptops or unescorted building passes). However, sanctions which ban members from council premises usually require cross-party support and are typically only considered appropriate in response to threatening behaviour such as bullying council officers.

The evidence we received suggests that the lack of serious sanctions, such as suspension:

- prevents local authorities from enforcing lower level sanctions, such as training or apology. When councillors refuse to apologise or to undergo training, the only route open to councils is to publicise the breach and the refusal.
- damages the public credibility of the standards system. Members of the public who make code of conduct complaints but do not see a significant outcome even where a breach is found would be justifiably frustrated that the standards system is not dealing with misconduct in a robust or effective way.
- makes the cost and resources of undertaking an investigation disproportionate in relation to sanctions available. We have heard evidence that Monitoring Officers resist undertaking standards investigations where possible, due to the significant cost, where a likely sanction may only be censure or training. We have also heard some evidence that members of the public do not make formal complaints as they do not consider the effort worthwhile given the limited outcomes available.
- gives local authorities no effective means of containing reputational damage or preventing recurrence, for example, in the case of disclosure of confidential information or bullying of officials. We heard that the lack of effective sanctions is deeply frustrating for officers and councillors who want to maintain the effective running of a council and to maintain high standards of conduct.



The removal of the powers previously open to local authorities to suspend a councillor and the broader sanctions open to Standards for England has removed the teeth of the standards regime, particularly in relation to repeat offenders. This undermines public confidence in the standards regime, particularly in the eyes of complainants who may be left with the belief that a councillor found guilty of a breach has 'got away with it'.<sup>70</sup>

### **Tonbridge and Malling Borough Council**

We do have good processes in place, but rarely use them due to the expense and time taken knowing that there is no significant sanction available at the end of the process to address serious issues. Councils simply cannot afford to enter into potentially long and costly processes unless it is clearly in the public interest. Time and money are key factors when they really should not be. As such, no-one achieves real satisfaction under the current standards regime.<sup>71</sup>

### **Taunton Deane Borough Council**

It is the almost universal view of every council we have worked with that the limited range of sanctions available to councils is completely unsuitable for the worst cases and for serial misconduct.<sup>72</sup>

### **Hoey Ainscough Associates**

Press reports show continuing instances of bullying, insulting, offensive and inappropriate behaviour towards fellow members, public and officers. Even when action is taken, in the worst cases, the limited sanctions that can be imposed are ignored or even seen as a 'badge of honour'... reports have historically shown how, if unchecked at the outset, a corrosive and demoralizing culture can quickly take hold.<sup>73</sup>

### **David Prince CBE**

Some councillors view low-level sanctions such as censure as a 'badge of honour', to indicate that they do not cooperate with the 'established' process, and may often not cooperate with sanctions in order to cause disruption to a local authority and the individuals within it.

### **Party group discipline**

Political groups, where they exist, make use of their own internal disciplinary processes. These processes are used, for example, to enforce whipping, but also in response to breaches of ethical standards. The evidence we received suggested that these processes are used partly to fill the gap left by the lack of formal sanctions available to principal authorities.

70 Written evidence 24 (Tonbridge and Malling Borough Council)

71 Written evidence 131 (Taunton Deane Borough Council)

72 Written evidence 212 (Hoey Ainscough Associates)

73 Written evidence 31 (David Prince CBE)



In many places party discipline has effectively filled the void left by the council's lack of formal powers but in our experience this is patchy and too subject to political calculation, such as the effect on balance of power within an authority so cannot be relied upon to be consistent across the country.<sup>74</sup>

**Hoey Ainscough Associates**

A political group is a group of any two or more councillors in a principal authority who formally notify the Monitoring Officer that they wish to be considered as a political group. Members of a political group do not have to be members of the same political party, though most councils will include groups from the main national political parties. The relative strength of numbers in political groups will determine the administration and opposition in a council.

Political groups will often undertake a whipping function, so that the group votes consistently on particular proposals (though this is not permitted in functions such as planning and licensing). They will exercise party discipline, both to enforce whipping and group rules, but also in response to poor behaviour by councillors.

The greatest sanctions appear to be informal sanctions issued by groups and leaders, in terms of, for example, removal from committees, other bodies, posts, and of the whip. Our strong view is that while in many cases political groups have acted on such bases, a standards framework that is reliant on the decisions of those groups to effect proportionate sanctions is not an effective one.<sup>75</sup>

**Andrew Maughan, Monitoring Officer,  
Camden Council**

Under the legislation which governs council committees, the council allocates seats on committees to political groups in proportion to the relative sizes of the political groups within the council as a whole. The council is required to put the wishes of a political group into effect as far as possible when allocating individual councillors to committees from within that group. This means that in practice, political group leaders decide on committee appointments (although the wishes of a majority of group members would in theory take precedence). This is a significant power of patronage that can be used as part of a disciplinary process by parties. Groups may also remove individuals from other posts to which they have been nominated by their group; and a majority party may also take away portfolios or other special responsibilities.

We heard from political parties that the threat of suspension or expulsion from a group in particular can be an effective deterrent at the level of political group within a council.

Whilst political groups have a formal legal definition, in practice they are organised differently in different authorities. Some will be highly organised with a hierarchy of a leader, deputy leader and group whips, will have group discussions on a large number of matters that come before council, and enforce whipping through party discipline. Others will have a group leader also acting as a group whip, and may take a lighter-touch approach to group discussions or whipping. Independent groups, for example, are very likely to take a light-touch approach to whipping, or, indeed, may have independence from a whip as the central rationale for the group.

Party discipline can play a positive role in upholding ethical standards within a local authority. We heard that senior officers may

74 Written evidence 212 (Hoey Ainscough Associates)

75 Written evidence 151 (Andrew Maughan, Camden Council)



often make an informal approach to political group leaders if they have concerns over the behaviour of a member of that group. Internal party discipline, or even simply advice from a group leader, can be a useful means of moderating individuals' behaviour without needing to resort to the formal standards process. However, we also heard of instances where an approach to a political group was considered a serious step, and that the Monitoring Officer, if they had any concerns about the behaviour of a councillor, would speak to that individual on a one-to-one basis.

Sometimes, however, cases of alleged misconduct may go to a political group leader or even the national leader of a political party instead of being reported to the Monitoring Officer at a local authority.

### **Examples of political party disciplinary process used as an alternative to the formal standards process**

In July 2018, a Greenwich councillor was suspended by their political group, as a result of their being charged with fraud following investigation by the council and referral to the police. The councillor was also removed from appointments made by their party group.

In Nuneaton, a political group leader wrote to the leader of a national political party in July 2018, to seek party discipline for councillors of that party for alleged abuse during a council meeting.

While party discipline can therefore have a positive role to play within local government, it also has drawbacks. Party discipline cannot apply to councillors who are not a

member of a political group. This means that party discipline cannot be used in relation to independent councillors, including those who might previously have been expelled from a party group. Political groups seldom exist in parishes, and so cannot address misconduct at parish level.

Party discipline may mean that political factors are taken into account over the public interest. When an authority is dominated by a single party or there is a very slim majority held by a party, that party may have an interest in downplaying or minimising standards breaches, rather than addressing them. It may also inhibit scrutiny and openness more generally where this may cause embarrassment to the party group.

Party discipline processes can run concurrently with, and in some cases preempt, the outcome of a formal standards investigation. We saw evidence that political parties have taken steps to enable swift discipline by group leaders or whips at a local level in serious cases. But this will tend to lack transparency, without formal announcements of measures taken or open investigative processes, particularly when political parties are under pressure to respond quickly.

There used to be a fairly clunky process of bringing a report to the group for the group to take action. We've revised that to take account of the way that news can spread so rapidly, and given group leaders the power to make a decision there and then for a time limited period along with the whip.<sup>76</sup>

**Cllr Rory Love, Chair, Association of Conservative Councillors**

76 Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



We also sought evidence during our review on the role of national political parties. Whilst national political parties will often have their own code of conduct, their involvement in allegations of misconduct will tend to be on a case-by-case basis, with less of a formal system for escalating and managing complaints. Party representatives we spoke to said that, understandably, the national party would involve itself only in serious cases or where it had an interest for particular reasons. Inevitably, the involvement of a national party is more likely when reputational issues are at stake, for example, during the selection of candidates at election time.

During the recent elections, we had no hesitation in suspending candidates from the Conservative whip even before the election day as a message to say “if you have the privilege of representing our party, there are standards we expect of you”.<sup>77</sup>

**Cllr Rory Love, Chair, Association of Conservative Councillors**

There is a particular focus [on standards] just before the point of election, which I think will remain the case. That’s when the party has the most influence, that’s when those conversations take place.<sup>78</sup>

**Cllr Simon Henig CBE, Chair, Association of Labour Councillors**

We have therefore concluded that political parties cannot play the central role in sanctions and upholding standards within an authority. Political group discipline is, essentially, an internal matter. This means it will never have the levels of transparency, consistency and

the relevant checks on impartiality that should characterise a fair and effective standards process. Whilst we have come across examples of positive joint working across political groups, and very effective relationships between officers and political groups, the party disciplinary process is still subject to political imperatives, even in authorities with otherwise very effective standards arrangements. In addition, political groups rarely operate at parish council level, and so party discipline cannot effectively address misconduct at parish level.

If, as our evidence suggests, the current high levels of involvement of parties in the standards process is due to a lack of formal sanctions, the reintroduction of a power of suspension may lead to a diminished role for political parties. Even if this were the case, political parties would still have an important role to play, which we consider further in chapter 8.

### **The sanction of the ‘ballot box’**

We have considered the case that, beyond censure or training, the most appropriate sanction for councillors is the ‘ballot box’, namely, the possibility that they could be voted out at a local election as a result of misconduct. We conclude that the ‘sanction of the ballot box’ is insufficient, both in principle and in practice.

Relying upon the electorate to address poor member conduct at the ballot box is insufficient. The current regime needs to specifically include greater powers for local authorities to robustly address poor member conduct.<sup>79</sup>

**Sandwell Metropolitan Borough Council**

<sup>77</sup> Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018

<sup>78</sup> Cllr Simon Henig CBE, Individual oral evidence, Wednesday 18 July 2018

<sup>79</sup> Written evidence 239 (Sandwell Metropolitan Borough Council)



In cases where really serious misconduct happens, and the perpetrator is not discouraged by adverse publicity, there is a significant gap between how the current system can deal with such cases and any criminal sanction, criminal sanctions always being a final resort. The argument that the ultimate arbiter of behaviour is the public at the ballot box does not fully answer this issue.<sup>80</sup>

**Wycombe District Council**

It is of course accepted that the democratic election of councillors must be respected. Following this, some would argue that (barring disqualification set out in law) only the public who conferred that mandate through an election can take it away by means of another election. It is argued that this is appropriate because only the public can be the proper judge of the suitability of a councillor to represent them which they only have the proper authority to do in an election or re-election.

Whilst the public will of course judge standards in public life at election time to some extent, the process of choosing a representative is based on wider political issues. As the Committee stated in 2013, “[...] decisions about who to vote for are made on the basis of a number of considerations. It would be undesirable for the electorate to have to set aside the opportunity to express their wider political views at election time simply to express a view on a standards issue.”<sup>81</sup> Indeed, voting in elections is often drawn on party lines rather than the overall suitability of an individual candidate.

Public expectations of elected representatives continue to increase not diminish. High ethical standards should be demonstrably observed in practice throughout a term in office. Much harm can be done to individual wellbeing, the democratic process, and council business if misconduct goes unchecked for up to four years.

Public participation ends at the ballot box. There must be more to ensure local governance commits to fulfil the expectations of their electorate where possible [...].<sup>82</sup>

**Cllr David Gaye**

It is also the case that a large number of seats in parish and town councils, and occasionally at principal authority level in more sparsely populated areas, are uncontested. In such circumstances the public are not choosing to exercise their judgment, and as a result there is no opportunity for electoral accountability to influence ethical standards.

The argument that the ballot box will decide is a moot point when over 50% of the town and parish councils in Cornwall do not have elections and these local councillors are returned unopposed.<sup>83</sup>

**Cornwall Council**

Democratic representation carries both privileges and responsibilities. The significance of that mandate, and the rights and powers that it gives to councillors, also means that a councillor is rightfully subject to the Seven Principles of Public Life and the obligations

80 Written evidence 186 (Wycombe District Council)

81 Committee on Standards in Public Life, *Standards Matter* (2013), Cm 8519, 4.18

82 Written evidence 302 (Cllr David Gaye)

83 Written evidence 147 (Cornwall Council)



under the council's code of conduct. Councillors' conduct should reflect the importance of their elected role and their need to act in the public interest. A standards regime that prevents a councillor from carrying out their role for a period, for example by suspension, does not undermine a councillor's electoral mandate. Rather it underlines the significance of the role and the expectations of high ethical standards that come with elected office.

