

## CONSTITUTION AND ETHICS COMMITTEE

MONDAY 8 FEBRUARY 2021  
6.00 PM

VENUE: [Peterborough City Council Youtube Page](#)

### AGENDA

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### ITEMS FOR INFORMATION

8. **Dispensation issues**

There have been no dispensations issued since the last meeting.

9. **Update on national issues**

There are no updates on national issues. The LGA Model Code of Conduct is being discussed as Item 4.

10. **Councillor code of conduct complaints** 77 - 102

11. **Work programme** 103 - 106

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Committee Members:

Councillors: Allen, Bashir (Vice Chairman), M Jamil, E Murphy, N Sandford, D Seaton (Chair) and A Shaheed

Substitutes: Councillors: Hemraj, Jones, Simons and Wiggin

Further information about this meeting can be obtained from Dan Kalley on telephone 01733 296334 or by email – [daniel.kalley@peterborough.gov.uk](mailto:daniel.kalley@peterborough.gov.uk)



**MINUTES OF THE CONSTITUTION AND ETHICS COMMITTEE  
MEETING  
HELD AT 6:00PM, ON  
MONDAY, 12 OCTOBER 2020  
VIA ZOOM**

Present: Councillors Seaton (Chair) Bashir (Vice-Chair), Allen, Murphy, Amjad Iqbal, Shaheed and Sandford

Officers in Attendance: Amy Brown, Deputy Monitoring Officer  
Dan Kalley, Senior Democratic Services Officer  
Fiona McMillan, Director of Law and Governance and Monitoring Officer  
Paulina Ford, Senior Democratic Services Officer  
Pippa Turvey, Democratic and Constitutional Services Manager  
Rachel Edwards, Head of Constitutional Services

Also in Attendance:

**1. APOLOGIES FOR ABSENCE**

There were no apologies of absence received

**2. DECLARATIONS OF INTEREST**

There were none.

**3. MINUTES OF THE MEETING HELD ON 30 SEPTEMBER 2019**

The minutes of the meeting held on 30 September 2019 were agreed as a true and accurate record.

**4. CHAIRING OF SCRUTINY COMMITTEES**

The Constitution and Ethics Committee received a report in relation to the chairing of Scrutiny Committees.

The Senior Democratic Services Officer introduced the report and confirmed that guidance was sought from the Centre for Governance and Scrutiny in relation to best practice for chairing scrutiny committees. Following this the Centre for Governance and Scrutiny confirmed that each Chair of a scrutiny committee would adopt their own style and the

best Chairs were those who were flexible in their approach and gauged the flow of each meeting. Members were informed that all Chairs were offered training by the Council before the start of each municipal year and that this was provided by the Democratic Services team. In addition the Centre for Governance and Scrutiny offered training however this came at a cost.

Councillor Sandford explained that the report was brought to Committee in light of some of previous meetings where a line of questioning was not permitted. In terms of asking questions it had been advised that it was better to ask a series or line of questions in order to have more effective scrutiny. It was however important that the Chair exerted some control over the meeting in order to prevent members from taking over discussion on an item. Training for Chairs was important as having an effective Chair allowed for effective meetings.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- It was good practice to allow members to follow a line of questioning if it was important and this issue was to be disseminated to all Chairs of committees.

The Constitution and Ethics Committee considered and **RESOLVED** (unanimous) to:

1. Notes the contents of the report, and
2. That Chairing Skills training was mandatory for Scrutiny Committee Chairs.

#### **ACTIONS:**

1. The Chair to write to all Chairs to be informed of discussions on chairing a meeting taken by the Constitution and Ethics Committee.

#### **5. MEMBERS GIFTS AND HOSPITALITY POLICY**

The Constitution and Ethics Committee received a report in relation to the Members Gifts and Hospitality Policy.

The Deputy Monitoring Officer introduced the report which was to provide an opportunity for members to review the current policy and consider approval of proposed amendments. Some of the changes made were purely cosmetic in order to allow the document to flow easily. Substantive changes included:

- An introduction to Law and Governance section, which confirmed that although there was no obligation for members to register any gifts or hospitality, they were bound by the requirements of the Bribery Act and the Councils Code of Conduct. This in broad terms prevented gifts or hospitality as an inducement or reward when carrying out their duties.

- There were the inclusion of some general principles which were designed to assist members in determining whether their acceptance or not of gifts or hospitality were appropriate.
- There was now a consistent level of value when accepting gifts or hospitality which mirrored the recommendation from the Commission on Standards in Public Life. Gifts and Hospitality up to a value of £50 or a collective value of £100 in one year maybe be accepted provided they were consistent with the general principles.
- Members were informed that there were some additional sections covering wills, sponsorship and gifts to Chairs. This should be discussed with the Monitoring Officer to ensure good governance procedures were followed.
- There was now more information on how members could register gifts and hospitality and a reminder that this might involve members having to declare further interests.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- Internal Audit had looked at the area surrounding gifts and hospitality with a recommendation to review this. It was due to come to Committee in March, however this was postponed due to the Covid pandemic.
- It was agreed that the wording of Chairman or Chairwoman was to be altered to now read Chair.

The Constitution and Ethics Committee considered and **RESOLVED** (Unanimous) to approve the proposed changes to the Members Gifts and Hospitality Policy subject to the amendment of references to 'Chairman/woman' to 'Chair'.

## **6. UPDATE AND REVIEW OF COUNCIL STANDING ORDERS**

The Constitution and Ethics Committee received a report in relation to amendments to the Member Officer Protocol.

The Democratic and Constitutional Services Manager introduced the report which was to provide an opportunity for members to review current policies and consider approval of proposed amendments.

Members were informed that there were four areas being recommended for changing these were:

1. Changes to the approval of minutes. The change required members to notify the Democratic Services Team by midday of the day of the meeting at which the minutes were to be approved of any substantive omissions or alterations. This was to allow officers the opportunity to investigate any issues.
2. Changes to the deadlines for submitting motions to Full Council, it was agreed that this would be reviewed by the Committee. There

were two options presented in the report, namely to keep the current timeframes or to shorten the deadlines by one day.

3. Proposed changes to the Chair's or Mayors casting vote, this was to provide clarity on equality of votes and for formal abstentions to not be included in when it came to votes being equal.
4. A change to the petition scheme adding a further reason for a petition not being accepted, this being a petition that related to a decision that had already been taken by the Council.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- It was debatable as to whether a section on the approval of minutes needed to be included in the standing orders. Members needed to ensure that they informed the Democratic Services Team if there were any challenges to the accuracy of the minutes.
- Including the wording around casting votes would help members understand how an abstention was an abstention to not vote on a recommendation. There was a perception from some Councillors that an abstention was in theory a 'no' vote.
- The proposed petition scheme change prevented people challenging a decision whereby it was still possible for a decision to be changed, especially in light of any public interest or expert advice that might be forthcoming.
- People understood what the purpose of a petition was and the proposed amendment prevented people from asking the Council to review decisions it had taken. The flexibility in the current scheme was good and enabled people to get involved in local democracy.
- The Monitoring Officer explained that the purpose behind the suggested change to the petition scheme was to prevent petitions on decisions where there was no chance of reversing the original decision.
- There was no obligation on the Council to take any action on the submission of a petition. There were very few examples of when a petition did not have any impact and therefore the suggested change prevented people from challenging a decision.
- On a vote the recommendation in terms of the petition scheme was defeated.
- The current deadline for submission of motions was causing some issues amongst some of the political groups. It was useful to be able to send draft motions to officers before the final deadline so that the wording and content could be checked, however it was queried as to the length of time that officers needed in order to do this. There would be more support amongst political groups to change the deadline to eight clear working days, down from nine and likewise the final deadline down from seven working days to six.
- Some members favoured giving officers as long as possible to help Councillors draft motions and ensure that what is being asked is something the Council has the ability to do.
- On a vote the majority of the Committee recommended changing the deadline for submission of motions.

The Constitution and Ethics Committee considered and **RESOLVED** that:

1. Standing Orders be amended as set out in paragraph 4.6 of the report, in relation to the approval of minutes. (unanimous)
2. Standing Orders be amended as set out in paragraph 4.12 of the report, in relation to equality of votes. (6 for, 1 against)
3. Standing Orders be amended as follows, in relation to the submission of motions to Full Council: (4 for, 3 against)
  - Draft Motions – 12 noon, 8 clear working days before the meeting.
  - Final Motions – 12 noon, 6 clear working days before the meeting.

## **7. AMENDMENT TO THE MEMBER OFFICER PROTOCOL**

The Constitution and Ethics Committee received a report in relation to some updates to the Council Standing Orders.

The Monitoring Officer introduced the report which was to provide an opportunity for members to review the current policy and consider approval of proposed amendments. There were two amendments to the policy, firstly motions that were submitted to Full Council, members were expected to liaise with relevant service area officers to ensure the motion was in the most acceptable form before being submitted to Democratic Services.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- There were some concerns around this amendment. It was a good idea for members to talk through potential motions with officers, however making it a requirement was not a good idea as there were occasions whereby a motion might be critical of a service area. There were also occasions where a member might not wish to consult with officers and this should not prevent a member presenting a motion to Council.
- There were processes in place by which once a motion was submitted it was checked by the legal team and then sent to the relevant department.
- It would be beneficial to encourage members but not make it mandatory.
- The Monitoring Officer explained that the wording could be changed to encourage. Members were reminded that senior officers had tight deadlines to check motions and feedback any comments to ensure the motion was within the Council's remit.
- This was about encouraging members rather than trying to re-write the Council's protocols.

The Monitoring Officer explained that the second part of the changes were around the use of Council premises. Following a complaint the Monitoring Officer investigated the wording within the constitution, of which there were gaps and outdated wording. The Nolan principles outlined the use of resources and not using these for party political purposes. The Monitoring Officer confirmed that the words 'allowance and' from section 4.4f were to

be removed. In addition if members wished to extract wording from a Council agenda they were able to as this was public information.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- It was important that the wording in the constitution was watertight and was clear. Section 14 of the Member Officer Protocol had direct reference to the Nolan principles around the use of Council resources, facilities or resources for party political purposes. All that was needed in the Member Officer Protocol was a statement around these principles, so that officers could interpret these if a complaint was made. The resolution tried to define every circumstance where something that the Council provided could be used for political purposes. However it was hoped that when the Monitoring Officer received a complaint they would investigate whether a substantial abuse of the rules had taken place for political advantage.
- There were concerns over the use of logo's for electronic media which might be referenced in political documentation when it ought not to be, or could be inferred that the Council supported certain policies.
- It might be seen as premature to agree to the recommendations at this current point. It raised a few problematic issues, for example IT systems that now had work, personal and Council email addresses on them and making sure that members used their personal or party email addresses for party political information and not the Council email address.
- Most Councillors were sensible and did not use the group rooms for party political purposes and the wording being suggested would be acceptable when some of the other issues had been resolved.
- The Monitoring Officer confirmed that these areas could be looked at further down the line at a later meeting. This was brought in front of Committee following a complaint.
- Members agreed that this could be reviewed when looking at the protocol in the future.

The Constitution and Ethics Committee considered and **RESOLVED** (Unanimous) to agree to amend the Member Officer Protocol in the Council's Constitution to include a section on 'Motions Submitted to Full Council' as set out in the report, subject to the amendment of, "Members are expected to liaise with ..." to, "Members are encouraged to liaise with ...".

**ACTION:**

1. The issue around the use of Council resources to be reviewed the next time the Member Officer Protocol is brought to Committee.

**8. REVIEW OF URGENT DECISIONS TAKEN**



The Constitution and Ethics Committee received a report in relation to a review of urgent decisions taken.

The Monitoring Officer introduced the report and the report included a list of the reasons why certain decisions had used the urgency procedure.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- It was important that a future report looked at how the number of decisions made compared to other local authorities and how it compared to the number of urgent decisions the Council had taken in previous years.
- Some of the issues revolved around time management and there were decisions that were on occasions missed. The Council had used these procedures on some occasions when they did not need to.
- There were some decisions on the list that were Covid related and during the pandemic there were a number of decisions that needed to be taken urgently in order to help and protect the community.
- Members requested a further report around the circumstances of when a decision should follow the urgency procedures. It was felt that the threshold for a decision to use urgency should be high. A more robust set of criteria needed to be in place and an urgent decision should only ever be used in exceptional circumstances.

The Constitution and Ethics Committee considered and **RESOLVED** (Unanimous) to:

1. Note, review and comment on the number of urgent decisions taken by Peterborough City Council; and
2. Bring a further report on the criteria for using urgency as outlined in the Executive Procedure rules to the next Committee meeting.

## **9. INDEPENDENT REMUNERATION PANEL**

The Constitution and Ethics Committee received a report in relation to the Independent Remuneration Panel.

The Democratic and Constitutional Services Manager introduced the report and confirmed that the last review was held in 2016. It was now time during the next Municipal Year for the timeframe and parameters to be agreed. In addition the terms of reference for the panel had been updated. Members were also informed that the terms of reference for the Constitution and Ethics Committee had been updated allowing the committee to remove a member of the Independent Remuneration Panel if exceptional circumstances.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- That the wording be changed from “three members” to “at least three members”. This would allow the Independent Remuneration Panel to still meet if one panel were unable to attend.

The Constitution and Ethics Committee considered and **RESOLVED** (Unanimous) to

1. Agree the proposed timetable for recruitment of an Independent Review Panel for next term
2. Agree the proposed changes to the Terms of Reference of the Independent Remuneration Panel, subject to the amendment of ,“The (IRP) shall be comprised of 3 members of the public,” to, “The (IRP) shall be comprise of at least 3 members of the public”; and
3. Agree the proposed changes to the Terms of Reference of the Constitution and Ethics Committee.

#### **10. DISPENSATIONS ISSUES**

The Director of Law and Governance and Monitoring Officer informed the Committee that two dispensations had been granted since the last meeting and these were detailed with the agenda.

The Constitution and Ethics Committee considered and **RESOLVED** (Unanimous) to note the dispensations granted

#### **11. UPDATE ON NATIONAL ISSUES (LGA MODEL CODE OF CONDUCT)**

The Constitution and Ethics Committee received a report in relation to the Local Government Association (LGA) model code of conduct

The Director of Law and Governance and Monitoring Officer introduced the report and confirmed that the consultation on the model code of conduct, run by the LGA, had been circulated to all members in August. The consultation responses were hoped to be presented in the Autumn. It was proposed that the final model code of conduct would come back to committee to decide on whether to adopt the new code, take parts of it or not adopt any part of the code.

Members were informed that a letter had been circulated to all local authority Chief Executives in July from the Committee on Standards in Public Life asking if local authorities had adopted the Committee on Ethical Standards best practice report. The Monitoring Officer stated that a response was being drawn up in response to a follow up letter asking for details on whether the Council had adopted these practices.

