

# Public Document Pack



**Service Director – Legal, Governance and  
Commissioning**

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Tuesday 7 September 2021

## Notice of Meeting

Dear Member

### Standards Committee

The **Standards Committee** will meet in the **Council Chamber - Town Hall, Huddersfield** at **10.00 am** on **Wednesday 15 September 2021**.

The items which will be discussed are described in the agenda and there are reports attached which give more details.

A handwritten signature in black ink, appearing to read "Julie Muscroft".

**Julie Muscroft**

**Service Director – Legal, Governance and Commissioning**

Kirklees Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair/Clerk of their intentions prior to the meeting.

## **The Standards Committee members are:-**

### **Member**

Councillor Erin Hill (Chair)  
Councillor Martyn Bolt  
Councillor James Homewood  
Councillor Alison Munro  
Councillor Mohan Sokhal  
Councillor Lesley Warner  
Councillor Michael Watson

# **Agenda**

## **Reports or Explanatory Notes Attached**

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### **Pages**

**1: Membership of the Committee**

To receive any apologies for absence.

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**2: Minutes of Previous Meeting**

1 - 6

To receive the Minutes of the meetings of the Committee held on 29 March and 19 May 2021.

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**3: Interests**

7 - 8

Committee Members will be asked to advise if there are any items on the Agenda in which they have a Disclosable Pecuniary Interest, which would prevent them from participating in any discussion on the item or participating in a vote upon the item, or any other interests.

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**4: Deputation/Petitions**

The Committee will receive any petitions and hear any deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also hand in a petition at the meeting but that petition should relate to something on which the body has powers and responsibilities.

In accordance with Council Procedure Rule 10 (2), Members of the Public should provide at least 24 hours' notice of presenting a deputation.

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## **5: Public Question Time**

The Committee will hear any questions from the general public.

In accordance with Council Procedure Rule 11(5), the period allowed for the asking and answering of public questions shall not exceed 15 minutes. A maximum of 4 questions per person may be submitted.

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## **6: Code of Conduct complaints update**

9 - 24

To receive a report detailing complaints received since the last Standards Committee meeting in March 2021.

Contact Officer: David Stickley – Senior Legal Officer

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## **7: Cases and News Update**

25 - 114

To receive a report setting out news and cases of interest since March 2021.

Contact Officer: David Stickley – Senior Legal Officer

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## **8: Local Government Association (LGA) Model Code of Conduct**

115 -  
198

To consider recommendations about proposals in relation to the LGA Model Code of Conduct.

Contact Officer: David Stickley – Senior Legal Officer

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## **9: Update on the Appointment of Independent Persons**

199 -  
202

To consider the reappointment of the current independent person and to note the steps to appoint one further independent person.

Contact Officer: David Stickley – Senior Legal Officer

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Contact Officer: Andrea Woodside

## **KIRKLEES COUNCIL STANDARDS COMMITTEE**

**Monday 29th March 2021**

Present: Councillor Mohan Sokhal (Chair)  
Councillor Martyn Bolt  
Councillor James Homewood  
Councillor Alison Munro  
Councillor Rob Walker  
Councillor Aleks Lukic

In attendance: Mike Stow – Independent Person

Observers: Councillor Paul White

Apologies: Councillor Eric Firth (Chair)

### **1 Membership of the Committee**

Apologies for absence were received on behalf of Councillor Eric Firth.

Councillor Sokhal was appointed as Chair of the meeting.

### **2 Minutes of Previous Meeting**

**RESOLVED** – That the minutes of the meeting held on the 29 September 2020 be approved as a correct record.

### **3 Interests**

It was noted that Councillor Bolt and Councillor Munro were a Member of either a Town or Parish Council.

It was noted that, in relation to Agenda Item 7 (Minute No.7 refers) (i) Councillor Lukic had an open complaint about a Member and (ii) Councillor Munro advised that two complaints regarding her conduct had been received within the reporting period.

### **4 Admission of the Public**

It was noted that agenda items would be considered in public session.

### **5 Deputation/Petitions**

No deputations or petitions were considered.

### **6 Public Question Time**

No questions were asked.

**7 Code Of Conduct Complaints Update**

The Committee received a report which provided an update on complaints that had been received since the previous meeting of the Committee on the 29 September 2020. The Committee was informed that the report was prepared every six months and gave a breakdown of complaints received.

That report advised that since 29 September 2020 the Monitoring Officer had received 16 complaints relating to alleged breaches of the Code of Conduct. This figure included one multiple complaint relating to 6 councillors. All 16 related to Kirklees Councillors (a total of 13 Councillors). There were no complaints that related to Town or Parish councillors. Of these 16, 13 were not progressed after the initial assessment process and 1 was not pursued by the complainant, after further information was requested. The remaining 2 complaints were relatively recent and were currently being investigated before being considered under the initial assessment process.

The Committee were advised that of the 18 complaints that were carried forward from the previous report as ongoing, these had mostly been concluded and that none were taken through the formal complaints process. The report explained that (i) 3 were closed because the member complained of had ceased to be a member and the Monitoring Officer felt there was nothing to be gained by continuing with any of those (ii) 1 was closed due to the complainant failing to respond and (iii) 5 were not found to have been breaches of the Code of Conduct after investigation and closed at the informal stage. It was noted that there were 4 complaints relating to one member of a Parish Council which were repeat complaints and needed to be taken through the formal process, 5 complaints that were still under investigation, 3 of which were multiple complaints about the same issue, and it was anticipated that they would be completed shortly.

**RESOLVED** – That the report be received and noted.

**8 Cases and News Update**

The Committee considered a report which provided information on developments, news and matters of local government ethics, including relevant case law.

**RESOLVED** – That the report be received and noted.

**9 LGA Model Code of Conduct and Standards Survey**

The Committee considered a report regarding proposals relating to the LGA Model Code of Conduct and to report on the Standards Survey.

**LGA Model Code of Conduct**

Within West Yorkshire, the Model Code had so far been adopted in full by Calderdale Council. Leeds City Council were recommending its adoption. Wakefield Council were recommending its adoption with some amendments.

The report set out that there was not a great deal of difference between the current Kirklees code and Model Code. Kirklees had 3 options with regards to the model code:

- i) adopt the code in full;
- ii) adopt parts of the code;
- iii) retain its own code.

A further report will be provided to the Committee once the full assessment of the Kirklees Standards Survey had been considered in greater depth, and before making any proposals about whether to adopt the GLA Model Code and/or make any other changes to the Code or Standards process.

### **Kirklees Standards Survey**

The standards consultation was conducted by means of an online survey that was widely publicised throughout Kirklees. The survey encouraged responses from Members, officers, members of the public, voluntary organisations and partners, Town and Parish Councillors and their clerks, the independent person, as well as Monitoring Officers from WYLAW.

The survey ran from the 1st of February to the 8th of March and 661 responses were received. The number of responses received were much higher than originally anticipated.

Initial analysis of the survey showed that the understanding of the functions and role of the council, not just in respect of the issue of standards, were unclear to members of the public. This was an opportunity to undertake some work around the role of the council, to reflect its real impact on people's lives, and the work it does to support the people of Kirklees, and for Members to consider their role in that.

Further work needed to be completed to identify any possible changes to the Code of Conduct or standards process and to see how the council could best use the information included in the survey feedback to raise the awareness of Member standards in Kirklees.

### **RESOLVED –**

- 1) That the report be received and noted.
- 2) That thanks be conveyed to all who completed the survey.

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Contact Officer: Andrea Woodside

**KIRKLEES COUNCIL**  
**STANDARDS COMMITTEE**

**Wednesday 19th May 2021**

Present: Councillor Eric Firth (Chair)  
Councillor Martyn Bolt  
Councillor James Homewood  
Councillor Aleks Lukic  
Councillor Alison Munro  
Councillor Mohan Sokhal  
Councillor Michael Watson

- 1 Admission of the Public**  
**RESOLVED** – That the business for the meeting be considered in public.
- 2 Appointment of Standards Sub Committee**  
It was moved by Councillor Hill, seconded by Councillor Munro and;  
**RESOLVED –**
  - 1) That the appointment of the Standards Sub-Committee be approved.
  - 2) That the Sub-Committee should not be in accordance with the requirements of Section 15 and 16 of the Local Government and Housing Act 1989 and that the membership shall be drawn from the membership of the Standards Committee at Item 15 of the Agenda of the Annual Council meeting.

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<b>KIRKLEES COUNCIL</b>				
<b>COUNCIL/CABINET/COMMITTEE MEETINGS ETC</b>				
<b>DECLARATION OF INTERESTS</b>				
Standards Committee				
Name of Councillor				
Item in which you have an interest	Type of interest (eg a disclosable pecuniary interest or an “Other Interest”)	Does the nature of the interest require you to withdraw from the meeting while the item in which you have an interest is under consideration? [Y/N]	Brief description of your interest	

Signed: ..... Dated: .....

## NOTES

### Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your disclosable pecuniary interests under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.

Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority -

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.

Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

Any tenancy where (to your knowledge) - the landlord is your council or authority; and the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -

- (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and  
(b) either -

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or  
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 you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.



**Name of meeting: Standards Committee**

**Date: 15<sup>th</sup> September 2021**

**Title of report: Code of Conduct complaints update**

**Purpose of report**

To brief the standards committee on Councillor complaints under the Code of Conduct since the last Standards Committee meeting in March 2021.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	no
The Decision - Is it eligible for call in by Scrutiny?	no
Date signed off by <a href="#">Strategic Director</a> & name	Yes – Rachel Spencer-Henshall – 7 <sup>th</sup> September
Is it also signed off by the Service Director Finance?	Yes – Eamonn Croston
Is it also signed off by the Service Director for Legal, Governance and Commissioning?	Yes – Julie Muscroft
Cabinet member <a href="#">portfolio</a>	Cllr Paul Davies

**Electoral wards affected: All**

**Ward councillors consulted: None**

**Public or private: Public**

**Has GDPR been considered? Yes**

## **1. Summary**

- 1.1 This report follows on from the report that was before the Standards Committee on the 29<sup>th</sup> of March 2021.
- 1.2 This report will look at the number of complaints received since the 29<sup>th</sup> of March 2021, along with their type and nature.
- 1.3 It will also look at which of those new complaints have been resolved and which are still subject to investigation or further action. It will also provide an update on those complaints that were received in the previous reporting period and were not resolved at the time of the previous report.
- 1.4 It will also compare this period's complaints with the previous period, to see if there are any significant differences or trends.

## **2. Information required to take a decision**

### **2.1 Complaints Summary**

- 2.1.1 Since the 29<sup>th</sup> of March 2021 the Monitoring Officer has received 11 complaints relating to alleged breaches of the Code of Conduct. This figure includes one multiple complaint relating to 2 councillors. One complaint was received that complained about 3 Councillors, but these were essentially separate complaints, so have been recorded as such.
- 2.1.2 9 relate to Kirklees Councillors (a total of 9 Councillors). There are 2 complaints that relate to Town or Parish councillors. There are two separate complaints relating to the same member.
- 2.1.3 Of these 11, 5 were not progressed after the initial assessment process. The remaining 6 complaints are currently being investigated, with clarification being sought from the complainant in respect of three of them, before they can be considered under the initial assessment process.

### **2.2 Update on previous complaints**

- 2.2.1 Of the 12 complaints that were carried forward from the previous report as ongoing, 3 have now been resolved informally, 4 are to progress to a meeting of the assessment panel, 1 is to be dismissed and the remaining 4 are being reviewed by the Monitoring Officer and the Independent Person.

## **2.3 Previous Report and comparison with the present report**

- 2.3.1 The previous report contained a total of 16 new complaints about 13 named Kirklees members, covering the period from the 29<sup>th</sup> of September 2020 to the 29<sup>th</sup> of March 2021. This compares with the current period under review, the 30<sup>th</sup> of March 2021 to the 14<sup>th</sup> of September 2021, where there is a total of 11 new complaints that related to 9 named Kirklees member and 2 named Town or Parish Councillors.
- 2.3.2 The nature of the complaints in the present report concern the behaviour of members towards members of the public (6 complaints relating to 6 members), whilst 1 concerns the behaviour of 1 member in social media posts, 2 concern behaviour in the pre-election period (3 members), and 2 concern the behaviour of members at Planning Committee.
- The sources of the complaints are that 10 were received from members of the public and 1 was from a Kirklees Councillor.
- 2.3.3 Comparing this to the previous report, complaints were about the behaviour at meetings (9 complaints relating to 5 members), 1 concerns an allegation of an undeclared conflict of interest, and 2 concern the behaviour of a member during lockdown. There are 4 complaints that have arisen from the planning process, concerning the actions of ward members. Of the 9 complaints recorded above relating to behaviour at committee meetings, 8 of these were complaints about behaviour at planning committee meetings.
- The sources of the complaints in this period are that 1 was from a Kirklees Councillor, and the remaining 10 were from members of the public.
- 2.3.4 Comparison between the two reports shows that the overall number of complaints has fallen from 16 to 11, whilst the number of Councillors complained about has fallen to 11 from 15.
- 2.3.5 In this period, we have seen no instances of 'multiple' complaints, with the same complaint being made and supported by more than one complainant.
- 2.3.6 The total number of complaints relating to Town or Parish Councils has risen from 0 to 2.
- 2.3.7 The number of complaints relating to the planning process has fallen in this period, from 12 of 16, to 2 of 9.

### **3. Implications for the Council**

#### **3.1 Working with People**

N/A

#### **3.2 Working with Partners**

N/A

#### **3.3 Place Based Working**

N/A

#### **3.4 Climate Change and Air Quality**

N/A

#### **3.5 Improving Outcomes for Children**

N/A

#### **3.6 Other (eg Legal/Financial or Human Resources)**

The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have reputational implications.

### **4. Next steps and timelines**

- 4.1 The Monitoring Officer will continue to assess any complaints about members' conduct as and when they are received and will report the outcomes to this committee as appropriate.

### **5. Officer recommendations and reasons**

- 5.1 It is recommended that the report is noted.

### **6. Cabinet portfolio holder's recommendations**

N/A

7. **Contact officer**

David Stickley  
Senior Legal Officer  
01484 221000  
[david.stickley@kirklees.gov.uk](mailto:david.stickley@kirklees.gov.uk)

8. **Background Papers and History of Decisions**

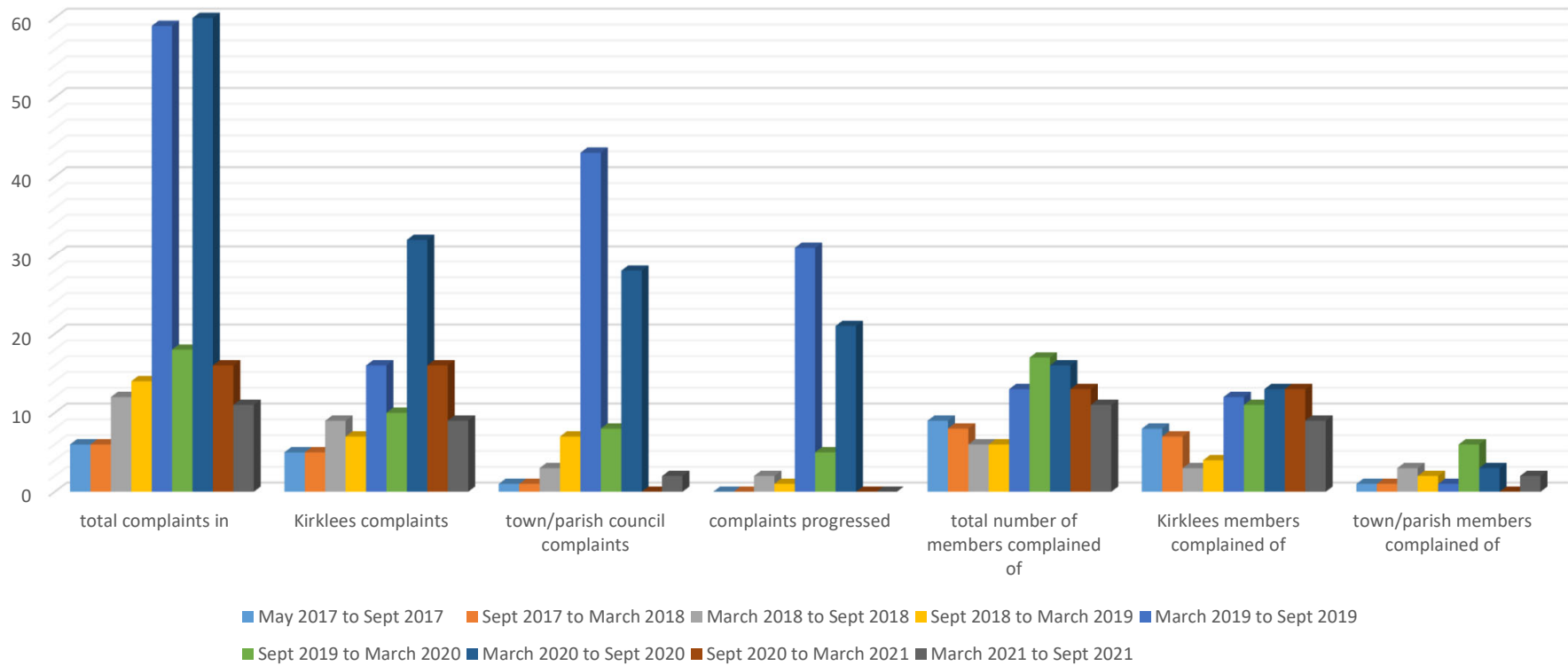
8.1 N/A

9. **Service Director responsible**

Julie Muscroft  
Service Director – Legal, Governance and Commissioning  
01484 221000  
[julie.muscroft@kirklees.gov.uk](mailto:julie.muscroft@kirklees.gov.uk)

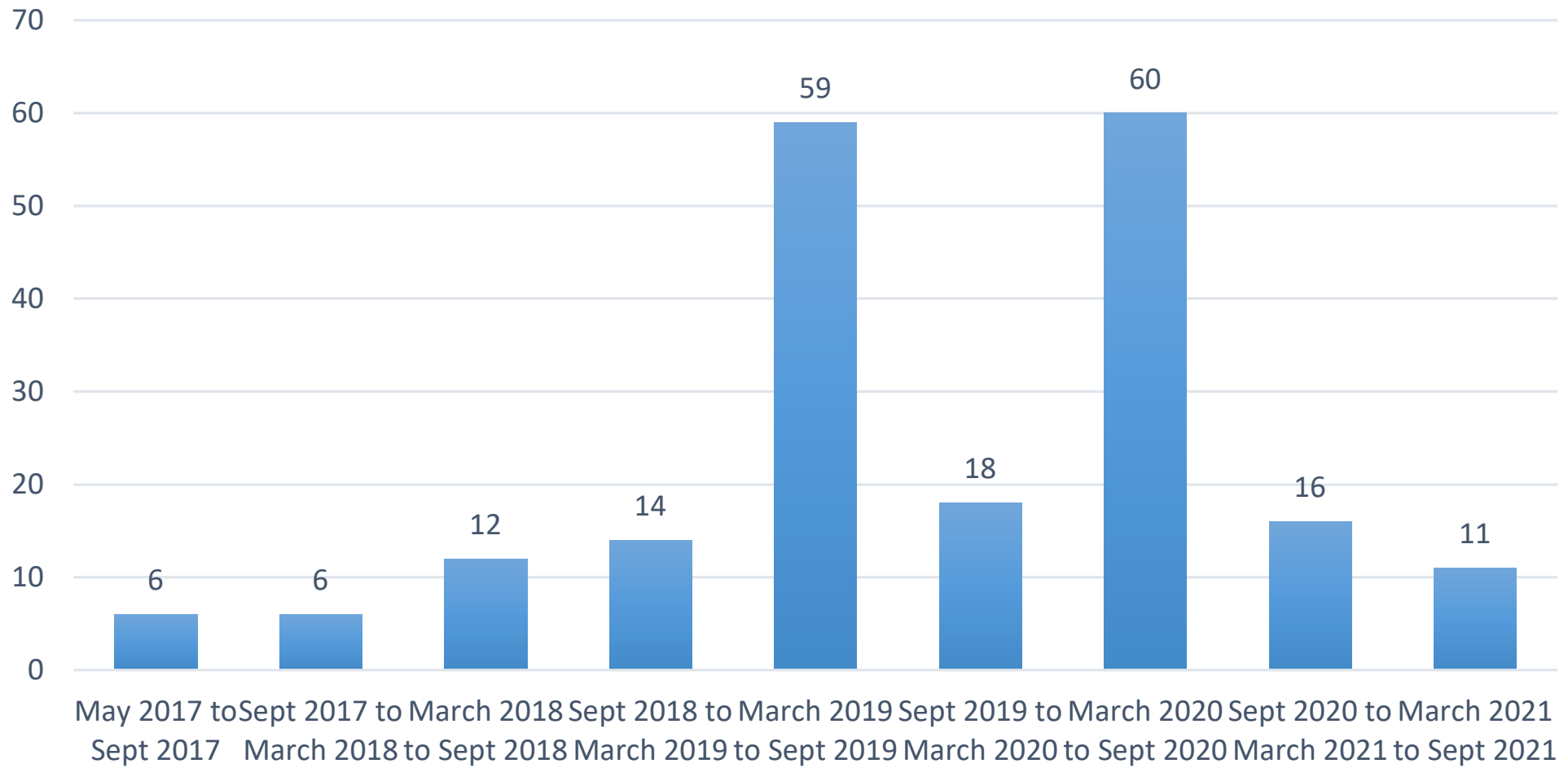
## **Appendix A**

## Complaints summary



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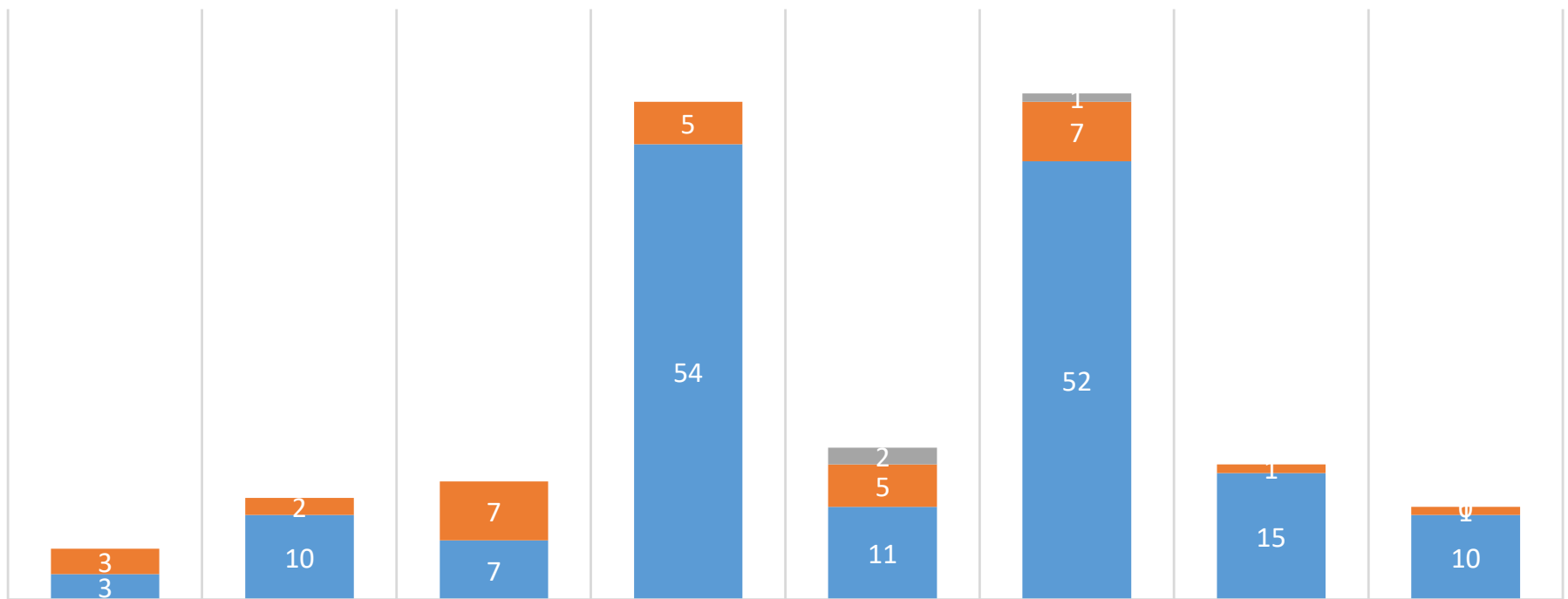
## Total complaints in



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## SOURCES OF COMPLAINTS RECEIVED

■ from mop ■ from cllrs ■ from officers

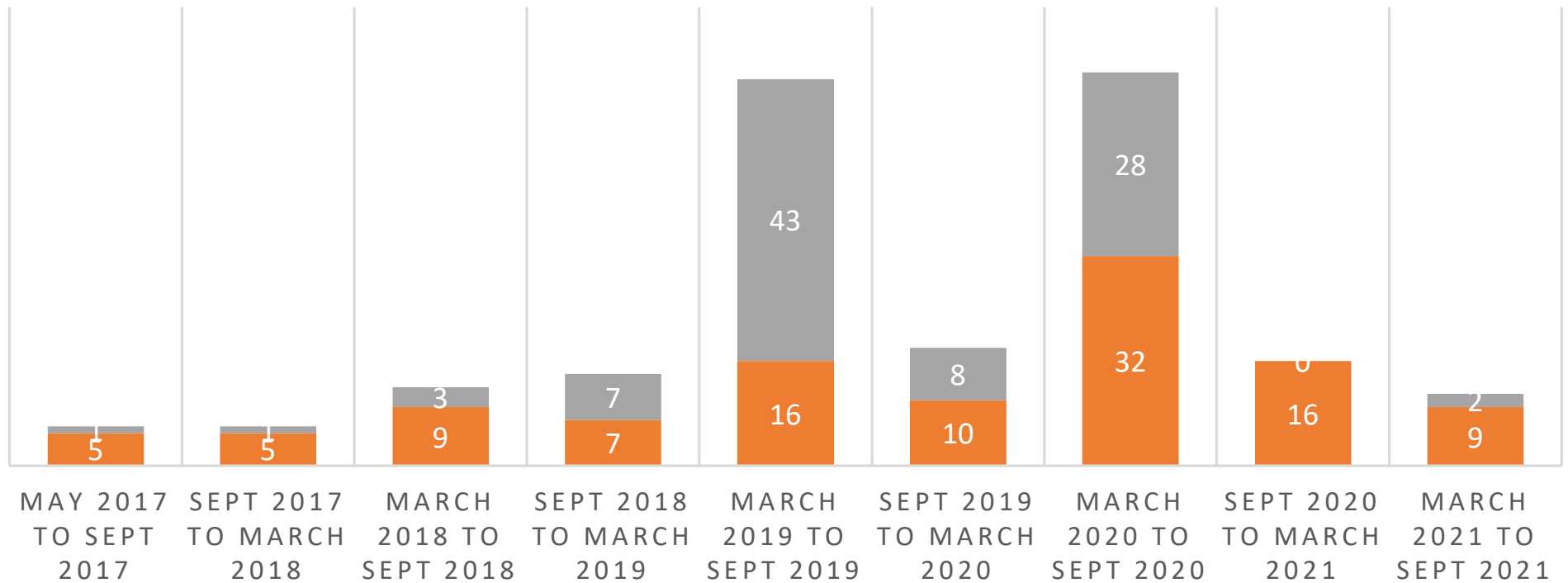


SEPT 2017 TO MARCH 2018    MARCH 2018 TO SEPT 2018    SEPT 2018 TO MARCH 2019    MARCH 2019 TO SEPT 2019    SEPT 2019 TO MARCH 2020    MARCH 2020 TO SEPT 2020    SEPT 2020 TO MARCH 2021    MARCH 2021 TO SEPT 2021

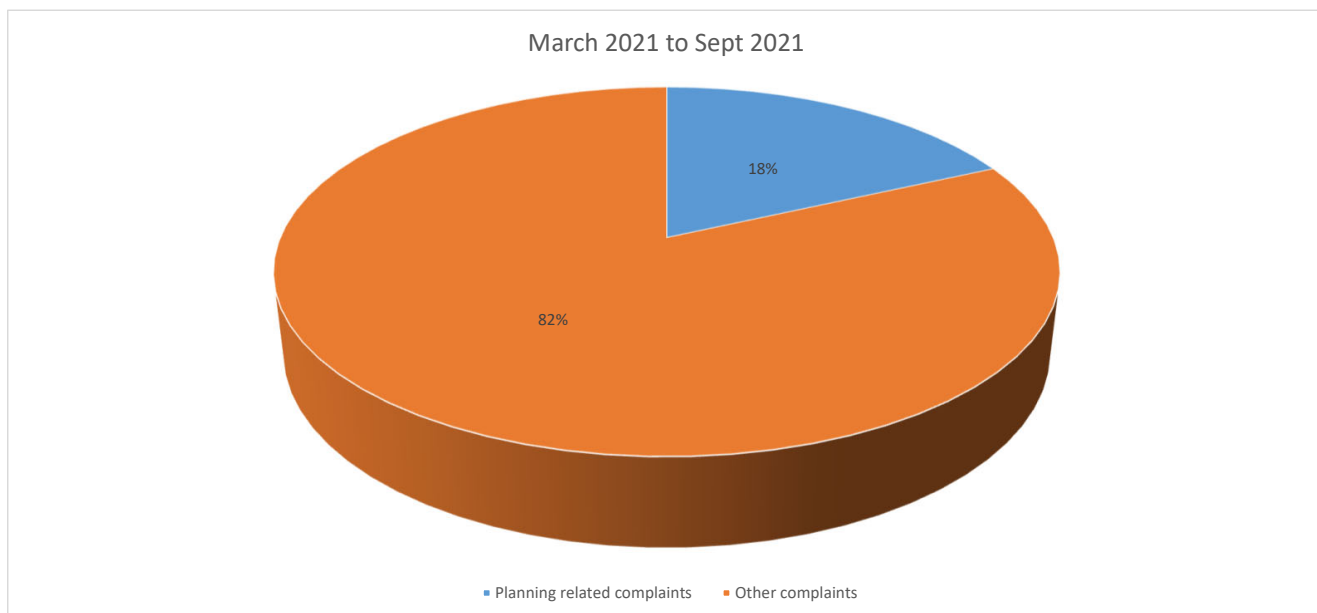
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## COMPLAINTS - KIRKLEES / TOWN AND PARISH COUNCILS

■ Kirklees complaints
 ■ town/parish council complaints



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**Name of meeting: Standards Committee**

**Date: 15<sup>th</sup> September 2021**

**Title of report: Cases and News Update**

**Purpose of report**

To brief the standards committee on any news and cases of interest since March 2021.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	not applicable
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	no
The Decision - Is it eligible for call in by Scrutiny?	no
Date signed off by <a href="#">Strategic Director</a> & name	Yes – Rachel Spencer-Henshall – 7 <sup>th</sup> September
Is it also signed off by the Service Director for Finance IT and Transactional Services?	Yes – Eamonn Croston
Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	Yes – Julie Muscroft
Cabinet member <a href="#">portfolio</a>	Cllr Paul Davies

**Electoral wards affected: All**

**Ward councillors consulted: None**

**Public or private: Public**

**Has GDPR been considered? Yes**

## **1. Summary**

- 1.1 This report is intended to brief members on any developments and news on matters of local government ethics.
- 1.2 It will look at news items and any relevant case law, as well as any recent published decisions from other local authorities or any of the existing standards boards.
- 1.3 It will also provide an update on the work of the CSPL that follows on from their report 'Ethical Standards in Local Government'.

## **2. Information required to take a decision**

### **2.1 News since March 2021**

- 2.1.1 A number of sources have been checked for details of any news items that are of relevance or may be of interest to the committee.
- 2.1.2 These include Local Government Lawyer, Lawyers in Local Government, the various standards boards' websites, websites of other local authorities as well as local and national media.
- 2.1.3 There are a number of articles, from various sources, which may be of interest to the committee, even if all are not directly relevant to the work of the committee. Copies of the articles are at appendix A, but the following are of particular interest.
- 2.1.4 In June 2021 it was reported that Doncaster Council would be taking no further action against an employee who had tweeted an image of Joseph Goebbels, associating this with an independent Councillor.
- 2.1.5 In May 2021, it was announced that Attleborough Town Council had agreed a settlement in respect of defamatory statements that had been made about two Councillors.
- 2.1.6 The leader of Castle Point Borough Council stood down as a councillor following a report by external lawyers into allegations of impropriety in two planning applications. It was alleged that the leader had put pressure on members to agree planning applications that he had a personal interest in.
- 2.1.7 Two councillors in Bristol have been threatened by council officers with defamation action, following comparisons by two elected members with Joseph Goebbels, accusing them of being untruthful.
- 2.1.8 Inews reported in July 2021 that two disabled York City councillors were barred from voting in an accessibility debate on the grounds that

they had 'a prejudicial interest'. They were later granted a dispensation to vote once only.

- 2.1.9 The former leader of Caerphilly Council has been suspended for five months following a breach of the code of conduct. David Poole was found to have purchased shares after having been in receipt of confidential information that he had attempted to use to his personal advantage.

## **2.2 Recent published decisions**

- 2.2.1 Some Local Authorities in England publish their decisions on member complaints, as do the Standards Boards in Wales, Scotland and Northern Ireland.
- 2.2.2 The Standards Commission for Scotland has continued to work, holding hearings remotely.
- 2.2.3 Since March 2021, the Commission has held a total of 1 standard hearing, resulting in disqualification. A copy of the press release is in Appendix B, with full details of the breaches. They were that the Councillor in question had repeatedly acted in a threatening and offensive manner towards other Councillors and officers, including the Chief Executive.
- 2.2.4 There have also been 2 further matters referred, but where no action was taken. One was a complaint based on inappropriate gender-based language and the other referred to using disrespectful language when commenting in correspondence about a fellow councillor. In both cases, the view taken was that convening a full hearing would be disproportionate as both members had acknowledged the potential breaches.
- 2.2.5 The Commissioner for Standards in Northern Ireland has now recommenced its hearing and has held 3 since March 2021.
- 2.2.6 These hearings resulted in 2 disqualifications and 1 suspension, one qualification following a criminal conviction, with the other disqualification and the suspension due to behaviour issues. Details are at Appendix B.
- 2.2.7 The Public Services Ombudsman for Wales publishes a 'Code of Conduct Casebook' periodically. There have been no 'casebooks' published since 2019, so no reports of any of its hearing are on its website. It does however record that it had made a number of referrals during the annual reporting period. These were to the Adjudication Panel for Wales and to Standards Committees. Details of those can be found at Appendix B.

- 2.2.8 The Ombudsman published its annual report in May 2021 and the ombudsman acknowledges the impact of Covid-19 on the number of complaints that have been received, which have fallen, but at the same time published an increase of 47% in Code of Conduct complaints compared to the previous year.
- 2.2.10 In England, publication of decisions still remains discretionary, although the CSPL did support publishing these, so it may be the case that we see more decisions from English local authorities being published in due course.
- 2.2.11 There is in general a lack of cases published English local authority websites in this period and none of interest have been found.

### **2.3 Case Law**

- 2.3.1 There has been a recent reported case - *Robinson, R (On the Application Of) v Buckinghamshire Council* [2021] – which was a judicial review of a decision taken by a Deputy Monitoring Officer. A report is in Appendix A.
- 2.3.2 A further case has been reported – *Cyril Bennis v Information Commissioner* [2021] – in which a district council's refusal to disclose advice from Independent Persons in response to a FOI request was upheld. Details are in Appendix A.

### **2.4 The work of the Committee on Standards in Public Life**

- 2.4.1 The CSPL have been fairly quiet in follow up work to their 2019 report.
- 2.4.2 Since the last report, the CSPL have published the minutes of their meeting held on the 18<sup>th</sup> of March in which it is noted that there had been an article in the Local Government Chronicle which stated that the Minister for Local Government had indicated the Ministry would respond to the Committee's local government ethical standards report 'shortly'. The Secretariat reported that nothing had been confirmed by the Ministry; there had been no response by the Ministry to regular chasing by the Secretariat. The minutes of the meeting held on the 15<sup>th</sup> of April 2021 noted that the Minister for Local Government had written to the Society of Local Council Clerks, apologising for the delay in the government response to the 2019 report, citing the 2019 General Election and Covid as being responsible. The minutes of the meeting held on the 20<sup>th</sup> of May 2021 note that the Chair reported that he had written to the Chair of the Local Government Association about the LGA's work on the model code of conduct and their civility in public life programme and that a meeting would be arranged for later in the year.

- 2.4.3 It was reported in Local Government Lawyer in July 2021 that the CSPL were calling on the government to respond as a matter of urgency to the 2019 report.
- 2.4.4 Following on from previous reports on 'Standards Matter 2', the committee has published an interim report into its findings, with a final report to follow next year. The findings principally relate to standards and conduct in Parliament, rather than Local Authorities. If members are interested in reading these, the report can be found at [Standards Matter 2: The Committee's Findings - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/standards-matter-2-the-committee-s-findings)

## **2.5 Update on work from the CSPL report**

- 2.5.1 The LGA have now published guidance on their model Code of Conduct. This is the subject of a separate report to this committee.
- 2.5.2 The consultation exercise has taken place and the results are being reviewed. Due to the large number of responses, this work will take longer than anticipated. A further report or reports will be brought before the Committee in due course.

## **3. Implications for the Council**

### **3.1 Working with People**

N/A

### **3.2 Working with Partners**

N/A

### **3.3 Place Based Working**

N/A

### **3.4 Climate Change and Air Quality**

In order to minimise any impact, printing is kept to a minimum.

### **3.5 Improving outcomes for children**

N/A

### **3.6 Other (eg Legal/Financial or Human Resources)**

The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.

## **4. Next steps and timelines**

- 4.1 The Monitoring Officer will continue to monitor any relevant news and cases and will report back to this committee. She will also continue to monitor and report back on the work of the CSPL.

## **5. Officer recommendations and reasons**

- 5.1 Members are asked to consider the report and comment on its contents (as applicable) and note its contents.

## **6. Cabinet portfolio holder's recommendations**

N/A

## **7. Contact officer**

David Stickley  
Senior Legal Officer  
01484 221000  
[david.stickley@kirklees.gov.uk](mailto:david.stickley@kirklees.gov.uk)

## **8. Background Papers and History of Decisions**

- 8.1 N/A

## **9. Service Director responsible**

Julie Muscroft  
Service Director – Legal, Governance and Commissioning  
01484 221000  
[julie.muscroft@kirklees.gov.uk](mailto:julie.muscroft@kirklees.gov.uk)

## Appendix A

Y News ▶ Local News ▶ Doncaster

# Councillor hits out after 'Nazi politician' election tweet faces no further action

A picture of Joseph Goebbels was posted on social media following the recent elections

SHARE



COMMENTS

By **George Torr** Local Democracy Reporter  
15:07, 2 JUN 2021

NE

Doncaster Council will take no further action after one of its employees who tweeted a meme of Nazi propaganda minister Joseph Goebbels following local election results.