### Sanctions in the devolved standards bodies

The sanctions available to the devolved standards bodies in Wales, Scotland and Northern Ireland, which were also available to the Adjudication Panel in England before its abolition, are suspension for up to one year and disqualification for up to five years.

The devolved standards bodies have used the most serious sanctions available to them sparingly. In 2017/18, the Standards Commission for Scotland has only once suspended a councillor for more than six months (although a number of cases involved a councillor who stood down, where the Commission indicated it would have imposed suspension if it were available).<sup>84</sup>

In 2016/17, the Northern Ireland Local Government Commissioner for Standards disqualified one councillor for three years, and suspended one councillor for three months.<sup>85</sup>

In 2016/17, the Adjudication Panel for Wales suspended four councillors, all for fewer than six months.<sup>86</sup> However, it should be noted that almost 20% of references and appeals to the Adjudication Panel since 2012 have resulted in disqualification.

### Stronger sanctions

We have concluded that stronger sanctions should be made available to local authorities.

We have not seen compelling evidence for introducing a power of disqualification. We consider that there is very strong reason to introduce a power of suspension, but this should only be for a period of up to six months. The evidence we received suggested that the suspension of allowances would form an important aspect of this sanction.

We would expect that such a power would be used rarely. Suspension should be used only in the case of the most serious breaches, such as serious cases of bullying and harassment, or significant breaches of the rules on declaring financial interests; or else in the case of repeated breaches or repeated non-compliance with lower level sanctions.

The sanctions that could be made available to local authorities depend upon the investigative processes and safeguards available to meet the requirements of due process. The more significant the sanction, the more important it is that the process ensures impartial application of sanctions. The evidence we have received suggests that the power to disqualify or suspend a councillor without allowances for longer than six months would likely require a formal independent tribunal arrangement in order to comply with a councillor's ECHR Article 6 right to a fair trial. We do not consider that such arrangements could be put in place without the introduction of a central standards body, which we reject for the reasons discussed in chapter 1.

84 Written evidence 106 (Standards Commission for Scotland)

85 Northern Ireland Local Government Commissioner for Standards (2017), *Annual Report 2016-17*. Available online at: <https://nipso.org.uk/site/wp-content/uploads/2017/12/NILGCS-Report-2016-17.pdf>

86 Adjudication Panel for Wales Register of Tribunals. Available online at: <http://apw.gov.wales/about/register-of-tribunals/?lang=en>





**Recommendation 16: Local authorities should be given the power to suspend councillors, without allowances, for up to six months.**

Legislation giving effect to this should ensure that non-attendance at council meetings during a period of suspension should be disregarded for the purposes of section 85 of the Local Government Act 1972, which provides that a councillor ceases to be a member of the local authority if they fail to attend council meetings for six consecutive months.

### **Giving legal certainty to councils**

At the moment, councils who impose sanctions at the most serious end of the current range – premises bans and withdrawal of facilities – are doing so without a clear basis in statute or case law. The relevant case law on sanctions has expressly identified training, censure, or publicising the breach as within a council's power, but does not limit the available sanctions to only these. We have heard expert views on both sides of the argument as to whether measures such as premises bans are likely to be *ultra vires* or could be considered as tantamount to suspension; councils are therefore accepting a certain measure of legal risk in using these sanctions. The government should make clear what local authorities' powers are in this area, and put them beyond doubt in legislation if necessary.

As we have seen, sanctions serve a number of purposes in a standards framework, one of which is the prevention of further wrongdoing. Sanctions such as premises bans and withdrawal of facilities may be useful for this purpose, as part of a range of available sanctions.

**Recommendation 17: The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.**

### **Criminal offences in the Localism Act 2011**

The provisions in the Localism Act make it a criminal offence for a councillor to fail to comply with their duties to register or declare Disclosable Pecuniary Interests (DPI), participate in a discussion or vote in a matter in which they have a DPI, or take any further steps in relation to such a matter. The maximum penalty is a level 5 fine and disqualification as a councillor for up to five years. It is important to acknowledge the seriousness of such a matter and to continue to support the need for serious sanctions for non-compliance in these circumstances. However, the evidence we have received suggests overwhelmingly that resorting to the criminal law is not the most appropriate way to handle such misdemeanours.

The making of certain breaches a criminal offence does not seem to have worked as such matters have to be referred to the police who, from my experience, are not geared up to the local government world and do not (understandably) see such matters as a high priority to them...matters can take a long time and often end up being handed back to the council to deal with in any case.<sup>87</sup>

**Taunton Deane Borough Council**

87 Written evidence 131 (Taunton Deane Borough Council)



The current arrangements are disproportionate. Failure to register or manage interests is a breach of the Seven Principles and damaging to the public interest, but it would usually be remedied by the application of internal sanctions. To potentially criminalise a public office-holder for what is essentially a code of conduct matter is inappropriate. It sets a high bar for the standard of proof and is a costly process for the public purse. It is also, inevitably, a long process which can be disproportionately stressful. We have heard evidence which suggests that the police are wary of the potential for politically motivated allegations and the highly sensitive nature of investigations to which they may not be able to allocate sufficient resources when budgets are constrained. We also heard of a number of instances where the police have not pursued cases referred to them.

**Recommendation 18: The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.**

### **Disqualification of councillors**

The criteria for disqualification of councillors are currently relatively limited. In the case of a councillor being convicted of a criminal offence, they would only be disqualified if they are imprisoned for three months or more.

### **Current law on the disqualification of councillors**

Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:

- are subject to bankruptcy orders
- are imprisoned for three months or more on conviction of a criminal offence (without the option of a fine)
- are found personally guilty of corrupt or illegal practice in an election

They are also disqualified if they:

- are employed by the local authority
- are employed by a company which is under the control of the local authority
- are employed under the direction of various local authority committees, boards or the Greater London Authority
- are a teacher in a school maintained by the local authority

The Ministry for Housing, Communities and Local Government have committed to bringing forward legislation to add to the existing criteria for disqualification, following a public consultation in September 2017. The additional conditions will include being listed on the sex offenders register, receiving a Criminal Behaviour Order under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014, and receiving a civil injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014. We support these changes, which will better reflect the expectations of the public.



# Chapter 5:

## Town and parish councils

Local government is made up of a number of tiers, of which town and parish councils are the most local. Their functions vary but may include: maintaining local amenities such as parks, cemeteries, and memorials; responding to planning consultations undertaken by principal authorities; producing neighbourhood development plans; and making grants or undertaking other activities to benefit their local communities. In recent years, however, many parish councils have undertaken a broader range of roles that traditionally were performed by principal authorities, such as economic regeneration and transport services.<sup>88</sup>

While the vast majority of people who serve on town and parish councils do so for the benefit of their community and in doing so observe the Seven Principles of Public Life, the Committee received evidence suggesting that poor behaviour and serious misconduct by some councillors is creating significant disruption in those communities. The evidence also suggests that this misconduct can create an increased workload for the relevant principal authority.

Our predecessor Committees have excluded town and parish councils from their reviews into local government standards; we have chosen to focus on them because the number and nature of concerns shared with the Committee by those who work in and with parish councils was sufficient for us to question whether the present arrangements provide for good governance and meet the needs of the public.

### Autonomy and accountability of parish and town councils

The oversight regime for parish councils is light-touch, in view of their comparatively lower budgets and limited remit compared to principal authorities.

There is, however, significant variation in the budgets of town and parish councils. A number of small parish councils have budgets of less than £25,000; but some may have budgets exceeding £1 million.

Parish councils with a precept of less than £25,000 are exempted from the need to have an annual assurance review or to appoint an external auditor to prepare their accounts. They are, however, required to comply with the government's Transparency Code for exempt authorities, and must appoint an auditor if an elector has an objection to the accounts.

Parish councils, unlike principal authorities, do not fall within the remit of the Local Government Ombudsman no matter their size or budget, so they are not subject to investigations or rulings on grounds of maladministration. This means that the stakes in some councils at this level are very high where there are either serious or persistent standards issues. Our view is that the current system does not take this potential risk into account.

Under the Localism Act 2011, much of the responsibility for standards in town and parish councils belongs to their principal

<sup>88</sup> Local Government Chronicle (2016), *Power to the people*. Available online at: <https://www.nalc.gov.uk/library/news-stories/2437-lgc-supplement-2016/file>



authority. We have seen a variety of models for how parishes relate to a principal authority in relation to standards. In many cases, the Monitoring Officer is the main point of communication, and communicates mainly with the clerk. Some councils maintain joint standards committees, with town and parish councillors sitting alongside councillors from the principal authority to discuss issues from both the principal authority and the parish councils, though parish council representatives cannot vote if the committee is a decision-making committee of the principal authority. We have also seen an important role played by county associations of local councils, who can maintain links with the principal authority through the senior officers and in some cases provide mediation and support on standards issues at the parish level.

One of the things we do in the CALC is provide an advisory service and someone to investigate what's gone on and someone to go along to listen to grievances.<sup>89</sup>

### **Cornwall Association of Local Councils**

When it comes to the day-to-day relationship with principal authorities, some parishes will see the principal authority as a point of support or advice on standards issues; some are heavily dependent on the principal authority to provide legal advice and to deal with governance or behavioural problems; but some have an antagonistic relationship with the principal authority and do not respect its formal remit in respect of ethical standards. As with the standards process within a council, the role of the Monitoring Officer is crucial in maintaining a positive and effective relationship with dependent parishes. We have also seen

the benefits of a strong relationship between senior officers (particularly the Monitoring Officer) and the county association of local councils.

We recognise the need to balance the autonomy of parish councils with accountability. The oversight of parish councils must be proportionate in relation to their comparatively limited budget and remit. Our view is that for the majority of parish councils, the current balance works well, although to address the standards issues which in a minority of councils have undermined good governance, we recommend changes below in the formal relationship between parish councils and principal authorities in relation to standards.

How effectively parish councils use their autonomy over their own governance is highly dependent on the skills, experience and support of the parish clerk. Clerks are sometimes the only employees of the council and also the repository of significant amounts of information, advice and guidance for councillors in undertaking parish business. Where the relationship between the councillors and their clerk is positive there is little need for additional accountability or support in the system.

However, we received evidence of substantial difficulties experienced where clerks are either inexperienced, untrained or feel isolated, particularly if they are the subject of poor behaviour on the part of councillors. Ongoing education and training of clerks would provide: confidence to some clerks on the scope and limits of their role; a network of peers who can provide advice and support when new situations arise that are challenging for a single clerk working alone; and a level of consistency and accountability to councillors, auditors

89 Sarah Mason, County Executive Officer, Cornwall Association of Local Councils, Visit to Cornwall Council, Monday 24 September 2018



and the public about the services a clerk can be expected to provide. There is, therefore, a significant need for clerks to be formally qualified (for example, through qualifications run by the Society for Local Council Clerks). Such qualifications need not be costly for parish councils.<sup>90</sup>

**Recommendation 19: Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.**

### Misconduct in parish councils

Analysis of survey responses from over 800 parish clerks, undertaken by Hoey Ainscough Associates on behalf of the Society of Local Council Clerks, suggests that 15% of parish councils experience serious behavioural issues such as bullying and disrespect towards other councillors or the clerk, and 5% of parish councils experience these issues to an extent that they are unable to carry out some or all of their proper functions.

We regularly come across cases of serious bullying and disrespect towards officers and fellow councillors, threatening and intimidating behaviour towards staff, obsessive behaviour and deliberate flouting of the need to declare interests. While such behaviour is very much in the minority it can seriously damage the reputation of an authority, as well as causing huge amounts of stress and effectively gumming up the workings of a council. This is particularly true at parish council level.<sup>91</sup>

**Hoey Ainscough Associates**

We heard of a number of individual cases of serious bullying or other unacceptable behaviour, particularly directed towards local council clerks, leading to high turnover of staff.

The impact often includes serious ill health, loss of employment, loss of confidence and a long-term detriment to their personal and professional lives. The parish sector experiences a high turnover of staff each year. In some areas of the country this can be up to 20-30% of clerks and a large element of this can be attributed to the underlying behaviour issues. We are aware of cases where the issues are long standing and repeated year on year, with multiple cycles of behavioural issues, loss of personnel and recruitment taking place.<sup>92</sup>

**Society of Local Council Clerks**

The evidence we received suggests that reintroducing a power of suspension for local authorities, which would be applicable to parish councillors, may address some of these problems. Although many parish councillors are not paid, a suspension of six months would nevertheless remove them from decisions and communications for all meetings during that period. It would also send a strong message to the individual member and the community. We discuss sanctions in more detail in chapter 4.