The Constitution and Ethics Committee debated the report and in summary the key points raised and responses to questions included:

- It was confirmed that the response to the letter on progress was around the best practice recommendations that came out of the Committee on Standards in Public Life and not on the model code of conduct. These recommendations were not enforceable, rather what was expected of authorities that demonstrated high levels of ethical standards.

The Constitution and Ethics Committee considered and **RESOLVED** (Unanimous) to note the report.

## **12. CODE OF CONDUCT COMPLAINTS RECEIVED SINCE SEPTEMBER 2019**

The Constitution and Ethics Committee received an update report on the code of conduct complaints received by the Monitoring Officer since the last meeting in July 2019.

The Constitution and Ethics Committee considered and **RESOLVED** (Unanimous) to note the report on complaints received/being handled by the Monitoring Officer since the Committee's last meeting in September 2019.

## **13. WORK PROGRAMME, FUTURE DATES AND MEMBER ISSUES**

The Constitution and Ethics Committee received a report in relation to the Committee's Work Programme for the Municipal Year 2019/20.

The Senior Democratic Services Officer confirmed the addition of two items to the work programme, firstly a further report on the wording in the constitution on use of urgency provisions and secondly to include the use of council resources in the Member Officer Protocol when this was next provided to Committee.

The Monitoring Officer commented that the next meeting was due to be held in November and the two substantive items were the model code of conduct from the LGA and an update on the Social Media Policy. It was suggested that as the model code of conduct was due to have a section on the use of social media it would be advisable to have the November meeting as a provisional meeting in case the code was published before then. However if this had not been received that the November meeting should be cancelled and the next meeting to take place in February by when it was hoped the model code would be produced. The Chair agreed that this was a sensible approach and that the November date was to be a provisional date, if there was no update then the meeting would be moved to the New Year.

There was a further item to be added to the agenda around the effectiveness of the Council's current code of conduct as there had been investigations that had lasted longer than a year.

The Chair confirmed that every meeting of the Constitution and Ethics Committee had an item on the agenda for the addition of items to the work programme. This was an opportunity for every member of the Committee to add an items they wished. In addition members of the Committee could request an item on the agenda if they informed Democratic Services.

The Constitution and Ethics Committee considered and **RESOLVED** (unanimous) to

1. note the Committee's work programme for the municipal year 2019/20, including the additional items raised by the Committee.

**ACTIONS:**

1. That the November meeting was provisional on the basis of the model code of conduct from the LGA becoming available, if not the next meeting to be held in the New Year when the code was hoped to be published.

6:00pm – 8.01pm

Chairman

<b>CONSTITUTION AND ETHICS COMMITTEE</b>	AGENDA ITEM No. 4
<b>8 FEBRUARY 2021</b>	<b>PUBLIC REPORT</b>

Report of:	Fiona McMillan, Director of Law and Governance and Monitoring Officer	
Cabinet Member(s) responsible:	Councillor Farooq, Cabinet Member for Digital Services and Transformation	
Contact Officer(s):	Fiona McMillan, Director of Law and Governance and Monitoring Officer	Tel. 452409

## LGA MODEL CODE OF CONDUCT

RECOMMENDATIONS	
<b>FROM:</b> <i>Director of Law and Governance and Monitoring Officer</i>	<b>Deadline date:</b> <i>N/A</i>
<p>It is recommended that the Constitution and Ethics Committee considers the new Model Code of Conduct published on 23 December 2020 by the Local Government Association and provides early comment.</p>	

### 1. ORIGIN OF REPORT

- 1.1 This report is submitted to the Constitution and Ethics Committee following a referral from the Monitoring Officer.

### 2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to provide the Committee with an opportunity to consider and provide initial comments on the new model code of conduct published by the the Local Government Association (LGA) on 23<sup>rd</sup> December 2020.
- 2.2 This report is for the Constitution and Ethics Committee to consider under its Terms of Reference No. 2.7.2.2

*Authority to oversee and approve the operation of the Council's functions relating to the promotion and maintenance of high standards of conduct amongst members and co-opted members of the Council including:*

- Promoting and maintaining high standards of conduct by Members and coopted members;*
- Assisting the Members and co-opted members to observe the Code of Conduct;*
- Advising the Council on the adoption or revision of the Members Code of Conduct and Officer Code of Conduct;*
- Monitoring the operation of the both Codes of Conduct;*
- Advising, training or arranging to train Members and co-opted members on matters relating to the Code of Conduct.*

### 3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	
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### 4. BACKGROUND AND KEY ISSUES

- 4.1 The LGA wrote to all Councils on 18th February 2020 to provide an update on progress with revising the Model Code of Conduct. The background to this review was the report by the Committee on Standards in Public Life on Local Government Ethical Standards which was published on 30 January 2019 <https://www.gov.uk/government/publications/local-government-ethical-standards-report>. One of the recommendations of this report was that "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". The proposed update to the Model Code of Conduct is the first major review since the new standards regime was introduced in the Localism Act 2011.
- 4.2 The LGA agreed in September 2019 to commence a review of the Code ahead of Central Government's response to the recommendations of the CSPL report. This work was part of a wider programme of work on Civility in Public Life, in response to rising local government concern about the increasing incidence of public, member-to-member and officer/member intimidation and abuse and overall behavioural standards and expectations in public debate, decision making and engagement. Some of the recommendations in the CPSL report, for example the power to suspend councillors (recommendation 16), require legislation which meant that such provisions could not be included in the Code.
- 4.3 The original consultation timetable was postponed due to Covid-19. An online consultation on the draft code of conduct ran for 10 weeks between June and August 2020. Consultation responses were considered and a final version of the new model code finally published on 23<sup>rd</sup> December 2020 and is attached as **Appendix 1**. The LGA is currently creating a guidance document on how the provisions on the new Code should be interpreted and applied and it is anticipated that this will be published in March 2021.
- 4.4 The new model Code is non-statutory and can be adopted in whole or in part by local authorities. The current Peterborough City Council code (**Appendix 2**) was adopted following the Localism Act 2011 when local authorities were given the choice of what code of conduct to adopt. Prior to that there was a national code of conduct along with a national oversight body, Standards for England, and complaints processes and a range of potential sanctions were contained in law. Under the Localism Act 2012 all local authorities had to adopt a code of conduct which needed to contain the Nolan Principles of standards in public life along with the statutory provisions on Disclosable Pecuniary Interests (DPIs) which were set out in the 2012 Act. At this time many local authorities adopted a code that was very similar to the previous national code of conduct and others, such as Peterborough, opted to adopt the minimum required under the Act, although some amendments have been made since then
- 4.5 The main provisions of the new model Code of Conduct are:
- a) General principles specific to local government member conduct, building on the Nolan Principles, which are set out in an Appendix to the model Code.
  - b) Application to both elected and co-opted members (who are defined in the Localism Act 2011). The model Code applies when a member is acting in their capacity as a councillor and the model Code clarifies that this can include when a member of the public could reasonably have the impression a member was acting as a councillor. It encompasses all forms of communication and interaction, including conduct on social media.

c) Standards setting out expected behaviour, with examples. These cover treating people with respect, not bullying, harassing or unlawfully discriminating, promoting equality, impartiality, confidentiality and access to information, not bringing the council into disrepute, use of a member's position and use of council resources, compliance with the Code, including participating in training, registration of interests and disclosure of gifts and hospitality. The standards are set out in the first person ("I ...") so a member reads the Code as a personal commitment to behave in accordance with the standards. The majority of these provisions on behaviour are not currently in the Council's code of conduct.

d) The model Code specifies declaration of gifts and hospitality in excess of £50 following consultation with local authorities. The Council's current Code specifies gifts and hospitality in excess of £100.

e) The model Code sets out what members must do to register, declare and behave in meetings where they have a disclosable pecuniary interest under the Localism Act 2011, another registrable interest and a non-registrable interest. "Non-registrable interests" are a new introduction to the Code of Conduct to cover situations where a matter affects a member's financial interest or wellbeing, or that of a friend, relative or close associate. This provision recognises the limits of the statutory provisions to fully encompass interests that could reasonably be seen to affect a member's judgement of the public interest. It re-introduces to the Code interests that were described as "prejudicial interests" prior to 2012. The Council's current Code was amended in July 2018 to include "non-statutory disclosable interests" to incorporate requirements to declare, and in some circumstances take no part in discussion or voting, where a matter affects a member's financial interest, or that of a friend, relative or close associate so this provision is not new to the Council.

4.6 The Constitution and Ethics Committee is invited to provide early comment on the new Code. It will also be circulated to the leaders of each of the council's political groups, the Task and Finish Group on equality & diversity and senior officers prior to returning to the Constitution & Ethics Committee to consider recommendations to full Council, alongside the guidance to be published by the LGA. The Code of Conduct needs to be approved by full Council and incorporated into the Council's Constitution.

#### 4.7 **Committee of Standards in Public Life**

On 20th July 2020 a letter was sent to all Local Authorities Chief Executives (**attached as Appendix 3**) as a follow up the 15 best practice recommendations made in 2019 Local Government report, representing a benchmark for ethical practice and which they expect any local authority should implement. The Committee intends to review the implementation of best practice in 2020 and will be writing to authorities later this year to seek their implementation progress. The council's response to the Committee on Standards in Public Life is attached as **Appendix 4**.

### 5. **CONSULTATION**

5.1 At PCC all members and parish councils were circulated the details of the consultation with an invitation for them to individually take part in the consultation exercise and details were also included in the weekly briefing to all staff inviting them to do the same.

### 6. **ANTICIPATED OUTCOMES OR IMPACT**

6.1 The Committee considers and provides initial comment to the new model code.

### 7. **REASON FOR THE RECOMMENDATION**

7.1 The Council needs to consider introducing a new Code of Conduct to update its current arrangements to address the concerns highlighted by the LGA in its report on Civility in Public Life and the recommendations of the CSPL. In its role of promoting and maintaining member standards in the Council, the Constitution and Ethics Committee can make an effective contribution to the adoption of a new Code.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

8.1 None at this stage.

## **9. IMPLICATIONS**

### **Financial Implications**

9.1 There are none.

### **Legal Implications**

9.2 There are none at the current stage.

### **Equalities Implications**

9.3 There are none.

## **10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

10. LGA Model Code of Conduct

## **11. APPENDICES**

11. Appendix 1 – new LGA model Code  
Appendix 2 – current PCC code of conduct  
Appendix 3 – Letter from CSPL  
Appendix 4 – Response to CSPL



## **Local Government Association**

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

#### **Joint statement**

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

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

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

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

## **Introduction**

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

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

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

## **Definitions**

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

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

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

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

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

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

## **General principles of councillor conduct**

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

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

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

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

In undertaking my role:

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

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

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

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

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

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

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

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

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

### **Standards of councillor conduct**

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

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

### **General Conduct**

#### **1. Respect**

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

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

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

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

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

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

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

### **As a councillor:**

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

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

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

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

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

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

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

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

**As a councillor:**

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

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

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

**As a councillor:**

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

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

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

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

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

## **5. Disrepute**

**As a councillor:**

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

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

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

## **6. Use of position**

**As a councillor:**

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

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

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

**As a councillor:**

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

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

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

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

Examples include:

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

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

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

### **As a Councillor:**

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

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

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

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

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

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

### **9. Interests**

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

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

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

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

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

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



## **10. Gifts and hospitality**

**As a councillor:**

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

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

## **Appendices**

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

The principles are:

#### **Selflessness**

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

#### **Integrity**

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

#### **Objectivity**

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

#### **Accountability**

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

#### **Openness**

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

#### **Honesty**

Holders of public office should be truthful.

#### **Leadership**

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

## Appendix B Registering interests

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

“**Disclosable Pecuniary Interest**” means an interest of yourself, or of your partner if you are aware of your partner’s interest, within the descriptions set out in Table 1 below.

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

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

### Non participation in case of disclosable pecuniary interest

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

### Disclosure of Other Registerable Interests

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

## Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which **affects** –
  - a. your own financial interest or well-being;
  - b. a financial interest or well-being of a relative, close associate; or
  - c. a body included in those you need to disclose under Other Registrable Interests as set out in **Table 2**

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

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

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

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

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

**Table 1: Disclosable Pecuniary Interests**

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

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

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

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

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

**Table 2: Other Registrable Interests**

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

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

The recommendations cover:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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## **Members' Code of Conduct**

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Peterborough City Council

The Members’ Code of Conduct is intended to promote high standards of behaviour amongst the elected and co-opted members of the council.

The Code is underpinned by the following principles of public life, which should be borne in mind, when interpreting the meaning of the Code:

- i. **Selflessness**  
Holders of public office should act solely in terms of the public interest.
- ii. **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.
- iii. **Objectivity**  
Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- iv. **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.
- v. **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.
- vi. **Honesty**  
Holders of public office should be truthful.
- vii. **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.

## **PART 1 GENERAL PROVISIONS**

You are a member or co-opted member of Peterborough City Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions and actions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should give reasons for those decisions and actions and restrict information only where the wider public interest clearly demands.

You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

### **Registering and declaring pecuniary and non-pecuniary interests**

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority’s monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority’s register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a ‘sensitive interest’.<sup>1</sup>

Following any disclosure of an interest not on the authority’s register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State.

Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a non-statutory pecuniary or non-pecuniary interest as defined by your authority.

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<sup>1</sup> A ‘sensitive interest’ is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority’s monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

**PART 2  
INTERESTS**

**1. Disclosable Pecuniary Interests**

1.1. The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011. Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as follows:

<b>Subject</b>	<b>Prescribed description</b>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from PCC) for any expenses incurred by you in carrying out your duties as a member, or towards your election expenses.  This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract with PCC:  (a) under which goods or services are to be provided or works are to be executed; and  (b) which has not been fully discharged.  This includes a contract between PCC and any body in which you, or a person specified in paragraph 8.2(b) below, has a beneficial interest
Land	Any beneficial interest in land which is within PCC’s area
Licences	Any licence (alone or jointly with others) to occupy land in the PCC’s area for a month or longer.
Corporate Tenancies	Any tenancy where (to your knowledge):  (a) the landlord is PCC; and  (b) the tenant is a body in which you, or a person listed in paragraph 8.2(b) below, has a beneficial interest

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<p>Securities</p>	<p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to your knowledge) has a place of business or land in PCC’s area; 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 person in paragraph 8.2 (below) has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>
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For this purpose –

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

- i) M’s spouse or civil partner,
- ii) A person with whom M is living as husband and wife, or
- iii) A person with whom M is living as if they were civil partners.



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

1.2. You must declare an interest if:

- (a) it is your interest, or
- (b) it is an interest of:
  - (i) your spouse or civil partner;
  - (ii) a person with whom you are living husband and wife, or
  - (iii) a person with whom you are living as if you were civil partners

and you are aware that that other person has the interest.

## 2. Other Disclosable Interests

2.1. You should not act or take decisions in order to gain financial or other material benefits for yourself, your family, or your friends. You must declare and resolve any interests and relationships as set out below, seeking the advice of the Monitoring Officer as necessary on what needs to be declared.

