

**Corporate Support Centre**  
Paul Walker - Chief Executive

**To: All members of the Council**

our ref: Council - 20 May 2022  
contact: Matthew Evans, Democratic Services  
telephone: 01432 383690  
email: matthew.evans@herefordshire.gov.uk

12 May 2022

Dear Councillor,

**You are hereby summoned** to attend the meeting of the Herefordshire Council to be held on **Friday 20 May 2022** at the The Hereford Suite, Hereford FC, Edgar Street, Hereford, HR4 9JU at **10.30 am** at which the business set out in the attached agenda is proposed to be transacted.

Yours sincerely

**Claire Porter**



**Monitoring Officer**



# AGENDA

## Council

Date: **Friday 20 May 2022**

---

Time: **10.30 am**

---

Place: **The Hereford Suite, Hereford FC, Edgar Street, Hereford, HR4 9JU**

---

Notes: Please note the time, date and venue of the meeting.

For any further information please contact:

**Matthew Evans, Democratic Services**

Tel: 01432 383690

Email: [matthew.evans@herefordshire.gov.uk](mailto:matthew.evans@herefordshire.gov.uk)

---

If you would like help to understand this document, or would like it in another format or language, please call Matthew Evans, Democratic Services on 01432 383690 or e-mail [matthew.evans@herefordshire.gov.uk](mailto:matthew.evans@herefordshire.gov.uk) in advance of the meeting.

# Agenda for the Meeting of the Council

## Membership

**Chairman**

**Vice-Chairman**

**Councillor Sebastian Bowen**

**Councillor Kema Guthrie**

Councillor Graham Andrews

Councillor Polly Andrews

Councillor Chris Bartrum

Councillor Dave Boulter

Councillor Ellie Chowns

Councillor Clare Davies

Councillor Barry Durkin

Councillor Elizabeth Foxton

Councillor John Hardwick

Councillor Liz Harvey

Councillor Kath Hey

Councillor Phillip Howells

Councillor Terry James

Councillor Tony Johnson

Councillor Mike Jones

Councillor Jonathan Lester

Councillor Bob Matthews

Councillor Jeremy Milln

Councillor Roger Phillips

Councillor Ann-Marie Probert

Councillor Nigel Shaw

Councillor John Stone

Councillor Elissa Swinglehurst

Councillor Kevin Tillet

Councillor Ange Tyler

Councillor William Wilding

Councillor Paul Andrews

Councillor Jenny Bartlett

Councillor Christy Bolderson

Councillor Tracy Bowes

Councillor Pauline Crockett

Councillor Gemma Davies

Councillor Toni Fagan

Councillor Carole Gandy

Councillor John Harrington

Councillor Jennie Hewitt

Councillor David Hitchiner

Councillor Helen l'Anson

Councillor Peter Jinman

Councillor Graham Jones

Councillor Jim Kenyon

Councillor Trish Marsh

Councillor Mark Millmore

Councillor Felicity Norman

Councillor Tim Price

Councillor Paul Rone

Councillor Louis Stark

Councillor David Summers

Councillor Paul Symonds

Councillor Diana Toynbee

Councillor Yolande Watson

## Agenda

| <b>Public Information</b>  | <b>Pages</b> |
|--|--------------|
| <i>(The meeting will be preceded by thought for the day.)</i>  | 9 - 10       |
| <p><b>1. ELECTION OF CHAIRPERSON</b><br/>To elect the Chairperson of the Council.</p> <p><b>2. APPOINTMENT OF VICE-CHAIRPERSON</b><br/>To appoint the Vice-Chairperson of the Council.</p> <p><b>3. APOLOGIES FOR ABSENCE</b><br/>To receive apologies for absence.</p> <p><b>4. DECLARATIONS OF INTEREST</b><br/>To receive any declarations of schedule 1, schedule 2 or other interests by Members in respect of items on the agenda.</p> |              |
| <p><b>5. MINUTES</b><br/>To approve and sign the Minutes of the ordinary meeting held on 4 March 2022 (<i>attached</i>) and the extraordinary meeting on 13 May 2022 (<i>to follow</i>).</p>   | 11 - 18      |
| <p><b>6. CHAIRMAN AND CHIEF EXECUTIVE'S ANNOUNCEMENTS</b><br/>To receive the Chairman and Chief Executive's announcements.</p>   | 19 - 22      |
| <p><b>7. ELECTION OF LEADER OF THE COUNCIL</b><br/>To elect the Leader of the Council.</p>   |              |
| <p><b>8. APPOINTMENTS TO COUNCIL COMMITTEES AND OUTSIDE BODIES - TO FOLLOW</b><br/>To make appointments to the committees of the Council and outside bodies in line with the rules of political proportionality. (<i>Please note this report is marked as to follow. The report will be published following the decision at the extraordinary meeting of Council on 13 May.</i>)</p>   |              |
| <p><b>9. RE-THINKING GOVERNANCE</b><br/>To approve amendments to the council's constitution recommended by the audit and governance committee at its meeting held on 10 May 2022.</p>  | 23 - 44      |
| <p><b>10. COUNCILLORS' ALLOWANCES SCHEME - TO FOLLOW</b><br/>To approve and update the Herefordshire councillors allowances scheme having regard to the recommendations of the council's independent remuneration panel (IRP). (<i>Please note this report is marked as to follow. The report will be published following an assessment of the outcomes of the IRP meeting on 12 May.</i>)</p>   |              |
| <p><b>11. CODE OF CONDUCT</b><br/>To approve a revised code of conduct on the recommendation of the audit and governance committee.</p>  | 45 - 132     |
| <p><b>12. REVISED SALARY FOR DIRECTOR OF GOVERNANCE AND LAW</b><br/>To agree an increased salary package for the Director of Governance and Law post.</p>  | 133 - 138    |

## **The Seven Principles of Public Life**

### **(Nolan Principles)**

#### **1. Selflessness**

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

#### **2. 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. Objectivity**

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

#### **4. 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.

#### **5. 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.

#### **6. Honesty**

Holders of public office should be truthful.

#### **7. Leadership**

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

## **The Public's Rights to Information and Attendance at Meetings**

In view of the continued prevalence of covid-19, we have introduced changes to our usual procedures for accessing public meetings. These will help to keep our councillors, staff and members of the public safe.

Please take time to read the latest guidance on the council website by following the link at [www.herefordshire.gov.uk/meetings](http://www.herefordshire.gov.uk/meetings) and support us in promoting a safe environment for everyone. If you have any queries please contact the Governance Support Team on 01432 261699 or at [governancesupportteam@herefordshire.gov.uk](mailto:governancesupportteam@herefordshire.gov.uk)

We will review and update this guidance in line with Government advice. Thank you very much for your help in keeping Herefordshire Council meetings a safe space.

## **YOU HAVE A RIGHT TO: -**

- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.

## **Recording of meetings**

Please note that filming, photography and recording of this meeting is permitted provided that it does not disrupt the business of the meeting.

Members of the public are advised that if you do not wish to be filmed or photographed you should let the governance services team know before the meeting starts so that anyone who intends filming or photographing the meeting can be made aware.

The reporting of meetings is subject to the law and it is the responsibility of those doing the reporting to ensure that they comply.

The council may make an official recording of this public meeting or stream it live to the council's website. Such recordings form part of the public record of the meeting and are made available for members of the public via the council's web-site.

## **Public transport links**

Hereford Football Club is located off Edgar Street in Hereford, approximately within walking distance of the train and bus stations. The location of Hereford F.C. and details of city bus services can be viewed at: <http://www.herefordshire.gov.uk/downloads/file/1597/hereford-city-bus-map-local-services>,



**Minutes of the meeting of Council held at Three Counties Hotel, Belmont Road, Belmont, Hereford, HR2 7BP on Friday 4 March 2022 at 10.00 am**

**Present:** Councillor Sebastian Bowen (chairperson)  
Councillor Kema Guthrie (vice-chairperson)

**Councillors:** Graham Andrews, Polly Andrews, Jenny Bartlett, Chris Bartrum, Christy Bolderson, Dave Boulter, Tracy Bowes, Ellie Chowns, Barry Durkin, Toni Fagan, Elizabeth Foxton, Carole Gandy, John Harrington, Councillor Liz Harvey, Jennie Hewitt, Kath Hey, David Hitchiner, Phillip Howells, Helen l'Anson, Terry James, Peter Jinman, Tony Johnson, Mike Jones, Jim Kenyon, Jonathan Lester, Trish Marsh, Bob Matthews, Mark Millmore, Jeremy Milln, Felicity Norman, Roger Phillips, Tim Price, Probert, Paul Rone, Nigel Shaw, Louis Stark, John Stone, David Summers, Elissa Swinglehurst, Paul Symonds, Kevin Tillet, Diana Toynbee, Ange Tyler, Yolande Watson and William Wilding

**Officers:** Chief Executive, Director of governance and law and Interim head of legal services

**40. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Paul Andrews, Pauline Crockett, Gemma Davies, John Hardwick and Graham Jones.

**41. DECLARATIONS OF INTEREST**

Cllr Phillips declared an other interest in agenda item no. 11 – Motions on Notice – Motion: Rural Impact Assessment and Rural Proofing as vice chairman of the Rural Services Network.

**42. MINUTES**

**RESOLVED:** That the minutes of the budget meeting held on 11 February 2022 be confirmed as a correct record and signed by the Chairman.

**43. CHAIRMAN AND CHIEF EXECUTIVE'S ANNOUNCEMENTS**

Council noted the Chairman and Chief Executive's announcements as printed in the agenda papers.

The Chairman had received a petition from the Hereford Hackney Carriage and Private Hire Association which he passed to the Cabinet Member Housing, Regulatory Services and Community Safety to provide a response.

**44. QUESTIONS FROM MEMBERS OF THE PUBLIC**

There were no questions from members of the public.

#### 45. QUESTIONS FROM MEMBERS OF THE COUNCIL

There were no questions from members of the Council.

#### 46. 2022/23 COUNCIL TAX SETTING REPORT

Council considered a report by the Leader of the Council and additional recommendation supplement published on 3 March to set the council tax and precepts for 2022/23 and amend the council tax reduction scheme. The Cabinet Member Finance, Corporate Services and Planning introduced the report and moved the recommendations in the report and supplement.

Council debated the report and supplement.

The Leader of the Council seconded the recommendations in the report and supplement.

The recommendations in the report and supplement were put to the recorded vote and were carried.

FOR (28): Councillors Graham Andrews, Bartlett, Bartrum, Boulter, Bowes, Chowns, Fagan, Foxton, Harrington, Harvey, Hewitt, Hey, Hitchiner, Howells, Jinman, Mike Jones, Marsh, Milln, Norman, Phillips, Price, Stark, Summers, Symonds, Toynbee, Tyler, Watson and Wilding.

AGAINST (8): Councillors Durkin, Johnson, Kenyon, Lester, Millmore, Probert, Rone and Shaw.

ABSTENTIONS (11): Councillor Polly Andrews, Bolderson, Bowen, Gandy, Guthrie, l'Anson, James, Matthews, Stone, Swinglehurst and Tillett.

#### **RESOLVED: That:**

**a) The precepting authority details incorporated in appendices 1 to 5, relating to town and parishes, West Mercia Police and Hereford and Worcester Fire Authority be approved in accordance with sections 30(2), 34(3), 36(1) and section 40 of the Local Government Finance Act 1992 (as amended) and that the following amounts be approved for the year 2022/23 in accordance with sections 31 to 36 of the Local Government Finance Act 1992, regulation 6 (as amended by the Localism Act 2011):**

- a. £385,137,976 being the estimated aggregate expenditure of the council in accordance with section 31A (2) of the act, including all precepts issued to it by parish councils;
- b. £260,451,287 being the estimated aggregate income of the council for the items set out in section 31A (3) of the act (including revenue support grant);
- c. £124,686,689 being the amount by which the aggregate at (a) above exceeds the aggregate at (b) calculated by the council in accordance with section 31A(4) of the act, as its council tax requirement for the year (including parish precepts); [Item R in the formula in Section 31B of the Act]
- d. £1,774.84 being the amount at (c) above divided by the amount of the council tax base calculated by the council, in accordance with section 31B of the act, as the basic amount of its council tax for the year (including parish precepts);
- e. £5,137,976 being the aggregate amount of all special items (parish precepts) referred to in section 34(1) of the act;

- f. **£1,701.70 being the amount at (d) above less the result given by dividing the amount at (e) above by the amount of the council tax base calculated by the council, in accordance with section 34(2) of the act, as the basic amount of its council tax for the year for dwellings in those parts of its area to which no parish precept relates (Herefordshire Council band D council tax, excluding parishes); and**
- b) **it is agreed that the net tax base of 70,252.52 band D equivalent properties (being the gross tax base adjusted for an assumed collection rate) used for setting the budget requirement for 2022/23;**
  - a. **is allocated to band D equivalent dwellings per precept area as shown in appendix 1; and**
  - b. **the individual council tax allocations per valuation band of dwelling by parish (including fire and police precepts) as set out in appendix 5.**
- c) **That the council tax reduction scheme is amended to include that any payment under the Energy Rebate Scheme 2022 is to be disregarded in determining:**
  - (a) An applicant's entitlement to a reduction in the scheme or**
  - (b) The amount of any reduction to which the applicant is entitled.**

#### **47. RE-THINKING GOVERNANCE**

Council considered a report by the Chairperson of the Audit and Governance Committee to approve the suggested amendments to the Council's constitution recommended by the Audit and Governance Committee. The Vice-Chairperson Audit and Governance Committee and Chairperson of the Re-thinking Governance Working Group introduced the report and moved the recommendations in the report.

Council wished to record its thanks for the work undertaken by the Re-thinking Governance Working Group and its Chairperson, Councillor Christy Bolderson.

Council debated the report and the following action was raised during the debate:

- The monitoring officer would use the delegation within the report recommendation (b) to include virtual participation of the public in meetings as a technical change within a relevant provision in the constitution.

The Chairperson of the Audit and Governance Committee seconded the recommendations in the report.

The recommendations in the report were put to the vote and were carried.

#### **RESOLVED: That:**

- a) **having regard to the work undertaken by the re-thinking governance working group, the revised constitution as set out at appendices 1 to 29, be approved for adoption, with implementation with effect from 20 May 2022; and**

- b) authority be delegated to the director of law and governance to make technical amendments (grammatical, formatting, and consistency) necessary to finalise and represent the revised constitution for publication.

*There was an adjournment at 11:25 a.m.; the meeting reconvened at 11:40 a.m.*

#### **48. DESIGNATION OF MONITORING OFFICER**

Council considered a report by the Chairperson of the Employment Panel to approve the recommendation of the Employment Panel to designate the role of director of governance and law as monitoring officer. A correction to the recommendation in the report was outlined and noted: to remove the word *interim* from the recommendation contained in the report. The Chairperson of the Employment Panel introduced the report and proposed the recommendation, as corrected above, in the report.

Council debated the report and recommendation, as corrected above.

The Vice-Chairperson of the Employment Panel seconded the recommendation in the report, as corrected above.

The recommendation, as corrected above was put to the vote and was carried.

#### **RESOLVED: That:**

- a) Council approves employment panels recommendation that the post of director of governance and law is designated as monitoring officer from 21 March 2022.

#### **49. LEADER'S REPORT**

Council received and noted the Leader's Report which provided an update on the work of the cabinet since the previous ordinary meeting of Council in January 2022. The Leader presented his report to Council.

Council questioned the Leader and the following actions were raised:

- To provide a written response regarding the ability to speak once (to ask one question) under the Leader's report.

#### **50. NOTICES OF MOTION UNDER STANDING ORDERS**

##### **Motion – Ukraine**

*In accordance with paragraph 4.1.90 of the Council's constitution the Chairperson, in consultation with the monitoring officer, accepted the motion below for debate at the meeting as an urgent matter directly affecting part or all of the county and it was not practical to defer consideration of the motion to the next ordinary meeting of Council.*

Councillor Nigel Shaw proposed the motion.

Councillor Mark Millmore seconded the motion.

Council debate the motion. In summary there was unanimous support for planning and preparation at the council to receive refugees from Ukraine.

The motion was put to the vote and was carried unanimously.

**RESOLVED: That:**

**This motion calls on the executive to consider and put in place whatever facilities as may be reasonably expected to receive Ukrainian refugees, subject to direction from national government and an evaluation of council resources required, to ensure that schooling and health services are alerted and to inform the government in Westminster, immediately, that Herefordshire will not be found wanting in our welcome. And to extend a wider request to our residents to be willing to welcome any refugees that they can into their homes, and to be ready to facilitate such organisation and support as these actions may require.**

**Motion – Award scheme for the built environment**

Councillor Jeremy Milln proposed the motion.

Councillor Phillip Howells seconded the motion.

Council debated the motion. In summary there was unanimous support for the motion to improve the standard of design of buildings and development locally.

The motion was put to the vote and was carried unanimously.

**RESOLVED: That:**

**This Council wishes to promote high standards in design, conservation and sustainability in the built environment, both for new build and for the care of existing stock.**

**Therefore:**

**Council requests the Executive to investigate setting up a County of Herefordshire award scheme to encourage and recognise exemplary work in the areas of design, conservation and sustainability for the built environment.**

**Motion – Rural Impact Assessment and Rural Proofing**

Councillor Yolande Watson proposed the motion.

Councillor Roger Phillips seconded the motion.

Council debated the motion. In summary there was unanimous support for the proposals in the motion to seek a formal evaluation of impacts on rural areas in decision-making and ensure that the decisions and policies of the council took account of the interests of a rural county.

The motion was put to the vote and was carried unanimously.

**RESOLVED: That:**

**This motion asks to refer to the executive at Herefordshire Council consideration of the undertaking of a Rural Impact Assessment from the outset of every budget and contract whether for service or products, which includes engagement with rural stakeholders. The results of the Rural Impact Assessment (RIA) are to be included in all future reports.**

**Rural proofing will ensure the needs of rural communities will become transparent and would demonstrate whether Government or local policies address the needs of rural communities and rural economies like Herefordshire. It is the first step towards developing a Rural Strategy for Herefordshire.**

**This motion considers a reformed approach to rural proofing should be introduced and that the executive should take into account the following during its considerations:**

- a) A rural assessment should take place at the start of the policy process, including engagement with rural stakeholders, and be treated as integral, rather than as an adjunct to urban-focused policy. No budget or service should be brought forward without an accompanying rural assessment statement;**
- b) The impact of new policies on rural areas should be systematically and consistently monitored as they are implemented. This would include an update on the performance of rural proofing across Herefordshire Council;**
- c) The executive at Herefordshire Council is required to monitor and report annually on the rural impacts of relevant policies and services, and to encourage its strategic partners to do the same; and**
- d) The executive at Herefordshire Council agrees to write to the Government and MPs in response to this motion that:
  - Government should put in place the appropriate structures to facilitate a more robust rural proofing regime; and**
  - Government needs comprehensively to rethink and reform the rural proofing process across Government, to ensure that relevant policies and legislation are attuned to the needs of rural communities and rural economies like Herefordshire.****

## **51. FULL COUNCIL MEETING DATES 2022/23**

Council considered and agreed the dates for meetings during the 2022/23 municipal year.

**RESOLVED – that the following dates are agreed for meeting of Council during the 2022/23 municipal year:**

- 29 July 2022**

- **21 October 2022**
- **9 December 2022**
- **10 February 2023 (Budget meeting)**
- **3 March 2023**
- **19 May 2023 (Annual meeting)**

The meeting ended at 1.15 pm

**Chairperson**





**Chairman's Announcements – Council Meeting – 20<sup>th</sup> May 2022**  
**Events attended by the Chairman since the last**  
**Council meeting on 4<sup>th</sup> March 2022**

7<sup>th</sup> March Cadet Award Ceremony

8<sup>th</sup> March Mayors Meeting

9<sup>th</sup> March Hereford City Council Queens Green Canopy Planting on Holmer Road

14<sup>th</sup> March Citizenship Ceremony

18<sup>th</sup> March Parkinson's Herefordshire Branch AGM

24<sup>th</sup> March Three Choirs Presentation

29<sup>th</sup> March Youth Orchestra Spring Concert

6<sup>th</sup> April Talk Community Hub Tour

8<sup>th</sup> April SAFFA AGM

9<sup>th</sup> April High Sheriff Declaration

11<sup>th</sup> April Veterans Centre Tour

11<sup>th</sup> Citizenship Ceremony

23<sup>rd</sup> April Kington Community Thanksgiving Service

23<sup>rd</sup> April Hereford City Council Charity Fijian Curry Night

28<sup>th</sup> April Forest of Dean County Council award Presentation to Charlotte Dujardin

3<sup>rd</sup> May Waverly House Shaw Healthcare Presentation

4<sup>th</sup> May Hereford Hospital A&E Tour

8<sup>th</sup> May St Johns Re Dedication Service

9<sup>th</sup> May Citizenship Ceremony & Hereford Mayor Making

10<sup>th</sup> May Mayors Meeting & Youth Orchestra Spring Concert

14<sup>th</sup> May BEM Medal Presentation to Sally Robertson



## **Chief Executive Announcement**

It is now one year since I joined Herefordshire Council as Chief Executive. It has been a challenging but rewarding year, as we take huge strides in changing and improving both the way we run the organisation and our services for residents. I have learned a great deal about Herefordshire, its people, its history and its geography. I have met many people from the community doing wonderful things and have been humbled by the way the county has accepted me. Herefordshire has a true sense of community and I thank you all for the way you have supported me over the last year.