The evidence we received also suggested that difficulties persist in resolving standards matters where clerks are not well supported by the parish council to formally make and resolve complaints, or to prevent behaviour from recurring. Parish councils should take corporate responsibility when allegations of a councillor

90 The basic level qualification offered by the Society of Local Council Clerks costs less than £120, and SLCC offer bursaries for clerks who work for parish councils with a very low precept

91 Written evidence 212 (Hoey Ainscough Associates)

92 Written evidence 197 (Society of Local Council Clerks)



bullying an employee are received. For example, where behaviour that is in breach of a code is observed by councillors or reported by a clerk, the parish council should lodge a formal standards complaint corporately or in the name of the chair. A clerk should not have to do so themselves. In addition to providing necessary support to the clerk in such circumstances, such measures signify to individual councillors that disruptive behaviour is not ignored or accepted by the council generally.

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

Of the monitoring officers who responded to the SLCC 11% were unable to commit resources to supporting parish councils with behaviour issues with a further 49% only becoming involved when there is a complaint.<sup>93</sup>

**Society of Local Council Clerks**

We have heard that dealing with standards issues in parish councils can be onerous for Monitoring Officers in principal authorities. Monitoring Officers reported to us that they could spend a high proportion of their working time on standards issues in parish councils, and that many of the cases that they had to deal with related to long-standing disputes or tensions, and so are not quickly resolved. We have heard a small number of concerning reports that Monitoring Officers have decided to decline to provide advice or accept

complaints received about or from parish councils about standards issues at the parish tier, citing insufficient resources and support for their work with parishes. Giving principal authorities the ability to deal more effectively with misconduct within parish councils should address to an extent the underlying problem of recurring standards issues, which we discuss below. Beyond this, Monitoring Officers need to be given the resources within their principal authority to allow them to carry out their duties in respect of parish councils as well as their own authority, and to be supported by senior management in doing so.

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

### **Investigations and sanctions in town and parish councils**

Under the Localism Act, a parish council may comply with the duty to adopt a code of conduct by adopting the code of its principal authority, or by adopting its own code.

The evidence we have received is that the variation in parish codes within a principal authority area is an additional burden on that principal authority when advising, investigating and adjudicating on code breaches.

For example, Cornwall Council is a unitary authority that oversees 213 parish councils, all of which, in theory, could have their own

93 Written evidence 197 (Society of Local Council Clerks)



individual code of conduct, on which Cornwall Council could be required to adjudicate. Through working with the Cornwall Association of Local Councils, Cornwall Council agreed a single code with all the parish councils.<sup>94</sup>

Without the support of CALC in Cornwall, we could have ended up with 214 different codes across the county, and this would have created problems with training, which is delivered by Cornwall Council, and interpreting the code which falls to Cornwall Council to administer.<sup>95</sup>

#### **Cornwall Council**

Only a principal authority has the power to undertake a formal investigation and decision on an alleged breach of a parish council's code under section 28(6) of the Localism Act.

We have concluded that it is anomalous that parish councils have the autonomy to adopt a code of conduct of their choosing, but do not have the authority to investigate and enforce that code.

We do not consider that parishes should be given the power to undertake a formal investigation on a breach of the code of conduct. Our evidence suggests that parish councils do not wish to take on this responsibility, and that they do not have the resources and structures necessarily to do so on a fair and impartial basis.

There is a need to balance the autonomy of parishes, with a recognition that ultimately the principal authority must be responsible for investigating breaches. We acknowledge the benefits of a councils being able to amend

their own code, which we discuss in chapter 2. Given this burden on principal authorities, however, and the confusion that often arises in the case of dual-hatted councillors, we consider on balance that the costs of giving parish councils the option to adopt their own code of conduct outweigh the benefits.

**Recommendation 20: Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.**

Following *Taylor v Honiton Town Council*,<sup>96</sup> a parish council cannot substitute its own decision on an allegation for that of the principal authority. If it imposes a sanction on the councillor, it may only impose the sanction recommended by the principal authority. Whilst Taylor did not address the question directly, the evidence we have received from practitioners is that a parish council is not bound to implement a sanction even if that is recommended by the principal authority.

The Wychavon Committee feels that only having the power to make recommendations to parish councils regarding breaches of the code of conduct often leaves complainants feeling that there is little merit in bringing forward any complaint, especially when coupled with the current regime's stipulation that investigations cannot be pursued if a councillor leaves office.<sup>97</sup>

#### **Wychavon Borough Council**

94 Written evidence 206 (Cornwall Association of Local Councils)

95 Written evidence 147 (Cornwall Council)

96 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

97 Written evidence 78 (Wychavon Borough Council)



Accordingly, parish councils may disregard the sanction recommended by a principal authority. This may sometimes be due to an antagonistic relationship with the principal authority, or pressure from particular parish councillors not to implement the recommendation. This already prevents the effective holding to account of some parish councillors for misconduct. If, as we recommend, local authorities were given a power of suspension, under the current law a parish council could effectively ignore a decision to suspend one of its members. We therefore consider that any sanction imposed on a parish councillor following the finding of a breach should be determined by the parish's principal authority, which will require a change to section 28 of the Localism Act 2011.

**Recommendation 21: Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.**

We have heard concerns that the judgement in *R (Harvey) v Ledbury Town Council*,<sup>98</sup> which was delivered during our review, prevents parish councils from taking action in the case of bullying. The principle that sanctions could not be applied to councillors outside of the formal investigation and decision process, involving an Independent Person, by a principal authority, is a straightforward application of the earlier judgment in *Taylor v Honiton Town Council*.<sup>99</sup> The evidence we have received is that this principle is the right approach: a parish council would not typically have the

resources to undertake a formal standards investigation; and sanctions should only be imposed following a fair and impartial process, as we discuss in chapter 3.

However, this does not suggest that there is no action that parish councils may take if an employee is being bullied. The evidence we have received from practitioners is that earlier case law has established that a parish council as a corporate body is vicariously liable for actions by an individual councillor which would involve an implied breach of their contractual obligations as an employer, including an implied obligation to provide a reasonable congenial working environment.<sup>100</sup> We understand that councils may therefore legally take proportionate, protective steps to safeguard employees if they are experiencing bullying or other unacceptable behaviour, for example, requiring that a particular councillor does not contact directly that named member of staff. However, for sanctions to be imposed, which are by nature punitive, then a formal complaint must be made, with an investigation undertaken by the principal authority.

98 *R (Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin)

99 *Taylor v Honiton Town Council and East Devon District Council* [2016] EWHC 3307 (Admin)

100 See *Moore v Bude-Stratton Town Council* [2000] EAT 313\_99\_2703, which was affirmed in *Heesom v Public Service Ombudsman for Wales* [2014] EWHC 1504 (Admin), 82





# Chapter 6: Supporting officers

## Role of the Monitoring Officer

The Monitoring Officer is one of the three statutory officers in local government, alongside the Head of Paid Service (Chief Executive or Chief Officer) and the Chief Finance Officer (often referred to as the Section 151 Officer).

The three statutory officers need to work together. They are not separate. I have always had a practice of ensuring I held regular statutory officer meetings where we specifically talked about those things where one of us might want to intervene.<sup>101</sup>

**Max Caller CBE**

The post of Monitoring Officer is set out in statute in section 5 of the Local Government and Housing Act 1989. The original statutory role was to report to the council on any proposal, decision or omission by the council which is likely to give rise to a contravention of law or to maladministration. Given the legal aspect of the role, the Monitoring Officer is often the head of legal services in an authority. More recently, the role is often (but not always) combined with oversight of democratic services (the team of officers who prepare and co-ordinate agendas and papers for committee and council meetings).

The Local Government Act 2000 provided for a greater role for the Monitoring Officer on ethical standards.<sup>102</sup> Guidance issued by the

then-Department for Environment, Transport and the Regions summed up its approach, following the passage of the Local Government Act 2000:

The monitoring officer will have a key role in promoting and maintaining high standards of conduct within a local authority, in particular through provision of support to the local authority's standards committee.<sup>103</sup>

The Monitoring Officer (or their deputy) remains the lynchpin of the arrangements for upholding ethical standards in an authority.

We are aware of a perception that the role of the Monitoring Officer is becoming more difficult.

A survey of 111 Monitoring Officers, carried out by Local Government Lawyer, identified that the increasing complexity of local government decision-making, especially commercial decision-making and outsourcing, was a particular challenge in the role, especially where there is an imperative to drive forward projects and decisions. 38% of those surveyed said that the role had become more risky in 'a significant way', and 48% said that it was moderately riskier than in the past.<sup>104</sup>

101 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

102 For example, in sections 59, 60, 66 of the Local Government Act 2000

103 Department for the Environment, Transport and the Regions (2000), *New council constitutions: guidance to English Authorities* (reissued by DCLG, 2006). Available online at:

<http://webarchive.nationalarchives.gov.uk/20120920053721/http://www.communities.gov.uk/documents/localgovernment/pdf/155181.pdf>

104 Local Government Lawyer (2018), *Monitoring Officers Report*. Available online at:

<http://www.localgovernmentlawyer.co.uk/monitoringofficers/?page=1>



The Monitoring Officer role is particularly varied and includes quite disparate aspects. A Monitoring Officer who also oversees a department of the council will have a role in senior management, and will be responsible for large teams. They will offer formal legal advice; but they will also act as a mediator and adviser in relation to standards issues. Some of the most significant difficulties for Monitoring Officers include the inherent potential for conflict when simultaneously:

- acting as a source of advice and guidance for members and officers (and parish councils for which they are the Monitoring Officer)
- assessing complaints in the first instance after it is received by a council
- obtaining and weighing advice from Independent Persons
- overseeing and managing investigations to determine whether serious breaches of the code of conduct have occurred, either personally or by seeking outside expertise and handling the consequential report and conveying it to members

The role involves a broad set of skills, and is broader than a chief legal adviser role. It is through the appropriate application of these skills and knowledge (including by developing a network of peers with whom Monitoring Officers can seek reassurance and check the consistency and fairness of their approach), that we have seen these competing pressures can be dealt with effectively.

The role of the Monitoring Officer in relation to ethical standards is no different to that in relation to their other statutory responsibilities. Dealing with complaints in relation to Members should not expose the Monitoring Officer to any greater risk of conflict. However, many have arrangements in place so that they do not advise the Standards Committee in relation to a complaint where they have been the investigating officer, etc.<sup>105</sup>

### **Lawyers in Local Government**

More nuanced but even far more serious complications can arise where the Monitoring Officer is overseeing an investigation into a senior member of the local authority, particularly a portfolio-holder. There is a potential conflict of interest, given the professional relationship between the Monitoring Officer and Cabinet members, in providing procedural and legal advice to enable them to pursue their objectives. In this case, the Monitoring Officer should be robustly supported and protected by the Chief Executive. Any investigation, even if outsourced to an independent investigator, should be overseen and managed ideally by the Monitoring Officer from a different authority, or failing that by a deputy, with the Monitoring Officer kept at arm's-length.

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

<sup>105</sup> Written evidence 228 (Lawyers in Local Government)



Whilst the location of the Monitoring Officer in the organisational hierarchy may vary, depending on the nature and functions of the individual authority, we have heard that effective governance relies on a strong working relationship between the three statutory officers (Chief Executive, Section 151 Officer, and Monitoring Officer). In particular, a Monitoring Officer needs to be able raise issues of concern to the Chief Executive, and be able to rely on the support of the Chief Executive in making difficult decisions, to know that they will not be undermined. We have seen that the confidence and support of the Chief Executive is crucial to ensuring the Monitoring Officer has the ability to uphold standards in a council, and can engage authoritatively with individual members.

We accept that the role of the Monitoring Officer is a difficult one to navigate, given the tensions that may be involved in advising on and addressing misconduct, alongside offering legal advice to achieve the council and administration's corporate objectives. We have concluded, however, that it is not unique in these tensions. The role can be made coherent and manageable, with the support of other statutory officers.

### **Standing of statutory officers**

Under the current disciplinary arrangements for statutory officers, any decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons.<sup>106</sup> The previous protections applied in respect of any disciplinary action taken against a statutory officer, not just dismissal, and required the action to be recommended by a Designated Independent Person.