2.2. You have a “non-statutory disclosable interest” in an item of business of your authority where:

- i) A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you, or a member of your family, or a person or body with whom you have a close association; or
- ii) It relates to or is likely to affect any of the interests listed in 1.1 but is in respect of a member of your family (other than your spouse or common law partner) ; or
- iii) It relates to an outside body or organisation to which you have been appointed by the council

2.3. If you attend a meeting and are aware that you have a non-statutory disclosable interest in any matter to be considered, or being considered, at that meeting:

- (a) If the interest is not entered in your register of members' interests you must disclose to the meeting the fact that you have a non-statutory disclosable interest in that matter; and

- (b) If the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interests, you must not:
  - i) participate, or participate further, in any discussion of the matter at the meeting; or
  - ii) remain in the meeting room whilst the matter is being debated or participate in any vote taken on the matter at the meeting

apart from making representations, giving evidence or answering questions prior to the commencement of the debate on that matter.

- 2.4. You must declare the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £100.

### **3. Registration of Disclosable Pecuniary Interests and Other Interests**

- 3.1. Subject to paragraph 5 below (sensitive interests), you must, within 28 days of:

- (a) this Code being adopted or applied by PCC; or
- (b) your election or appointment (where that is later)

notify the Monitoring Officer in writing of any disclosable pecuniary interests and other interests you have at that time.

- 3.2. Subject to paragraph 5 below (sensitive interests) you must, within 28 days of becoming aware of any new disclosable pecuniary or other interest or any change to any such interest, notify the Monitoring Officer in writing of that new pecuniary interest or change.

### **4. Disclosable Pecuniary Interests in Matters Considered at Meetings or by a Single Member**

- 4.1. If you attend a meeting and are aware that you have a disclosable pecuniary interest in any matter to be considered at that meeting:

- (a) if the interest is not entered in the register of members' interests you must disclose to the meeting the fact that you have a disclosable pecuniary or other interest in that matter
- (b) if you have not already done so, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure, and
- (c) whether the interest is registered or not you must not, unless you have obtained a dispensation from the Monitoring Officer, participate, in any

discussion of the matter at the meeting and should leave the room until the consideration of the item has completed

- (d) whether the interest is registered or not you must not, unless you have obtained a dispensation from the Constitution and Ethics Committee, participate in any vote, or further vote, taken on the matter at the meeting and should leave the room until the consideration of the item has completed.

#### 4.2. Single Member Action

If you are empowered to discharge functions acting alone, and are aware that you have a disclosable pecuniary interest or other interest in any matter being dealt with, you must not take any steps, or any further steps, in relation to the matter (except for the purposes of enabling the matter to be dealt with otherwise than by you).

If the Disclosable Pecuniary Interest is not entered in the Register and is not subject to a Pending Notification, you must notify the Monitoring Officer of the Disclosable Pecuniary Interest before the end of 28 days, beginning with the date of when you became aware of the matter

### 5. Sensitive Interests

- 5.1. Where you consider (and the Monitoring Officer agrees) that the nature of a disclosable pecuniary or other interest is such that disclosure of the details of the interest could lead to you, or a person connected with you, being subject to intimidation or violence, it is a “sensitive interest” for the purposes of the Code and the details of the sensitive interest do not need to be disclosed to a meeting, although the fact that you have a sensitive interest must be disclosed.

## PART 3 RELATED DOCUMENTS

The following documents also provide guidance on the standards of conduct expected of members and can assist in the interpretation of this Code of Conduct. These documents can be found in the Council’s Constitution.

1. The Constitution & Ethics Committee Rules of Procedure set out the arrangements for dealing with an alleged breach of this Code
2. PCC’s Planning Code of Conduct deals specifically with the Code of Conduct within the remit of the Planning and Environmental Protection Committee
3. PCC’s Social Media Code for members sets out appropriate behaviour when using social media and acting, or appearing to act, in your capacity as a councillor
4. PCC’s Member/Officer Protocol sets out how members and officers should work together

5. PCC's Gifts and Hospitality Policy which sets out the procedures under which registration and declaration of interests, gifts and hospitality are to be made.

## **PETERBOROUGH CITY COUNCIL GIFTS AND HOSPITALITY POLICY**

### **INTRODUCTION**

This Policy sets out guidance for elected members, co-opted members and independent members (“Members”) on the principles governing the acceptance of gifts and hospitality.

Members are likely to be offered gifts or hospitality during the course of conducting Council business. This raises an initial question of deciding whether or not to accept. The acceptance of a gift or hospitality potentially creates a risk to the integrity and reputation of the Member as well as the Council itself. The overriding objective is to ensure transparency in the dealings of the Council, which in turn is a safeguard against this and any associated allegations of misconduct.

The fundamental principle of this Policy is that a Member should not do anything that might give rise to the inference that they have or may have been influenced by a gift or hospitality, to show bias for or against anybody or any organisation in carrying out their duties. Members are therefore strongly advised to be cautious and should consult the Monitoring Officer if they are in any doubt.

### **LAW AND GOVERNANCE**

#### **Legal Position**

While there is now no specific statutory requirement for members/co-opted members to register the offer of gifts and hospitality, the Bribery Act 2010 provides that if you accept any gift, loan, fee, reward or advantage whatsoever as an inducement or reward for doing or forbearing to do anything in respect of any matter or transaction in which the Council is concerned, you commit a criminal offence carrying a maximum term of imprisonment of 10 years or a fine or both.

#### **Members’ Code of Conduct and Constitution**

The Council’s Members’ Code of Conduct (Part 5, Section 1 of the Constitution) provides that you must serve the public interest, rather than acting in the interests of any particular individual or section of the community, and it is a breach of the Code to place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

### **GENERAL PRINCIPLES**

In deciding whether it is proper to accept any gift or hospitality, you should apply the following principles. Even if it would normally be appropriate to accept a small gift or hospitality, you should not do so if it would be in breach of one or more of these principles:

- Never accept a gift or hospitality as an inducement or reward for anything you do as a Member.
- You must not be influenced in the discharge of your duties by the offer, prospect of an offer, or the non-offer of any inducement or reward for discharging those duties in a particular manner.
- You should only accept a gift or hospitality if there is a commensurate benefit to the Council.

- The only proper reason for accepting any gift or hospitality is that there is a commensurate benefit for the Council that would not have been available but for the acceptance of that gift or hospitality.
- Acceptance of hospitality can confer an advantage on the authority, such as an opportunity to progress the business of the authority through a working lunch. Acceptance of a gift is much less likely to confer such an advantage. But unless the benefit to the Council is clear and is commensurate with the value of the gift or hospitality, the presumption must be that the gift or hospitality is purely for your personal benefit.
- Never accept a gift or hospitality if acceptance might be open to misinterpretation.
- The appearance of impropriety can be just as damaging to the Council and to you as a Member as actual impropriety. The Council’s ability to govern rests upon its reputation for acting fairly and in the public interest. You must consider whether acceptance of the gift or hospitality is capable of being interpreted as a sign that you or the Council favours any particular person, company, organisation or section of the community or as placing you under any improper obligation to any person or organisation. If so, you must either refuse the gift or hospitality or take appropriate steps to ensure that such a misunderstanding cannot arise.
- Certain occasions are particularly sensitive and require the avoidance of any opportunity for such misunderstanding. These include:
  - competitive procurement processes;
  - determinations of planning applications or planning policy;
  - funding decisions.
- Never accept a gift or hospitality that puts you under an improper obligation. Some commercial organisations and private individuals see the provision of gifts and hospitality as a means of buying influence. If you accept a gift or hospitality improperly, they may seek to use this fact to persuade you to determine an issue in their favour. If others note that you have been prepared to accept a gift or hospitality improperly, they may feel that they will no longer be able to secure impartial consideration from the Council.
- Never solicit a gift or hospitality in connection with your position as a Member and you should also take care to avoid giving any indication that you might be open to any such improper offer.

## **GIFTS**

In general, all gifts should be refused, this includes all such offers from organisations or persons who do, or might provide work, goods or services to the Council or who need some decision from the Council. These rules also apply to discounts offered to an individual Member going beyond those offered to the general public (other than those available to all Members and Officers).

As general guidance, the following small gifts worth under an individual value of £50 or accumulative value of £100 (from a single source) over the course of a municipal year may occasionally be accepted (provided that they do not conflict with the General Principles):

- office equipment or stationery given by way of trade advertisements or for use in the office. Nothing more elaborate than calendars, pens or diaries would fall within this exception. (NB: You should take care not to display any such branded items when this might be taken as an indication of favour to a particular supplier or contractor, for example in the course of a procurement exercise).
- gifts of only token value given on the conclusion of an official courtesy visit, for example, a visiting delegation.
- Gifts e.g. a box of chocolates or flowers of a value less than £25 provided they are given as a genuine show of appreciation of work undertaken but should never be accepted if it may give rise to an appearance of influence or reward.

## **HOSPITALITY**

Offers of hospitality should always be approached with caution and offers of hospitality where any suggestion of improper influence is possible must be refused.

Hospitality should only be accepted with the utmost caution, and on a scale appropriate, to the occasion or the circumstances. Acceptance may make it difficult to avoid some obligation to the party offering it and might later be thought to have affected a Member's impartiality in dealing with official matters.

Some offers of hospitality are always unacceptable for example, offers of holiday accommodation. Others will need to be considered on their facts, for example, invitations to sporting fixtures, evenings at the theatre or similar entertainment should only be accepted when they are required for the conduct of Council business or can properly be considered to provide a commensurate benefit to the Council not the individual Member. Hospitality on a lower scale than this may also be unacceptable. No absolute dividing-line can be laid down.

There is an important difference between, for example, attendance in an official capacity at a function organised by a public authority and accepting hospitality from a private individual or firm standing to benefit from the goodwill of the Council. However, it will not always be possible or even desirable to reject offers of hospitality on a modest scale. Acceptable hospitality is that not exceeding an individual value of £50 or an accumulative value (from a single source) of £100 over the course of a municipal year such as official hospitality at a function organised by a public authority; a drink and sandwich following a site visit; or a working lunch of modest standard to enable business discussions. The decision whether to accept or not must depend on the circumstances in each case but hospitality should never be accepted if it may give rise to an appearance of influence or reward.

## **WILLS & BEQUESTS**

If there is any connection between your work as a Member and being a beneficiary under a will, then you need to be cautious as the offer of any benefit will need to be considered carefully in accordance with the General Principles and if accepted, may need to be registered. You should discuss this matter fully with the Monitoring Officer before a decision is taken on acceptance or refusal.

## **SPONSORSHIP**

Offers of sponsorship need to be treated carefully. If the offer is to sponsor the Council it should be referred to the Monitoring Officer who will consider the offer in accordance with the Council's usual processes.

If the offer is to sponsor you as an individual, it should be dealt with in the same way as an offer of a gift or hospitality. In some cases such offers may be acceptable for example, where colleagues or others are sponsoring you for a charitable purpose. In other cases they may not be acceptable for example, where they are related in some way to the work of the Council or your role as a Member; involve significant sums; or seek specific outcomes for the person or organisation making the offer. If in doubt you should consult the Monitoring Officer.

## **GIFTS TO THE COUNCIL**

You may at some time be offered a gift for the Council as opposed to a gift to you in your individual capacity as a Member. Such gifts could take several forms, for example: land, buildings, goods, services, either for the Council to retain or test with a view to future acquisition; offers to carry out works, or provide services; or sponsorship of a Council-supported or organised function or activity. In such cases you should report the offer on receipt to the Monitoring Officer who will consider and determine in accordance with normal Council processes whether the Council should or should not accept the gift.

The Monitoring Officer will notify the person or the organisation offering the gift, whether it is accepted or not and will:

- Record the acceptance or non-acceptance;
- Record the outcome for audit purposes;
- Ensure the gift, if accepted, is properly applied for the benefit of the Council.

## **GIFTS TO THE CHAIR**

Gifts received by the Chair in his or her official capacity are deemed to be gifts of the Council. The Chair should record the receipt of all such gifts in the Register and in consultation with the Monitoring Officer determine how best they may be used for the benefit of the Council.

## **REGISTER**

In order to protect your integrity and that of the Council, and to counter any possible accusations or suspicion of improper conduct, the organisation will maintain a central register of gifts and hospitality.

All gifts and offers of hospitality accepted by you or your partner in accordance with the General Principles should be recorded on a Member Gifts and Hospitality Declaration Form (see Appendix A) and recorded centrally at [giftsandhospitality@peterborough.gov.uk](mailto:giftsandhospitality@peterborough.gov.uk).

All declarations should be made within 28 days of receipt of offer and will be published on the Council’s website

If you are in any doubt as to whether to accept or decline any gift, hospitality or sponsorship then you are advised to seek the Monitoring Officer’s advice before doing so. In order to do this you will need to advise the Monitoring Officer of the following:

- The nature and your estimate of the market value of the gift or hospitality;
- The name of the person or company offering the gift or hospitality;
- The connection which you have with the person or organisation making the offer or invitation such as any work which you have undertaken for the Council in which they have been involved;
- Any work, permission, concession or facility that you are aware that the person or organisation making the offer or invitation may seek from the Council;
- Any special circumstances that lead you to believe that acceptance would not be improper.

The Monitoring Officer will give you advice wherever possible but it will be a matter for you to make the decision as to whether to accept or decline.



You may also make a voluntary declaration to be entered on the Register of Gifts and Hospitality, even if you have declined the gift or hospitality or the value of the gift or hospitality is less than the maximum permissible amount. If you are concerned that an offer or its acceptance might be misinterpreted you may make such a voluntary declaration to ensure that there is nothing secret or underhand about the gift or hospitality or your actions

### **WHAT DO I NEED TO DECLARE AT A MEETING?**

If a matter under consideration at a meeting is likely to affect a person who gave you a gift or hospitality then you must declare the existence and nature of the gift or hospitality, the source who gave it to you and how the business under consideration relates to that source.

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1 Horse Guards Road  
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SW1A 2HQ

[public@public-standards.gov.uk](mailto:public@public-standards.gov.uk)

Sent by email  
to Local Authorities in England  
For the attention of the Chief Executive

**Committee on  
Standards in  
Public Life**

July 2020

## **LOCAL GOVERNMENT ETHICAL STANDARDS**

I am writing from the Committee on Standards in Public Life to follow up recommendations made in our January 2019 [report](#) on local government ethical standards.

In that report, we identified some best practice recommendations which represent a benchmark for ethical practice and which we expect any local authority should implement.

We said in our report that we would review the implementation of those best practice recommendations in 2020. We completely understand the unexpected and unprecedented pressures that local authorities are facing this year with COVID-19, so we are not of course asking for an immediate response. The purpose of this email is to let you know that we will be writing again in the autumn to ask you for your progress against these recommendations. I have attached a list of the best recommendations for ease of reference, but they are of course also set out in the report.