Independent councillor Sean Gibbons who was elected again in the Mexborough ward said [the council](#) employee posted a picture of Goebbels which had the caption: "Accuse the other side of which you are guilty."

Coun Gibbons lodged a formal complaint and said the post was tweeted a day after Mexborough First beat all three of Labour's candidates in the ward.

The tweet read: "Nothing has changed and nothing will, and people wonder why. Tories in disguise. #Mexborough."

The councillor also said the employee had been out canvassing for Labour during the election campaign.

But in an email seen by the Local Democracy Reporting Service, DMBC monitoring officer Scott Fawcus said the employee is a junior member of staff and 'does not occupy a politically restricted post as set out in law'.

Mr Fawcus added: "The twitter account does not identify them as being a DMBC employee and therefore does not reflect upon the organisation.

"As much as I may personally not approve of their content, the tweets are not a disciplinary matter for their employer to become involved in. I understand that having now seen the potential for offence (the person in question) has since deleted the tweets.

"The council does have a social media policy and guidance for employees and intend to do some reminder work with staff on the implications of posting on sensitive subjects and the potential reputational issues which may arise from that."

In response, Coun Gibbons said: "I have to say that despite your response below and explanations of the authority's position on this serious matter and assurances, I am not at all happy with your conclusions.

"The fact (the person in question) is a junior member of staff and does not occupy a politically restricted post makes no difference to the fact that this tweet he posted on May 7, 2021 is wholly unacceptable and offensive."

The Labour party has been contacted for comment.

## Town council to pay £70k+ over defamatory statements about two councillors (May 2021)

Attleborough Town Council has agreed to pay more than £70,000 in costs and damages after it issued a “profound and unreserved apology” to two councillors who it said it had defamed.

A council statement offered the apology to Taila Taylor and Edward Tyrer “for the publishment [sic] of defamatory statements concerning false allegations of both councillors sustaining a ‘campaign of harassment, bullying and intimidation’ on fellow councillors, staff and employees of Attleborough Town Council. We accept that all such allegations were false and wrong”.

The council admitted that in February 2020 members passed an unlawful motion to remove both councillors from their positions and prevent them from being appointed as either vice-chairman or mayor for two years.

There had been “procedural impropriety and complete disregard to the due process” required for investigating the allegations against them.

Attleborough said the unlawful motion was passed following several code of conduct complaints made to the monitoring officer at Breckland District Council - in which Attleborough is situated - and the issue of a formal letter of grievance by Miles Hubbard, regional officer of the Unite trade union.

It said the two councillors issued judicial review proceedings and had “been vindicated of all allegations relating to ‘harassment, bullying and intimidation’ and had all their previous positions held within the council reinstated”.

The statement added: “The council would like to make it clear that both Cllr Taylor and Cllr Tyrer have never been found to have harassed, bullied, or intimidated fellow councillors, staff and employees of the council and the council sincerely apologises for the hurt, suffering and stress that has been caused to both councillors.”

Attleborough’s bill comprises an agreed payment of £10,000 to a local charity, £20,000 in damages to Cllr Taylor, £7,500 to Cllr Tyrer and £41,200 as costs of the judicial review claim.

A court consent order was made that provided that the judicial review proceedings would be withdrawn if Attleborough set aside its earlier decision on the two councillors' roles and admitted “that it does not have the power formally to investigate or impose sanctions in respect of any allegation that the claimant has engaged in conduct which is either alleged to be, or would be, contrary to the member code of conduct and that any such allegations must be dealt with under the relevant arrangements of Breckland District Council”.

A summary of the consent order from the judicial review and the extensive council proceedings and correspondence that formed the dispute, has been published by the town council.

It reveals a long series of sulphurous exchanges and allegations that defamatory statements were made.

The summary noted that at one point supporters of Cllrs Taylor and Tyrer refused despite police intervention to leave a meeting at which a confidential report on the matter was due to be discussed

Mr Hubbard said: "Unite was completely justified in standing by our members over allegations that a number of councillors had waged a systematic and sustained campaign of bullying and harassment against staff employed by Attleborough Town Council. We stood by them then and do so now."

He said the payments to the two councillors should be investigated by "relevant regulatory authorities" as to whether this was a proper use of the council's money.

## **Council leader defends his conduct after public interest report into pay-off of former chief executive (April 2021)**

City of York Council's Leader has been criticised in a public interest report by auditor Mazars over how former chief executive Mary Weastell came to receive a £377,118 pay off.

The report by Mark Kirkham, a Mazars partner, said that when Liberal Democrat Keith Aspden became leader in May 2019 Ms Weastell "began a period of absence and did not return to work".

In February 2020 the council's Staff Matters and Urgency Committee approved her request for retirement at a meeting chaired by Cllr Aspden.

The committee was told the settlement agreed with Ms Weastell was negotiated after she issued an Employment Tribunal claim that named the council and Cllr Aspden as respondents.

This claim referred to a series of events including "allegations of bullying and victimisation especially by Councillor Aspden", which he and the council denied.

Mr Kirkham said this involved "alleged detrimental treatment followed an investigation that was commissioned by the chief executive in response to complaints she had received in March 2017 which included allegations about a series of breaches of the council's Code of Conduct by Councillor Aspden in connection with a recruitment matter for another person".

An independent investigator had then concluded that Cllr Aspden used his position improperly to obtain an advantage for an applicant.

York's Standards Sub-Committee though did not agree that Cllr Aspden had a close association with the person involved and no sanctions were imposed.

Ms Weastell was eventually offered the £377,118 package but Mr Kirkham said he had "not seen clear evidence that the council considered the arrangement and the ex-gratia payment to be in the interests of taxpayers".

It had been put to the committee that the cost of defending a tribunal action would be significantly larger.

But the report said: “A local authority should not enter a settlement agreement simply to avoid embarrassment to the authority or individual elected members, or the cost of defending proceedings.

“It is only where there is a risk that a claim has a reasonable chance of success that it may be compromised. The business case [for the payment to Ms Weastell] refers to potential legal costs of contesting the Employment Tribunal claim but we have seen no clear evidence that demonstrates members challenged the limited information provided, or asked about the source of the estimate, or considered other options.”

Termination of Ms Weastell’s contract was marked by “ambiguity in the nature of the severance...accompanied by a lack of transparency and objectivity in approving the discretionary elements of the agreement”. Several Nolan principles were breached, Mazars found.

The report said some committee members may not have been informed that Cllr Aspden was a respondent in the Employment Tribunal claim and were, “therefore, unaware of that aspect of the conflict of interest”.

It went on: “We can reasonably expect, however, that they would have been aware of the earlier investigation arranged by the chief executive and might, therefore, have been sceptical about the propriety of the decision to approve an incomplete business case during a meeting [Cllr Aspden] chaired.”

Mazars said the failure to manage the conflict of interest “arguably means that the discretion involved in approving the severance has not been properly exercised”.

It said there had been several cases of conflicts “that have led to audit action or media coverage in recent years”, which suggested “a pattern or evidence of systemic weakness”

A review in progress of York’s constitution should be used to clarify how self-interest risk are managed, it said.

It made a number of other recommendations to improve processes and decisions recording.

Ian Floyd, the council’s chief operating officer, said: ‘We have developed an action plan to deliver each of the recommendations made by the auditor and this action plan will be considered at the same time as full council considers the Mazar’s report in May.’

Cllr Aspden said he relied on advice from council legal officers concerning any conflict of interest at the meeting about Ms Weastell’s payment, which “on this occasion was that there was no pecuniary or financial interest to declare on the specific decision being made”.

He said York’s code of conduct said councillors did not have a prejudicial interest in any council business where this “does not affect your financial position”. He would have been indemnified had he and the council lost the tribunal case.

Cllr Aspden said: “We know that there is certainly more that can be done at City of York Council to improve upon governance arrangements and, more widely, bolster existing processes.

“Work has already started to address this, including the new director of governance role and investment to update the council’s constitution. The action plan will complement the work already underway and must include creating a revised constitution, a new model code of conduct, template reports and decision logs.”

He said the deletion of the posts of chief executive post and one council director saved some £200,000 a year which would “be invested back into taxpayers’ priorities, not just as a one-off, but annually”.

## Leader of borough council steps down after report from external lawyers on planning issues (April 2021)

A report by a law firm has led to the resignation of a council leader over planning issues.

Castle Point Borough Council’s Conservative leader Norman Smith stood down as a councillor after the report by law firm Wilkin Chapman raised concerns about his conduct in relation to planning applications lodged by his son and a personal friend.

A council statement said: “Due to pressing business demands requiring his full and undivided attention which meant he was unable to carry out his responsibilities as a councillor and leader of the council, Councillor Norman Smith has today resigned as councillor representing the Boyce Ward and leader of the Castle Point Borough Council.”

Castle Point in April 2019 received a peer challenge report on planning that found “a widespread perception concerning weakness in probity in relation to planning decision making”.

That report highlighted evidence of collusion among some councillors on planning decisions and this consequently became a sensitive issue for Castle Point.

“How planning applications like Luke Smith’s were dealt with by the committee related to what was at the heart of those concerns”. Wilkin Chapman said.

Mr Smith’s son Luke Smith had submitted a planning application to replace a house on a Green Belt site with a larger one.

A planning officer recommended refusal and the development control committee agreed with this but some councillors later complained that Cllr Smith had “attempted to encourage support” for his son’s application.

The second planning application was a residential one on Canvey Island from Bernard Litman - who owns a property in Barbados where Mr Smith often holidayed. The report said he was “well known to have used the villa”.

A planning officer refused this application under delegated powers but Mr Smith sought to persuade another Conservative councillor Charles Mumford to call the matter in.

The report said Cllr Mumford believed this was because Mr Smith wanted to help Mr Litman, against whom there is no suggestion of impropriety.

It found it was “evident that Councillor Smith spoke to the chief executive regarding this application and also to the planning officer” and that since he had a non-pecuniary interest in his son’s project “by lobbying members and officers he attempted to confer on or secure an advantage for his son...that lobbying was improper”.

There was also a non-pecuniary interest in Mr Litman’s application because of the friendship between the two men, and lobbying in that case was also held to be improper.

David Marchant, who was the council’s chief executive until his death in February, told the law firm during its enquiries that he “had been very concerned about” Luke Smith’s application and although he had not attended the planning committee meeting in question he had watched a webcast which he found “very uncomfortable viewing, especially the second webcast where some members had clearly behaved in an extraordinary way”.

Mr Marchant had been chief executive for 16 years and said he had never previously experienced “so many members of the controlling group had gone forward and expressed their concerns about the pressure they had been put under to support a planning application”.

After Mr Litman’s application was turned down Mr Smith approached Mr Marchant and asked “can you see if there is a middle way through this for me please, David”.

Mr Smith was though found not to have compromised the impartiality of a planning officer or to have breached the protocol on councillor/officer relations.

## London borough says planning decision cannot stand after problems with broadcast stream for committee meeting (March 2021)

The monitoring officer at Ealing Council has advised the chair of its planning committee that a decision taken at a meeting on 10 March 2021, which saw an “unexpected problem” with the broadcast stream, cannot stand.

The council said the last 40 minutes of the meeting, which included part of the debate and the vote, was not broadcast publicly on the council’s *YouTube* stream.

Ealing said the planning committee would need to meet afresh to consider the application, which relates to the redevelopment of a 1.36ha site including its Perceval House offices. “Steps are being taken to confirm a suitable date for as soon as possible, to allow this to happen, in circumstances where the public will be able to witness the full debate and the vote.”

The local authority, which has taken measures to prevent a re-occurrence of the problem, said: “The monitoring officer gave her advice following full consideration of what happened at the 10 March planning committee meeting and also, consideration of the legal position.

“It has always been a fundamental principle of Ealing Council’s decision making that it be completely transparent, and it is disappointing that, due to technical problems outside the council’s control, that did not happen at the 10 March meeting.”

## **Senior officers threaten defamation action against councillors over remarks at meeting on staff transfer (May 2021)**

Two Bristol councillors have said they face defamation actions from senior council officers over remarks made at a meeting considering a staff reorganisation.

The BBC has reported that Conservative Richard Eddy and Liberal Democrat Gary Hopkins respectively compared the officers to the Nazi propaganda chief Josef Goebbels and accused them of not telling the truth.

Monitoring officer Tim O’Hara is reported to have referred the matter for investigation, but the council refused to confirm this or comment on any other aspect of the case.

According to the BBC, lawyers for the council’s director of workforce and change, John Walsh, and head of facilities management, David Martin, have served the two councillors with claims demanding a retraction, public apology and damages.

The dispute concerned the proposed transfer of some staff to the council’s wholly-owned Bristol Waste operation.

Cllr Eddy said: “Cllr Gary Hopkins and myself utterly reject the allegations.

“Moreover, Bristol City Council’s director of legal services agrees with us that the comments were made by us at a formal council meeting at which we were representing Bristolians and our constituents.

“Accordingly, we are covered by the council’s insurance cover and the council has put us in touch with outside lawyers and the insurance company will cover any legal expenses and, potentially, any legal damages (which we very much doubt).”

Cllr Hopkins said: “I will have plenty to say in the near future, but not now.”

## **Welsh council agrees to accept Ombudsman recommendations in full despite Monitoring Officer report advising payment of £15k less in proposed compensation to complainant (May 2021)**

Councillors at Flintshire County Council came close to rejecting a recommendation from the Public Services Ombudsman for Wales after the local authority’s monitoring officer advised councillors to pay a complainant £5,000 instead of the proposed £20,000.

An investigation by the Ombudsman found that the council's planning department caused injustice to a homeowner when it gave permission for an annexe with living accommodation to be built in their neighbour's garden.

Flintshire's monitoring officer agreed with all but one of the recommendations that the Ombudsman made in its report, which was published last month. However, councillors this week voted to accept all of the recommendations.

The report found that the development proposed by a Certificate of Lawfulness of Proposed Use or Development (a "s192 certificate" for an "annexe" containing primary living accommodation to be built in the garden of the next-door property) was not within a class for which planning permission was not required. Therefore, it was not a lawful development and the application should not have been granted, the Ombudsman said.

As a result, the watchdog recommended that Flintshire assess the impact of the development on the complainant's property and pay her the difference in the value of her property before and after the development as compensation. This amounted to £20,000. It also recommended the council apologise and check that the conditions on the planning permission had been followed.

However, speaking in a council committee meeting on Tuesday (25 May 2021), Flintshire's Monitoring Officer, Gareth Owens, said he disagreed with the Ombudsman on how much compensation should be paid and suggested the neighbour's development would receive permission on appeal anyway.

"There are limits to having some sympathy for the claimant's situation for two significant reasons," Mr Owens said. "The first is the neighbours' right of appeal, and further because of the neighbours' right to construct under what is called a 'permitted development'".

The Flintshire MO said that it is "highly likely" the neighbour would have had permission on appeal had the council refused it. He also said that it is possible that a visually similar but "potentially much larger building could have been constructed within the back garden under permitted development rights".

Mr Owens added: "As officers, we disagree with the Ombudsman's recommendation about compensation. The Ombudsman is recommending that we compensate the complainant based on the perceived loss of value to her property from having the visual intrusion of this building constructed.

"Officers are suggesting compensation, but we believe we are offering compensation at a more realistic value given that it is very likely that a building would have been constructed anyway."

Mr Owens recommended that the council:

- accept the Ombudsman's findings;
- issue an apology;
- check that the conditions on the planning permission have been followed;
- does not accept the valuation;
- pay to the complainant £5,000 to reflect the time taken to resolve the complaint the upset, distress and uncertainty.

Despite Mr Owen's report, councillors voted to accept the Ombudsman's complete recommendations, including paying £20,000 to the complainant, by a margin of 29 votes to 25, and 3 abstentions.

## Tribunal upholds decision by council to refuse to disclose views of independent persons on complaint about councillor (June 2021)

The First-Tier Tribunal has dismissed a legal challenge to a district council's decision to refuse, in response to a freedom of information request, to provide the views of two independent persons on a complaint about the conduct of a councillor.

In *Cyril Bennis v Information Commissioner (Dismissed)* [2021] UKFTT 2017\_0220 (GRC) the appellant had made a complaint to Stratford-upon-Avon District Council about the conduct of the councillor ('Councillor A').

The complaint was considered by Stratford's monitoring officer, who sought the views of the two IPs appointed under the Localism Act 2012. On 13 January 2017 the monitoring officer informed the appellant by letter that his complaint would not be investigated any further.

On 23 January 2017 Mr Bennis made a request for information in the following terms: "*I have requested under the Freedom of Information Act all correspondent (sic) relating to my complaint.*"

Stratford provided the majority of the information held but refused to provide the IPs' views on the complaint. In doing so, it relied on ss. 36(2)(b) & 36(2)(c), s. 40(2) and s. 40(3)(a)(i) of the Freedom of Information Act 2000 ('FOIA').

On 4 September 2017 the Information Commissioner upheld the council's decision in relation to ss. 36(2)(b) and 36(2)(c).

The Commissioner concluded that it was reasonable for the Stratford to have withheld information comprising the IPs' views on the complaint, on the basis that publication would be likely to inhibit the free and frank provision of future advice, and would be likely to be otherwise prejudicial to the effective conduct of public affairs.

The Commissioner went on to apply the public interest test set out in s.2(2) FOIA and decided that the public interest in the withheld information being disclosed was outweighed by the public interest in the exemption being maintained.

Mr Bennis appealed but this has now been rejected by the FTT.

The FTT said it was satisfied that the focus of the appellant's grounds of appeal was the public interest balancing test (the second stage identified in *Malnick*) rather than the reasonableness of the qualified person's opinion as to prejudice (the *Malnick* threshold question).

The tribunal also noted the generalised nature of the appellant's case, which relied on the public interests of transparency, openness and accountability in relation to public sector activities.

The FTT said these were always important public interests but was satisfied that they should not be afforded especial weight in the context of local democracy. “Rather, the weight afforded must always be fact dependant and varies according to context.”

It was further satisfied that the council’s usual practice, notwithstanding its flexible approach but in line with that of other local authorities, was that IPs’ opinions would generally be treated as confidential and would only be published when a complaint proceeds to a public hearing.

“We find that, in the context of this case, the IPs provided their opinions on the merit of the complaint with a reasonable expectation that these views would not be made public,” the FTT said.

The tribunal also considered whether, in light of the council’s flexible approach and the possibility of a public hearing, the candour with which IPs express their opinions might already be inhibited by the possibility of publication. “We conclude that it is not, noting Mr Grafton’s [Stratford’s monitoring officer’s] evidence that an outcome that includes publication rarely arises, if at all.”

The FTT further concluded that there was a significant risk that the candour, and therefore the quality, of the IPs’ advice to the council would be diminished were it to become more likely that it would be made public.

“This is because we accept the Respondents’ submissions as to the risk of self-censorship were an IP to become concerned that their views are likely to be made public. We find in addition that this risk is particularly acute in the context of local democratic activities, where the IPs are named and are members of the local community.”

The FTT said it was satisfied that the ability of the IPs to provide candid and uncensored advice to the monitoring officer was an important part of the council’s complaint system. “We find that any inhibition of the IP’s advice is likely to reduce the effectiveness of the complaints system overall and to have a negative impact on the quality of decisions taken.

“We find in addition that there is a strong public interest in avoiding detriment to the Council’s process for dealing with complaints made against elected officials.”

Having considered all of these factors, the FTT concluded that the public interests of transparency, openness and accountability were outweighed in this case by the significant public interest in avoiding the risk of inhibition of the IPs’ candid advice, and in maintaining the effectiveness of the council’s complaint process that might otherwise be undermined.

On s.40(2) the tribunal considered that both Councillor A and the IPs had a legitimate expectation of privacy in relation to the withheld material. It also found that the appellant had failed to identify any consideration in favour of publication that amounted to a “pressing social need” or any other reason capable of overriding Councillor A’s right to respect for her private life.

The FTT was satisfied that publication would be unfair to Councillor A. “We find in addition that publication of an unsubstantiated complaint against an elected official gives rise to a risk of reputational damage.”

Stratford submitted that similar considerations applied to the IPs' personal data. However, the FTT noted that the role is a formal appointment and appeared, from submissions, to be public facing. It also appeared that the names of the IPs in the case were already known.

"It is not immediately apparent how the Council's reliance on s40(2) distinguishes the personal data aspects of the IPs' advice to the Council from that of senior civil servants, whose names are publicly known and whose advice on matters affecting central government policy are regularly the subject of information requests, where s. 40(2) is not relied upon."

The FTT concluded that there was insufficient information available to it about the role and function of the IPs for it to determine the third question in *IC v Rodriguez-Noza and Foster* in relation to their personal data, as it seemed to it that a different balancing exercise may be required. "However, a determination of the Council's reliance on s. 40(2) in relation to the IPs is not required for present purposes."

The tribunal dismissed that appeal and upheld the decision notice of 4 September 2017.

Inews July 2021

## **Disabled councillors blocked from accessibility vote — because they are disabled**

The pair were told they had to leave the room during the vote among councillors on Thursday evening

A council ballot turned sour when two councillors were blocked from voting in an accessibility debate — **because they are disabled**.

Councillors Katie Lomas and Ashley Mason were told by York City Council they had "a prejudicial interest" in vote on improving **accessibility in the town centre** because they are Blue Badge holders.

The pair were told they had to leave the room during the vote among councillors on Thursday evening, and they would have to declare the reasons in front of their colleagues as a conflict of interest.

Labour's Ms Lomas told **i** she “was physically shaking” when told the meeting room, and told her colleagues that the exclusion was “discrimination.”

She said: “I was nervous [about delivering the speech] because I’m a woman in politics, and I know that women in politics are often targets for abuse.

“I was nervous because I’m disabled, and there is a public narrative sometimes about the community being scroungers, and being entitled to things they shouldn’t.

“But I am absolutely certain there were other people who were sitting in that room yesterday evening, who might drive into the city centre and use parking, and none of them were prevented from participating in the debate.

“I’ve taken steps today to confirm that that my view remains that that needs to be properly investigated.”

After Ms Lomas shared her outrage, she and Liberal Democrat Mr Mason were told they could receive “dispensation” to vote on the matter this once — but not if the topic came up again.

“I feel that probably compounds, the hurt, to me, because they weren’t accepting that they were discriminating against me on the grounds of a disability,” she added.

Mr Mason told **i**: “Until Councillor Lomas delivered her speech, the reality of the exclusion hadn’t sunk in.

“In the future we need to ensure on a national level that nobody else is put in this position again.”

Disability campaigner Helen Jones called the exclusion “absolutely shocking.”

The York Disability Rights Forum member told **i**: “In a debate about disability they were silencing disabled councillors.

“It’s already hard enough for disabled people to take part in local politics.

“There will be some people out there who voted for their councillor because they are a disabled voter and this is a disabled candidate. The council needs to listen to people who have lived experience of being disabled.”

“There will be some people out there who voted for their counsellor because they are a disabled voter and this is a disabled candidate. The council needs to listen to people who have lived experience of being disabled.”

A spokesperson for York Human Rights City Network told **i**: “We have looked carefully at the Council’s current plans for **access to the city centre and Blue Badge parking**, in the context of the UN Convention on the Rights of Persons with Disabilities, the Human Rights Act (1998) and the Equality Act (2010).

“We have concluded that a human rights approach has not been adopted in developing the current plans.”

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## Former council leader suspended after code of conduct breach (July 2021)

The former leader of Caerphilly County Borough Council has been suspended for five months for using confidential information to buy shares.

Labour councillor David Poole was found to have breached the councillors’ code of conduct by the Adjudication Panel for Wales (APW). Cllr Poole resigned as leader in September 2019.

Part of Cllr Poole’s duties was to represent Caerphilly on the board of the Cardiff Capital Region City Deal.

In the course of this he became aware that councils in the area wished to support the construction of a semiconductor factory in which a company named IQE would be involved. A confidential report made predictions about IQE’s profitability. The project attracted a £38m grant from the city deal and the Welsh Government to transform a disused building in Newport.

A few days after the city region board considered the matter Cllr Poole bought shares worth £2,034.55 in IQE. The APW said that in January 2019, Cllr Poole tried to amend his register of interests entry to include the IQE shares but “following advice from the monitoring officer, no amendment was made.

“He was advised that, because of the level of his shareholding and the fact that the business was based outside the council’s area, it was not necessary to make any amendment.”

Cllr Poole in January 2019 reinvested his dividends by buying further IQE shares worth £111.57, and another £111.33 that May.

He sold the shares in September 2019 and referred himself to the Public Services Ombudsman, noting “..with the benefit of hindsight, by purchasing shares in IQE, I was preventing myself becoming involved in any decisions of CCR around IQE and the hoped for wider compound semiconductor industry growth in the area”.

The APW found in mitigation that Cllr Poole had not previously breached the code and that he did seek to register an interest in IQE in January 2019, “but failed to do so as a result of the monitoring officer’s advice”.

It also found that Cllr Poole had not tried to influence decisions concerning IQE at a February 2019 meeting and left later meetings at which it was discussed.

There were though a number of aggravating factors. These included his influential position as leader, that he had used confidential, price sensitive information to attempt to secure a personal advantage and had “shown no real insight into his wrongdoing and/or acceptance of guilt” and had in the latter stages of the process failed to engage with the APW.

It suspended him as a councillor for five months and for two months concurrently for failing to disclose interests.

## **Standards watchdog calls on Government to respond to recommendations in 2019 local government ethical standards report “as a matter of urgency” (July 2021)**

The chair of the Committee on Standards in Public Life has said the watchdog remains concerned that the Government has not formally responded to its local government ethical standards report, some two and a half years after it was published.

In the CSPL’s Annual Report 2020/21, Lord Evans of Weardale urged the Government to look at the recommendations made – including the need for greater sanctions, where appropriate, in the rare cases of significant or repeated breaches of the code of conduct – “as a matter of urgency”.

The chair of the committee did, however, praise the Local Government Association for acting “promptly” to take forward the recommendation of a model code of conduct for local councils.

“We wanted to enhance the consistency and quality of local codes, and to support action against bullying and harassment,” Lord Evans said.

The report added: “This is vital support for local authorities as they ensure councillors and officers adopt and maintain high ethical standards and we see this as an important step towards encouraging good conduct and safeguarding the public’s trust in local government. The importance of an ethical culture in every local council to maintain public trust and confidence in local democracy should not be underestimated.”

Lord Evans separately said the Committee recognised that the need for immediate action at a time of crisis meant that the normal way of doing things might have to be set aside. But he warned that there were some areas of concern “where important norms had been disregarded”.

He noted that “demonstrating the principles of public life, and showing a sense of fairness in carrying out its duties, has a critical impact on the ability of government to take the public and business with them and is necessary for building consensus.”

Lord Evans added that the Committee would continue to monitor the impact of the pandemic on ethical standards in public life.

The majority of the Committee’s time and work during the period covered by the 2020/21 report was on two major reviews: one on election finance, the other covering the standards landscape (“Standards Matter 2”).

Its next review, to be launched later this year, will identify best practice in education, culture, and leadership on ethical standards. It will report to the Prime Minister in 2022.

The Cabinet Office meanwhile this week (15 July) announced that the Prime Minister had appointed Professor Gillian Peele, Emeritus Professor of Politics in the University of Oxford, and Ewen Fergusson, a former partner in the finance division at City law firm Herbert Smith Freehills, as members of the Committee, with effect from 1 August 2021.

## High Court quashes decision by deputy monitoring officer that parish councillor had breached code of conduct (July 2021)

A parish councillor has won a High Court challenge over a decision by a Deputy Monitoring Officer (DMO) to uphold a complaint that he had breached its Code of Conduct for Members (PC Code).

The background to the case of *Robinson, R (On the Application Of) v Buckinghamshire Council* [2021] EWHC 2014 (Admin) was that Farnham Royal Parish Council had complained about the claimant, Cllr Clive Robinson, to South Bucks Council (whose functions are, following local government reorganisation, now carried out by Buckinghamshire Council).

The parish council accused the claimant of breaching paragraph 3.1 of the PC Code (behaving in a respectful way and not acting in a way that could bring the council into disrepute).

The principal basis of the challenge was that the decision was in breach of section 6 of the Human Rights Act 1998 as it violated Cllr Robinson’s right to freedom of expression under Article 10 of the European Convention on Human Rights.

The claimant had been refused permission to challenge the defendant’s decision in respect of a complaint against another councillor, Trevor Clapp, but he was given permission to rely on the contrast between the defendant’s treatment of the two complaints.

The complaints arose out of a public meeting of the parish council, chaired by Cllr Clapp, on 17 April 2018 to discuss the Green Belt. The parish has a large area of Green Belt land within its boundaries.

South Bucks Council had, in March 2016, published its review of Green Belt land in which it stated that most of the Green Belt land in Farnham Royal only contributed weakly to the Green Belt, due to the intensification of housing on it, or adjacent to it.

“The prospect of development on the Green Belt in and around Farnham Royal generated some interest among developers, but was controversial among local residents who wanted to preserve the Green Belt,” the judge noted.

The complaint against Cllr Robinson, who had addressed the meeting from the floor, was that he had made misrepresentations about the motivation and intentions of other councillors, namely that they were minded to allow development of the Green Belt.

It was also said that he had met with residents and repeated those misrepresentations, he had refused to apologise or retract those misrepresentations and had added further claims against the clerk.

In the complaint the clerk to the parish council said it had decided that Cllr Robinson’s actions were in breach of the PC Code by bringing the council into disrepute and failing to show respect to other councillors.

The complaint also noted that as a result of a public backlash whereby the integrity of the chairman and the clerk had been questioned, Cllr Clapp had already asked for himself to be referred to the Monitoring Officer for a determination as to whether he had been in breach of the Code of Conduct.

Subsequent efforts to resolve the issue with Cllr Robinson were unsuccessful.

South Bucks’ Monitoring Officer wrote to the claimant in July 2018 inviting his comments. He responded by denying the allegations made against him.

An external solicitor was asked to assess the complaint on the papers and made recommendations in a report dated 18 February 2019.

The Deputy Monitoring Officer agreed with the assessor’s conclusion that Cllr Robinson had breached the Code of Conduct against five councillors and Cllr Clapp. She also agreed that there was no evidence to justify Cllr Robinson’s accusations that these councillors were secretly supporting development on the Green Belt.

The DMO added: “Having considered all the evidence, it appears Cllr Robinson’s objective was to prove to the public that the Council and/or other councillors were not being truthful about their position regarding the green belt. I find this to be damaging to the Council especially as the Council had formally adopted a policy on the Green belt, one which Cllr Robinson had been privy to through all the stages before adoption.

“Further I also find that his allegations that the Parish Council’s Policy statement on the Green Belt was being used to allow development to be disrespectful and was sufficient to damage the reputation of the office of the Councillors and/or the Council.”

She also noted that the allegations were made in an open forum where members of the public were present.

The DMO concluded that the claimant was in breach of the PCC Code, but also that the complaint did not warrant a referral for investigation.

Cllr Robinson brought a claim for judicial review over the DMO's decision.

Ground A was that the DMO's decision failed to make any clear findings as to what the claimant actually said at the meeting.

Grounds B and C alleged that the DMO failed to consider Article 10 in sufficient detail, in particular, there was insufficient regard given to the wider importance of freedom of expression, rigorous debate, scrutiny of decision-making and public accountability in local government.

Specifically, ground B alleged that paragraph 8 of the DMO's decision which suggested that, if the claimant had raised the issues of concern in private, the findings against him might not have been made, was wholly inappropriate. It was submitted that it was entirely proper for the claimant to raise concerns about issues affecting the parish at a properly convened meeting in a public forum, with other councillors, and in his capacity as a councillor.

Ground C meanwhile alleged that the DMO erred in law in paragraph 9 of the decision, when she observed that "if criticism is a personal attack or of an offensive nature, it is likely to cross the line of what is acceptable behaviour".

Ground D alleged that the defendant acted unreasonably, inconsistently and unfairly in adopting a different approach to freedom of speech in complaints against the claimant and Cllr Clapp.

In relation to Cllr Clapp, the DMO concluded that Cllr Clapp appeared to be aggrieved that he had been challenged in public by Cllr Robinson and in retaliation he attacked the person of Cllr Robinson when making a statement to the parish council on 25th June 2018. She said Cllr Clapp should be invited to respond to those allegations.

However, the DMO did not consider that Cllr Clapp's actions met the threshold for a breach of the Code of Conduct. She concluded that, as she had found no substantive breach on Cllr Clapp's part, it was not in the public interest to refer the complaint for investigation, and the costs of doing so would be disproportionate.

In the High Court Mrs Justice Lang concluded that the claim should succeed.

In relation to Ground A, both [the external solicitor] and the DMO had rightly been critical of the failure to record full and accurate minutes of the public meeting of 17 April 2018, and in particular, the failure to refer at all to the statements made by the Claimant.

"However, [the external solicitor] accepted that [the clerk until she resigned in 2018] had kept her own notes of what the Claimant said, and she set them out in paragraph 5.4 of her assessment. The Claimant gave his account of what he said at the meeting, which partly corresponded with [the clerk's] account and partly differed from it," the judge said.

"Neither [the external solicitor] nor the DMO made clear findings as to what the Claimant actually said at the meeting. The DMO said in paragraph 12 that the Claimant accepted that he made "those statements", which I take to mean the statements which [the clerk] attributed to him, based on her private notes. This was not entirely accurate. Given the importance that was placed upon his statements, for the purposes of the PC Code and Article 10, I consider that this was a significant

failing in the assessment and decision-making process. It is not possible to say what difference it would have made to the outcome if this exercise had been properly undertaken.”

In relation to Grounds B and C, Mrs Justice Lang found that the DMO's interpretation and/or application of Article 10 was flawed, and she failed to give effect to the claimant's enhanced right of political expression.

“In re-making the decision under Article 10(2), I conclude that the interference did not fulfil a pressing social need, and nor was it proportionate to the aim of protecting the reputation of the other councillors. As an elected councillor, taking part in a public meeting called by the PC to discuss the Green Belt, the Claimant was entitled to the enhanced protection afforded to the expression of political opinions on matters of public interest, and the benefits of freedom of expression in a political context outweighed the need to protect the reputation of the other councillors against public criticism, notwithstanding that the criticism was found to be a misrepresentation, untruthful, and offensive,” the judge said.

“Although no further action was pursued against the Claimant, beyond recommending that he apologise, it was a violation of Article 10 to subject the Claimant to the complaints procedure, and to find him guilty of a breach of the PC Code. Therefore Grounds B and C succeed.”

Finally, in relation to Ground D, Mrs Justice Lang said that whilst the factual differences between the cases [involving Cllr Robinson and Cllr Clapp] may have resulted in a different outcome, the approach should have been the same in both. “Councillor Clapp was more favourably treated. Therefore I consider that Ground D succeeds.”

Finding that there had been a violation of Article 10, the judge quashed the decision.



## **Appendix B**



**10 May 2021**

**AMENDED MEDIA RELEASE**

### **RENFREWSHIRE COUNCILLOR DISQUALIFIED FOR MISCONDUCT**

A Renfrewshire Councillor, Paul Mack, has been disqualified by the Standards Commission for misconduct following a Hearing held online on 3 May 2021, at which he was found to have behaved repeatedly in a manner which was harassing, threatening and offensive towards two other councillors, as well as to the Chief Executive and other officers.

At the Hearing, which was held in Councillor Mack's absence, the Panel heard that Councillor Mack had made a number of serious and unfounded allegations about the allocation of a council property to the family member of another councillor. The allocation was the subject of a review by the Council's Chief Auditor and then Audit Scotland, who concluded that the Council property was appropriately let and that there was no influence, or opportunity for influence, over the selection process, by any elected member.

Despite this, and without any evidence to the contrary, Councillor Mack had embarked upon a course of conduct in which he made wholly unwarranted accusations of corruption and cronyism, and of covering up criminal activity, towards the other councillor, the Chief Executive and senior Council staff. Councillor Mack had further demanded the suspension of senior officers, again without any justification.

Mr Paul Walker, Chair of the Hearing Panel, said: "Even when confronted with independent findings which confirmed him to be in the wrong, Councillor Mack compounded his misconduct by continuing to make offensive and damaging allegations. A fundamental element of the Code of Conduct is the requirement for Councillors to behave with courtesy and respect towards fellow Councillors and staff. Councillor Mack has shown little regard for his obligations, not just in these cases, but on previous occasions when he was suspended for breaches of the Code for disrespect. He has provided no justification, no apology, and no undertaking to avoid similar conduct in the future, and indeed his participation in the whole process has been minimal. Imposing a sanction of disqualification is not one we have come to lightly but the Panel is satisfied, in the circumstances that it is fully warranted and necessary to protect others and to reflect Councillor Mack's repeated wilful misconduct and unwillingness to change his behaviour."

The Hearing Panel accepted that Councillor Mack was entitled to raise concerns about the allocation of council housing, particularly if he was doing so on behalf of a constituent. However, having heard evidence, reviewed emails sent to other councillors, senior officers and a journalist over a period of some seven months in 2019, and watched a video recording of comments made in public at a Council meeting on 27 June 2019, the Panel was satisfied that Councillor Mack had sought repeatedly to allege serious wrongdoing by a widening

number of individuals. This was despite no evidence of wrongdoing being found during any investigation (including the independent inquiry). The Panel noted that Councillor Mack had not produced any evidence to support his claims at any stage.

The Panel was satisfied that Councillor Mack's accusations amounted to offensive and abusive personal attacks and were persistent and unwarranted. The Panel also considered that, in copying in all elected members to some of the emails, in sending one to a newspaper and in making comments at full Council meetings, Councillor Mack had sought to inflict reputational harm.

The Panel was further satisfied that Councillor Mack had made a number of gratuitous and unwarranted personal comments to a second councillor in an email of 24 April 2020. In addition, the Panel found that Councillor Mack had made threatening and intimidating remarks in that email in making reference to someone going to the second councillor's house and inflicting personal harm on him.

The Panel found that Councillor Mack's actions contravened the Councillors' Code of Conduct, which states that elected members must treat officers and their colleagues with respect, that they must avoid any conduct that amounts to bullying and harassment; and that they should refrain from raising matters relating to the conduct or capability of officers in public.

The finding and sanction take into account that the Standards Commission had previously suspended Councillor Mack for breaches of the respect provisions in the Code at Hearings on 17 October 2016 and 23 October 2017, with the latter suspension being for a period of seven months. Despite this, the Panel did not consider there was any evidence that he had made any attempt to moderate his behaviour or that he gave any consideration to how it could impact others.

The Panel noted that Councillor Mack had repeatedly indicated that he should not have to abide by the Code and did not recognise the Standards Commission and its role in the ethical standards framework.

The Panel determined that Councillor Mack's behaviour was deliberate and serious in nature. The Hearing Panel considered that the manner in which Councillor Mack had raised his concerns was unacceptable and that it amounted to personal attacks on officers and fellow councillors. The Panel considered that, as such, it was likely that Councillor Mack's behaviour would have seriously undermined public confidence in local government and have a significant detrimental impact on working relationships within the Council. The Panel did not consider, therefore, that a more lenient sanction than disqualification was appropriate in the circumstances.