A few respondents to the consultation referenced the political pressure that Monitoring Officers come under to achieve particular outcomes and that this can place them in a conflicted as well as vulnerable position. The statutory protections for Monitoring Officers should be re-visited. LLG strongly supports this assertion.<sup>107</sup>

### **Lawyers in Local Government**

We have received a range of evidence on the implications of the changed environment for senior officers. We have heard of cases where Monitoring Officers have been put under undue pressure or forced to resign because of unwelcome advice or decisions, and heard that a diminished standing of senior officers has hampered their ability to give objective advice especially when this may not be welcome. On the other hand, we have heard that the current environment ensures that authorities are genuinely led by elected members, and that officers do not have too dominant a role in a local authority, which confuses the lines of accountability.

On balance, we consider that the disciplinary protections for statutory officers should be enhanced, by extending those protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal.

**Recommendation 22: The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.**

<sup>106</sup> Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881)

<sup>107</sup> Written evidence 228 (Lawyers in Local Government)



## Training of officers

We also heard during the review of the danger of councillors or officers perceiving necessary processes and procedures in local government as arbitrary or bureaucratic. When councillors do not appreciate the rationale for the decision-making processes – that exist in order to ensure objectivity, integrity, openness, and accountability – that can lead to undue pressure on officers to ‘bend the rules’, and implement the wishes of the administration regardless of the proper processes.

Sometimes there is a denigration in the culture of an authority because the authority has been hollowed out. In that instance, there is no longer the core of individuals who know the rationale for the rules, rather than just the rules themselves.<sup>108</sup>

**Max Caller CBE**

When officers do not appreciate the rationale for the governance processes, then they can be treated as a ‘rubber stamp’, circumvented, or simply not fully utilised, leading to a compromise in the quality of decision-making.

There is a need to remind people of why the systems of governance are there: why, for example, reports are taken in public.<sup>109</sup>

**Dame Stella Manzie DBE**

Local authorities’ training on governance and process should therefore include an explanation of the rationale for the processes in place, and link specific procedures to their wider aim of ensuring ethical decision-making. Training and support in the governance and

corporate aspects of the statutory officer roles is particularly important, since we heard that there is not necessarily a standard training offer for the statutory aspects of senior officer roles. We discuss councillor induction training in greater detail in chapter 8.

## Whistleblowing

The written evidence we received suggests that local authorities will generally have a whistleblowing policy in place.

Since the abolition of the Audit Commission, local government audit is undertaken externally by private companies. External auditors are listed as ‘prescribed persons’, those to whom certain disclosures in the public interest can be made that will attract employment protections under the Public Interest Disclosure Act 1998.

However, the evidence we received suggested that local authorities will not tend to specify a named contact or provide contact information within the external auditor. This would have the effect of deterring whistleblowers from contacting the auditor, or make it difficult to report a concern.

The perceived lack of independence of the current external regime for auditing local government, coupled with the absence of comprehensive information for the public, councillors, and officials as to who to contact in a private audit firm could deter individuals coming forward.<sup>110</sup>

**Protect**

108 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

109 Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018

110 Written evidence 305 (Protect)



**Recommendation 23: The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.**

We therefore see benefits to councillors being listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998, to make it easier for individuals to make protected disclosures to a councillor.

**Recommendation 24: Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.**

Under the current whistleblowing law in the UK, councillors are not listed as a 'prescribed person', which means that the disclosure of information to them in the public interest must meet a higher standard in order to attract employment protections.

Whilst it is accepted that reporting concerns to councillors is not appropriate in all circumstances, there have from our experience been scenarios where concerns have not been dealt with at an internal level, and due to nuances of the individual situation, the most effective way of bringing about scrutiny of the concerns may be to inform elected local government councillors.<sup>111</sup>

### **Protect**

Under the current legislation, ordinary disclosure within a line management chain has a lower bar for attracting employment protection. Generally, an employee would therefore make a disclosure to their manager (for example), before making a 'wider disclosure'. However, we accept that there will be instances where a local government officer may feel able only to make a disclosure to a councillor, rather than another officer.

111 Written evidence 305 (Protect)



# Chapter 7:

## Councils' corporate arrangements

### A more complex environment

A number of recent changes have created a more complex environment for local government which can impact on ethical standards.

Local Economic Partnerships (LEPs), which have access to up to £12 billion of funding via the Regional Growth Fund over five years, are one feature of this new environment. LEPs are partnerships between the private and public sectors. They usually cross local government boundaries, to reflect economic patterns rather than administrative functions. LEPs tend to be limited companies, but may also be voluntary partnerships that work through a specific local authority. LEPs are chaired by an individual drawn from the private sector and tend to have a majority private sector board. Funding was awarded to individual LEPs on the basis of the submission of strategic economic plans, and tends to be spent on areas such as transport or skills.

Councils may also embark on joint ventures – for example, partnering with a development company on a high-value housing project, or with an outsourcing firm to deliver back-office services. In such cases the council usually owns 50% of the company and is represented on its board.

Joint working and collaboration can improve outcomes by pooling resources and sharing knowledge. But partnerships also introduce complexity and mixed incentives that can create ethical risks.

The local government sector has also seen a significant change in the way councils are funded. Local government funding has moved from central block grant funding, towards locally-raised funds such as council tax precepts, business rates retention and fees.

Councils have been involved in high-value procurement for many years. However, this new funding environment has resulted in changes in the way that services are delivered, for example, by increased use of outsourcing. This may not always be a council's preferred mode of delivery and councils may feel forced to pursue a particular path in spite of the challenges in maintaining scrutiny, accountability, and high ethical standards.

The NAO has found that these changes have created an environment of financial uncertainty for local councils, who may find it difficult to match its revenue streams to cost pressures in discharging their statutory obligations.<sup>112</sup> The changes have therefore altered the imperatives for revenue generation, giving incentives for increasing the value of tax base from which council tax and business rates are raised, and for undertaking other revenue-generating activities, for example, by maintaining a commercial property portfolio.

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<sup>112</sup> National Audit Office (2018), *Financial sustainability of local authorities*. Available online at: <https://www.nao.org.uk/report/financial-sustainability-of-local-authorities-2018/>



## Resulting governance challenges

This complex environment – made up of partnerships, joint ventures, and other new entities – creates the potential for ethical risks. Ethical standards apply to how decisions are made, as much as to an individual's day-to-day conduct, and ethical decision-making is needed to ensure that councils act in the public interest.

In fact we often don't speak about it, all we talk about is people's conduct, whereas actually ethics comes into how decisions are made, how did you weigh this up against this, what constitutes fairness, what is the measure, what is the ethical basis for considering this or choosing this process.<sup>113</sup>

**Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea**

First, such complexity makes it difficult to identify who is accountable for particular decisions or outcomes. In turn, this can make it difficult for officers, councillors, and the public to hold local authorities and other sectoral bodies effectively to account. The *Municipal Journal*, reporting on a roundtable held jointly with the National Audit Office, quoted a participant who argued that “[...] governance has become impossible what with districts, counties, LEPs etc. What gets lost is the clarity of accountability.”<sup>114</sup>

Secondly, the complexity can create conflicts of interest. If a council officer or a councillor is a director of a limited company jointly-owned by the council, they will have fiduciary duties which have the potential to conflict with the interests of the council. Such conflicts may also

arise the other way around, when the council has to make decisions about a company in which it has a significant interest.

Thirdly, the growth in separate bodies – such as investment vehicles, joint ventures, and LEPs – can result in less transparency over decision-making. This is because the new bodies are not likely to be subject to the same reporting and transparency requirements and structures as the local authority itself, but are nonetheless carrying out functions crucial to the work of the authority. The need for proportionate commercial confidentiality adds a further dimension of complexity to this issue.

## Responding to the new governance challenges

### Setting up separate bodies

We have heard that local authorities setting up a separate body without sufficient clarity over the governance arrangements, can create a governance ‘illusion’, that because of its relative day-to-day independence the local authority is not responsible or accountable for its activities and propriety. To avoid this, attention needs to be paid to ethical governance at three key stages.

Individual members on outside bodies can be a problem; councillors' legitimacy comes from their election, and they need I think to import with them the ethical dimension that they have from being a councillor.<sup>115</sup>

**Barry Quirk CBE, Chief Executive, London Borough of Kensington and Chelsea**

113 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September

114 “What next for care and health?”, *Municipal Journal*, 22 February 2018, 16

115 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018



First, local authorities may set up bodies with very different structures and functions, that will require different governance arrangements. However, it is important that at the earliest stage, the authority considers and makes decisions about:

- what the relationship will be between the body and the local authority
- what role the statutory officers will have in overseeing its activities and providing assurance on its governance
- how and when the body will report to full council
- what the relationship will be between the body and individual councillors
- how councillors will scrutinise the activities of the body, in particular if it will fall within the remit of the audit or scrutiny committee, and if not, how else scrutiny will happen

Secondly, additional consideration needs to be given to governance if councillors or officers are to be involved or appointed to the body, for example as observers or as board directors. Ideally, the body should be set up so that its interests are aligned with the council's policy aims, in order to minimise any potential conflicts of interest. Nevertheless, if councillors or officers are appointed to the body, they should receive briefing on their governance responsibilities, in particular their legal responsibility to discharge any fiduciary duties to the new body.

The local authority needs, in particular, to consider whether councillors' involvement on the board would constitute a conflict of interest that will need to be managed if the authority makes decisions about the body.

Councils need to put safeguards in place where they decide to involve a council representative in a decision-making position on an ALEO [arm's-length external organisation]. These include procedures for dealing with conflicts of interest, making training and advice available, and personal liability insurance to protect board members in their role.<sup>116</sup>

### **Audit Scotland, *Councils' use of arm's-length external organisations (ALEOs)***

Audit Scotland outlined the advantages and disadvantages of councillors sitting on separate bodies in their report, *Councils' use of arm's-length external organisations (ALEOs)*.

### **Potential advantages of council nominees as board directors or trustees**

- can improve the relationship between the ALEO and the council
- can bring an insight into the council and its objectives and the broader community
- council representatives can gain valuable first-hand experience of service issues and different sectors

<sup>116</sup> Audit Scotland (2018), *Councils' use of arms-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)



### Potential disadvantages of council nominees as board directors or trustees

- can bring additional demands to their already diverse role
- representatives may lack the background, skills or understanding required of the role
- risk of conflict of interest between their role on the ALEO and their role on the council
- negative impact on council decision-making where councillors withdraw from committees owing to conflicts of interest
- exposure to legal risks and personal liability
- risk to continuity if councillors lose their position if not re-elected<sup>117</sup>

The disadvantages to councillors acting as directors or trustees for separate, council-owned or council-sponsored bodies suggests that this should not be considered a default option for local authority oversight of a separate body. Audit Scotland noted that, whilst they had not come across any cases of significant misconduct, appointing a member or officer in an observer or liaison capacity to the board of a body without a formal decision-making role could limit the potential for conflicts of interest.<sup>118</sup>

Council representatives can take a monitoring and liaison role as an alternative to taking a board position. This allows them to oversee and advise the ALEO without taking a decision-making role on the ALEO. Most of our sample group of councils had strengthened the role of such officers to give them greater seniority and influence. Their role involves managing the relationship between the council and the ALEO, and monitoring the performance of the ALEO and its compliance with its contracts or service agreements with the council.<sup>119</sup>

### **Audit Scotland, *Councils' use of arm's-length external organisations***

The code of conduct for councillors in Scotland includes a provision exempting councillors from the requirement to withdraw from a discussion where they have an interest, if that interest is by virtue of being appointed to a body which is 'established wholly or mainly for the purpose of providing services to the councillor's local authority' or which has 'entered into a contractual arrangement with that local authority for the supply of goods and/or services to that local authority'. This exemption was put in place "[...] so that ALEOs can function with councillors as members. It also recognises that it is not practical for a councillor to always remove themselves from council discussions relating to the ALEO".<sup>120</sup> However, councillors may still not take part in any decision-making in relation to that body where it is in a quasi-judicial capacity, and ideally not in decisions relating to funding of that body.

117 Audit Scotland (2018), *Councils' use of arm's-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

118 Audit Scotland (2018), *Councils' use of arm's-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

119 Audit Scotland (2018), *Councils' use of arm's-length external organisations (ALEOs)*. Available online at: [http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180518\\_councils\\_aleos.pdf](http://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180518_councils_aleos.pdf)

120 Standards Commission for Scotland (2016), *Advice for councillors on ALEOs*. Available online at: [http://www.standardscommissionscotland.org.uk/uploads/tiny/mce/160928%20Advice%20for%20Councillors%20on%20ALEOs\(FINAL\)%20.pdf](http://www.standardscommissionscotland.org.uk/uploads/tiny/mce/160928%20Advice%20for%20Councillors%20on%20ALEOs(FINAL)%20.pdf)



We accept that, in some circumstances, local authorities in England may be justified in granting a member a dispensation under section 33 of the Localism Act 2011 for decision-making regarding a separate body on which the member has a formal role. This is because the exact nature of any potential conflict will vary depending on the relationship between the authority and the body in question. Councillors should always declare their interest if they hold a position with a council-owned or council-sponsored body. However, in general, we suggest that local authorities consider councillors or officers having observer, rather than director, status on a relevant board so as to minimise potential conflicts of interest.