If you have any questions, please do just let us know. Otherwise, we wish you well and look forward to being in touch again later this year.

Secretariat  
Committee on Standards in Public Life

## List of Best Practice Recommendations

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

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

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

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

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

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

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

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

**Best practice 8:** An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial. 19 List of best practice

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

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

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

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

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

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

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

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## **PETERBOROUGH CITY COUNCIL**

### **CSPL Local Government ethical standards – progress against 15 best practice recommendations**

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

**Progress: Pending – awaiting issue of LGA revised Code of Conduct and further national guidance.**

The current PCC code [PCC Code of Conduct](#) does not make specific reference to bullying and intimidation.

As you know the Local Government Association (LGA) is currently reviewing the national model code of conduct. The links below show that the Council's Constitution and Ethics Committee has received a number of reports on this issue, most recently on 12<sup>th</sup> October 2020. Councillors and officers were asked to respond to the consultation which ended on 17 August 2020.

The proposed new Code from the LGA includes a whole section on bullying and harassment. Once the LGA publishes a new national model of code of conduct, the Council will take a new Code to its Constitution and Ethics Committee and then full Council for approval.

[Constitution and Ethics Committee 11 March 2019](#) (Item 5)  
[Constitution and Ethics Committee 12 October 2020](#) (Item 11)

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

**Progress: Partially complete**

See response to Section 1 – there is currently no reference to councillors being required to comply with formal standards investigations and we await the outcome of the revised national code.

The council's current complaint handling procedure applies a preliminary sift to trivial and malicious/tit-for-tat complaints.

<https://www.peterborough.gov.uk/council/councillors/complain-about-a-councillor>

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

**Progress: Partially complete.**

The council does not currently formally review its code of conduct each year. However the Monitoring Officer keeps the council's constitution under constant review and as part of this proposes amendments to the Code of Conduct as and when considered necessary, eg reviewing the gifts and hospitality policy on 12<sup>th</sup> October 2020 and rewriting the advice for members on this issue. We have also had a number of reports in the last two years on the social media conduct of members and adopted a social media policy in March 2019, which is cross-referenced in Part 3 of the council's Code of Conduct.

[Constitution & Ethics Committee March 2019](#)

When reviewing and amending its Code of Conduct it does take it to two formal decision making bodies (Constitution & Ethics Committee and then to Full Council) where all members of the public have the right to ask questions. Again see response to Section 1.

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

**Progress: Complete**

The council's code of conduct is easily accessible on our website –

<https://www.peterborough.gov.uk/council/councillors/complain-about-a-councillor>

and at the council's offices on request.

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

**Progress: Complete**

<https://www.peterborough.gov.uk/council/councillors/councillor-information>

The Code of Conduct requires all Councillors and co-opted members to register various interests, such as membership of other organisations, the ownership of land, the receipt of gifts and hospitality, and significant financial interests. Individual declarations of Interests can be found under "Members Interests" for each Councillor, and declarations in respect of gifts and hospitality (where received) are also listed under "Gifts and Hospitality", on our [Councillors](#) page.

The Council updates a Councillor's page immediately it receives notice of a gift or hospitality received. The Gifts and Hospitality Policy has recently been updated and is an appendix to the Code of Conduct – see link at Q1. We are currently preparing one overall register in an accessible format.

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

**Progress: Complete**

<https://www.peterborough.gov.uk/council/councillors/complain-about-a-councillor>

[PCC Councillor Conduct Complaint guidance](#)

The complaints flowchart (Appendix of the guidance) details clearly the preliminary tests a complaint needs to go through, including assessment of public interest.

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

**Progress: Complete.**

The Council has one independent person – Gillian Holmes – who is appointed by the Council on an annual basis at the Annual General Meeting. The Council is required under the Localism Act 2011 to appoint at least one independent person.

This is stated on the council's website in the Appointments report to Council (2.3.5 – 2.3.6): [Appointments report 2019 AGM](#)

which was automatically rolled over for another year under the Covid-19 legislation.

The council would have access to other Independent Persons via its county Monitoring Officer group should the need arise.

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

**Progress: Complete**

The IP is consulted at all stages of the process. The process is set out in the two documents below.

<https://www.peterborough.gov.uk/council/councillors/complain-about-a-councillor>

[PCC Councillor Conduct Complaint guidance](#)

The IP was invited to give written comments on the last complaint that carried on to a hearing – 1<sup>st</sup> April 2019 Appendix E.

<https://democracy.peterborough.gov.uk/ieListDocuments.aspx?CId=712&MIId=4254&Ver=4>

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

**Progress: Complete**

This is in place – see decision notice from the Conduct hearing in April 2019.

[Decision Notice](#)

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

**Progress: Complete**

Available at this link –

<https://www.peterborough.gov.uk/council/councillors/complain-about-a-councillor>

[PCC Councillor Conduct Complaint guidance](#)

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

**Progress: Partially Complete**

Guidance for parish councils and clerks on code of conduct issues is available here:

<https://www.peterborough.gov.uk/council/councillors/parish-councils>

There is no specific guidance about how to deal with such complaints but there is general guidance and a model protocol in the Parish Governance Toolkit and the Monitoring Officer also provides advice on how to make such complaints.

<https://www.peterborough.gov.uk/asset-library/imported-assets/Parish%20Council%20Toolkit.pdf>

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

**Progress: Complete**

Guidance for parish councils and clerks on code of conduct issues is available here:

<https://www.peterborough.gov.uk/council/councillors/parish-councils>

Advice is regularly given by the Monitoring Officer to parish council chairmen and clerks although there is no separate budget for this work.

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

**Progress: Complete**

The Monitoring Officer would either ask the Deputy Monitoring Officer to manage an investigation if a conflict arose and vice versa, or ask another Monitoring Officer (we have a Cambridgeshire & Peterborough Monitoring Officer's Group) or commission an external investigation.

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

**Progress: Complete.**

The council's Annual Governance Statement includes reference to the council's partnerships and an overview of the council's companies (Item 5 Appendix s19.02) is published as part of the statement of accounts.

[Audit Committee July 2020 Annual Governance Statement](#)

The Council has a Cabinet Shareholder Committee which oversees all the Council's companies and outside bodies – all issue reports to the committee and attend to present reports and answer questions.

[Cabinet Shareholder Committee](#)

Detailed advice has also been issued by the Monitoring Officer to all councillors on outside bodies, which is reviewed by the committee on an annual basis.

[Guidance for members and officers on outside bodies](#)

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

**Progress: Complete**

The Chief Executive and Monitoring Officer have regular meetings with political group leaders as a whole and with individual group leaders as necessary regarding any standards issues relating to particular members.

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<b>CONSTITUTION AND ETHICS COMMITTEE</b>	AGENDA ITEM No. 5
<b>8 FEBRUARY 2021</b>	<b>PUBLIC REPORT</b>

Report of:	Fiona McMillan, Director of Law and Governance and Monitoring Officer	
Cabinet Member(s) responsible:	Councillor Farooq, Cabinet Member for Digital Services and Transformation	
Contact Officer(s):	Dan Kalley, Senior Democratic Services Officer and Pippa Turvey, Democratic and Constitutional Services Manager	Tel. 296334

## REVIEW OF URGENCY WORDING

RECOMMENDATIONS	
<b>FROM:</b> <i>Director of Law and Governance and Monitoring Officer</i>	<b>Deadline date:</b> <i>N/A</i>
<p>It is recommended that the Constitution and Ethics Committee:</p> <p>1. Review and comment on the wording of the Council's urgency procedures and make any recommendations for change to Full Council.</p>	

### 1. ORIGIN OF REPORT

- 1.1 This report is submitted to the Constitution and Ethics Committee following a request from the Committee to review the wording of the Council's use of urgency procedures as set out in the Constitution.

### 2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to allow the Committee the opportunity to review and comment on the wording of the Council's urgency process and make any suggested changes to Full Council for approval.

- 2.2 This report is for the Constitution and Ethics Committee to consider under its Terms of Reference No. 2.7.2.1

*Authority to oversee the operation of the Council's Constitution and authority to make recommendations to Full Council as to amendments and improvements to the Council's Constitution (including the codes and protocols) subject to the receipt and consideration of a report prepared by the Monitoring Officer, with the exception of those matters under the remit of the Executive.*

### 3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If yes, date for Cabinet meeting	
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#### **4. BACKGROUND AND KEY ISSUES**

- 4.1 The Constitution and Ethics Committee at its last meeting on 20 October 2020 agreed to review the wording used in the Council's Constitution outlining the procedures for a Cabinet Member Decision to be taken using urgency procedures.
- 4.2 The current wording in the Constitution is set out in Part 4 Section 7 – Executive Procedure Rules. Some of the wording has been updated in to reference the Chair of Scrutiny Committees in place of 'Chairman'.

A further change has been incorporated into the wording of the Scrutiny Committee Procedure Rules to bring it in line with those in the Executive Procedure rules to state that if the Chair of the relevant Scrutiny Committee is unable to act then the request for urgency is then sought from the Mayor or in their absence the Deputy Mayor.

This is keeping in line with [Statutory Instrument 2012/2089 - The Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012, regulation 11](#), which sets out that in the event of the relevant Scrutiny Chair being available agreement to use special urgency needs to be sought from the Chair of the Local Authority and if absent from the Deputy Chair.

#### **6. GENERAL EXCEPTION - URGENCY**

##### **6.1**

If a matter which is likely to be a key decision has not been included in the Forward Plan, then subject to special urgency, the decision can still be taken if:

- (a) it is impractical to defer the decision until it has been included in the next Forward Plan and the start of the first period because the decision must be taken sooner.
- (b) the Monitoring Officer has informed the Chair~~man~~ of the relevant Scrutiny Committee, or in the absence of a Chair~~man~~, each Member of that Committee by notice in writing
- (c) the Monitoring Officer has made copies of that notice available to the public at the offices of the Council
- (d) at least five clear working days have elapsed since the Monitoring Officer complied with paragraphs (b) and (c) above.

##### **6.2**

Where such a decision is taken by Cabinet as a whole, it must be taken in public subject to these provisions.

#### **7. SPECIAL URGENCY**

Should a decision need to be taken urgently and the provisions in paragraph 6 above cannot be followed, the decision taker (an individual or the Chair~~man~~ of the decision-making body) must obtain the agreement of the Chair~~man~~ of the relevant Scrutiny Committee before the decision can be taken. If there is no Chair~~man~~ of this Committee, or if the Chair~~man~~ is unable to act, then the agreement of the Mayor, or in his or her absence the Deputy Mayor will suffice

#### **8. REPORTS ON SPECIAL URGENCY DECISIONS**

Executive decisions taken in the circumstances set out in paragraph 7 (Special Urgency) will be reported to the Council by the Leader. The report will include the number of decisions taken and a summary of each decision within preceding three months.

- 4.3 In addition to the wording above the Constitution also sets out in Part 4 Section 8 – Scrutiny Committee Procedure Rules.

Some of the changes are to bring this in line with the Executive Procedure rules.

## **CALL-IN AND URGENCY**

### **10.24**

The call-in procedure set out above will not apply where the decision is urgent or becomes urgent during the process. A decision will be urgent if any delay would seriously prejudice the Council's or the public interest. The request for a decision to be deemed urgent will be considered by the Chair~~man~~ of the relevant committee and the Monitoring Officer. They will take into account the reasons provided. If there is no Chair of this Committee, or if the Chair is unable to act, then the agreement of the Mayor, or in his or her absence the Deputy Mayor will suffice.~~In the absence of the relevant Chairman, another Scrutiny Committee Chairman will consider this.~~ The decision will only be taken if the Chair~~man~~ of the relevant Scrutiny Committee agrees that the decision is a matter of urgency.

### **10.25**

The public record of the decision will state:

- Why in the opinion of the decision-making person or body, the decision is or has become an urgent one.
- The consent of the relevant Scrutiny Chair~~man~~.
- In the absence of the relevant ~~all~~ Scrutiny Chair~~man~~, the consent of the Mayor will be required. In their absence, the consent of the Deputy Mayor will be sufficient.

### **10.26**

Decisions taken under the urgency procedures and where call in has been waived will be reported to the next available meeting of the Council. Details of the reasons of urgency will also be provided.

### **10.27**

The operation of the provisions relating to call-in and urgency shall be monitored annually. A report will be submitted to Council with proposals for review if necessary.

## **5. CONSULTATION**

- 5.1 Any changes to the Council's constitution needs to be approved by Full Council. The Constitution and Ethics Committee are the consultees in relation to any suggested amendments to Full Council.

## **6. ANTICIPATED OUTCOMES OR IMPACT**

- 6.1 If the Committee agrees to any suggested changes these will need to be presented to Full Council for approval and if agreed the Constitution will need to be updated to reflect the changes.

## **7. REASON FOR THE RECOMMENDATION**

- 7.1 The recommendation outlined is at the request of the Committee to review the Council's urgency procedures and suggest any alterations.

## **8. IMPLICATIONS**

### **Financial Implications**

8.1 There are no financial implication arising.

### **Legal Implications**

8.2 If any changes are agreed these will need to be legal and changes to the Constitution will need to be carried out.

### **Equalities Implications**

8.3 There are no equalities implications arising.

## **9. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

9.1 Council Constitution:

- Part 4 Section 7 – Executive Procedure Rules
- Part 4 Section 8 – Scrutiny Committee Procedure Rules.

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

## **10. APPENDICES**

10.1 None.



<b>CONSTITUTION AND ETHICS COMMITTEE</b>	AGENDA ITEM No. 6
<b>8 FEBRUARY 2020</b>	<b>PUBLIC REPORT</b>

Report of:	Fiona McMillan, Director of Law and Governance and Monitoring Officer	
Cabinet Member(s) responsible:	Councillor Farooq, Cabinet Member for Digital Services and Transformation	
Contact Officer(s):	Fiona McMillan, Director of Law and Governance and Monitoring Officer Paulina Ford, Senior Democratic Services Officer	Tel. 452508

**TASK AND FINISH GROUP AND WORKING GROUP MEETINGS**

RECOMMENDATIONS	
<b>FROM:</b> Director of Law and Governance and Monitoring Officer	<b>Deadline date:</b> <i>n/a</i>
<p>It is recommended that the Constitution and Ethics Committee consider the contents of the report and</p> <ol style="list-style-type: none"> <li>1. Agree how Task and Finish Groups / Working Groups should operate with regard to meeting in public going forwards, and</li> <li>2. Agree the relevant amendments to the Constitution to recommend to Council for consideration and approval.</li> </ol>	

**1. ORIGIN OF REPORT**

- 1.1 This report is submitted to the Constitution and Ethics Committee following a motion from Councillor Hogg which was agreed at Full Council on 21 October 2021 requesting that *“amendments to the Constitution be made so that by default meetings of task and finish groups and working groups should be held in public, unless it can be demonstrated that there is a clear reason for them to be held in camera.”*

**2. PURPOSE AND REASON FOR REPORT**

- 2.1 The purpose of this report is for the Committee to consider options of how Task and Finish Groups and Working Groups can practically be held in public and by doing so agree on proposed changes to the Constitution to present to Full Council for consideration and approval.
- 2.2 This report is for the Constitution and Ethics Committee to consider under its Terms of Reference No. 2.7.2.1 Authority to oversee the operation of the Council’s Constitution and authority to make recommendations to Full Council as to amendments and improvements to the Council’s Constitution (including the codes and protocols) subject to the receipt and consideration of a report prepared by the Monitoring Officer, with the exception of those matters under the remit of the Executive.