#### Notes:

At a hearing on 4 February 2021, a Sheriff Principal considered an appeal lodged by a Respondent against a decision made by a Panel of the Standards Commission about the same complaints, at a Hearing on 10 September 2020, to find him in breach of the Councillors' Code of Conduct and to disqualify him. The Sheriff Principal did not consider, or

make any finding, on the Panel's decisions on breach and sanction, but determined that the Standards Commission should not have proceeded with the Hearing in the absence of the Respondent, who stated he was self-isolating from 9 September 2020 (having been in close contact with an individual who had tested positive for Covid-19). The Sheriff Principal remitted the matter back to the Standards Commission to consider at a new Hearing.

A full written decision in respect of the Hearing will be issued and published on the Standards Commission's website within 14 days. The disqualification will remain in place until September 2022.

The Standards Commission for Scotland works independently of Government and political parties. It promotes and enforces Codes of Conduct for councillors, as well as for individuals appointed to a wide range of national and regional public bodies across Scotland such as the Accounts Commission, the Scottish Qualification Authority, SportScotland, Scottish Water and the Scottish Police Authority and many other organisations, including NHS Boards and further education colleges.

Further information on the work of the SCS can be found at [www.standardscommissionscotland.org.uk](http://www.standardscommissionscotland.org.uk).

A previous press release issued on 3 May 2021 incorrectly stated that the disqualification would remain in place until July 2022. This was due to an error in the verbal decision read at the Hearing, which was subsequently recognised by the Hearing Panel and corrected in the written decision, a copy of which can be found at: <https://www.standardscommissionscotland.org.uk/cases/case-list>.

ENDS

Issued by the Standards Commission for Scotland. For further information please contact the Standards Commission on 0131 348 6666 or [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk)



## **LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 2014**

**In the matter of former Councillor Brian Duffin (Antrim and Newtownabbey Borough Council)**

**Case Reference C00324**

Acting Local Government Commissioner: Mr Ian Gordon OBE QPM  
Mr Michael Wilson, Solicitor and the Legal Assessor

Ms Michaela McAleer, Acting Deputy Commissioner presented the case.  
Former Councillor Brian Duffy represented himself.

## **INTRODUCTION**

The Northern Ireland Local Government Commissioner for Standards (the Commissioner), Mrs Margaret Kelly, has appointed Mr Ian Gordon as Acting Local Government Commissioner (Acting Commissioner) in relation to this Adjudication Hearing process. The role of the Acting Commissioner in this Hearing is defined by:

The Local Government Act (Northern Ireland) 2014 (the Act).

Due to the restrictions arising from Covid-19, this was a virtual hearing, held on the WebEx system and the proceedings were recorded by a stenographer.

By virtue of section 55(1)(a) of the Act, the Commissioner may investigate a written allegation made by any person that a Councillor (or former Councillor) has failed, or may have failed, to comply with the Code of Conduct for Councillors (the Code).

On 19 June 2018, Councillor Brian Duffin (the Respondent) was convicted at Antrim Magistrates' Court of sexually assaulting a teenage girl, which had taken place on 15 June 2016.

On 24 August 2018 a written complaint was received by the Northern Ireland Local Government Commissioner for Standards (the Commissioner) from Alderman Stephen Martin, in accordance with section 55 (1) (a) of the Act. The complaint alleged that the Respondent, an elected member of Antrim and Newtownabbey Borough Council (the Council), had failed to comply with the Code.

The Respondent's Declaration of Acceptance of Office is dated 4 June 2014 (Appendix E). By signing the declaration, the Respondent affirmed that he had read and would observe the Code.

The Respondent resigned as a Councillor on 30 November 2018.

## INVESTIGATION

The complaint was investigated by the former Deputy Commissioner Mr Paul McFadden, who, in his Investigation Report dated 17 June 2019, reported that he had found evidence that would point to the Respondent having failed to comply with paragraph 4.2 of the Code:

*"You must not conduct yourself in a way which could reasonably be regarded as bringing your position as a Councillor, or your Council, into disrepute".*

The Deputy Commissioner submitted his investigation report to the Acting Commissioner in accordance with sections 55 and 56 of the 2014 Act. On 9 May 2019, the Acting Commissioner decided to hold an Adjudication Hearing in relation to the Respondent's conduct to determine whether or not he had failed to comply with the Code.

## STAGE 1 - FINDINGS OF FACT and STAGE 2 - DETERMINATION ON BREACH OF THE CODE

At the outset, as preliminary matters, the Acting Commissioner addressed three issues relevant to evidence being led in the Hearing:

1. He referred to the non-automatic disqualification consequence of the sentence being suspended on appeal. The Deputy Commissioner in his Investigation Report at paragraph 27 had said:

*"Councillor Duffin was sentenced to a period of four months' imprisonment, suspended for three years. It is my understanding that automatic disqualification therefore applies in this case."*

The Acting Commissioner did not agree with that conclusion. The Local Government Act of Northern Ireland at Section 4(1)(cc) does not include the term 'suspended sentence' in its reasons for disqualification, whereas in the Local Government Acts for England, Scotland and Wales, the term was specifically included. In those Acts it reads:

*"Has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months."*

The Acting Commissioner was satisfied that the sentence imposed on the Respondent did not therefore invoke an automatic disqualification in this case.

2. The Acting Commissioner gave a warning to the Respondent about the relevance of evidence in the Hearing. He stated that he would not allow the Respondent to challenge the finding of guilt imposed on him by the Antrim Magistrates' Court, nor the outcomes of his subsequent appeals against conviction and sentence. On the advice of the Legal Assessor, the Acting Commissioner was satisfied that he had absolutely no authority to go behind those findings, which were made by courts of law and are established, and that he could take judicial notice of the outcome of the initial conviction and subsequent appeal.
3. The Acting Commissioner raised the aspect of confidentiality. He made it absolutely clear that the victim must not be named, and that warning extended to members of her family, or their addresses. It was imperative that there was no identification during the Hearing.

The Acting Deputy Commissioner had no preliminary matters to raise.

As a preliminary matter, the Respondent informed the Acting Commissioner that, in relation to his criminal case, he had appointed new solicitors. He had instructed them to raise legal actions of perjury against the complainant and her mother. The Acting Commissioner informed the Respondent that the hearing was focused purely on his conviction as it now stood. The Respondent stated that he accepted that position.

The Acting Deputy Commissioner emphasised that the criminal conviction in this case related to the same underlying facts that formed the basis of the former Deputy Commissioner's Investigation Report. She intended to proceed on the basis that it was not necessary for her to prove the facts behind the conviction. The former Deputy Commissioner had obtained a full summary of the circumstances of the offence and other evidence, such as witness statements, to consider the conduct to which the conviction related within the context of the Code.

The Acting Deputy Commissioner said Alderman Martin, in providing his complaint, also provided printouts of the following news reports from the BBC website, which he provided to support his complaint:

1. An article from 19<sup>th</sup> June 2018 entitled: "Councillor Brian Duffin guilty of teen sex assault".
2. An article from 7<sup>th</sup> August 2018 entitled: "Brian Duffin sentenced for sex assault".

The complaint that Alderman Martin made arose from the following facts:

1. On 19<sup>th</sup> June 2018, the Respondent was convicted of sexually assaulting a teenage girl on 15 June 2016.
2. On 7<sup>th</sup> August 2018 he was sentenced to four months' imprisonment, was placed on the Sex Offenders Register for a period of seven years and it was ordered that he be subject to a five-year Sexual Offences Prevention Order (SOPO).
3. The Respondent was released on bail pending an appeal against his conviction and sentence.

The former Deputy Commissioner had obtained a copy of the Respondent's declaration of acceptance of office which was dated 4 June 2014. By signing the declaration, the Respondent affirmed that he had read and would observe the Code.

The focus of the Deputy Commissioner's investigation was to ascertain if the Respondent may have failed to comply with paragraph 4.2 of the Code, which states:

*"You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a councillor or your council into disrepute."*

This rule applies to councillors at all times, even when they were not acting in the role of councillor, therefore the Acting Deputy Commissioner was satisfied that the Code was in effect when the conduct complained of occurred.

To assist his investigation, the former Deputy Commissioner sought further evidence:

1. Belfast Magistrates' Court provided a certificate of conviction in respect of the Respondent's conviction.

2. The Respondent's trial and conviction attracted significant media interest and a selection of the media articles in respect of same can be found at pages 35 to 48 of the Hearing bundle.
3. The Respondent subsequently resigned from the Social Democratic and Labour Party pending the outcome of the court case and within the media articles it was noted that the SDLP, his former party, condemned his actions and called for him to resign his seat immediately.

On 11th October 2018 a statement of evidence was recorded from Mrs Jackie Dickson, the Chief Executive of the Council for Antrim and Newtownabbey regarding the complaint against the Respondent. It was notable that the Chief Executive was of the view that, as a result of his conviction the Respondent had brought his position as a councillor and the council into disrepute. Furthermore, the Acting Deputy Commissioner noted that within that statement her view that the Respondent's conviction had caused reputational damage to the council. It had impacted on public trust and confidence in the Council.

The Respondent lost his appeal against conviction on 28th November 2018 and on 29th November 2018 the Respondent notified Mrs Jackie Dickson, by letter, of his intention to resign as a councillor on 30th November 2018.

The Acting Deputy Commissioner said that concluded her submissions.

The Acting Commissioner invited submissions from the Respondent.

The Respondent referred to the written communications he had previously sent to the Acting Commissioner and stated that he did not want to waste time just going over those. He appreciated that it was a sentence of a Court, but he abided by the decision although he disputed it. He was now taking legal action against the individual.

The Respondent said that he appreciated the Acting Commissioner's situation that he was duty bound to uphold the Court's decision. He said he did not dispute the Court's decision; rather he disputed the evidence given to the Court.

Noting the submissions that he had just made, the Legal Assessor, asked the Respondent if he accepted, for the purpose of the Adjudication, that he was in breach of paragraph 4.2 of the Code? The Respondent replied "No".

The Legal Assessor asked the Respondent if he wished, therefore, to submit to the Acting Commissioner why he believed that he was not in breach of paragraph 4.2 of the Code?

The Respondent replied that he was not in breach of the Code because the individual, who made the complaint, perjured herself on eight counts to the Court and his legal team had not challenged any of the allegations made.

The Acting Commissioner asked the Respondent to confirm that he said that he did not breach the Code? The Respondent replied “Yes”.

The Acting Commissioner adjourned to consider his determination on the findings of fact.

### **STAGE 1 – FINDINGS OF FACT**

The Acting Commissioner said the evidential test for his consideration of findings of fact was on the balance of probabilities. He had taken note of the findings of fact from the Acting Deputy Commissioner, and he had concluded:

1. The Code was in effect when the conduct complained of occurred.
2. The Respondent signed an undertaking on 4th June 2014 that he had read and would observe the Local Government Code of Conduct for Councillors.
3. The Respondent served as a member of Antrim Council from 1st October 2013. He then served as a member of Antrim & Newtownabbey Council from 28th May 2014.
4. At the relevant time, 15th June 2016, the Respondent was a member of Antrim & Newtownabbey Council.
5. On 19th June 2018 the Respondent was convicted of sexually assaulting a teenage girl on 15th June 2016.
6. On 7th August 2018 he was sentenced to four months imprisonment, was placed on the Sex Offenders Register for a period of 7 years, and it was ordered that he be subject to a five-year Sexual Offences Prevention Order.
7. The Respondent was released on bail pending an Appeal against his conviction and sentence.
8. On 24th August 2018 a written complaint was received by the Northern Ireland Local Government Commissioner for Standards (the Commissioner) from Alderman Stephen Martin alleging that the Respondent had failed to comply with the Code.

9. The Respondent lost his Appeal against conviction on 2th8 November 2018.
10. The Respondent notified the Chief Executive on 29th November 2018 of his intention to resign as a councillor, with effect from 30th November 2018.
11. On 14th May 2019 the Respondent's sentence was reduced, on Appeal, to four months' imprisonment, suspended for three years. The SOPO was also removed. The Respondent is to remain on the Sex Offenders Register for 7 years.
12. The media reported the Respondent's original conviction and the outcome of his appeals against both sentence and conviction.

## **STAGE 2 – DETERMINATION ON BREACH OF THE CODE**

The Acting Commissioner noted:

1. The Respondent was convicted on 19th June 2018 at Antrim Magistrates Court of an offence committed on 15th June 2016: sexually assaulting a teenage girl.
2. On 7th August 2018 he was sentenced to four months' imprisonment, placed on the Sex Offenders Register for a period of 7 years, and it was ordered that he be subject to a five-year Sexual Offences Prevention Order (SOPO).
3. On 14th May 2019 the Respondent's sentence, on appeal, was reduced to four months' imprisonment, suspended for three years. The SOPO was also removed. Councillor Duffin is to remain on the Sex Offenders Register for 7 years.
4. The Respondent's conduct, which resulted in a criminal conviction, had brought both his position as Councillor and his Council into disrepute.

### **Reasons for the Acting Commissioner's decision**

In reaching his decision on the failure to comply with the Code, the Acting Commissioner had taken into account the Guidance for Councillors on the Code<sup>1</sup> and in particular paragraph 4.5.3 which states:

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<sup>1</sup> Guidance for Councillors from the Northern Ireland Commissioner for Complaints

*‘As a Councillor, your actions and behaviour are subject to a higher level of expectation and scrutiny than those of other members of the public. Therefore, your actions – in either your public life or your private life – have the potential to adversely impact on your position as a Councillor or your Council. Dishonest and deceitful behaviour or conduct that results in a criminal conviction, such as a conviction for fraud or assault, even where such conduct occurs in your private life, could reasonably be regarded as bringing your position as councillor, or your Council, into disrepute’.*

The Acting Commissioner also took into account 4.5.4 of the Guidance which states:

*“When considering whether such conduct is such that it could reasonably be regarded as bringing your position, or your Council, into disrepute, I will consider:*

- Whether that conduct is likely to diminish the trust and confidence the public places in your position as Councillor, or your Council, or is likely to result in damage to the reputation of either; and*
- Whether a member of the public – who knew all the relevant facts – would reasonably consider that conduct as having brought your position as Councillor, or your Council, into disrepute”.*

The Acting Commissioner also took into account the statement of Ms Dixon, Chief Executive of the Council, where she stated:

*“I believe that Councillor Duffin’s conduct has brought his position as a councillor and the Council into disrepute as he has been convicted of this serious offence”.*

The Acting Commissioner was satisfied that the conduct of the Respondent, which resulted in a criminal conviction with attendant media publicity, was such that it was likely to diminish the trust and confidence the public placed in him as a Councillor and his Council. He had been referred to in media reports in this regard.

The Acting Commissioner found that a member of the public, knowing all of the relevant facts, would reasonably consider that the Respondent’s conduct was such that it brought his position as Councillor, and his Council, into disrepute.

The Acting Commissioner was satisfied, despite the denial by the Respondent, that the Respondent had breached Paragraph 4.2 of the Code:

*“You must not conduct yourself in a way which could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute”.*

### **STAGE 3 – SANCTION**

The Acting Commissioner considered the submissions by both parties on sanction and the Guidance on Sanctions document. In summary, the respective submissions were as follows:

#### **Submissions by the Deputy Commissioner:**

##### **Mitigating Factors:**

1. The Respondent has no history of breaching the Code.
2. He was first elected as a member of Antrim Borough Council on 1st October 2013 and continued to serve as a councillor until his resignation on 30th November 2018. This provides some evidence of a previous record of good service and compliance with the Code.
3. He has cooperated with the Adjudication Hearing.

##### **Aggravating Factors:**

The Acting Deputy Commissioner said that an important factor in this case was the protection of the public interest in terms of public confidence in the institution of local government through those democratically elected to represent constituents. The legitimate aim being pursued by the Code was to provide for and secure the high standards required from elected councillors and in turn the purpose of sanction was preservation of confidence in local government representation.

The Acting Deputy Commissioner referred to the list of aggravating factors in the Commissioner's Guidance on Sanctions and drew on three factors:

1. The Respondent's actions had brought his role as a councillor and his council into disrepute where his conduct could reasonably be expected to attract significant public opprobrium.
2. The Respondent's conviction had caused reputational damage to the council and had impacted on public trust and confidence in the council.
3. There is some evidence that the Respondent had continued to deny the facts that formed the basis of his conviction and him seeking to unfairly blame other people.

The Acting Deputy Commissioner addressed the categories of decision for sanction. She noted paragraph 6 of the Sanction Guidelines:

*"The Acting Commissioner will take account of the actual consequences that have followed as a result of the Respondent's conduct and will also consider what the potential consequences might have been even if these did not occur".*

**1. No action:**

Was not a suitable outcome given the deliberate nature of the conduct, which gave rise to the Acting Commissioner's determination and breach of the Code. This was not an inadvertent failure, rather it was a conduct driven by the Respondent's own actions

**2. Censure:**

Given the weight of the public interest and the gravity of the conduct in question, as opposed to the minor failures envisaged under this outcome, it was highly questionable, in her view, whether censure could adequately cater for the public interest in the circumstances.

**3. Partial suspension:**

This provision was designed to meet circumstances in which a councillor's conduct was such that it was limited to a particular activity or section of council business from which the councillor could be easily extracted. The conduct in this case, which led to disrepute of the council and the office of councillor, is conduct of a pervasive nature and one which went to the very heart of public representation and the role of a councillor at every level on every matter.

**4. Suspension:**

Paragraph 18 of the Sanctions Guidelines states that suspension will not be considered if the Respondent has resigned or has not been re-elected to the council.

**5. Disqualification:**

Paragraph 19 of the Sanctions Guidelines states:

*"Disqualification is the most severe of the options open to the Acting Commissioner."*

It sets out the factors from (a) to (h) those circumstances in which disqualification may be an appropriate outcome. The Acting Deputy Commissioner considered the Respondent's conduct fell into:

(g) *"Bringing the council into disrepute. Where the Commissioner finds that the Respondent's conduct has brought the council into disrepute, he will consider whether the extent of reputational damage to the council is so serious as to warrant a disqualification."*

The Council had suffered reputational damage as a result of the Respondent's conduct.

(h) *"If the conduct giving rise to a failure to comply with the conduct is such as to render the Respondent entirely unfit for public office, then disqualification is the likely and appropriate sanction."*

Paragraph 3 of the Sanctions Guidelines states:

*"The Commissioner's consideration of the sanction decision in any case will be based on her view. The principal purpose of sanction is the preservation of public confidence in local government representative. Her decisions on sanction were aimed to uphold the following objectives, the public interest in good administration; upholding and improving the standard of conduct expect of councillors and the fostering of public confidence in the ethical standards regime introduced by the 2014 Act."*

The Acting Deputy Commissioner was of the view that a conviction for an offence of this nature would be viewed seriously by the public. It was of the type that would diminish rather than preserve confidence in local government representatives and the ethical standards regime where a councillor would be allowed to continue in his role as a councillor, or indeed, become a councillor for any period during which they were still registered on the Sex Offenders Register.

### **Other cases**

The Acting Deputy Commissioner referenced the case of *Councillor Patrick Clarke* which was decided on 21st November 2016. Patrick Clarke had been convicted of criminal offences, one in February 2015 in respect of fraud that occurred in 2010, and one in September 2015 relating to a sexual assault that occurred in December 2014. During the investigation further criminal offences came to light. Sentences for the convictions included: a probation order for 10 months; pay compensation of £200; 7 months' imprisonment suspended for 3 years. He was disqualified for a period of 3 years.

This was in clear comparison to the sentence given to the Respondent and the accompanying time period to be spent on the Sex Offenders Register. It was the Acting Deputy Commissioner's submission that the Respondent's case was one which fell within the disqualification category and one which may attract a period of disqualification matching that, which was still required to be spent by him on the Sex Offenders Register.

There would be no loss of entitlement to allowances as these ceased upon the Respondent's resignation.

The Acting Deputy Commissioner concluded that there was an overriding public interest in this case and maintaining public confidence in local government. There was no doubt that a key element of this would be public knowledge of the sanction itself, along with an understanding of the factors that led to this outcome.

### **Submissions by the Respondent**

The Respondent said that he had been found guilty of an assault based on perjured evidence and that and he was innocent. Those were the facts and those were the truths and that was his submission.

### **Conclusion on Sanction**

The Acting Commissioner said he had listened carefully to the submissions. He acknowledged the mitigating factors raised by the Deputy Commissioner: that the Respondent did good service as a councillor; he resigned of his own accord; he had cooperated with the Investigation and the Hearing.

The Acting Commissioner dealt with sanction in ascending order of severity:

1. **No action:** The Acting Commissioner determined that to take no action in this case was not an appropriate response to the failure by the Respondent to comply with the Code because his conduct was a serious matter and not merely an 'inadvertent' failure to comply with the Code.
2. **Censure:** On the facts of this case, the Respondent's conduct, which had led to his convictions for a criminal offence of sexual assault could not be considered as a deliberate but nonetheless minor failure to comply with the Code. Therefore censure was not a suitable sanction.
3. **Partial suspension:** The Sanctions Guidelines indicated that partial suspension may be appropriate where the conduct in question was not sufficiently serious as to warrant disqualification. The Acting Commissioner considered that partial suspension was more likely to be appropriate where the conduct related to a particular activity or Council business from which the Councillor could be easily removed. He determined that the Respondent's conduct, which led to this breach of the Code, was serious. In this instance, however, it was not related to any particular area of Council business. The Acting Commissioner concluded that the sanction of partial suspension was not appropriate in this case.

4. **Suspension:** The Acting Commissioner took into account the Sanctions Guidelines which state that the sanction of suspension was to be considered where the conduct was not sufficiently serious to warrant disqualification, but the conduct was of a nature that:

- it is necessary to uphold public confidence in the standards regime and/or local democracy;
- there is a need to reflect the severity of the matter; and
- there is a need to make it understood that the conduct should not be repeated.

In view of the actual conduct itself, the seriousness of the criminal conduct, suspension was not an appropriate sanction for this breach of the Code.

5. **Disqualification:** This was the most severe of the options open to the Acting Commissioner. The Sanctions Guidelines, referred to by the Acting Deputy Commissioner, provided a list of Factors in a case which may lead to this option. The Acting Commissioner considered the following two Factors were relevant to this case:

*g. Bringing the council into disrepute. Where the Commissioner finds that the Respondent's conduct has brought the council into disrepute, she will consider whether the extent of the reputational damage to the council is so serious as to warrant a disqualification.*

*h. If the conduct giving rise to a failure to comply with the Code is such as to render the Respondent entirely unfit for public office, then disqualification is likely to be the appropriate sanction.*

The Acting Commissioner considered that a contributory factor was that the Respondent was on the Sex Offenders Register for seven years and he believed that it was not in the public interest to exclude that fact from his decision. The Respondent continued to deny the lawfulness of his conviction. The Respondent's conduct made disqualification the appropriate sanction.

The Acting Commissioner had considered the objectives, set out in paragraph 3 of the Sanctions Guidelines, and found that the following objectives were relevant to determining sanction in this case:

- the public interest in good administration;

- upholding and improving the standard of conduct expected of councillors;
- the fostering of public confidence in the ethical standards regime introduced by the 2014 Act.

Any sanction imposed must also be justified in the wider public interest and should be designed to discourage or prevent the particular Respondent from any future failures to comply with the Code or to discourage similar conduct by other Councillors.

The decision of the Acting Commissioner, made under Section 59(3)(c) of Part 9 of the Local Government Act (Northern Ireland) 2014, was to disqualify the Respondent for a period of 5 years from being, or becoming (whether by election or otherwise), a councillor and the disqualification was to have effect from 9th June 2021.

The Acting Commissioner took into account the economic impact on the Respondent in the loss of Council allowances but said that consideration was removed when the Respondent resigned from the Council.

## **6. LEAVE TO APPEAL**

The Respondent may seek the permission of the High Court to appeal against a decision made by the Acting Commissioner, which must be made within 21 days of the date that the Respondent receives written notice of the Acting Commissioner's decision.

A handwritten signature in blue ink, appearing to read 'Ian A Gordon'.

Ian A Gordon

Acting NI Local Government Commissioner for Standards  
30 June 2021



Northern Ireland

# Local Government Commissioner for Standards

## Local Government Act (Northern Ireland) 2014

### In the Matter of Councillor Colin Kennedy – C00095 (Ards and North Down Borough Council)

### Decision of the Acting Northern Ireland Local Government Commissioner for Standards following Stages 1 and 2 of the Adjudication Hearing

The Northern Ireland Local Government Commissioner for Standards, Ms Margaret Kelly, has appointed Mr Ian Gordon, OBE, QPM, as Acting Local Government Commissioner (the Acting Commissioner) in relation to the Adjudication Hearing process in respect of this complaint. Mr Gordon was assisted by Mr Michael Wilson, Solicitor, Legal Assessor.

## 1. COMPLAINT

A complaint by Councillor James Menagh (Reference C00095 - Appendix A<sup>1</sup>) was made to the Commissioner which alleged that an elected member of Ards and North Down Borough Council, Councillor Colin Kennedy (Respondent), had or may have failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors (the Code)<sup>2</sup>. The allegation was investigated by the Deputy Commissioner for the Local Government Ethical Standards (LGES) Directorate of the Northern Ireland Ombudsman's Office.

**The complaint** was investigated by Mr Paul McFadden, then Deputy Commissioner for the Local Government Ethical Standards (LGES) Directorate of the Northern Ireland Ombudsman's Office.

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<sup>1</sup> A reference to an Appendix is to the relevant Appendices in the Investigation Report dated 11 July 2019.

<sup>2</sup> <https://nipso.org.uk/site/wp-content/uploads/2016/02/Code-of-Conduct.pdf>

The relevant parts of the Code where it was alleged the Respondent had failed to comply with the Code were:

**Paragraph 4.2:** *“You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute”.*

**Paragraph 4.13(a):** *‘You must show respect and consideration for others’.*

**Paragraph 4.13(b):** *‘You must not use bullying behaviour or harass any person’.*

Following his investigation, the Deputy Commissioner, submitted a report, dated 11 July 2019, to the Acting Commissioner in accordance with sections 55 and 56 of Part 9 of the Local Government Act (Northern Ireland) 2014. At paragraph 107 of his report, the Deputy Commissioner concluded there was sufficient evidence that the Respondent had failed to comply with the three provisions of the Code noted above.

## **2. PRE-ADJUDICATION HEARING REVIEW**

On 24 June 2020 the Acting Commissioner determined to hold an Adjudication Hearing into the Complaint. In a letter dated 6 November 2020, the Respondent submitted his Response to the Deputy Commissioner’s Investigation Report.

Due to Covid, it was decided that meetings of the Northern Ireland Local Government Commissioner for Standards would be held ‘virtually’ to ensure the safety of participants. A Pre-Hearing Review Meeting was convened by the Acting Commissioner, under paragraph 37 of the Procedures for the Adjudication of Cases<sup>3</sup> (Procedures) document, for Wednesday 9 December 2020. The Respondent declined to attend but, in an email dated 9 December 2020, he stated:

*“I am content, however, that given Mr McFadden has failed to provide any evidence to substantiate the claims he had made and which I have contended, I am happy for Mr Gordon to proceed to adjudication”.*

The Procedures document, at page 7 paragraphs 25 to 27, sets out the procedure that permits the Acting Commissioner to determine whether there has been a breach of the Code without holding an Adjudication Hearing:

### **Paragraph 25: Determination of Adjudication without an Adjudication Hearing**

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<sup>3</sup> <https://nipso.org.uk/site/wp-content/uploads/2016/09/Adjudication-Procedures-September-2016.pdf>

*“The Commissioner has the discretion to adjudicate to determine whether there has been a breach without an Adjudication Hearing if she considers that she requires no further evidence and any one of the following circumstances apply:*

*25a. If no reply is received in response to the notification provided to the Respondent within the specified time or any extension of time allowed by the Commissioner; or*

*25b. If the Respondent states that he or she does not intend to attend or wish to be represented at the Adjudication Hearing; or*

*25c. The Respondent does not dispute the contents of the investigation report”.*

In this instance, the Acting Commissioner determined that in view of the contents of the Respondent’s e-mail dated 9 December 2020, paragraph 25b applied.

#### **Paragraph 26**

Where the Commissioner decides not to hold an Adjudication Hearing, paragraph 26 requires him to

*send to the Respondent a list of the facts, together with any other supporting evidence, that she will take into account in reaching her decision. The Respondent will have 15 working days to submit any further written representations before the Commissioner make her adjudication.”*

Having invoked paragraph 25b the Acting Commissioner then sent the Respondent a list of facts and supporting evidence in accordance with paragraph 26.

#### **Paragraph 27:**

*“In circumstances where the Commissioner has made a determination as to breach without holding an Adjudication Hearing, she will, except in exceptional circumstances, hold an Adjudication Hearing to make a determination as to sanction.”*

### **3. STATEMENT OF FACTS SUPPLIED TO THE RESPONDENT**

In accordance with paragraph 26 of the Procedures document a Statement of Facts, obtained from the Report of the Deputy Northern Ireland Local Government Commissioner for Standards dated 11 July 2019 and the Response Form of Councillor Kennedy received on 9 December 2020, was sent to the Respondent on 8 January 2021. He did not respond.

**Relevant Facts:**

1. The Local Government Act (NI) 2014 provides that the Code will apply to all Councillors. Councillor Kennedy is an elected member of Council on Ards and North Down Borough Council from 4 June 2014 to the present date. He has served as a Councillor for 6 years.
2. Councillor Kennedy signed an undertaking on 4 June 2014 that he had read and would observe the Local Government Code of Conduct for Councillors (the Code). The Code was in effect when the conduct complained of occurred
3. At the relevant time, 30 November 2016, Councillor Kennedy was a member of the Council.
4. On 30 November 2016, the Council held 'a Gateway Signage Sub-Committee meeting' at the Signal Centre in Bangor, County Down, to discuss new signs for five local towns. Councillor Kennedy attended the meeting as a member of the Council.
5. At the end of the meeting, an exchange occurred between a Councillor Robinson and Councillor Kennedy which continued in the car park at the rear of the Signal Centre.

**From Witness Statements:****A. Councillor James Menagh (Appendix B)**

1. Councillor Menagh provided a written statement of complaint in which he stated that he had received a telephone call from Councillor Noelle Robinson on 30 November 2016 about the Regeneration Committee meeting at the Signal Centre in Bangor that evening.

**B. Councillor Noelle Robinson (Appendix H)**

1. Councillor Robinson attended a Gateway Signage - Regeneration meeting at 5.30 pm on Wednesday 30 November 2016 at the Signal Centre in Bangor.
2. She has stated that she jokingly asked for the prototype 'Newtownards' sign and remarked how pleased her friend and council colleague, Councillor Jimmy Menagh, would be as she intended to give the sign to him.

3. Councillor Robinson stated: prior to her leaving the room, Councillor Kennedy started to remonstrate with her in full view and hearing of those still present in the room.
4. She stated: he raised his voice and pointed his finger at me.
5. He stated very forcefully *"Noelle, you are not giving that sign to Jimmy Menagh"*
6. Councillor Robinson stated: *"I would describe Councillor Kennedy as having been right on top of me, he was right in my face. He was very aggressive and intimidating, his face was very red, I think he may have been attempting to block me from leaving"*.
7. Agnes Eaton approached her after she left the building and said words to the effect of; *'that was terrible, that fella is a big bully'*.
8. Councillor Robinson stated: Councillor Kennedy started shouting across at her when she was standing beside her car in the carpark at the rear of the Signal Centre.
9. Councillor Robinson stated: it was *"pitch dark"* at that time with some street lighting in the carpark and that she *"was quite intimidated by him, his face appeared to go white, he was very angry"*.
10. She asked him why she should not give the sign to Councillor Menagh, he responded with *"a diatribe about the UVF and insinuated that Jimmy was in the UVF.....I am certain that he said that Jimmy was in the UVF"*.
11. In respect of the discussion, Councillor Robinson said to Councillor Kennedy; *"everyone has a past"* and added that he responded by stating; *"Jimmy has a past and a present"* – Councillor Robinson interpreted this to mean that Councillor Menagh was still active in a paramilitary organisation. She added that he had also said that *"Jimmy's friends were drug dealers and thugs"*.
12. Councillor Robinson stated: she told Councillor Kennedy that he could have the sign, but he walked away, refusing to take it. She asked Mrs Eaton to return the sign to *'White Noise'* as she was too upset to go back in.
13. Councillor Robinson stated: that she contacted Councillor Menagh after she arrived home that night and told him about what had happened.
14. Councillor Robinson contacted the Chief Executive of the Council (Mr Stephen Reid) that night by email (Appendix H) and provided an account of Councillor Kennedy's behaviour.

15. In conclusion, she stated: *"I would like if he (Councillor Kennedy) would be big enough to apologise to me"*.

**C. Agnes Eaton (Appendix I)**

1. Mrs Eaton stated that, as Councillor Robinson was leaving with a Perspex sign, she remarked that she would be giving the sign to *"Jimmy someone"* – she could not recall the surname. In response to this, Councillor Kennedy reportedly said; *"what did you just say?"* in a loud voice and she said, *"he definitely was not calm"*.
2. Mrs Eaton stated: *"I got the impression he wanted the sign. It appeared obvious to me that something had ticked him off. Noelle said: "I'm giving it to Jimmy" and said his surname. He responded: "I don't think you are"*.
3. She stated: Councillor Kennedy said to Councillor Robinson; *"I don't care what it's for, he's not getting it"*. Councillor Kennedy then followed Councillor Robinson out towards the carpark. She observed Councillor Kennedy *"towering over"* Councillor Robinson in the carpark.
4. She stated: *"I could see that Noelle was looking frustrated – they appeared to be having a heated debate. He was right up in Noelle's face. I would describe him as being very tall and well built, he looks like a big farmer. I could hear him talking about the man called Jimmy"*.
5. Mrs Eaton stated: *"I would say that he came across as a bully. He was neither a good representative of himself nor his party. I spoke with both of them to try and diffuse the situation. Noelle was chalk white. I hope I never witness the likes of this again"*.
6. Mrs Eaton stated: Councillor Robinson had told her that Councillor Kennedy had *"accused her of supporting terrorists"* and *"supporting paramilitaries and drug dealers"*. Mrs Eaton had not heard this being said.
7. She returned the sign at Councillor Robinson's request and told Brian Dorrian that *"Councillor Kennedy had "tore strips" off Noelle and that he is a bully"*.
8. Mrs Eaton stated: *"I could not even sleep that night; I was so shocked. Had he behaved towards me in that manner, I would have called the PSNI. It was a horrible situation"*.

**D. Mark Mulholland, Company Director of White Noise Graphic Design Studio (Appendix J)**

1. Mr Mulholland stated: Councillor Kennedy said something inappropriate to Councillor Noelle Robinson at the start of the meeting. He could not recall what was said but thought that it was most inappropriate. Councillor Kennedy's demeanour was not particularly pleasant...whilst he could not recall what Councillor Kennedy said, he would say it created an uncomfortable atmosphere in the room.
2. He stated: Councillor Robinson left along with Agnes Eaton, whom, he stated, returned about 5-6 minutes later. He described Mrs Eaton as being '*clearly distressed – she was white*'. She said to Claire (Jackson) that she was returning the sign and referred to some sort of a conversation in the carpark. He assumed that this related to Councillor Kennedy – he did not hear all of the conversation

**E. Claire Jackson, Corporate Communications Manager, the Council**

1. Claire Jackson stated: Agnes Eaton (Agatha) had told her that she had witnessed an exchange in the carpark between Councillors Kennedy and Robinson. She described Agatha as 'evidently upset and shaking' and stated that Agatha had told her that Councillor Kennedy had 'behaved in an aggressive manner towards Councillor Robinson and had made allegations concerning paramilitary activity on the part of Councillor Jimmy Menagh'.
2. Ms Jackson stated: she could recall that Councillor Robinson had requested a 'small mock-up sign of Newtownards'. She had indicated her intention to give it to Councillor Menagh.
3. Ms Jackson said: she had told Councillor Kennedy that the ladies (Councillor Robinson and Mrs Eaton) had taken the sign and jokingly said words to the effect of '*you will have to chase them out to the carpark*'. She added that she did not think that he would go out after them. She described Councillor Kennedy 'as appearing to be slightly agitated – he definitely wanted to know where the sign was'.
4. Ms Jackson stated: she had sent an email to the Chief Executive of the Council, Mr Stephen Reid that night which indicated:
  - 'Colin Kennedy had a row with Noelle Robinson in the carpark. It was to do with Jimmy Menagh who he apparently described as a paramilitary who has no business in Ards (or words to that effect).

- She was not there but it was witnessed by a business owner from Bangor (Agatha) who came back into the meeting to tell her about it. Agatha was fairly upset and said Noelle was the same’.

**F. Ms Foreman, Assistant Regeneration Officer at the Council.**

1. Ms Foreman stated: she was unaware of any tension during the meeting. Councillor Robinson had asked for a sample of gateway signage and had taken it with her and left along with Agnes Eaton.
2. Agnes Eaton came back in from the carpark and made a general comment along the lines of *‘that was very rude’* – Ms Foreman did not know what this referred to and believed that Agnes had brought the sign back.

**G. Stephen Reid Chief Executive, the Council (Appendix M)**

1. Mr Reid stated: he received an email from Councillor Robinson at 20.08 on Wednesday 30 November 2016 in which she had raised her concerns about her interaction with Councillor Kennedy and that he responded to her email that night.
2. He stated: he had also received an email from Claire Jackson who advised: *‘Colin Kennedy had a row with Noelle Robinson in the carpark’* and that he also responded to Claire that night.

**H. Interview of Councillor Kennedy (Appendix N)**

1. Councillor Kennedy was interviewed on 24 August 2017 at the Northern Ireland Public Services Ombudsman’s Office in Belfast. Councillor Kennedy was not accompanied during the interview. The interview was audio recorded.
2. He said: he spoke to Councillor Robinson as she was leaving and told her that she could not take the sign and should not be giving it to anybody *‘especially Mr Menagh but again she ignored me’*. He added that he certainly had not shouted at her but stated that *“the tone of my voice would’ve been obviously firm”*.
3. He said: Councillor Robinson does not represent Newtownards town and if the sign was going to be given to anybody that it should go to one of the representatives for the District Electoral Area.
4. When asked, why he told Councillor Robinson that the sign should not be given to Councillor Menagh: he said, *“in my view it shouldn’t be given to anybody who is, or*

*has connections with, or who is an apologist for those who are a blight on the local communities. And, as the evidence that I submitted, and everybody knows, well if that means nothing, because we're talking about evidence here, but Councillor Menagh has connections with, eh, local paramilitary groupings".*

5. He described the carpark as *"... sufficiently well-lit to make it safe and that you can see the boundaries of it. Now actually to be honest I mean I can't say for sure"*. He said that he saw Councillor Robinson as he left and thought that the other lady may have joined them afterwards.
6. When asked to describe Councillor Robinson, he initially gestured with his little finger and described her as: *"...she's slim, tall, well tall, slim"*. *"That's just as opposed to me who, yes, I'm 6ft 3 and 22 stone, yes, Noelle is you know, she's, we are the physical antithesis of each other"*.
7. Asked how Councillor Robinson may have responded to him, he said: *"Disproportionate. Disproportionately I thought at the time. Because she was so vociferous and so passionate, eh, in what she was saying in defence of Jimmy to the point where she may well have been in tears at the end of it. That was as she left to get in her car, and I went to get in my car, and she could well have been in tears, yeah"*.
8. He was asked, in hindsight, and in light of their contrasting physical statures, if he could see how Councillor Robinson may have perceived his behaviour as somewhat intimidating or harassing. He responded by stating *"Yes, I actually can. I can see it from her point of view now. However, yes, it would be a misrepresentation of how I behaved because at the end of it, if the same thing was to happen again, I would behave exactly the same"*.
9. He was later asked what Mrs Eaton may have seen when she approached both Councillors Kennedy and Robinson in the carpark. He stated: *"Well she would've seen sort of this hulk standing, you know, face to face, well not face to face obviously, but speaking, having this conversation with Noelle who would have been fairly animated"*.
10. Councillor Kennedy denied behaving in a disrespectful and bullying manner towards Councillor Robinson.
11. Councillor Kennedy denied that he said Councillor Menagh was a member of the UVF (Ulster Volunteer Force).