Thirdly, both the body and the local authority need to practice ongoing assurance, oversight, and transparency, and regularly review the governance procedures to ensure that they are still appropriate.

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

## Local Enterprise Partnerships (LEPs)

Our evidence suggests that there can be a lack of transparency around Local Enterprise Partnerships (LEPs), and gaps in the processes within LEPs to manage potential conflicts of interest.

I've encountered ward members during my LEP board experience, which works well. But more support is needed for LEP panel members in terms of processes and accessibility.<sup>121</sup>

**Nicola Greenan, Director, East Street Arts, and LEP board member**

An internal government review of the National Assurance Framework, led by Mary Ney, a non-executive director of MHCLG, found problems with the governance arrangements for LEPs. Ney found, for example, that whilst LEPs will adopt a conflict of interest policy and maintain registers of interests, “[...] the content of policies and approach to publication varies considerably and is dependent on the overall cultural approach within the organisation”.<sup>122</sup>

The report also identified a need to consider “[...] the position of public sector members on LEP boards in the context of the changing role of local authorities and their increased involvement in commercial enterprises and alternative delivery mechanisms. This is currently somewhat underdeveloped in terms of LEP governance implications”.<sup>123</sup> Ney recommended that “[...] the National Assurance Framework requires LEPs to include in their local statements how scenarios of potential conflicts of interest of local councillors, private sector and other board members will be managed whilst ensuring input from their areas of expertise in developing

<sup>121</sup> Nicola Greenan, Visit to Leeds City Council, Tuesday 18 September 2018

<sup>122</sup> Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.1

<sup>123</sup> Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 3.4



strategies and decision-making, without impacting on good governance".<sup>124</sup>

We agree with Ney's conclusions and recommendations. We welcome MHCLG's commitment to implement in full the recommendations from the Ney review. We also welcome the department's commitment, in *Strengthened Local Enterprise Partnerships*, to improve scrutiny and peer review among LEPs.<sup>125</sup>

### **Ethical standards and corporate failure**

Our evidence suggests a strong link between failings in ethical standards and corporate failure by councils.

The most obvious way in which this can happen is through a culture of 'slackness', where low level breaches of ethical standards go unchallenged and unaddressed. This can then seep into the culture of an authority and allows for more significant wrongdoing to take place, which would have significant implications for the performance and reputation of the council.

However, in most cases the process is more complicated, and several factors are jointly present in order for serious corporate governance failings to take place. As part of our review, we examined reports from high-profile cases of corporate governance failure.

### **Tower Hamlets Borough Council (incidents between 2010-14, report by PWC Best Value inspection, 2014)<sup>126</sup>**

The Best Value report was commissioned by DCLG to consider four different areas where the council allegedly failed to provide 'best value': payment of grants; transfer of property; spending on publicity; and processes on entering into contracts. The report found problems within the local authority in respect of the first three strands.

The report noted a lack of transparency over reasoning for grant decisions, and an abrogation of governance and oversight by the relevant committee, who would discuss the detail of decisions rather than following and overseeing the overarching mechanisms and methodologies that the authority had put in place.

The report also concluded that there were potential conflicts of interests, as well as a lack of transparency and rigour in the reasoning of decisions to transfer property.

The inspectors found an ambiguity in the demarcation between official and political activity by officers.

The report concluded that there were inadequate governance arrangements, in particular a failure to follow declaration and conflict of interest requirements rigorously, and a failure of officers to follow through on resolutions relating to governance and oversight.

<sup>124</sup> Department of Communities and Local Government (2017), *Review of Local Enterprise Partnership governance and transparency*, 6.3

<sup>125</sup> Ministry of Housing, Communities and Local Government (2018), *Strengthened Local Enterprise Partnerships*

<sup>126</sup> PricewaterhouseCoopers LLP (2014), *Best value inspection of London Borough of Tower Hamlets*. Available online at: <https://www.gov.uk/government/publications/best-value-inspection-of-london-borough-of-tower-hamlets>



### **Doncaster Metropolitan Borough Council (incidents between 2005-09, report of the Audit Commission Corporate Governance Inspection, 2010)<sup>127</sup>**

The Audit Commission found in 2009 that Doncaster was a 'failing council'. Its governance failings at that time meant that it did not have the capacity to secure needed improvement in services. The Audit Commission identified three areas which were "[...] individually divisive and collectively fatal to good governance, each serving to compound and magnify the negative impacts of the others":

- the way the council operates to frustrate what the Mayor and Cabinet seek to do
- the lack of effective leadership shown by the Mayor and Cabinet
- the lack of leadership displayed by some chief officers, and the way they have all been unable to work effectively together to improve services

The commission concluded that councillors placed political objectives, in particular frustrating the work of the council leadership, above their public duties.

The inspection found that the scrutiny function in the council was not undertaking genuine scrutiny, but rather was acting as a parallel executive decision-making process, for example, in drawing up its own budget and policy rather than considering the proposals and decisions made by the Cabinet.

The 2009 IDeA ethical governance healthcheck found that individual councillor behaviours at Doncaster were "venomous, vicious, and vindictive".<sup>128</sup> The commission report likewise found evidence of bullying and intimidating behaviour, for example, "comments such as 'we have long memories' and 'we will get you' made to officers when, in the course of their professional duty, they have given advice which certain councillors are uncomfortable with or dislike".

The commission also found that officers were collectively unable to withstand pressure from some senior councillors, compromising their impartiality and leading to a loss of trust by other councillors. The report also suggested that the leadership style of the interim Chief Executive compromised the impartiality of officers; and that inexperienced leadership by the Mayor further weakened the governance of the council.

<sup>127</sup> Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*. Available online at: <https://webarchive.nationalarchives.gov.uk/20121206054613/http://www.audit-commission.gov.uk/inspection-assessment/local-gov-inspection/reports/Pages/201004doncastermetropolitanboroughcouncilcorporategovernanceinspection.aspx>

<sup>128</sup> Cited in Audit Commission (2010), *Doncaster Metropolitan Borough Council: Corporate Governance Inspection*, para 34



### **Northamptonshire County Council (events taking place between 2015-17; report by Max Caller CBE, Best Value Inspector, 2018)<sup>129</sup>**

Whilst the problems faced by Northamptonshire Council were primarily financial, underlying these was a lack of scrutiny, both at an overall level and at the level of individual councillors being permitted to ask questions.

The inspection team said that they were “[...] struck by the number of councillors who told us that they had been refused information when they sought to ask questions”.

“Members told us that they had been informed that ‘you can only ask that at scrutiny meetings and not outside a meeting’ that ‘I need to get permission from the Cabinet member to discuss this with you’ or just not getting a response. Councillors told us that they felt if they asked difficult questions at Audit Committee or scrutiny meetings they would be replaced and there was some evidence to support this.”

The report also commented that “[...] there had been no attempt to review either successful or unsuccessful budget inclusions in past years to learn lessons as to why things went well or failed to be delivered”.

Based on these reports, and our broader evidence, we have identified three common threads in cases of corporate governance failings, all of which are linked to failures in upholding the Seven Principles of Public Life.

First, an unbalanced relationship between members and officers. This involves a breakdown in the structures of accountability and objectivity, which should allow officers to provide quality, impartial advice to the members who are ultimately accountable for the work of the council. When this is unbalanced, with either officers or members becoming over-dominant, or a blurring of the official and political, there is a risk that decisions are not made in the public interest.

What you see in cases of corporate failure is that the relationship between members and officers gets ‘bent’ – either with over-dominant councillors and weak officers, or indeed vice versa. A ‘member-led authority’ can become ‘member-dominant’.<sup>130</sup>

**Dame Stella Manzie DBE**

Secondly, a lack of understanding and appreciation of governance processes and scrutiny. All the examples we describe above involve a lack of a proper scrutiny function, fundamental to the Nolan Principles of openness and accountability. Scrutiny, oversight, and audit processes can stagnate when there is a lack of appreciation of why they exist. Scrutiny should not be a process of rubber-stamping, but rather a probing of policy intent, assessment of financial viability, testing of assumptions, and weighing of evidence to ensure that decisions made, are made in the public interest. Local authorities should therefore not be afraid of the scrutiny function or treat it lightly, but should welcome opportunities to strengthen proposals and realise the benefits of bringing potential issues to light at an early stage.

<sup>129</sup> Max Caller CBE (2018), *Northamptonshire County Council Best Value Inspection*. Available online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690731/Best\\_Value\\_Inspection\\_NCC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690731/Best_Value_Inspection_NCC.pdf)

<sup>130</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



If you don't maintain a culture, it doesn't happen by itself. You have to work on it, live it, you have to work on it with people who try and breach it (because they don't understand). A good ethical culture atrophies quite quickly.<sup>131</sup>

**Max Caller CBE**

Thirdly, a culture of fear or bullying. This was a strong theme of the cases we considered. When individuals are fearful of speaking up then poor behaviour goes unreported and can become part of an authority's culture. Similarly, when an individual is subject to bullying by another, this can result in undue pressure to act, or refrain from acting, in a way that is contrary to the public interest. A culture of fear or bullying is fundamentally a failure of leadership, whether leaders fail to tackle wrongdoing when it occurs or are themselves the ones who are doing the bullying.

Left unchecked, standards risks can be realised and become instances of corporate failure. The danger of corporate failure points to a need for councils to identify when standards and governance are at risk, and develop and maintain an ethical culture, to protect against those risks in their own authority.

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131 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



# Chapter 8: Leadership and culture

## Leadership

Leadership is essential in embedding an ethical culture. We have considered throughout our review where, primarily, leadership comes from in local government – who sets the tone when it comes to ethics and standards. We have concluded that leadership is needed from a range of senior individuals, given the multi-faceted nature of local government and the distinctive remits of different roles.

Leadership is needed from a local authority's standards committee. Standards committees play a role not just in formally adjudicating on alleged breaches of the code of conduct, but by continuously reviewing ethical standards in the council, and drawing the authority's attention to areas where standards could be better upheld. Standards committees should see themselves as playing a leadership role in setting expectations of behaviour and continually holding the authority to account on standards issues.

The Chief Executive also plays an important role, especially among officers. Their leadership role includes modelling high standards of conduct, particularly those distinctive to officers in respect of political impartiality and objectivity. But the Chief Executive must also show leadership by empowering other senior officers – such as the Monitoring Officer – to carry out their role effectively. The Chief Executive is ultimately responsible for guarding the demarcation between officers and members, and needs to be clear about when members need to take a decision, and when officers should have the discretion to carry out their roles as they see fit.

If the Chief Executive is weak and senior officers are not backed up then they are stymied as there is nowhere else to go.<sup>132</sup>

**Dame Stella Manzie DBE**

Leaders of political groups play a vital leadership role among councillors. Political group leaders set the tone for how new councillors will engage with each other, and set expectations for how councillors will engage with officers. Leader of political groups not only need to model high standards themselves, but should be quick to address poor behaviour when they see it. They should seek to mentor and advise councillors in their party on how to maintain standards of conduct, and be willing to use party discipline when necessary. The leader of the council plays an important role here: as the most visible group leader, they should model the highest standards of conduct and address any poor behaviour by portfolio-holders.

Where group leaders can appoint councillors to the standards committee, they should demonstrate leadership by appointing members who have the experience and commitment to fulfil that role effectively.

Last, there is a leadership role played by the chair of the council. When this post is occupied by a senior and respected member, they can play a role in setting the tone of full council meetings, and ensure that councillors – regardless of party group – are aware of the expectations for how they engage with each other and with officers. This is particularly important in order to provide support for councillors who are not members of a political group, which we discuss further below.

<sup>132</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



## Turning around a culture

As part of our review, we took evidence from a number of experienced Chief Executives and Commissioners who have each turned around an unhealthy organisational culture in one or more local authorities.

This evidence, alongside our consideration of reports on corporate failures at specific authorities over the recent years, suggests that four measures are needed from senior leaders in order to turn around an unhealthy culture.