### 3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If yes, date for Cabinet meeting	N/A
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### 4. BACKGROUND AND KEY ISSUES

4.1 At its meeting on 21 October 2020, Full Council received and resolved to approve the following motion from Councillor Hogg:

“Council believes that as a public body spending tens of millions of pounds of public funds, as much as possible of the democratic processes of the City Council should be carried out at meetings which are accessible to members of the public. Council notes that currently task and finish groups and working groups set up by the Peterborough City Council cabinet or its scrutiny committees meet exclusively in private, whereas in many other councils evidence gathering sessions of such groups happen in public and that is also the practice adopted by Parliamentary select committees.

**Council instructs the Monitoring Officer to prepare and submit to Council amendments to the Constitution so that by default meetings of task and finish groups and working groups should be held in public, unless it can be demonstrated that there is a clear reason for them to be held in camera. The Monitoring Officer is asked to consult with the Constitution and Ethics Committee in drawing up such amendments.”**

4.2 The current practice in Peterborough is to run Cross Party Task and Finish Groups and Working Groups informally in private and to present their findings, conclusions and recommendations in a full report to Cabinet (if a working group) or the parent Scrutiny Committee and then on to Cabinet if a Task and Finish Group.

Whilst holding the meetings in private has been common practice there is nothing in the constitution that states that a Task and Finish Group / Working Group cannot hold any of its meetings in public. There have been occasions in the past where it was felt that a particular topic would benefit from holding a meeting in public in order to engage with and collect evidence from a wider group of people. Examples of this are:

[Scrutiny in a Day: Focus on the Impact of Welfare Reform – 17 January 2014](#)

[The Big Debate: The Effects on Peterborough of the Economic Downturn. -16 February 2010](#)

[Tackling Anti-Social Behaviour - 16 March 2004](#)

4.3 However, it should also be noted that holding scrutiny meetings in public can require more resourcing than the normal informal Task and Finish Group working arrangements, as much more planning and preparation is required.

The advantages of conducting Task and Finish Groups and Working Groups in private session are considered to be as follows:

- Cross Party working is more effective as members of the group are more willing to participate and put forward their opinions openly and without fear of being misquoted.
- Members of the group work together in a non-political way and are more likely to take part in informal and candid discussions to get to the real issues of the topic being reviewed
- Members are more willing to put their names forward to be part of a Task and Finish Group on topics that truly interest them.
- Individuals from external organisations can have fixed perceptions of what an evidence session entails and may be unwilling to subject themselves to detailed public scrutiny if they believe it could reflect badly on them or their employer. Making an informal approach

can help reassure an organisation of the aims of the committee, the type of information being sought and the manner in which the evidence session would be conducted; (*Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities*)

- The group is more able to develop robust recommendations in a considered way working with officers without the time constraints of a formal meeting.

#### 4.4 The Good Scrutiny Guide states:

*Structurally speaking there are several ways to investigate a topic, some of which are explored in the guidance. These include a variety of different approaches to “scrutiny reviews”, or “task and finish” reviews. These are more informal approaches to scrutiny, which involve a small group of councillors being commissioned by a formal committee to go and investigate a topic in detail, before reporting back with recommendations.*

#### 4.5 The Senior Democratic Services Officer contacted 20 Local Authorities within a Scrutiny Network Group to ask how they conducted scrutiny reviews of which 6 responded as follows:

- Suffolk, Medway and Leeds all responded that all Task and Finish Groups and Working Groups were held in private and in an informal way and reported their findings to the parent scrutiny committee and on to Cabinet.
- Birmingham responded that reviews were held both in public session, as part of the formal committee, and as informal working groups depending on the subject matter and what members were looking to get out of it
- Milton Keynes – In general Task and Finish Group meetings were held in public depending on the subject matter.
- Hertfordshire - Task and finish (topic groups) were held in public for observation, not participation. All the papers, including presentations were published on the website as were the report with the recommendations, executive response and the outcome of monitoring the recommendations 6 months after the scrutiny. The topic was usually dealt with in one day.

#### 4.6 Options for Consideration

**Option 1** – To continue running the Task and Finish Groups / Working Groups following the current practice of generally holding them in private session and leaving it to the discretion of the individual Task and Finish Group / Working Group to decide on whether they wish to hold any or all of their meetings in public, depending on the topic being reviewed and if the group considered there would be any benefit in doing so.

**Option 2.** - Hold evidence gathering sessions with key witnesses in public and hold all other meetings in private. Consideration would need to be given to whether the subject matter was of a sensitive nature in which case it may not be possible to hold the meeting in public. This option may deter some key witnesses from attending and giving evidence and therefore the decision to hold key witness sessions in public would need to be decided on a case-by-case basis.

**Option 3** – Hold all meetings in public. This option will require additional meetings to carefully plan the public meetings and therefore will be more resource intensive, and as mentioned in paragraph 4.3 might preclude some Members from joining a Task and Finish Group / Working Group and some Key Witnesses from taking part.

#### 4.7 Proposed wording to amend the constitution can be found highlighted in red text in Appendix 1 of the report.

## 5. CONSULTATION

### 5.1 N/A

## **6. ANTICIPATED OUTCOMES OR IMPACT**

- 6.1 It is for the committee to discuss the contents of the report and to agree on which option to take forward and the required amendments to the constitution.

## **7. REASON FOR THE RECOMMENDATION**

- 7.1 The recommendation is in response to the motion put forward by Councillor Hogg and agreed at Full Council on 21 October 2020.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

- 8.1 Alternative options are listed for consideration in section 4.5 of the report.

## **9. IMPLICATIONS**

### **Financial Implications**

- 9.1 None at present. However, if the Task and Finish Groups and Working Groups were to hold ALL meetings in public this would double the workload of officers supporting the groups due to the impact of having to hold additional meetings to plan the public meetings. It is therefore anticipated that additional resourcing may be required to support these additional meetings however the cost of this would not be known until they took place.

### **Legal Implications**

- 9.2 There is no legal requirement to hold meetings of working parties or Task and Finish Groups in public.

### **Equalities Implications**

- 9.3 *None*

### **Rural Implications**

- 9.4 *None*

## **10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 10.1 [The Good Scrutiny Guide](#)

[Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities](#)

## **11. APPENDICES**

- 11.1 Appendix 1

## Appendix 1

### Part 4, Section 8 – Scrutiny Committee Procedure Rules

#### 14. TASK AND FINISH GROUPS

14.1 Scrutiny Committees have the power to set up Task and Finish groups to consider any matter within their terms of reference.

14.2 The specific terms of reference for the Task and Finish group will be agreed by the relevant Committee when the group is set up. These will include the membership of the group and the proposed dates of reporting to the parent body.

14.3 Each Task and Finish group may co-opt no more than two non-elected members to the group. The number of co-opted members will not exceed the number of elected Members. Co-opted members will be able to contribute to the debate of the group and will be able to vote on any decisions made. Co-opted members will not be able to vote on any decisions when the final report is considered by the parent body.

14.4 Task and Finish groups will carry out reviews and policy development work allocated to them by the parent body.

Task and Finish groups may at their discretion decide to hold some of their meetings in public, if they feel this would be beneficial to the outcome of the review.

14.5 Task and Finish groups will keep the parent body informed of their progress. They will produce a report for consideration by the relevant parent body at the end of the review.

14.6 Once a Task and Finish group's final report has been considered by the parent body the Group will be disbanded.

### Part 3, Delegations Section 7 - Joint Committees and Working Groups Involving Members

#### 7.6 Working Groups Involving Members

7.6.1 Working groups, review teams and advisory groups are established from time to time, for specific purposes and shall be time limited. They will only be established when the matter cannot be undertaken by a relevant Scrutiny Committee or Scrutiny Commission. They usually fall into one of the following categories:

(a) Advisory groups relating to Executive Functions Usually established to advise a Cabinet Member about an issue or subject area. The terms of reference and membership are specified by the Executive.

(b) Task & Finish Groups Small groups of Members appointed by a Scrutiny Committee or Scrutiny Commission for the purpose of advising the parent committee about either:

(i) an in-depth policy review

(ii) performance monitoring

(iii) responding to a major policy consultation from the Executive. The terms of reference and purpose are

Working Groups and Task and Finish groups may at their discretion decide to hold some of their meetings in public, if they feel this would be beneficial to the outcome of the review.

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<b>CONSTITUTION AND ETHICS COMMITTEE</b>	AGENDA ITEM No. 7
<b>8 FEBRUARY 2021</b>	<b>PUBLIC REPORT</b>

Report of:	Fiona McMillan, Director of Law and Governance and Monitoring Officer	
Cabinet Member(s) responsible:	Councillor Farooq, Cabinet Member for Digital Services and Transformation	
Contact Officer(s):	Pippa Turvey, Democratic and Constitutional Services Manager	Tel. 296334

## MOTIONS AND FULL COUNCIL MEETINGS PROCEEDURE

RECOMMENDATIONS	
<b>FROM:</b> <i>Director of Law and Governance and Monitoring Officer</i>	<b>Deadline date:</b> <i>N/A</i>
<p>It is recommended that Constitution and Ethics Committee:</p> <ol style="list-style-type: none"> <li>1. Review and comment on the wording of the Council's Standing Orders in relation to the submission and debate of motions and make any recommendations for change to Full Council.</li> <li>2. Consider the number of Full Council meetings to be held over the course of the municipal year and make any recommendations for a change to the programme of meetings to Full Council.</li> </ol>	

### 1. ORIGIN OF REPORT

- 1.1 This report is submitted to the Constitution and Ethics Committee following the passing of a motion at Full Council on 9 December 2020 from Councillor Shaz Nawaz.

### 2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is to allow the Committee the opportunity to review and comment on the procedures around the submission and debate of motions at Full Council, and the regularity of Full Council meetings.

- 2.2 This report is for the Constitution and Ethics Committee to consider under its Terms of Reference No. 2.7.2.1

*Authority to oversee the operation of the Council's Constitution and authority to make recommendations to Full Council as to amendments and improvements to the Council's Constitution (including the codes and protocols) subject to the receipt and consideration of a report prepared by the Monitoring Officer, with the exception of those matters under the remit of the Executive.*

### 3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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### 4. BACKGROUND AND KEY ISSUES

4.1 The Constitution and Ethics Committee previously considered a number of options to amend the process for debating motions at Full Council at its meeting on 29 October 2018. This included discussion on whether it would be appropriate to introduce a time limit on the debate of motions. At that time the Committee did not feel any action to amend the debate or submission of motions was necessary.

4.2 At the Full Council meeting a motion was agreed as follows:

“This council notes:

1. Motions are an integral part of council business
2. Motions are a useful mechanism for proposing substantive issues for consideration including council action
3. Motions enable the council to adopt a particular course of action, to do some act, or to document a specific approach or attitude
4. Motions are an opportunity for members to debate and discuss important issues
5. Motions are part of our democratic process and serve as a vital instrument to help the council move forward

The council believes:

It is the democratic right of its members to table motions to create a robust and forward-thinking Local Authority.

**The council resolves to:**

**Request the Constitution and Ethics Committee to review the situation in terms of allowing more time for debating motions. In particular, it is to review and consider introducing additional full council meetings to discuss and debate motions specifically.”**

4.3 The following options are presented to the Constitution and Ethics Committee as potential responses to the issues outlined in the above motion.

#### Questions on Notice

During the COVID-19 pandemic, meetings of Full Council have been held virtually. As part of this process the Council has considered a number of measures to ensure that the virtual meetings of Full Council run in a more efficient manner in order to avoid prolonged screen time for participants.

One such proposal during this time has been for Members of the Executive and Chairs to respond to questions on notice from other Members in writing only. The Committee may wish to consider introducing this as a permanent change to the Council’s standing orders, either with a provision for supplementary questions to be put verbally to Members at the meeting or not, in order to ensure sufficient time is available to debate motions.

Possible wording:

“18.5 Response



An answer ~~may will~~ take the form of a written response, to be circulated to Members and published online one day prior to the meeting.:

~~a) a direct oral answer of up to three minutes;~~

~~b) by reference to published material of the Council which is readily available to Members; or~~

~~c) where the reply cannot conveniently be given orally, a written answer will be circulated later to the questioner.”~~

#### Questions without Notice

Questions without notice of Executive decisions taken since the previous Council meeting are not currently subject to any time limit and are considered prior to the debate on any motions.

In order to ensure that sufficient time is provided for the debate of motions, the Committee may wish to consider the introduction of a time limit on such questions without notice.

Possible wording:

“xii. receive reports about and receive questions and answers on decisions made by members of the Cabinet since the last meeting of Council for up to 20 minutes;”

#### Time Limit on Motion Debate

There are a number of time limits already in place within the framework of Full Council, for example, Questions on Notice and in the length of time permitted for individual Member's speeches (excepting Budget debates).

As such, the Committee may wish to consider the introduction of a time limit for the debate of any individual motion. This may ensure that no one motion is debated at length, at the expense of any other motion, although if a motion is considered of sufficient importance to the council as a whole necessitating longer debate any such time limit could be suspended.

Possible wording:

#### “19.5 Timing

Debate on individual motions will last no longer than 30 minutes, at which point the meeting will move directly to the vote.”

OR

#### “19.5 Timing

Debate all motions in total will last no longer than 2 hours 30 minutes, at which point the meeting will move directly to the vote on all remaining motions.”

#### Limit on Number of Motions Submitted

In a similar manner to the suggestion above, the Committee may feel that it would be appropriate to introduce a limit on the number of Motions that would be accepted for debate at a Council meeting. This would ensure that any agenda for Full Council would not become crowded with a high number of motions and would mean the motions that were included on the agenda could be debated for a more reasonable period of time. For example, Cambridgeshire County Council only accepts a maximum of five motions for debate at an ordinary meeting of the Council and does not accept motions at all for the annual budget meeting, to enable more time for full debate of the budget.

Possible wording:

“19.5 Limit of Number of Motions

The number of Motions to be considered at the meeting shall be limited to 5 motions. These shall be the first 5 motions received that are within the permitted scope of motions on notice.”

Re-order of the Council Agenda

At current the Council’s Standing Orders set out that motions will be considered only after Questions on Notice, Petitions, reports from Cabinet, reports from Council’s committees, and reports on the decisions made by the Executive and by the Combined Authority since the previous meeting.