## **I. Councillor Colin Kennedy's Response to the Investigation Report**

Councillor Kennedy has disputed the content of some of the Investigating Officer's Report but has offered no evidence to support his position. In his Response, Councillor Kennedy has said the following:

1. *"Councillor Menagh was not present at the meeting nor witness to any of the events under consideration".*
2. *"It was 'pitch black' in the car park making it impossible for anyone to make comment on the colour of one's skin".*

## **4. STAGE 1 – CONCLUSION OF FINDINGS OF FACT**

In his Response Form (9 December 2020), to the Investigation Report, the Respondent has commented on some of the findings by the Deputy Commissioner. He does not, however, categorically contest any of the evidence set out in the statements of the witnesses. The Respondent concluded:

*"I am content, however, that given Mr McFadden has failed to provide any evidence to substantiate the claims he had made and which I have contended, I am happy for Mr Gordon to proceed to adjudication".*

As noted above a Statement of Facts compiled by the Acting Commissioner was sent to the Respondent on 8 January 2021 but the Respondent did not respond to that document.

The Acting Commissioner has accordingly determined that the facts set out in part 3 above represent the findings of fact in this matter.

In summary, the Acting Commissioner is satisfied there is clear evidence in the Investigation Report, from both the Respondent and Councillor Robinson, together with a number of independent witnesses, that the incident arose from a dispute over the road sign. The cause of the dispute is also clear, Councillor Robinson wanted to give the sign to Councillor Menagh whilst Councillor Kennedy was adamant that would not happen. The incident escalated outside in the car park and that was witnessed by Mrs Eaton. It is also apparent, from Councillor Robinson's statement and from the interview with the Respondent, that he has a strong dislike of Councillor Menagh, which was a key factor in the escalation.

## 5. STAGE 2 – DETERMINATION ON BREACH

The evidential test for consideration of findings of fact is whether the Deputy Commissioner established to the satisfaction of the Acting Commissioner, on the ‘Balance of Probabilities’, there had been a failure to comply with the Code.

The Acting Commissioner considered all of the evidence and found as follows:

- A. The Councillor’s Code of Conduct applied to the Respondent. In reaching his decision on the failures to comply with the Code, the Acting Commissioner has taken into account the Commissioner’s Guidance on the Code.
- B. The Respondent has failed to comply with the Code at:
  - 1. **Paragraph 4.2: “You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute”.**

The Commissioner’s Guidance on the Code (Page 17 p. 4.5.4)<sup>4</sup> states that “*when considering whether a councillor’s actions or behaviour could reasonably be regarded as bringing their position, or their council, into disrepute, she will assess:*

- a. whether that conduct is likely to diminish the trust and confidence the public places in your position as councillor, or your council, or is likely to result in damage to the reputation of either; and*
- b. whether a member of the public – who knew all the relevant facts – would reasonably consider that conduct as having brought your position as a councillor, or your council into disrepute.”*

The Acting Commissioner noted that the Respondent’s exchange with Councillor Robinson initially occurred during, then immediately after, a council meeting and continued in a carpark and that both were acting as members of their council with members of the public and council officers present or nearby.

The Acting Commissioner was satisfied that, taking all the facts as a whole concerning the incident, the Respondent’s conduct was likely to diminish the trust and confidence the public places in his position as councillor.

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<sup>4</sup> <https://nipso.org.uk/site/wp-content/uploads/2018/02/Guidance-for-Councillors-from-the-Northern-Ireland-Commissioner-for-Complaints-April-2017-2-1.pdf>

The Acting Commissioner determined that a member of the public, knowing all of the relevant facts, would reasonably consider that the Respondent's conduct was such that it brought his position as Councillor into disrepute.

However, whilst the Acting Commissioner found that Councillor Kennedy had breached paragraph 4.2 of the Code, he did not find evidence that the Respondent's conduct had brought his council into disrepute. In coming to this conclusion, the Acting Commissioner noted and accepted the submission of the Deputy Commissioner who referenced the case of Livingstone v Adjudication Panel for England<sup>5</sup> which concerned offensive comments made by the then Mayor of London, Ken Livingstone. In that case the court drew a distinction between an elected representative bringing themselves into disrepute and bringing his or her office into disrepute:

*"While the appellant has a high profile as Mayor, I doubt that many people would regard what he did as bringing disrepute on the office rather on him personally. Misuse of the office can obviously bring disrepute on the office, but personal misconduct will be unlikely to do so."*

Although the Respondent's behaviour in the incident was unacceptable and offensive, there is no tangible evidence to support the conclusion that it brought the Council into disrepute.

## **2. Paragraph 4.13(a): 'You must show respect and consideration for others'.**

The Acting Commissioner has carefully considered the analysis by the Deputy Commissioner set out in Paragraphs 94 and 95 of his Investigation Report in which he noted:

1. The Respect Principle (Code page 8) where it is acknowledged that exchanges may be robust but that should not extend to individuals being subjected to unreasonable and excessive personal attack. and
2. In the Guidance to the Code at Paragraph 4.6.5: where it states, you should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence, in councillors.

The Acting Commissioner was satisfied that based on the findings of fact the Respondent's behaviour and words, for example, in the evidence of Councillor Robinson and Mrs Eaton, amounted to an unreasonable and excessive personal attack on Councillor Menagh. The behaviour was also patently rude and offensive to Councillor Robinson.

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<sup>5</sup> [2006] EWHC 2533 (Admin)

The Acting Commissioner has had regard to the potential effect of Article 10 of the European Convention on Human Rights, which attracts ‘*enhanced protection*’ when a councillor’s comments are political in nature; in a political context, the immoderate, offensive, exaggerated and aggressive may be tolerated where it would not otherwise be.

However, the principles set out cases such as *Heesom v Public Services Ombudsman for Wales*<sup>6</sup> make it clear that the protection afforded by Article 10 does not extend to gratuitous personal comments.

The Acting Commissioner agreed with the conclusion of the Deputy Commissioner, that the Respondent’s words were ill-tempered, and the incident occurred in a public car park. It was not in the context of a debate in the interests of informing the public nor did what was said relate to a matter of public administration or public concern. As such, it did not attract the enhanced protection under Article 10.

Accordingly, the Acting Commissioner found that Councillor Kennedy had failed to comply with paragraph 4.13(a) of the Code and the Respect Principle.

**3. Paragraph 4.13(b): ‘*You must not use bullying behaviour or harass any person*’.**

The evidence of Councillor Robinson makes a number of references that she felt intimidated by the Respondent’s behaviour, both in the Council building and then in the car park. She was embarrassed by his behaviour in the room, described him as angry and shouting at her in the car park and, in reference to his accusations about Councillor Menagh, said that “*they took my breath away and shocked me to the core*”. She was too upset to take the sign back into the building and asked the witness Eaton to do so. Councillor Robinson was still upset when she drove home.

The evidence of Agnes Eaton, Mark Mulholland, Claire Jackson and Stephen Reid make reference to the Respondent behaving in an aggressive manner and to Councillor Robinson being upset because of the incident.

The Acting Commissioner was satisfied there was sufficient evidence to show that Councillor Robinson felt intimidated and offended by the behaviour of the Respondent, which included offensive accusations about Councillor Menagh. The Acting Commissioner was also satisfied that the behaviour by the Respondent towards Councillor Robinson, during the confrontation, was bullying and harassing in nature.

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<sup>6</sup> [2014] EWHC 1504 (Admin)

The Commissioner's Guidance on the Code<sup>7</sup> at pages 25 to 26, describes bullying and harassment:

- 4.6.6 *"unwanted behaviour that makes someone feel intimidated or offended"*.
- 4.6.7 *"if your criticism is a personal attack on a councillor...or is of a highly offensive nature, this is likely to be considered bullying or harassment and therefore a breach of the Code"*.
- 4.6.8 *"allegations of bullying and harassment will be considered from the perspective of the alleged victim"*.

The evidence of Councillor Robinson and Mrs Eaton clearly describe the offensive nature of the Respondent's behaviour and words to Councillor Robinson, together with the upset it caused to her. This behaviour falls within the definitions of bullying and harassment set out above and accordingly the Acting Commissioner found that Councillor Kennedy has breached paragraph 4.13(b) of the Code

## **6. STAGE 3 - SANCTION**

On 11 June 2021, Stage 3 of the Adjudication Hearing was held on WebEx. The Acting Commissioner said restrictions imposed by Covid 19 were designed to protect the public by avoiding in person public meetings, and accordingly this Stage 3 was being conducted on a virtual basis.

Ms Michaela McAleer                      Acting Deputy Commissioner presented the case.

Councillor Colin Kennedy              The Respondent, represented himself.

The Hearing was recorded by a stenographer.

The Acting Commissioner reiterated that Stage 1 Finding of Facts and Stage 2 Determination had been conducted under Paragraph 25 of the Procedures document, in particular, paragraph 25(b), where the Respondent did not intend to be present or represented at Stages 1 and 2.

The Acting Commissioner had made a determination in Stages 1 and 2, on 2 March 2021, and he was satisfied that the Respondent had failed to comply with the Code at:

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<sup>7</sup> <https://nipso.org.uk/site/wp-content/uploads/2018/02/Guidance-for-Councillors-from-the-Northern-Ireland-Commissioner-for-Complaints-April-2017-2-1.pdf>

**1. Paragraph 4.2:**

*'You must not conduct yourself in a way which could reasonably be regarded as bringing your position as a Councillor, or your Council, into disrepute'.*

**2. Paragraph 4.13(a):**

*'You must show respect and consideration for others'.*

**3. Paragraph 4.13(b):**

*'You must not use bullying behaviour or harass any person'.*

The determination was sent to the Respondent, and he was given the opportunity to respond.

The Acting Commissioner considered the submissions by both parties on sanction and the Guidance on Sanctions document. In summary, the respective submissions were as follows:

**Submissions by the Acting Deputy Commissioner:**

**Mitigating Factors:**

1. The Respondent has no history of breaching the Code.
2. He did not bring the Council into disrepute.
3. There had been co-operation and engagement in the investigation.
4. The incident was a one-off occurrence and there had been no further incidence of non-compliance in the intervening period.

**Aggravating Factors:**

The Acting Deputy Commissioner said that an important factor in this case was the protection of the public interest in terms of public confidence in the institution of local government through those democratically elected to represent constituents. The legitimate aim being pursued by the Code was to provide for and secure the high standards required from elected councillors and in turn the purpose of sanction was preservation of confidence in local government representation.

The Acting Deputy Commissioner referred to the list of aggravating factors in the Commissioner's Guidance on Sanctions and drew on four aggravating factors which she

considered applicable to this case and a further few factors that should be taken into account which do not appear in that non-exhaustive list, but which, in her view, were relevant.

1. The Respondent's actions had brought his role as a councillor into disrepute. Its seriousness reflected perhaps in the fact that it was specifically mentioned as a justifying factor under the suspension and partial suspension categories of decision. In this instance a member of the public, Mrs. Eaton, specifically referred to the Respondent as "not being a good representative of himself or his party".
2. Despite a number of witness accounts being provided which went some way to supporting Councillor Robinson's account of events, and those were contemporaneous accounts, the Respondent did not attach any weight to these and rather described the Deputy Commissioner as having failed to provide any evidence to substantiate the claim that he, the Deputy Commissioner, had made.
3. The Respondent referred to a medical issue for Councillor Robinson which she shared with Council before the 2019 local government election. The inference Councillor Kennedy was inviting, in her view, to be drawn from this statement was that Councillor Robinson's account was unreliable. No reference is made by Councillor Kennedy to the fact that the events took place in 2016 and there was an independent witness to some of the incident. The Acting Deputy Commissioner suggested that this provided some evidence of Councillor Kennedy seeking unfairly to blame other people.
4. The complete absence of any provocation or backdrop to the events that occurred. Moreover, the Respondent chose to follow Councillor Robinson to the car park where his conduct escalated, despite Councillor Robinson's decision to walk away having presented him with an opportunity to desist from his behaviour and de-escalate matters.
5. The allegations made by Respondent were serious and could have had serious personal safety consequences for another Councillor and potentially for the Respondent himself were they to find their way into the wider public domain.

The Acting Deputy Commissioner addressed the categories of decision for sanction. She noted paragraph 6 of the Sanction Guidelines:

*"The Acting Commissioner will take account of the actual consequences that have followed as a result of the Respondent's conduct and will also consider what the potential consequences might have been even if these did not occur".*

### **1. No action:**

This was not a suitable outcome given the deliberate nature of the conduct, which gave rise to the Acting Commissioner's determination and breach of the Code. This was not an inadvertent failure, rather this was conduct that was driven by the Respondent's own actions with him choosing to follow Councillor Robinson to the car park where matters escalated.

### **2. Censure:**

Given the weight of public interest the Acting Deputy Commissioner suggested in this case, as opposed to the minor failures envisaged under this outcome, it would be highly questionable in her view whether censure could cater for the public interest in the circumstances.

### **3. Partial Suspension**

The provision was designed to meet circumstances in which a councillor's breach was such that it was limited to a particular activity or section of council business from which the councillor could be easily extracted. The conduct here, which involved bullying and harassing behaviour leading to disrepute and disrespect, was conduct of a pervasive nature and one which therefore went to the heart of public representation and the role of the councillor at every level and in every matter.

### **4. Suspension**

The Acting Deputy Commissioner had considered Councillor Kennedy's case within the framework set out in the Sanctions Guidelines as to when suspension might be appropriate. She noted that suspension may be adequate in addressing the public interest insofar as it upholds public confidence in the standards regime and reflected the severity of the matter and conveys that the matter should not be repeated.

The Respondent had brought the office of councillor into disrepute and also been found to have failed to comply with Rules 4.13(a) and (b). Added to which, Councillor Kennedy referred to behaving in the same way again if the same thing was to happen. The possibility of repeat conduct, therefore, cannot be easily ruled out.

The Acting Deputy Commissioner looked at case law from other jurisdictions. She considered the case of Councillor Jim Swift where the Standards Commission for Scotland decided to impose a sanction of a one-month suspension for a breach of the Scottish Code. The panel noted that Councillor Swift had been shouting at the complainer during an exchange and that his demeanour, tone and body language were aggressive and intimidating. It was,

nevertheless, of the view that the respondent's conduct did not warrant a more severe sanction because it was satisfied that the incident was a one-off, was of limited duration, and that there was no evidence of any previous transgressions by that Respondent.

The Acting Deputy Commissioner distinguished the Respondent's case from Councillor Swift:

1. The potentially serious nature of the comments made by Councillor Kennedy which amounted to an excessive personal attack on another councillor who was not present to defend himself or respond.
2. Three people were directly affected by Councillor Kennedy's conduct, one of whom was a member of the public.
3. There had been no formal acknowledgment of regret or apology by Councillor Kennedy.
4. There had been only partial rather than full cooperation with the adjudication process.
5. There was some evidence of challenging the evidence to the end.
6. She highlighted that there was no finding of disrepute (in Swift) relating to the role or office of the councillor.

The Acting Deputy Commissioner considered that suspension would be in line with the decisions on sanction in the previous case and it would meet the public interest.

## **5. Disqualification**

The Acting Deputy Commissioner referred to Paragraph 19 of the Sanctions Guidelines, where disqualification is described as the most severe of the options open to the Acting Commissioner. It goes on to list from A to H those circumstances in which disqualification may be an appropriate outcome. She had not identified that Councillor Kennedy's conduct fell within any of those subparagraphs.

The Acting Deputy Commissioner said the key question in determining whether disqualification was appropriate was the extent of the reputational damage and she highlighted that as to the Council and not the Respondent. The Deputy Commissioner's Report and the Acting Commissioner's determination made it clear that the disrepute in this case did not extend to the Council.

On that basis, the Acting Deputy Commissioner's submission was that the Respondent's case was one which fell within the suspension category and one which may attract a period of two to three months.

The Acting Deputy Commissioner referred to financial impact should the Respondent be suspended. In accordance with *"Section 59.5 or Section 61 of the Local Government Act Northern Ireland 2014, where a councillor is suspended from carrying out their duties the part of basic allowance, special responsibility allowance, chairperson and vice chairperson allowance payable for the period of suspension to the councillor will be withheld."*

There would be a financial impact on the Respondent.

### **Submissions by the Respondent**

The Acting Commissioner informed the Respondent that he had passed a copy of his written submissions, submitted on 4 June 2021, to the Stenographer to be inserted into the transcript for Stage 3. There were some parts in those submissions, linked to family, where the Acting Commissioner would have taken that evidence in 'private mode'. The Acting Commissioner directed that those sections would not appear in the public transcript of today's Hearing nor would the Respondent's email address. The Acting Commissioner said he understood that the Respondent was content for his submissions to go into the transcript without reading it out in the Hearing, and confirmed that the Respondent would have the opportunity to speak on mitigation. The Respondent agreed to this course of action.

The Respondent also referred to the Paragraph 3 of the Sanctions Guidelines and observed:

1. The exchange between himself and Councillor Robinson which was the foundation for the complaint was limited to himself and Councillor Robinson; it did not take place in a public/Council forum/setting; nor was the detail of the exchange witnessed by any member of the public, with only one person making observations from sufficient distance away that they could not hear what was being said.
2. The author of the report submitted by the Ombudsman's Office made serious allegations regarding his actions yet failed to provide any evidence whatsoever to substantiate said allegations. In fact, in Paragraph 87, the author stated that he is "persuaded" that evidence exists, yet no such evidence has ever been submitted.
3. While he is on record as having acknowledged Councillor Robinson's interpretation of their exchange insofar as she was offended and upset, at no time did he intend to come across in a bullying or intimidating fashion, with the only evidence offered being an

observation that he was considerably taller and larger than Councillor Robinson, which neither of them could do much about.

4. Section 8 of the “Sanctions Guidelines” states, “Circumstances where the Commissioner may find it appropriate to determine that no action needs to be taken in respect of a failure to comply with the Code include:

- a. An inadvertent failure to comply with the Code.
- b. A written undertaking from the Respondent that, despite the lack of sanction, there is not likely to be any further failure to comply on the part of the Respondent.

In the first instance, it was clear from the evidence provided, that there was no malice associated with his comments to Councillor Robinson; neither was there any premeditation involved. It was an organic exchange that flowed from earlier events. If his actions did indeed breach the Code, it was certainly inadvertent on his part and wholly unintentional.

In the second instance, it has always been his stated position, that irrespective of the rights and the wrongs of what happened, he was always more than happy to issue a full apology to Councillor Robinson. The only reason this did not happen was because he was not made aware of the fact that Councillor Robinson had been hurt and offended until he received correspondence from the Ombudsman's Office in relation to a complaint which had been submitted by a third party. Had he been made aware of this at an earlier stage, he would not have hesitated to apologise to Councillor Robinson both in person and in writing.

### **Mitigation**

In regard to mitigation, to say that he had learned a salutary lesson from this incident was an understatement and he was on record as having expressed regret in relation to how Councillor Robinson felt following their exchange and he was truly sorry for any hurt he caused. He was glad to say that Councillor Robinson and himself were on good speaking terms at the end of the last Council term. It matters little whether or not he intended to upset her that night and he was still more than willing to issue an apology.

He had absolutely no intention of letting this sort of incident happen ever again. Up until this point in his life he had never been investigated or disciplined in relation to his behaviour in any part of his life, professional or private. He had a blemish free record heretofore and a completely clear criminal record. He had never sought to react to events in a knee-jerk fashion, or to let emotion dominate reason and, as a Christian, he strove to take time to know and understand other people.

Without seeking to dismiss the hurt felt by Councillor Robinson, he would simply wish to stress that their exchange was only witnessed by one other person, and at a distance. He had never denied that the exchange took place or that Councillor Robinson and he had a heated discussion in relation to appropriate behaviour of public representatives. However, it was clear that they had markedly differing opinions as to what actually happened that evening. In any event, there was no media coverage of the incident; there was no coverage on social media and there was no mention of it within the Council. The potential damage caused to the perception of councillors was therefore very limited.

The personal impact of an adverse judgement could have a catastrophic impact upon his life, relationships and livelihood. At present his only income was through his role as Councillor and with 18-month and 8-week-old daughters to provide for, things were incredibly hectic to say the least.

The Respondent commented on the submission by the Acting Deputy Commissioner concerning her statement that his inclusion of the information regarding Councillor Robinson's personal health was included in some way to deflect where in fact it was the opposite. The reason he included that information was to emphasise his own regret at what took place that evening. Certainly, if he had known that the circumstances may have been different.

The Respondent said that no point had he attempted to escape any responsibility that he had for anything that happened that night other than to perhaps attempt to explain from his own point of view what had happened and that will come across. So, beyond the submission he had made that will be included in the record, he did not have anything else to say.

## **Sanction**

The Acting Commissioner considered sanction, as set out in paragraph 68 of the Procedures document, in ascending order of severity, and taking into account the Sanctions' Guidelines:

### **1. No action**

To take no action in this case was not an appropriate response to the failure by the Respondent to comply with the Code. His conduct was of a more serious nature and not merely an 'inadvertent' failure to comply with the Code.

### **2. Censure**

The Acting Commissioner noted the submission by the Acting Deputy Commissioner on balancing the public interest in this case against the Respondent's conduct. That conduct was not a 'minor failure' as envisaged in paragraph 9 of the Guidance on Sanctions. The sanction of Censure was not a suitable sanction.

### **3. Partial suspension**

Is more likely to be appropriate where the conduct related to a particular activity or Council business from which the Councillor could be easily removed. The Respondent's conduct, which led to this breach of the Code, was not related to any particular area of Council business. The Acting Commissioner did not find that he had brought his Council into disrepute. The sanction of partial suspension was not a suitable sanction.

### **4. Suspension**

The Sanctions Guidelines state that suspension is to be considered where the conduct is not sufficiently serious to warrant disqualification, but the conduct is of a nature that:

- a. it is necessary to uphold public confidence in the standards regime and/or local democracy.
- b. there is a need to reflect the severity of the matter; and
- c. there is a need to make it understood that the conduct should not be repeated.

### **5. Disqualification**

The Acting Commissioner had considered whether or not Disqualification would be an appropriate sanction, however he was satisfied that, taking into account the Sanctions' Guidelines, the conduct in this case did not require disqualification. Of particular relevance was his finding that the Respondent did not bring the Council into disrepute.

The Acting Commissioner considered suspension to be the appropriate sanction for this case.

#### **Reasons:**

Councillor Kennedy had submitted challenges to the Deputy Commissioner's Investigation Report and to the facts and determination the Acting Commissioner had made in Stages 1 and 2 of the Hearing. He declined to attend the Pre-Hearing Review and, Stages 1 and 2 of the Adjudication Hearing, when he could have categorically contested any of the evidence set out in the statements of the witnesses. He had not presented evidence to support his written comments on the Report nor in the Adjudication Hearing proceedings.

**Mitigating Factors:**

1. The Respondent has a previous record of good service and compliance with the Code. He was re-elected to the Council in May 2019.
2. He did not bring the Council into disrepute.
3. There has been co-operation and engagement in the investigation.
4. The incident was a one-off occurrence and there has been no further incidence of non-compliance in the intervening period.
5. The Respondent has shown remorse for what occurred and has expressed his willingness to apologise. He has met with former Councillor Robinson since the incident and there has been no further issue between them.
6. The Respondent has made further relevant submissions which the Acting Commissioner has considered in private.

**Aggravating Factors:**

1. The serious nature of the conduct leading to a breach of the Code
2. The conduct of the Respondent was deliberate in that he followed Councillor Robinson into the car park to challenge her about the town sign.
3. The Respondent's actions had brought himself into disrepute.
4. A lack of sufficient insight by the Respondent as to his actions that night. There was some evidence of continuing to deny the facts despite clear, contrary evidence, and challenging the investigation and adjudication to the end

The Acting Commissioner noted the submission from the Deputy Commissioner in relation to the Council allowance paid to the Respondent. He also noted the Respondent's submission concerning the impact of suspension on his family.

The Acting Commissioner recognised there had been a significant period between the incident and this Hearing, which in the main, had been brought about by external events. He took that into consideration.

The Acting Commissioner had considered the objectives, set out in paragraph 3 of the Sanctions Guidelines, and found that the following objectives were relevant to determining sanction in this case:

1. the public interest in good administration
2. upholding and improving the standard of conduct expected of councillors
3. the fostering of public confidence in the ethical standards regime introduced by the 2014 Act

Any sanction imposed must also be justified in the wider public interest and should be designed to discourage or prevent the particular Respondent from any future failures to comply with the Code or to discourage similar conduct by other Councillors.

The Acting Commissioner had considered a suspension for a period of three months. He was, however, persuaded by the submissions from both of the parties and the circumstances of this case, that it would be appropriate to reduce that period of suspension. He found that a sanction of suspension for six weeks was a proportionate sanction in the circumstances of the failures to comply with the Code and the outcomes of the Respondent's conduct.

The decision of the Acting Commissioner, made under Section 59(3)(c) of Part 9 of the Local Government Act (Northern Ireland) 2014, was to suspend the Respondent for a period of six weeks and the suspension was to have effect from 18 June 2021.

## **7. RIGHT OF APPEAL**

The Respondent may seek the permission of the High Court to appeal against a decision made by the Acting Commissioner, which must be made within 21 days of the date that the Respondent receives written notice of the Acting Commissioner's decision.

A handwritten signature in blue ink, appearing to read 'Ian A Gordon'.

Ian A Gordon

Acting NI Local Government Commissioner for Standards  
30 June 2021



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Northern Ireland

# Local Government Commissioner for Standards

## Local Government Act (Northern Ireland) 2014

**In the matter of former Councillor Ian Stevenson (Causeway Coast and Glens  
Borough Council)**

**Ref: C00356**

**Decision of the Northern Ireland Local Government Commissioner for  
Standards on Stages 1 and 2 of the Adjudication Hearing process by Mrs Katrin  
Shaw, Acting Commissioner.**

### **The Complaint about former Councillor Ian Stevenson (the Respondent)**

By virtue of section 55(1)(a) of the Local Government Act (NI) 2014 (2014 Act), the Commissioner may investigate a written allegation made by any person that a Councillor (or former Councillor) has failed, or may have failed, to comply with the Local Government Code of Conduct for Councillors (the Code).

Two complaints were received. First, on 23 November 2018 the Chief Executive of Causeway Coast and Glens Borough referred to the Respondent's conviction on 22 November 2018 for a sexual assault which had occurred on 29 April 2017; and secondly, on 26 November 2018 a written complaint was received from a member of the public concerning the same matter.

### **The Investigation**

The Director of Investigations commenced an investigation pursuant to section 55(1)(a) of the 2014 Act. The investigation report of the Director of Investigations, dated 22 December 2020, (the Investigation Report) addressed whether the Respondent had failed to comply with paragraph 4.2 of the Code, as follows:

#### *Paragraph 4.2*

*'You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a Councillor, or your Council, into disrepute'.*

Following her investigation, the Director of Investigations submitted the Investigation Report to the Commissioner in accordance with sections 55 and 56 of the 2014 Act. In particular, in accordance with section 55(5) of the 2014 Act, the Director of Investigations found at paragraph [36] of the Investigation Report that there was evidence that the Respondent had failed to comply with paragraph 4.2 of the Code

and that the Commissioner should make an adjudication on the matters which were the subject of the investigation.

On 8 January 2021, the Acting Commissioner determined to hold an Adjudication Hearing in relation to the Respondent's conduct in order to determine whether or not he had failed to comply with the Code.

The Adjudication Procedures permit the Commissioner to determine whether or not there has been a breach of the Code without an Adjudication Hearing in certain circumstances. Paragraphs 25 to 27 of those procedures state as follows:

***'Determination of Adjudication without an Adjudication Hearing***

25. *The Commissioner has the discretion to adjudicate to determine whether there has been a breach without an Adjudication Hearing if she considers that she requires no further evidence and any one of the following circumstances apply:*
  - a. *If no reply is received in response to the notification provided to the Respondent within the specified time or any extension of time allowed by the Commissioner; or*
  - b. *If the Respondent states that he or she does not intend to attend or wish to be represented at the Adjudication Hearing; or*
  - c. *The Respondent does not dispute the contents of the investigation report.*
26. *If the Commissioner decides not to hold an Adjudication Hearing to determine whether there has been a breach she will send to the Respondent a list of the facts, together with any other supporting evidence, that she will take into account in reaching her decision. The Respondent will have 15 working days to submit any further written representations before the Commissioner makes her adjudication.*
27. *In circumstances where the Commissioner has made a determination as to breach without holding an Adjudication Hearing, she will, except in exceptional circumstances, hold an Adjudication Hearing to make a determination as to sanction. The procedures to be followed in regard to an Adjudication Hearing to determine sanction will, after the completion of any necessary preliminaries (such as an explanation of the order of proceedings and any opening remarks the Commissioner wishes to make) be those set out at paragraphs 67 to 68 below.'*

At a Pre-hearing review held on 2 March 2021, the Respondent accepted that paragraph 25c applied and consented to the Acting Commissioner's decision to use this expedited procedure.

By letter dated 4 March 2021, the Acting Commissioner confirmed to the Respondent that she had decided to use the expedited procedure and to determine whether or not there had been a breach of the Code by him without a public hearing as to the facts, and he was provided with a Statement of Facts and the other supporting evidence that

she would take into account in reaching her decision<sup>1</sup> in accordance with paragraph 26 above, and given the opportunity to comment and provide further submissions to the Acting Commissioner to consider in advance of the Adjudication Hearing. On 18 March 2021 the Respondent in an e-mail to the Acting Commissioner's Legal Officer proposed a limited number of amendments to the Statement of Facts 'for accuracy' which the Acting Commissioner accepted.

## **Findings of Fact**

The following facts have been obtained from the Investigation Report.

- 1.1 The Respondent signed an undertaking on 7 June 2014 that he had read and would observe the Code.
- 1.2 The Respondent was first elected as a member of Ballymoney Borough Council on 11 June 2001 to serve as a councillor until 6 May 2019, but he was suspended as a Councillor on 25 March 2019 for the remainder of his term of office.
- 1.3 During the period 11 June 2001 to 6 May 2019, the Respondent served as Deputy Mayor of Ballymoney Borough Council on two occasions (2004/5 and 2013/14) and was Mayor of Ballymoney Borough Council in the year 2011/12.
- 1.4 At the relevant time, 29 April 2017, the Respondent was a member of Causeway Coast and Glens Borough Council.
- 1.5 On 22 November 2018 the Respondent was convicted of sexually assaulting a care assistant on 29 April 2017.
- 1.6 On 20 December 2018 the Respondent was sentenced to 220 hours' community service, and was placed on the Sex Offenders Register for a period of 5 years.
- 1.7 The Respondent lost his seat on Causeway Coast and Glens Borough Council at the Local Government elections on 2 May 2019.
- 1.8 The Respondent appealed his conviction and sentence.
- 1.9 The Respondent's appeal against his conviction and sentence was dismissed on 6 September 2019, and his original conviction and sentence were upheld.

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<sup>1</sup> The other supporting evidence is the content of Appendices A to O (inclusive) of the Investigation Report.

## Stage 2 of the Adjudication Hearing –The Acting Commissioner’s decision on whether there had been a breach of the Code

The Acting Commissioner, having established the facts and considered all of the available evidence before her, found as follows:

1. The Code applied to the Respondent.
2. The Respondent was convicted on 22 November 2018 of sexually assaulting a care assistant on 29 April 2017 and he was subsequently sentenced to 220 hours’ community service, and was placed on the Sex Offenders Register for a period of 5 years. The Respondent unsuccessfully appealed this conviction.
3. The Respondent accepted at interview with the Investigating Officer on 13 November 2019, that his conviction and the subsequent reporting of it, had damaged his reputation and that of the Council.<sup>2</sup>
4. In concluding her decision on the failure to comply with the Code, the Commissioner has taken into account the Guidance on the Code and in particular paragraph 4.5.3 which states:

*‘As a Councillor, your actions and behaviour are subject to a higher level of expectation and scrutiny than those of other members of the public. Therefore, your actions – in either your public life or your private life – have the potential to adversely impact on your position as a Councillor or your Council. Dishonest and deceitful behaviour or conduct that results in a criminal conviction, such as a conviction for fraud or assault, even where such conduct occurs in your private life, could reasonably be regarded as bringing your position as Councillor, or your Council, into disrepute’.*

5. The Acting Commissioner has also taken into account 4.5.4 of the Guidance which states:

*‘When considering whether such conduct is such that it could reasonably be regarded as bringing your position, or your Council, into disrepute, I will consider:*

- *Whether that conduct is likely to diminish the trust and confidence the public places in your position as Councillor, or your Council, or is likely to result in damage to the reputation of either; and*
- *Whether a member of the public – who knew all the relevant facts – would reasonably consider that conduct as having brought your position as Councillor, or your Council, into disrepute’.*

5. The Acting Commissioner is satisfied that the conduct of the Respondent, which resulted in a criminal conviction with attendant media publicity, was such that it was likely to diminish the trust and confidence the public places in

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<sup>2</sup> Appendix O of the Investigation Report.

him as a Councillor and his Council. The Acting Commissioner noted that the Respondent had also accepted in his interview that his conviction and the subsequent reporting of it, had damaged his reputation and that of the Council.

6. The Acting Commissioner determined that a member of the public, knowing all of the relevant facts, would reasonably consider that the Respondent's conduct was such that it brought his position as Councillor, and his Council, into disrepute. The Acting Commissioner was satisfied therefore that the Respondent had breached paragraph 4.2 of the Code.

### **Stage 3 of the Adjudication – The Acting Commissioner's Decision on whether Action needs to be Taken**

Having determined Stages 1 & 2 of the Adjudication without a hearing, in accordance with Paragraph 27 of the procedures for Adjudication outlined above, the Acting Commissioner convened a hearing on 28 June 2021 to make her determination as to sanction.

The Respondent was notified of the date of the hearing and had agreed that he and his representative could attend the hearing on 28 June. The Respondent engaged in the pre hearing adjudication process and requested that the hearing be conducted in private.

Prior to the hearing, the Respondent raised concerns about a number of matters and Requested that the hearing be adjourned. He was informed that the Acting Commissioner would deal with the issues he had raised at the commencement of the hearing.

Neither the Respondent nor his representative attended the hearing which was conducted remotely because of the Covid restrictions on 28 June. The 9.30am start time of the hearing was delayed for the Acting Commissioner's Legal Officer to contact the Respondent and his representative.

The Legal Officer emailed the Respondent (copying it to his Representative) at 9.50am as follows:

*"Please be advised that the Acting Commissioner has directed that the hearing will commence at 10:00am. Please advise if you intend to attend. You can forward any comments you wish to be considered. The Acting Commissioner may proceed in your absence".*

The Respondent replied at 10.03 as follows:

*"As previously stated, I will not be present for the hearing. Indeed, I do not believe it should go ahead whilst my concerns are outstanding. I also add that I have not been allowed to question people I wished to or have my character witness present and feel even if things were satisfactory, that my papers could have arrived sooner."*

The Acting Commissioner asked the Acting Deputy Commissioner to address her on whether it was appropriate to proceed with the hearing.

The Acting Deputy Commissioner said there had already been suitable flexibility shown in setting the date and time of the hearing with the Respondent and in terms of the fair and efficient handling of the adjudication she referred the Acting Commissioner to paragraphs 48 and 49 of the Adjudication Procedures which provide that if a respondent, or any other person, requested to be present, fails to attend or be represented at any adjudication hearing of which he has been notified the Acting Commissioner may adjudicate in that person's absence or may adjourn the adjudication hearing to another date. Paragraph 49 makes clear before adjudicating in the absence of a respondent the Acting Commissioner considers any written representations submitted by or on behalf of that person in response to the notice of the adjudication hearing.

The Acting Deputy Commissioner referred to her detailed written submissions on the issue of sanction and to the Respondent's detailed response to those submissions which were available in the hearing bundle. As the Respondent's representations were available the Acting Deputy Commissioner considered that the hearing could proceed in the Respondent's absence without having any detriment for the fair and efficient handling of the adjudication.

**The Acting Commissioner's decision on whether to proceed with the hearing in the absence of the Respondent.**

Where a party fails to attend an Adjudication Hearing the Adjudication Procedures state as follows:

48. *If a Respondent, or any other person requested to be present (except the Deputy Commissioner or her representative) fails to attend or be represented at an Adjudication Hearing of which he/she has been notified, the Commissioner may:*
  - a. *Adjudicate in that person's absence; or*
  - b. *Adjourn the Adjudication Hearing to another date, in which case the Commissioner will advise the Respondent, or any other person required to be present, accordingly.*
49. *Before adjudicating in the absence of a Respondent, the Commissioner will consider any written representations submitted by or on behalf of that person in response to the notice of the Adjudication Hearing. For this person, any reply shall be treated as a representation in writing.*

Whilst the Acting Commissioner was delivering her decision on whether the matter should proceed in the Respondent's absence, the Respondent's representative contacted the Acting Commissioner's Legal Officer to say that he could not access the link for the remote meeting. In view of this the hearing was adjourned for the Legal Officer to send a fresh remote meeting link to the Respondent's representative. When the hearing reconvened, the Legal Officer confirmed that there had been no further

contact from the Respondent's representative and that both the Representative and the Respondent had been provided with the Legal Officer's contact number and had not made contact with him.

### **The Acting Commissioner's decision on whether to proceed with the hearing in the Respondent's absence**

The Acting Commissioner, having consulted with her Legal Assessor, carefully considered whether to proceed in the Respondent's absence and decided that it was appropriate for her to proceed with this Stage 3 Sanction Hearing.

The Acting Commissioner noted that in relation to the Respondent's e-mail to the Legal Officer, he did not outline any particular personal circumstances which would necessitate an adjournment of the hearing and the Acting Commissioner considered that the hearing bundle which the Respondent received the week before the hearing was merely a paginated version of documents and information he had received previously which contained no fresh information. She also noted the efforts which had been taken on the morning of the hearing to contact the Respondent.

The Acting Commissioner considered that the Respondent was aware of the proceedings; had actively engaged with the pre-hearing process up until that point and had been advised that she may decide to proceed with the hearing in his absence.

The Acting Commissioner said that she could conduct the hearing in accordance with the adjudication procedures; that she had available to her the various submissions the Respondent had made on the issue of sanction and his response to the Deputy Commissioner's submissions on sanction.