My arrival as Chief Executive for Herefordshire Council coincided with a High Court judgment on Herefordshire Children's Social Care Services. Shortly after that we received a non-statutory Improvement Notice from the Department for Education. It was clear that Herefordshire Council needed to make major changes to its Children's Services. As a father, I was upset and saddened to hear of the ways we have let children and families in the county down, and as an incoming Chief Executive I made it my top priority to ensure we make the changes required, so that children and families in Herefordshire get the support they need and are entitled to.

We took immediate action to address the serious issues highlighted by last year's judgment and we are now one year into a three-year improvement plan, recognising that such significant changes take time and investment. We have undertaken a thorough analysis of all aspects of our children's social care practice, which has informed our decision to significantly invest in Herefordshire Children's Services. We know that our practice and processes still need improvement in some areas and we are committed to making the changes needed to provide better services for children and families in Herefordshire. Our Social Workers continue to do their best, often in very difficult circumstances, to support families and protect vulnerable children in our community.

We've welcomed a number of new directors into our restructured corporate leadership team, which will soon be complete with the arrival of Hilary Hall as Corporate Director, Community Wellbeing in June. This new team is providing strengthened leadership for the delivery of local services, with a focus on delivering County Plan priorities, service improvements and the economy. The new team is working with a corporate focus and will provide welcome stability following a period of change with the organisation. The support provided to staff during this time has been hugely important and our now established regular staff briefings are providing a welcomed opportunity for staff to hear direct from the leadership team and for sharing ideas, questions and comments. The briefings, which are consistently well-attended, are a forum for sharing immediate challenges and opportunities alongside new developments and projects, and where we can recognise the hard work and commitment of colleagues.

Throughout the last year, we have celebrated many successes and I am proud of the initiatives we have brought to residents. As part of our Covid Recovery, we have channelled £6million of government funding into a programme of work to help the county's economic and wellbeing recovery in the wake of the pandemic. Our 'Bus It' campaign has been well received and it has been great to be able encourage residents to travel around our beautiful county by bus every weekend, absolutely free. I know this has been appreciated during the current financial climate, as residents face the national cost of living increase. We have been helping people get out and about as they get back into their community, and we now have 46 Talk Community hubs, which offer local services and support from friendly faces you know in your community. It was great to hear how businesses benefitted from the funding invested into our Shop Local card, where local residents were provided with a pre-paid card for up to £25. There were 91,494 transactions made at 2,017 individual shops, the vast majority of which are independently owned, with a total of

£1,002,684 spent in the County. Money spent at a locally-owned business stays in the local economy and continues to strengthen the economic base of the community. Although it wasn't only about the money- by connecting residents with their local shops and traders, we also helped people connect to their local community, by meeting new people, discovering new activities, places to visit and groups to meet with.

We've also provided a range of activities to encourage residents to get active, provided free swims for over 10,000 people, a Revive and Thrive grants programme to help small and growing businesses and the LoyalFree app to reward local shopping. We've also helped hundreds of businesses access £46m of grant funding towards equipment, new premises and faster broadband.

The last year has also seen exciting development in our schools, with the opening of a brand new special needs sixth-form facility, the Beacon College, and improvements for Mordiford, Marlbrook and John Kyrle High Schools. The opening of the Station Approach student accommodation has helped attract new students to the city's colleges and our work with NMiTE continue to grow as we attract and invest new life into Hereford to support their revolutionary new campus and their unique approach learning.

Our work continues as we develop the 2050 Big Plan to build a vision for Herefordshire together with our businesses and communities. It was exciting to see Herefordshire promoted on TV as a tourist destination and the marketing campaign we have delivered together with Visit Herefordshire has reached millions of people across the country.

We continue with our plan to ensure Herefordshire is as kind to the environment as possible. Our commitment to ensure Herefordshire is carbon neutral by 2030 is ambitious but important. As a council we have already reduced our carbon footprint by 59.6% since our first carbon management plan in 2008/09. The forthcoming changes to our bin collections will allow us to recycle more and reduce our waste, while our Greener Footprints campaign brings together businesses and community groups to help find new ways of changing for the better.

Thank you for your continued support.



# Title of report: Re-thinking governance

**Meeting: Council**

**Meeting date: 20 May 2022**

**Report by: Chairperson of the Audit and Governance Committee**

## Classification

Open

## Decision type

This is not an executive decision

## Wards affected

(All Wards);

## Purpose

To approve amendments to the council's constitution recommended by the audit and governance committee at its meeting held on 10 May 2022.

## Recommendation(s)

That:

- a) **To approve amendments to the audit and governance committee functions as set out in Appendix 1 and the two proposed changes to the constitution set out in paragraphs 9 and 10 with implementation with effect from 20 May 2022; and**
- b) **authority be delegated to the Director of Governance and Legal Services to make technical amendments (as required by law, grammatical, formatting, and consistency) necessary to finalise the revised constitution.**

## Alternative options

1. To reject the proposed amendments and retain the current constitution and policies unamended: this is not recommended because the amendments have been proposed in order to either:
  - a) Improve clarity; or

b) Improve the efficiency and effectiveness of the council's governance arrangements

2. To propose alternative or additional amendments; it is open to the committee to propose that consideration be given to alternative or additional amendments. However additional time may be required in order for the working group to assess the impacts of any such proposals and to consult with the working group as necessary.

## Key considerations

3. On 11 October 2019, Council resolved to review its governance arrangements to investigate and explore options for the future. The following guiding principles were set by the Council:
  - To maximise member engagement and participation in decision-making.
  - To ensure decision-making is informed, transparent and efficient.
  - To welcome public engagement.
  - To enable members and officers to perform effectively in clearly defined functions and roles.
  - To assess any resource implications for any proposed changes.
4. The review was undertaken by a cross-party member working group, the current membership of which is

| Member               | Substitute member  | Political Group                | Function                |
|----------------------|--------------------|--------------------------------|-------------------------|
| Councillor Bolderson |                    | Conservatives                  | Audit and Governance    |
| Councillor Bartlett  | Councillor Toynbee | Green                          | Scrutiny                |
| Cllr Harvey          |                    | Independents for Herefordshire | Planning and Regulatory |
| Councillor James     |                    | Liberal Democrat               | Employment Panel        |
| Councillor Matthews  | Councillor M Jones | True Independents              | Scrutiny                |

5. On 9 October 2020, Council resolved upon recommendation from this committee: "having regard to the work undertaken by the Re thinking Governance working group and the recommendation of audit and governance committee, a hybrid cabinet model of governance is approved with implementation from annual council in May 2021."
6. At the Council meeting on 4 March 2022, council approved a number of changes to the constitution following the recommendation of the audit and governance committee meeting on 25 January 2022.
7. At that time, there was still work to be concluded on the audit and governance committee functions. This report deals with those outstanding matters.
8. On 15 March 2022, the re-thinking governance working group considered audit and governance committee functions and these revised functions as a clean version are attached at Appendix 1. A tracked change version of the changes to the function are attached at Appendix 2.
9. As part of the re-thinking governance working group meeting, it was agreed that treasury management function should sit within the remit of the new scrutiny management board as that board will also be considering the council's budget. On this basis, the re-thinking governance

working group are recommending that treasury management be added to the scrutiny management board functions at Part 3, Section 4, Scrutiny Functions.

10. For information, there will be a technical change in relation to the membership of Standing advisory council on religious education (SACRE):

Article 9, Joint Arrangements: insert following groups into Group A at 2.9.21:

One representative of the Hindu faith;  
One representative of the Quaker faith;  
One representative of Humanism

11. The above amendment is being made in accordance with the Education Act 1996 (as amended) and at the request of the SACRE committee.

12. At the meeting of the audit and governance committee meeting held on 10 May 2022, the following further changes to the functions of the audit and governance committee were resolved to be recommended as follows and have been included within Appendix 1:

3.5.11 The words '~~as necessary~~' be removed;

3.5.13 The final sentence of paragraph one be amended to '... The minutes of the meeting should state in what capacity the independent ~~person~~ *expert* is voting' and a definition be provided in relation to the independent expert;

3.5.14 The paragraph be amended to 'The Committee will meet approximately 8 times a year and a quorum of three elected members (~~including the Chair or Vice Chair~~) is required for decisions of the Committee to be ratified.';

3.5.15 (a) The paragraph be amended to 'review *and examine, and where required in depth examine*, matters relating to internal audit, external audit, risk management, governance, assurance statements, anti-fraud and anti-corruption arrangements as well as any other function to meet the Council's Audit Committee requirements';

3.5.30 (i) The paragraph be amended to 'To give its opinion, as appropriate, to Herefordshire Council, the Clinical Commissioning group or NHS commissioning Board, as to whether they are discharging their duty to have regard to any assessment of relevant needs prepared by the Council, the Clinical Commissioning Group or NHS commission Board in the exercise of their functions.';

## Community impact

13. Corporate governance is the term used to describe the systems, processes, culture and values the council has established to ensure we provide the right services, to the right people in a timely, open, and accountable way. Good corporate governance includes encouraging better informed longer-term decision making using resources efficiently, and being open to scrutiny with a view to improving performance and managing risk. Periodic reviews of the models of governance adopted by the council and the established processes and culture are valuable ways in which the council can demonstrate how the council uphold the code of corporate governance.
14. This work forms part of a formal corporate delivery plan, 2020 to 2022, commitment to: Complete the review of governance arrangements and implement new arrangements and constitution. This report brings the audit and governance committee up to date with progress toward that objective.

15. The council is responsible, as a corporate parent, for providing the best possible care and safeguarding for children who are looked after by the council, and as part of this must consider the impact of decision making on looked after children and care leavers. Any review of models of governance and mechanisms for stakeholder engagement in decision-making must consider how this responsibility may best be discharged.

## Environmental impact

16. The development of a revised governance model will seek to minimise any adverse environmental impact and will actively seek opportunities to improve and enhance environmental performance.

## Equality duty

17. Under section 149 of the Equality Act 2010, the ‘general duty’ on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
18. The public sector equality duty (specific duty) requires the council to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying ‘due regard’ in our decision making in the design of policies and in the delivery of services. Any review of governance models and decision making processes must ensure this duty is demonstrably upheld and promoted.

## Resource implications

19. There are no resource implications with this decision. The resource allocation for the revised governance arrangements were approved by Council on 4 March 2022.

## Legal implications

20. The council is required to have a constitution. The proposed new model will provide the basis for changes to the current constitution to be adopted and implemented at the next annual council meeting.

## Risk management

| Risk / opportunity  | Mitigation  |
|---|---|
| Insufficient time to make all operational changes   | Project management support in place to ensure milestones are met  |
| Structural changes do not make cultural changes needed to strengthen function of all committees | Training on the refreshed model and functions of scrutiny has been procured by Centre For Governance and Services and training for A&G committee on their refreshed terms of reference will also be |



|   |  |
|---|--|
|   | procured with an effectiveness review in a year's time |
| Insufficient time to re-present the constitution            | This is not time critical                              |
| Changes do not meet the design principles agreed by Council | A review will be undertaken in May 2023                |

21. These are all operational risks that will be managed by the project lead from the programme management office and may be escalated to the Law and Governance risk register in accordance with the risk management policy.

## Consultees

22. All political groups are represented in the working group. The non-aligned member declined to participate in the working group.

## Appendices

Appendix 1 - Part 3 Section 5 Other Functions, Audit and Governance Committee Functions – clean version

Appendix 2 - Part 3 Section 5 Other Functions – tracked change version

## Background papers

None identified.



---

## Section 5 - Other functions

This section contains a description of the bodies who have functions delegated to them by Council.

Those functions are those carried out as follows:

- Town and country planning, development control (the planning functions) and licensing functions
- Audit and governance functions
- Standards panel functions
- Employment functions
- Health and wellbeing board

### **3.5.1 Planning and regulatory committee**

3.5.2 When the committee carries out its planning functions it will follow the planning rules (part 4 section 8) and the planning code (part 5 section 6)

3.5.3 The committee functions are detailed in appendix one to the council functions scheme.

- 3.5.4 The committee will determine applications for planning permission and listed building consent in those cases where:
- (a) the application has been called in for committee determination by the relevant ward member in accordance with the redirection procedure
  - (b) the application is submitted by the council, by others on council land or by or on behalf of an organisation or other partnership of which the council is a member or has a material interest, and where objections on material planning considerations have been received, or where the proposal is contrary to adopted planning policy
  - (c) the application is submitted by a council member or a close family member such that a council member has a material interest in the application
  - (d) the application is submitted by a council officer who is employed in the planning service or works closely with it, or is a senior manager as defined in the council's pay policy statement, or by a close family member such that the council officer has a material interest in the application
  - (e) the application, in the view of the assistant director regulatory, environment and waste services, raises issues around the consistency of the proposal, if approved, with the adopted development plan
  - (f) the application, in the reasonable opinion of the assistant director regulatory, environment and waste services, raises issues of a significant and/or strategic

---

nature that a planning committee determination of the matter would represent the most appropriate course of action, or

- (g) in any other circumstances where the assistant director regulatory, environment and waste services believes the application is such that it requires a decision by the planning and regulatory committee.

### **3.5.5 Licensing functions**

3.5.6 The functions of the licensing authority (contained in appendix 1) are to be taken or carried out by the licensing subcommittee. The Council has delegated some of these functions to the chief executive as also detailed in appendix 1.

3.5.7 The licensing sub-committee determines the following;

- (a) Applications for personal licences (if police objection);
- (b) Applications for personal licences with unspent convictions;
- (c) Applications for premises licences/club premises certificates (if relevant representation are made as specified in the Licensing Act 2003);
- (d) Applications for provisional statements (if relevant representation are made as specified in the Licensing Act 2003);
- (e) Applications to vary premises licences/club premises certificates (if relevant representation are made as specified in the Licensing Act 2003);
- (f) Applications to vary designated premises supervisor (if police objection);
- (g) Requests to be removed as a designated premises supervisor
- (h) Applications for transfer of premises licence (if police objection);
- (i) Applications for interim authorities (if police objection);
- (j) Applications to review premises licences/club premises certificate;
- (k) Deciding whether to object when the authority is a consultee and not the relevant authority considering an application;
- (l) Determination of objections to temporary event notices;
- (m) Determination of application to vary premises licence at community premises to include alternative licence condition (if police objection)
- (n) Revocations of licences where convictions come to light
- (o) Appeals in relation to refusals (full or part) for a pavement licence under Business and Planning Act 2020

### **3.5.8 Audit and governance functions**

3.5.9 The purpose of an audit committee is to provide independent assurance to Cabinet and Full Council on the adequacy of the risk management framework together with the internal control of the financial reporting and annual governance processes. The responsibility for functions are set out in paragraphs 3.5.15 to paragraphs 3.5.21

3.5.10 To help maintain its independence, the Committee is able to meet privately and separately with the External Auditor and the Head of Internal Audit to seek assurance that effective and strong financial management arrangements are in place.

3.5.11 The membership of the Audit Committee shall comprise seven members of the council and may also include an independent expert who is not a councillor but is appointed by council. Voting rights of the expert can only be exercised if the committee is making recommendations or advising on a particular item. The expert is not able to exercise a vote in relation to any decision making function of the committee. The minutes of the meeting should state in what capacity the Independent expert is voting.

For the avoidance of doubt the independent expert is not an independent persons appointed by the council as set out in procedure rule 4.9.26. An Independent Expert means a person with no material current or prior business or personal relationship with the council or its members and who has a particular skill or extensive knowledge of a specified subject.

3.5.12 The Committee will meet approximately 8 times a year and a quorum of three elected members is required for decisions of the Committee to be ratified

3.5.13 The Committee shall:

- (a) review and examine, and where required in depth examine matters relating to internal audit, external audit, risk management, governance, assurance statements, anti-fraud and anti-corruption arrangements as well as any other function to meet the Council's Audit Committee requirements
- (b) enhance and promote the profile, status and authority of the internal audit function and to demonstrate its independence
- (c) contribute towards making the authority, its committees and departments more responsive to the audit function
- (d) review compliance with the relevant standards, code of conduct, codes of practice and corporate governance policies
- (e) act within the Council's Constitution

#### **3.5.14 Internal audit**

- (a) To review and agree the internal audit charter, the internal audit plan which will include the budget and resource plan.
- (b) To agree any significant additional internal audit consulting services which are not included in the internal audit plan.
- (c) To consider the Head of Internal Audit's annual report and opinion, and a summary of internal Audit activity (actual and proposed) and the level of assurance it can give over the Council's corporate governance arrangements
- (d) To consider summaries of specific Internal Audit reports and the main issues arising and seek assurance that action has been taken where necessary

- (e) To consider reports dealing with the management and performance of the providers of Internal Audit Services to include the approval of appointment of the Internal Audit Services or recommend the removal of the Internal Audit Services
- (f) To consider a report from Internal Audit on agreed recommendations not implemented within a reasonable timescale
- (g) To be able to call senior officers and appropriate members to account for relevant issues within the remit and responsibilities of the Committee
- (h) To seek assurance and confirm the independence of the internal audit and review safeguards in place to limit impairments
- (i) The Committee will not receive detailed information on investigations relating to individuals. The general governance principles and control issues may be discussed, in confidential session if applicable, at an appropriate time, to protect the identity of individuals and so as not to prejudice any action being taken by the Council.

#### **3.5.15 External audit**

- (a) Review and agree the External Auditors annual plan, including the annual audit Fee and annual letter and receive regular update reports on progress
- (b) To consider specific reports from the External Auditor
- (c) To meet privately with the External Auditor if required
- (d) To comment on the scope and depth of external audit work and to ensure it gives value for money
- (e) To recommend appointment of the council's local (external) auditor
- (f) Ensure that there are effective relationships between external and internal audit that the value of the combined internal and external audit process is maximised.

#### **3.5.16 Governance**

- (a) To maintain an overview of the council's Constitution, conduct a biennial review and recommend any changes to council other than changes to the contract procedure rules, finance procedure rules which have been delegated to the committee for adoption
- (b) To monitor the effective development and operation of risk management and corporate governance in the council
- (c) To monitor the effective development and operation of the assurance framework and partnership governance for the council
- (d) To monitor the effective development and operation of value for money framework for the council management
- (e) To maintain an overview and agree changes to the council policies on whistleblowing and the 'Anti-fraud and corruption strategy'.

- (f) To monitor the effectiveness and operation of the anti-fraud and corruption strategy.
- (g) To oversee the production of the authority's Statement on Internal Control and to recommend its adoption
- (h) To annually conduct a review of the effectiveness of the council's governance process and system of internal control which will inform the Annual Governance statement
- (i) The council's arrangements for corporate governance and agreeing necessary actions to ensure compliance
- (j) To annually review the council's information governance requirements
- (k) To agree the annual governance statement (which includes an annual review of the effectiveness of partnership arrangements together with monitoring officer, s151 officer, caldicott guardian and equality and compliance manager reviews)
- (l) To undertake community governance reviews and to make recommendations to Council.

### **3.5.17 Waste contract**

- (a) To review, in conjunction with external advisers advising the council as lender, the risks being borne as a result of the funding provided by the council to Mercia Waste Management Ltd and consider whether the risks being borne by the council, as lender, are reasonable and appropriate having regard to the risks typically assumed by long term senior funders to waste projects in the United Kingdom and best banking practice
- (b) To monitor the administration of the loan to the waste project in line with best banking practice having regard to any such external advice, including the terms of any waivers or amendments which may be required or are desirable
- (c) Consider what steps should be taken to protect the interests of the council as lender in the event of a default or breach of covenant by Mercia Waste Management Ltd, and make recommendations as appropriate to Council, the council's statutory officers or cabinet as appropriate to ensure the appropriate enforcement of security and litigation in relation to the loan to Mercia Waste Management Ltd
- (d) Consider and recommend appropriate courses of action to protect the position of the council as lender to the waste project:
  - (i) make recommendation as appropriate to Council with regards to its budget and policy framework and the loan to the waste project
  - (ii) generally to take such other steps in relation to the loan within the scope of these terms of reference as the committee considers to be appropriate.