It should be noted that the current standing orders on the order of proceedings at council meetings were set out in the Modular Constitution issued by central government as part of the change to the local government flowing from the Local Government Act 2000.

In recent meetings the 4-hour guillotine (or 3-hour guillotine, for virtual meetings during the current COVID-19 pandemic) has been reached before the majority, or even any, of the motions on the agenda are able to be debated. This has resulted in motions subsequently not being moved by those who have submitted them or being voted on without debate.

The Committee may wish to consider recommending that motions be dealt with at an earlier point in the meeting. The Committee should however bear in mind the other items on the agenda, such as recommendations from Cabinet or committees, for which debate may also be of key importance.

Standing Order 1.1.3 also allows for the current agenda order to be varied at the discretion of the Mayor, which has happened on a number of occasions, for example when the climate change emergency motion was being debated and a large number of members of the public attended.

Possible wording:

“2.1 Ordinary meetings of the Council will take place in accordance with a programme decided at the Council’s annual meeting. The order of business at ordinary meetings will be as follows:

...

~~viii. Receive questions from, and provide answers to, Members in accordance with Standing Order 17.2;~~

viii. deal with any business from the last Council meeting;

ix. receive reports from the Cabinet for consideration, including consideration of proposals from the Cabinet in relation to the Council’s budget and policy framework and receive questions and answers on any of those reports;

x. receive any reports from the Council’s committees and overview and scrutiny committees for consideration and receive questions and answers on any of those reports;

xi. consider motions;

xii. Receive questions from, and provide answers to, Members in accordance with Standing Order 17.2;

xiii. receive reports about and receive questions and answers on decisions made by members of the Cabinet since the last meeting of Council;

xiv. receive any reports about and receive questions and answers on the business of joint arrangements and external organisations, including the Combined Authority; and

~~xiv. consider motions; and”~~

### Additional Council Meetings

The motion agreed at Full Council in December asks the Committee to consider whether it may be appropriate to hold additional meetings of Full Council specifically for the consideration of motions. This issue had been the subject of discussion at a number of Group Leaders meetings in the last year where it has not been possible to reach a consensus on whether to increase the number of meetings.

Peterborough City Council currently meets approximately six times a year (including the Annual Council meeting). Typically, two of these meetings will consider the Council’s budget in phase one and phase two.

The Constitution and Ethics Committee have previously been presented with a report in relation to the frequency of Full Council meetings at its meeting on 8 July 2019 and at that time agreed to continue at its current rate. Within that report it was noted that the average number of meetings held per year was seven. It was further advised that, at that time, the cost of running a Full Council meeting was approximately £3,500.

If the Committee were minded to recommend introducing further Full Council meetings specifically for the consideration of motions, members may also wish to consider whether motions be excluded at other meetings, to ensure that other business such as Cabinet or committee recommendations are also sufficiently considered.

Additionally, Members may wish to consider whether it is appropriate to continue to consider motions at Budget Council meetings, as a significant length of time may need to be dedicated in these particular meetings to the debate on the Council’s budget.

Possible proposal:

- To add an additional meeting in June, in between May Annual Council and July Ordinary Full Council, solely to consider motions.

Possible wording:

“21.5 Budget Meetings

Rule 20.4 above, in respect of the length of speeches, shall not apply to a debate on the Budget where speeches shall not be subject to any time limit.

At a meeting of Full Council at which debate on the Budget takes place, there shall be no consideration of any motions on notice.”

## **5. CONSULTATION**

- 5.1 Any changes to the Council’s constitution needs to be approved by Full Council. The Constitution and Ethics Committee are the consultees in relation to any suggested amendments to Full Council.

## **6. ANTICIPATED OUTCOMES OR IMPACT**

- 6.1 If the Committee agrees to any suggested changes these will need to be presented to Full Council for approval and if agreed the Constitution will need to be updated to reflect the changes.

## **7. REASON FOR THE RECOMMENDATION**

7.1 The recommendation outlined is at the request of the Council to review the Council's motions process and suggest any alterations.

## **8. IMPLICATIONS**

### **Financial Implications**

8.1 There are no financial implication arising.

### **Legal Implications**

8.2 If any changes are agreed these will need to be legal and changes to the Constitution will need to be carried out.

### **Equalities Implications**

8.3 There are no equalities implications arising.

## **9. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

9.1 Council Constitution Standing Orders  
Full Council 9 December 2020 Record of Outcomes  
Constitution and Ethics Agenda 29 October 2018  
Constitution and Ethics Agenda 8 July 2019

## **10. APPENDICES**

10.1 None.

<b>CONSTITUTION AND ETHICS</b>	AGENDA ITEM No. 10
<b>8 FEBRUARY 2021</b>	<b>PUBLIC REPORT</b>

Report of:	Fiona McMillan, Director of Law and Governance/Monitoring Officer	
Cabinet Member(s) responsible:	Cllr Mohammed Farooq – Cabinet Member for Digital Services and Transformation	
Contact Officer(s):	Philippa Turvey, Democratic and Constitutional Services Manager Daniel Kalley – Senior Democratic Services Officer	296334

## **CODE OF CONDUCT COMPLAINTS**

R E C O M M E N D A T I O N S	
<b>FROM: Monitoring Officer</b>	<b>Deadline date: N/A</b>
<p>It is recommended that the Constitution and Ethics Committee:</p> <p>Notes the report on complaints received/being handled by the Monitoring Officer/Deputy Monitoring Officer since the Committee's last meeting on 12<sup>th</sup> October 2020.</p>	

### **1. ORIGIN OF REPORT**

- 1.1 This Report is submitted to the Constitution and Ethics Committee by the Council's Monitoring Officer.

### **2. PURPOSE AND REASON FOR REPORT**

- 2.1 The Constitution and Ethics Committee has the responsibility for promoting and maintaining high standards of conduct amongst members and co-opted members of the council including 'monitoring the operation of the Code of Conduct'. This also includes parish councillors.

To assist in the fulfilment of the above objective it has been agreed that a standing item is placed on the agenda for the committee notifying and updating it on complaints that have been made, how they are being handled and whether they have been resolved. The committee decided that these should be reported in an anonymous way until such time as a breach of the code of conduct is found as part of the complaints process.

This Report fulfils the requirements set out above.

- 2.2 This report is for the Constitution and Ethics Committee to consider under its Terms of Reference No. 2.7.2.2.

Authority to oversee and approve the operation of the Council's functions relating to the promotion and maintenance of high standards of conduct amongst members and co-opted members including:

- promoting and maintaining high standards of conduct by members and co-opted members;
- Assisting the members and co-opted members to observe the Code of Conduct;
- Advising the council on the adoption or revision of the Members Code of Conduct;
- Monitoring the operation of the Code of Conduct;
- Advising, training or arranging to train members and co-opted members on matters relating to the Code of Conduct.

### 3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If yes, date for Cabinet meeting	
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### 4. **BACKGROUND AND KEY ISSUES**

#### 4.1 **New Complaints - City Councillors**

Since the Committee's last report on 12<sup>th</sup> October 2020 there has been three new complaints received in relation to city councillors. The new complaints received include:

- A complaint was made by a councillor in relation to a social media post by another councillor (January 2021). This has only just been received and is therefore still at the very early stages of the process.
- A complaint has been made by a member of the public in relation to two city councillors and their involvement in a local issue (January 2021). Further information has been sought from the complainant before the complaint can be sent to the councillors for comment and then assessed.
- A complaint has been made by a member of the public in relation to a city councillor and comments made during a visit to business premises (January 2021). The Monitoring Officer is awaiting a response from the councillor before it can be assessed.

#### **New complaints – Parish Councillors**

There have also been four new complaints received in relation to parish councillors. These include:

- A complaint by one parish councillor against another in relation to the content of an email sent. This matter has been discussed with the Independent Person and is being referred for investigation.
- A complaint by the clerk of a Parish Council against a parish councillor in relation to tone and content of various emails and interactions over the course of 2020. This matter has been discussed with the Independent Person and is being referred for investigation.
- A complaint from a member of the public against a parish councillor in relation to the tone and content of two interactions. The matter is due to be discussed with the Independent Person imminently.
- A complaint from a member of the public against a parish councillor in relation to their use of social media and subsequent interactions with them. The matter is due to be discussed with the Independent Person imminently.

#### 4.2 **Update on complaints reported to last meeting**

##### **City Council complaints**

- A complaint from a councillor in relation to the behaviour of another councillor at a council meeting (October 2019). The Investigator concluded that there had been a breach of the

Code of Conduct and, following discussion with the Independent Person, the Deputy Monitoring Officer is currently establishing whether this complaint is capable of alternative resolution.

- Two complaints from a councillor in relation to social media posts by another councillor (received September 2020). These have been initially assessed by the Monitoring Officer and Independent Person and have both been referred for a joint investigation.

### **Parish Council complaints**

- The previous complaint made by one parish councillor against two other councillors at the same parish council in respect of issues arising at a Parish Meeting have been discussed with the Independent Person and is being referred for investigation.
- The complaint by a parish councillor about another parish councillor at the same parish council involving allegations of bullying has been discussed with the Independent Person and is being referred for investigation.

It should be noted that the investigation of new and existing Parish Councillor complaints detailed above will be investigated together as they all emanate from the same Parish Council.

### **Publication of investigation report**

At the Committee in October 2020 a report was made concerning the outcome of three complaints about one councillor, which were previously referred for a formal investigation by an external investigator, to be investigated together. The investigator found that there was a breach of the code of conduct in relation to one of the complaints. The Monitoring Officer and Independent Person considered the investigator's recommendation that, taking the complaints as a whole, an alternative resolution in the form of social media training should be sought in order to resolve the complaint without the need for a hearing. The councillor agreed to attend training and this was organised and took place on 9<sup>th</sup> July 2020. The councillor attended and participated fully and therefore no further action was to be taken.

In July 2018 the Committee agreed, when considering the code of conduct complaints process and confidentiality, that "*where a conclusion has been reached that the code of conduct has been breached but that no hearing is necessary due to an agreed alternative resolution that the investigation report will be published when the case is reported back to the committee*". This should have been attached to the October report and was omitted in error. The investigation report in relation to this complaint is therefore attached as **Appendix 1** for the Committee to note.

## **5. CONSULTATION**

5.1 N/A

## **6. ANTICIPATED OUTCOMES OR IMPACT**

6.1 By reporting the complaints that have been made the Committee can more effectively monitor the operation of the Code of Conduct.

## **7. REASON FOR THE RECOMMENDATION**

7.1 Regular reporting of both quantities and substance of complaints will help the Committee gain a better understanding of the effectiveness of current procedures and how well the Code is being observed across both the council and parish councils in its area. This will inform future decisions about what training may be necessary to ensure the requirements of the code are being met.

**8. ALTERNATIVE OPTIONS CONSIDERED**

8.1 None

**9. IMPLICATIONS**

**Financial Implications**

9.1 None

**Legal Implications**

9.2 Under the Localism Act 2011 the council may set its own procedures in relation to the handling of complaints.

**Equalities Implications**

9.3 None

**10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

10.1 The Localism Act 2011.

**11. APPENDICES**

11.1 None





**Independent investigation into allegations  
concerning**

**Councillor Ed Murphy  
of  
Peterborough City Council**

**Report into complaints by  
Councillor David Seaton  
and  
Mrs Alison Seaton-Paige**

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## 1: Executive Summary

- 1.1 Peterborough City Council's Monitoring Officer instructed us to investigate three complaints about Councillor Ed Murphy's conduct; two that were received from Councillor David Seaton and one Mrs Seaton-Paige. All of the complaints related to comments that were allegedly made by Councillor Murphy about Councillor Seaton. These included:
1. That Councillor Murphy made disparaging comments about Councillor Seaton during a City Council meeting and continued to do so on Facebook on while the meeting was being webcast.
  2. That Murphy called Councillor Seaton "*controlling and bullying*" in a Facebook post.
  3. That Councillor Murphy used the offensive acronym 'FOAD' on Facebook.
- 1.2 As part of this investigation we considered firstly whether the alleged conduct fell within the jurisdiction of the standards framework; a councillor only has to abide by their Council's Code of Conduct when they are conducting the business of that authority. For those allegations that did engage the Code; we have gone on to consider whether by his conduct, Councillor Murphy failed to promote and support the high standards of conduct required when serving in his public post.
- 1.3 The investigation has established that Councillor Murphy did act as alleged and in the case of the first two allegations, did so in his councillor capacity; as such, the Code of Conduct was engaged. Councillor Murphy is clearly a committed and hardworking member of the Council who is passionate about representing his local community. We have concluded though that Councillor Murphy's comments about Councillor Seaton on Facebook went beyond the "rough and tumble" of local politics and instead amounted to online personal abuse.
- 1.4 The Council's arrangements for dealing with standards complaints states that when the investigator considers that there has been a breach of the Code the Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or seek an alternative resolution. In considering what action the Monitoring Officer should consider taking, we are not sure that further examination of the concerns highlighted or formal determination of these allegations through a public hearing is necessarily justified, particularly given the limited nature of the sanctions available. While we think that Councillor Murphy's conduct did on this occasion cross the line, it is a finely balanced decision. It is also evident that his conduct was not without provocation, in that when trying to get Councillor Murphy excluded from the meeting of 16 May 2019, Councillor Seaton made comments about Councillor Murphy that are in many ways similar to those complained about. There appears to be a long standing and ongoing public 'spat' between Councillors Murphy and Seaton which in our view has done little for the reputation of either; councillors are required to set standards of

behaviour and not allow their conduct to descend to the levels they might perceive in others.

- 1.5 In light of the comments above, our recommendation is that Councillor Murphy be offered some training in relation to his use of Social Media when acting as a councillor. If Councillor Murphy refuses the offer of training, our recommendation is that this matter be referred to the Council's Hearings Panel for local hearing.

## **2: Councillor Murphy's official details**

2.1 Councillor Murphy has served on Peterborough City Council since May 2011. He is currently the ward member for Ravensthorpe. He is a member of the Labour Party.

2.2 Councillor Murphy currently sits on the following Committee's:

- Cambridgeshire Police and Crime Panel (Reserve) Peterborough City Council
- Cambridgeshire Police and Crime Panel Complaints Sub-Committee
- Constitution and Ethics Committee
- Constitution and Ethics Sub-Committee
- Planning and Environmental Protection Committee(Reserve)

## **3: Relevant legislation and protocols**

### ***The Localism Act 2011***

3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant authority must promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity. For the purposes of this investigation, the relevant authority is Peterborough City Council.

3.2 Section 28 of the Act provides that the Authority must secure that its code of conduct is, when viewed as a whole, consistent with the following principles: -

- (a) Selflessness;
- (b) Integrity;
- (c) Objectivity;
- (d) Accountability;

- (e) Openness;
- (f) Honesty;
- (g) Leadership.