The Acting Commissioner said that she would deal with other issues the Respondent had raised as "preliminary matters" before moving on to consider her decision on sanction.

She stressed that she would make sure that the Respondent's interests were protected during the hearing that he was treated fairly in the process. The Respondent had the right to a fair hearing and the Acting Commissioner said she would take full consideration and have regard for the submissions he had made that she would protect his rights during the process.

### **The Acting Commissioner addressed the preliminary issues which had been raised by the Respondent**

In relation to the issues which the Respondent raised prior to the hearing, the Acting Commissioner said:

- Issues relating to the conduct of the "interim hearing" which took place when the Respondent was suspended for a short period from the 19th of March until 6th May 2019 were an entirely separate matter which had no bearing on the Acting Commissioner's adjudication apart from the fact that the Sanctions Guidelines required her to take into account the fact that the Respondent had been suspended on an interim basis from the 19th of March until 16th May 2019.

- In relation to the Respondent's concerns about the number of referrals which may have been made to the Commissioner's office by the Chief Executive of the Council and the way in which the matter was drawn to the former Commissioner's attention by the Council's Chief Executive in November 2018, the Acting Commissioner noted that the Chief Executive's email to the former Commissioner which had stated that he felt that the Council's reputation may have been brought into disrepute and therefore, that the matter merited consideration in line with Section 4 of the Northern Ireland Code of Conduct for Councillors. The Acting Commissioner said it was important to note that she had issued her decision on Stages 1 and 2 of the procedure and found that the Respondent had breached the Code of Conduct. She said the Ethical Framework did not require any consideration or scrutiny of the way in which a complaint had been referred to the Commissioner, or the motives of a person bringing a complaint to the Commissioner because the Ethical Framework exists to maintain high standards in public life. This was not therefore a matter she needed to address.
- The Acting Commissioner had decided that it was unnecessary for the fair and proper determination of the matter to permit a character witness for the Respondent to provide evidence orally at the hearing. The Acting Commissioner said she had received the witness' statement of this individual together with other statements the Respondent had provided from his former work colleagues. The Acting Commissioner said she would consider that evidence. She noted the statement from the witness the Respondent had referred to related to her experience of the Respondent as a former work colleague. The Acting Commissioner said that as she was considering the issue of sanction in relation to the Respondent's public role as a councillor, having considered the witness' statement, the Acting Commissioner did not consider that there was any relevant oral evidence this particular witness could provide on the issue of whether the Respondent was fit to carry out his public role as a councillor.
- In relation to the Respondent's comments about media reporting of his case, the Acting Commissioner said that she considered that the media reporting was a relevant factor in so far as the Acting Commissioner's decision that the Respondent's conduct had brought his office as a councillor and the Council into disrepute as a consequence of his criminal conviction for sexual assault. She considered that this was also a matter which was relevant to issue of sanction and that she would consider this when she made her decision on what, if any, action to take.
- Finally, the Acting Commissioner said that the issue of whether the Respondent accepts that he breached the Code of Conduct and whether he is able to contest his conviction, is a matter which she would consider in her consideration of the issue of sanction.

### **The Acting Commissioner's decision on whether the hearing should be conducted in public or in private**

The Acting Commissioner said she had considered very carefully the Respondent's reasons for holding the hearing in private. She said it was important at the outset to consider that the provisions of Section 56A (2) of the Local Government Act (NI) 2014 which

state that the '*hearing must be held in public save to the extent that the [Acting] Commissioner determines that this would not be in the public interest*'. The Acting Commissioner said she had taken into consideration that:

- the Respondent's conviction has already been widely reported in the public domain;
- the incident on 31 August 2019 which the Respondent had referred to in his application for the matter to be heard in private which he reported to the police had occurred nearly two years ago;
- the Respondent had continued to live in his local area since that time and that no evidence had been presented to the Acting Commissioner of any more recent concerns in that regard or of any current issue of concern.

The Acting Commissioner did not consider that there were any exceptional circumstances which would require her to hold the hearing in private contrary to the legislative presumption that the hearing should be held in public.

The Acting Commissioner decided therefore that the hearing would be held in public. She said however that if, during the course of the hearing there was a need for her to move into private session because any sensitive information needed to be considered, then her Legal Assessor would advise her if this was required.

She also said that she and her Legal Assessor would ensure that the hearing was conducted fairly and that the transcript of the hearing which would be available to members of the public on request to the NIPSO office after she published her decision would be appropriately redacted.

### **The Acting Commissioner's decision on sanction**

At this point of the hearing, the Respondent's Representative contacted the Legal Officer to say that he was having internet problems. The hearing was adjourned to offer the Representative the option of joining the remote meeting on the telephone. When the hearing recommenced, the Legal Officer confirmed that he had sent further invitations to join the meeting which included the option of telephoning into the meeting at 10.55am. The Legal Officer informed the Representative that the hearing would recommence 11.10am.

The Acting Commissioner considered that ample opportunity had been given for the Respondent's Representative to access the meeting. In addition, and as already noted, both the Acting Deputy Commissioner and the Respondent had provided the Acting Commissioner with written submissions on the issue of sanction, and accordingly the Acting Commissioner was satisfied that the interests of the Respondent would not be prejudiced by continuing the hearing in his absence.

## **Submissions by the Acting Deputy Commissioner:**

### **Mitigating factors:**

1. The Respondent had no history of breaching the Code.
2. He was first elected as a member of Ballymoney Borough Council on 11th June 2001 and continued to serve as a councillor until 6th May 2019. During this time he held a number of positions in the Council. He served as Deputy Mayor of Ballymoney Borough Council on three occasions, that was in 2004, 2005 and 2013 and he was also Mayor of Ballymoney Borough Council in 2011. This provides some evidence of previous record of good service and compliance with the Code.
3. The Respondent cooperating with the Investigation process and he also attend the pre-hearing reviews and engaged with the adjudication process up until the point of the hearing.
4. A number of character references had been submitted by the Respondent.

### **Aggravating factors:**

The Acting Deputy Commissioner said that an important factor in this case was undoubtedly the protection of the public interest in terms of public confidence in the institution of local government through those democratically elected to represent constituents. The legitimate aim being pursued by the Code was to provide for and secure high standards required from elected councillors and in turn the purpose of sanction was preservation of confidence in local government representation.

The Acting Deputy Commissioner referred to the list of aggravating factors in the Commissioner's Guidance on Sanctions and drew on three particular aggravating factors:

1. The Respondent's actions brought the role of councillor and his council into disrepute; the sexual offence for which the Respondent had been convicted fell squarely into the category of serious misconduct and conduct of this type could reasonably be expected to attract significant public opprobrium.
2. The evidence of the Chief Executive of Causeway Coast and Glens Borough Council was that the Respondent's conviction had brought his position as a councillor and the council into disrepute which in his view caused reputational damage to the Council and had negatively impacted on public trust and confidence in the council. Despite the alleged incident occurring in the Respondent's professional working life, media reporting of the Respondent's conviction (which formed the basis of one of the complaints), linked the Respondent's criminal conviction to his position as a Councillor prominently drawing the link to the attention of the public.
3. The Respondent has continued to deny the facts that formed the basis of his conviction and in view of the courts' decisions, both at first instance and on

appeal, this presented some evidence of the Respondent seeking to unfairly blame other people.

The Acting Deputy Commissioner noted that the Sanctions Guidelines said that the Acting Commissioner should take into account the actual consequences that have followed as a result of the Respondent's conduct and also consider what potential consequences might have been, even if these did not occur.

Of further relevance was paragraph 29 of the Sanctions Guidelines, which states:

*"In circumstances where the Commissioner eventually determines that a respondent, who has been suspended or partially suspended at an interim adjudication hearing, has failed to comply with the Code, the Acting Commissioner will take the period of interim suspension applied to the respondent into account in determining the sanction, if any is to be imposed."*

The Respondent was subject to an interim suspension from Tuesday, the 19th of March until the end of his term of office on 6th May 2019. Turning now specifically to the categories of sanction available at this stage.

The Acting Deputy Commissioner addressed the categories of decision for sanction.

**No action:** this was a suitable outcome given the deliberate nature of the conduct, which has given rise to the Acting Commissioner's determination under breach of the Code. This was not an inadvertent failure, rather this was conduct that was driven by the Respondent's own actions.

**Censure:** attention was drawn to the weight of the public interest in this case and the gravity of the conduct in question as opposed to the minor failures envisaged under this outcome, it was highly questionable whether censure would adequately cater for the public interest in the circumstances.

**Partial suspension:** the Respondent was not presently a councillor and this provision was designed to meet the circumstances in which a councillor's conduct was such that it was limited to a particular activity or section of Council business from which the councillor was easily extracted; rather than conduct of a pervasive nature and one which, therefore, goes to the very heart of public representation and the role of a councillor at every level and on every matter.

**Suspension:** Paragraph 18 of the Sanctions Guidelines states that *"Suspension will not be considered if the Respondent has resigned or has not been re-elected to the Council."*

**Disqualification:** Paragraph 19 of the Sanctions Guidelines states that *"disqualification is the most severe of the options"* available.

It lists the factors from (a) to (h) those circumstances in which disqualification may be an appropriate outcome. The Acting Deputy Commissioner considered the Respondent's conduct fell into:

*(g) "Bringing the council into disrepute. Where the Commissioner finds that the Respondent's conduct has brought the council into disrepute, he will consider whether the extent of reputational damage to the council is so serious as to warrant a disqualification."*

The Council had suffered reputational damage as a result of the Respondent's conduct.

*(h) "If the conduct giving rise to a failure to comply with the conduct is such as to render the Respondent entirely unfit for public office, then disqualification is the likely and appropriate sanction."*

Paragraph 3 of the Sanctions Guidelines states:

*"The Commissioner's consideration of the sanction decision in any case will be based on her view that the principal purpose of sanction is the preservation of public confidence in local government representative. Her decisions on sanction will also aim to uphold the following objectives: the public interest in good administration; upholding and improving the standard of conduct expected of councillors and the fostering of public confidence in the ethical standards regime introduced by the 2014 Act."*

The Acting Deputy Commissioner was of the view that conviction for an offence of this nature would be viewed seriously by the public and was of the type that would diminish rather than preserve confidence in local government representatives and the Ethical Standards Regime where a councillor would be allowed to continue in his role as a councillor, or where a councillor is no longer a councillor be allowed to become a councillor for any period during which they were still registered on the Sex Offenders Register.

The Acting Deputy Commissioner referred to the case of *Councillor Patrick Clarke*, whereby the Respondent, Patrick Clarke, had pleaded guilty to an offence contrary to Article 7(1) of the Sexual Offences (Northern Ireland) Order 2008 and for which he was sentenced to a probation order for 10 months and ordered to pay compensation of £200. This was one of a number of offences of varying natures and types that Patrick Clarke pleaded guilty to. The decision in that case was to disqualify the Respondent for a total period of three years.

It was the Acting Deputy Commissioner's submission that the Respondent's case was one which fell within the disqualification category and one which may attract a period of disqualification matching the time which was still required to be spent by him on the Sex Offenders Register.

Whilst this would preclude the Respondent from running in the next elections, which are scheduled for May 2023, for the reasons set out by the Acting Deputy Commissioner, she did not consider that the period of disqualification would have a disproportionate effect on the Respondent as any lesser period would not, in her view, meet the public interest in this case.

There would be loss of entitlement to allowances as they ceased upon the Respondent losing his seat in the May 2019 Elections.

The Acting Deputy Commissioner concluded that there was an overriding public interest in this case and maintaining public confidence in local government. There was no doubt a key element of this would be public knowledge of the sanction itself, alongside an understanding of the factors that led to it.

### **Submissions by the Respondent**

The Respondent had provided written submissions on sanction, in which he responded to the Acting Deputy Commissioner's written submissions and gave his view on sanction. He considered that he was entitled to legally contest his conviction without this having a negative impact on his position. He also outlined the financial, emotional and personal hardship which he had suffered as a result of his conviction and the negative publicity.

### **The Acting Commissioner's decision on Sanction**

The Acting Commissioner said she had carefully considered the Guidelines on Sanctions and the submissions from both parties before reaching her decision.

She noted the mitigating factors which have been outlined by the Acting Deputy Commissioner and by the Respondent which included the fact that the Respondent had no previous history of breaching the Code of Conduct, his good record of service and compliance with the Code, that he had co-operated with the investigation and during the adjudication process up to the point of the hearing and the impact his conviction had had on him, his reputation and his family. The Acting Commissioner also said she had considered the character evidence submitted by the Respondent's former work colleagues and, as required by the Sanctions Guidelines, she had considered the fact that the Respondent was subject to an interim suspension for the period from 19 March until 6 May 2019.

However, Acting Commissioner said that the serious nature of the conviction and the aggravating factors which have been outlined, substantially outweigh the mitigating factors in this case. The purpose of the sanctions regime was to uphold the public interest and standards of conduct in local government representatives, to foster public confidence in the Ethical Standards Regime and the standards of those who serve in public life in local government.

The Acting Commissioner said that the Respondent had brought his role of councillor and the council into disrepute. She considered that his conviction for sexual assault clearly fell within the category of serious misconduct. The evidence of disrepute to the Council provided by the Council's Chief Executive and the media reporting of his conviction had drawn attention to the Respondent's position as a councillor. The Acting Commissioner considered that knowledge of the Respondent's conviction was likely to have diminished public confidence and trust in the Council.

The Respondent had continued to deny the facts and the basis of his conviction despite his conviction and his appeal against conviction and sentence having been dismissed by the court. Whilst private citizens may challenge criminal convictions, the Acting Commissioner was entitled to take into account the Respondent's ongoing denial of the outcome of the criminal process in coming to her decision on sanction.

The Acting Commissioner considered that a sanction of "no action" or of "censure" was not appropriate because this was not an inadvertent failure or a minor breach of the Code of Conduct.

As the Respondent was no longer a councillor, the sanction of suspension or partial suspension could not be considered. In any event, the Acting Commissioner was of the view that the seriousness of his conduct and the public interest was such that suspension would not have been appropriate in this case.

The Acting Commissioner said that the factors she had outlined met the criteria set out in the Sanction Guidelines for the most serious form of sanction of disqualification. She considered that his conviction, conduct and placement on that Sex Offenders Register for the period of 5 years would be viewed very seriously by the public. The Respondent's conduct, conviction and finding that he had brought his office and the Council into disrepute, would diminish trust in local government representatives and in the Ethical Standards Regime were he to become a councillor again while still being placed on the Sex Offenders Register.

The Acting Commissioner said she was conscious that the purpose of this sanctions regime was not to punish the councillor. Also, whilst a considerable period of time has been taken to bring this matter to a conclusion, in part attributable to Covid, the Acting Commissioner said her decision on sanction would have been no different had the matter been capable of being determined sooner.

Given the seriousness of the Respondent's conduct she considered that a disqualification of four years was a proportionate and appropriate sanction in this case. As well as the *Clarke* case, which had been outlined by the Deputy Commissioner, the Acting Commissioner considered the very recently determined case of a former Councillor, *Brian Duffin*, where a five-year disqualification was imposed for a convicted sex offender. Whilst the *Duffin* case merited a five-year disqualification, the Acting Commissioner noted that he was placed on the Sex Offenders Register for a period of seven years. In contrast the Respondent was placed on the Sex Offenders Register for a period of five years.

The Acting Commissioner considered that this case merited a disqualification of four years. However, she considered that it was appropriate to give credit to the Respondent for the period of interim suspension he had already served and taking this and the mitigating factors into account, the Acting Commissioner determined that the appropriate period of disqualification would be one that would run from 28 June 2021 until 30 April 2025

The Acting Commissioner said that whilst the length of this disqualification would preclude the Respondent from standing in the next Local Government Elections scheduled in May 2023, she considered that this was required in the public interest

given his conviction and placement on the Sex Offenders Register. The reputational damage to his position as a councillor and the Council as a result of his conduct and conviction, was very serious. In view of this she did not consider that the period of disqualification would have a disproportionate effect on the Respondent, because any less a period of disqualification would not have met the public interest and the overriding purpose of the Ethical Standards Regime of upholding standards of conduct and fostering public confidence in local government and the standards regime itself.

The decision of the Acting Commissioner, made under Section 59(3)© of part 9 of the Local Government Act ( Northern Ireland) 2014, was to disqualify the Respondent until 30th April 2025.

### **Leave to Appeal**

The Respondent may seek the permission of the High Court to appeal against a decision made by the Acting Commissioner, which must be made within 21 days of the date that the Respondent receives written notice of the Acting Commissioner's decision.



**Katrin Shaw**  
**NI Local Government Acting Commissioner for Standards**  
**28 June 2021**

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## Code of Conduct complaints

### New Code of Conduct complaints

This year we received 535 new Code of Conduct complaints (an increase of 47%) and we took forward for investigation 308 complaints.

Body	2020/21	2019/20
Town and Community Councils	167	135
County and County Borough Councils	138	96
National Parks	2	0
Fire Authorities	1	0
<b>Total</b>	<b>308</b>	<b>231</b>

Whilst complaints about members of National Parks and Fire Authorities have remained low, Town and Community Council complaints have increased by 23.7% and County and County Borough Councils complaints by 43.8%. The latter appears to be of particular concern. However, it should be noted that we received 35 complaints about 1 County Council member. Several investigations are ongoing in respect of those complaints.

Within a small number of Town and Community Councils we are still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues.

Where we receive, 'tit for tat' complaints we will engage with the Council and the Monitoring Officer of the principal authority to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.

We have provided training with Monitoring Officers to town and community council which are responsible for a disproportionately high number of complaints to our office.

We categorise the subject of the Code of Conduct related complaints based on [the Nolan Principles](#), which are designed to promote high standards in public life. The table below shows the proportion of complaints received under each principle when compared to 2019/20:

Subject	2020/21	2019/20
Accountability and openness	4%	11%
Disclosure and registration of interests	14%	17%
Duty to uphold the law	8%	7%
Integrity	12%	10%
Objectivity and propriety	5%	2%
Promotion of equality and respect	55%	49%
Selflessness and stewardship	2%	3%

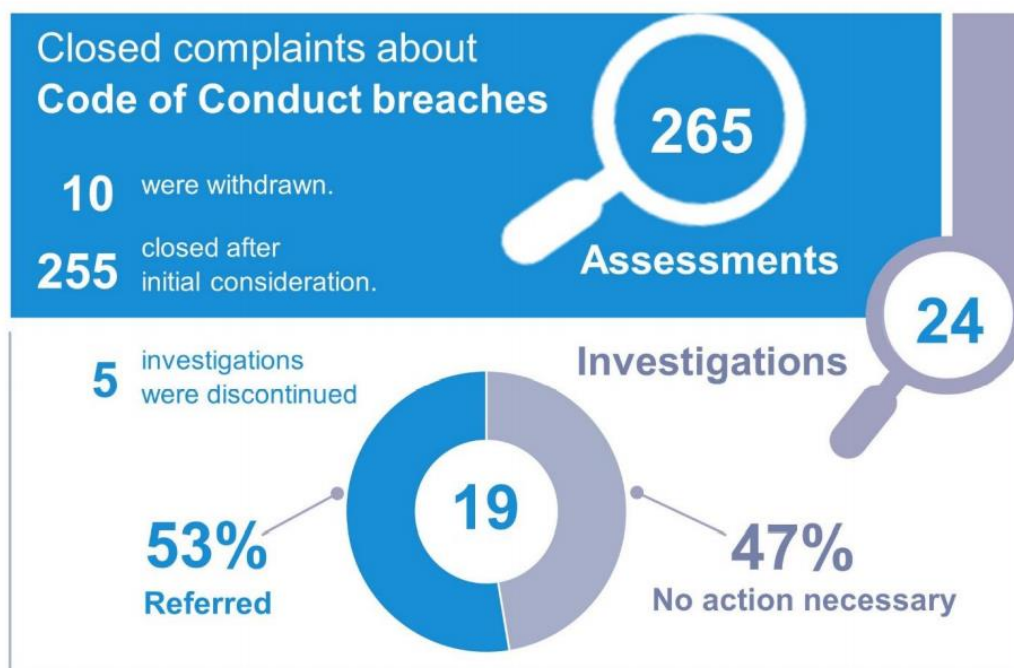
The themes 'promotion of equality and respect' (55%) and 'disclosure and registration of interests' continue to dominate. There is an annual increase in the number of complaints where bullying behaviour is being alleged.

Code of Conduct training is essential to becoming a 'good councillor'. Our impression from investigations is that many members of Town and Community Councils often do not take up training opportunities offered on the Code of Conduct. Whilst there is no statutory obligation for members to complete such training, we and the Monitoring Officers across Wales strongly advise them to do so.

### Closed Code of Conduct complaints

This year we closed 289 Code of Conduct complaints. This represented a 23% increase compared to the previous year. Despite the significant increase in the number of complaints received, closures have almost matched that number.

The graphic below presents an overview of outcomes of the Code of Conduct complaints that we closed in 2020/21.



All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- A complaint is supported by direct evidence that is suggestive that a breach has taken place.
- It is in the public interest to investigate that matter.

Public interest can be described as “something which is of serious concern and benefit to the public”.

In 2020/21, we closed 92% of all Code of Conduct complaints after assessment against our two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is higher than the previous year (86%).

The remaining 8% (24) complaints taken forward to investigation represented the most serious of the complaints received. Of these, 10 complaints were referred to the local standards committee or the Adjudication Panel for Wales, a 100% increase on the previous year.

When an investigation is concluded, we can determine that 'no action needs to be taken' in respect of the matters investigated. This can be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned.

We made such determinations in 58% (14) of the Code of Conduct investigations this year, a significant decrease on the previous year (85%). This reflects that although fewer cases are being referred for investigation, of those that are, we are finding evidence suggestive of a breach of the Code of Conduct in more cases. This suggests that we are using our two-stage test to good effect and identifying more of the most serious cases at the assessment stage.

Cases which feature serious breaches of the Code, are referred to a Standards Committee or the Adjudication Panel for Wales for consideration. In 2020/21 we made 10 referrals (3%) of all the Code complaints that we closed. This is an increase from 2% last year.

The subjects of the Code of Conduct complaints that we closed this year largely mirrored the subjects of the new complaints received. The majority related to 'disclosure and registration of interests' and 'promotion of equality and respect'.

## Referrals

In 2020/21 we made:

- 6 referrals to Standards Committees.
- 4 referrals to the Adjudication Panel for Wales.

The Adjudication Panel for Wales and the Standards Committees consider the evidence we prepare, together with any defence put forward by the member concerned. They then determine whether a breach has occurred and if so, what penalty, if any, should be imposed.

There were 6 referrals to the Standards Committees this year. At the time of writing 5 are yet to be concluded. The matter which has already been considered related to a former member of Laleston Community Council who used Council funds for personal items. The Standards Committee issued a censure, the only sanction available to it as the member had resigned. A Standards Committee also considered 2 cases which were referred to it in the previous year, relating to 2 members of Conwy Town Council who had failed to disclose an interest in business relating to a member of staff who had made a bullying complaint against them which had not been resolved at the time of the events. Both members were suspended for 1 month.

There were 4 referrals to the Adjudication Panel for Wales. 2 have already been considered. The first concerned the conduct and behaviour of a member in relation to their failure to disclose their personal and prejudicial interests and their actions towards a member of staff. In this case the member of Merthyr Tydfil County Borough Council was suspended for 7 months. The second related to Facebook posts made by a member of Sully and Lavernock Community Council, which contained extreme and gratuitous violent references about female politicians. The member was disqualified for 15 months. Two other referrals have been made and are yet to have been considered by the Adjudication Panel.

In 20/21 the Adjudication Panel for Wales and the Standards Committees upheld and found breaches in 100% of our referrals.

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**Name of meeting: Standards Committee**

**Date: 15<sup>th</sup> September 2021**

**Title of report: Local Government Association (LGA) Model Code of Conduct**

**Purpose of report:**

To seek recommendations from Standards Committee about proposals in relation to the LGA Model Code of Conduct.

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	No
<b>Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)</u>?</b>	No
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	No
<b>Date signed off by <u>Strategic Director</u> &amp; name</b>	Yes – Rachel Spencer-Henshall – 7 <sup>th</sup> September
<b>Is it also signed off by the Service Director for Finance?</b>	Yes – Eamonn Croston
<b>Is it also signed off by the Service Director for Legal Governance and Commissioning?</b>	Yes – Julie Muscroft
<b>Cabinet member <a href="#">portfolio</a></b>	Cllr Paul Davies

**Electoral wards affected: All**

**Ward councillors consulted: YES**

**Public or private: Public**

**Has GDPR been considered? YES**

## **1. Summary**

- 1.1 This report is intended to seek the views of members on proposals in respect of the LGA Model Code of Conduct and ask them to make recommendations as appropriate.
- 1.2 Copies of both the current Kirklees members' Code of Conduct and the LGA Model Code of Conduct are at Appendix A

## **2. Information required to take a decision**

### **2.1 LGA Model Code of Conduct**

- 2.1.1 The LGA published its final Model Code of Conduct in December 2020, following a period of consultation that began in June 2020. A copy is at Appendix A.
- 2.1.2 The LGA's Model Code is based on the best practice recommendations made by the CSPL and since publication of the CSPL report in early 2019 this committee has been looking at the various recommendations and implementing those that could be done on a voluntary basis. The Council made some changes to its Code of Conduct in 2019 as a result of the recommendations. As a result there is in reality not a great deal of difference now between the current Kirklees code and the LGA Model Code.
- 2.1.3 The most obvious change brought in by the Model Code is that it is written in the 'first person'. It has been suggested that doing so may reinforce to members that it is about them and their obligations. There are some parts of the current Kirklees code that are not covered by the LGA model code, particularly around 'other' interests and exemptions.
- 2.1.4 Within West Yorkshire, the Model Code has so far been adopted in full by Calderdale Council. Leeds City Council were recommending its adoption. Wakefield Council are recommending its adoption with some amendments. WYCA has adopted the code.
- 2.1.5 Kirklees has 3 options with regards to the model code:
  - 1) adopt the code in full;
  - 2) adopt parts of the code;
  - 3) retain its own code.
- 2.1.6 Option 1 has a number of advantages, including:
  - i) The LGA has also undertaken to prepare and deliver training on the Model Code. The LGA has already published a guidance document on

the Model Code. There would be potential cost savings involved if the LGA training was available to members.

ii) The LGA has committed to an annual review of the Model Code, which is in line with the CSPL recommendation. This would reduce the onus on Kirklees to review their code and also the need to engage in wider consultation.

iii) we would be in line with WYCA, which would be a potential advantage for any Kirklees members who are also WYCA members, as there would be a single code.

iv) depending on personal preference the fact that it is framed in the first person may be considered an advantage.

#### 2.1.7 Disadvantages of option 1 include:

i) Lack of control of the content of the code of conduct and the possibility that it may not be flexible enough to meet local needs.

ii) Less detail in certain areas than the current Kirklees code, so could be a step backwards and may cause more issues in those areas. The key example of this is the treatment of 'other' interests and how these should be declared and addressed at any meetings.

iii) Councillors and members of the public will need to familiarise themselves with a new code.

#### 2.1.8 Option 2 has a number of advantages, including:

i) Kirklees will still retain a level of control over the content of the code.

ii) Councillors and members of the public should be clearer about 'other interests'.

iii) Hospitality limits can be set locally.

iv) The code can be tailored to fit local, rather than national, needs.

#### 2.1.9 Disadvantages of option 2 include:

i) we may be less able to rely on any LGA provided training. There would be a need to tailor some parts to cover any differences

ii) if the code differs significantly, we may not be able to rely on the LGA reviews and consultations and may have to undertake our own

#### 2.1.10 Option 3 has a number of advantages, including:

i) Councillors and members of the public will not need to familiarise themselves with a new code

ii) Kirklees will retain full control over the contents of the code

2.1.11 Disadvantages of option 3 include:

i) we could not take advantage of any training provided by or guidance issued by the LGA.

ii) we would still be obliged to review and consult on the code

iii) we may be out of step with other WYLAW authorities and WYCA, and our local Town and Parish Councils if they choose to adopt the LGA code (NALC are in favour of Town and Parish Councils adopting the LGA Code)

### **3. Implications for the Council**

#### **3.1 Working with People**

N/A

#### **3.2 Working with Partners**

N/A

#### **3.3 Place Based Working**

N/A

#### **3.4 Climate Change and Air Quality**

In order to minimise any impact, printing is kept to a minimum.

#### **3.5 Improving outcomes for children**

N/A

#### **3.6 Other (eg Legal/Financial or Human Resources) Consultees and their opinions**

The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.

### **4. Next steps and timelines**

In the event that the Committee decide that they wish to change the current code of conduct the proposals will be referred to Corporate Governance and Audit committee for consideration before being referred to a meeting of Council

## **5. Officer recommendations and reasons**

Members are asked to:

5.1 consider the report and agree one of the following:

5.1.1 Adopt the LGA model Code of Conduct in full;

5.1.2 Reject the LGA model Code of Conduct and retain the existing code;

5.1.3 Adopt a modified version of the LGA code of Conduct that addresses issues highlighted;

5.2 And, depending upon the outcome of members discussion, make recommendations to the Corporate Governance and Audit committee to consider any changes before referring the proposal to Council for consideration

## **6. Cabinet Portfolio Holder's recommendations**

N/A

## **7. Contact officer**

David Stickley  
Senior Legal Officer  
01484 221000  
[david.stickley@kirklees.gov.uk](mailto:david.stickley@kirklees.gov.uk)

## **8. Background Papers and History of Decisions**

LGA Model Code of Conduct

LGA Guidance on Model Code

Report to Standards Committee 29<sup>th</sup> March 2021

[Code of Conduct](#)

Kirklees DPI form

## **9. Service Director responsible**

Julie Muscroft  
Service Director – Legal, Governance and Commissioning  
01484 221000  
[julie.muscroft@kirklees.gov.uk](mailto:julie.muscroft@kirklees.gov.uk)

## Appendix A

LGA Model Code of Conduct

Kirklees Council Code of Conduct

LGA Guidance on Model Code of Conduct

Kirklees DPI form

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# Code of Conduct for Members

## 1 Application

1.1 This Code applies to you as a member of Kirklees Council (“the authority”) and it is your personal responsibility to comply with the requirements of this Code. This Code sets out the standards of behaviour required of you and applies to you whenever you act in the capacity of an elected or co-opted member of the authority, including –

- 1.1.1 at meetings of the authority
- 1.1.2 when acting as a representative of the authority
- 1.1.3 in taking any decision as a Cabinet member or a Ward Councillor
- 1.1.4 in discharging your functions as a Ward Councillor
- 1.1.5 at briefing meetings with officers and
- 1.1.6 at site visits
- 1.1.7 when corresponding with the authority other than in a private capacity

1.2 Where you act as a representative of your authority on another local authority, you must, when acting for that other authority, comply with that other authority’s code of conduct.

1.3 Where you act as a representative of your authority on a body which is not another local authority you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

## 2 Interpretation

For the purposes of this Code –

2.1 “member of the authority” includes:

- 2.1.1 elected members; and
- 2.1.2 co-opted members who are entitled to vote on any questions which fall to be determined by the committees, sub-committees, joint committee, joint subcommittees or area committees upon which they sit.

2.2 “meeting” means any meeting of:

- 2.2.1 the authority;
- 2.2.2 the executive of the authority; or
- 2.2.3 any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees or area committees.

2.3 “body” means any body of which you are a member or in a position of general control or management and –

- 2.3.1 to which you are appointed or nominated by your authority; or
- 2.3.2 which is a body –

- (a) exercising functions of a public nature; or
- (b) directed to charitable purposes; or

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

2.4 “relevant person” for the purposes of paragraph 5 of this Code means any person or body with whom you have a family, social or business relationship.

### **3 General Principles**

Your conduct as a member should be consistent with the following principles –

#### **3.1 Preamble**

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, 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.

#### **3.2 Selflessness**

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

#### **3.3 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.

#### **3.4 Objectivity**

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

#### **3.5 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.

#### **3.6 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.

#### **3.7 Honesty**

Holders of public office should be truthful.

### 3.8 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.

#### **3A General Principles and Obligations**

1. You must treat others with respect.
2. 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.

For the purposes of this code, bullying and harassment are defined as follows:

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.

3. You must not conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of behaviour.
4. You must not do anything which may cause the Council to breach any of the equality duties. This includes refraining from behaviour or comments which might reasonably be regarded as being racist, sexist or otherwise discriminatory towards other people.
5. You must not conduct yourself in a manner which would reasonably be regarded as bringing the Council into disrepute, or your position as a Councillor into disrepute.
6. You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably be aware, is of a confidential nature, except where:-
  - (i) You have the consent of a person authorised to give it;
  - (ii) You are required by law to do so;
  - (iii) The disclosure is made by a third party for the purposes 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 –
    - (A) Reasonable and in the public interest
    - (B) Made in good faith and in compliance with the reasonable requirements of the authority; and
    - (C) You have consulted the Monitoring Office prior to its release.
7. You must not prevent another person gaining access to information which that person is entitled to by law.

8. You must be clear when communicating with the media or speaking in public that you do not give the impression you are acting in an official capacity when you are not. Nor should you express your own views in a way which misleads anyone reading or listening that it is official or agreed policy or position of the Council when it is your own personal view or those of a political party or group of people which you are a member.
9. You must respect the impartiality and integrity of the authority's statutory officers and its other employees. You must not do anything which compromises the impartiality and integrity of anyone who works for or on behalf of the Council, or do anything that is likely to compromise their impartiality and integrity.
10. When you use or authorise the use by others of the resources of the Council you must:
  - (i) Abide by the Council's reasonable requirements; and
  - (ii) Ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - (iii) Have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
11. You must co-operate with the Standards process when you are the subject of a complaint and respond to a complaint that is brought against you, except where there are extenuating circumstances.
12. You must comply with the decision of the Standards process if you are found to be in breach of this Code of Conduct.
13. You must comply with the standards as described in the Council's Behaviours and in particular the protocol on Member/Officer Relations as well as all other relevant policies and guidance related to standards of appropriate behaviour and responsibilities from time to time agreed by the Council or which the Council is required to comply with or have appropriate regard to.
14. You must comply with the rules and procedures of meetings you attend. This includes compliance with the Council's Standing Orders and the authority and rulings of the Mayor or Chair.
15. When reaching decisions on any matter you must have regard to any relevant advice provided to you by the Council's –
  - (a) chief finance officer (the statutory s.151 Officer); or
  - (b) monitoring officer (the Service Director of Legal, Governance and Commissioning), where that officer is acting pursuant to his or her statutory duties.

#### **4 Disclosable Pecuniary Interests**

4.1 Disclosable Pecuniary Interests ("DPIs") are those interests defined as such in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 ("the 2012 Regulations") or in any subsequent regulations which amend, vary or revoke the 2012 Regulations. For the purposes of illustration only, a summary of the 2012 Regulations is set out in the Schedule to this Code of Conduct.

4.2 You must, within 28 days of:

- 4.2.1 adoption of this Code of Conduct by the authority; or
- 4.2.2 taking office as a member or co-opted member of the authority notify the authority's Monitoring Officer of any DPI, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

4.3 When you are present at a meeting of the authority and you have a DPI in any matter to be considered or being considered at the meeting, and where the matter does not relate to 'sensitive information' as defined below, you must disclose the existence and nature of the interest to the meeting.

4.4 Following any disclosure of a DPI not on the authority's register or the subject of pending notification, you must notify the authority's Monitoring Officer of that interest within 28 days beginning with the date of disclosure.

4.5 Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a DPI and must withdraw from the meeting while the matter is under consideration.

4.6 You must within 28 days of becoming aware of any new DPI or the need to change or update a current DPI registration, notify the authority's Monitoring Officer of those new or revised register entries.

## **5 Interests which are not Disclosable Pecuniary Interests (Other Interests)**

5.1 In addition to the requirements relating to DPIs, if you attend a meeting at which any item of business is to be considered and you are aware that you have an interest which does not amount to a DPI you must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent.

5.2 You have an Other interest where –

(a) a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing (including interests in land and easements over land) of you or a member of your family or a person or an organisation with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the authority's administrative area, or

(b) it relates to or is likely to affect any of the interests that are defined as DPIs but are in respect of a member of your family (other than a partner) or a person with whom you have a close association.

5.2 In such circumstances you must consider whether your continued participation in the matter relating to your interest would be reasonable in the circumstances, particularly if the interest may give rise to a perception of a conflict of interests in the matter under discussion.

5.3 You do not have an Other interest if the interest relates to any business of the authority in respect of –

- 5.3.1 housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

- 5.3.2 school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- 5.3.3 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;
- 5.3.4 an allowance, payment or indemnity given to members;
- 5.3.5 any ceremonial honour given to members; and
- 5.3.6 setting council tax or a precept under the Local Government Finance Act 1992.

## Sensitive Interests

5.4 Where you have an interest which is not a disclosable pecuniary interest and information relating to the interest is sensitive information, you must indicate to the meeting that you have an interest, the details of which are withheld.

## 6 Sensitive information

6.1 Where you consider that the information relating to any of your interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest under paragraph 4.

6.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 6.1 is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

6.3 In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person connected with you may be subjected to violence or intimidation.

## 7 Gifts and Hospitality

7.1 You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value of £25 or over which you have accepted from or has been offered to you by any person or body other than the authority. You must also declare receipt of gifts or hospitality totalling £100 or over from any one single source in any 12 month period.

7.2 The Monitoring Officer will place your notification on a public register of gifts and hospitality, such register to be available on line.

7.3 This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the authority for this purpose.

## SCHEDULE

## Regulation 1(2)

### Disclosable Pecuniary Interests

Disclosable Pecuniary Interests are the interests specified in the second column of the following table and for the purposes of that table the following definitions apply:

“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) (Disclosure of pecuniary interests upon taking office) or section 31(7) (Interests not entered on the authority’s register and not subject to a pending notification), as the case may be, of the Act;

“relevant person” means M or M’s spouse or civil partner, a person with whom M is living as husband and wife or a person with whom M is living as if they were civil partners;

“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

### Regulation 2

<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

Contracts	<p>within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(1).  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 –</p> <ul style="list-style-type: none"> <li>(a) under which goods or services are to be provided or works are to be executed; and</li> <li>(b) which has not been fully discharged.</li> </ul>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (along or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge) –</p> <ul style="list-style-type: none"> <li>(a) the landlord is the relevant authority; and</li> <li>(b) the tenant is a body in which the relevant person has a beneficial interest.</li> </ul>
Securities	<p>Any beneficial interest in securities of a body where –</p> <ul style="list-style-type: none"> <li>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</li> <li>(b) either – <ul style="list-style-type: none"> <li>i. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</li> <li>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.</li> </ul> </li> </ul>

# Guidance on Local Government Association Model Councillor Code of Conduct



We are pleased to publish this supporting guidance which is aimed to help understanding and consistency of approach towards the code. The code, together with the guidance, has been designed to protect our democratic role, encourage good conduct, and safeguard the public's trust and confidence in the role of councillor in local government.