---

**3.5.18 Code of conduct**

- (a) To promote and maintain high standards of conduct by members and co-opted members of the Council
- (b) To support Town and Parish Councils within the county to promote and maintain high standards of conduct by members and co-opted members of the Council
- (c) To recommend to Council the adoption of a code dealing with the conduct that is expected of members and co-opted members of the Council
- (d) To keep the code of conduct under review and recommend changes/replacement to Council as appropriate
- (e) To publicise the adoption, revision or replacement of the Council's Code of Conduct
- (f) To oversee the process for the recruitment of the Independent Persons and make recommendations to Council for their appointment
- (g) To annually review overall figures and trends from code of conduct complaints which will include number of upheld complaints by reference to individual councillors within unitary, town and parish councils and when a code of conduct complaint has been upheld by the Monitoring Officer or by the Standards Panel, after the option of any appeal has been concluded, promptly to publish the name of the councillor, the council, the nature of the breach and any recommendation or sanction applied.
- (h) To grant dispensations under Section 33 (2)(b)(d) and (c) Localism Act 2011 or any subsequent amendment
- (i) To hear appeals in relation to dispensations granted under section 33 (2)(a) and (c) Localism Act 2011 by the monitoring officer  

To review any dispensations which have been granted by the monitoring officer under 33 (2)(a) and (c) Localism Act 2011 at the next available meeting of the committee.

**3.5.19 Accounts**

To review and approve the Statement of Accounts, external auditor's opinion and reports on them and monitor management action in response to the issues raised by external audit.

**3.5.20 Standards panel**

3.5.21 Council has agreed that the arrangements for determining breaches of the code of conduct for members will include consideration and determination of complaints (a) where the matter cannot be resolved by the Monitoring Officer, or (b) an appeal.

3.5.22 The function of the panel is to consider submissions made either in person or in writing by the complainant, the subject member and the monitoring officer and produce a report.



---

3.5.23 The panel will also undertake an twice a year sample review of decisions made by the monitoring officer under the code of conduct complaint process.

### **3.5.24 Employment functions**

3.5.25 Council has agreed that an employment panel be established and will fulfil the following functions:

- (a) Be the appropriate body to fulfil the employment functions as set out in part 4 section 9 of the procedure rules in relation to: the head of paid service (to include returning officer and electoral registration officer functions), director for adults and communities, director of children and families; director for economy and place, director of public health, monitoring officer and s151 officer.
- (b) Review the annual pay policy statement and make recommendations to Council
- (c) Be a consultee on all terms and conditions including policies for all staff
- (d) Approve the performance and development framework for annual assessment of the chief executive

The chair of the employment panel has delegated authority to suspend to head of paid service.

### **3.5.26 Health and wellbeing board functions**

3.5.27 Herefordshire Council has established a health and wellbeing board in accordance with the provisions of the Health and Social Care Act 2012

3.5.28 The functions of the board are:

- (a) To encourage those who arrange the provision of any health or social care services in Herefordshire to work in an integrated manner for the purpose of advancing the health and wellbeing of the people of Herefordshire.
- (b) To provide such advice, assistance or other support as it thinks appropriate, for the purpose of encouraging the making of prescribed arrangements under S 75 National Health Service Act 2006.
- (c) To encourage those who arrange for the provision of any health related services in Herefordshire to work closely with the health and wellbeing board.
- (d) To encourage the close working of those providing health or social care services with those who arrange for the provision of health related services in Herefordshire.
- (e) To prepare a health and social care joint strategic needs assessment (Understanding Herefordshire) for the county
- (f) To prepare a health & wellbeing strategy to meet those needs
- (g) Reviewing whether the commissioning plans and arrangements for the NHS, public health and social care (including Better Care Fund submissions) are in line with and have given due regard to the health and wellbeing strategy

- (h) To prepare and publish a local Pharmaceutical Needs Assessment under S206 of the 2012 Act.

and additionally:

- (i) To give its opinion, as appropriate, to Herefordshire Council, the Clinical Commissioning group or NHS commissioning Board, as to whether they are discharging their duty to have regard to any assessment of relevant needs prepared by the Council, the Clinical Commissioning Group or NHS commission Board in the exercise of their functions; and
- (j) To sign off annual plans and periodic performance submissions for the better care fund

---

## Section 5 - Other functions

This section contains a description of the bodies who have functions delegated to them by Council.

Those functions are those carried out as follows:

- Town and country planning, development control (the planning functions) and licensing functions
- Audit and governance functions
- Standards panel functions
- Employment functions
- Health and wellbeing board

### **3.5.1 Planning and regulatory committee**

3.5.2 When the committee carries out its planning functions it will follow the planning rules (part 4 section 8) and the planning code (part 5 section 6)

3.5.3 The committee functions are detailed in appendix one to the council functions scheme.

- 3.5.4 The committee will determine applications for planning permission and listed building consent in those cases where:
- (a) the application has been called in for committee determination by the relevant ward member in accordance with the redirection procedure
  - (b) the application is submitted by the council, by others on council land or by or on behalf of an organisation or other partnership of which the council is a member or has a material interest, and where objections on material planning considerations have been received, or where the proposal is contrary to adopted planning policy
  - (c) the application is submitted by a council member or a close family member such that a council member has a material interest in the application
  - (d) the application is submitted by a council officer who is employed in the planning service or works closely with it, or is a senior manager as defined in the council's pay policy statement, or by a close family member such that the council officer has a material interest in the application
  - (e) the application, in the view of the assistant director regulatory, environment and waste services, raises issues around the consistency of the proposal, if approved, with the adopted development plan
  - (f) the application, in the reasonable opinion of the assistant director regulatory, environment and waste services, raises issues of a significant and/or strategic

---

nature that a planning committee determination of the matter would represent the most appropriate course of action, or

- (g) in any other circumstances where the assistant director regulatory, environment and waste services believes the application is such that it requires a decision by the planning and regulatory committee.

### **3.5.5 Licensing functions**

3.5.6 The functions of the licensing authority (contained in appendix 1) are to be taken or carried out by the licensing subcommittee. The Council has delegated some of these functions to the chief executive as also detailed in appendix 1.

3.5.7 The licensing sub-committee determines the following;

- (a) Applications for personal licences (if police objection);
- (b) Applications for personal licences with unspent convictions;
- (c) Applications for premises licences/club premises certificates (if relevant representation are made as specified in the Licensing Act 2003);
- (d) Applications for provisional statements (if relevant representation are made as specified in the Licensing Act 2003);
- (e) Applications to vary premises licences/club premises certificates (if relevant representation are made as specified in the Licensing Act 2003);
- (f) Applications to vary designated premises supervisor (if police objection);
- (g) Requests to be removed as a designated premises supervisor
- (h) Applications for transfer of premises licence (if police objection);
- (i) Applications for interim authorities (if police objection);
- (j) Applications to review premises licences/club premises certificate;
- (k) Deciding whether to object when the authority is a consultee and not the relevant authority considering an application;
- (l) Determination of objections to temporary event notices;
- (m) Determination of application to vary premises licence at community premises to include alternative licence condition (if police objection)
- (n) Revocations of licences where convictions come to light
- (o) Appeals in relation to refusals (full or part) for a pavement licence under Business and Planning Act 2020

---

### 3.5.8 Audit and governance functions

3.5.9 The purpose of an audit committee is to provide independent assurance to Cabinet and Full Council on the adequacy of the risk management framework together with the internal control of the financial reporting and annual governance processes. The responsibility for functions are set out in paragraphs 3.5.15 to paragraphs 3.5.21

~~3.5.10 The Committee will be a fully constituted committee of the Council and act independently of the Authority's Executive and scrutiny functions and its membership shall not include Cabinet members or Scrutiny members.~~

~~3.5.11 To help maintain its independence, the Committee is able has the right to meet privately and separately with the External Auditor and the Head of Internal Audit as necessary to seek assurance that effective and strong financial management arrangements are in place.~~

~~3.5.12 The business of the Committee will be conducted apolitically~~

~~3.5.13 The membership of the Audit Committee shall comprise a seven members of the council and may also include an independent person expert who is not a councillor but is appointed by council and has the same voting rights as other members of the committee minimum of 7 Members of the Council and [a maximum of three co-opted non-voting members]. Voting rights of the expert can only be exercised if the committee is making recommendations or advising on a particular item. The expert is not able to exercise a vote in relation to any decision making function of the committee. The minutes of the meeting should state in what capacity the Independent person expert is voting.~~

~~For the avoidance of doubt the independent expert is not an independent eeet persons appointed by the council as set out in procedure rule 4.9.26. An Independent Expert means a person with no material current or prior business or personal relationship with the council or its members and who has a particular skill or extensive knowledge of a specified subject.~~

~~3.5.14 The Committee will meet approximately ~~least~~ 38 times a year and a quorum of three elected members (including the Chair or Vice Chair) is required for decisions of the Committee to be ratified~~

~~3.5.15 The Committee shall:~~

~~(a) - review and examine, and where required in depth examine matters relating to internal audit, external audit, risk management, governance, assurance statements, anti-fraud and anti-corruption arrangements as well as any other function to meet the Council's Audit Committee requirements~~

~~(b) enhance and promote the profile, status and authority of the internal audit function and to demonstrate its independence~~

~~(c) contribute towards making the authority, its committees and departments more responsive to the audit function~~

(d) review compliance with the relevant standards, code of conduct, codes of practice and corporate governance policies

(e) act within the Council's Constitution

### **3.5.106 Internal audit**

(a) To review and agree the internal audit charter, the internal audit plan which will include the budget and resource plan.

(b) To agree any significant additional internal audit consulting services which are not included in the internal audit plan.

~~(a)~~(c) To consider the Head of Internal Audit's annual report and opinion, and a summary of internal Audit activity (actual and proposed) and the level of assurance it can give over the Council's corporate governance arrangements

~~(b)~~(d) To consider summaries of specific Internal Audit reports and the main issues arising and seek assurance that action has been taken where necessary

(e) To consider reports dealing with the management and performance of the providers of Internal Audit Services to include the approval of appointment of the Internal Audit Services or recommend the removal of the Internal Audit Services

~~(e)~~(f) To consider a report from Internal Audit on agreed recommendations not implemented within a reasonable timescale

(g) To be able to call senior officers and appropriate members to account for relevant issues within the remit and responsibilities of the Committee

~~(d)~~(h) To seek assurance and confirm the independence of the internal audit and review safeguards in place to limit impairments

~~(e)~~(i) The Committee will not receive detailed information on investigations relating to individuals. The general governance principles and control issues may be discussed, in confidential session if applicable, at an appropriate time, to protect the identity of individuals and so as not to prejudice any action being taken by the Council.

### **3.5.147 External audit**

(a) Review and agree the External Auditors annual plan, including the annual audit Fee and annual letter and receive regular update reports on progress

(b) To consider specific reports from the External Auditor

(c) To meet privately with the External Auditor ~~once a year~~ if required

- (d) To comment on the scope and depth of external audit work and to ensure it gives value for money
- (e) To recommend appointment of the council's local (external) auditor
- (f) Ensure that there are effective relationships between external and internal audit that the value of the combined internal and external audit process is maximised.

### **3.5.128 Governance**

- (a) To maintain an overview of the council's Constitution, conduct a biennial review and recommend any changes to council other than changes to the contract procedure rules, finance procedure rules which have been delegated to the committee for adoption

~~(b)~~ (b) To monitor the effective development and operation of risk management and corporate governance in the council

(b) To monitor the effective development and operation of the assurance framework and partnership governance for the council

(c) To monitor the effective development and operation of value for money framework for the council management

(d) To maintain an overview and agree changes to the council policies on whistleblowing and the 'Anti-fraud and corruption strategy'.

~~(e)~~ (e) To monitor the effectiveness and operation of the anti-fraud and corruption strategy.

~~(d)~~ (f) To oversee the production of the authority's Statement on Internal Control and to recommend its adoption

~~(e)~~ (g) To annually conduct a review of the effectiveness of the council's governance process and system of internal control which will inform the Annual Governance statement

~~(f)~~ (h) The council's arrangements for corporate governance and agreeing necessary actions to ensure compliance

~~(g)~~ (i) To annually review the council's information governance requirements

~~(h)~~ (j) To agree the annual governance statement (which includes an annual review of the effectiveness of partnership arrangements together with monitoring officer, s151 officer, caldicott guardian and equality and compliance manager reviews)

~~(i)~~ To adopt an audit and governance code

(k) To undertake community governance reviews and to make recommendations to Council.

- ~~Treasury management oversight~~
- ~~(l) To undertake an annual effectiveness review of the council's treasury management processes and decisions.~~
- ~~(i)(m) To review Internal Audit annual report on the council's treasury function as part of their normal audit programme.~~

### **3.5.139 Waste contract**

- (a) To review, in conjunction with external advisers advising the council as lender, the risks being borne as a result of the funding provided by the council to Mercia Waste Management Ltd and consider whether the risks being borne by the council, as lender, are reasonable and appropriate having regard to the risks typically assumed by long term senior funders to waste projects in the United Kingdom and best banking practice
- (b) To monitor the administration of the loan to the waste project in line with best banking practice having regard to any such external advice, including the terms of any waivers or amendments which may be required or are desirable
- (c) Consider what steps should be taken to protect the interests of the council as lender in the event of a default or breach of covenant by Mercia Waste Management Ltd, and make recommendations as appropriate to Council, the council's statutory officers or cabinet as appropriate to ensure the appropriate enforcement of security and litigation in relation to the loan to Mercia Waste Management Ltd
- (d) Consider and recommend appropriate courses of action to protect the position of the council as lender to the waste project:
  - (i) make recommendation as appropriate to Council with regards to its budget and policy framework and the loan to the waste project
  - (ii) generally to take such other steps in relation to the loan within the scope of these terms of reference as the committee considers to be appropriate.

### **3.5.1420 Code of conduct**

- (a) To promote and maintain high standards of conduct by members and co-opted members of the Council
- (b) To support Town and Parish Councils within the county to promote and maintain high standards of conduct by members and co-opted members of the Council
- (c) To recommend to Council the adoption of a code dealing with the conduct that is expected of members and co-opted members of the Council
- (d) To keep the code of conduct under review and recommend changes/replacement to Council as appropriate
- (e) To publicise the adoption, revision or replacement of the Council's Code of Conduct



- (f) To oversee the process for the recruitment of the Independent Persons and make recommendations to Council for their appointment
- (g) To annually review overall figures and trends from code of conduct complaints which will include number of upheld complaints by reference to individual councillors within unitary, town and parish councils and when a code of conduct complaint has been upheld by the Monitoring Officer or by the Standards Panel, after the option of any appeal has been concluded, promptly to publish the name of the councillor, the council, the nature of the breach and any recommendation or sanction applied.
- (h) To grant dispensations under Section 33 (2)(b)(d) and (c) Localism Act 2011 or any subsequent amendment
- (i) To hear appeals in relation to dispensations granted under section 33 (2)(a) and (c) Localism Act 2011 by the monitoring officer
- ~~(i) To consider review any dispensations which have been granted by the monitoring officer under 33 (2)(a) and (c) Localism Act 2011 at the next available meeting of the committee~~

### **3.5.1521 Accounts**

To review and approve the Statement of Accounts, external auditor's opinion and reports on them and monitor management action in response to the issues raised by external audit.

### **3.5.1622 Standards panel**

3.5.1723 Council has agreed that the arrangements for determining breaches of the code of conduct for members will include consideration and determination of complaints (a) where the matter cannot be resolved by the Monitoring Officer, or (b) an appeal.

3.5.1824 The function of the panel is to consider submissions made either in person or in writing by the complainant, the subject member and the monitoring officer and produce a report.

3.5.1925 The panel will also undertake an ~~annual~~ twice a year sample review of decisions made by the monitoring officer under the code of conduct complaint process.

### **3.5.2026 Employment functions**

3.5.2127 Council has agreed that an employment panel be established and will fulfil the following functions:

- (a) Be the appropriate body to fulfil the employment functions as set out in part 4 section 9 of the procedure rules in relation to: the head of paid service (to include returning officer and electoral registration officer functions), director for adults and communities, director of children and families; director for economy and place, director of public health, monitoring officer and s151 officer.

- (b) Review the annual pay policy statement and make recommendations to Council
- (c) Be a consultee on all terms and conditions including policies for all staff
- (d) Approve the performance and development framework for annual assessment of the chief executive

The chair of the employment panel has delegated authority to suspend to head of paid service.

### **3.5.2228 Health and wellbeing board functions**

3.5.2329 Herefordshire Council has established a health and wellbeing board in accordance with the provisions of the Health and Social Care Act 2012

3.5.2430 The functions of the board are:

- (a) To encourage those who arrange the provision of any health or social care services in Herefordshire to work in an integrated manner for the purpose of advancing the health and wellbeing of the people of Herefordshire.
- (b) To provide such advice, assistance or other support as it thinks appropriate, for the purpose of encouraging the making of prescribed arrangements under S 75 National Health Service Act 2006.
- (c) To encourage those who arrange for the provision of any health related services in Herefordshire to work closely with the health and wellbeing board.
- (d) To encourage the close working of those providing health or social care services with those who arrange for the provision of health related services in Herefordshire.
- (e) To prepare a health and social care joint strategic needs assessment (Understanding Herefordshire) for the county
- (f) To prepare a health & wellbeing strategy to meet those needs
- (g) Reviewing whether the commissioning plans and arrangements for the NHS, public health and social care (including Better Care Fund submissions) are in line with and have given due regard to the health and wellbeing strategy
- (h) To prepare and publish a local Pharmaceutical Needs Assessment under S206 of the 2012 Act.  
  
and additionally:
  - (i) To give its opinion, as appropriate, to Herefordshire Council, the Clinical Commissioning group or NHS commissioning Board, as to whether they are discharging their duty to have regard to any assessment of relevant needs prepared by the Council, the Clinical Commissioning Group or NHS commission Board in the exercise of their functions; ~~and~~
  - (j) To sign off annual plans and periodic performance submissions for the better care fund



# Title of report: Code of Conduct

**Meeting: Council**

**Meeting date: 20 May 2022**

**Report by: Chairperson of the Audit and Governance Committee**

## Classification

Open

## Decision type

This is not an executive decision

## Wards affected

(All Wards);

## Purpose

To approve a revised code of conduct on the recommendation of the audit and governance committee.

## Recommendation(s)

That:

- a) **The Local Government Association (LGA) model code of conduct, as amended by local arrangements as set out at Appendix 3, is approved for adoption by Herefordshire Council at the annual Council meeting on 20 May 2022; and**
- b) **The LGA model arrangements for dealing with code of conduct complaints is adopted and applied to new complaints received after 20 May 2022**

## Alternative options

1. The existing code of conduct applicable to all members and co-optees of the council could remain in place. This is not recommended because a model code of conduct has been prepared by the Local Government Association (LGA) with the intention that all councils in England adopt this model with local amendments where necessary.

## Key considerations

2. Under the Localism Act 2011, Section 27 (2), the council is required to adopt a code of conduct which is applicable to all council members and co-optees. Up until December 2020 there was no proposed national model code for councils to adopt or amend.
3. Parish and town councils may choose to adopt their principal authority's code of conduct. The council is a principal authority and the majority of parish and town councils within Herefordshire have adopted the most current version of the code dated 25 May 2018 and a number of parish councils have now adopted the LGA model code of conduct.
4. The council's current code of conduct was last reviewed in 2018 and as part of good practice should be reviewed on a regular basis.
5. On 30 January 2019, the Committee on Standards in Public Life (CSPL) published its review on Local Government Ethical Standards. Recommendation 1 was that the "The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government."
6. Between 8 June and 17 August 2020, the LGA launched a national survey on a draft model code of conduct. Following the resolution of Audit and Governance Committee on 30 July 2020, a response to this survey was submitted on behalf of the committee by the Monitoring Officer.
7. The LGA has undertaken this review whilst the Government continues to consider the recommendations made by the CPSL in their report on [Local Government Ethical Standards](#). If the Government chooses to implement any of the CSPL's recommendations, this could require a change to the LGA model code of conduct and the council's new code as set out at Appendix 3.
8. Their 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
9. In December 2020, the LGA issued a model code of conduct based on the feedback received as a result of the consultation. The model code of conduct is not mandatory, it will be updated annually by the LGA to ensure it is still fit for purpose. The model code of conduct was further revised by the LGA in May 2021 and is attached at Appendix 1.
10. There is no confirmed data as to whether or not all English councils are adopting the model code of conduct. However, anecdotally a proportion of councils are now adopting the model code in its entirety or are adopting with local amendments.
11. At the Audit and Governance Committee held 23 January 2022, it was resolved that a consultation with all parish councillors and ward councillors be undertaken to seek their views on the model code of conduct and the model arrangements.