- 3.3 The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which engenders public confidence in democracy, as was recognised by Beatson J, as he then was, in *R (Calver) v The Adjudication Panel for Wales* [2012] EWHC 1172 (Admin) when he held that there was a clear public interest in maintaining confidence in local government while at the same time bearing in mind the importance of freedom of political expression or speech in the political sphere.
- 3.4 Under 28(6) of the Act, Local Authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision by the appointment of the authority of at least one “independent person” 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. For the purposes of this investigation, the relevant authority is Peterborough City Council.
- 3.5 Section 28(11) of the Act provides that if a relevant authority finds that a member or a co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.

### ***Peterborough City Council's Code of Conduct***

- 3.6 Under Section 27(2) of the Localism Act the Council established a Code of Conduct for members (the Code).
- 3.7 The Code adopted by Peterborough City Council includes the following paragraphs:

#### **PART 1 GENERAL PROVISIONS**

You are a member or co-opted member of Peterborough City Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example

3.8 Further to the above, the Council's website states:

### **What is expected of councillors**

Councillors come into contact with a very wide range of people and are asked to make decisions about many different local issues. It is important that they follow high standards of behaviour and integrity, acting as they do on the public's behalf. The council Members' Code of Conduct sets clear guidance for councillors, the key points are:

- councillors must treat others with respect
- councillors must not bring the council into disrepute

### 3.9 ***European Convention on Human Rights (ECHR)***

3.10 Section 3 of the Human Rights Act 1998 (HRA) requires that primary and subordinate legislation must, as far as possible, be read and given effect in a way which is compatible with the Convention rights. By virtue of section 6, it is unlawful for a public authority to act in a way that is incompatible with Human Rights.

3.11 Article 10 of the ECHR provides:

Freedom of expression

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

3.12 In considering these matters it is important to note the words of Collins J in the standards case of *Livingstone v The Adjudication Panel for England* [2006]EWHC 2533 (Admin) [at para.39]:

“The burden is on [the Adjudication Panel for England] to justify interference with freedom of speech. However offensive and undeserving of protection the appellant’s outburst may have appeared to some, it is important that any individual knows that he can say what he likes, provided it is not unlawful, unless there are clear and satisfactory reasons within the terms of Article 10(2) to render him liable to sanctions”.

3.13 The right to freedom of expression is a crucially important right in a democratic society and it is clear that it may only be interfered with where there are convincing and compelling reasons within Article 10(2) justifying that interference. A key issue for determination is thus whether a finding of a breach of the Code on the facts as found, would represent no greater an impairment to an elected member’s right to freedom of expression than is necessary to accomplish the legislative objective of the Code.

3.14 In *Heesom v Public Service Ombudsman for Wales* Mr Justice Hickinbottom considered a councillor’s right to free speech in some detail. His considerations drew attention to a number of earlier cases in which the following propositions could be derived:

- a. While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests.
- b. The enhanced protection applies to all levels of politics, including local.
- c. Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.
- d. Whilst, in a political context, article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.
- e. The protection goes to “political expression”; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.
- f. Past cases draw a distinction between fact on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis. What amounts to a value judgment as opposed to fact will be generously construed in favour of the former; and, even where something expressed is not a value judgment but a statement of fact (e.g. that a council has not consulted on a project), that will be

tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it, “reasonableness” here taking account of the political context in which the thing was said..

- g. As article 10(2) expressly recognises the right to freedom of speech brings with it duties and responsibilities. However, any restriction must respond a “pressing social need”.
- h. Politicians are required to have a thick skin and be tolerant of criticism and other adverse comment. Civil servants are, like politicians, subject to the wider limits of acceptable criticism. However, unlike politicians they are involved in assisting with and implementing policies, not making them. As such they must enjoy public confidence in conditions free from perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive attacks when on duty.

## 4: The evidence gathered

### *The investigation*

- 4.1 This investigation was conducted by Alex Oram and Mark Hedges on behalf of the Council’s Monitoring Officer. Alex is a director of ch&i associates<sup>1</sup>, a company with a successful track record of conducting complex investigations, assessments and case reviews within the regulatory, charity, NHS and local government sectors. Alex has been conducting member conduct investigations since 2003. He was previously employed by Standards for England as a principal investigator responsible for conducting many of their most complex, politically sensitive and high-profile investigations into member conduct. Mark is a former Police Detective with twenty years’ experience of investigation work.
- 4.2 During the course of this investigation we have interviewed Councillor Murphy , Councillor Seaton and Mrs Seaton-Page; we have considered evidence provided by the Council and taken from the Council website; and we have watched the relevant Facebook webcast and examined Councillor Murphy’s use of Facebook generally.

### *The Evidence*

#### *Background*

- 4.3 Councillor Seaton and Councillor Murphy both told me that they have longstanding concerns about the way the other conducts themselves; both in the

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<sup>1</sup> Alex is not a lawyer and therefore nothing in this report should be interpreted as legal advice. Any opinions offered are based on his experience of having been involved in over 300 standards investigations.



chamber and on social media. This has led to them making several complaints about the other before and during this investigation.

- 4.4 Councillor Seaton told me that he believes Councillor Murphy to be a bully who has a tendency to target women. Councillor Seaton told me that he understands that Councillor Bashir made a complaint about Councillor Murphy's conduct towards her. He also told me that he spoke informally to the Council's Chief Executive about Councillor Murphy's behaviour towards two women within the Labour Party; they agreed that this was not a matter that the Council could directly involve itself in. Councillor Seaton said that Councillor Murphy had agreed to apologise to him during 2018 for things he had said; *"instead he issued a pretty nasty statement to the Peterborough Telegraph<sup>2</sup> and since then, has consistently refused to apologise."*
- 4.5 Councillor Murphy told me that he considers Councillor Seaton to be a misogynist and understands that there has been more than one complaint made about him as a result. By way of an example, Councillor Murphy told us that, in **May 2018**, a Labour candidate in the local elections made a complaint about Councillor Seaton included allegations of misogyny and the objectifying of women<sup>3</sup>.
- 4.6 I make reference to the above in that they are relevant to comments made by Councillor Murphy on Facebook and to provide context to the allegations under consideration in this report.

#### Matters related to Complaints 1 & 2

- 4.7 At its meeting on **25 February 2019**, the City Council's Cabinet received a report in relation to the Council Tax Support Scheme for 2019/2020, including feedback from the consultation and the continuation of the Council Tax Hardship Policy (the report).
- 4.8 At the City Council meeting of **6 March 2019**, Councillor Seaton introduced the report and provided Council with some background information. He advised that until 2013, residents on low income could claim Council Tax Benefit, which had the potential to cover up to 100% of their Council Tax. In 2013, Council Tax Benefit was abolished, and each local authority was given the responsibility to design and adopt its own scheme. Pensioners were exempt from the changes and the new schemes only affected working age claimants, who received a 30% reduction. The scheme has remained in place since 2013, however funding from central Government to support the City Council had continued to diminish. The Cabinet were proposing that the City Council adopt a scheme that contained the following components:

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<sup>2</sup> Councillor Seaton told me that Councillor Murphy was quoted in the Peterborough as follows: *'Hopefully some of these sexist, yesterday men will be removed from senior positions.'*

<sup>3</sup> The Council's Monitoring Officer concluded though that Councillor Seaton had not been acting in his capacity as a councillor and therefore the matter fell outside the jurisdiction of the standards framework.

- a. The existing 30% reduction that is applied at the end of the benefit calculation is replaced with a 30% liability reduction applied at the start of the calculation.
- b. Increasing the 30% liability reduction by 1% a year for 3 years, starting in 2019/20.
- c. Reducing the capital limit to £6,000 for non-passported claims.
- d. To amend appropriate rates in line with annual upratings.
- e. To allow the use of Universal Credit Data Share documents as claims for Council Tax Support

4.9 Members debated the recommendation and in summary the points raised included:

- Members wanted to know how many residents were affected by the changes and by how much.
- Moving the existing 30% reduction applied at the end of the benefit calculation to the start of the calculation would lead to higher council tax increases for some of the poorest residents.
- Members felt that Council Tax would rise and disproportionately affect poorer people who would receive a reduction in the amount of assistance received.
- The Council Tax Support Scheme discourages people from taking up employment and some Members felt for this reason they could not support the proposal.
- The online consultation was complicated and not easy to understand and only two people responded. Members asked how the consultation could be justified with only two responses.
- 30% change from net to gross liability would generate an additional £225,000 and would affect 1,991 people. The 1% increase would generate £79,000 and affects 8698 people and the £6,000 capital limit will generate £22,000 which will affect 43 people. This was not confirmed by the Cabinet Member for Resources.
- Concerns were raised regarding the disregard of child benefit affecting poorer families and pensioners had expressed concern about the capital limit reduction from £16,000 to £6,000.

4.10 During the debate, Councillor Murphy told the meeting that in his view Councillor Seaton had got something right by proposing that the Council Tax increase be maxed out<sup>4</sup> at 2.99%. Councillor Murphy pointed out though that that increase would disproportionately affect the most vulnerable because of their lower incomes and that these were the residents who were seeing the benefits on which they relied being further eroded by cuts in services.

4.11 Responding to Councillor Murphy, Councillor Seaton stated: “*Councillor Murphy said that we’re maxing out Council Tax by increasing it by 2.99 percent. That’s rich, from a Councillor who, twelve months ago – headline in the Peterborough Telegraph – I mentioned it earlier, wanted to increase Council Tax by fifteen percent. That’s not maxing out, but 2.99 is? But, hey ho.*”

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<sup>4</sup> This is the maximum allowable increase without the need for a referendum.

4.12 Councillor Murphy responded to Councillor Seaton:

*“On a point of accuracy, if you recall the debate and the comment, which is there and people have commented on, I said if the Leader of the Council then wanted to go for that sort of increase in council tax, and it would solve the housing emergency and all those big problems in Peterborough, I might be minded to support it. You’re getting a reputation for telling porky pies. Now, sometimes, when you actually tell the truth people think you’re lying. Like today, you’re probably right, we are borrowing money to pay – we are selling assets to pay off – but people think you’re not doing that –”*

- 4.13 Councillor Seaton told us that he considered Councillor Murphy’s interjection to be completely inappropriate because he was effectively calling him a liar. While Councillor Seaton said that he encouraged robust debate, he did not believe that councillors should attack the personal integrity of those they are debating with.
- 4.14 Councillor Murphy told me that he had been careful not to accuse Councillor Seaton of being a liar; his interjection was in fact to simply correct what had been both a factually incorrect and pointless attempt by Councillor Seaton to have a dig at him. Councillor Murphy acknowledged stating, in the context of an incorrect comment being made about him, that Councillor Seaton had a reputation for ‘telling porky pies’; Councillor Murphy contended though that this was simply a fact based on his discussions with members of the public. Councillor Murphy pointed out that that he had not said either way whether this reputation was warranted or not. Councillor Murphy stressed that the point he was actually making at the meeting was that he largely believed that Councillor Seaton was being open and honest about the budget.
- 4.15 Councillor Seaton took exception to Councillor Murphy’s comment and challenged the Mayor to intervene: *“Mr Mayor. This is a Member insulting another Member and each Council you allow this Council; this Councillor; to bully women, to insult other colleagues, and you say nothing.”*
- 4.16 The Mayor turned to Councillor Murphy and suggested that accusing another councillor of ‘telling porky pies’ was probably not acceptable unless he had evidence. Councillor Murphy responded: *“Sorry, Mr Mayor, I was just pointing out that many of the public actually don’t believe a word he says now.”*
- 4.17 Councillor Seaton then proposed that Councillor Murphy either apologise for the comment or be removed from the chamber: *“Either Councillor Murphy apologises, or he should be removed from the chamber. Every Council meeting he bullies women in this chamber, he insults colleagues in this chamber. It is entirely unacceptable behaviour, he has just accused me of lying, not just at this Council meeting, he’s doing it all the time. When we had all party scrutiny; remember that? ”Porky pies’ there as well. We should move to a vote on removing Councillor Murphy from this chamber.”*

- 4.18 The Monitoring Officer pointed out to all present that before the Council could consider Councillor Seaton's proposal, they would first have to agree that Councillor Murphy is not heard further. Councillor Seaton amended his proposal and it was carried with twenty-eight for, nineteen against, three abstentions, and two 'no votes'.
- 4.19 Councillor Seaton then proposed the Councillor Murphy be removed from the Chamber. The Monitoring Officer again intervened to clarify that this could only be proposed if Councillor Murphy disregarded the previous motion. Councillor Seaton said that this was a shame; he then proceeded to respond to the issues that had been raised in relation to the report. The recommendations included in the report were subsequently agreed by the Council. The Mayor then moved the meeting on to the next item, which was again present by Councillor Seaton.
- 4.20 The City Council generally live streams its Council meetings on its Facebook page. The live stream allows Facebook users to not only view proceedings but add real time comments that are posted alongside the video feed. As the votes in relation to the report were being announced, Councillor Murphy (using his personal Facebook account titled 'Ed Murphy') posted:
- "Check out Cllr Seaton who's had a number of allegations of misogyny made against him. Many Folk just don't believe a word he says these days".*
- 4.21 One of the people viewing the feed responded to Councillor Murphy on Facebook to point out that his comments were just as '*unparliamentary*' when posted in the Facebook comments; another said they thought Councillor Murphy had been silenced. Others on Facebook were subsequently supportive of Councillor Murphy.
- 4.22 Mrs Seaton told us: *"On the night of the meeting that was broadcast in March, I happened to be here for the evening. I popped online to see how the meeting was going and was utterly appalled to see these things about my husband. During the Webcast, people can comment live. Councillor Murphy was taking this opportunity to provide his own commentary after he was told in the chamber that he was not to be heard from anymore. It can be a very volatile arena, which is why I don't tend to watch the whole thing, and I just happened to be on there at that point and it made me very unhappy. Having these things said reflects a great deal on both my husband and me... I was so offended at the time that I actually considered going to a solicitor for slander and libel. I found it very painful. I know David [Councillor Seaton] is a strong character and he will defend with vigour. If he is poked, he will poke back but he is not a liar and he is most definitely not a misogynist. That to me is a deeply insulting and harmful thing to say."*
- 4.23 In his complaint, Councillor Seaton also provided a screenshot of another comment made about him by Councillor Murphy on Facebook, which stated *"people who are not in control of themselves or habits do tend to try controlling and bullying others. Seems to be the case with Cllr Seaton"*. Councillor Seaton told us that he believed that this comment was made at a similar time; the

investigation has not been able to find the relevant comment on any current Facebook thread, however.