08 Jul 2021

## Part 1 - Introduction

In December 2020, the Local Government Association (LGA) developed and published a **Model Councillor Code of Conduct** [\[https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020\]](https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020) in association with key partners and following extensive consultation with the sector. This was in response to the recommendation of the Committee of Standards in Public Life Local Government Ethical Standards 2019. The code was part of our work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance, and our civility in public life programme.

The code is a template for Local Authorities to adopt in whole and or with amendments to take into account local circumstances.

Our aim was to make the code relatively short and easy to read rather than an overly-complex legal document as it needed to be accessible to councillors, officers, and the public alike. The consultation response also asked for supporting guidance to help understand some of the key provisions in greater depth with examples and case illustrations.

We are therefore pleased to publish this supporting guidance which is aimed to help understanding and consistency of approach towards the code.

The code together with the guidance have been designed to protect our democratic role, encourage good conduct, and safeguard the public's trust and confidence in the role of councillor in local government. While it sets out the minimum standards of behaviour expected, together with the guidance, it is designed to encourage councillors to model the high standards expected of councillors, to be mutually respectful even if they have personal or political differences, to provide a personal check and balance, and to set out the type of conduct that could lead to complaints being made of behaviour falling below the standards expected of councillors and in breach of the code. It is also to protect councillors, the public, local authority officers and the reputation of local government.

This guidance embeds the provisions of the code and is structured to enable each chapter to be directly accessed. We have also produced a standalone document without the embedded code intended to provide easy access to the guidance.

The LGA will undertake an annual review of this guidance and the code to ensure it continues to be fit for purpose, incorporating advances in technology, social media, case law and changes in legislation.

For the purposes of this guidance, we have adopted the definitions used in the Code of Conduct, for "councillor" and "local authority".

Any comments on the use of the guidance or suggestions for improvement would be welcomed and should be sent to [ModelCode@local.gov.uk](mailto:ModelCode@local.gov.uk) [\[mailto:ModelCode@local.gov.uk\]](mailto:ModelCode@local.gov.uk)

## General principles of Councillor conduct

The Seven Principles of Public Life (also known as the Nolan Principles) outline the ethical standards those working in the public sector are expected to adhere to. The principles apply to all public office holders at all levels including ministers, civil servants, councillors, and local authority officers, as well as private and voluntary organisations delivering services paid for by public funds.

The principles are set out in **Appendix 2** [<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#appendix-2-general-principles->] below.

These principles underpin the standards that councillors should uphold and form the basis for the Code of Conduct, where the principles have been translated into a series of clear rules. While fundamental to the Code of Conduct, the principles are not part of the rules of the code and should be used for guidance and interpretation only.

## Application of the Model Councillors' Code of Conduct

### When does the Code apply?

S27(2) of the Localism Act 2011 says that a local authority must adopt 'a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity.'

The term 'capacity' is not further defined in the Act. However, the Model Code states that:

**The 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.

This means it applies when you are carrying out your official duties, for example when you are considering or discussing local authority business, either as a councillor or representing the local authority on an outside body.

There is no formal description of what the role of a councillor is, but aside from formal local authority business it would include promoting and representing the local authority in the local community and acting as a bridge between the community and the local authority. The LGA's **Guidance** [[https://www.local.gov.uk/sites/default/files/documents/11.166%20Councillors%20Guide%202019\\_08\\_0.pdf](https://www.local.gov.uk/sites/default/files/documents/11.166%20Councillors%20Guide%202019_08_0.pdf)] for new councillors is a helpful reference point.

The code does not, therefore, apply solely when you are in local authority meetings or on local authority premises.

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 communications

in electronic and social media communication, posts, statements, and comments.

This includes interactions with the public as well as with fellow councillors and local authority officers.

### Acting as a private individual

For something to fall within the code there must be a clear link to a local authority function or your role as a councillor. For example, an argument with a neighbour which does not relate to local authority business would not engage the code, even if your neighbour happens to know you are a councillor and therefore complains to the local authority about being treated disrespectfully.

#### Example

A councillor and an officer had a personal relationship. The councillor sent and encouraged the officer to send inappropriate social media messages, including messages of a sexual nature, during office hours. The panel rejected arguments that the councillor had been acting in an entirely personal capacity. It found that the councillor could not divorce himself from his role as the officer's quasi-employer and that, when sending or encouraging the officer to send the messages during working hours, he was acting in his official capacity.

It is not always immediately apparent in which capacity you are acting, therefore in situations where there may be ambiguity it may be helpful if you can make clear to people in which capacity you are engaging with them.

While the Code does not apply to your non-councillor roles, what you do as a councillor could impact on your position in those other roles.

Political party or group rules may also require you as a councillor to demonstrate certain behaviours as a private individual and failure to do so can result in sanctions from political groups.

Under the Local Government Act 1972 councillors can be disqualified from being a councillor due to matters in their private life, such as being subject to a bankruptcy order or receiving a custodial sentence of three months or longer (whether or not suspended).

### **In what circumstances might I give the impression to a reasonable member of the public that I was engaged on local authority business?**

When you use or attempt to use your position as a councillor to seek to gain an advantage for yourself or someone close to you or to disadvantage someone this is an attempt to misuse your position and therefore falls within the scope of the Code of Conduct.

A number of factors will need to be taken into account to determine whether or not you had used or attempted to use your position as a councillor.

For example:

writing to someone on local authority headed paper or using a local authority email address may lead someone to assume you were writing in your capacity as a councillor

handing out a business card where you describe yourself as a councillor may also lead to that assumption

wearing official local authority regalia.

### **Examples**

Attempting to misuse your position as a councillor would include if you threaten to use your position improperly to block someone's planning, licence or grant application. In effect you would be doing something that only a councillor could do even if as a matter of fact, you did not have the power to do so. That may include an assumption, for example, that you would put inappropriate pressure on officers or fellow councillors or lobby behind the scenes for a particular outcome. It should not be up to a member of the public to have to work out whether you are in fact on a planning committee.

Another example would be disclosing confidential information improperly you had received because of your role as a councillor.

A councillor returning from a party got into an argument with a taxi driver. When he arrived home, he refused to pay the fare and when he spoke to the manager of the taxi company, he said that he was a councillor and would make sure that the taxi driver's licence was withdrawn by the council. While he was entitled to dispute the payment if he was dissatisfied with the service he had received he was found to have breached the code by invoking his office and seeking to misuse his position to intimidate the manager and driver and to seek to gain an advantage for himself, notwithstanding the fact that he did not in reality have the ability to carry out his threat.

### **Social media postings**

Simply describing yourself as a councillor in a social media posting or at the top of your page or in your username or profile, for example, does not of itself mean that every posting you make is covered by the Code. There must be a link within the individual posting or thread to your role as a councillor or to local authority business. However, even if you do not describe yourself as a councillor you may fall within the scope of the code if you are discussing local authority business.

For example, a posting which is simply discussing a recent football match is not covered by the code even if you have described yourself as a councillor. However, if you make a posting threatening a fellow councillor or officer that would fall within the code even if you have not described yourself as a councillor as it relates to local authority business or your role as a councillor.

Each matter would need to be looked at on a case-by-case basis ([see guidance on 'disrespect, bullying and harassment in Part 2 for further information \[https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#part-2-general-obligations-under-the-code-of-conduct\]](#)).

You should be very careful when describing yourself as a councillor as seeing the word "councillor" may lead to assumptions amongst the community that you are acting as a councillor.

To help avoid some of these issues, some councillors have found it helpful to have separate social media profiles for personal and local authority use, though even the strictest privacy settings are no guarantee that posts or actions will remain private. As a rule of thumb, never post anything online you would not be comfortable saying or sharing in a public meeting. If your local authority has guidance on the effective use of social media this can help.

The LGA has published [guidance on councillors \[https://local.gov.uk/councillors-and-social-media\]](#) and social media.

### **Examples**

Following a heavy snowstorm which meant a local street market could not go ahead a councillor posted on the local community Facebook page that a certain local authority officer should be sacked for failing to put adequate arrangements in place to clear the snow. Even though it was not posted on a local authority page and he did not explicitly describe himself as a councillor in the post he was found to have breached the code by treating an officer with disrespect and seeking to put undue pressure on officers.

A councillor who described himself as such in his Twitter profile made insulting and offensive comments about the Prime Minister which led to complaints being made to his local authority. He was found not to have breached the code as the comments did not directly relate to his role as a councillor or local authority business but were seen as wider political comments.

### **What does acting as a representative of my local authority mean?**

You are acting as a representative of the local authority when you are sitting on an outside body to which you have been appointed by the local authority, for example.

You would also be considered a representative of the local authority where you were attending an external function or conference on behalf of the local authority or as the local authority's nominated delegate.

You would not be considered as a representative of the local authority where you were attending an event in a party-political role, for example at a political party's annual conference. In that situation you would be subject to any relevant party rules.

Matters in party group meetings would also normally not be covered by the code as they are more matters for a party to regulate. However, if you are clearly trying to improperly influence fellow councillors or put undue pressure on them in relation to local authority business for example then relevant provisions of the code would apply. The same would apply to social media groups you may be a member of, such as a WhatsApp group set up for your local authority group.

### **What if I sit on more than one local authority?**

If you sit on more than one local authority, you are subject to the code and associated procedures of the local authority you are representing at any one time. As such, if you are on a district council and a parish council, you would be bound by the district code when attending district council meetings or speaking to district council officers; and bound by the parish council code when attending parish council meetings or speaking to parish council officers.

Where your local authorities have the same code, the same rules would apply and, for example, your completed register of interests should be the same on both tiers.

### **What is a co-opted member?**

The code also applies to co-opted members under the Localism Act. A co-opted member under the Act is someone who is entitled to vote on any matter to be decided at a local authority committee or sub-committee.

A parish councillor who has been co-opted to fill a casual vacancy where an election has not been held is also covered by the Code of Conduct in the same way as if they had been elected.

It does not, therefore include co-opted members who do not have voting rights, nor does it cover, for example, an Independent Person appointed under s28 of the Localism Act to support the local authority on standards matters.

However, it would be good practice to ask such councillors to agree to abide by the code of conduct and to inform the monitoring officer of any interests they might have. While they would not formally fall within the statutory framework for complaint handling, they can be removed from their role by the local authority should they be found to have committed a serious breach of the code so it is important that they are also aware of the expected standards of behaviour.

## **Part 2 – General obligations under the Code of Conduct**

### **Respect**

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

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

Showing respect to others is fundamental to a civil society. As an elected or appointed representative of the public it is important to treat others with respect and to act in a respectful way. Respect means politeness, courtesy and civility in behaviour, speech, and in the written word. It also relates to all forms of communications councillors undertake, not just in meetings. Rude, offensive, and disrespectful behaviour lowers the public's expectations and confidence in its elected representatives.

### **Respect**

The key roles and responsibilities of councillors; representing and serving your communities and taking decisions on their behalf, require councillors to interact and communicate effectively with others. Examples of councillor interaction and communication include talking to constituents, attending local authority meetings, representing the local authority on outside bodies, and participating in community meetings and events. In turn this means that as a councillor you are required to interact with many different people, often from diverse backgrounds and with different or conflicting needs and points of view.

You will engage in robust debate at times and are expected to express, challenge, criticise and disagree with views, ideas, opinions, and policies. Doing these things in a respectful way will help you to build and maintain healthy working relationships with fellow councillors, officers, and members of the public, it encourages others to treat you with respect and helps to avoid conflict and stress. Respectful and healthy working relationships and a culture of mutual respect can encourage positive debate and meaningful communication which in turn can increase the exchange of ideas, understanding and knowledge.

Examples of ways in which you can show respect are by being polite and courteous, listening and paying attention to others, having consideration for other people's feelings, following protocols and rules, showing appreciation and thanks and being kind. In a local government context this can mean using appropriate language in meetings and written communications, allowing others time to speak without interruption during debates, focusing any criticism or challenge on ideas and policies rather than personalities or personal attributes and recognising the contribution of others to projects.

### **Disrespectful behaviour**

Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurs are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurs, who observes the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompts the alleged disrespect.

Disrespectful behaviour can take many different forms ranging from overt acts of abuse and disruptive or bad behaviour to insidious actions such as bullying and the demeaning treatment of others. It is subjective and difficult to define. However, it is important to remember that any behaviour that a reasonable person would think would influence the willingness of fellow councillors, officers or members of the public to speak up or interact with you because they expect the encounter will be unpleasant or highly uncomfortable fits the definition of disrespectful behaviour.

Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communications such as swearing, ignoring someone who is attempting to contribute to a discussion, attempts to shame or humiliate others in public, nit-picking and fault-finding, the use of inappropriate sarcasm in communications and the sharing of malicious gossip or rumours.

Disrespectful behaviour can be harmful to both you and to others. It can lower the public's expectations and confidence in you and your local authority and councillors and politicians more generally. It influences the willingness of fellow councillors, officers, and the public to speak up or interact with you because they expect the encounter will be unpleasant or uncomfortable. Ongoing disrespectful behaviour can undermine willingness of officers to give frank advice, damage morale at a local authority, and ultimately create a toxic culture and has been associated with instances of governance failure.

## **Freedom of expression**

The requirement to treat others with respect must be balanced with the right to Freedom of expression. Article 10 of the European Convention on Human Rights protects your right to hold your own opinions and to express them freely without government interference. This includes the right to express your views aloud or in writing, such as in published articles or leaflets or on the internet and social media. Protection under Article 10 extends to the expression of views that may shock, disturb, or offend the deeply-held beliefs of others.

However, Article 10 is not an absolute but a qualified right which means that the rights of the individual must be balanced against the interests of society. Whether a restriction on freedom of expression is justified is likely to depend on a number of factors, including the identity of the speaker, the context of the speech and its purpose, as well as the actual words spoken or written. Democracy depends on people being free to express, debate and criticise opposing viewpoints. The courts have generally held that the right to free expression should not be curtailed simply because other people may find it offensive or insulting. A balance must still be struck between the right of individuals to express points of view which others may find offensive or insulting, and the rights of others to be protected from hatred and discrimination.

Freedom of expression is protected more strongly in some contexts than others. In particular, a wide degree of tolerance is accorded to political speech, and this enhanced protection applies to all levels of politics, including local government. Article 10 protects the right to make incorrect but honestly made statements in a political context but it does not protect statements which the publisher knows to be false. Political expression is a broad concept and is not limited to expressions of or criticism of political views but extends to all matters of public administration including comments about the performance of public duties by others. However, gratuitous personal comments do not fall within the definition of political expression.

Public servants such as local government officers are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits are not as wide as they are for elected politicians such as councillors. Officers do not necessarily have the same right of reply to such comments as councillors do and councillors should take care not to abuse or exploit this imbalance.

Recent case law has confirmed that local authority officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to offensive, abusive attacks and unwarranted comments that prevents them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, for example chief executives or heads of services, will also be expected to have a greater degree of robustness.

### **Is the Respect provision of the code a gag on councillors?**

This provision of the Code (Paragraph 1) is not intended to stand in the way of lively debate in local authorities. Such discussion is a crucial part of the democratic process. Differences of opinion and the defence of those opinions through councillors' arguments and public debate are an essential part of the cut and thrust of political life. Councillors should be able to express their opinions and concerns in forceful terms. Direct language can sometimes be appropriate to ensure that matters are dealt with properly. The code is not intended to stifle the expressions of passion and frustration that often accompany discussions about local authority business.

### **Can councillors criticise officers?**

Yes. In some cases, officers have been known to reject reasonable criticism appropriately made and describe it as disrespectful or bullying. The Code of Conduct is not intended to constrain councillors' involvement in local governance, including the role of councillors to challenge performance. Councillors can question and probe poor officer performance provided it is done in an appropriate way. In the everyday running of a local authority, it is inevitable that councillors may have disagreements with officers from time to time.

This paragraph of the code does not mean that councillors cannot express disagreement with officers. This disagreement might, in the appropriate context, manifest itself in criticism of the way in which an officer or officers handled particular matters.

It is important that councillors raise issues about poor performance in the correct way and at the appropriate forum in accordance with your local authority's processes and procedures, and not in a public meeting or through a published attack in the media.

All local authorities should have clearly defined policies, procedures, and occasions where such issues can be properly raised. It is only where councillors' conduct is unfair, unreasonable, or demeaning that the code will be relevant. If a councillor's criticism is abusive or offensive it is likely to breach the code.

### **What kinds of conduct are not covered?**

A very clear line must be drawn between the Code of Conduct's requirement of respect for others, including councillors with opposing views, and the freedom to disagree with the views and opinions of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other.

### **What if a member of the public is being unnecessarily disrespectful to me?**

Councillors are allowed to respond to criticism, and where that criticism is robust, then they can be robust in response. However, councillors should always seek to try to be civil and demonstrate leadership in their communication. Even where councillors have been wrongly accused, responding in an angry, defensive way can often escalate the situation.

There has been a growing tendency for members of the public to use social media channels to unfairly criticise local councillors. For this reason, many local authorities now offer social media guidance to councillors in addition to the civility in public life resources available on the **LGA's website** (<https://www.local.gov.uk/our-support/guidance-and-resources/civility-public-life>)

### Examples

The complaint alleged that the councillor posted on their blog a highly critical comment and an offensive caption about a former councillor, who had passed away and whose funeral had taken place the previous day. The councillor was found to have breached the provisions of his local authority's Code of Conduct relating to councillors treating others with respect; as well as conducting themselves in a manner which could reasonably be regarded as bringing their role or their authority into disrepute.

The complaint alleged that a councillor commented under a pseudonym on a local authority blog referring to possible nepotism in the awarding of a contract to a local firm by the local authority. The standards committee found that the councillor had breached the Code of Conduct in making the posts because he had failed to treat others with respect and, in doing so, he had conducted himself in a manner which brought his role and his local authority into disrepute.

The complaint alleged that a councillor had made remarks of an abusive, insulting and personal nature to the complainant, a police officer, and also made a number of unfounded allegations about him during two telephone calls to a police station made in his capacity as a ward councillor. It was found that the comments amounted to an unacceptable personal attack on the complainant and that the councillor had breached the respect provisions in his local authority's Code of Conduct.

## Bullying

### As a councillor:

1.

#### 1.1. I do not bully any person.

Bullying, harassment, discrimination, and victimisation (either directly or indirectly) are unacceptable and should not be tolerated. It is important to recognise the impact such behaviour can have on any individual experiencing it, as well as on the wider organisation in terms of morale and operational effectiveness.

Bullying may be characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour, an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation. Bullying may be obvious or be hidden or insidious. Such conduct is usually part of a pattern of behaviour which attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

Bullying can take the form of physical, verbal, and non-verbal conduct but does not need to be related to protected characteristics. Bullying behaviour may be in person, by telephone or in writing, including emails, texts, or online communications such as social media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

Bullying can affect anyone, in any career, at any time, at any level and within any workplace. Such behaviour can take the form of easily noticed, physically threatening or intimidatory conduct with immediate impact, or it can take place behind closed doors, or be much more subtle or camouflaged and difficult to identify, at least at first. It can start, for example, with what appear to be minor instances, such as routine 'nit-picking' or fault-finding, but which become cumulative or develop into more serious behaviour over time, enabling the perpetrator to isolate and control the person.

Some bullies lack insight into their behaviour and are unaware of how others perceive it. Others know exactly what they are doing and will continue to bully if they feel they are unlikely to be challenged. Bullying can sometimes be overlooked, as a result of common euphemisms being used by way of explanation or justification, referring to someone as having a "poor leadership style" or a "bad attitude," for example, or to the problem being due to a "personality clash".

You should always be mindful of the overall potential impact of the behaviour on others. First and foremost, bullying can have a significant impact on the recipient's well-being and health. Bullying can have an impact on a local authority's effective use of resources and provision of services. Officers who are subject to bullying are frequently away from their posts, sometimes for extended periods, on sickness or stress-related leave. Bullying can impact on a councillor's ability to represent their residents effectively. It can also discourage candidates from standing in local elections, making local authorities less representative of their communities, and impacting local democracy.

Like disrespectful behaviour, bullying can be difficult to define. When allegations of bullying are considered it's likely that the person handling the complaint will consider both the perspective of the alleged victim, and whether the councillor intended their actions to be bullying. They will also consider whether the individual was reasonably entitled to believe they were being bullied.

Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, where it is targeted at issues, rather than at an individual's conduct or behaviour, or when the behaviour by both the complainant and councillor contributed equally to the breakdown in relations. However, the cumulative impact of repeated 'minor' incidents should not be underestimated.

Examples of bullying include but are not limited to:

- verbal abuse, such as shouting, swearing, threats, insults, sarcasm, ridiculing or demeaning others, inappropriate nicknames, or humiliating language
- physical or psychological threats or actions towards an individual or their personal property
- practical jokes
- overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures
- inappropriate comments about someone's performance
- abuse of authority or power, such as placing unreasonable expectations on someone in relation to their job, responsibilities, or hours of work, or coercing someone to meet such expectations
- ostracising or excluding someone from meetings, communications, work events or socials
- sending, distributing, or posting detrimental material about other people, including images, in any medium
- smear campaigns.

**Freedom of expression 'Respect' guidance Part 2** [<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#respectful-behaviour->]

#### **Does this mean that councillors cannot raise concerns about officers or fellow councillors?**

Bullying behaviour should be contrasted with the legitimate challenges which a councillor can make in challenging policy or scrutinising performance. An example of this would be debates in the chamber about policy or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views. However, if your criticism is a personal threat or abusive or offensive in nature, you are likely to cross the line of what is acceptable behaviour.

#### **Preventing bullying conduct from developing**

Ideally, a culture of honest and clear communication should be sought, with respect for the individual and for the confidentiality required when managing individual performance-related issues. The bullying of officers might be reduced by establishing a specific protocol, which addresses issues such as councillor-officer work relations and appropriate behaviour.

The protocol for parish and town councils can include such simple but important matters as acceptable times to contact the clerk by telephone at home or call at the clerk's home on council business.

Local authority officers and parish clerks also need to be mindful that councillors can come from a wide range of backgrounds and may have been part of workplaces where the culture and expected standards are very different from what the clerk or officers expect; as a result, the councillor simply may not be aware of the impact that their communications have had on the clerk or officer. Early discussion about emerging issues is important to help avoid matters escalating and help establish more effective working arrangements for the future.

#### **Bullying and harassment and the law**

In some cases, acts of bullying or harassment can be civil offences, which can be brought to an employment tribunal or a county court.

In some cases, conduct that amounts to bullying and harassment may also amount to criminal offences, which can be tried in the criminal courts. There is not an exhaustive list of acts of bullying or harassment that may constitute a criminal offence. Examples may include, but are not limited to:

- physical assault
- making threats of violence or death threats

- stalking
- hate crimes
- sexual harassment

## Intimidation of councillors

Councillors can face behaviours which could amount to bullying and intimidation when carrying out their role.

The LGA and the Welsh Local Government Association recognise the growing need among councillors for support related to intimidation and have jointly developed a “**Councillors' guide to handling intimidation. Practical steps that you and your local authority can undertake to protect yourself as a person in a public position**”  
[\[https://www.local.gov.uk/sites/default/files/documents/Full%20word%20english%20version%20guide%20for%20councillors\]](https://www.local.gov.uk/sites/default/files/documents/Full%20word%20english%20version%20guide%20for%20councillors)

. The guide covers topics such as how to handle abuse, both face-to-face, letters or online, guidance on personal safety, lone working and online abuse and the legal and practical remedies, including the nature of the criminal offences involved. It will be continuously updated with the latest advice and information available.

## Harassment

### As a councillor:

1.
  - 1.1. I do not harass any person.

The Protection from Harassment Act 1997 states that harassment includes behaviour which alarms a person or causes a person 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 victim in a manner that could be expected to cause distress or fear in any reasonable person. Harassment of any kind whether direct or indirect is in no-one's interest and should not be tolerated. It is important to recognise the impact such behaviour can have on any individual experiencing it, as well as on the wider organisation in terms of morale and operational effectiveness.

Like bullying, harassment can take the form of physical, verbal, and non-verbal conduct but does not need to be related to protected characteristics. Harassment may be in person, by telephone or in writing, including emails, texts, or online communications such as social media. It may manifest obviously or be hidden or insidious.

The factors likely to be considered when assessing allegations of harassment are whether the councillor knows or ought to know that their actions constitute harassment, whether a reasonable person would consider the actions to be harassment and the impact of the behaviour/conduct on victim.

Examples of harassment include but are not limited to:

- sending unwelcome emails
- unnecessarily repetitive, intrusive questioning
- unwelcome physical contact such as touching or invading 'personal space'
- haranguing
- intimidation
- inappropriate remarks or questioning such as comments about someone's appearance, lewd comments, and offensive jokes
- overbearing or intimidating levels of supervision, including preventing someone from undertaking their role or following agreed policies and procedures
- inappropriate comments about someone's performance
- placing unreasonable expectations on someone in relation to their job, responsibilities, or hours of work, or coercing someone to meet such expectations
- sexual harassment

### What does the law say about harassment?

[\[https://www.local.gov.uk/sites/default/files/documents/Full%20word%20english%20version%20guide%20for%20councillors\]](https://www.local.gov.uk/sites/default/files/documents/Full%20word%20english%20version%20guide%20for%20councillors)

In some cases, acts of harassment can be civil offences, which can be brought to an employment tribunal or county court.

In some cases, conduct that amounts to harassment may also amount to criminal offences, which can be tried in the criminal courts. There is not an exhaustive list of acts of harassment that may constitute a criminal offence. Examples may include, but are not limited to physical assault:

- making violent or death threats
- stalking
- hate crimes
- sexual harassment

### Example

The complaint alleged that a councillor had behaved in a disrespectful and harassing manner towards two fellow female councillors and officers. It was established that the councillor had made unwarranted and inappropriate physical contact with the councillors and officers at an official event and had also made remarks towards the officers which were patronising and demeaning. The councillor was found to be in breach of the Code of Conduct.

## Discrimination

### As a councillor:

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

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.

The Equality Act 2010 imposes positive duties on local authorities to promote equality and to eliminate unlawful discrimination and harassment. Under the Act your authority may be liable for any discriminatory acts which you commit. This will apply when you do something in your official capacity in a discriminatory manner. You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under the Act. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code of Conduct. If you are unsure about the particular nature of the duties of your authority you should seek advice from the monitoring officer or parish clerk.

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

There are four main forms of discrimination:

**Direct discrimination:** treating people differently because of their age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation.

**Indirect discrimination:** treatment which does not appear to differentiate between people because of their age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation but which disproportionately disadvantages them.

**Harassment:** engaging in unwanted conduct on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.

**Victimisation:** treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

Examples of discriminatory behaviour include but are not limited to:

- exclusion or victimisation based on the Protected Characteristics
- treating someone less favourably or limiting their opportunities based on any of the Protected Characteristics
- comments, slurs, jokes, statements, questions, or gestures that are derogatory or offensive to an individual's or group's characteristics
- promoting negative stereotypes relating to individual's or group's characteristics
- racial or ethnic slurs, insults, or jokes
- intolerance toward religious customs

- mimicking, mocking, or belittling a person's disability
- homophobic, biphobic or transphobic comments or slurs
- discriminating against pregnant people or mothers
- declaring ('outing') someone's religion or sexuality or threatening to do so against their will
- deliberate, unwarranted application of an authority's practice, policy or rule in a way that may constitute indirect discrimination
- instructing, causing, inducing, or knowingly helping someone to commit an act of unlawful discrimination under the Equality Act 2010.

A councillor's personality and life experiences will naturally incline them to think and act in certain ways. They may form views about others based on those experiences, such as having an affinity with someone because they have a similar approach to life or thinking less of someone because they are from a different generation. This is known as "unconscious bias" and it can lead people to make decisions based on biases or false assumptions. Councillors need to be alert to the potential of unconscious bias and ensure they make decisions based on evidence, and not on assumptions they have made based on biases.

## Questions

### How can councillors cause their authority to be in breach of the Equality Act?

The Code of Conduct is not intended to stifle democratic debate. Councillors should always remember that Article 10 of the European Convention on Human Rights gives a high level of protection to comments that are genuinely made during political debate, even if most people would find them offensive.

Some councillors have particular roles which may give a higher risk for the potential for discrimination; for example, if you are on an appointment panel for a position in the local authority, or you are able to award local grants in your ward and will need to decide which organisations to support.

Merely arguing, or even voting, against a proposal which is aimed at complying with a positive anti-discriminatory duty would not be enough by itself to risk breaking this part of the code. Simply having a party-political or personal position on an issue is unlikely to amount to a breach of this provision because it does not, of itself, involve the local authority doing anything.

Under the Equality Act 2010, an authority is made liable for any discriminatory acts which a councillor commits. This will apply where they say or do something in their official capacity in a discriminatory manner.

## Examples

The complaint alleged that a councillor 'liked' several racially discriminatory comments on social media and one comment advocating violence against Travellers. The panel found that 'Liking' of the offensive comments did amount to a failure to treat those who were the subject of such comments with respect and a failure to promote equalities in breach of the Code of Conduct.

A councillor was a member of the local authority's recruitment panel to appoint a new chief executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the councillor said, "good candidate, shame he's black". The panel found that the Code of Conduct had been breached.

## Impartiality of officers

### 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.

Both councillors and officers are servants of the public and are indispensable to one another. Together, they bring the critical skills, experience and knowledge required to manage an effective local authority.

At the heart of this relationship, is the importance of mutual respect. Councillor-officer relationships should be conducted in a positive and constructive way. Therefore, it is important that any dealings between councillors and officers should observe reasonable standards of courtesy, should show mutual appreciation of the importance of their respective roles and that neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party.

Councillors provide a democratic mandate to the local authority and are responsible to the electorate whom they represent. They set their local authority's policy framework, ensure that services and policies are delivered and scrutinise local authority services.

Councillors of the executive, chairs and vice chairs of committees have additional responsibilities. These responsibilities will result in increased expectations and relationships with officers that are more complex. Such councillors must still respect the impartiality of officers and must not ask them to undertake work of a party-political nature or compromise their position with other councillors or other officers.

Officers provide the professional advice and managerial expertise and information needed for decision making by councillors and to deliver the policy framework agreed by councillors. They are responsible for implementing decisions of councillors and the day-to-day administration of the local authority.

The roles are very different but need to work in a complementary way.

It is important for both sides to respect these differences and ensure that they work in harmony. Getting that relationship right is an important skill. That is why the code requires councillors to respect an officer's impartiality and professional expertise. In turn officers should respect a councillor's democratic mandate as the people accountable to the public for the work of the local authority. It is also important for a local authority to have a councillor-officer protocol which sets out how this relationship works and what both councillors and officers can expect in terms of mutual respect and good working relationships.

Officers may sometimes give you advice that you do not want to hear or does not suit your political views. They must be allowed to do this without fear of recriminations to allow for good decision-making looking at all relevant options.

That means in your dealing with officers you must not seek to influence them improperly or put undue pressure on them. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision.

Other than political assistants, officers are required to remain politically neutral and not demonstrate their support for specific parties or candidates.

The fundamentally held principle is that "the local government system of the UK has long resided on a bond of trust between elected members and a permanent corps of local government officer... that relationship of trust stems from the right of council members to expect that they are being assisted in their functions by officers who are politically neutral and whose loyalty is to the council as a whole<sup>[1]</sup> [\[#\\_ftn1\]](#)".

### **Examples**

A councillor became involved in a social care case on behalf of a constituent during which time he inappropriately sought to influence operational decision-making and sent discourteous and disrespectful correspondence to the officers. In doing so, he lost sight of his overall responsibility to the local authority to allow its officers to perform their statutory functions. He was found to have breached the Code of Conduct.

A councillor who, over a period of six months, persistently sought to influence the decisions of officers dealing with a complaint by his son and daughter-in-law against their local authority tenant neighbour was found, through his actions, to have compromised the impartiality of the officers and to have used his position improperly to promote the interest of his family and to have brought the role of councillor into disrepute in breach of the Code of Conduct.

### **What does working on behalf of the authority mean?**

Local Authorities deliver services in a range of ways. Often services will have been contracted out to outside bodies. For example, if you are in a highway authority, road repair services may be carried out by outside contractors. Their employees delivering that contract are doing so on behalf of the local authority and you should not use your position to interfere improperly in delivery of that service.

### **What if I disagree with the views of an officer?**

You are perfectly entitled to disagree with officers. They are there to give you impartial professional advice and you do not need to accept their advice without question. When you do question them however, you should treat them with respect and recognise that they are professionals.

If you feel dissatisfied with the advice you are given you should raise through appropriate management channels in line with your local authority's councillor-officer protocol (where you have one) - [\[https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#respectful-behaviour-\]](https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#respectful-behaviour-) **see guidance on respect, bullying and harassment in Part 2.** [\[https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#bullying\]](https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#bullying)

Where you have a declarable interest in a matter you are discussing with an officer you should make that clear to the officer – **see guidance on declarations of interest in Part 3.** [\[https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#declarations-of-interest\]](https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#declarations-of-interest) Where it is an interest which would stop you from taking part in a meeting you should not discuss those matters with officers except where you are seeking professional advice in the same way as any member of the public could – for example, assistance with making an application – and the officer should make a note that an interest has been declared. If you need to speak to an officer about the matter, you should arrange a meeting as a member of the public and not seek to use your position to gain preferential or quicker access.

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[1] [\[#\\_ftnref1\]](#) Ahmed v United Kingdom (2000) 29 EHRR 1

### Having regard to Officer advice

Councillors take decisions every day that affect the lives of those who live and work within your community. It is therefore important that those decisions are made having regard to all available evidence and weighing up all sides of the argument.

Decisions can be challenged if they are unreasonable, and the local authority could find itself facing an expensive legal bill if it takes a decision which is unlawful. When considering any decision, you must have regard to any professional advice you have been offered, for example from planning or licensing officers. Both the monitoring officer and the chief finance officer have a statutory duty to report formally to the local authority where they believe a local authority action or expenditure is, or may be, unlawful. Similarly, when it comes to elections, you will need to have regard to any advice given to you by the returning officer who may well be a senior officer but in that capacity is entirely independent of and separate from the local authority and is required to be politically neutral.

You must also give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by your local authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected. Where councillors disagree with officer recommendations in making a decision, councillors will need to take particular care in giving clear reasons for the decision.

If you seek advice as an individual councillor, or advice is offered to you, for example, on whether or not you should register or declare an interest, you must have regard to this advice before you make your mind up. Failure to do so may lead to a breach of the Code of Conduct.

If in any doubt – be safe and always seek advice from your monitoring officer before taking any action.

Local authorities have protocols for councillor-officer relations in their constitutions which are accessible on their websites.

The LGA published “

[\[https://www.local.gov.uk/sites/default/files/documents/11.141%20A%20councillor%27s%20workbook%20on%20councillor%20A%20councillor's%20workbook%20on%20effective%20councillor%20officer%20relationships%202018\]](https://www.local.gov.uk/sites/default/files/documents/11.141%20A%20councillor%27s%20workbook%20on%20councillor%20A%20councillor's%20workbook%20on%20effective%20councillor%20officer%20relationships%202018)

[\[https://www.local.gov.uk/sites/default/files/documents/11.141%20A%20councillor%27s%20workbook%20on%20councillor%20A%20councillor's%20workbook%20on%20effective%20councillor%20officer%20relationships%202018\]](https://www.local.gov.uk/sites/default/files/documents/11.141%20A%20councillor%27s%20workbook%20on%20councillor%20A%20councillor's%20workbook%20on%20effective%20councillor%20officer%20relationships%202018)

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[\[https://www.local.gov.uk/sites/default/files/documents/11.141%20A%20councillor%27s%20workbook%20on%20councillor%20A%20councillor's%20workbook%20on%20effective%20councillor%20officer%20relationships%202018\]](https://www.local.gov.uk/sites/default/files/documents/11.141%20A%20councillor%27s%20workbook%20on%20councillor%20A%20councillor's%20workbook%20on%20effective%20councillor%20officer%20relationships%202018)  
. This workbook has been designed as a distance learning aid for local councillors. It forms part of the suite of LGA resources intended to provide councillors with insight and assistance into key skills and knowledge. It is designed to provide a foundation for effective working as you progress in your councillor career, from the ward level to holding a leading councillor position. The workbook has been updated to contain information and examples obtained from the LGA's work on the ground in local authorities and through the **Corporate Peer Challenge programme** [\[https://www.local.gov.uk/our-support/peer-challenges/peer-challenges-we-offer\]](https://www.local.gov.uk/our-support/peer-challenges/peer-challenges-we-offer), and to reflect the changing nature of the councillor and officer relationship.

### 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 have received the consent of a person authorised to give it;
    - I am required by law to do so;
    - 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
    - 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. 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.

## Confidential information

While local authority business is by law generally open and local authorities should always operate as transparently as possible, there will be times – for example, when discussing a named individual, confidential HR matters or commercially sensitive information – when it is appropriate for local authority business to be kept confidential or treated as exempt information.

In those circumstances, you must not disclose confidential information, or information which you believe to be of a confidential nature, unless:

- you have the consent of the person authorised to give it
- you are required by law to do so
- the disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person
- the disclosure is in the public interest

## Disclosure in the public interest

Disclosure 'in the public interest' is only justified in limited circumstances, when all the following four requirements are met:

- the disclosure must be reasonable
- the disclosure must be in the public interest
- the disclosure must be made in good faith
- the disclosure must be made in compliance with any reasonable requirements of your authority

In relation to the disclosure of confidential information in the public interest, the four requirements are outlined in more detail below.

1. The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:

Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.

Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.

The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.

The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.

The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.

The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing or is likely to reoccur.

Whether the disclosure involves your authority failing in a duty of confidence owed to another person.

2. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- a criminal offence is committed.
- your local authority or some other person fails to comply with any legal obligation to which they are subject.
- a miscarriage of justice occurs.
- the health or safety of any individual is in danger.
- the environment is likely to be damaged.
- that information tending to show any matter falling within the above is deliberately concealed.

3. The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party-political advantage or to settle a score with a political opponent.

4. The fourth requirement, that you comply with the reasonable requirements of your local authority, means that before making the disclosure you must comply with your local authority's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors, which may justify its disclosure despite these potential consequences. If in doubt you should always seek advice from the monitoring officer. Always keep a note of the reason for your decision.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

### **Circumstances in which a local authority can treat information as confidential**

The presumption under local government law is that local authority business is open unless it falls within a specific category of confidential or exempt information as set out in legislation. These categories are:

1. information given to the local authority by a Government Department on terms which forbid its public disclosure or
2. information the disclosure of which to the public is prohibited by or under another Act or by Court Order.

Generally personal information which identifies an individual, must not be disclosed under the data protection and human rights rules.

Exempt information means information falling within the following categories (subject to any condition):

1. relating to any individual.
2. which is likely to reveal the identity of an individual.
3. relating to the financial or business affairs of any particular person (including the authority holding that information).
4. relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.
5. in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. which reveals that the authority proposes:
  - 6.1. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - 6.2. to make an order or direction under any enactment
7. relating to any action taken or to be taken in connection with the prevention, investigation, or prosecution of crime.

Where information is legally classified as 'confidential' under the above categories the public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed. Likewise, public access to reports, background papers, and minutes will also be excluded.