12. The consultation with councillors within Herefordshire took place between 2 February 2022 and 25 March 2022. There were 8 responses from either parish councils or individual parish councillors and 6 from ward members.
13. There were 9 responses which reflected that the current 5.2.14 (d) paragraph (Schedule 2 Interests) relating to membership of any body “is not open to the public without formal membership” be retained in the Council’s adopted code of conduct.
14. Following consideration of the model code of conduct and the responses received, the Monitoring Officer is recommending that the LGA model of conduct be adopted with the local amendments as set out in Appendix 3.
15. Following consideration of the model arrangements for dealing with code of conduct complaints, the Monitoring Officer is seeking the endorsement from the committee that the LGA model arrangements for handling of code of conduct complaints are adopted with no local amendments (Appendix 2). The adoption of the model arrangements should enable the benchmarking with other local authorities to take place as currently most authorities arrangements do vary making this extremely difficult.
16. The comparison between the council’s current code of conduct and the LGA Model Code of Conduct is set out at Appendix 4.
17. It is proposed that the model code of conduct, subject to adoption by the Council at the annual meeting, comes into effect from 21 May 2022.
18. At the Audit and Governance committee meeting held on 10 May 2022, it was recommended that the following local amendments to the arrangements for dealing with code of conduct complaints were made and have been made to Appendix 2:
  - i) an addendum to specify that the local arrangements will involve at least two independent persons; and
  - ii) the adoption of an amendment to the section on Sanctions as follows:

‘Note that where the subject member is a parish or town councillor, the matter is referred back to their council to say that a breach of the Code has been found and with a recommended sanction. The town or parish council must then meet to consider whether to impose that sanction ~~or to replace it with another relevant sanction~~. They cannot overturn the finding that there has been a breach of the Code ~~and if they wish to impose a different sanction they should seek advice from the clerk and/or the monitoring officer~~. The panel should also ask the parish or town council to report back to the monitoring officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.’

## **Community impact**

19. The code of conduct sets out the standards expected of councillors when undertaking their duties as a councillor. Having a clear and unambiguous code will enable residents of Herefordshire to understand the conduct which they should expect to receive from councillors.

## **Environmental impact**

20. Whilst this is a decision on back office functions and will have minimal environmental impacts, consideration has been given to minimise waste and resource use in line with the council’s Environmental Policy.

## **Equality duty**

21. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

21. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

## **Resource implications**

22. There are no resource implications associated with these recommendations.

## **Legal implications**

23. There are no legal implications arising from the recommendations in this this report.
24. The substantive legal issues are discussed in the key considerations paragraphs of this report

## **Risk management**

25. There are no risks arising directly from the report. Maintaining high standards of conduct mitigates risks to the reputation of the council. How the arrangements are managed can be cause for complaint however the new Model Code provides LGA Guidance to Monitoring Officers on Code of Conduct Handling.
26. The fact that there are no real sanctions that can be applied and only recommendations can be made by the Monitoring Officer exposes the council to risk of criticism; this is a result of the national framework which the CPSL considered.

## **Consultees**

27. All parish councils, town councils, parish councillors, town councillors and ward councillors were consulted and their views have been reflected in the local amendments being proposed.

## **Appendices**

Appendix 1 - LGA Model Councillor Code of Conduct

Appendix 2 - LGA Guidance on Member Model Code of Conduct Complaints Handling

Appendix 3 - LGA Model Councillor Code of Conduct as amended to take account of local amendments

## Appendix 4 - Comparison between the Herefordshire Council Model Code and the LGA Model Code of Conduct

### **Background papers**

- 1) [LGA Model Councillor Code of Conduct 2020 | Local Government Association](#)
- 2) [Guidance on Member Model Code of Conduct Complaints Handling | LGA](#)







**Local Government Association**  
**Model Councillor Code of Conduct 2020**

**Joint statement**

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

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

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

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

## **Introduction**

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

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

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

## **Definitions**

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

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

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

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

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

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

## **General principles of councillor conduct**

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

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

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

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

In undertaking my role:

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

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

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

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

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

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

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

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

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

Officer.

## **Standards of councillor conduct**

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

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

### **General Conduct**

#### **1. Respect**

**As a councillor:**

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

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

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

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

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

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

**As a councillor:**

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

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

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

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

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and

contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

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

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

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

**As a councillor:**

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

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

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

**As a councillor:**

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

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

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

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

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

**5. Disrepute**

**As a councillor:**

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

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public’s confidence in your 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 Registerable Interests as set out in **Table 2**

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

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.<br>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. |
|--|--|

\* 'director' includes a member of the committee of management of an industrial and provident society.

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

**Table 2: Other Registrable Interests**

|   |
|---|
| <p>You must register as an Other Registerable Interest :</p> <ul style="list-style-type: none"> <li>a) any unpaid directorships</li> <li>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</li> <li>c) any body <ul style="list-style-type: none"> <li>(i) exercising functions of a public nature</li> <li>(ii) directed to charitable purposes or</li> <li>(iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)</li> </ul> </li> </ul> <p>of which you are a member or in a position of general control or management</p> |
|---|

## 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.***



# Guidance on Member Model Code of Conduct Complaints Handling

## 1. Introduction

It is vital that the public has confidence in the high standards of local government, and that there is transparency about the conduct of councillors and the mechanisms for dealing with alleged breaches of the Codes of Conduct. Equally, it is vital that councillors themselves have confidence in these mechanisms, and that investigations into such complaints abide by the principles of natural justice.

Any reference in this guidance to ‘you’ is a reference to a monitoring officer, a deputy monitoring officer, or any person nominated by them to carry out their functions. Furthermore, any reference to the ‘subject member’ is a reference to the councillor who is the subject of the allegation and references to an Independent Person means an Independent Person appointed under s. 28(7) of the Localism Act 2011.

Under the Model Code of Conduct, councillors are required to cooperate with any Code of Conduct investigation and respect the impartiality of officers. This is in recognition of the key role monitoring officers have in ensuring what might be contentious and difficult issues are handled fairly. This guidance is to support them in carrying out their duties.

The system of regulation of standards of councillor conduct in England is governed by the Localism Act 2011. Local authorities must have a Code of Conduct for councillors, which must be consistent with the “Seven Principles of Public Life”, selflessness, honesty, integrity, objectivity, accountability, openness and leadership.

Under Section 28 of the Localism Act 2011, local authorities (other than parish and town councils) must have in place ‘arrangements’ under which allegations that an elected or co-opted councillor of the authority or of a town or parish council within the principal authority’s area has failed to comply with the authority’s Code of Conduct can be considered and decisions made on such allegations. It is for the principal authority to decide the details of those arrangements, but they must appoint at least one Independent Person whose views are to be taken into account before making a decision on a complaint that they have decided to investigate. **Herefordshire Council’s arrangements will involve at least two independent persons.**

This guidance is for guidance purposes only and where it differs from the authority’s own arrangements under the Localism Act then the authority’s arrangements should be followed.

s28 (6) A relevant authority other than a parish council must have in place—

(a) arrangements under which allegations can be investigated, and

(b) arrangements under which decisions on allegations can be made.

(7) Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—

(a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and

(b) whose views may be sought—

(i) by the authority in relation to an allegation in circumstances not within paragraph (a),

(ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and

(iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

The case of R (Harvey) v Ledbury Town Council 2018 (R Taylor v Honiton TC) made clear that allegations of a failure to follow an authority's Code of Conduct can only be considered in accordance with the principal authority's standards arrangements. Though the conduct complained of may give rise to a staff grievance, for example, the subject member cannot receive a sanction outside of the standards arrangements.

## **Background**

More than 100,000 people give their time as councillors. The majority do so with the very best motives, and they conduct themselves in a way that is beyond reproach. However, public perception tends to focus on a minority who in some way abuse their positions or behave badly. Even where behaviour does fall short most issues are resolved easily through a simple apology or through swift action from an officer, a political group or meeting chair. Reference to the Code of Conduct and a formal complaint are very much the last resort where issues remain unresolved.

Anyone who considers that a councillor may have breached the Code of Conduct may make a complaint to that councillor's local authority, usually via the principal authority's monitoring officer. Each complaint must be assessed to see if it falls within the authority's legal jurisdiction, for example whether the subject member was acting as a councillor or representative of the authority at the time. A decision must then be made on whether or not some action should be taken, either as an investigation or some other form of action.

When a matter is referred for investigation or other action, it does not mean that a decision has been made about the validity of the allegation. It simply means that the authority believes the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct and that some action should be taken in response to the complaint.

The process for dealing with Code of Conduct complaints must be fair and be seen to be fair.

## **2. Initial assessment of complaints**

### **Responsibilities**

The law does not specify how complaints are to be handled. However, in most authorities, initial assessment of complaints that a councillor may have breached the Code of Conduct is usually carried out by the authority's monitoring officer. In other authorities all complaints go to an assessment committee of councillors for consideration. This is a matter for local choice, but the authority should be satisfied that whatever assessment arrangements it adopts, the assessment can be carried out fairly, objectively and without undue delay.

Even where the matter is normally delegated to the monitoring officer, they may reserve the right to refer the matter to a committee of councillors, for example where the monitoring officer has a conflict of interest or the matter is particularly high-profile.

Whichever approach (or any other) is taken, it is important to have published criteria against which complaints can be assessed to aid transparency and consistency (see below).

Independent Persons (IPs) are people who are neither councillors nor officers of the authority but are appointed under Section 28 of the Localism Act 2011 to work with the authority to support them with Code of Conduct complaints and standards issues. Under the Localism Act their views must be sought and taken into account on any matter under investigation, the subject member may seek their views at any stage and the authority may also seek their views at any other stage of the process.

The Committee on Standards in Public Life has recommended that authorities should also seek the views of the IP when initially assessing a case as a further way of ensuring consistency and enhancing public confidence in the framework.

### **Pre-assessment**

#### **Publicising the complaints system**

Local authorities, including parish and town councils, should publish information on their websites about the Code of Conduct, about what can and cannot be considered as a complaint, how to complain (including a standard complaints form if appropriate) and where Code of Conduct complaints should be sent to. They should also provide clear details of the procedures they will follow in relation to any written allegation received about a councillor.

Where a principal authority is responsible for handling complaints about its parish and town councillors, it should also make this clear.

#### **The submission of complaints and accessibility**

Local authorities should consider that some complainants will not know where to direct their complaint. Some complaints may also need to be considered through more than one of an authority's complaint processes.

Officers dealing with any incoming complaints to the authority will therefore need to be alert to a complaint that a councillor may have breached the Code. If a written complaint specifies or appears to specify that it is in relation to the Code, then it should be passed to the relevant person for consideration.

Local authorities may produce a complaint form which sets out all the information they expect to receive from a complainant. This can be helpful to both the authority and the complainant. However, authorities cannot compel complainants to use a complaint form.

If an authority does not have a complaint form, it should nevertheless give clear guidelines as to the information that complainants need to provide.

The required information may include:

- the complainant's name, address and other contact details;
- who the complainant is, for example, a member of the public, fellow councillor or officer;
- who the complaint is about and the authority or authorities that the councillor belongs to;
- details of the alleged misconduct including, where possible, dates, witness details and other supporting information;
- equality monitoring data if applicable, for example the nationality of the complainant.

The authority should also make it clear that only in exceptional circumstances would a complainant be granted confidentiality and that as a matter of fairness the complainant's identity would normally be disclosed to the subject member (see section below on confidentiality).

A complaint may arise from an expression of dissatisfaction or concern, which come about in a number of ways initially, including verbally. In such cases, the monitoring officer should ask the complainant whether they want to formally put the matter in writing. If the complainant does not, then the monitoring officer should consider the options for informal resolution to satisfy the complainant. If it is a significant complaint, which the complainant is unwilling to commit to writing (for example because they feel they are being bullied), the monitoring officer may wish to reassure the complainant about confidentiality and draft the complaint for agreement with the complainant.

Under the Localism Act, however, formal complaints must be submitted in writing. This include electronic submissions, though the requirement for complaints to be submitted in writing must be read in conjunction with the Equality Act 2010 and the duty to make adjustments. For example, a complainant may have a disability that prevents them from making their complaint in writing. In such cases, authorities may need to transcribe a verbal complaint and then produce a written copy for approval by the complainant or the complainant's representative.

Authorities should also consider what support should be made available to complainants.

Authorities should not normally allow anonymous complaints as that would be against the principles of transparency and fairness and make matters much more difficult to investigate. However, there may be exceptional compelling reasons why an anonymous complaint could be accepted without detriment to the process and where the allegation can be evidenced without reference to the complainant. For example, if an anonymous complainant submitted a video

showing the councillor acting inappropriately or sent in documentation disclosing an undeclared directorship in a matter relating to local authority business, it may be considered that the public interest in investigating the allegation outweighed the issue of anonymity.

Please note that anonymity and confidentiality are different concepts. Anonymity means the complainant is not known whereas confidentiality means that the complainant is known to the authority but their identity has been withheld for a specific reason.

Complaints which identify criminal conduct or a breach of other regulations by any person may be referred to the police or any other relevant regulatory agency for consideration, in accordance with any agreed protocol. In such cases the authority, in agreement with the other body, should consider pausing the assessment of the complaint pending action by the other body.

## **Acknowledging receipt of a complaint**

When a complaint is received by the local authority the relevant officer should acknowledge its receipt and set out the process to be taken to assess the complaint with an agreed timescale.

The authority may also notify the subject member that a complaint has been received and invite their comments on it within an agreed timescale. In deciding whether or not to notify the subject member they would need to weigh up different factors. For example, would telling the subject member risk that the complainant may be intimidated or evidence destroyed, or if the complaint seems to fall outside of the jurisdiction of the Code is there any need to hear from the councillor? However, the presumption would normally be to invite the subject member to comment as this can help the authority to decide whether a matter can be dealt with informally without the need for a formal investigation, for example.

If the authority does tell the subject member about the complaint, the relevant officer will need to be satisfied that they have the legal power to disclose the information they choose to reveal. Additionally, the impact of the Data Protection Act 2018 and UK General Data Protection Regulation (GDPR) should be considered to ensure that any personal data is processed fairly and lawfully at every stage of the process. Reasonable expectations of privacy need to be balanced against the public interest.

## **Pre-assessment enquiries and reports**

When the authority notifies the subject member that a complaint has been made about them, and seeks any relevant comments, the subject member should be given a short timeframe in which to submit their comments such as 10 working days from the date of the notification. In parish cases the principal authority may also notify the clerk and may ask for relevant factual information which would help in the assessment of the complaint.

In notifying the subject member it should be made clear that no judgment one way or the other has been made about whether the allegation is in fact true.

The authority may contact complainants for clarification of their complaint if they are unable to understand the document submitted.

The authority may also carry out preliminary enquiries, for example whether the member was in fact present at the meeting to which the complaint relates. However, such enquiries should be limited to readily-available public records so as not to extend to a more formal investigation.

In authorities where the assessment is carried out by a committee rather than an officer, they may decide that they want the monitoring officer, or other officer, to prepare a short summary of a complaint for the committee to consider. This could, for example, set out the following details:

- Whether the complaint is within jurisdiction;
- The paragraphs of the Code of Conduct the complaint might relate to, or the paragraphs the complainant has identified;
- A summary of key aspects of the complaint if it is lengthy or complex;
- Any further information that the officer has obtained to assist the committee with its decision, for example initial comments from the subject member, minutes of meetings or a copy of a councillor's entry in the register of interests. However, it should be noted that these pre-assessment enquiries should not be carried out in such a way as to amount to an investigation. For example, they should not extend to interviewing potential witnesses, the complainant, or the subject member (although they may have been asked for initial comments) as that would be a matter for any formal investigation should the case proceed;
- The views of the Independent Person.

## **Assessment**

### **Initial tests**

The assessment of a complaint would normally be a two-step process, described by the Committee on Standards in Public Life as the 'can/should' stages – the first stage being 'can we deal with this complaint?' and the second being 'should we deal with this complaint?'.

The first step would be a jurisdictional test and would assess whether the complaint is:

- against one or more named councillors of the authority or of a parish or town council the authority is responsible for;
- the named councillor was in office at the time of the alleged conduct;
- the complaint relates to matters where the councillor was acting as a councillor or representative of the authority and it is not a private matter;
- the complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint. If there is any doubt, however, the allegation should proceed to the second stage. For example, if it is unclear whether the councillor was acting 'in capacity' or not then the second stage of assessment criteria should be used.

Where a matter is being referred to a committee of councillors for assessment, we would expect the monitoring officer only to pass cases which have met the jurisdictional threshold.

## Second-stage criteria

Once these jurisdictional tests have been met the authority should have further criteria against which it assesses complaints and decides what action, if any, to take. These criteria should reflect local circumstances and priorities and be simple, clear and open. They should ensure fairness for both the complainant and the subject member.

Assessing all complaints by established criteria will also protect the authority from accusations of bias. Assessment criteria can be reviewed and amended as necessary, but this should not be done during consideration of a matter.

In drawing up assessment criteria, authorities should bear in mind the importance of ensuring that complainants are confident that complaints about councillor conduct are taken seriously and dealt with appropriately. They should also consider that deciding to investigate a complaint or to take other action will cost both public money and the officers' and councillors' time. This is an important consideration where the matter is relatively minor.

The following non-exclusive factors may help an authority to develop local criteria:

1. Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?
2. Are there alternative, more appropriate, remedies that should be explored first?
3. Where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression;
4. Is the complaint in the view of the authority malicious, politically motivated, or 'tit for tat'?
5. Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction (see guidance on hearings);
6. Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration;
7. Whether a substantially similar complaint has been submitted and accepted;
8. Does the complaint relate to conduct in the distant past? This would include consideration or any reason why there had been a delay in making the complaint;
9. Was the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting;
10. Does the complaint actually relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual? And
11. Is it about someone who is no longer a councillor or who is seriously ill?

Some of these criteria are inevitably subjective. For example, who decides if a complaint is trivial? The complainant may feel they have a genuine grievance even if to a third party it seems relatively minor.

Equally even if a complaint seems to be 'politically motivated' it may nevertheless be highlighting a potentially significant breach of the Code which could not be ignored.

Such criteria can therefore only ever be indicative, and authorities always need to take into account the public interest in taking further action on a complaint. Assessment criteria should be adopted

which take this into account so that authorities can be seen to be treating all complaints in a fair and balanced way.

In assessing any case, an authority may want to consider the following questions in the context of local knowledge and experience:

Has the complainant submitted enough information to satisfy the authority that the complaint should be referred for investigation or other action?

If the answer is no, it should be made clear to the complainant that there is insufficient evidence to make a decision so unless, or until, further information is received, the authority will take no further action on the complaint. When doing so, the complainant should be given a clear timeline to submit any further evidence or otherwise the file will be closed.

### **Is the complaint about someone who is no longer a councillor?**

The councillor may have been a councillor at the time of the alleged misconduct but may have since ceased to be a councillor. The authority will need to consider whether it still has jurisdiction. If so, then the authority may not want to take any further action unless they believe the matter is so serious, and the councillor may return to the authority that it would still be in the public interest to pursue the matter. If they do pursue the matter the range of potential sanctions is inevitably more limited and may extend only to publication of the report and a formal censure.

If the councillor is still a member of another principal authority, the authority may wish to refer the complaint to that authority if it would also fall within their code of conduct.

If a councillor is still a member of a town or parish council within the principal authority's area, then the principal authority can still deal with the matter if it relates to matters at the town or parish council.

### **Is the complaint about something that happened so long ago that there would be little benefit in taking action now?**

Where a matter happened some time ago then the authority may decide that any further action would be unwarranted. For example, an investigation may be difficult as people's recollections may have faded. The authority may therefore wish to set a time limit for receiving complaints of say six months under normal circumstances. However, it should also be borne in mind that there may be a good reason why a complaint is 'late' – for example, victims of bullying or harassment may have needed time and courage before coming forward or been made aware of other incidents which has prompted them to make a complaint about things in the past.

### **Does the complaint appear to be trivial, malicious, politically motivated or tit-for-tat?**

Where a complaint is rejected on these grounds the authority should be very clear about the reasons why and discourage politically motivated or tit-for-tat complaints in particular. It will, however, need to satisfy itself that, regardless of any alleged motive of the complainant, the complaint itself is not sufficiently serious to warrant any further action regardless of the motive. A complaint may appear on the face of it to be politically motivated, for example, because of the



timing of its submission, but if it raises sufficiently serious matters it would nevertheless need to be considered fully.

The assessment criteria that the authority adopts should be made publicly available on its website.

## **Decision**

### **Initial assessment decisions**

Where the decision has been delegated to an officer, the authority should aim to complete their initial assessment of an allegation within 15 working days of receiving a complaint. Where they have asked the subject member for comment, they should allow them up to 10 working days to comment and then make the assessment normally within five working days of any comments being received.

Where the subject member has not commented, and the ten working days has elapsed (and they have not provided a reasonable excuse for the delay) the assessment should nevertheless be made within five working days after that.

Where an Independent Person is invited to give their views prior to assessment these should be done at least a day before the final deadline. Where the Independent Person meets in person with the officer to discuss the case, they should nevertheless record their views in writing for the record after the meeting.

Where the assessment is sent to a committee, the committee should be set up along similar timescales. Any inordinate delay in assessing cases can have a damaging effect on trust in the system and is unfair for both the complainant and subject member.

The authority may reach one of the three following decisions on an allegation:

- no further action should be taken on the allegation;
- the matter should be dealt with through a process of informal resolution in the first instance (see section on informal resolution) or;
- the matter should be referred for a formal investigation (see section on investigations).