First, senior leadership modelling the expected behaviours and signalling from the first day how these behaviours look, sound and feel. This is particularly the case, as we have discussed above, in the early days of a new council or in the case of corporate renewal, once new senior officers or commissioners have been put in place. As well as modelling the expected behaviour, this element of installing and maintaining an ethical culture is about a present, visible and accessible leadership.

As a leader in a council in trouble I think you have to be absolutely clear what you expect, and model that behaviour every day.<sup>133</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**

I meet every new starter and tell them “You are a fresh pair of eyes. Do call things out. You are a really valuable asset”, so you set that expectation to challenge and seek improvement really early on.<sup>134</sup>

**Dawn French, Chief Executive,  
Uttlesford District Council, Essex**

This demonstrated form of visible leadership can also straddle the member-officer divide, with meetings between new officers and council and group leaders to discuss standards being routine until the tone of the council is reset.

Secondly, an attentiveness to even small practices that do not match expected behaviour. Taking a ‘zero tolerance’ approach even to small breaches may be disproportionate when there is a healthy culture, but is necessary to embed the required behaviours when trying to reverse an unhealthy culture.

There have been standards issues in the authorities in which [I have worked], ranging from informality about the parking passes, to trying to keep information away from the opposition, to informality in granting licences, or to circumventing proper financial regulations. Even the lowest level of wrongdoing needs attention, through a private conversation, and when unaddressed can lead to more significant wrongdoing.<sup>135</sup>

**Dame Stella Manzie DBE**

Thirdly, the timely, fair and accurate identification by senior leadership of opportunities for development and occasions for discipline of those who are in danger of breaching the rules. An effective leader turning around an unhealthy culture will identify the underlying motives of behaviour, to judge whether it is more appropriate privately to advise and correct an individual, or to discipline them.

<sup>133</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>134</sup> Dawn French, Visit to Uttlesford District Council, Monday 10 September 2018

<sup>135</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018





Opportunities to develop individuals to build a more effective culture may change over time, and this is even more the case for a council experiencing a period of transition.

Fourthly, whilst there is clearly a role for interim appointments in order to provide transitional leadership, interim arrangements should not be overstretched, to allow new leaders to embed long-term changes to the organisation's culture.

When you have prolonged interim officers, that has a problem for the culture in the longer term. In the interim term, they [interim appointees] can never start to work on those sorts of things.<sup>136</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**

### The role of political groups

Whilst political parties can form only part of the system, and are not a substitute either for effective senior officers, or for the formal standards process, they nevertheless have an important role to play in showing leadership and maintaining an ethical culture.

All the political parties need to get a lot more organised and coherent about standards in local authorities. That would still be important even if local authorities had the power to sanction councillors.<sup>137</sup>

**Dame Stella Manzie DBE**

The role of party groups in maintaining an ethical culture can be conceptualised in two ways. The first is a 'parallel' model, where the activities of political groups are undertaken in parallel alongside activities of the local

authority, for example, parallel disciplinary processes, training, and so on. The second is a 'layered' model, where political groups play a distinct role that sits between direct advice from officers on the one hand and formal processes undertaken by the local authority on the other.

We see risks in local authorities adopting a 'parallel' model. In practice, parallel processes will mean either that political groups are not used and engaged with effectively, which neglects opportunities for informal training and resolution; or that the effective standards training and discipline become, in time, delegated to political groups, which lacks the necessary checks, independence, and transparency. Such a model also tends to depend heavily on individual post-holders, which means that the authority may face standards risks if there is a change either in political leadership or in those occupying senior officer posts.

Rather, local authorities should see political groups as a semi-formal institution in the 'layered' model. We heard that group whips will often see mentoring new councillors and supporting existing councillors as an important part of their role. When it comes to training, local authorities should value and utilise the informal mentoring and support within political groups that can complement the formal training offered by the local authority and advice from officers. Senior officers should regularly engage with group whips and group members to understand the training needs of members and to ensure that the right expectations are set for how councillors act in the chamber, on committees, with officers, and on outside bodies.

With respect to disciplinary processes, ideally the Monitoring Officer or deputy should

<sup>136</sup> Max Caller CBE, Individual oral evidence, Thursday 20 September 2018

<sup>137</sup> Dame Stella Manzie DBE, Individual oral evidence, Monday 20 August 2018



seek early, informal resolution of emerging issues with members. If, for whatever reason, it is considered that a direct approach is inadvisable or the issue is politically sensitive, senior officers should seek to work with group leaders and whips in order to address the issue of a member's conduct. Where there is a formal complaint, or the issue is a serious one, the formal standards processes should be followed, with the necessary checks and transparency.

There is a balance here, and it is about degrees; I know there are times when it's right to go through a formal process in the council with the greater transparency that brings. But there are also times when any sanction would fail if it went through that process. But actually the person probably has gone further than they should have done, it's up against that fine line of the Seven Principles and what they need is a stern warning. It's better sometimes to have that reflected on during 30 days' suspension from their group rather than go through a formal process that finds that there is insufficient evidence.<sup>138</sup>

**Cllr Rory Love, Chair, Association of Conservative Councillors**

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

We heard evidence of the difficulties presented by new political groups, or independent members who sit outside the formal group structures. New political groups will not always enable the mentoring of new councillors, to

set expectations of behaviour, or for officers to draw on long-standing working relationships with group leaders. In the case of councillors who sit outside group structures, party discipline and the use of informal approaches to deal with potential misconduct are not possible. As a result, we heard that, generally, political groups can maintain ethical standards more effectively in an authority when they tend to be larger and better resourced. This points to a need for officers to provide greater support and ensure a full induction process for councillors who lack the support of an established political group.

### **Building an ethical culture**

The aim of a standards system is ultimately to build an ethical culture: to embed high standards throughout an organisation, so that it becomes an integral part of how the organisation works as a whole, and how each individual person goes about their role within it. Having a system which effectively investigates complaints which is punitive where necessary is important; what is more important is a system which enables good behaviour.

An ethical culture starts with tone. A civil tone when conducting politics is the basic starting point for a healthy ethical culture. This is true both for the relationship between councillors and officers, and the relationship between different councillors. A common aim of elected members and those supporting them is to work for the benefit of the community they all serve. This provides a solid basis for an ethical culture. Of course, such civility does not mean that individual members or officers should not feel free to challenge or pursue inquiries, but concerns can be expressed in such a way as to be constructive and civil in tone.

Secondly, a local authority needs to set clear expectations of behaviour, as well as its

<sup>138</sup> Cllr Rory Love, Individual oral evidence, Wednesday 27 June 2018



underlying rationale, namely to enable the local authority to perform its functions in a way which is in the public interest. This behaviour needs to be modelled by senior leaders and the expectations of behaviour need to be followed through in advice from officers and group leaders, and any party discipline or sanctions process. The expected behaviour of councillors needs to be set out at an early stage in induction and training programmes.

Our evidence from local authorities suggests that induction for councillors at the earliest stage is crucial to ensuring high standards of conduct. Councils we visited that had not previously arranged training or left it until the dynamics of the groups were set after a new term, were now putting plans in place to ensure that training could occur at an earlier stage in subsequent terms. Councils who perceived they had an effective ethical culture attributed this to early and effective induction of councillors with clear messages from senior leadership about attendance.

To be successful, induction training should not be dry or compliance-focussed, but should set out the rationale for high standards in public life, and should be scenario-based so that councillors can engage with concrete examples and see the relevance of standards to different areas of activity in which they might be involved.

The evidence we received suggests that such training, even where offered, may not always be taken up by councillors. We therefore suggest that a stronger role should be played by political groups and national political parties to ensure that councillors attend relevant training on ethical standards where this is offered by their local authority.

**Recommendation 25: Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.**

We have considered whether any particular voting pattern – electing councillors every four years, in halves, or in thirds – makes it easier to induct councillors or to preserve an ethical culture. We have concluded that each pattern has advantages and drawbacks in preserving an ethical culture, given the trade-off between regularity of turnover, and the proportion of councillors who are potentially replaced at each election. There is no ‘optimal’ pattern; what matters more is early induction by the local authority.

Thirdly, an objective, impartial Monitoring Officer, who enjoys the confidence of members and of senior officers, is essential. It is important that councillors of all parties know that they can approach the Monitoring Officer in confidence for authoritative and impartial advice.

Fourthly, an ethical culture is an open culture. A local authority should take an open approach to its decision-making, with a presumption that reports and decisions should be public unless there are clear and lawful reasons that the information should be withheld.

When scrutiny is seen as an unnecessary evil and that is what the culture is, it is difficult to know whether decisions are being made properly.<sup>139</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**



We have been concerned by reports of councils relying unnecessarily on commercial confidentiality as a reason to withhold information, and of using informal working groups or pre-meetings in order to hold discussion out of the view of the public, in full cabinet or full council. As the House of Commons Communities and Local Government Committee concluded in relation to commercial information held by local authorities, “[...]we cannot see a justification for withholding such information from councillors [...] councils should be reminded that there should always be an assumption of transparency whenever possible, and that councillors scrutinising services need access to all financial and performance information held by the authority”.<sup>140</sup>

High quality and engaged local journalism can help to maintain standards by bringing to light council’s decisions and councillors’ behaviour. We heard in Camden Council, for example, that maintaining an ethical culture was helped by a highly engaged civic community and strong local press, due to the expectation that behaviour and decisions would be publicly reported.

In Camden, we have a very active local press. There is not much that we do that doesn’t get reported. That is probably one (amongst a number) of the positive drivers towards high standards among councillors – what our councillors do and how they behave matters as it is noticed and reported on.<sup>141</sup>

**Andrew Maughan, Monitoring Officer,  
Camden Council**

We are aware, however, that there is a decline of public interest journalism undertaken by the local press in many areas of the country. In some areas of the UK, public-interest journalism is undertaken privately by bloggers, but the quality of such journalism can vary significantly. This suggests to us that local government as a sector cannot rely on public interest journalism to provide the requisite transparency in decision-making; rather local authorities must have the right processes and attitudes in their own organisation to enable external scrutiny of behaviour and decisions.

The role of public-interest journalism is ‘telling people things they didn’t know’. It includes both an investigative aspect and encouraging public engagement with local democracy.<sup>142</sup>

**Darryl Chamberlain, editor, 853 blog**

The scrutiny function within a local authority is vital to ensure effective and ethical decision-making. An authority should welcome and support scrutiny, seeing it as an opportunity to improve the quality of decision-making by challenging assumptions, probing policy intent, and testing viability. An authority should ideally take a risk-based approach to scrutiny, submitting decisions which carry the greatest risk to the greatest degree of scrutiny. The definition of risk should be based on the risk to the public interest, in respect of the authority’s duties, not reputational risk to the organisation.

<sup>140</sup> House of Commons Communities and Local Government Committee (2017), *Effectiveness of local authority overview and scrutiny committees*, HC 369, para 41

<sup>141</sup> Andrew Maughan, Visit to Camden Council, Monday 15 October 2018

<sup>142</sup> Darryl Chamberlain, Individual oral evidence, Tuesday 4 September 2018



[In an unhealthy organisational culture], self regard takes over and leaders end up spending their time looking at risk registers about reputational damage, rather than what the risks to the public are.<sup>143</sup>

**Barry Quirk CBE, Chief Executive,  
Royal Borough of Kensington &  
Chelsea**

Common law rights of councillors to know what is going on are well established in local government. It is not about regulations (although they are there), it is about making sure the culture says ‘these people are elected and have entitlement to know and there are some rules about confidentiality’. They can’t pursue cases where they have individual reasons for not being involved.<sup>144</sup>

**Max Caller CBE, Commissioner,  
Northamptonshire County Council**

Councils should be open to processes such as peer review, for example, as offered through the Local Government Association, in order to test the effectiveness of their culture and organisational and governance structures. Such reviews should also include consideration of the processes the authority has in place to maintain ethical standards.

**Recommendation 26: Local Government Association corporate peer reviews should also include consideration of a local authority’s processes for maintaining ethical standards.**

In the first instance, officers and portfolio-holders need to take decisions in a way that are open to scrutiny by council members. Local government differs from central government in that officials are accountable to full council, not to the administration. Council officers therefore have a general obligation to provide information to councillors and to account for decisions to councillors. Officers should ensure that members are aware of their right to gain information and to ask questions, and the culture of the authority should reflect the accountability of officers and the administration to full council.

143 Barry Quirk CBE, Individual oral evidence, Wednesday 19 September 2018

144 Max Caller CBE, Individual oral evidence, Thursday 20 September 2018



# Conclusion

High standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Throughout this review, we have seen and heard that both councillors and officers want to maintain the highest standards in their own authorities. The challenge is to maintain a system that serves the best instincts of councillors and officers, whilst guarding against corporate standards risks, and addressing the problem of a small minority of councillors who demonstrate unacceptable behaviour.