Where an officer recommends that a report to a decision-making committee should be treated as exempt information under the above categories the committee must still agree that the matter should be heard in a closed session. The committee may disagree with any recommendation and decide that those legal tests have not been met; or they may agree that those tests have been met but nevertheless it is in the public interest that the matter be considered in an open session. Again, you should keep a record of the rationale for the decision.

Once the local authority has agreed that the matter be treated as exempt, public access to relevant reports, background papers and minutes will also be excluded and an individual councillor must abide by that collective decision or risk breaching the code if they disclose that information (papers and content of discussion) without lawful excuse.

### **Does confidentiality under the code apply only to information which is classified as confidential or exempt by law?**

No. The code goes wider than matters simply considered in a formal local authority setting. Information is a broad term. It includes facts, advice, and opinions. It covers written material, including tapes, videos, CDs, DVDs, and other electronic media. It covers material in unwritten form, including intellectual property. Information can only be confidential if all the following apply:-

- it has the necessary 'quality of confidence' about it (trivial information will not be confidential but information that you would expect people to want to be private would be);
- it was divulged in circumstances importing an obligation of confidence (information properly in the public domain will not be confidential);
- disclosure of it would be detrimental to the party wishing to keep it confidential.

For example, you may be told confidential information by a constituent in the course of your duties. That is why the code is written broadly to cover information classed as confidential which you may come across in your duties.

You should use your judgment when you are given information. An individual does not have to explicitly say that information is confidential if they tell you something which a reasonable person would regard as sensitive. You may, however, wish to clarify if somebody tells you something whether they want you to treat it as confidential.

### **Examples**

A councillor was assisting a resident in an adoption process, which the resident decided to subsequently withdraw from. The resident's estranged parent contacted the councillor for information as to what was happening with the case and the councillor inadvertently shared confidential information as she had not realised that father and son were estranged. This was found to be a breach of the code.

A councillor circulated information about an officer's medical condition to other councillors and a local headteacher with whom he was acquainted. He was found to have disclosed information which should reasonably be regarded as being of a confidential nature and without the officer's consent in breach of the Code of Conduct.

### **What does consent by the person authorised to give it mean?**

If somebody, for example a constituent, has told you something in confidence – for example in the line of casework – you may later want to put that in the public domain as part of pursuing that case. You should always check with the individual before you disclose something you believe is confidential to ensure that they are comfortable with that information being disclosed. You should also be clear with them as to how you may use the information, they give you to help resolve their issue.

### **In what circumstances am I required to disclose confidential information by law?**

This would be where a law enforcement or regulatory agency or the courts required disclosure of information.

### **In what way could I use information I have obtained to advance myself or others?**

As a councillor you will often receive commercially sensitive or other confidential information. You must not use that information to your own advantage. For example, if you know the local authority is considering the purchase of a piece of land, you should not use that information in your private dealings to seek to purchase the land.

### **How does this relate to the Data Protection Act?**

As part of their role councillors will receive personal information. They should seek to ensure they are familiar with how the Data Protection Act applies to their role in handling such information through training, and if they are not sure to seek advice from an appropriate officer in the council.

Although councillors are not required to register as a data controller, they will receive personal information from residents in their area. They should only use it for the purpose for which it has been given and must ensure this information is held securely and only share with others that are entitled to it.

In contrast, the local authority is responsible for information they provide to councillors and ensuring they know how it can be used.

## **Access to information**

Transparency is a very important principle underpinning local democracy and public decision-making. The public are entitled to see information about the way decisions are made unless there are specific reasons why that information is confidential. Your local authority should have a publication scheme setting out what information is accessible to the public and you as an individual councillor must not prevent any person from accessing information which they are entitled to by law. This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports, and other documents of your local authority which they have a right to access.

If in doubt seek advice from the relevant local authority officers.

### **The 'need to know'**

As a councillor, you are not automatically entitled to access all information the local authority holds. For example, the local authority may deal with highly confidential and sensitive information about employees or about residents involved in complex cases.

In addition to rights set out in law or conferred by your local authority constitution, you have a right to inspect documents if you can demonstrate a "need to know". This isn't a right to a roving commission but must be linked to your performance of your duties and functions as a councillor. For example, the need could more easily be demonstrated by membership of a relevant committee, such as a staffing committee than simply because you are interested in seeing the information. Local authorities have more justification for denying free access to particularly sensitive papers such as childcare or staffing records. You should not seek to get information if you have a declarable interest in it.

Most local authorities will have a nominated officer you can seek advice from if you feel you are not being given access to information you seek.

You can also exercise the "need to know" in respect of attending meetings. Access to Information Rules set out an Overview and Scrutiny Committee's rights of access to documents and additional rights of access to documents for councillors to carry out their functions.

Where you are given access to documents which are not available to members of the public, you should ensure that any confidential information is used and protected in an appropriate and secure manner and shared with authorised persons only.

### **Can I use local authority information for matters outside the local authority?**

A councillor is entitled to access information held by the local authority for the performance of their duties as a councillor. If a councillor wishes to use local authority information for any purpose other than in connection with their duties as a councillor, and that information is not in a publicly available document, however, then that councillor should submit a freedom of information request so that it can be given to them to use freely.

The general rule is that any information held by the local authority and given directly to a councillor may only ever be used for the purpose for which it was provided. That purpose may add particular restrictions, for example where it relates to an individual constituent or sensitive matter. The purpose should not be for anything other than use in connection with the proper performance of the councillor's duties as a councillor. The exceptions to this are where the information has already been published, it has been given as a result of a request under Freedom of Information or Environmental Information Regulations or it is in the public interest ('whistleblowing') for which provisions are made in the Code of Conduct as explained above.

Please see the **ICO website** [<https://ico.org.uk>] for helpful guidance on data protection and freedom of information.

## **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. Article 10 of the European Convention on Human Rights protects your right to freedom of expression, and political speech as a councillor is given enhanced protection but this right is not unrestricted. You should be aware that your actions might have an adverse impact on your role, other councillors and/or your local authority and may lower the public's confidence in your ability to discharge your functions as a councillor or your local authority's ability to discharge its functions.

In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor's behaviour in office will bring their **role** into disrepute if the conduct could reasonably be regarded as either:

1. reducing the public's confidence in them being able to fulfil their role; or
2. adversely affecting the reputation of your authority's councillors, in being able to fulfil their role.

Conduct by a councillor which could reasonably be regarded as reducing public confidence in their local authority being able to fulfil its functions and duties will bring **the authority** into disrepute.

For example, circulating highly inappropriate, vexatious or malicious e-mails to constituents, making demonstrably dishonest posts about your authority on social media or using abusive and threatening behaviour might well bring the role of councillor into disrepute. Making grossly unfair or patently untrue or unreasonable criticism of your authority in a public arena might well be regarded as bringing your local authority into disrepute.

## Questions

### What distinguishes disrepute to “your role or local authority” from disrepute to you as a person?

The misconduct will need to be sufficient to damage the reputation of the councillor's role or local authority, as opposed simply to damaging the reputation of the individual concerned.

Certain kinds of conduct may damage the reputation of an individual but will rarely be capable of damaging the reputation of the role of councillor or the reputation of the authority.

Here are some of the situations that might tip the balance in favour of disrepute to the role of councillor or to the authority in particular cases:

1. Situations where councillors have put their private interests above the public interest, which they are expected to promote as councillors, and therefore reduced the standing of their role. For example, councillors using their position to secure a secret personal profit.
2. Similarly, situations where a councillor defies important and well-established rules of the authority for private gain.
3. Where a councillor engages in conduct which directly and significantly undermines the authority's reputation as a good employer or responsible service provider.

## Examples

A councillor posted a tweet reading “Cllr Blogs why don't you just throw in the towel, just go before you cause any more damage to the reputation of the council. You and some members of your cabinet have failed. I hope that the SFO is brought in to investigate your conduct. #failedleadership.” The complainant stated that she found the tweet ‘very offensive’ and bullying and also considered that the tweet would reasonably bring the councillor's office and the authority into disrepute. The councillor was found to have brought his authority into disrepute by reducing public confidence in the council.

A councillor brought his role and authority into disrepute by taking advantage of a local authority mistake and failing to prevent local authority-employed contractors from working on his privately-owned home. The local authority mistakenly sent decorators to the home, an ex-local authority property. The councillor only told the local authority about the mistake after the work had been completed and then said he could not be charged for the work.

The chair of a local authority made a deeply inappropriate remark at a local authority meeting that was reported in the local media and was accused of bringing his role and authority into disrepute. It was clear in both the meeting and the local media reporting that other councillors expressed concerns about his comments and found them inappropriate. It was found that he had not brought his authority into disrepute but that he had brought his role into disrepute.

## Misuse 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 councillor 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.

You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a councillor.

Involving yourself in a decision in which you have an interest, to seek to benefit yourself or another would be a breach of this paragraph of the code. For guidance on how to conduct yourself when you have an interest and how to balance your rights as an individual and your responsibilities as a public decision maker see the chapter on registration of interests.

Councillors who own land, or whose relatives or close associates own land, need to be particularly cautious where planning matters are concerned. This applies equally to parish councillors when your local authority is consulted on planning matters. Similarly, while it is reasonable to expect councillors to help constituents apply to the local authority, for example, for housing, it is quite improper to seek to influence the decision to be taken by the officers and would also be in breach of paragraph 3 of the code.

### **What kinds of attempts to advantage or disadvantage would be improper?**

There are circumstances where it will be proper for a councillor to seek to confer an advantage or disadvantage and other circumstances where it will not.

Being a councillor can involve making hard choices and balancing a range of interests. Most decisions will inevitably benefit some people and will be to the detriment of others. It's important when you make those decisions to make them in what you think is the public interest and not be influenced by private interests.

For example, there can be no objection to councillors voicing their opposition to the closure of a local public library. This conduct is clearly intended to secure an advantage for the users of the library. What is crucial is that councillors' attempts to secure this advantage are clearly part and parcel of their duties as a local representative. Therefore, these activities are not improper.

The term 'improperly' is not defined in the Code of Conduct. This ensures that the scope of the provision is not unnecessarily limited. The underlying principle is that councillors are elected or appointed to public office to serve the public interest.

A councillor's conduct would be improper if they were to use their public position to further private interests of themselves or associates, or to settle old scores with enemies, to the detriment of the public interest. Any conduct that unfairly uses a councillor's public position to promote private interests over the public interest will be improper.

### **What if the attempt to confer an advantage or disadvantage fails?**

The wording of the Code of Conduct makes it clear that the use of position provision (paragraph 6) covers failed attempts as well as situations where an advantage or disadvantage has actually been achieved.

For example, if you have tried to influence fellow councillors to vote in a particular way which would be to your personal advantage and/or that of your family/close associates you would have breached this provision of the code even if they did not in fact vote that way.

### **Examples**

Most alleged improper uses of position are in connection with matters in which the councillors have interests.

A councillor who was a 'joint co-ordinator' of a community group did not notify the local authority of her position in this group. She took part in the considerations and voted on the decision to negotiate a new lease in respect of a workshop used by this community group. A standards committee found that she had used her position improperly as the decision on which she voted benefited a group in which she clearly had an interest which she had not disclosed to the local authority.

A local authority leader failed to declare a conflict of interest relating to land he owned. The court found that he used his position as a councillor and instructed a planning officer to alter the road route to benefit his own land's value to a considerable extent. He was found guilty of misconduct in public life for trying to influence the route of a new by-pass to enclose his land in a new development belt, which would have significantly increased its value. He received an 18-month custodial sentence.

A parish councillor was found to have improperly used his position and secured an advantage for a member of the public by asking the parish clerk to make a payment which had not been approved by the Parish Council in breach of the Code of Conduct. The payment was for repairs to a private road used by the councillor to get to his allotment.

## **Misuse of resources and facilities**

### **As a councillor:**

**7.1 I do not misuse local authority resources.**

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

1. **act in accordance with the local authority's requirements; and**
  - 1.1. **ensure that such resources are not used for political purposes unless**
    - 1.1.1. **that use could reasonably be regarded as likely to facilitate, or**
    - 1.1.2. **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 your 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.

You must make sure you use the authority's resources for proper purposes only. It is not appropriate to use, or authorise others to use, the resources for political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any Local Authority Code of Publicity made under the Local Government Act 1986.

#### **The recommended code of practice for local authority publicity**

[\[https://www.gov.uk/government/publications/recommended-code-of-practice-for-local-authority-publicity\]](https://www.gov.uk/government/publications/recommended-code-of-practice-for-local-authority-publicity) published by Ministry of Housing, Communities & Local Government provides guidance on the content, style, distribution, and cost of local authority publicity.

You must be familiar with the rules applying to the use of resources made available to you by your local authority. Failure to comply with the local authority's rules is likely to amount to a breach of the code.

If you authorise someone (for example a member of your family) to use your local authority's resources, you must take care to ensure that this is allowed by the local authority's rules.

You should never use local authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes.

However, your authority may authorise you to use its resources and facilities for legitimate political purposes in connection with your authority's business. For example, holding surgeries in your ward and dealing with correspondence from your constituents. In this case, you must be aware of the limitations placed upon such use for these purposes. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code of Conduct. Where you are part of a formally-recognised political group, your local authority is also allowed to give you such resources as you need for local authority business, for example use of a room for group meetings.

You should never use local authority resources purely for private purposes, for example using a photocopier to print off flyers for your business unless your local authority's procedures allow for you to repay any costs accrued.

#### **What are the "resources of the local authority"?**

The resources of the local authority include services and facilities as well as the financial resources of the authority.

Resources could include any land or premises, equipment, computers, and materials. The time, skills, and assistance of anybody employed by the authority, or working on its behalf, are also resources, as is information held by the authority which it has not published.

#### **What constitutes using resources "improperly for political purposes"?**

The code acknowledges that party politics has a proper role to play, both in the conduct of authority business and in the way that councillors carry out their duties.

There will be times when it is acceptable for political groups to use the resources of the local authority, for example, to hold meetings in authority premises. Often it is impractical to separate a councillor's political campaigning from carrying out their duties as an elected ward member, such as when they hold surgeries or deal with correspondence from constituents.

However, councillors and monitoring officers will need to exercise considerable care to ensure that this provision is not abused. You must ensure that there is a sufficient connection between the use of resources and the business of the authority. Only **improper** use of resources will be a breach of the Code of Conduct.

This part of the code complements Section 2 of the Local Government Act 1986, which prevents the publication of material "designed to affect public support for a political party". The code, however, goes further than the Code of Recommended Practice on Publicity. It covers not only the publication of campaigning material but also any other activity that is intended to promote purely party-political interests.

You must have regard to any applicable local authority code of publicity made under the powers contained in Section 4 of the Local Government Act 1986. Publicity is defined as "any communication, in whatever form, addressed to the public at large or to a section of the public". It will cover meetings, websites, and social media postings as well as printed and other written material.

You should be particularly scrupulous about the use of authority resources when elections are pending, particularly those resources relating to publicity. When using the local authority's resources in these circumstances, you should not appear to be seeking to influence public opinion in favour of you, your party colleagues, or your party.

### **How do you know what the authority's requirements for the use of resources are?**

Your local authority should have a protocol dealing with use of authority resources. A typical protocol would cover the following topics:

- use of authority premises
- councillor-officer relationships including use of officer time
- information technology, for example computer equipment and the use of associated software, including the use of such equipment at home
- telephones
- photocopying
- use of stationery and headed notepaper
- postage
- use of authority transport
- allowances and expenses

Your local authority may also have a separate protocol on the use of social media which would also be relevant.

The key principle underlying all such protocols should be that public office and public resources should not be used to further purely private or party-political purposes.

It is worth noting that where you authorise someone such as a family member to use the authority's resources, you must check whether the authority's rules allow this.

### **Examples**

The complaint alleged a councillor used his computer equipment provided by his local authority for private purposes by downloading inappropriate adult pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. He was found to have misused the local authority's equipment in breach of the code and had brought his office into disrepute.

A councillor used local authority notepaper in an attempt to avoid parking penalties incurred by his son. He also dishonestly attempted to renew a parking permit for disabled drivers. He was convicted of attempting, by deception, to evade the parking penalties dishonestly. He was also found by his local authority to have breached this paragraph of the code.

## **Complying with 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.

### **As a councillor:**

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

Councillors should be competent for the work they undertake, and this includes the way in which you conduct yourself when carrying out your role as a councillor. Training helps to develop such competence, ensuring that you understand the Code of Conduct and how it applies to you.

As a councillor you are responsible for your own actions and will be held personally responsible if you breach your local authority's Code of Conduct. Therefore, it is essential that, where you are offered the opportunity by your local authority, you equip yourself with sufficient knowledge of the code to ensure that you comply with it at all times.

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

The Code of Conduct is a cornerstone of good governance. It is important for public trust that it is seen to be taken seriously by individual councillors as well as the local authority as a whole.

While being the subject of a complaint that you have breached the Code of Conduct and having your conduct investigated may at times be unpleasant and stressful it is essential that councillors cooperate with any code investigations and determinations. Failure to cooperate will not stop an investigation but may simply drag matters and does not allow you to put your side of the story so increases the risk that inferences are drawn about your unwillingness to cooperate and that you will be found in breach of the Code.

It is equally important if you have made a complaint which the local authority has decided merits investigation that you continue to cooperate. Complaints made simply to damage the reputation of an individual through inferences but which you are not willing to support through your cooperation will damage relationships and will also damage the reputation of you and your local authority.

If you are asked to assist the investigator as a potential witness it is again important that you do so to allow as fully rounded a picture as possible to be drawn so that any determination on a case has as much evidence as necessary in order to reach the correct decision. You should let the investigator know if you need any reasonable adjustments made.

### **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.**

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code of Conduct, it is always wrong to intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code of Conduct, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course. If you seek to intimidate a witness in an investigation about your conduct, for example, you may find yourself subject to another complaint that you breached this paragraph of the Code of Conduct.

#### **When does the duty not to intimidate start and avoiding allegations of intimidation?**

Once there is the possibility of a complaint that the Code of Conduct has been broken, councillors need to be alert to how their behaviour towards potential witnesses or officers involved in handling of their case may be viewed. However innocently the contact is intended or may appear, great care should be taken when councillors deal with people involved with their case.

You should refer to your local authority's procedures and protocol for dealing with alleged breaches of your Code of Conduct.

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

Fair, consistent, and proportionate sanctions help to ensure the integrity of the standards framework and thus maintain public trust and confidence in councillors, your role, and your authorities. It is important that councillors and local authorities take standards of conduct seriously and the use of sanctions helps to demonstrate this.

Failure to comply with sanctions can bring the standards framework into disrepute.

## **Part 3 – Protecting your reputation and the reputation of the local authority**

The code requires you to register matters under 2 separate categories:

1. Gifts and hospitality, you receive in your role as a councillor; and
2. Certain types of interests

### **Registration of gifts, hospitality and interests**

#### **Gifts and hospitality**

**As a councillor:**

**9.1 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.**

**9.2 I register with the monitoring officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**

**9.3 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.

#### **What does “hospitality” mean?**

Hospitality can be defined as any food, drink, accommodation, or entertainment freely provided or heavily discounted.

#### **How much detail should I include on the register?**

Where you register gifts or hospitality you should include the name of the person or organisation who gave you the gift or hospitality; the date on which you received it; the reason it was given; and its value or estimated value.

#### **How do I know if gifts or hospitality have been offered to me because of my role as a councillor?**

The code says you must register any gift or hospitality received *in your capacity as a councillor* if the estimated value exceeds £50 or such other limit as agreed by your local authority.

You should ask yourself whether you would have received the gift or hospitality if you were not on the local authority. If you are in doubt as to the motive behind an offer of a gift or hospitality, we recommend that you register it or speak to the clerk or monitoring officer before deciding whether to accept it. You should also refer to the local authority's policy on gifts and hospitality.

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, or gifts which you do not accept. However, you should apply common sense when you consider how receipt of a gift might be interpreted. For example, if you are the chair of the planning committee and a birthday present arrives from a family friend who is also an applicant just before a planning application is due to be considered, then you need to think about how this would be interpreted by a reasonable member of the public.

#### **What about gifts or hospitality I do not accept?**

The code makes it clear that the presumption is that you do not normally accept gifts or hospitality. While gifts or hospitality can be offered for benign reasons it is important for your reputation, the reputation of the local authority and the need to reassure the public that decision-making is not being improperly influenced that you do not accept gifts or hospitality wherever possible.

Simply accepting gifts or hospitality and then registering it does not mean that it may be seen as reasonable. Accepting an expensive meal from somebody who is negotiating for a contract with the council, for example, is not 'made right' by being recorded on a public register.

There will be times, however, where turning down hospitality or gifts could be seen as causing unnecessary offence. For example, if you have been invited as a ward councillor to a local festival or faith celebration along with other members of the community then it may be entirely appropriate to accept the hospitality. However, you should always exercise particular caution if the organisers are involved in ongoing negotiations with the local authority on a particular matter.

Where you are offered a gift or hospitality but decline it you should nevertheless notify the monitoring officer. That helps the authority to identify if there are any patterns and to be aware of who might be seeking to influence the authority.

#### **What about gifts or hospitality that falls below the limit in the code?**

You should always notify the monitoring officer of any gift or hospitality offered to you if it could be perceived as something given to you because of your position, especially where the gift or hospitality is from somebody who has put in an application to the local authority (or is about to) even where that hospitality falls below £50 or the limit set by the local authority.

While that would not be a matter for the public register it again allows the authority to be aware of any patterns.

Also, an accumulation of small gifts you receive from the same source over a short period of say a couple of months that add up to £50 or over should be registered in the interests of transparency.

#### **What if I do not know the value of a gift or hospitality?**

The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may therefore have to estimate how much a gift or hospitality is worth. For example, if you attend a dinner as a representative of the authority which has been pre-paid by the sponsors you would need to make an informed judgment as to its likely cost.

#### **What if I'm at an event but don't have the hospitality or only have a small amount?**

The best way to preserve transparency is for you to assess the hospitality on offer, whether it is accepted or not. This is because it would clearly not be in your interests to be drawn into arguments about how much you yourself ate or drank at a particular occasion. For example, you may find yourself at a function where relatively lavish hospitality is on offer, but you choose not to accept it. You may go to a champagne reception but drink a single glass of orange juice for example.

As a guide you should consider how much a person could reasonably expect to pay for an equivalent function or event run on a commercial basis. What you have been offered is the value of the event regardless of what you actually consumed. Clearly where you are in any doubt the prudent course is to register the hospitality.

#### **Is there a minimal threshold where I wouldn't have to notify the monitoring officer?**

The code is about ensuring that there is transparency and accountability about where people may be trying to influence you or the local authority improperly. However, in the course of your duties as a councillor you will be offered light refreshments or similar on many occasions. It is perfectly acceptable to have a cup of tea or biscuits at a meeting with residents at the local community centre for example and there may be times when an external meeting lasts all day and the organisers offer you a sandwich lunch and refreshments.

The Government's guide to the Bribery Act for employers says that 'the Government does not intend that genuine hospitality or similar business expenditure that is reasonable and proportionate be caught by the Act, so you can continue to provide bona fide hospitality, promotional or other business expenditure. In any case where it was thought the hospitality was really a cover for bribing someone, the authorities would look at such things as the level of hospitality offered, the way in which it was provided and the level of influence the person receiving it had on the business decision in question. But, as a general proposition, hospitality or promotional expenditure which is proportionate and reasonable given the sort of business you do is very unlikely to engage the Act.'

You should use your discretion and think how it might look to a reasonable person but always seek the views of the monitoring officer or clerk where you are a parish councillor if in doubt.

#### **What are 'normal expenses and hospitality associated with your duties as a councillor'?**

As well as the minimal threshold hospitality above there will be times when you are paid expenses which include an element for food and drink as part of your role.

The focus of the code is on the source of the hospitality and its nature. Hospitality does not need to be registered where it is provided or reimbursed by the authority or where it is clearly ancillary to the business being conducted, such as an overnight stay for an away-day. Therefore, hospitality at a civic reception or mayor's ball would not need to be registered.

However, the hospitality should be registered if it is provided by a person or body other than the authority and is over and above what could reasonably be viewed as ancillary to the business conducted. You might meet dignitaries or business contacts in local authority offices. However, if such meetings take place in other venues, such as at cultural or sporting events, this should be registered as hospitality.

If you are away at a conference and you are offered entertainment by a private company or individual or attend a sponsored event you should consider registering it.

#### **What if my role involves me attending regular events or receiving gifts or hospitality?**

Some roles in a local authority will inevitably involve being offered more entertainment than others because of the 'ambassadorial' nature of the role. For example, the mayor or chair of the authority will be invited to a large number of functions and the leader of the local authority may be attending events as political leader of the local authority.

Although the mayor or chair, for example, may attend many social functions, they are not exempt from the requirement to register hospitality as individual councillors. However, where the hospitality is extended to the office holder for the time being rather than the individual, there is no requirement under the code to register the hospitality against your individual register. The question a councillor needs to ask themselves is, "Would I have received this hospitality even if I were not the mayor/chair?" If the answer is yes, then it must be registered.

If matters are recorded on a mayor or chair's register any entry on the register should make it clear that gifts or hospitality are being accepted because of the office held and, where possible, any gifts accepted should be 'donated' to the local authority or to charity or as raffle prizes for example.

Gifts that are clearly made to the local authority, for example a commemorative goblet which is kept on display in the local authority's offices, do not need to be registered in the councillor's register of gifts and hospitality. However, such gifts ought to be recorded by the local authority for audit purposes.

## Register of interests

Section 29 of the Localism Act 2011 requires the monitoring officer to establish and maintain a register of interests of members of the local 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.

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)**.

[\[https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests\]](https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-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)**. [\[https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests\]](https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests).

You must register two different categories of interests:

1. Disclosable Pecuniary Interests – these are categories of interests which apply to you and your partner. The categories are set out in regulations made under s27 of the Localism Act 2011 and knowing non-compliance is a criminal offence.
2. Other registerable interests – these are categories of interest which apply only to you and which the LGA believes should be registered as an aid to transparency.

Further details about these two categories follow. For guidance on when these interests give rise to a matter which needs to be declared at a meeting see the **guidance on declaring interests in Part 3**. [\[https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#declarations-of-interest\]](https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#declarations-of-interest)

## Disclosable Pecuniary Interests

These are interests which must be notified to the principal authority's monitoring officer within 28 days of the code being adopted by your local authority or within 28 days from when you become a councillor in accordance with the statutory requirements of the Localism Act 2011. These are enforced by criminal sanction, and failure to register or declare such an interest at a meeting is a criminal offence. You must keep your register up to date so, as soon as a new interest needs to be registered or you cease to hold an interest, you should notify the monitoring officer.

A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, 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) and the categories covered are set out in Appendix A of the Code.

## Offences

It is a criminal offence under the Localism Act 2011 to

- fail to notify the monitoring officer of any disclosable pecuniary interest within 28 days of election or co-option
- fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- fail to notify the monitoring officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- knowingly or recklessly provide information that is false or misleading in notifying the monitoring officer of a disclosable pecuniary interest or in disclosing such interest to a meeting.

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to five years.

Subject	Description
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.
<b>Sponsorship</b>	<p>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.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
<b>Contracts</b>	<p>Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council:</p> <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>Licences</b>	Any licence (alone or jointly with others) to occupy land in the local authority for a month or longer
<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 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 spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

\* 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.

### **Does 'office carried on for profit or gain' include allowances I may receive from another local authority I sit on?**

If you receive allowances which are treated as taxable income rather than simply being pure reimbursement of expenses, say, then they do need to be registered and declared as appropriate.

Reimbursement of expenses is separately covered by the DPI category 'sponsorship' and makes clear that it excludes the need to register or declare reimbursement of expenses from one's own authority. However, that does not exclude any allowances received from another authority. This is supported by a letter written by the then Minister Brandon Lewis to Desmond Swayne MP in 2013 when this issue was raised with Government which said: "a member being in receipt of taxable members' allowances may be considered to give rise to a disclosable pecuniary interest under the subject of 'Employment, office, trade or vocation' set out in the regulations.

That means that any member in receipt of taxable allowances from another authority would have to register such as a DPI. For example, a parish councillor who is also a district councillor and is in receipt of taxable allowances from the district would need to register that fact.

### **How much detail do I need to put about my employment?**

It is not enough simply to put, for example, 'management consultant' or 'teacher'. Sufficient detail should be given to identify your company or employer. This aids transparency and allows people to see where potential conflicts of interest may arise.

Where you have a sensitive employment, which should not be disclosed you should discuss this with your monitoring officer (see 'sensitive interests' below). While the law on sensitive interests only applies to where there is a fear of intimidation there may be employment, such as certain sections of the military, which cannot be disclosed for other reasons so you should always seek advice if in doubt.

### **What is a contract with the local authority?**

Some councillors' own businesses which may have dealings with the local authority. For example, a grounds maintenance company may contract with a parish council for grass cutting. Such contracts should be included on the register of interests.

More broadly, councillors, as residents, may have dealings with the local authority in their personal lives. For example, some councillors pay their own local authority to have garden waste collections, rent an allotment or may be a member of the gym of a local authority operated leisure centre. Such arrangements form a subscription service that are open to all residents, and do not require registration.

### **How much detail is required of landholdings?**

Sufficient detail should be given to identify the land in question.

An address and, where the address is not sufficient, details that are sufficient to identify the land will usually meet the requirement. A plan identifying the land may be useful in some situations but is not a requirement.

### **Do you have to register the landholdings of your employers or bodies you have shareholdings in?**

In general, there is no requirement to list the landholdings of companies or corporate bodies included in the register. The only requirement is to register any tenancy between such bodies and the authority (under the corporate tenancies). Obviously, you can only be expected to register those you ought reasonably to be aware of, so, for example, if you work for a large housebuilder you may not be aware of which land in the local authority's area they had options on.

You do need to be mindful of your level of control in the company and the effect this may have on your benefit from the land. For example, if you and your spouse jointly owned a farming business, you would be the sole beneficiaries of any land owned by that farm and as such it is strongly advised to register land held by companies in which you have a controlling interest.

### **What about my home and tenancies?**

The most common beneficial interest in land councillors have is their home address. You should include in here your home if you live in it; whether that be as a result of a mortgage, tenancy, or other arrangement (for example, a councillor is living with their parents but not paying a rental fee to them).

You should also include in the section for beneficial interests in land any tenancy properties you own in the local authority's area.

### **How much information do you have to give out about shareholdings?**

In general, if you hold more than £25,000 of equity in a company, or more than 1 per cent of a shareholding, you are required to declare this.

Many councillors hold investments through trust funds, investment funds or pension funds which are managed by fund managers. In that situation, you may not know if you actually hold more than £25,000 in a single company or more than 1 per cent of a shareholding. The expectation is that you should take reasonable steps to ensure you do understand what investments you may have and whether the requirement to register applies, and so:

1. It can be helpful for councillors to state on their form that they have funds invested in specific funds.
2. It can be helpful for councillors to make fund managers aware of their requirement to declare where they hold significant investments within a company that operates in the local authority's area so that they can be notified if this is the case.

### **Do I have to separate my spouse/partners interests and my own interests?**

The law only requires you to register the interests, and you are not required specifically to state whether the interest is held by you, or by your spouse. However, many local authorities do ask for this information as it can be more transparent to separate it.

### **How much information do I need to obtain from my spouse/partner?**

You need to make sure you take all reasonable steps to obtain information from your spouse or partner about their interests. For example, you would reasonably be expected to know where they worked, or if they owned any rental properties. You would be expected to ask if they had any shareholdings in companies, but they may not know the full details of an investment fund they had and where it was invested, and if that were the case, you would not be expected to know (and register) it either.

### **Other registerable interests**

In addition to the Disclosable Pecuniary Interests above, you must, within 28 days of the code being adopted by your local authority, or your election or appointment to office (where that is later), notify the monitoring officer in writing of the details of your interests within the following categories, which are called 'other registerable interests':

- (a) Details of any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your local authority;
- (b) Details of any body of which you are a member or in a position of general control or management and which –
  - exercises functions of a public nature
  - is directed to charitable purposes, or
  - is a body which includes as one of its principal purposes influencing public opinion or policy
- (c) Details of any gifts or hospitality with an estimated value of more than £50 or such other limit as your local authority has agreed, that you receive personally in connection with your official duties.

With Other Registerable Interests, you are only obliged to register your own interests and do not need to include interests of spouses or partners. Therefore, a spousal interest in a local group is not registerable as an 'other registerable interest'. Failure to register these interests is **not** covered by the criminal offence but would be a breach of the code.

### **What is a "body exercising functions of a public nature"?**

Although it is not possible to produce a definitive list of such bodies, here are some criteria to consider when deciding whether or not a body meets that definition -

- does that body carry out a public service?
- is the body taking the place of local or central government in carrying out the function?
- is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority?
- is the function exercised under legislation or according to some statutory power?
- can the body be judicially reviewed?

Unless you answer "yes" to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature.

Examples of bodies included in this definition: government agencies, other councils, public health bodies, council-owned companies exercising public functions, arms-length management organisations carrying out housing functions on behalf of a council, school governing bodies.

### **Do local campaigning or Facebook groups need to be registered?**

Membership (which does not include simply being on a mailing list), of local campaign or Facebook groups will only need to be registered if they are bodies:

- exercising functions of a public nature;
- directed towards charitable purposes; or
- one whose principal purpose includes influencing public opinion or policy.

Generally, it is unlikely that these groups will be regarded as formal bodies to be registered. However, each case should be considered on its own merits. 'A Body' is defined as 'a number of persons united or organised'. Some groups are very united on their cause and organised, but their purpose must fall under one of the functions listed above.

There must also be some formality to the membership, such as registration for example. Simply attending a meeting of a local campaign does not of itself make you a 'member' of that organisation.

There has been a growth in organisations which are more nebulous in nature, and no formal membership requirements exist, such as Extinction Rebellion. It can be helpful to ask yourself the question "do I consider I am a member of the organisation" and if the answer is yes, then register the membership for transparency purposes.

If you need further information or specific advice, please speak to your clerk or monitoring officer.

### **What about membership of a political party or trade union?**

The second category of other registerable interests refers to membership of a body or being in a position of general control and management of a body, one of whose principal purposes includes the influence of public opinion or policy. This includes any political party or trade union. Memberships of political parties and Trade Unions therefore need to be registered. Remember that if because of membership of a political party or a trade union any payment or financial benefit is received, it is likely to come under the Sponsorship category of DPI.

### **Sensitive interests**

Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the monitoring officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

### **What is sensitive information?**

It may include your sensitive employment (such as certain scientific research or the Special Forces) which is covered by other legislation or interests that are likely to create serious risk of violence or intimidation against you or someone who lives with you. For example, disclosure of your home address where there has been a threat of violence against you or where there is a court order protecting your whereabouts.

You should provide this information to your monitoring officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. You do not need to include this information in your register of interests, if your monitoring officer agrees, but you need to disclose at meetings the fact that you have an interest in the matter concerned (see guidance on declaring interests).

### **What happens if the monitoring officer does not agree that the information is sensitive?**

It is for the monitoring officer to decide if the information is sensitive. You must notify the monitoring officer of the information which you think is sensitive and give your reasons and any supporting evidence.

If the monitoring officer agrees, this information does not need to be included in the register of interests. However, if the monitoring officer disagrees then it must be registered.

### **What happens if the information stops being sensitive?**

You must notify the monitoring officer of any change in circumstances which would mean that the sensitive information is no longer sensitive within 28 days of the change, for example a change in employment. The information would then be included in the authority's register of interests.

### **I haven't received a direct threat, but I am concerned about registering my home address.**

At present, councillors are required to register their home address as part of their local authority's register of interests which are typically published on their local authority website. There have been growing concerns about the potential for threats and intimidation to councillors by virtue of disclosing their home address. Whilst some councillors believe disclosing a home address is a core component of democracy and it is important for the public to know where a councillor may live as they may be making decisions that have an impact on their property, others are very concerned about it. Section 32 of the **Localism Act 2011** [[https://en.wikipedia.org/wiki/Localism\\_Act\\_2011](https://en.wikipedia.org/wiki/Localism_Act_2011)] allows Local Authorities to withhold sensitive interests from the public register where their disclosure could lead to violence or intimidation. It is recommended that councillors should not be required to register their home addresses as a disclosable pecuniary interest. The **Committee on Standards in Public Life** [[https://en.wikipedia.org/wiki/Committee\\_on\\_Standards\\_in\\_Public\\_Life](https://en.wikipedia.org/wiki/Committee_on_Standards_in_Public_Life)]'s review of Local Government Ethical Standard recommended in January 2019 that councillors should not be required to register their home addresses as a disclosable pecuniary interest. However, at present the Government has not legislated for this.

It is important that if councillors have such concerns, they share these with the monitoring officer transparently and openly so they can be properly considered.

### **Who should you notify when registering your interests?**

The Localism Act and the Code both say that the monitoring officer is responsible for maintaining the register. You must therefore notify your monitoring officer of your interests to be registered. This is also true for parish councillors that you must notify the monitoring officer of the district, metropolitan or unitary authority for the area in which the parish council is situated.

However, the obvious point of contact for information of this type for the public is the parish clerk. The clerk needs to have an up-to-date copy of the register of interests in order to comply with public access requirements and there is a requirement for the parish council to publish the registers on their website where they have one, either directly or through a link to the relevant page on the principal authority's website. It also ensures that the clerk is aware of potential conflicts if they arise in a parish council meeting and can advise accordingly. It is therefore practical for the parish clerk to act as the point of contact between parish councillors and the relevant monitoring officer by collecting their interests together, passing them on and regularly asking councillors to review if there have been any changes.

However, you should ensure that there is a system in place for the parish clerk to pass on immediately any information to the relevant monitoring officer as each individual councillor is ultimately responsible for ensuring that the relevant monitoring officer is in possession of all the required information.

## Declarations of interest

### 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 of the Code** [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>], is a criminal offence under the Localism Act 2011.

**Appendix B of the Code** [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>] sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your monitoring officer.

This part of the Code is about the registering of your interests and then how to go about declaring or managing your interests.

At heart there is a simple principle – as public decision-makers, decisions must be made in the public interest and not to serve private interests. However, the rules to set out whether you have an interest or not in any given situation can be complex given the infinite variety of issues that may arise. This guidance is to help you steer a way through those rules.

The Code therefore requires members to declare interests in certain circumstances. Disclosure, in the register and at meetings, is about letting members of the public and interested parties know where you are coming from when involved in decision making and is to enable you to be 'up front' about who you are and what your conflicts of interest might be. Conflicts of interest in decision making as a councillor, and what in public law is known as 'apparent bias', are an established part of the local government legal landscape. The Nolan Principles and the Model Code require councillors to act impartially (i.e. not be biased) when carrying out their duties. **(See also guidance on bias and predetermination in Part 3) []**

A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the local authority, yet is seldom due to actual corruption or even consciously favouring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally.

The object of this part of the Code is therefore twofold.

Firstly, it is to provide an explanation and a guide to the public and councillors as to what is or isn't a conflict of interest and then how a conflict between the interest you may hold as an individual councillor and the public interest you must hold as a decision maker of a public authority can be best managed.