### **Decision to take no action**

The authority may decide that no further action is required in respect of a complaint based on its agreed criteria.

Where the authority reaches this decision it should be clear that, where an allegation may have disclosed a potential breach of the Code it has nevertheless made no finding of fact as it does not believe it is in the public interest to pursue the matter any further, Where it has been concluded that no potential breach of the Code of Conduct is disclosed by the complaint (for example because it is outside of jurisdiction), no further formal action can be taken by the authority in respect of it.

There should be no right of appeal against a decision not to take any further action if the system is to be efficient and proportionate.

Where the decision was taken by an officer, the monitoring officer may wish to report to the relevant committee periodically on cases in which there has been no further action taken. These cases should be reported confidentially with the aim of giving the committee a picture of issues within the authority and enabling it to assure itself that decisions made have been broadly reasonable in the whole. They are not there to re-open issues.

## **Referral for informal resolution**

When the authority decides that they should seek to resolve the matter informally in the first instance they should refer to the separate guidance on informal resolution.

## **Referral for investigation**

When the authority decides a matter should be referred for investigation it should refer to the separate guidance on investigations.

## **Notification of assessment decisions**

If the authority decides to take no action over a complaint, then as soon as possible after making the decision they should notify the complainant and subject member of the decision and set out clearly the reasons for that decision, including the views of the independent person.

If the authority decides that the complaint should be referred for formal investigation or informal resolution, they should notify the complainant and subject member, stating what the allegation was and what further action is being taken.

In such cases the authority will need to decide whether or not to give the subject member a copy of the full complaint and whether the complainant, where they had been granted confidentiality, should remain confidential for the time being. In doing so they would need to decide whether doing so would be against the public interest or would prejudice any future investigation. This could happen where it is considered likely that the subject member may intimidate the complainant, or any witnesses involved. It could also happen where early disclosure of the complaint may lead to evidence being compromised or destroyed. If only one part of a complaint has been referred for action or the complaint is against more than one councillor then the authority may wish only to disclose the relevant parts of the complaint. Any decision to withhold information should be kept under review as circumstances change.

If the subject member is a parish or town councillor and the authority has decided to take some action with regard to the complaint, their parish or town council should also be notified via the clerk. In doing so the authority will need to consider whether any of the information is confidential.

A decision notice should be issued within one working day of the decision being made.

## **Independent Person**

If the views of the Independent Person were sought, this should be made clear in the decision letter and state whether the Independent Person agreed with the decision or not. Where the Independent Person did not agree with the decision, the notification should explain how the authority took account of those views in reaching a different decision – for example in concluding that the matter was not in fact within the scope of the Code but was a private matter.

## **Other issues to consider**

### **Assessments Committee**

Where a committee is convened to assess an allegation, it is an ordinary committee of the authority if it is making the decision. This means it must reflect political proportionality unless that has been waived and it is subject to the notice and publicity requirements under Schedule 12A of the Local Government Act 1972.

However, while there should be a presumption that a hearing following an investigation would normally be held in public (see guidance on hearings) there will be a strong presumption towards an assessment being treated as exempt information. The meeting may have to consider unfounded and potentially damaging complaints about councillors, which it would not be appropriate to make public because of the risk of unfounded reputational damage or the potential risk of prejudicing any future investigation.

Nevertheless, as for any meeting dealing with exempt or confidential information a summary of the outcome would need to be published setting out the main points considered such as:

- the conclusions on the complaint;
- the reasons for the conclusion.

### **Assessments delegated to officers**

Where an assessment decision has been delegated to an officer there is no legislative requirement for a decision notice to be published. Nevertheless, the authority should consider whether an assessment notice should be published in the public interest or not in the same way as they would if it were a committee decision.

### **What if the subject member is member of more than one authority?**

There may be times when the same complaint is made against a member of more than one authority. For example, an allegation may allege that a councillor has failed to register an interest at both district and county level.

In such a case the two authorities should have an agreement about who would carry out the initial assessment (if necessary, under an agreed delegation) and any subsequent action. This avoids the risk of two different actions or conclusions being reached.

The matter would not arise where the councillor was on a town or parish council and also on the ‘principal’ district, unitary or metropolitan council as the principal authority is responsible for handling both complaints. It could however arise if the parish or town councillor were also on the county council in a two-tier area.

### **3. Informal resolution**

When dealing with allegations, an authority can decide that some form of action other than investigation or ‘informal resolution’ is needed at a local level. The authority may also decide that informal resolution may be more appropriate than referring a matter to a hearing following completion of an investigation. Where the authority has delegated such a decision to the monitoring officer, we would expect the monitoring officer to seek the views of an Independent Person before taking such a course of action. Where the delegation is held by a committee, we would expect the committee to consult its monitoring officer and an Independent Person before reaching that decision. You may also consider seeking an informal resolution part way through an investigation rather than completing an investigation if it becomes clear the matter could be resolved amicably. Where informal resolution relates to a formal investigation you must seek the views of an Independent Person before halting or pausing the formal investigation.

#### **Why seek an informal resolution?**

An informal resolution is a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals. It should be borne in mind however that dealing with a matter by alternative resolution at the initial assessment stage is making no finding of fact as there has been no formal investigation, so you would need to balance the interest in resolving a matter quickly and satisfactorily against the interest in the complainant having their complaint upheld or the member’s desire to clear their name.

Matters which you might consider appropriate for informal resolution may include:

- the same particular breach of the Code by many members, indicating poor understanding of the Code and the authority’s procedures;
- a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the authority;
- misunderstanding of procedures or protocols;
- misleading, unclear or misunderstood advice from officers;
- lack of experience or training;
- interpersonal conflict;
- allegations and retaliatory allegations from the same members;
- allegations about how formal meetings are conducted;
- allegations that may be symptomatic of governance problems within the authority, which are more significant than the allegations in themselves.

#### **When would informal resolution not be appropriate?**

Complaints should not be referred for informal resolution when you believe an investigation is in the public interest, for example because of the seriousness of the allegations or because it demonstrates a pattern of behaviour. In addition, an allegation which challenges the councillor's honesty or integrity may be better dealt with as a formal investigation because of the potential reputational issues.

Similarly, an informal resolution is not intended to be a quick and easy means of dealing with matters which you consider to be too trivial or time-consuming to investigate. Genuinely trivial cases are better dealt with by a decision to take no action (see guidance on initial assessments). While an alternative resolution can be a cost-effective way of getting a matter resolved for individual cases, it is not a quick fix particularly where there are more systemic issues. It should not be seen as a routine or cheap way of disposing of an allegation, as it can sometimes be a drawn out, costly and time-consuming process.

You should also take care to avoid it appearing to the complainant that deciding to seek an alternative resolution is sweeping matters under the carpet. The decision should demonstrate to the complainant that their complaint is being addressed and being taken seriously, although perhaps as part of a wider issue.

Importantly, if a complaint merits being investigated, then it should be referred for investigation.

## **Who can be the subject of informal resolution?**

Informal resolution could either be directed at the councillor who is the subject of the complaint, both the subject member and the complainant, or at the authority more generally.

For example, it may be a request that a councillor apologise for remarks made in the heat of the moment. Or you may decide that the authority's resources are better used trying to ensure that the subject member and complainant attempt some form of mediation or reconciliation, or it may be about wider issues for your authority that are raised by the case. For example, a relatively minor alleged infringement of the Code, by a councillor who is accused of misusing their authority's IT equipment, might identify shortcomings in the authority's policy about councillors using that equipment. In such a case you might decide that the best way to deal with the allegation is to ask the authority to review the policy and make recommendations for improvement.

If you decide to seek an informal resolution when assessing a complaint, you should be clear that an investigation into that complaint will not take place provided you are satisfied that the party at whom the resolution is directed has acted in good faith in seeking to comply with it.

## **Who should you inform if seeking informal resolution?**

If you believe a complaint can be dealt with through informal resolution you should consult with the Independent Person and you should inform the subject member and the complainant of your intention and give them the opportunity to comment before you make your final decision. However, you should simply be trying to assess how successful the resolution might be rather than giving them a veto. For example, a complainant may not be happy at receiving an apology as they

may expect the matter to be fully investigated but you may nevertheless decide that an apology is reasonable and best use of resources in the circumstances.

When informal resolution has been completed you should notify:

- the subject member;
- the complainant;
- the relevant Independent Person;
- the relevant town or parish council if the subject member is a town or parish councillor.

In addition, you should report back to the standards committee or similar where you have one at the next available opportunity on the outcome of your actions. This would allow the committee to take a holistic view of whether informal resolution is being used appropriately and effectively in the round but should not be seen as an opportunity to re-open the case.

### **What sort of actions might form an alternative resolution?**

Alternative resolution can take a wide range of forms. When considering an alternative resolution, you need to think if the complaint highlights specific issues. For example, if it is against a relatively new councillor, a councillor who has taken on a new role or to do with relatively new procedures is there an issue about lack of understanding or training?

Training may be in anything you consider appropriate, such as:

- the Code of Conduct
- authority procedures and protocols
- chairing skills
- working with external bodies
- wider governance issues
- planning and licensing
- working with officers
- use of authority resources.

Where the issue is more of an inter-personal dispute it may simply be asking the subject member to apologise or to withdraw a remark. You may need to be clear that this does not necessarily mean that the councillor has been found to have breached the Code of Conduct where there has been no formal investigation. It is therefore important where you decide on this course at initial assessment that the action proposed does not imply this. You cannot require the subject member to apologise although you may take that into consideration when thinking of the next steps. Of course, in those cases where the councillor has admitted the breach and offered an acceptable apology, you may decide that no further action is necessary.

Where the allegation highlights wider procedure or cultural issues within the authority, you may wish to consider training for all councillors as a whole or mentoring of particular councillors, or work as an authority on conflict resolution.

You may also decide that the allegation highlights authority procedural failings rather than the specific fault of an individual so you may want to develop or review particular authority protocols and procedures.

Where the allegation is one of a series which in your view highlight that relationships within an authority as a whole have broken down to such an extent that it has become very difficult to conduct the business of the authority then some wider form of reconciliation may be needed rather than simply investigating a whole series of complaints which may of themselves be relatively minor but highlight a pattern of disruption or dysfunction. In such cases it may be helpful to engage an independent mediator who is experienced in group community resolution. Mediation is a formal professional process designed to reach agreed outcomes. Less formal mechanisms may also be used to work with the authority to draw up an action plan to move matters forward and again these are often best done by somebody independent.

In such cases it is particularly important that all parties should understand that a decision to seek an informal resolution without investigating the individual complaints means that no conclusion has been reached about what happened. Furthermore, no decision has been made about whether the subject member(s) failed to comply with the Code. Everyone involved should understand that the purpose of such action is not to find out whether the councillor breached the Code of Conduct but rather to address the underlying causes. This is regardless of how simple it may be to establish the facts.

Where a committee is considering an alternative resolution, it should always consult the monitoring officer. The monitoring officer may be able to advise the committee how viable the proposed resolution is, by providing information on the resources available to them. They may be able to tell the committee how much any proposed resolution might cost and whether, for example, the authority has access to the facilities or resources needed to accomplish it, such as qualified mediators.

Where the matters involve the town or parish council the principal authority cannot compel the town or parish council to meet the costs, but it may discuss with them the implications that other town and parish councils have experienced when they have failed to take action at an early stage. These have included officer and councillor resignations, community disharmony, national level publicity and reputational damage, staff grievances and settlement costs, excessive Freedom of Information Act (FoIA) and Data Subject Access requests, additional external audit inspections and fees and legal challenges and costs.

In considering such issues it is incumbent on the town or parish council to recognise there will be a need to invest in resolutions to the issues and it may be that where they are unwilling to seek to resolve the issues they face, the principal authority may take that into account when assessing future complaints.

## **Role of the monitoring officer**

### **Role of the monitoring officer**

When a matter has been referred for alternative resolution, you should inform the relevant parties (see above). You should take care over how the decision is conveyed. It is important that the

wording does not imply that the councillor is culpable where there has been no formal investigation. It is also important that councillors do not feel they have been found guilty without an investigation of the allegation. Above all avoid the risk that both parties could end up potentially feeling dissatisfied.

You should set a time limit by which the action must be taken and make it clear what will happen if it is not undertaken, or not undertaken to your satisfaction. If, within that time limit, you are satisfied with the outcome you should notify the relevant parties. The matter is then closed.

If you are not satisfied within the timescales, you must then notify the relevant parties of whether the matter is nevertheless now closed or whether you intend to take further action. In doing so you should consult with the relevant Independent Person.

You should report any outcomes to your standards committee.

## **What are the next steps if the informal resolution does not work?**

In certain cases, you may decide that no further action is required. For example, if the subject member has made what you consider to be a reasonable apology or has attended the training, then there is little merit in pursuing the issue even if the complainant may remain dissatisfied. An investigation should not be viewed as something that can take place after an alternative resolution has been attempted and is simply not to the satisfaction of the complainant. There is a risk otherwise that alternative resolution will not be taken seriously, and the complainant will not cooperate if it is seen merely as a precursor to an investigation.

On the other hand, where a subject member has categorically refused to comply with the proposed resolution, has failed to cooperate or has taken action you consider inadequate then you should consider whether a formal investigation is needed, or where the resolution has been proposed during or at the end of a formal investigation, whether the matter should be referred for a hearing. Bear in mind that deliberate and continued failure to cooperate with a monitoring officer who is trying to deal with a standards issue may amount to a breach of the Model Code. In deciding on next steps, you should always bear in mind the public interest and your agreed criteria for considering whether a matter needs further investigation.

## **4. Investigations**

### **Introduction and background**

This guidance deals with good practice where it has been decided that an allegation that the Code of Conduct may have been breached merits a formal investigation.

The Localism Act does not specify how an investigation should be carried out or by whom but simply asks principal authorities to have arrangements in place to handle allegations that the Code may have been broken. In practice we would expect authorities to delegate the day-to-day handling of a formal investigation to their monitoring officer. Monitoring officers are at the heart of the standards framework. They promote, educate and support councillors in following the highest standards of conduct and ensuring that those standards are fully owned locally.



## Principles of investigation

While an investigation under the Localism Act 2011 is not covered by the right to a fair hearing under Article 6 of the European Convention on Human Rights as the outcome of any hearing will not impact upon the rights of the councillor to carry on the role as a councillor, any investigation must nevertheless abide by the principles of natural justice (*R (Greenslade) v Devon County Council* 2019). That means that the councillor must know what they are accused of and be given the opportunity to comment on the allegations.

Any investigation should therefore bear in mind some key principles:

- Proportionality. That is, the investigation should strive to be proportionate to the seriousness or complexity of the matter under investigation. Where a matter is straightforward or relatively simple, for example where the facts are not in dispute, there may be no need for any formal investigation, but a report can simply be written up (see attached table). Equally not all of the steps in this guidance need be followed in every instance of a formal investigation – a judgment must be made in each case based on its complexity and contentiousness.
- Fairness. The investigation should make sure that the subject member knows what they are accused of and has an opportunity to make comments on the investigation, including on a draft report. Again, this may depend on the nature of the complaint – for example, an alleged failure to declare an interest may be largely a factual matter which needs little or no investigation rather than one that needs to involve evidence from other parties. A councillor quickly admitting to an error may not need further detail to be probed.
- Transparency. As far as is practical and having regard to an individual's right to confidentiality, investigations should be carried out as transparently as possible – all parties should be kept up to date with progress in the case.
- Impartiality. An investigator should not approach an investigation with pre-conceived ideas and should avoid being involved where they have a conflict of interest.

## Managing conflicts of interest

A first consideration when deciding how an investigation is to be handled will be to see whether any conflicts of interest arise for you. As monitoring officer, you may have taken the decision that an allegation needs a formal investigation. It would not be a conflict of interest if you yourself then undertook that investigation. You have simply decided in the first instance that there is on the face of it a case to answer but have made no judgment. An investigation is to then establish what exactly did happen and if it does in fact amount to a breach of the code. So, there is no conflict in deciding that a matter needs investigating and then carrying out that investigation yourself.

However, there may be other areas where a potential conflict of interest could arise. For example:

- If you were asked to investigate an allegation against a councillor and you had advised them on the same issue previously, regardless of whether or not they had followed your advice;
- If you have been involved in assisting the complainant in formulating their allegation (*Her Majesty's Advocate v Alexander Elliot Anderson Salmond*)

- If you were the complainant or a potential key witness to the incident. In such situations, you should delegate the investigation to somebody else (see section on delegation of investigations);
- Where you have tried unsuccessfully to resolve a complaint informally, for example where one of the parties has refused to cooperate or refused to accept an apology (see guidance on informal resolution). In such a case there may be a perception that you have already made some judgment in the matters at hand.
- If you find that you have a direct or indirect interest in an investigation, for example if a family member or friend is involved. Instead, you should notify the subject member and the complainant so that the conflict is on the record, explaining that you will not take any part in the investigation, the reason why and who will carry out the investigation in your place.

Also bear in mind that if you do the investigation personally a conflict may arise later in the process if the matter goes to a hearing, and you are asked to act as adviser to the hearing. You may therefore wish to consider at the start of an investigation whether you would want to ask someone else to carry out the investigation if you think you would be better supporting any hearing panel (see guidance on holding a hearing). We believe that you should not conduct an investigation and advise a hearing about the same case. You therefore need to consider whether it is more important to investigate the matter and delegate the role of advising a potential hearing, or to delegate the investigative role.

## **Delegation of investigations**

Monitoring officers can delegate investigations to their deputy or to any other named individual. However, if they do, monitoring officers should maintain the function of overseeing the investigation unless they are conflicted out – see section on conflicts of interest – in which case they should make arrangements for another suitable person to oversee the investigation.

Under Section 5(1)(b) of the Local Government and Housing Act 1989, local authorities must provide you with sufficient resources to perform your duties. In many authorities, monitoring officers will be able to appoint another officer to carry out their investigation. Smaller authorities may find it useful to make reciprocal arrangements with neighbouring authorities where they do not already exist formally. This is to make sure that an experienced officer is available to carry out an investigation or supervise it, should the need arise.

Authorities may also decide to outsource the investigation to another organisation or individual. This can be particularly helpful if it is a complex investigation which may absorb an individual's time or where it is politically high-profile or contentious or where there are possible conflicts of interest and it is therefore helpful to have somebody independent from the authority carrying out the investigation. You may wish to agree a decision to outsource an investigation with an Independent Person.

Where you delegate the investigation, you should record the scope of the delegation in writing and keep this on the investigation file. This is to ensure that there is no confusion concerning the role and authority of the person delegated to conduct the investigation. You should be particularly clear about who is responsible for writing the draft and final reports. You should also have agreed timelines for delivery of the report. Where it is likely that this initial timeline cannot be met, for

example because of unavailability of people for interviews or because further issues emerge, you should have a mechanism to agree and record any extension and again you may wish to consult with the Independent Person.

If you intend to advise a hearing panel should the matter go for a hearing, you should avoid being involved in the preparation of the investigation report. However, you may want to be able to reserve the right to decide when the report is of an acceptable quality to be put to the hearing and, if the recommendation from the investigator is that there is no breach of the Code you should be clear about who signs off that report and decides on no further action. We recommend that the views of the Independent Person are also sought where no further action is being taken.

You should inform the relevant parties when you delegate an investigation or make sure that the investigator has done this, so that they know who is dealing with the case and in case they need to provide the investigator with more information.

## **Disclosure of information**

You must treat any information you receive during the course of an investigation as confidential to the investigative process until the investigation is completed unless there is a statutory requirement to disclose it, for example when there are parallel criminal investigations being undertaken. Similarly, all parties involved in the conducting of the investigation should be advised of the confidential nature of the proceedings.

## **Starting an investigation**

When you decide to start a formal investigation or receive instructions to carry out an investigation, be clear what it is you are investigating. If the initial complaint had made several different allegations be clear whether you are investigating them all or only part of the allegations. You should also be clear which parts of the Code you are investigating against although you may decide to include other or different provisions during the investigation as it develops.

Having established the scope of the investigation you should inform:

- the subject member;
- the complainant;
- the relevant Independent Person and
- the relevant town or parish council if the subject member is a town or parish councillor.

We would suggest that the notice sent to the town or parish council is sent to the parish clerk, unless sending it to the chair of the council is more appropriate because of the parish clerk's involvement in the complaint (or deputy chair if the chair is the subject member). You may wish to set out what action you consider the town or parish council should take (if any) with regards the complaint and requirements related to confidentiality given that town or parish council standing orders may require the clerk to report the complaint to the council.

You should explain to all parties what it is you are investigating and what will happen next. You should also inform the subject member that they have the right to seek the views of the Independent Person and be represented at any interviews with the investigator.

## **Conducting the investigation**

You must always be aware of your obligations under the Data Protection Act 2018, UK General Data Protection Regulations the Human Rights Act 1998 and other relevant legislation, when carrying out an investigation.