A robust system, which includes adequate codes of conduct, investigation mechanisms and safeguards, and – where necessary – punitive sanctions, is important. What is more important, however, is a system and culture that enables good behaviour.

Our recommendations represent a package of reforms to strengthen and clarify the existing framework for local government standards. Whilst many of our recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – we would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly. The best practice we have identified is, in most cases, already operating in a number of local authorities. Taken as a whole, this best practice represents a benchmark that any local authority in England can and should implement in their own organisation. We intend to monitor the uptake of our best practice in 2020.

Ultimately, however, responsibility for ethical standards rests, and should remain, with local authorities. Senior councillors and officers must show leadership in order to build and maintain an ethical culture in their own authority.

We are confident that local government in England has the willingness and capacity to maintain the highest standards in public life; the recommendations and best practice we have outlined will enable them to do so.



# Appendix 1: About the Committee on Standards in Public Life

The Committee on Standards in Public Life (the Committee) is an advisory non-departmental public body sponsored by the Cabinet Office. The chair and members are appointed by the Prime Minister.

The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference: *“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”*

The remit of the Committee excludes investigation of individual allegations of misconduct.

On 12 November 1997, the terms of reference were extended by the then Prime Minister: *“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”*

The terms of reference were clarified following the Triennial Review of the Committee in 2013. The then Minister for the Cabinet Office confirmed that the Committee *“[...] should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies”, and that “the government understands the Committee’s remit to examine ‘standards of conduct of all holders of public office’ as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public office”.*

The Committee is a standing committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit those areas and monitor whether and how well its recommendations have been put into effect.

## **Membership of the Committee, as of January 2019**

Lord (Jonathan) Evans of Weardale KCB DL,  
Chair

The Rt Hon Dame Margaret Beckett DBE MP  
Simon Hart MP

Dr Jane Martin CBE

Dame Shirley Pearce DBE

Jane Ramsey

Monisha Shah

(leave of absence since October 2018)

The Rt Hon Lord (Andrew) Stunell OBE

## **Secretariat**

The Committee is assisted by a Secretariat consisting of Lesley Bainsfair (Secretary to the Committee), Ally Foat (Senior Policy Advisor), Stuart Ramsay (Senior Policy Advisor), Nicola Richardson (Senior Policy Advisor) (from January 2019), Aaron Simons (Senior Policy Advisor) (from January 2019), Lesley Glanz (Executive Assistant) (from December 2018) and Amy Austin (Executive Assistant and Policy Advisor). Press support is provided by Maggie O’Boyle.

Professor Colin Copus acted as academic advisor to the Committee during the review.



## Appendix 2: Methodology

The Committee used a range of methods as part of its evidence gathering for this review, including:

- a public consultation, which received 319 responses, published online alongside our review
- 30 individual stakeholder meetings
- desk research, including:
  - research on the legal framework for local government standards
  - analysis of a sample of 20 principal authority codes of conduct
  - analysis of reports of corporate failure
- roundtable seminars, with Monitoring Officers, clerks and Independent Persons; and academics and think tanks
- five visits to local authorities in England

### Stakeholder meetings

The Committee held 30 meetings with individual stakeholders. These meetings were all held on the basis that the no note of the meeting would be published, and material from the meeting would only be quoted in our report with the permission of the individual concerned.

Name	Role and organisation
Marie Anderson	Northern Ireland Local Government Commissioner for Standards
Nick Bennett	Public Service Ombudsman for Wales
Clive Betts MP	Chair, House of Commons Housing, Communities and Local Government Committee
Max Caller CBE	Best Value Inspector, Northamptonshire County Council
Darryl Chamberlain	Editor, 853 blog
Kirsty Cole	Deputy Chief Executive, Newark and Sherwood District Council
Kevin Dunion OBE*	Convenor, Standards Commission for Scotland
Jonathan Goolden	Wilkin Chapman LLP
Justin Griggs	National Association of Local Councils





Name	Role and organisation
Cllr Liz Harvey	Councillor and subject of R (Harvey) v Ledbury Town Council
Cllr Simon Henig CBE	Chair, Association of Labour Councillors
Mayor Dave Hodgson	Chair, Association of Liberal Democrat Councillors
Lorna Johnston	Executive Director, Standards Commission for Scotland
Lord (Robert) Kerlake	Former Permanent Secretary, Department of Communities and Local Government
Michael King	Local Government Ombudsman
Cllr Rory Love	Chairman, Association of Conservative Councillors
Dame Stella Manzie DBE	Former Chief Executive, Birmingham City Council
Graeme McDonald	Chief Executive, Solace
Jacqui McKinlay	Chief Executive, Centre for Public Scrutiny
Diana Melville	Governance Advisor, CIPFA (The Chartered Institute of Public Finance and Accountancy)
Aileen Murphie and Abdool Kara	National Audit Office
Mark Norris	Local Government Association
Cllr Marianne Overton MBE	Local Government Association Vice Chair (Independent)
David Prince CBE	Former Chief Executive, Standards for England, and former member of CSPL
Dr Barry Quirk CBE	Chief Executive, Royal Borough of Kensington and Chelsea
Cllr David Simmonds CBE	Former Local Government Association Vice Chair (Conservative)
John Sinnott and Lauren Haslam	Chief Executive and Director of Law and Governance, Leicestershire County Council
Rishi Sunak MP	Minister for Local Government
Richard Vize	Former editor, Local Government Chronicle
Rob Whiteman	Chief Executive, CIPFA (The Chartered Institute of Public Finance and Accountancy)

\* Presentation on the work of the Standards Commission for Scotland at the Committee's October 2018 meeting



## Roundtable seminars

The Committee held two roundtable seminars as part of this review. The first took place on Wednesday 18 April 2018 in Birmingham, with Monitoring Officers, clerks, and Independent Persons, and was held on the basis that a non-attributed summary note of the seminar would be published following approval by attendees, but verbatim material from the seminar would only be quoted in our report with the permission of the individual concerned. The summary note was published on our website on 14 May 2018. The second took place on Tuesday 24 April 2018, with academics and think tanks, and was held on the basis that a transcript of the seminar would be published following approval by attendees. This was published on our website on 14 May 2018.

### Monitoring Officers, Clerks, and Independent Persons roundtable Wednesday 18 April

Name	Organisation
Dr Peter Bebbington	Stratford-upon-Avon District Council
Lord (Paul) Bew	Committee on Standards in Public Life
Kate Charlton	Birmingham City Council
Tom Clark	Mid Sussex District Council
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Jonathan Goolden	Wilkin Chapman LLP
Philip Horsfield	Lawyers in Local Government
Simon Mansell MBE	Cornwall Council
Tim Martin	West Midlands Combined Authority
Dr Jane Martin CBE	Committee on Standards in Public Life
Sharn Matthews	Northampton Monitoring Officers Group
Megan McKibbin	Ministry of Housing, Communities and Local Government
Lis Moore	Society of Local Council Clerks
Dr Jonathan Rose	Department of Politics & Public Policy, De Montfort University
Richard Stow	Herefordshire County Council
Meera Tharmarajah	National Association of Local Councils
Jeanette Thompson	North Hertfordshire District Council



## Academics and think tanks roundtable Tuesday 24 April 2018

Name	Organisation
Lord (Paul) Bew	Committee on Standards in Public Life
John Cade	INLOGOV, University of Birmingham
Professor Colin Copus	Local Governance Research Unit, Leicester Business School
Ellie Greenwood	Local Government Association
Paul Hoey	Hoey Ainscough Associates
Dr Jane Martin CBE	Committee on Standards in Public Life
Megan McKibbin	Ministry of Housing, Communities and Local Government
Jacqui McKinlay	Centre for Public Scrutiny
Mark Norris	Local Government Association
Dame Shirley Pearce DBE	Committee on Standards in Public Life
Jane Ramsey	Committee on Standards in Public Life
Rt Hon Lord (Andrew) Stunell OBE	Committee on Standards in Public Life
Brian Roberts	CIPFA (Chartered Institute for Public Finance and Accountancy)
Professor Tony Travers	London School of Economics and Political Science
Daniel Thornton	Institute for Government



## Local authority visits

The Committee undertook visits to five principal authorities in England. The five local authorities were selected to ensure a representative range of geographies, tiers of local government, and political control. All five authorities had made written submissions to the Committee's consultation.

Local authority	Date	Meetings
Uttlesford District Council	10 September 2018	Standards committee; Chief Executive; Monitoring Officer; Independent Persons; parish council chair; Essex Association of Local Councils
Worcestershire County Council	11 September 2018	Standards committee; group leaders; Chief Executive; Monitoring Officer; Independent Person; independent members of standards committee
Leeds City Council	18 September 2018	Standards committee; Chief Executive; Deputy Monitoring Officer; Independent Person; Leader and Deputy Leader; Leader of the Opposition; group whips; community representative
Cornwall Council	24 September 2018	Standards committee; Chief Executive; Monitoring Officer and Deputy Monitoring Officer; Leader; Independent Persons; independent members of standards committee; Cornwall Association of Local Councils
Camden Council	15 October 2018	Monitoring Officer; Chief Executive; Administration Chief Whip; Leader of the Opposition; Independent Person*

\*Follow-up telephone conversation



## **Committee on Standards in Public Life**

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January 2019

## **Local Government Association**

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

#### **Joint statement**

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

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

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

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

## **Introduction**

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

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

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

## **Definitions**

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

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

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

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

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

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



## **General principles of councillor conduct**

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

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

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

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

In undertaking my role:

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

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

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

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

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

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

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

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

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

## **Standards of councillor conduct**

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

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

### **General Conduct**

#### **1. Respect**

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

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

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

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

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

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

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

### **As a councillor:**

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

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

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

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

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

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

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

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

**As a councillor:**

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

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

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

**As a councillor:**

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

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

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

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

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

## **5. Disrepute**

**As a councillor:**

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

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

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

## **6. Use of position**

**As a councillor:**

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

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

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

**As a councillor:**

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

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

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

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

Examples include:

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

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

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

### **As a Councillor:**

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

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

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

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

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

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

### **9. Interests**

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

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

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

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

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

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

## **10. Gifts and hospitality**

**As a councillor:**

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

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

## **Appendices**

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

The principles are:

#### **Selflessness**

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

#### **Integrity**

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

#### **Objectivity**

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

#### **Accountability**

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

#### **Openness**

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

#### **Honesty**

Holders of public office should be truthful.

#### **Leadership**

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



## Appendix B Registering interests

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

“**Disclosable Pecuniary Interest**” means an interest of yourself, or of your partner if you are aware of your partner’s interest, within the descriptions set out in Table 1 below.

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

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

### Non participation in case of disclosable pecuniary interest

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

### Disclosure of Other Registerable Interests

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

## Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. 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.
8. Where a matter arises at a meeting which **affects** –
  - a. your own financial interest or well-being;
  - b. a financial interest or well-being of a relative, close associate; or
  - c. a body included in those you need to disclose under Other Registrable 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

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

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

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

### Table 1: Disclosable Pecuniary Interests

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

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

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

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

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

**Table 2: Other Registrable Interests**

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

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

The recommendations cover:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## NOTES



## **5. CODES AND PROTOCOLS**

### **PART 5.1 MEMBERS' CODE OF CONDUCT**

#### **CONTENTS**

PART A General

PART B Obligations and Conduct

PART C Disclosable Pecuniary Interests

PART D Other Interests

PART E Sensitive Interests

PART F Dispensations

Schedule 1 The Nolan Principles

Schedule 2 Disclosable Pecuniary Interests - Definitions

# SCARBOROUGH BOROUGH COUNCIL

## PART A – GENERAL

### 1. Introduction and Interpretation

1.1 This Code of Conduct ('the Code') has been adopted by the Council pursuant to the requirements of the Localism Act 2011 ('the Act') and the duty to promote and maintain high standards of conduct by Members of the Council set out at section 27 of the Act.

1.2 In this Code:

1.2.1 "Meeting" means any meeting of:

- (a) the Council;
- (b) any of the Council's committees or sub-committees;
- (c) the Executive or any committee or sub-committee of the Executive; or
- (d) a joint committee or joint sub-committee.

1.2.2 "Member" includes a co-opted Member and an appointed Member.

### 2. Scope

2.1 This Code applies to you whenever you are acting in your capacity as a Member of the Council, including (but not limited to):

- (a) at formal Meetings;
- (b) when acting as a representative of the Council;
- (c) in taking any decision as an Executive Member or a Ward Councillor;
- (d) in discharging your duties as a Ward Councillor;
- (e) at briefing meetings with Officers;
- (f) at site visits; and
- (g) when corresponding with the Council other than in a private capacity.