Secondly, the Code provides a means to hold an individual councillor to account for their actions when they fail to manage that conflict of interest properly and put the decision of the public authority, including the public purse, and decisions around individuals' daily lives, at risk.

The test at law for apparent bias is 'would a fair-minded and informed observer, having considered the facts, conclude that there was a real possibility of bias'. This is why you will see this question reflected in the Code when you are asked to consider whether or not you should participate in a meeting where you have a conflict of interest.

The code contains three different categories of interests – **Disclosable Pecuniary Interests (DPI)**; **Other Registerable Interests (ORI)**; and **Non-Registerable Interests (NRI)**.

For the first two categories these are interests which must be recorded on a public register except in limited circumstances (**see guidance on Registration of Interests in Part 3**) [<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#declarations-of-interest>]. The third category do not need to be recorded on the register but will need to be declared as and when they arise.

This means an interest may arise not just from interests already on your register. There will also be times when, although the interest does not personally involve you, it may involve a relative or close associate. You are not expected to register every interest of those people, but you will need to declare them as and when they might arise. These are referred to in the code as '**non-registerable interests**'.

As a brief summary, the requirements of the code apply where:

1. you or someone you are associated with has an interest in any business of your authority, and;
2. where you are aware or ought reasonably to be aware of the existence of that interest, and
3. you attend a meeting of your authority at which the business is considered (or where you are making a delegated decision as an individual under executive arrangements).

You must disclose to that meeting the existence and nature of your interests at the start of the meeting, or when the interest becomes apparent. It is usual to have for any declarations of interest at the start of the meeting but it is good practice also to ask again at the start of any agenda item. For example, members of the public may only be present for a specific item so will not have heard the declaration at the start, and a member may only become aware of the interest part-way through the meeting or item in any case.

And there will be times that because your interest is so close to the matter under discussion you will not be able to take part in that item of business. Those circumstances are explained in greater detail for each category of interest below.

This means there are three types of interest which you may have to declare:

**Disclosable Pecuniary Interests (Part A of the Register** [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-a-the-seven-principles-of-public-life>]); [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-a-the-seven-principles-of-public-life>].

**Other Registerable Interests (Part B** [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>]); [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>] and

**Non-registerable interests** [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>].

Guidance is given below on each of these categories in turn.

## **Disclosable Pecuniary Interests**

(**Annex B, paragraphs 4 and 5**) [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>]

Disclosable Pecuniary Interests (or 'DPIs') were introduced by s30 of the Localism Act 2011. They are a category of interests which relate to the member and/or their partner, such as financial interests of you or your partner such as your house or other property, or if you have a job or own a business. The categories are set out in regulations made under the Act and are in **Table 1 of Annex B of the Code** [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>].

'Partner' is defined by regulations as your 'spouse or civil partner, 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.'

They must be registered and, where they come up in a meeting, declared. Failure knowingly to register or declare a DPI is a criminal offence under the Localism Act.

The Localism Act says that if you are present at a meeting of the Council, or any committee, sub-committee, joint committee or joint sub-committee of the authority, and you have a disclosable pecuniary interest **in any matter to be considered or being considered at the meeting**:

- you may not participate in any discussion of the matter at the meeting
- you may not participate in any vote taken on the matter at the meeting
- if the interest is not registered, you must disclose the interest to the meeting
- if the interest is not registered and is not the subject of a pending notification, you must notify the monitoring officer of the interest within 28 days.

The Act says you need to declare the nature of the interest only if it is not on the public register. In addition, your authority's rules might require you to leave the room where the meeting is held while any discussion or voting takes place.

However, the Model Code states that it is important to declare the nature of the interest and to withdraw while the item is being dealt with. This aids transparency for the public and helps avoid accusations that you may be seeking to influence the outcome by remaining in the room even if your local authority's rules don't explicitly require it.

If you have a **DPI**, you may in certain circumstances be granted a dispensation to take part (see guidance on **Dispensations in Part3**).

### **When does a Disclosable Pecuniary Interest arise?**

The Localism Act uses the phrase 'you have a DPI in any matter...'

This wording has led to some confusion as to what circumstances would lead to the need to declare a DPI. The Explanatory Notes to the Localism Act say that section 31 of the Act "requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest), at a meeting or if acting alone, where any matter to be considered **relates to** their interest. ... It prohibits a member from participating in discussion or voting on any matter **relating to** their interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations)." [our emphasis].

This means you have a Disclosable Pecuniary Interest (DPI) in a matter when the matter being discussed **directly relates** to your registered interest or that of your partner, rather than simply affecting it.

For example, if you have registered 1 Acacia Avenue as your address, you would have a DPI if you put in a planning application for 1 Acacia Avenue, or if the whole of Acacia Avenue was being considered for a Resident Parking Zone.

You would not have a DPI if 3 Acacia Avenue had put in a planning application as the matter does **not directly relate** to your registered interest. You may however have a non-registerable interest (see below) as the application may indirectly affect your property.

### **Does setting the Council Tax or precept give rise to a DPI?**

The LGA is clear that you do not have a DPI simply if you are voting to set the Council Tax or precept. Guidance issued by the Government in 2013 made clear that 'any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support.'

The Council Tax and precept are charges on all relevant properties in the area and do not directly relate to any single property in such a way as to give rise to a DPI. Members are therefore fully entitled to vote on the matter (subject to rules about Council tax arrears).

### **Other registerable interests**

**(Paras 6, 8 and 9 of Annex B)** [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>]

The second category of interests are 'other registerable interests' or ORIs.

If you have an 'Other Registerable Interest' – that is an interest which falls within the categories in Table 2 in Annex B - the Code says you should not participate in the relevant business in two circumstances:

1. when a matter directly relates to the finances or wellbeing of that interest. (para 6); or
2. when a matter affects the finances or wellbeing of that interest to a greater extent than it affects the majority of inhabitants; and a reasonable member of the public would thereby believe that your view of the public interest would be affected (paras 8 and 9).

**An interest ‘directly relates’ to an outside body where the local authority is taking a decision which directly relates to the funding or wellbeing of that organisation**

For example, under a) if you are a member of a group which has applied for funding from the local authority, or if you are a member of an organisation which has submitted a planning application, the decision directly relates to that organisation.

In such a case you must not take part in any discussion or vote on the matter. You can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. For example, you may want to put forward the organisation’s case as to why it has applied for funding, but representatives from competing organisations would also need to be able to make their case.

If the public are not allowed to address the meeting on that item, you would need, if necessary, to get another councillor who did not have an ORI to make any relevant case.

If the local authority is simply discussing that outside organisation but not making a decision which relates to its finances or wellbeing – for example discussing the annual report from the organisation – that does not directly relate to the organisation as there is no direct impact on the organisation which would give rise to a conflict of interest.

Under b) if you are on the committee of the local village hall and an application for a licence for another venue in the village is made which may take trade away from the village hall then the matter would affect the village hall and a reasonable person would believe that would affect your view of the public interest so those two tests are met.

You would not have an interest if the local authority was discussing early planning for an event, which may or may not be held in the village hall as there would be no direct financial impact at that time. When the plans crystallised then an interest would arise as a decision would be made which would have financial implications.

There will also be circumstances where you do not need to declare an interest even though the matter may be relevant to the wider aims of an organisation of which you are a member. For example, if you are a member of a charity such as the Royal Society for the Protection of Birds (RSPB), you do not need to declare an interest every time the local authority might discuss matters relating to habitats or conservation issues. Those issues may reflect the wider aims of RSPB, but they do not directly relate to or affect the organisation and your mere membership of the organisation has no bearing on the matter.

If you were in a position of control or general management in that body and the organisation was campaigning actively on the specific issue being discussed or you personally were campaigning actively on that specific issue the situation would be different. In those circumstances you may have an interest and there is a risk of predetermination. Where there is doubt you should always seek advice from the monitoring officer (or clerk if you are a parish councillor).

As with DPIs you can be granted a dispensation (see below) and if the interest has not been registered or notified to the monitoring officer you should do so within 28 days of the meeting.

### **Non-registerable interest**

(paras 7, 8 and 9 of Annex B) [<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020#appendix-b-registering-interests>]

The third category of interests is Non-registerable interests or NRIs.

A **Non-registerable Interest** arises where the interest is that of yourself or your partner which is not a DPI or of a relative or close associate (see definition below).

As a councillor you are not expected to have to register the interests of your relatives or close associates but under the Code you are expected to declare them as and when relevant business occurs which affects their finances or wellbeing. The Code says you should not participate in the relevant business in two circumstances:

- **a.** when a matter directly relates to that interest. Or
- **b.** when a matter affects that interest to a greater extent than it affects the majority of inhabitants and
  - a reasonable member of the public would thereby believe that your view of the public interest would be affected

For example, under a) if your son has submitted an application for a licence to open a bar, the matter directly relates to your relative. You must not take part in any discussion or vote on the matter.

For example, under b) there has been an application made to build several units of housing on a field adjacent to your business partner’s home. It is not their application, but they will be more affected by the application than the majority of people so again you would be expected to declare the interest and withdraw.

Similarly, an application for the property next door to you does not directly relate to your property so it is not a DPI, but you would instead need to declare a Non-Registerable Interest.

In all of these cases you can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. If the public are not allowed to address the meeting on that item, you would need if necessary, to get another councillor who did not have an NRI to make any relevant case or to represent the wider views of constituents.

As with DPIs you can be granted a dispensation (see below).

### **What is the difference between 'relates to' and 'affects'?**

Something relates to your interest if it is directly about it. For example, the matter being discussed is an application about a particular property in which you or somebody associated with you or an outside body you have registered has a financial interest.

'Affects' means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest – for example, it is a planning application for a neighbouring property which will result in it overshadowing your property. An interest can of course affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations.

### **What does "affecting well-being" mean?**

The term 'well-being' can be described as a condition of contentedness and happiness. Anything that could affect your quality of life or that of someone you are closely associated with, either positively or negatively, is likely to affect your well-being. There may, for example, be circumstances where any financial impact of a decision may be minimal but nevertheless the disruption it may cause to you or those close to you could be significant. This could be on either a temporary or permanent basis. Temporary roadworks in your street may affect your wellbeing on a temporary basis. Closure of a local amenity may have a more permanent impact on your wellbeing if you use it more than the majority of people in the area.

### **What are the definitions of relative or close associate?**

The Code does not attempt to define "relative" or "close associate", as all families vary. Some people may have very close extended families, but others will have more distant relations. You should consider the nature of your relationship with the person (eg whether they are a close family member or more distant relation). The key test is whether the interest might be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor. It would be a person with whom you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts. A close associate may also be somebody to whom you are known to show animosity as you might equally be viewed as willing to treat them differently.

### **What if I am unaware of the interest?**

You can only declare an interest in a matter if you are aware of the interest. For example, a company of which your father-in-law is a director may have made an application to the local authority. You may not be aware that he is a director, and you are not expected to have to ask about the business affairs of your relatives or acquaintances simply because you are a councillor. However, you would need to declare an interest as soon as you became aware.

A reasonable member of the public would expect you to know of certain interests of course, so it is, for example, reasonable that you would be expected to know your daughter's address or job but not necessarily any shareholdings she might have. While it is therefore your decision as to whether or not to declare an interest, you should always consider how it might seem to a reasonable person and if in doubt always seek advice from the monitoring officer.

### **Do I always have to withdraw if I have an 'other registerable interest' or a non-registerable interest to declare?**

Where you have declared a DPI the Localism Act says you must always withdraw from participation unless you have a dispensation.

If the matter is an 'other registerable interest' or a non-registerable interest you must always withdraw from participation where the matter directly relates to that interest unless you have a dispensation.

If it is something which affects the financial interest or wellbeing of that interest you are asked to declare it and the Code then asks you to apply a two-part test before considering whether to participate in any discussion and/or vote:

1. Does the matter affect the interest more than it affects the majority of people in the area to which the business relates?  
For example, if a major development affects the settlement where your sister lives and your sister would be no more affected than anybody else – for example, she lives at the other end of the settlement rather than next door to the development, the answer would be no. If the answer is yes, you then ask:
2. Would a reasonable member of the public knowing all the facts believe that it would affect your judgment of the wider public interest?

This is similar to the test for bias (*see guidance on predetermination and bias in Part 2*) and if the answer is yes to that question then you must not take part in the meeting.

You help to run a food bank and are considering a motion to investigate the causes of poverty. A reasonable member of the public would not think that fact would affect your view of the wider public interest.

You are over 65 and are taking part in a discussion about provisions for older people. You would be more affected than the majority, but a reasonable member of the public would not think that fact would affect your view of the wider public interest.

You are discussing closure of the local authority-run home where your elderly parent lives. A reasonable member of the public would think that fact would affect your view of the wider public interest because of the direct effect on your parent.

### **What does 'withdraw from the meeting' mean?**

When you withdraw from the meeting that means you must not be present in the room during the discussion or vote on the matter. If the public are allowed to speak at the meeting then you would be granted the same speaking rights as the public and would need to comply with the same rules – for example, giving notice in advance or abiding by time limits. However, unlike the public you would then withdraw once you had spoken.

This would be true at a committee meeting, for example, even if you are not a member of the committee but are simply attending as a member of the public. By staying in the room, even though you are not permitted to speak or vote, it is a long-held doctrine of case law that a councillor may still influence the decision or might gather information which would help in the furtherance of his or her interest. It is therefore in the public interest that a councillor, after having made any representations, should withdraw from the room, and explain why they are withdrawing.

These rules would apply to virtual meetings as they would to physical meetings. For example, after having spoken you should turn off your microphone and camera and may be moved to a 'virtual waiting room' while the item is discussed.

### **Executive decisions**

Where you are an executive member you should follow the same rules as above when considering a matter collectively – that is you should not take part in the decision where you have an interest applying the same rules as apply to other meetings above.

Where you have delegated decision-making power, you should not exercise that delegation in relation to matters where you have a disclosable pecuniary interest or another type of interest which would debar you from taking part in a meeting. Instead you should ask the executive to take the decision collectively without your participation.

Where you have been delegated non-executive powers under s.236 of the Local Government and Public Housing Act 2007 you should similarly follow this approach and your local authority may need to make that clear in its code if it is using that power.

### **Dispensations**

Wherever you have an interest the code allows you to apply for a dispensation. The Localism Act sets out arrangements for applying for a dispensation where you have a DPI but is silent about dispensations for other types of interest as they are not statutory interests. A similar process should however be set out in your constitution or Dispensation Policy for ORIs and NRIs.

A dispensation must be applied for in writing to the 'Proper Officer' (the monitoring officer or, in the case of a parish council, the clerk) in good time before the relevant meeting and will be considered according to the local authority's scheme of delegation for considering a dispensation. The circumstances whereby a dispensation may be granted are where -

1. It is considered 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.
2. It is considered 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.
3. That the authority considers that the dispensation is in the interests of persons living in the authority's area.
4. That the authority considers that it is otherwise appropriate to grant a dispensation.

### **What is a 'sensitive interest'?**

There are circumstances set out in the Localism Act where you do not need to put an interest on the public register or declare the nature of an interest at a meeting although you would have to declare in general terms that you have an interest. These are so-called 'sensitive interests'.

An interest will be a sensitive interest if the two following conditions apply: (a) That you have an interest (whether or not a DPI); and (b) the nature of the interest is such that you and the monitoring officer consider that disclosure of the details of the interest could lead to you or a person connected to you being subject to violence or intimidation.

Where it is decided that an interest is a “sensitive interest” you must inform the monitoring officer of the interest so that a record is kept but it will be excluded from published versions of the register. The monitoring officer may state on the register that the member has an interest the details of which are excluded under that particular section.

Where the sensitive interest crops up in a meeting the usual rules relating to declaration will apply except that you will only be required to disclose that you hold an interest in the matter under discussion but do not have to say what that interest is. The Localism Act sets out the scheme where the DPI is a sensitive interest. Your local authority procedures should allow for similar arrangements for other registerable or declarable interests.

For example, if your sister has been subject to domestic violence such that the perpetrator has been served with a Domestic Violence Protection Order you would not be expected to disclose your sister’s address to a meeting.

### What do I do if I need advice?

If you are unsure as to whether you have an interest to declare you should always seek advice from the monitoring officer (or the clerk if you are a parish councillor).

**The Golden Rule is be safe –seek advice if in doubt before you act.**

No.	TYPE	SPEAK*	VOTE	STAY	EXAMPLE	COMMENTS
1	DPI	N	N	N	Awarding a contract to your own company  Planning application for your property  Resident parking zone includes your house	<i>Directly relates to DPI-foreseeable-narrow-criminal</i>
2a	ORI	If public allowed to	N	N	Awarding/withdrawing grant funding to a body of which you are a member e.g. village hall  Granting planning permission to a body of which you are a member	<i>Directly relates to finances-foreseeable-narrow-can “address” meeting if public can do, but not take part in discussion.</i>
2b	ORI	Test	Test	Test	Awarding grant funding to a body other than the body of which you are a member e.g. competitor to village hall	<i>Affects finances or wellbeing-test (1) greater than majority of inhabitants and (2) reasonable public-affect view of public interest</i>
3a	NRI	If public allowed to	N	N	Determining an application submitted by your sister or your neighbour for a dog breeding licence  Partner with free parking permit and policy review decision to be made  Councillor objects in private capacity to neighbours planning application cannot sit on PC as statutory consultee	<i>Directly relates to finances of you, partner (not a DPI)-a relative or close associate-Unforeseeable- can “address” meeting if public can do, but not take part in discussion.</i>
3b	NRI	Test	Test	Test	Application for housing development on land near to partners business property  Your neighbour applies for planning permission	<i>Affects finances or well-being-test 1) greater than majority of inhabitants and (2) reasonable public-affect view of public interest</i>

2b/3b	NRI	Test	Test	Test	Road works noise outside your house Odours from nearby refuse tip ASB from rough sleepers housed in B+B's nearby	<i>May not affect finances but Well-being=quality of life – apply 2-stage test</i>
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\*speak-take part in discussion, as opposed to addressing a public meeting as a member of the public where others can also address the meeting

Proximity in personal relationship and in physical proximity are often important factors in determining ability to speak and/or vote.

## Bias and Predetermination

Bias and predetermination are not explicitly mentioned in the Code of Conduct. The code provisions on declarations of interest are about ensuring you do not take decisions where you or those close to you stand to lose or gain improperly. **(See guidance on declarations of interest in Part 2)** [\[https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#part-2-general-obligations-under-the-code-of-conduct\]](https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#part-2-general-obligations-under-the-code-of-conduct)

There is however a separate concept in law dealing with bias and predetermination which exists to ensure that decisions are taken solely in the public interest rather than to further private interests.

Both the courts and legislation recognise that elected councillors are entitled, and indeed expected, to have and to have expressed their views on a subject to be decided upon by the local authority. In law, there is no pretence that such democratically accountable decision-makers are intended to be independent and impartial as if they were judges or quasi-judges.

Nonetheless, decisions of public authorities do involve consideration of circumstances where a decision-maker must not act in a way that goes to the appearance of having a closed mind and pre-determining a decision before they have all of the evidence before them and where they have to act fairly. Breaches of the rules of natural justice in these circumstances have and do continue to result in decisions of local authorities being successfully challenged in the courts. These issues are complex, and advice should be sought and given in the various situations that come up, which is why there are no direct paragraphs of the code covering this, although it does overlap with the rules on declarations of interest.

While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code of Conduct, but councillors need to be clear that they are not biased or predetermined going into the decision-making process. Otherwise the decision is at risk of being challenged on appeal or in the Courts. To quote a leading judgment in this field "All councillors elected to serve on local councils have to be scrupulous in their duties, search their consciences and consider carefully the propriety of attending meetings and taking part in decisions which may give rise to an appearance of bias even though their actions are above reproach." <sup>[1]</sup>[\[#\\_ftn1\]](#)

The rules against bias say that there are three distinct elements.

The first seeks accuracy in public decision-making.

The second seeks the absence of prejudice or partiality on the part of you as the decision-maker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal strong feelings they may have had in advance of making the decision.

The third requirement is for public confidence in the decision-making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact, in order to ensure that justice should not only be done but should manifestly and undoubtedly be seen to be done.

To varying degrees, these "requirements" might be seen to provide the rationales behind what are generally taken to be three separate rules against bias: "automatic" (or "presumed") bias, "actual" bias, and "apparent" bias.

<sup>[1]</sup>[\[#\\_ftnref1\]](#) Kelton v Wiltshire Council [2015] EWHC 2853 (Admin)

The rationale behind "automatic" or "presumed" bias appears to be that in certain situations (such as if you have a pecuniary or proprietary interest in the outcome of the proceedings) then it must be presumed that you are incapable of impartiality. Since a motive for bias is thought to be so obvious in such cases, the decisions are not allowed to stand even though no investigation is

made into whether the decision-maker was biased *in fact*. In these circumstances you should not participate in the discussion or vote on the issue. These are covered by the code's requirement to declare certain interests and withdraw from participation. (**see guidance on declaration of interests in Part 3**). [<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct#declarations-of-interest>]

A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the local authority yet is seldom due to actual corruption or even consciously favouring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally.

### **Predetermination**

The Localism Act 2011 has enshrined the rules relating to pre-disposition and predetermination into statute. In essence you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or indirectly indicated what view you may take in relation to a matter and that matter was relevant to the decision.

Predetermination at a meeting can be manifested in a number of ways. It is not just about what you might say, for example, but it may be shown by body language, tone of voice or overly-hostile lines of questioning for example.

You are therefore entitled to have a predisposition one way or another as long as you have not pre-determined the outcome. You are able to express an opinion providing that you come to the relevant meeting with an open mind and demonstrate that to the meeting by your behaviour, able to take account of all of the evidence and make your decision on the day.

### **How can bias or predetermination arise?**

The following are some of the potential situations in which predetermination or bias could arise.

### **Connection with someone affected by a decision**

This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.

### Examples

The complaint alleged that a councillor had behaved in a disrespectful and harassing manner towards two fellow female councillors and officers. It was established that the councillor had made unwarranted and inappropriate physical contact with the councillors and officers at an official event and had also made remarks towards the officers which were patronising and demeaning. The councillor was found to be in breach of the Code of Conduct.

A district councillor also belongs to a parish council that has complained about the conduct of an officer of the district council. As a result of the complaint the officer has been disciplined. The officer has appealed to a councillor panel and the councillor seeks to sit on the panel hearing the appeal. The councillor should not participate.

Contrast this with:

The complaint about the officer described above is made by the local office of a national charity of which the councillor is an ordinary member and is not involved with the local office. The councillor should be able to participate in this situation because the matter is not concerned with the promotion of the interests of the charity.

## Improper involvement of someone with an interest in the outcome

This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.

### Examples

A local authority receives an application to modify the Definitive Map of public rights of way. A panel of councillors are given delegated authority to make the statutory modification Order. They have a private meeting with local representatives of a footpath organisation before deciding whether the Order should be made. However, they do not give the same opportunity to people with opposing interests.

## Prior involvement

This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.

## Commenting before a decision is made

Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. But this is as long as they do not give the appearance of being bound only by the views of that body. If the councillor makes comments which make it clear that they have already made up their mind, they may not take part in the decision.

If the councillor is merely seeking to lobby a public meeting at which the decision is taking place but will not themselves be involved in making the decision, then they are not prevented by the principles of predetermination or bias from doing so. Unlike private lobbying, there is no particular reason why the fact that councillors can address a public meeting in the same way as the public should lead to successful legal challenges.

### Examples

A local authority appoints a barrister to hold a public inquiry into an application to register a village green. The barrister produces a report where he recommends that the application is rejected. A councillor attends a meeting in one of the affected wards and says publicly: "speaking for myself I am inclined to go along with the barrister's recommendation". He later participates in the local authority's decision to accept the barrister's recommendation. At the meeting the supporters of the application are given an opportunity to argue that the recommendation should not be accepted.

This is unlikely to give rise to a successful claim of predetermination or bias. The statement made by the councillor only suggests a predisposition to follow the recommendation of the barrister's report, and not that he has closed his mind to all possibilities. The subsequent conduct of the meeting, where supporters of the application could try and persuade councillors to disagree with the recommendation, would confirm this.

A developer entered into negotiations to acquire some surplus local authority land for an incinerator. Planning permission for the incinerator had already been granted. Following local elections there is a change in the composition and political control of the local authority. After pressure from new councillors who have campaigned against the incinerator and a full debate, the local authority's executive decides to end the negotiations. This is on the grounds that the land is needed for housing and employment uses.

The local authority's decision is unlikely to be found to be biased, so long as the eventual decision was taken on proper grounds and after a full consideration of all the relevant issues.

#### **What do I do if I need advice?**

If you are unsure as to whether your views or any action you have previously taken may amount to predetermination you should always seek advice from the monitoring officer (or the clerk if you are a parish councillor).

**The Golden Rule is be safe –seek advice if in doubt before you act.**

### **Appendix 1 - Interests Flowchart**

#### **Interests Flowchart**

The flowchart below gives a simple guide to declaring an interest under the code.

### **Appendix 2 - General Principles**

#### **General Principles**

The Seven Principles of Public Life (also known as the Nolan Principles) outline the ethical standards those working in the public sector are expected to adhere to. The principles apply to all public office holders at all levels including ministers, civil servants, councillors, and local authority officers, as well as private and voluntary organisations delivering services paid for by public funds. The principles are:



These principles underpin the standards that councillors should uphold and form the basis for the Code of Conduct, where the Principles have been translated into a series of clear rules. While fundamental to the Code of Conduct the principles are not part of the rules of the code and should be used for guidance and interpretation only.

## **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

## **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 authority or authorising their use by others:**

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

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

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport

- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and 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 the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest.

## 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 or close associate; or
  - c. a financial interest or wellbeing of a body included 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 (referred to in paragraph 8 above) **affects** the financial interest or well-being:
  - a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
  - b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

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

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

10. [Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it]

**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.
<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 have 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

You must register as an Other Registrable Interest :

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

## 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.***



**NOTIFICATION OF (1) DISCLOSABLE PECUNIARY INTERESTS AND (2) OTHER PERSONAL INTERESTS WHICH ARE NOT DISCLOSABLE PECUNIARY INTERESTS BY ELECTED AND CO-OPTED MEMBERS**

I, -----[Name]

Being an elected member of Kirklees Council do hereby give notice that I have set below in Part I of the form my disclosable pecuniary interests for the purposes of the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and in Part II of this form, my other personal interests which are not disclosable pecuniary interests.

Within 28 days of election to office, an elected member must register his/her disclosable pecuniary interests in a public register by providing written notification to the Kirklees Council's Monitoring Officer.

I understand that this notification will be placed upon a public register and published on the Kirklees Council website.

Signed-----Dated-----20[    ]

**PLEASE COMPLETE THE FORMS IN PART I AND PART II BELOW FOR BOTH YOURSELF AND YOUR SPOUSE OR CIVIL PARTNER OR ANY PERSON WITH WHOM YOU ARE LIVING AS HUSBAND AND WIFE OR ANY PERSON WITH WHOM YOU ARE LIVING AS IF YOU WERE CIVIL PARTNERS.**

Please use additional sheets if necessary. Any additional sheets should be marked with the number of the question to which they apply. If you have no interests relevant to a particular section please write "None" in that section. Attached to this form is an extract from the Explanatory Notes to the Localism Act 2011 dealing with the offences which may be committed in relation to disclosable pecuniary interests.

## PART I – DISCLOSABLE PECUNIARY INTERESTS

Disclosable Pecuniary Interests	Disclosable Pecuniary Interests
<p><b>1. Employment, office, trade, profession or vocation</b></p> <p><i>Please give details of any employment, office, trade, profession or vocation carried on by you for profit or gain. In particular you should give a brief description of the activity and the name and address of any employer, partnership or other organisation from which you receive payments.</i></p>	
<p><b>2. Sponsorship</b></p> <p><i>Please give details of any payment or provision of any other financial benefit (other than from Kirklees Council) which has been made or provided within the last 12 months in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union or political party.</i></p>	

<p><b>3. Contracts</b></p> <p><i>Please give details of any contract which is made between you (or a body in which have a beneficial interest) and Kirklees Council -</i></p> <p><i>(a) under which goods or services are to be provided or works are to be executed; and</i></p> <p><i>(b) which has not been fully discharged</i></p> <p><i>[A body in which you have a beneficial interest means a firm in which you are a partner or a body corporate of which you are a director, or in the securities of which you have a beneficial interest]</i></p>	
<p><b>4. Land</b></p> <p><i>Please give details of any beneficial interest you have in land which is within the area of Kirklees Council. For these purposes the definition of land excludes an easement, servitude, interest or right in or over land which does not carry with it a right (alone or jointly with another) to occupy the land or to receive income. In particular you should provide details of any land which you own, lease, receive rent from or for which you are the mortgagee together with sufficient information to identify the location of such land.</i></p>	

<p><b>5. Licences</b></p> <p><i>Please provide details of any licence (alone or jointly with others) to occupy land in the area of Kirklees Council for a month or longer.</i></p>	
<p><b>6. Corporate Tenancies</b></p> <p><i>Please provide details of any tenancy where (to your knowledge)-</i></p> <p style="padding-left: 40px;"><i>(a) the landlord is Kirklees Council; and</i></p> <p style="padding-left: 40px;"><i>(b) the tenant is a body in which you have a beneficial interest</i></p> <p><i>[A body in which you or such a person has a beneficial interest means a firm in which you are a partner or a body corporate of which you are a director, or in the securities of which you have a beneficial interest]</i></p>	

<p><b>7. Securities</b></p> <p><i>Please provide details of any beneficial interest in securities of a body where-</i></p> <p><i>(a) that body (to your knowledge) has a place of business or land in the area of Kirklees Council; and</i></p> <p><i>(b) either-</i></p> <ul style="list-style-type: none"> <li><i>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</i></li> <li><i>(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.</i></li> </ul> <p><i>[For these purposes "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.]</i></p>	

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## PART II – PERSONAL INTERESTS

Please list any personal interests which are NOT disclosable pecuniary interests and briefly describe your involvement. Personal interests may be interests for which you receive no remuneration or have no beneficial interest but which may still be seen as prejudicing your decision making.

The interests you list are a matter for your discretion but you should have regard to paragraph 5.1 – 5.9 of the Code of Conduct relating to interests which are not disclosable pecuniary interests and also your duty to act in accordance with the Seven Principles of Public Life which are contained in the Council's Code of Conduct for Members, namely:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The following is a list of the type of personal interests you should consider including in this form but please note this is not a comprehensive list and is given only by way of example. Please ask the Monitoring Officer or her deputies if you require guidance.

**(a) Membership of Trade Union**

*Note – if you are paid by a trade union, this is a disclosable pecuniary interest and should be disclosed in Part I of this form. Part II is for the disclosure of membership of a Trade Union only*

**(b) External bodies to which you are appointed or nominated by the Council but for which you receive no remuneration**

*(any organisation of which you are a member or in a position of general control or management and to which you are appointed or nominated by Kirklees Council as its representative but it is not a disclosable pecuniary interest. Note that being nominated as a director is a disclosable pecuniary interest*

**(c) Interests in charities, societies and other bodies**

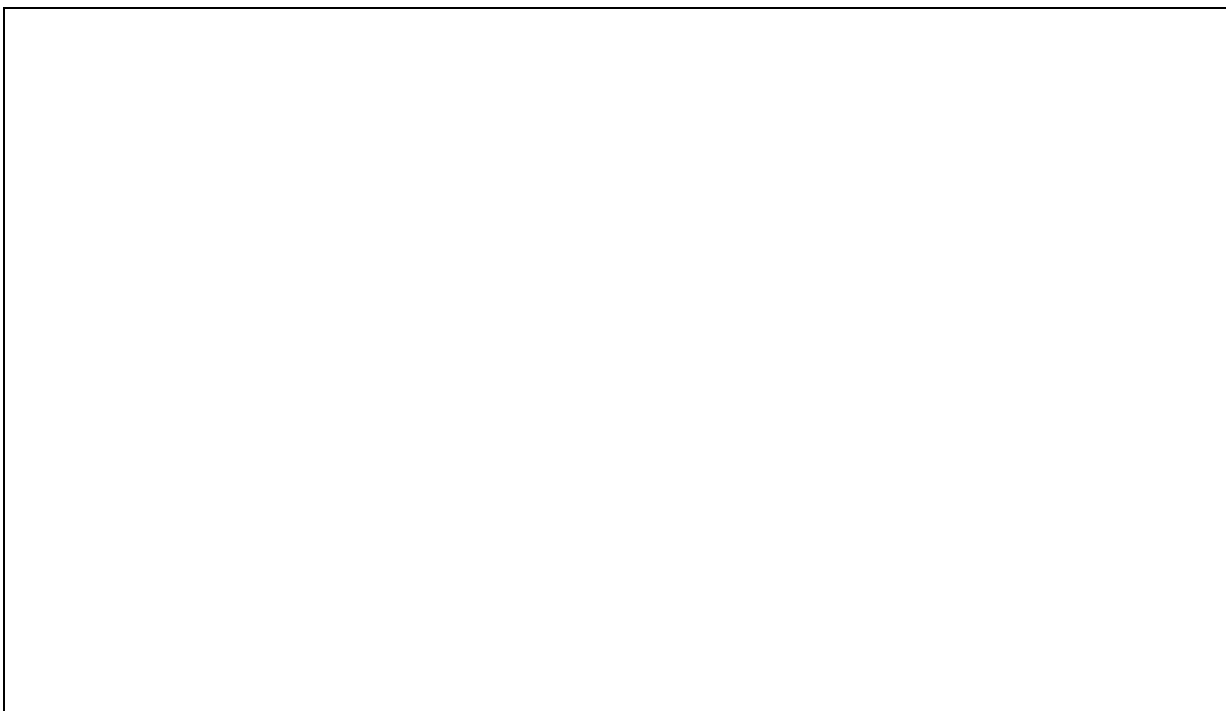
*(any position of general control or management in any public authority or body exercising functions of a public nature; company, industrial and provident society, charity or body directed to charitable purposes; bodies whose principal purposes include the influence of public policy including professional association) but it is not a disclosable pecuniary interest*

**(d) Membership of a local organisation**

*(any local organisations of which you are a member, e.g., friends of "x")*

**(e) Involvement in any organisation for which you do not receive remuneration but the organisation may receive funding or support from the Council**

**(f) Receipt of benefits like for example, Council Tax Single Person's Allowance**



**Note-** You are also reminded that if you have received gifts and hospitality with a value in excess of £25 you must notify the Monitoring Officer in writing within 28 days of receipt.

## **LOCALISM ACT 2011 - OFFENCES**

### **[Extract from the Explanatory Notes to the Localism Act 2011]**

Section 34 [of the Localism Act 2011] makes it a criminal offence if a member or co-opted member fails, without reasonable excuse, to comply with requirements under section 30 or 31 to register or declare disclosable pecuniary interests, or take part in council business at meetings or when acting alone when prevented from doing so. It empowers the magistrates' court, upon conviction, to impose a fine of up to level 5 (currently £5,000), and an order disqualifying the person from being a member of a relevant authority for up to five years. It extends the time for bringing a prosecution for the offence by allowing a prosecution to be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions.

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**Name of meeting: Standards Committee**

**Date: 15<sup>th</sup> September 2021**

**Title of report: Update on the appointment of independent persons**

**Purpose of report:**

To ask Standards Committee to agree to recommend to Council the reappointment of the current independent person and to note the steps to appoint one further independent person.

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>No</b>
<b>Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u></b>	<b>No</b>
<b>The Decision - Is it eligible for call in by Scrutiny?</b>	<b>No</b>
<b>Date signed off by <u>Strategic Director</u> &amp; name</b>  <b>Is it also signed off by the Service Director for Finance?</b>  <b>Is it also signed off by the Service Director for Legal Governance and Commissioning?</b>	<b>Yes – Rachel Spencer-Henshall – 7<sup>th</sup> September</b>  <b>Yes - Eamonn Croston</b>  <b>Yes</b>
<b>Cabinet member <a href="#">portfolio</a></b>	<b>Cllr Paul Davies</b>

**Electoral wards affected: All**

**Ward councillors consulted: NO**

**Public or private: Public**

**Has GDPR been considered? YES**

## **1. Summary**

- 1.1 This report is intended to update the Standards Committee on the current position with Kirklees' Independent Persons (IP).
- 1.2 Authority was previously given by Council to the Monitoring Officer, in May 2019, to appoint a second Independent Person following the best practice recommendation of the CSPL for a local authority to have access to at least two Independent Persons. This has been delayed. The current IP's term expires shortly. As it has not been possible to appoint a second IP in the timescales it is proposed to renew the current IP's contract for a further period of two years and to continue with the appointment for a second IP.
- 1.3 The present IP has been in post for a number of years and has significant experience, having been involved in working closely with the Monitoring Officer on a number of standards investigations and decisions. He has also worked with and advised other Councils as an IP and so has wide experience and knowledge. The view of the Monitoring Officer is that the present IP is a valuable member of the team with good insight and understanding of the Standards process and working with members in Kirklees and in light of the delay in recruiting a further IP it is important that the appointment is made.

## **2. Information required to take a decision**

- 2.1 The present Independent Person's two year contract will expire shortly and it is proposed that a new contract is issued, appointing him for a further two years.
- 2.2 Alongside this, it is proposed that the Monitoring Officer continue to take steps to recruit an additional Independent Person, to provide some resilience and to act as a potential successor to the present Independent Person.

## **3. Implications for the Council**

The Council is required under the Localism Act 2011 to have at least one Independent Person appointed to consult in relation to code of conduct complaints. If the council fails to appoint an Independent Person they would be in breach of this requirement and could face a potential legal challenge in respect of any decisions taken that required input from an Independent Person.

### **3.1 Working with People**

N/A

### **3.2 Working with Partners**

N/A

### **3.3 Place Based Working**

N/A

### **3.4 Climate Change and Air Quality**

In order to minimise any impact, printing is kept to a minimum.

### **3.5 Improving outcomes for children**

N/A

### **3.6 Other (eg Legal/Financial or Human Resources) Consultees and their opinions**

The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications. The role of IP is paid an allowance of £500 p.a.

## **4. Next steps and timelines**

This committee's recommendation will be put before Council.

The recommendation will be considered by Council and, subject to approval, the Monitoring Officer will arrange to issue a fresh contract to the existing Independent Person.

The Monitoring Officer will arrange for the post of Independent Person to be advertised again in order to appoint a second independent person.

## **5. Officer recommendations and reasons**

Members are asked to recommend to Council to appoint the current IP for a further term of 2 years.

Members are asked to note that the Monitoring Officer will arrange for the post of Independent Person to be advertised again in order to appoint a second independent person.

**6. Cabinet Portfolio Holder's recommendations**

N/A

**7. Contact officer**

David Stickley  
Senior Legal Officer  
01484 221000  
[david.stickley@kirklees.gov.uk](mailto:david.stickley@kirklees.gov.uk)

**8. Background Papers and History of Decisions**

Report to Annual Council dated 22<sup>nd</sup> May 2019 - [Report to Annual Council May 2019](#)

**9. Service Director responsible**

Julie Muscroft  
Service Director – Legal, Governance and Commissioning  
01484 221000  
[julie.muscroft@kirklees.gov.uk](mailto:julie.muscroft@kirklees.gov.uk)