When conducting an investigation, you should be able to make inquiries of any person you think necessary. However, there is no obligation for them to respond. If you have difficulties obtaining a response, or a person refuses to cooperate with the investigation you should not let this delay the investigation but make sure that is clear in any report you write.

By law, a monitoring officer can require their authority to provide them with any advice or assistance they need to help them with their duties. However, you cannot require a parish or town council to meet the costs of any investigation into a parish or town councillor or any costs incurred by the parish or town council in providing advice and assistance with the investigation.

## **Evidence of new breaches**

During the course of an investigation, you may uncover evidence of conduct by councillors that breaches the Code of Conduct but extends beyond the scope of the investigation referred to you. Your powers as an investigator relate only to the allegation that you have been given. While that means you may consider other parts of the Code than those initially considered if they are relevant to the matter in hand, you may also uncover evidence of a possible breach that does not directly relate to the allegation you are investigating. If this happens, you should tell the person you obtained the information from that you cannot investigate the possible breach as part of your existing investigation. You should tell them that they may wish to make a separate complaint to the authority and if the authority considers it needs further action it could be subsequently added to your investigation or dealt with as a separate matter.

Alternatively, if the matters are serious issues in your view, you may wish to refer the matters to the authority yourself as a new complaint for them to make an initial assessment on through their scheme of delegation. If you hold that delegation (for example as monitoring officer) you may wish to ask someone else to take a view on whether the investigation should be extended.

## **Referring cases back to the authority**

During the course of an investigation, it may be necessary to reappraise if an investigation remains the right course of action, for example, if:

- You believe that evidence is uncovered suggesting a case is less serious than may have seemed apparent to the authority originally and that a different decision might therefore have been made about whether to investigate it or not;

- You conclude after examining the matter in detail that in fact the matters under investigation were not done by the subject member in their role as a councillor or as a representative of the authority but rather in a private capacity;
- You have uncovered something which is potentially more serious and the authority may want to consider referring it to the police, for example;
- The subject member has died, is seriously ill or has resigned from the authority and you are of the opinion that it is no longer appropriate to continue with the investigation;
- The subject member has indicated that they wish to make a formal apology which you consider should draw a line under the matter.

In this context ‘seriously ill’ means that the councillor has a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. This might be a terminal illness or a degenerative condition. You would be expected to establish this from a reliable independent and authoritative source other than the subject member. This would include where a councillor claims they are suffering from stress brought on by the investigation.

Ultimately it will be for the monitoring officer (or as otherwise defined in the authority’s procedures for handling complaints) to conclude whether the investigation should continue. In reaching that decision, the authority should consult with the Independent Person before deciding to defer or end the investigation.

If the matter has been deferred or ended you should notify the subject member and the complainant of the decision and provide timescales within which the matter will be dealt with if it has been deferred. This would not always be appropriate, however, particularly if the matter has been referred to the police.

## **Deferring an investigation**

An investigation should be deferred when any of the following conditions are met:

- There are ongoing criminal proceedings or a police investigation into the councillor’s conduct;
- You cannot proceed with your investigation without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceeding;
- Your investigation might prejudice another investigation or court proceeding.

An investigation may also need to be deferred:

- when there is an ongoing investigation by another regulatory body;
- because of the serious illness of a key party;
- due to the genuine unavailability of a key party.

When it is clear that there is an ongoing police, or other investigation, or related court proceedings, you should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings. It may be helpful to have an agreed Protocol with the local police about

handling overlapping cases as the police may want you to carry on your investigation in the first instance.

If at any time during the investigation you become aware of any circumstances that might require the investigation to be deferred, you should normally notify the subject member of this but again you would need to be careful where there are other proceedings ongoing. If you are not the monitoring officer, you should notify the monitoring officer and seek their consent to the deferral. You or the monitoring officer may also wish to consult with the Independent Person.

The decision to defer an investigation should be taken by the monitoring officer. If you have asked someone else to carry out the investigation, they will need to gather sufficient information from the complainant, subject member, and from the police or other organisation involved, to enable you, as the monitoring officer, to come to a decision. You may wish to seek legal advice at this stage. The reason for the decision to defer should be specifically set out in the investigation file with supporting documentation attached.

In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another investigation or court proceedings. The investigator should highlight those areas where investigation may be possible in the investigation plan.

In some cases, it will be possible to investigate the alleged conduct in parallel with another investigation, for example where the Local Government and Social Care Ombudsman is investigating an authority's decisions and you are investigating the conduct of an individual councillor involved in making the decision. You may need to work closely with the other organisation and agree the steps that each party will take.

You should ask the police, other relevant organisation or individual in writing to keep you informed of the outcome of any police or other investigation, court proceedings or other relevant matter. You should note any important dates, for example of committal hearings, in the investigation plan review. In addition, you may wish to make further contact with the police, other body or individual to ask for an update on the matter.

A deferred investigation should be kept under regular review, in the interests of natural justice. You may wish to seek legal advice at regular intervals, for example every three months, from the date of the deferral decision about the reasonableness of continued deferral.

Once a decision is taken to begin the investigation again you should notify in writing:

- the subject member;
- the complainant;
- the relevant Independent Person; and
- the relevant town or parish council if the subject member is a town or parish councillor.

You should also review the investigation plan in light of the outcome of any police investigation or court proceedings.

## **Confidentiality**

You should treat the information that you gather during your investigation as confidential. This will help ensure that your investigation is seen as fair. Maintaining confidentiality reduces the risk of evidence being viewed as biased and preserves the integrity of the investigation.

We recommend that you also ask the people you interview, and anyone else aware of the investigation, to maintain confidentiality. You should remind councillors of their obligations under the Code of Conduct regarding the disclosure of information that they receive in confidence.

Members of the public are not covered by the Code of Conduct. A person making an allegation about a councillor is under no responsibility to the subject member to keep that complaint confidential, but if they do decide to publish the complaint and it is untrue then the complainant may well expose themselves to an action for defamation.

When the complaint has been received by the authority, the authority is then a data controller in respect of the personal data contained within the complaint and also a body subject to the FoIA.

Were the authority to receive a subject access request (SAR) from the subject member, then the response is likely to be that the complaint will be disclosed to the subject member anyway for comment. Schedule 2 s.7 of the Data Protection Act 2018(DPA) includes an exemption from DPA rights where the function is designed to protect members of the public against dishonesty, malpractice or seriously improper conduct and the function is of a public nature. Local authority investigations are likely to fall under this scope and therefore relevant articles of the UK GDPR including subject access (article 15) do not apply.

There is of course an exemption against disclosure of third-party personal data, but the complainant can be assumed to have agreed to the processing of their own personal data. Some thought needs to be given as to whether other third-party data needs to be redacted, but sufficient information does need to be provided to the subject member to allow them to comment on the complaint.

If a request for information about the complaint was received under the FoIA from a third party, then there would be clear grounds for refusing that request during an ongoing investigation.

If you receive a request from a journalist for example, who is asking if a councillor is under investigation for a specific issue, it would be reasonable to confirm or deny the fact but explain that no further comment can be made until the investigative process is complete.

Any draft report that you issue on the outcome of the investigation should be marked as confidential. This is to preserve the integrity of any further investigation that you may need to undertake.

## **Timescales for an investigation**

There are many factors that can affect the time it takes to complete an investigation. Nevertheless, it is important that there are realistic targets from the outset for the completion of an investigation. This allows the monitoring officer to monitor the progress of investigations and explore reasons for any delays where they have delegated the investigation. We recommend that most

investigations are carried out, and a report on the investigation completed, within a maximum of six months of the original complaint being referred for an investigation.

This will not always be possible, particularly where there is overlapping jurisdiction or you are waiting for a key piece of evidence from an external body but if it is to take longer than that, specific permission should be discussed between the monitoring officer and the Independent Person, and a note made as to the reasons why.

Refusal by the subject member or other relevant party to cooperate, for example by not making themselves available for an interview without good reason, should not be a reason for delay but should be reflected in the report. If the subject member refuses to cooperate that of itself is a potential breach of the Model Code and may be something that any decision maker in a case may want to take account of.

## **Draft reports**

The investigator should produce a draft report. If they are not the monitoring officer, they should share the draft initially with the monitoring officer and the independent person so that they can satisfy themselves that the investigation is of an acceptable standard and met the scope of the complaint. Once the monitoring officer is satisfied, the draft report should then be sent to the relevant parties with a deadline for commenting.

Where criticism is made of a third party (for example a witness) who will not otherwise have an opportunity to comment on a draft report then a Maxwellisation process (Maxwellisation is the process by which people who may be subject to criticism in public reports can comment on those proposed criticisms before the report is published) should be followed before a draft report is completed.

You are under no obligations to accept any comments made but where you do not accept comments you should make a note explaining why. Exceptionally you may need to issue a second draft if there have been significant changes.

## **Completion of an investigation**

On completion of an investigation, the monitoring officer may decide:

- to take no further action;
- to seek to resolve the matter informally; or
- to refer the matter to a hearing if it is part of the authority's procedures to refer the matter to a separate hearing by a panel or standards committee (see guidance on hearings).

In doing so the monitoring officer must consult with the relevant Independent Person.

In general, the investigation should be regarded as completed when the monitoring officer receives the final report and accepts that no further investigation is necessary.

## **Purpose of the report**



The report should be treated as an explanation of all the essential elements of the case and a justification for why you have concluded there has been a breach or not. The report should cover:

- agreed facts;
- any disputed facts together with your view, if appropriate, as to which version is more likely;
- whether those facts amount to a breach of the code or not; and
- your reasons for reaching that conclusion.

## **Final reports**

The final report should be issued by the monitoring officer and must be sent to:

- the subject member;
- the complainant;
- the relevant Independent Person;
- the relevant parish or town council of which the subject member is a councillor.

The report must make one of the following findings on the balance of probabilities:

- that there have been one or more failures to comply with the Code of Conduct;
- that there has not been a failure to comply with the Code.

If the monitoring officer considers that there has been no breach of the Code, that should usually be the end of the matter though they may want to send the report or a summary to the standards committee where you have one for information purposes only or to consider wider lessons.

If the monitoring officer considers that there has been a breach of the Code, the monitoring officer will decide what action, if any, to take and notify the relevant parties. For example, they may decide to seek an informal resolution at this stage or decide that the matter is merely a technical breach which will not lead to any sanction. In doing so the monitoring officer should consult with the independent person.

If the monitoring officer decides the matter should be referred for a hearing, the report should be accompanied by information explaining that a hearing will be held and the procedure to be followed. (see guidance on holding a hearing)

## **Publishing a report**

Where a matter has been referred to a hearing you do not need to publish the report as that will be dealt with at the Hearings Stage.

Where you have concluded that there has been no breach, that no further action is needed, or the matter has been resolved in some other way you do not need to publish the investigation report but you should report the matter to your standards committee. If the matter has generated local interest you may consider putting out a brief statement explaining the outcome and your reasoning. The report may also be disclosable under a Freedom of Information request but that would need to be

considered depending on the content of each report, the need to redact personal information and careful consideration given to the public interest test as to whether it should be disclosed or not.

## **Report checklist**

Your report should contain the information listed below.

- a 'confidential' marking
- a 'draft' or 'final' marking
- the date
- the legislation under which the investigation is being carried out
- a summary of the complaint
- the relevant sections of the Code
- evidence
- your findings of fact
- your reasoning
- your finding as to whether there has been a failure to comply with the Code.

The level of detail required will vary for each report, depending on the complexity of information to be considered and presented. The report should, however, contain documents that you have relied on in reaching your conclusions. These may include:

- a chronology of events
- summaries of conversations, correspondence and notes of interviews with witnesses.

In addition, the covering letter you send with the draft report should explain that the report does not necessarily represent your final finding. You should also explain that you will produce a final report once you have considered any comments received on the draft report.

When you send the final report, you should also explain that the report represents your final findings and, if it is to be subject to a hearing, it will be for the panel to decide if they agree with your view or not. It is important that the report has the date of its completion on the front page. This provides clear evidence of when the time within which a hearing should be held begins.

The date of the hearing should be within three months from the date the monitoring officer, or delegated officer, completes the final report (see guidance on hearings).

There should be no appeal allowed either for the subject member or the complainant. Where a breach has been found and the matter is going to a hearing the parties will have their chance to have their say on the investigation at that stage. Where no breach has been found, no action taken or the matter otherwise resolved, that will be the end of the matter.

## **5. Investigation practicalities**

### **Outsourced investigations**

There are a number of reasons why you might outsource an investigation. This may be because of the complexity of the matters means that you want an experienced investigator to carry out the investigation. High-profile or politically contentious cases may require a greater degree of independence from the authority to be demonstrated. It may also be because the authority's investigatory resources internally are limited or at capacity due to other workloads.

In addition, most successful investigation report writers have experience of writing reports for lay people or councillors. They understand that their reports need to be clear enough for someone with no legal background to understand how they reached their decision. They also need to be clear enough to show what factors were taken into account when reaching that decision. You would need to consider if you have that capacity in your organisation.

Objectivity is also important. It may be difficult for an officer to consider whether a colleague was bullied or treated disrespectfully for example. There will be cases when an officer can investigate a complaint where a colleague is the complainant. However, this can only be done if you are sure that they have the necessary impartiality to conduct the investigation, with no perception of bias.

It is important, however, to stay in control of outsourced investigations. To do so you will need to do the following:

1. Agree the scope of any delegation. In particular be clear who has responsibility for preparing the investigation report and if necessary, presenting it to a hearing panel;
2. Agree the scope of the investigation. In particular be clear what allegations are being investigated and what should happen if the investigator discovers evidence of further potential breaches of the Code of Conduct;
3. Agree a firm deadline. You need to agree when the case will be completed and consider whether there will be any financial implications if the case is not completed on time;
4. Agree interim deadlines. You should agree when you will receive key pieces of work including the investigation plan, the draft report and the final report. If the investigating officer is new, then you may wish to programme in regular investigation updates;

Agree the payment structure. You may want to consider how you structure the payment for investigations. It is not unreasonable to pay per stage of work completed, and for any additional investigative stages to be agreed as and when they occur.

## **Start of an investigation**

Draw up an investigation plan. This will help focus you on making the investigation as effective as possible. The plan should include:

- The complaint made against the subject member. You may find it necessary to seek clarification from the complainant;
- The paragraphs of the Code of Conduct that may have been breached. Please note that you do not need to accept the complainant's interpretation of what paragraphs may have been breached. It is helpful to breakdown each potential failure to comply into the component parts of each provision. For example, in considering whether a councillor has misused their position improperly to gain an advantage you may need evidence to demonstrate that:

- 1) the councillor used their position;
  - 2) the councillor used their position improperly;
  - 3) the councillor conferred or attempted to confer an advantage or disadvantage.
    - The facts which need to be determined to establish if the councillor breached the Code and to decide what the appropriate finding might be. They need to include:
      - 1) facts which would establish if the conduct happened as alleged;
      - 2) facts that would need to be proven to show that the conduct constituted a breach of the Code;
      - 3) facts which might aggravate or mitigate the alleged breach, for example, provocation or an apology.
- 
- The evidence that you would need to determine the issues outlined in your plan. This includes who you will need to interview and why;
  - The evidence that has already been supplied by the complainant;
  - How you plan to gather any further evidence you are likely to need;
  - Any documents you are likely to need to see such as minutes of meetings or register of interest forms and you can get them from;
  - If you are not the monitoring officer and are doing the investigation under delegation, make sure you have confirmation on the extent and scope of the investigation and build in check-in points with the monitoring officer on progress;
  - How long you think it is likely to take you.

If at any stage in the investigative process there are significant changes to any of the above areas, an investigation plan review may need to be completed.

Contact the complainant and subject member to advise them of your contact details and provide them with a preliminary timescale for the investigation. You should also remind the subject member of their right to seek the views of an Independent Person.

At the end of your investigation, you should have documents which chart the approach you took to the investigation, the reasons for this approach, and when you changed your approach if appropriate. You do not need to share these documents with the parties involved in the investigation – they are for you to use as you wish. Their main function is as a planning tool, but they also provide an audit trail should your investigation be the subject of a complaint or review.

## **The investigation**

### **Information requests**

Documentary evidence should be sought before you conduct any interviews and at the earliest opportunity. The list in your investigation plan should form the basis of the first contact you make with the parties and other witnesses.

You may invite the subject member to provide an initial response to the allegation in writing when first making written contact with them. This gives councillors the opportunity to admit to the breach if they would like to do so, and could then save time and effort for all involved. A written response may also provide you with additional useful information before the interview stage.

Where you make a specific request for information this should be made in writing, even if the initial contact is made by phone. Explain the authority you have for asking for the documents and the broad purpose for which you need the document, for example 'an investigation into the conduct of Councillor X'. You do not need to provide the detail of the complaint against the councillor at this stage. You should also outline the confidentiality requirements that relate to the information request and set a deadline for response.

In certain cases, you may wish for a subject member or other party not to be made aware of a request for evidence. For example, if you consider that this might lead to destruction of evidence by one of the parties or to the improper collaboration of witnesses. In such circumstances it may be appropriate to arrange to meet with the witness, having given them a brief outline of your role. You can then make your request for the relevant documents during the meeting. It is important here that you explain what powers you have to obtain information. If in doubt, it may be prudent to seek legal advice on how to proceed.

If the request for information is refused it is likely to prove time consuming and legally complex to try to pursue the matter. It may be easier to see if there is another route to obtaining the same information.

## **Interviewing**

Your goal in interviewing is to obtain the most informed, reliable evidence possible. It is not to ambush or catch out interviewees.

### **Order of interviews**

You may have spoken the subject member initially for their initial reaction, but you will normally interview the subject member again formally at the end of the investigation, when you have gathered all your evidence, if they have not admitted to the breach at first contact. This will give you the opportunity to put that evidence to the subject member and obtain their responses to it.

Where practicable it may be best to carry out consecutive interviews on the same day if you are concerned that witnesses may collude or use information provided to them.

You may also wish to re-interview the complainant near the end of the investigation on the same timescale as you are interviewing the subject member. This may allow you to get them to agree facts. It also gives them an opportunity to comment on issues that have been raised during the

course of the investigation and provides an opportunity to present potential inconsistencies to the relevant parties for comment.

## **The format of the interview**

It might be more appropriate to conduct face-to-face or virtual interviews than telephone interviews if:

1. the matters involved are sensitive;
2. the interviewee is vulnerable;
3. you or they will need to refer to multiple documents during the interview;
4. the interviewee wishes to have a representative or colleague present;
5. the interview is with the subject member.

It may be more appropriate to conduct a telephone interview if:

1. there are significant resource implications, either in terms of cost or time in conducting a face-to-face interview;
2. the interview does not fall into one of the categories outlined above.

If a subject member or witness insists on a face-to-face interview, then serious consideration should be given to their request. You should specifically check that there is no medical or disability-related reason for their request. If there is, then you should conduct a face-to-face interview. If there is no medical or disability-related reason, then the decision is at your discretion. If you still wish to proceed with a telephone interview despite their request, then you should outline your decision in writing on the file. This is to show that it was both proportionate and reasonable.

Do not conduct joint interviews. It is important that each witness gives their own account without having their recollection influenced by hearing another person's account. An interviewee may, however, have a friend or adviser present. If so that person should not be someone who is a witness, and they should be asked to keep the matters confidential. If an interviewee is a vulnerable person or a minor, you may wish to ensure that you are accompanied by another person.

## **The venue**

If you are conducting a face-to-face interview, try to ensure that the venue is:

1. mutually convenient on neutral territory – this would generally include local authority offices but this may not always be appropriate;
2. in a private room where you cannot be overheard;
3. a place where the interviewee will feel comfortable and is unlikely to be seen by people whose presence may intimidate or upset them, for example, the complainant or subject member;
4. is safe for you, the investigating officer - please refer to any authority policy on lone working.

Occasionally it may be appropriate to conduct an interview at the home of the interviewee. This should generally be at the request of the interviewee, but you should only do this if you feel safe and there is no suitable alternative.

## **Information you should provide interviewees**

You should provide the following information in writing to the interviewee:

1. Confirmation of the agreed time, date and venue or that it is a telephone or virtual interview.
2. Confirmation that the interview will be recorded, if appropriate.
3. Confirmation that the interviewee can have a legal or other representative with them, but that the representative must not be a potential witness in the investigation. Ask that they provide you with the name and status of their representative before the interview.
4. Why you are conducting the interview.
5. How the information they give you in the interview may be used.
6. The circumstances in which the information that they give you during the interview may be made public.
7. The confidentiality requirements that they are under as an interviewee.
8. Details and copies of any documents you may refer to during the interview.
9. In the case of the subject member, details and copies of any evidence you have gathered and which you may refer to in your report.

You do not have to disclose witness testimony prior to the interview, depending on the nature of that testimony and whether you want the interviewee's account prior to putting the witness's testimony to them. However, you may wish to disclose a witness's testimony during an interview once you have obtained the interviewee's own account.

You could also consider providing an outline of the areas you intend to cover at interview.