2.2 This Code does not have effect in relation to your conduct other than where such conduct is in your official capacity as a Member.

### **3. The Nolan Principles**

#### **3.1 This Code is consistent with and based upon the principles set out at section 28(1) of the Act, being:**

- (a) selflessness;**
- (b) integrity;**
- (c) objectivity;**
- (d) accountability;**
- (e) openness;**
- (f) honesty; and**
- (g) leadership**

**The above principles are explained in more detail at Schedule 1 of this Code.**

### **PART B – OBLIGATIONS AND CONDUCT**

- 1. You must** treat others with respect;
- 2. You must not:**
  - i. do anything or attempt to do anything which may cause the Council to breach the Equality Act 2010;
  - ii. bully, intimidate or be abusive to, or attempt to bully, intimidate or be abusive to, any person;
  - iii. intimidate or attempt to intimidate any person who is or is likely to be;
    - (a) a complainant;
    - (b) a witness; or
    - (c) involved in the administration of any investigation or proceedings; in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct;

- iv. do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.
3. **You must not:**
- i. disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
    - (a) you have the consent of the person authorised to give it;
    - (b) you are required by law to do so;
    - (c) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
    - (d) the disclosure is;
      - i. reasonable and in the public interest; and
      - ii. made in good faith and in compliance with the reasonable requirements of the Council;
  - ii. prevent another person from gaining access to information to which that person is entitled by law.
4. **You must not** conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.
5. **You:**
- i. **must not** use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
  - ii. **must** have regard to the Council's Protocol on Member/Officer Relations;
  - iii. **must**, when using or authorising the use by others of the resources of the Council;
    - (a) act in accordance with the Council's reasonable requirements; and
    - (b) ensure that such resources are not used improperly for political purposes (including party political purposes);

- iv. **must** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
6. When reaching decisions on any matter **you must** have regard to any relevant advice provided to you by Officers, and in particular to relevant advice given to you by the Statutory Officers, namely:
- i. the Head of Paid Service;
  - ii. the Chief Finance Officer; and
  - iii. the Monitoring Officer.
7. **You must** exercise your own independent judgement, and give good and substantial reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council.

## **PART C – DISCLOSABLE PECUNIARY INTERESTS**

An interest is a ‘Disclosable Pecuniary Interest’ (‘DPI’) in relation to a Member if it is of a description specified in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (and **as set out in Schedule 2 of this Code**), and is either:

- (a) an interest of the Member; or
- (b) an interest of;
  - i. the Member’s spouse or civil partner;
  - ii. a person with whom the Member is living as husband and wife; or
  - iii. a person with whom the Member is living as if they were civil partners; and the Member is aware of that interest.

### **1. Notification of Disclosable Pecuniary Interests**

- 1.1 **You must** within 28 days of becoming a Member notify the Council’s Monitoring Officer in writing of any DPI.
- 1.2 Where you become a Member as a result of re-election or reappointment, the duty set out in paragraph 1.1 of Part C of this Code only applies to DPIs not already entered in the Council’s Register of Interests.

- 1.3 **You must** within 28 days of becoming aware of any new DPI, or a change to a DPI already registered, provide the Council's Monitoring Officer with written notification of the same.
- 1.4 Where a Member gives a notification the Monitoring Officer is to cause the interests notified to be entered into the Council's Register of Interests (whether or not they are DPIs).

## **2. Non-Participation in case of Disclosable Pecuniary Interest**

- 2.1 Where you are present at any Meeting and have a DPI in or that relates to any matter being considered at the Meeting, and you are aware of the same;
- (a) **you must not** participate, or participate further, in any discussion of the matter at the Meeting;
  - (b) **you must not** participate in any vote, or further vote, taken on the matter at the Meeting;
  - (c) **you must** withdraw from the room or chamber where a Meeting considering the matter is being held whenever it becomes apparent that the business is being considered at that meeting unless you have obtained a dispensation from the Council's Monitoring Authority of the Standards Committee;
  - (d) if the DPI is not registered, **you must** disclose the DPI at the Meeting; and
  - (e) if the DPI is not registered and is not the subject of a pending notification, **you must** notify the Monitoring Officer in writing of the interest within 28 days.
- 2.2 Where you are authorised to discharge a function of the Council acting alone and have a DPI in or that relates to any matter being considered by you in the course of discharging that function, and you are aware of the same;
- (a) **you must not** take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by yourself); and
  - (b) if the DPI is not registered and is not the subject of a pending notification, **you must** notify the Monitoring Officer in writing of the interest within 28 days.

## **3. Offences**

- 3.1 You commit a criminal offence if, without reasonable excuse, you:

- (a) fail to comply with the obligations imposed by paragraph 1, paragraph 2.1 (d) and (e), or paragraph 2.2 (b) of Part C of this Code;
  - (b) participate in any discussion or vote in contravention of paragraph 2.1 (a) and (b) of Part C of this Code; or
  - (c) take any steps in contravention of paragraph 2.2 (a) of Part C of this Code.
- 3.2 You commit a criminal offence if under paragraph 1, paragraph 2.1(d) and (e), or paragraph 2.2 (b) of Part C of this Code you provide information that is false or misleading and you:
- (a) know that the information is false or misleading; or
  - (b) are reckless as to whether the information is true and not misleading.
- 3.3 A person guilty of a criminal offence under paragraphs 3.1 or 3.2 of Part C of this Code is liable on summary conviction to a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

**IF YOU ARE IN ANY DOUBT ABOUT YOUR POSITION UNDER THIS CODE PLEASE CONSULT THE MONITORING OFFICER**

**PART D – OTHER INTERESTS**

**1. Personal Interests**

- 1.1 You have a personal interest in any business of the Council where it relates to or is likely to affect:
- (a) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;
  - (b) any body;
    - i. exercising functions of a public nature;
    - ii. directed to charitable purposes; or
    - iii. one of whose principle 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;

- (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50.
- (d) your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of your electoral division or ward, as the case may be, affected by the decision.

1.2 In paragraph 1.1 (d) of Part D of this Code a 'relevant person' is:

- (a) a member of your family or any person with whom you have a close association;
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are a director;
- (c) any body or person that has a place of business or land in the Council's area, and in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower).

## 2. Disclosure of Personal Interests

- 2.1 Where you have a personal interest in any business of the Council and you attend a Meeting at which the business is considered, **you must** disclose to that Meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- 2.2 Where you have a personal interest in any business of the Council of the type mentioned in paragraph 1.1 (c) of Part D of this Code, you need not disclose the nature or existence of that interest to the Meeting if that interest was registered more than three years before the date of the Meeting.
- 2.3 Paragraph 2.1 of Part D of this Code only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- 2.4 Where you have a personal interest but by virtue of Part E of this Code sensitive information relating to it is not registered in the Council's Register of Interests, **you must** indicate to the Meeting that you have a personal interest, but need not disclose the sensitive information to the Meeting.
- 2.5 Where you are authorised to discharge a function of the Council acting alone and have a personal interest in or that relates to any matter being considered by you in the course of discharging that function, and you are aware of the same, **you must** ensure that any written statement of that decision records the existence of



that interest, and the nature of the same unless it is considered to be a sensitive interest by virtue of Part E of this Code.

### **3. Prejudicial Interests**

3.1 Subject to paragraph 3.2 of Part D of this Code, where you have a personal interest in any business of the Council you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

3.2 You do not have a prejudicial interest in any business of the Council where that business:

- (a) does not affect your financial position or the financial position of a person or body described in paragraph 1 of Part D of this Code;
- (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 1 of Part D of this Code;
- (c) relates to the functions of the Council in respect of:
  - i. housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
  - ii. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
  - iii. any ceremonial honour given to a Member;
  - iv. an allowance, payment or indemnity given to Members;
  - v. setting council tax or a precept under the Local Government Finance Act 1992.

### **4. Prejudicial Interests arising in relation to the Overview and Scrutiny Board**

4.1 You also have a prejudicial interest in any business before the Overview and Scrutiny Board of the Council (or of a sub-Committee of the Overview and Scrutiny Board) where you were involved in the making of the decision being considered by the Overview and Scrutiny Board.

4.2 You are however permitted to attend at the Overview and Scrutiny Board where paragraph 5.2 of Part D of this Code applies.

## 5. Effect of Prejudicial Interests on participation

- 5.1 Subject to paragraph 5.2 of Part D of this Code, where you have a prejudicial interest in any business of your authority;
- (a) **you must** withdraw from the room or chamber where the Meeting is being held;
    - i. in a case where paragraph 5.2 of Part D of this Code applies, immediately after making representations, answering questions or giving evidence;
    - ii. in any other case, whenever it becomes apparent that the business is being considered at that meeting. unless you have obtained a dispensation from the Monitoring Officer or the Standards Committee;
  - (b) **you must not** seek to improperly influence a decision about that business.
- 5.2 Where you have a prejudicial interest in any business of the Council, you may attend a Meeting (including a meeting of the Overview and Scrutiny Board or of a sub-Committee of such Board) but only for the purpose of making representations, answering questions or giving evidence relating to the business, **provided that** the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- 5.3 Where you are authorised to discharge a function of the Council acting alone and have a prejudicial interest in or that relates to any matter being considered by you in the course of discharging that function, and you are aware of the same, **you must not** take any steps or further steps in the matter, or seek to influence a decision about the matter, and **you must** as soon as is reasonably practicable notify the Monitoring Officer of that prejudicial interest in writing.

## 6. Registration of Other Interests

- 6.1 When requested by the Monitoring Officer, **you must** complete a Register of Interests form.
- 6.2 In addition to the requirement to notify the Monitoring Officer of any DPI as set out in Part C of this Code of Conduct, you will also be required to provide details of other interests within the Register of Interests form that are from time to time deemed appropriate.

## **PART E – SENSITIVE INTERESTS**

1. Paragraphs 2 and 3 of Part E of this Code apply where:
  - i. you have an interest (whether a DPI or an ‘other interest’); and
  - ii. the nature of the interest is such that you, and the Council’s Monitoring Officer, consider that disclosure of the details of the interest could lead to you, or a person connected with you, being subject to violence or intimidation.
2. If the interest is entered in the Council’s Register of Interests, copies of the register that are made available for inspection, and any published version of the register, shall not include details of the interest (but may state that you have an interest the details of which are withheld under Part E).
3. Where you are present at a Meeting and have an interest in or that relates to any matter being considered at the Meeting, and the registration of that interest (whether a DPI or ‘other interest’) is pending entry in the Council’s Register of Interests, you need not disclose the interest but merely the fact that you have an interest in the matter concerned.

## **PART F – DISPENSATIONS**

1. Upon a written request being made by a Member to the Council’s Monitoring Officer, the Monitoring Officer may grant the Member a dispensation to;
  - (a) participate in a discussion; and/or
  - (b) vote on a matter at a Meeting; or
  - (c) remain in the chamber or room where that business is being considered; even where that Member has a DPI or an ‘other interest’ in or relating to the business under consideration.
2. A dispensation can only be granted if, after having had regard to all relevant circumstances, the Monitoring Officer or the Standards Committee:
  - (a) considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
  - (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;

- (c) considers that granting the dispensation is in the interests of persons living in the authority's area;
  - (d) considers that without the dispensation each member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive; or
  - (e) considers that it is otherwise appropriate to grant a dispensation.
3. Where the Monitoring Officer deems it appropriate, they may refer a written request for a dispensation to the Standards Committee for determination.
  4. Any dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
  5. Paragraph 2.1 of Part C of this Code does not apply to a Member in relation to anything done for the purpose of deciding whether to grant a dispensation under this Part.

## SCHEDULE 1 – THE NOLAN PRINCIPLES

<b>Principle</b>	<b>Revised Description</b>
<i>Preamble</i>	<p>The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services.</p> <p>All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.</p>
<i>Selflessness</i>	<p>Holders of public office should act solely in terms of the public interest.</p>
<i>Integrity</i>	<p>Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.</p>
<i>Objectivity</i>	<p>Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.</p>
<i>Accountability</i>	<p>Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.</p>
<i>Openness</i>	<p>Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.</p>
<i>Honesty</i>	<p>Holders of public office should be truthful.</p>
<i>Leadership</i>	<p>Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.</p>

## SCHEDULE 2 – DISCLOSABLE PECUNIARY INTERESTS - DEFINITIONS

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge): (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where: (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either: (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (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 relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

## Definitions

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“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.

## NOTES