Note: if you only need to confirm one or two factual details with a local authority officer you may contact them by phone and do not need to forewarn them. However, when obtaining this information, you should:

1. orally outline all of the information you would otherwise have provided in writing as set out above;
2. check that they are happy to give it to you then, rather than at an agreed date in the future;
3. confirm the detail of information they do provide, in writing.

## **Special circumstances**

If an interviewee has additional needs, for example a disability (seen or unseen) or language barrier you should make reasonable provisions to cater for their specific needs. If an interviewee is vulnerable or a minor, then they should always be accompanied by a third party at the interview.

## **Structuring an interview**

Interviews should be planned in advance. You can plan your questions using the following suggested format:

1. Divide the information you require into discrete issues. For example, **Issue 1:** The planning meeting on date x; **Issue 2:** The planning meeting on date y.
2. Make a note of the evidence you have already obtained about each issue.
3. Note how you would briefly summarise the evidence to the interviewee.

## **Conducting the interview**

All important interviews should be recorded where possible or else detailed notes taken which are agreed afterwards with the interviewee. The only exception is when the interview is likely to cover only a small number of factual matters. In this case, it may be more appropriate to resolve these factual matters in writing. Before recording an interview, you should:

1. obtain the consent of the interviewee before you start recording the interview;
2. ask them to record their consent on the record once you have started and; offer to send the interviewee a copy of the transcript or draft interview statement, whichever is applicable.

If they ask, you can send them a copy of the recording too. If you are concerned that the interviewee may share the transcript with other witnesses, you can delay sending the transcript or recording until you have completed all of your interviews.

The interviewee should not normally be allowed to make a recording of the interview. This is to prevent collusion between interviewees and any possibility of record tampering.

Interview recordings should be destroyed as soon as a transcript of the interview has been produced and agreed as accurate.

## **At the start of the interview**

When the interviewee arrives, try and put them at ease;

1. Before you start the formal interview, inform the interviewee that there is a standard interview preamble that you must take them through. This ensures that any rapport you have established is unlikely to be lost when you take them through the legal framework of the interview;
2. Confirm that the interview will be recorded and put the recording device in a visible place on the desk;
3. With their permission start recording;
4. Ask them to confirm for the record that they consent to the recording;
5. Confirm for the record who you are, and why you are conducting the Interview;
6. State the date and time for the record;
7. Confirm that they received your letter outlining the arrangements for the interview;
8. Confirm that they read and understood your letter and ask if they have any questions about any of the information within it;



9. If the interview is with the subject member, repeat orally all of the information contained in your letter;
10. If the interviewee is at all unclear about anything, then repeat orally all of the information contained in your letter;
11. Explain that they can take a break whenever they choose;
12. Explain that you will offer them a break if the interview goes over an hour, even if they have not said that they want one;
13. Tell them how long the interview is likely to take and ask them if they have a time by which it needs to end;
14. Explain that they can ask you to rephrase a question if they don't understand it.

## **During the interview**

1. Start the interview with the subject member with some background questions. These could include 'how long have you been a councillor, or 'what training have you had on the Code of Conduct?'
2. Do not ask multiple questions. Ask one question at a time, and do not ask another question until the interviewee has answered your first question;
3. Do not dart back and forth between different issues as you are liable to confuse yourself and the interviewee;
4. Tackle one subject issue at a time;
5. Ask open questions about information the interviewee or other witnesses have provided about the issue;
6. Drill down. In other words, ask open questions about one specific issue until you have all the information you need on it;
7. Where relevant ask the interviewee to reconcile differing accounts;
8. Ask closed questions to confirm the information you have obtained about the specific issue;
9. Move onto the next issue using the same method. Start with a broad open question about the subject, drill down for information with specific open questions. Conclude the area by asking closed questions to confirm what you have been told;
10. Do not ask leading questions, for example, 'You said this to the clerk, didn't you?';
11. Do not ask the interviewee to speculate;
12. Accurately put the evidence of other interviewees to the interviewee and ask for their response;
13. When asked, explain the relevance of your question;
14. Do not allow the interviewee's lawyer or representative to answer a question;
15. You must allow the interviewee to stop and obtain advice whenever they choose;
16. If the interviewee becomes upset or unwell you must offer them a break;
17. Never raise your voice. Only interrupt if the interviewee is being unreasonable or is not providing relevant information;
18. You should be mindful of avoiding oppressive or repetitive questioning. If an interviewee will not properly answer a question, despite significant attempts to obtain a satisfactory response, then you should move on to another point or issue;
19. Do not question the subject member about matters which fall outside the scope of the complaint;

20. If the interviewee wants a break, record the time of the break on the record and the time you resume the interview. Ask the interviewee to confirm for the record that you did not discuss anything about the case with them during the break.

## **Closing the interview**

1. State the time the interview finished;
2. Thank the interviewee for their time and outline what will happen next;

## **After the interview**

1. Send the interviewee a copy of the transcript;
2. State in the letter that if you do not hear from them by a specified date, you will assume the transcript is agreed;
3. If the content of the transcript is disputed, check the discrepancies against the recording;
4. If the transcript is confirmed by the recording, write to the interviewee to inform them of this. In these circumstances, if the matter is referred to a hearing, submit the transcript, the recording, the interviewee's letter outlining the dispute, and your response.

## **Evaluating the information after an interview**

1. Review your investigation plan in light of the information gathered during the interview;
2. Review all the evidence you have gathered to determine if there are any gaps in it;
3. Take a view on all disputed relevant matters. Your own opinion on the evidence is sufficient. However, if you are unable to come to a decision, you may need to seek further information or decide that you are unable to reach a conclusion;
4. Weigh up all the evidence and decide if the alleged conduct occurred;
5. If you decide that the subject member acted as alleged, you will need to consider whether their conduct involved a failure to comply with the Code of Conduct;
6. If you decide the subject member breached the Code, consider whether you have evidence of any mitigating or aggravating circumstances. If not, you may need to seek further information.

## **Drafting the report**

When you have concluded your investigation, you will need to write up your findings in a report which should contain the following information:

1. who the report is for;
2. who the report is by;
3. the date of the report.

## **Executive summary**

This should include:

1. the full allegation and who it was made by;

2. the provisions of the Code of Conduct that were considered;
3. a conclusion as to whether there has been a failure to comply with the Code the finding;
4. any relevant extracts from the Code and any other legislation or protocols considered in the report.

## **Evidence gathered and the investigator's consideration**

1. Set out all the relevant evidence you have gathered even if it does not support the conclusions you have reached;
2. State what you consider has taken place based upon your evaluation of this evidence;
3. Set out undisputed facts as facts. Do not summarise them or preface them 'he said' or 'the minutes state'. If they are undisputed just state them as fact.
4. Where there is a disputed fact, outline the different views and your conclusion on them. You need to form a conclusion based on the balance of probabilities. Also state why you have reached this conclusion. For example:
  - The clerk, Councillor Jones and Councillor Smith met at Councillor Jones's house on y date at x time;
  - At interview the clerk stated that Councillor Jones said.....
  - At interview Councillor Smith stated that Councillor Jones told the clerk...
  - At interview Councillor Jones stated that he told the clerk...
  - I have considered the following issues when deciding what Councillor Jones said to the clerk... I consider at on the balance of probabilities Councillor Jones told the clerk...because...
5. Include any mitigating or aggravating factors, such as the state of mind of those involved.
6. When you refer in the report to material in the evidence bundle, identify the document referred to.

## **Summary of the material facts**

Summarise the facts needed to confirm the conclusions you have reached. Where there was a disputed fact, you will only need to include the conclusion you came to.

If the subject member has made additional submissions which you do not consider relevant to the case outline why you do not deem information or opinions submitted by the subject member to be relevant.

## **Reasoning as to whether there has been a failure to comply with the Code of Conduct**

1. Make each alleged breach in turn.
2. Outline which part of the Code of Conduct you are considering. Explain the test you are applying when determining if there has been a failure to comply with the Code.
3. Explain in detail, giving reasons, why you do or do not consider that the conduct constitutes a breach of the Code.

4. Do not introduce any new facts or opinions. You must only refer to evidence or opinions that have been outlined earlier in the report.

Make sure your explanation of the test you are applying, and the reasons for your conclusions, are detailed and clear enough to understand for a lay person with no legal background.

## **Finding**

You should make a finding about each alleged breach of the Code:

1. Outline in detail the reason for your decision
2. Refer to aggravating or mitigating facts, which must be outlined in the facts section earlier in the report.

## **Schedule**

Your report should include any documents taken into account:

1. Exhibit all the evidence upon which you have relied when reaching your conclusion;
2. In complex cases it may be appropriate to provide a chronology;
3. Provide a list of unused material if appropriate.

## **Issuing a draft report**

You should send a draft report, sending a copy to the subject member and the complainant and inviting their comments by a specified date. If you have carried out an investigation on behalf of the monitoring officer, you should first of all make sure they are happy that the draft is to an acceptable standard.

The draft should not be sent to other witnesses or parties interviewed, but you should seek confirmation of their evidence from them before issuing the report.

Ensure that the draft report is clearly marked as 'Draft' and 'Confidential' (though it can be discussed with a legal representative) and make clear that the report may be subject to change and does not represent your final conclusion.

If you have found the subject member in breach, make sure that the evidence that you have relied upon when reaching this conclusion is clearly marked in the report.

You must consider whether any of the information in the draft report is sensitive personal information that should not go into the public domain, for example, medical reports details or personal contact details. Information of this nature should be edited from the draft and final report unless it is essential to the reasoning.

## **Comments on the draft**

Responses to your draft may reveal the need for further investigation, or they may add nothing of relevance. Occasionally changes may be significant enough for you to consider issuing a second draft.

Once you have considered whether the responses add anything of substance to the investigation, you will be able to make your final conclusions and recommendations.

Where comments on the draft are critical of the investigation or the investigator, you may need to consider how to respond to the complaints made. You should not let such criticisms prevent a draft report being finalised, however, unless this is unavoidable. In particular, the investigation process, including writing the report, should not be suspended while a complaint about the investigation is dealt with. Complaints about the conduct of investigators should be dealt with in the same way as other service complaints.

You should keep a written record of your consideration of any comments received on the draft. It is best practice to provide a written response to the party explaining your position or referring them to the relevant paragraph of the report. This can be done when they are sent the final report. You should avoid getting drawn into lengthy correspondence with the subject member or other interested parties where they disagree with the draft. You should confine comments to matters of fact rather than personal opinions as to how the investigation was done or the opinion you have reached. However, you will need to show that you took all reasonable steps to address concerns.

If you receive further comments after the final report has been issued you should explain that the investigation is now closed and refer them to the person who is dealing with any hearing if appropriate.

## **The final report**

You must state that the report represents your final finding. If you have found the subject member in breach you should make sure the reasoning for that conclusion and any supporting evidence is clear. You must consider whether any of the information in the report or evidence bundle is confidential information that should not go into the public domain, for example, medical details, personal contact details or signatures. All information of this nature should be edited from the final report unless it is essential to the reasoning.

You should send the final report to the monitoring officer if you are not the monitoring officer who will then issue the report. If you are the monitoring officer, you must send your report to:

1. The subject member
2. The Independent Person

A copy may also be made available to the complainant and others as you think appropriate.

The monitoring officer must decide whether:

1. There has been no breach and therefore no further action will be taken;
2. There have been one or more breaches, but no further action is needed;

3. There have been one or more breaches, but the matters should be resolved in a way other than by a hearing; or
4. That the matters be referred to a hearing.

This should be made clear in the letter accompanying the report and if the monitoring officer decides that the matter should be referred to a hearing panel, they should arrange for that to happen as soon as possible (see separate section on hearings). The letter should also make clear what if any aspects of the report are confidential but that it can be discussed with a legal representative. If the matter is being referred to a hearing it should be made clear that the whole report remains confidential until the time of the Hearing to avoid prejudicing any considerations.

## **Confidentiality during the investigation**

While it is important during the course of an investigation to preserve confidentiality so as not to compromise the integrity of the investigation, in practice in some circumstances, maintaining the confidentiality of an investigation can be difficult. However, it is important that you take all reasonable steps to maintain the confidentiality of your investigation, as failure to do so may compromise the investigation. To help maintain confidentiality:

1. Mark all of your letters, transcripts and reports as confidential;
2. Outline why you have marked it confidential but clearly inform subject members in writing that they can appoint a solicitor, or other person, to act as their representative. You must also clearly inform them that they can disclose any relevant document to this representative.
3. You should state that their representative should not be someone who may be involved in the investigation;
4. It is important that you make it clear to all parties that they should make any approach to witnesses in writing. This is to avoid confusion that might arise about the investigative process;
5. When arranging interviews ask interviewees to identify the name of any person who is accompanying them to the interview. Also ask them to state what their relationship is to the interviewee. You should explicitly state, in writing, that they should not be accompanied by anyone who may be called as a witness in the investigation;
6. If you think it is possible that witnesses may discuss their testimonies with each other, you should not send the transcripts of any interviews until all of the interviews have been concluded. This may mean that you send interview transcripts out with the draft report;
7. Where you are interviewing a number of people who have close relationships with one another, it may be prudent to interview them immediately after each other. This reduces any opportunity for collaboration.

If confidentiality is breached you should write to the party reminding them of the confidentiality requirements and, if they are a councillor, of their duties under the Model Code of Conduct. If you have evidence that information was disclosed to a party prior to their interview, you can take this into account when evaluating the reliability of the witness's evidence. If the disclosure was made by a councillor, you can consider making a formal complaint about their conduct.

## **6. The hearings process**

Once a formal investigation has taken place, the monitoring officer may refer the matter to a hearing.

There is no prescription in the legislation that says a matter has to go to a hearing or how that hearing may be conducted. Whatever approach you decide to take it must follow the rules of natural justice and comply with the obligations to ensure a fair hearing under Article 6 of the Human Rights Act. In line with the principle of proportionality the approach you take may depend upon the seriousness of the issue. For example, if you are satisfied that the investigation has allowed all sides to have their say the panel may simply review the report without further reference to the parties.

This guidance is written however on the presumption that a hearings panel of some form, consisting of elected councillors, will be convened.

The legislation stipulates that, where it is a town or parish council case, the matter is dealt with by the principal authority.

Throughout this guidance we will refer to panel, but by that we mean a committee or a sub-committee which the local authority (or a committee, such as an Audit or Standards Committee) has delegated responsibility to determine the outcome of certain complaints that individual councillors have breached the Code of Conduct.

## **Convening a hearing**

At the end of the investigation, a hearing may be called where the investigator has concluded that there has been a breach of the Code of Conduct and the monitoring officer has concluded that the matter cannot otherwise be resolved informally (see guidance on informal resolution).

For reasons of fairness and proportionality a hearing should wherever possible take place within three months of the date on which the investigator's report was completed. Where that is not possible, for example because the matter is awaiting the outcome of other matters being dealt with by outside bodies or other investigations into the subject member, the monitoring officer should notify the relevant parties of the reason for the delay and provide an estimated timescale.

However, the hearing should not take place sooner than 14 days after the investigation report has been issued unless the subject member agrees. This is to allow them sufficient time to prepare their defence and consider any witnesses they may wish to call for example (see section on the pre-hearing process below)

Once a date has been set for a Hearing the monitoring officer should notify:

- the subject member;
- the investigator;
- the relevant Independent Person;
- the complainant if appropriate;
- the clerk of any relevant town or parish council.

They should also outline the hearing procedure; the subject member's rights and they should additionally ask for a written response from the subject member within a set time. This is to find out whether the subject member:

- wants to be represented at the hearing
- disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements
- wants to give evidence to the hearing, either verbally or in writing
- wants to call relevant witnesses to give evidence to the standards committee
- wants to request any part of the hearing to be held in private
- wants to request any part of the investigation report or other relevant documents to be withheld from the public.

The investigator should also be asked if they wish to call any witnesses.

If the subject member is unable to make the specified date the panel may arrange for the hearing to be held on a different date, provided that they are satisfied that the subject member has given an acceptable reason. Where the subject member does not give an acceptable reason or does not reply within a specified time, the panel should proceed with the date and may consider the report in the subject member's absence if the subject member does not go to the hearing. The subject member should not be able to evade having the case heard simply by refusing to cooperate and the Model Code makes failure to cooperate a potential breach. However, the panel should make clear at the start of the hearing that they have considered whether they can proceed in the absence of the subject member and should record their reasons.

If one or more witnesses are unavailable on the given date the monitoring officer, in consultation with the chair of the panel, should decide how material they would be to the hearing and whether another date needs to be looked for. Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect although it may be that their views were already sought as part of the investigation so the panel would need to evaluate how they could proceed without them. Witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

Except in the most complicated cases, the panel should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. When scheduling hearings, you should bear in mind that late- night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to repetition or important matters being forgotten.

## **Role of the monitoring officer**

It is important that the panel receives high quality, independent advice. For this reason, a monitoring officer should be the main adviser to the standards committee, unless they have an interest in the matter that would prevent them from performing this role independently. This may be because they have carried out the investigation or have another conflict (see guide on investigations). If this situation arises, a monitoring officer should arrange for another appropriately qualified officer to advise the standards committee.



The monitoring officer or other legal adviser's role in advising the panel is to:

- make sure that members of the standards committee understand their powers and procedures
- make sure that the procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible
- make sure that the subject member understands the procedures the panel will follow
- provide advice to the panel during the hearing and their deliberations.
- help the panel produce a written decision and a summary of that decision.

Monitoring officers play an important role in advising their councillors on a day-to-day basis. When performing this role, monitoring officers need to be aware of the potential conflicts of interest that can arise, as these conflicts could prevent them from advising the panel at a later stage.

Monitoring officers will need to be aware of the potential conflicts involved in investigating a matter, advising the panel and advising councillors (see also guidance on investigations).

However, conflicts of interest are not likely to arise simply from informal discussions between councillors and monitoring officers.

You may wish to consider options for reducing the likelihood of such conflicts, including:

- arranging for another officer to advise councillors
- continuing to advise councillors, while identifying possible scenarios that may lead to future conflicts.

You should also ensure that if your advice could be relevant to an investigation, you have another appropriately experienced officer who is prepared to support the panel in its hearings and deliberations.

Smaller authorities in particular may find it useful to make arrangements with neighbouring authorities to make sure that when a conflict arises, an appropriately experienced officer is available to advise the panel.

## **Composition of the panel**

The panel should be drawn from the main body of the standards committee. If the panel includes independent representatives or parish representatives, they do not have voting rights by law.

You will need to be clear whether political proportionality applies to the panel or whether it has been waived by the local authority.

All panel members should have undergone suitable training.

## **Holding a pre-hearing**

As soon as a date has been set for a hearing the panel should hold a private pre-hearing. This could be done in writing or just between the monitoring officer and the Committee chair for expediency. The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself. The pre-hearing should also decide who will chair the panel.

At the pre-hearing the panel should:

- Decide whether any of the findings of fact in the investigation report are in dispute and, if so, how relevant they are likely to be at the hearing. For example, if the dispute is about the time of a particular conversation but that time is not relevant to whether the Code has been breached or not, there would be little point focussing on that. On the other hand, if that alleged discrepancy were material the panel needs to satisfy itself how it would resolve that difference at the hearing.
- Consider any additional evidence it considers is required at the hearing.
- Identify any witnesses it thinks it would want to hear from.
- Decide if witnesses which the subject member or investigator may want to call are relevant bearing in mind the nature of the issue and the need for proportionality. For example, if an incident has occurred at full council there would be no need to call every member as a witness but equally the panel may feel it needs to hear from a couple of witnesses representing different sides. Similarly, if the subject member decides to call a number of character witnesses the panel should take a view as to how relevant that is and how many would suffice.
- Consider whether there are any parts of the hearing that are likely to be held in private or whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain ‘exempt’ material (see section on confidentiality below) though the final decision will rest with the panel on the day. The presumption should be to hold a public hearing unless there is specific exempt or confidential information as defined by Part VA of the Local Government Act 1972 so identifying that at the pre-hearing will have some bearing on publication of any relevant papers.
- Identify any potential conflicts of interest, for example any close associations with the people involved or potential witnesses. The monitoring officer will advise if any conflicts mean that a councillor should stand down from the panel.

It is important that at the pre-hearing panel members do not debate the merits of the case.

Note that this pre-hearing would not of itself be a formal meeting so would not be open and often these matters can be dealt with through correspondence. Once the pre-hearing has been held the monitoring officer should write to everyone involved in the complaint at least two weeks before the hearing. This should confirm the date, time and place for the hearing, note whether the subject member or investigator will be represented at the hearing. It should also list those witnesses, if any, who will be asked to give evidence and outline the proposed procedure for the hearing.

## **The hearing**

A hearing is like any other committee or sub-committee of the authority and as such must follow the rules that apply to committees. This means that it must reflect the political proportionality of the local authority as a whole unless the authority has waived proportionality and that only elected members of the authority are entitled to vote at the Hearing. The rules around access to information also apply as they do to other committees – that is the hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters.

Panel members should bear in mind that it is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The panel should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and councillors, have confidence in its procedures and findings. Decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the local authority and the public. For the subject member, an adverse decision by the committee can result in significant reputational damage.

## **Representatives**

The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish. This should have been agreed at the pre-hearing and if the panel has any concern about the person chosen to represent the subject member, they should have made that clear beforehand. The panel does, however, have the right to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

## **Evidence**

The panel, through its chair, controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

In many cases, the panel may not need to consider any evidence other than the investigation report and any other supporting documents. However, the panel may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The panel can allow witnesses to be questioned and cross-examined by the subject member, the investigator or their representatives. Alternatively, the panel can ask that these questions be directed through the chair. The panel can also question witnesses directly and the Independent Person should also be asked if they wish to ask any questions. It is not a legal requirement that the Independent Person attend the hearing, but it is best practice and the authority must have regard to their views when reaching a decision. If the Independent Person does not attend therefore, there must be an agreed mechanism for receiving their views.

If the panel believes, however, that questions are irrelevant or oppressive then the chair should stop that particular line of questioning.

Generally, the subject member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. However, the panel has the right to govern its own procedures as long as it acts fairly. For this reason, the panel may limit the number of witnesses if the number is unreasonable. This should have been agreed at the pre-hearing.

## **Making a finding**

Once the panel has heard all the relevant evidence it should suspend the hearing and retire in private to consider its finding.

Before retiring the chair should invite the Independent Person to give their views to the panel which the local authority must have regard to. These views should be given in the open session so that all sides can have a chance to challenge them as necessary. If the Independent Person retires with the panel, they should not take part in any decision making as they are not part of the formal decision-making process. In addition, they should ensure that any views they give to the panel are also made publicly to the meeting.

Any officer who retires with the panel is there to advise on matters of procedure and law. Any advice given, however, must then be conveyed back publicly to the meeting.

If the panel, after retiring, decides that it needs to reconsider certain matters it is able of reconvening to ask further questions.

Once the panel has reached its decision it should reconvene to inform the subject member. Where a breach has been found, it should then invite representations as to any aggravating or mitigating factors (see below) before retiring again to consider an appropriate sanction.

It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day, before people's memories fade. The officer providing administrative support to the panel will normally also draft minutes of the meeting.

The panel should give its full written decision to the relevant parties as soon as possible after the hearing. In most cases this should be within one week of the hearing.

The relevant parties are:

- the subject member
- the complainant
- the relevant Independent Person
- any parish or town councils concerned.

Where appropriate the subject member's political group may also be informed of the decision if the sanction requires group action (see below) and should also be sent to the next full council meeting.

## **Sanctions**

There is no definitive list of possible sanctions (*The Government's response to the Committee on Standard in public life 2019 is awaited*). If the panel finds that a subject member has failed to follow the Code of Conduct and that they should be sanctioned, it needs to be clear which sanctions it has the power to impose and which matters are reserved to council or need to be referred to a relevant political group.

Typical sanctions may include one or a combination of the following:

- report its findings in respect of the subject member's conduct to council (or the relevant parish council)
- issue (or recommend to the parish council to issue) a formal censure
- recommend to the subject member's group leader (or in the case of un-grouped councillors, recommend to council) that they be removed from any or all committees or sub-committees of the authority (or recommend such action to the parish council)
- recommend to the leader of the authority that the subject member be removed from positions of responsibility
- instruct the monitoring officer to (or recommend that the parish council) arrange training for the subject member
- recommend to council (or recommend to the parish council) that the subject member be removed from all outside appointments to which they have been appointed or nominated by the authority (or by the parish council);
- recommend to council (or recommend to the parish council) that it withdraws facilities provided to the subject member by the authority for a specified period, such as a computer, website and/or email and internet access; or
- recommend to council (or recommend that the parish council) that it excludes the subject member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings and/or restricts contact with officers to named officers only
- if relevant recommend to council that the subject member be removed from their role as leader of the authority
- if relevant recommend to the secretary or appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.

Note that where the subject member is a parish or town councillor, the matter is referred back to their council to say that a breach of the Code has been found and with a recommended sanction. The town or parish council must then meet to consider whether to impose that sanction ~~or to replace it with another relevant sanction~~. They cannot overturn the finding that there has been a breach of the Code ~~and if they wish to impose a different sanction they should seek advice from the clerk and/or the monitoring officer~~. The panel should also ask the parish or town council to report back to the monitoring officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.

Note that under the Model Code of Conduct failure to comply with a sanction may of itself be a breach of the Code.

When deciding on a sanction, the panel should ensure that it is reasonable, proportionate and relevant to the subject member's behaviour. Before deciding what sanction to issue, the panel should consider the following questions, along with any other relevant circumstances:

- What was the subject member's intention?
- Did the subject member know that they were failing to follow the Code of Conduct?
- Did the subject member get advice from officers before the incident? Was that advice acted on or ignored?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result or potential result of failing to follow the Code of Conduct?
- How serious was the incident?
- Does the subject member accept they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct or failed to follow the Code of Conduct before?
- Is the subject member likely to do the same thing again?
- How will the sanction impact on the subject member's ability to carry out their role?

Sanctions involving restricting access to an authority's premises or equipment or contact with officers should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.

Mitigating factors may include:

- an honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice;
- a councillor's previous record of good service;
- substantiated evidence that the councillor's actions have been affected by ill-health;
- recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the councillor;
- compliance with the Code since the events giving rise to the complaint.

Aggravating factors may include:

- dishonesty or breaches of trust;
- trying to gain an advantage or disadvantage for themselves or others;
- bullying;
- continuing to deny the facts despite clear contrary evidence;
- seeking unfairly to blame other people;
- failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code;
- persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

## **Publicising the findings**

The panel should arrange for a decision notice to be published on the website of any authorities concerned, and anywhere else the panel considers appropriate.

If the panel finds that the subject member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding.

If the panel finds that the subject member failed to follow the Code but that no action is needed, the public summary should:

- say that the councillor failed to follow the Code, but that no action needs to be taken;
- outline what happened;
- give reasons for the panel's decision not to take any action.

If the panel finds that a councillor failed to follow the Code and it imposed a sanction, the public summary should:

- say that the councillor failed to follow the Code;
- outline what happened;
- explain what sanction has been imposed;
- give reasons for the decision made by the panel.

The panel's reports and minutes should be available for public inspection in the same way as other local authority committee papers.

## **Appeals**

Given that the framework and sanctions are meant to be light-touch and proportionate, there should be no right of appeal against a decision on a Code of Conduct complaint.





## **APPENDIX 3**

### **Herefordshire Council**

#### **LGA Model Councillor Code of Conduct – Adopted May 2022**

##### **Definitions**

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

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

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

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

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

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

## General principles of councillor conduct

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

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

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

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

In undertaking my role:

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

## Application of the Code of Conduct

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

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

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

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

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

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

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

Officer.

## **Standards of councillor conduct**

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

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

### **General Conduct**

#### **1. Respect**

**As a councillor:**

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

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

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

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

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

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

**As a councillor:**

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

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

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

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

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and

contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

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

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

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

**As a councillor:**

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

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

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

**As a councillor:**

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

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

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

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

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

## **5. Disrepute**

**As a councillor:**

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

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your 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 Registerable Interests as set out in **Table 2**

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

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.<br>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. |
|--|--|

\* 'director' includes a member of the committee of management of an industrial and provident society.

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

**Table 2: Other Registrable Interests**

|  |
|--|
| <p>You must register as an Other Registerable Interest :</p> <p>a) any unpaid directorships</p> <p>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</p> <p>c) any body</p> <ul style="list-style-type: none"> <li>(i) exercising functions of a public nature</li> <li>(ii) directed to charitable purposes or</li> <li><u>(iii)</u> one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union</li> <li><b>(iv)_is not open to the public without formal membership.</b></li> </ul> |
|--|

**Table – 5.2.17**

Where a member has a Disclosable Pecuniary Interest, Other Registrable Interest or Non-Registrable interest as detailed above the following applies:

| <b>What is the interest</b>    | <b>Do I have to complete the form and register?</b>  | <b>Do I have to declare this interest?</b> | <b>When do I disclose this interest?</b>           | <b>Can I participate?</b>                                     | <b>Can I vote?</b> | <b>Do I have to leave the room?</b> |
|--------------------------------|--|--|--|---|--------------------|-------------------------------------|
| Disclosable Pecuniary Interest | Yes<br>Within 28 days of: <ul style="list-style-type: none"> <li>• becoming a member or re-appointment to office</li> <li>• re-appointment to office</li> <li>• Disclosing at a meeting a previously undisclosed interest</li> <li>• Becoming aware of any change or new interest</li> </ul> | Yes  | As soon as you are aware that you have an interest | No  | No                 | Yes                                 |
| Other Registrable Interest     | Yes<br>Within 28 days of: <ul style="list-style-type: none"> <li>• becoming a member or re-appointment to office</li> <li>• re-appointment to office</li> <li>• Disclosing at a meeting a previously undisclosed interest</li> </ul>   | Yes  | As soon as you are aware that you have an interest | Yes if members of the public are able to speak at the meeting | No                 | Yes                                 |

|   |  |     |   |   |    |    |
|---|--|-----|---|---|----|----|
|   | <ul style="list-style-type: none"> <li>Becoming aware of any change or new interest</li> </ul> |     |   |   |    |    |
| Disclosure of Non-Registrable Interests | No   | Yes | At the meeting - As soon as you are aware that you have an interest | Yes if members of the public are able to speak at the meeting | No | No |





## APPENDIX 4

### Principle Differences between the Council's Code of Conduct, the LGA Model Code of Conduct and the New Model Code.

#### Definitions

- The HC Code – the council's current code of conduct adopted in May 2018.
- The LGA Model Code – the Code of conduct recommended by the LGA (Appendix 2).
- The New Model Code – the LGA Model Code with Herefordshire Council local amendments.

#### Principles Differences

1. The Herefordshire Council New Model Code attached at Appendix 3 of this report is the product of a review by the Monitoring Officer of the LGA Model Code of Conduct following consultation with the Independent Persons, Ward councillors, Parish and Town Councils. The recommendation of the Monitoring Officer is to adopt the LGA Model Code with some local changes (the New Model Code), as set out below:
  - a) The LGA Model Code had a joint statement at the beginning of the document and Appendix C, a statement from the Committee on Standards in Public Life, both of which have been deleted from the New Model Code.
  - b) All 7 Nolan Principles still apply – these are now set out in Appendix A in the LGA Model Code.
  - c) The example codified elements of the Model Code are written in the first person, e.g. "I register and disclose my interests." The explanatory text is written as if addressed directly to the Member, e.g. "You need to register your interests so that....".
  - d) Standards of Conduct - currently set out in paragraph 5.2.7 of the council's Code of Conduct are now described in the LGA Model Code in paragraphs 1 to 10. There is no exact parallel to the paragraphs in this LGA Model Code compared to the current HC Code, save that the majority of the council's principles are included in the LGA principles.
  - e) The LGA Model Code applies to a member or co-opted member of a local authority when acting in their official capacity. This is now set out in more detail compared to the HC Code.
  - f) The LGA Model Code now expressly applies to all forms of communication and interaction, including: face to face meetings, online or telephone meetings, written communication, verbal communication and non-verbal communication, electronic and social media communications and posts, statements and comments. This is not specified in the HC Code.
  - g) The LGA Model Code keeps the obligation to treat others with respect and sets out in more detail the obligations not to bully, harass or discriminate against a person. These are set out in paragraphs 1 and 2 of the LGA Model Code.
  - h) The LGA Model Code at paragraph 8, introduces an obligation to undertake code of conduct training, which the council has already recognised as being mandatory, although this obligation is not contained within the council's current code of conduct.

i) Code of Conduct Interests

This standard of conduct is now set out at paragraph 9 of the LGA Model Code.

The position regarding Disclosable Pecuniary Interests remains as this is contained within the Localism Act 2011 and must be registered (Table 1 Interests). The other interests are now known as 'Other Registrable Interests' (Table 2 Interests) and 'Non Registrable Interests'. The LGA Model Code set out the definitions of these and how a member establishes when they may have one of these interests and what that member should do if they have one.

The HC Code sets out requirements in Schedule 1 and Schedule 2 Interests and 'Other declarable interests' at paragraph 5.2.13, 5.2.14 and 5.2.15. These are now incorporated into the LGA Model Code at Appendix A. They are now known as 'Table 1' Interests and 'Table 2' Interests.

j) Gifts and Hospitality – Change of disclosable value from £20 to £50

In the HC Code, at paragraph 5.2.14, there is a requirement to register with the Monitoring Officer any gifts or hospitality with an estimated value of at least £20.00.

The LGA Model Code, at paragraph 10, specifies the amount to register with the Monitoring Officer at a minimum of £50.00.

So, the minimum amount of gifts or hospitality that will be required to be registered will be £50.00 instead of £20.00

k) Local Amendments

In addition the following 'local' amendment has been made to the LGA Model Code:

**1) 'Other Registerable Interest' – 'Table 2' Interests**

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)

(iv) is not open to the public without formal membership.

This amendment deals with the membership of closed bodies, which the council approved in its current code of conduct at paragraph 5.2.4; the outcome of recent consultation is to retain the provision set out in 'red' above.

**2) Code of Conduct Interest – Summary Table**

This is currently set out at 5.2.17 of the current constitution.

It shows, in summary format, what a member should do if they have a Code of Conduct interest.

This Summary Table is retained and included as an appendix to the New Model Code.

END.



# Title of report: Revised Salary for Director of Governance and Law Post

**Meeting: Council**

**Meeting date: 20 May 2022**

**Report by: Chairperson of Employment Panel**

## **Classification**

Open

## **Decision type**

This is not an executive decision

## **Wards affected**

(All Wards);

## **Purpose**

To agree an increased salary package for the Director of Governance and Law post.

## **Recommendation(s)**

**That:**

- a) **A new search for the Director of Governance and Law is initiated on the basis of a salary of £108,472.**

## **Alternative options**

1. Council could determine that the salary for the post of Director of Governance and Law remains as it is. This is not recommended as the recruitment agency has provided clear feedback from prospective candidates that the salary currently on offer is not sufficient to secure a strong field of candidates.

## Key considerations

1. In February 2022 a recruitment agency was engaged to undertake a national search for candidates for the Director of Governance and Law.
2. On 30 March 2022 employment panel was due to consider the applications for the post and develop a short list of candidates. Unfortunately there were no suitable candidates that could be short listed for this role.
3. The search was thorough with over 75 candidates targeted during the month long campaign and the role was advertised nationally in the Municipal Journal on two occasions.
4. The advice from the recruitment agency is that extending the deadline or going back out to advert would be unlikely to produce a different outcome unless the council is able to offer an improved salary package and a salary that is comparable with other councils and other director posts in the council.
5. The current salary for this role is £89,379 and although there was an expectation that a market forces supplement of up to £10,000 would be required, this has not proved to be sufficient in terms of value or in terms of the clarity it offers candidates about their prospective pay package.
6. A comparison of similar roles being advertised recently shows that the salary for this post does not benchmark well and feedback from multiple candidates approached as part of the search gave clear feedback that the salary was insufficient to attract their interest.
7. A sample of salaries for similar Director of Law and Governance roles which have been advertised recently is pasted in the table below:

| Council   | Role   | Pay            |
|---|--|----------------|
| Birmingham City Council                                       | City Solicitor   | £149,999       |
| Blackburn with Darwen Council                                 | Director of Legal Services                                     | Up to £100,000 |
| Blackpool Council   | Director of Governance (Monitoring Officer)                    | £95,000        |
| Bradford Council  | Director of Law and Governance                                 | £106,000       |
| Breckland District Council and South Holland District Council | Executive Director: Strategy & Governance (Monitoring Officer) | To £111,295    |
| Derbyshire County Council                                     | Director of Legal Services                                     | £98, 924       |
| Greater Manchester CA   | Director of Governance   | £140,000       |
| Lancaster City Council  | Head of Legal Services and Monitoring Officer                  | £113,000       |
| Leeds City Council  | City Solicitor   | £102,000       |

|                              |                                       |                                 |
|------------------------------|---------------------------------------|---------------------------------|
| Manchester City Council      | Deputy City Solicitor                 | £97,000                         |
| Staffordshire County Council | County Solicitor                      | £111,618 + Car allowance £5,438 |
| Walsall Council              | Head of Legal and Democratic Services | Up to £95,000                   |

8. Since the corporate leadership team (CLT) restructure last year and the resignation of the service director for corporate services this role has grown to include a broader remit including elections, registrars and wider governance responsibilities. To date these changes have not previously been factored into the grading of this role. A grading review of the CLT roles is planned for later in the year but the imminent need to recruit to this role and the challenging recruitment market coupled with significant wage inflation has brought forward the need to re-look at the salary package for this role. A desktop grading assessment has shown that job evaluation has changed and the salary for this role should now be the same as the Director of Resources and Assurance (s151 officer) which is currently £108,472.
9. The Localism Act 2011 provides that the council's pay policy statement must be approved at Full Council. The proposed salary specified in paragraph 8 of this report is not set out in the council's current pay policy statement that was approved at Full Council on 11 February 2022 and must therefore be considered by Full Council.
10. It is therefore proposed that Full Council agree to increase the salary for this post to £108,472. A new search for a field of candidates will then be initiated on the basis of the improved salary package.

### **Community impact**

11. In accordance with the adopted code of corporate governance, the council needs appropriate structures and leadership, as well as people with the right skills, qualifications and mind-set, to operate efficiently and effectively. The council is accountable for how it uses the resources under its stewardship, including accountability for outputs and outcomes achieved. In addition the council has an overarching responsibility to serve the public interest in adhering to the requirements of legislation and government policies.
12. The post holder for this role provides strategic leadership to council services and has a key leadership role in Herefordshire, regionally and nationally. Without effective leadership, outcomes for communities and individuals in Herefordshire could be adversely affected.

### **Environmental Impact**

13. The council's directors have shared responsibility for the delivery of the county plan and corporate delivery plan and the inherent environmental objectives and outcomes within these plans.

## Equality duty

14. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:
- A public authority must, in the exercise of its functions, have due regard to the need to
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The council's policies in relation to job evaluation and recruitment and selection pay full regard to the council's responsibilities as set out in the public sector equality duty. The council is a disability confident employer and the council encourages applications from candidates from diverse backgrounds.

## Resource implications

15. The establishment budget is available for this post and any appointment will be made within this budget.
16. The current salary is currently £84,744 - £89,378, and it is recommended that this increases to £108,472. The salary costs will be met from within the existing directorate revenue budget.
17. Allowing time for a successful candidate to serve notice with the current employer, a start date of 1 October 2022 is assumed.

| Revenue budget implications  | 2022/23   | 2023/24    | Future Years |  |
|--|-----------|------------|--------------|--|
|  | £000s     | £000s      | £000s        |  |
| Salary for Director of Governance and Law (not including on costs) | 54        | 108        | 108          |  |
|  |           |            |              |  |
| <b>TOTAL</b>   | <b>54</b> | <b>108</b> | <b>108</b>   |  |

## Legal implications

18. The council is required to designate a suitably qualified officer to act as Monitoring Officer as prescribed in the Local Government and Housing Act 1989.
19. The Director of Governance and Law will act as Monitoring Officer as prescribed in the Local Government and Housing Act 1989 and as determined at Full Council on 4 March 2022.

20. Any employee employed by the council must be employed on the council's normal terms and conditions and will be subject to all relevant policies and procedures as any other employee would be.
21. The Localism Act 2011 provides that the council's pay policy statement must be approved at Full Council. The proposed salary specified in paragraph 8 of this report is not set out in the council's current pay policy statement that was approved at Council on 11 February 2022 and must therefore be considered by Council.

## Risk management

22.

| Risk / opportunity                                    | Mitigation  |
|---|---|
| The council will not be able to recruit to this role. | This report recommends an improved salary package so that it is comparable with other councils and so the council is more likely to be able to attract a field of qualified candidates. |

## Consultees

23. Employment panel considered this proposal on 10 May 2022 and agreed to recommend the proposal to Council.

## Appendices

None

## Background papers

None identified.

## Report Reviewers Used for appraising this report:

| Please note this section must be completed before the report can be published |  |            |               |            |
|---|--|------------|---------------|------------|
| Governance  | Sarah Buffrey, Democratic Services Officer | 25/04/2022 |               |            |
| Finance   | Louise Devlin                              | 25/04/2022 |               |            |
| Legal   | Alice McAlpine                             | 25/04/2022 | Kate Charlton | 25/04/2022 |

|  |             |            |
|--|-------------|------------|
|  |             |            |
| Communications<br>Luenne Featherstone 25/04/22 |             |            |
| Equality Duty<br>Harriet Yellen 26/4/22        |             |            |
| Risk   | Kevin Lloyd | 24/04/2022 |

Approved by [Click or tap here to enter text.](#) Date [Click or tap to enter a date.](#)