- 4.24 Councillor Murphy told us that he had no recollection of having made the comments attributed to him on Facebook, however he did not challenge the assertion that he did so. Councillor Murphy again questioned what such a comment should warrant a Code of Conduct investigation, claiming that he had said nothing that was incorrect or unfair.
- 4.25 At the same meeting, during a discussion on the subsequent item, Councillor Murphy (now allowed to speak once more) asked for clarification with regards a supplementary paper that had been produced to correct a minute taken at an earlier meeting. Councillor Murphy asked whether anyone had actually checked the audio of the relevant meeting to ensure that the amendments set out in the supplementary paper had been agreed; or were members just being asked to believe Councillor Seaton. The Council's Monitoring Officer confirmed that it had been a clerical error with regards the recording of the relevant decision and that the amendment had nothing to do with Councillor Seaton.

### Matters related to Complaint 3

- 4.26 'Peterborough Politics – Official' is a 'closed'<sup>5</sup> group on Facebook that was set up by Councillor Darren Fower in September 2015 (the politics group). Members of the group are invited to only post about political issues that relate to the activities associated with the governance of Peterborough.
- 4.27 In the run up to a Parliamentary bi-election (which took place on **6 June 2019**), a member of the public [Mr B] posted in the politics group: "*I know this is a majority Labour page 😊... and expecting many silly comments... but 🙌 Just a little reminder to vote for the BREXIT PARTY in the up and coming elections 🇬🇧. This is about showing we won't be ignored and that we want what we voted for...*"
- 4.28 We have not been able to access the original post during the investigation; it is common ground though that Councillor Murphy commented on the post as follows: "FOAD".
- 4.29 Councillor Murphy acknowledged posting the message on Facebook, though he made not comment with regards what FOAD might mean or refer to. Councillor Murphy was clear that the exchange and therefore his comment had no connection to his role as a councillor; in his view the Code only exists to regulate what councillors do when they are conducting Council business. Councillor Murphy also pointed out that the message was left on a private Facebook group that regularly includes very robust exchanges and that nobody actively engaged in exchange complained.

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<sup>5</sup> Only members of the group can see who is in the group and what they post. Any Facebook user is able to apply to join the group; membership decisions rest with the administrator, however. There are currently approximately 3000 members of the group.

4.30 In his complaint, Councillor Seaton stated that Councillor Murphy's comment, which is a well-known acronym for 'Fuck Off And Die', was clearly in breach of the Council's Social Media Policy. Councillor Seaton told us he believed that the conduct could damage the reputation of the Council: "*The post talked about voting for the Brexit party; vote for Mike Greene in the Peterborough election. It was talking about politics and therefore it is Council business. When you're talking local politics, it impacts upon Council matters and Council politics because those things are fairly intertwined. The people campaigning for MPs are the same people who stand within the Council Chamber.*"

## 5: Reasoning as to whether there have been failures to comply with the Code of Conduct?

### Capacity

- 5.1 The complaints referred to above are clearly about a serving councillor and about actions that took place during his term of office. The complainants therefore may understandably assume that their concerns fall within the scope of the standards framework. However, a complicating factor to be considered relates to so-called 'official capacity', in other words, before we make a recommendation as to whether Councillor Murphy's conduct amounts to a failure to comply with the Code of Conduct, we need to decide if he was acting as a Councillor (i.e. acting in his official capacity) at the relevant times.
- 5.2 Section 27(2) of the Localism Act 2011 requires all relevant authorities to adopt a code of conduct "*dealing with the conduct that is expected of members ... when they are acting in that capacity.*" The Council has reiterated this in Part 1 of their Code, as set out in paragraph 3.7 of this report. The Code then does not seek to regulate what members do in their private and personal lives. The Code only applies to members when conducting Council business or when carrying out their constituency work. A distinction must be drawn between the individual as a councillor and the individual as an individual; a councillor is not a councillor twenty-four hours a day. Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the Code; a link to that person's membership of their authority is needed.
- 5.3 The comments made by Councillor Murphy during the Council meeting of **6 March 2019**, which prompted the Council to vote to temporarily silence him, were clearly made in his official capacity; he was present at the meeting as a member of the Council and only allowed to participate in the debate in that capacity. All the other comments complained about however relate to posts Councillor Murphy published on Facebook. When it comes to social media, councillors can often have 'blurred identities'; this is where a member has a social media account that they use both as a councillor and as a private individual. For example, using the same Facebook account, a councillor might post a message / photographs about their family holiday (personal) and then post an explanation about their Council's position on pothole repairs (councillor). Such blurred identities can have implications on how Code of Conduct complaints about such matters can be considered.

5.4 In offering our own views on this, we recognise that the Localism Act is vague on the key point of what acting in ‘official capacity’ involves. Nor do we have any case law arising from the Localism Act to assist us on this. What we do have, however, is well established case law from earlier hearings. Whilst the wording in the current Code varies slightly from the previous model codes of conduct, cases concerning the former model codes remain of relevance as to how Councils must interpret what ‘official capacity’ means.

5.5 Under the previous legislation, a fairly restrictive view on capacity was generally taken by the Adjudication Panel for England, the First Tier Tribunal (Local Government Standards) and the High Court. In the standards case of “Livingstone v The Adjudication Panel for England [2006]” Mr Justice Collins considered the question of official capacity in relation to a complaint about the then Mayor of London, Ken Livingstone. On the facts of that case, Collins J found that Mayor Livingstone’s offensive comments to a journalist were not sufficiently connected to his position as Mayor as to engage the Code of Conduct, despite the fact that the offending comments were made as Mayor Livingstone was leaving an official function. Collins J rejected the finding of an earlier Tribunal - that Mayor Livingstone’s conduct had brought his office into disrepute - on the basis that Mayor Livingstone had effectively stopped ‘conducting Council business’ as soon as he put his coat on and left the function; his exchange with the journalist outside the event therefore did not fall within the jurisdiction of the standards framework. Collins J stressed that in cases such as this it was important to maintain the distinction between the man and his office, even where the matter concerned high-profile individuals.

5.6 In APE0458 Sharratt the tribunal supported this position, observing:

*“The dedication of many councillors to activities in public life means that often their social and professional lives are shaped by their roles as councillors and in turn shape how they approach those activities. However, while they [councillors] may always be conscious of their office as councillor and carry out a wide range of activities in which that is a factor in their thinking, no reasonable observer would conclude that they are carrying out the business of the office of councillor; a test which, in the light of the decision in Livingstone, should be narrowly construed.”*

5.7 The Upper Tribunal decision in MC v Standards Committee of the London Borough of Richmond [2011] UKUT 232 (AAC) provided a helpful distillation of the previous High Court cases on capacity. The principles stated in the Richmond case were as follows :-

*(a) was the councillor, as a matter of ordinary English, actually conducting the business of their authority, including the business of the office of councillor?*

*(b) a fact sensitive approach is required to the above;*

*(c) the question is one for the tribunal to determine, not a reasonable observer.*

- 4.31 When considering the circumstances surrounding Councillor Murphy's various comments on Facebook, we are mindful that many of those reading his posts would have been aware that he was a councillor. As part of this investigation we reviewed Councillor Murphy's general use of Facebook and his account is a good example of the 'blurred identity' referred to above. Councillor Murphy has had a Facebook account under the name 'Ed Murphy' since September 2007; this predates his becoming a councillor by 4 years. A wider review of Councillor Murphy's Facebook account shows that he uses it both to discuss / highlight matters that directly relate to Council business and to highlight matters that have absolutely nothing to do with his role as a councillor. Councillor Murphy's profile on Facebook makes no reference to his position as a councillor, however his posts make it clear that he is one. Councillor Murphy has also activated the 'Follower' functionality on his profile; this tends to be used by public figures / celebrities or businesses to allow people to be notified, to access and to share content posted by Councillor Murphy without being a 'friend'.
- 5.8 Judge Laverick specifically considered the use of social media by a councillor in First Tier Tribunal Case No. LGS/2011/0537. When considering the capacity in which a councillor was writing in an online blog, Judge Laverick stated that it was perfectly reasonable for a councillor to write posts / make comments in their private capacity even if their social media account clearly identified them as a councillor; the key determining factor when it came to deciding the capacity in which the councillor was writing was whether the content of the relevant post was sufficiently connected to Council business in order for the Code to be engaged<sup>6</sup>. Judge Laverick accepted that under those circumstances it was possible for a councillor to make offensive and possibly defamatory comments on the internet that could well damage the reputation of their Council without engaging their Council's Code of Conduct.
- 5.9 A councillor's use of social media was also considered by Judge Lister in First Tier Tribunal Case No. LGS/2012/0597, which concerned an appeal against a decision made by Surrey Heath Borough Council's standards committee. The standards committee had found that one of their members had been acting in their official capacity when making general political and satirical comments in an online blog. In her considerations Judge Lister gave regard to the guidance that had been produced by Standards for England, which stated:

*"Q. Does the Code apply to blogs, social networking sites, twitter etc?"*

*It is unlikely that private blogging will fall within the scope of the Code... It is important to draw a distinction between comments on a blog about council business and comment about general political issues. The context is*

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<sup>6</sup> This position was supported in *McTigue v Middlesbrough Council* (2009) APE 421, where a councillor was deemed to be acting in her official capacity when posting in an online forum despite writing under a pseudonym which did not identify her as a councillor solely because she was writing about a matter that directly related to Council business.



*important and the decision as to whether the Code is engaged is fact sensitive and case specific.”*

Judge Lister overturned the Standards Committee’s decision, stating that although the member had been clearly identifiable as a councillor, the reference to that position in his description about himself had just been part of his wider profile and not an indication that he was actually conducting the business of his authority. Importantly the posts, while political in tone, did not specifically relate to Council business.

5.10 In our experience decisions such as those described above have been difficult for many people to fully accept. This is reflected in a 2019 report titled Ethical Standards in Local Government, which was published by the Committee on Standards in Public Life: *“The widespread use of social media presents a particular challenge to determining whether a code of conduct applies to instances of behaviour.”* The report suggested that high standards of conduct are desired / expected of public office holders in their use of social media, even when they purport to be acting in a personal capacity. The Committee on Standards in Public Life expressed the view that what is relevant to the public is not just whether an individual was conducting Council business, but also whether the behaviour itself is in public or in private. In their view the restrictions on what an individual can do or say in public are different in kind from any restrictions on an individual’s private life; they therefore recommend that the primary legislation under which the Code is applied be changed: *“Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches”*. The report though makes it clear that the current legislation does not reflect this when it comes to considering the conduct of councillors in England.

5.11 When applied to Councillor Murphy’s conduct, it is evident that the changes suggested by the Committee on Standards in Public Life would automatically bring all of his posts on Facebook within the scope of the standards framework. As it is, councillors are able to say things on social media that are objectively offensive without engaging the Code; the key factor is whether the content is sufficiently connected to Council business to warrant regulatory intervention.

5.12 The three Facebook comments we have been asked to examine are:

I. *“Check out Cllr Seaton who’s had a number of allegations of misogyny made against him. Many Folk just don’t believe a word he says these days”*.

This was posted on an official Council webcast during a Council meeting and concerned a councillor / incident relevant to that meeting. As such we consider it falls within the jurisdiction of the Code.

II. *“people who are not in control of themselves or habits do tend to try controlling and bullying others. Seems to be the case with Cllr Seaton”*

Although the investigation has been unable to establish the exact context to this post, it clearly refers to a serving councillor and appears to be a criticism of the way that he conducts himself in that capacity. The role of a councillor is to provide a bridge between the community and the Council. As well as being an advocate for their local residents, representing their views at council meetings and signposting them to the right people within the authority, councillors are responsible for communicating back to their constituents about the decisions they and their Council make, providing a view as to the general effectiveness of their local authority and its members / officers. As such we consider it falls within the jurisdiction of the Code.

### III. "FOAD".

This was posted as a comment on a Facebook post that called for people to vote for the Brexit Party at the forthcoming elections. Generally, councillors are not considered to be conducting Council business when electioneering / commenting on matters related to an election. We have seen no compelling evidence that would lead us to consider that Council Murphy was acting in his official capacity when posting this comment; As such we consider that this allegation does not fall within the jurisdiction of the Code; as such Councillor Murphy cannot be found to have failed to comply with it.

### *Has Councillor Murphy failed to comply with the Code of Conduct?*

#### **Code principles**

- 5.13 The Council's Code requires members to have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Councillors must promote and support high standards of conduct when serving in their public post. The intention of the Code is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy.
- 5.14 In adhering to the principles set out in the Code there is an expectation that members will treat their fellow councillors, Council officers and members of the public with respect. This is not to say that councillors should not be encouraged to engage in vigorous public debate on matters pertaining to the Council, however the impact of such debate is diminished, rather than accentuated, when it is cast in abusive or offensive terms. Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurred are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.
- 5.15 Any consideration as to whether Councillor Murphy failed to comply with the Code must also take into account his right to free speech, in particularly the higher level of protection offered to political speech. In considering whether a

breach finding would amount to a disproportionate restriction on Councillor Murphy's right to freedom of expression. We must give weight to the fact that his comments were directed towards an elected councillor; politicians are required to have a thick skin and be tolerant of criticism and other adverse comments

- 5.16 The focus of this investigation has been on Councillor Murphy's publicly stated view that Councillor Seaton risks people not believing him when he tells the truth because he is getting a reputation for telling '*porky pies*'; that he has had allegations of misogyny made against him; and that he '*seems*' to fit into the category of a person who tries to control and bully others because they can't control their own behaviour.
- 5.17 We have been involved in several cases in the past where a member's use of the word 'liar' has been considered a breach of the Code, some of which were considered at Tribunal level. While these were considered under the previous standards framework (and therefore the sanctions referred to are no longer applicable), they remain relevant to any considerations under the current Code.
- 5.18 As an example, Councillor Adkins of Ashfield District Council was found to have breached the Code when he called Chief Superintendent Nick Holmes a liar during a Council meeting. In that instance, the Tribunal considered whether the 'truth' of the accusation was relevant to their considerations; did it matter if the Chief Super had lied and could Councillor Adkins prove it? The Tribunal decided that there were circumstances where the veracity of the accusation might be relevant, however in this case it was considered that Councillor Adkins belief that what he was saying was true did not justify the comment: "*There is nothing wrong with making fair criticism of a public official in an appropriate manner but to impugn the integrity of a police officer on the flimsiest of information in a public forum was clearly unacceptable*". Councillor Adkin's was suspended from office for 3 months. Councillor Mason of Needham Market Town Council was also found to have breached the Code when he called another councillor and the clerk '*proven blatant liars*' at a Council meeting; Councillor Mason was disqualified from office for a year<sup>7</sup>.
- 5.19 Shortly after the Mason case, the Adjudication Panel for England upheld an appeal from Councillor Whipp, who had been found in breach of the Code after calling two other councillors '*liars*' during a Council meeting; the Council's Standards Committee considered that his use of the word liar was disrespectful because "*went beyond political expression, was rude and offensive and amounted to an expression of anger and personal abuse.*" Relevant to this case is the fact that the Judge in the appeal overturned the Council's decision because Councillor Whipp has accused other councillors of being liars; they, unlike officers or members of the public, are expected to be able to cope with a certain level of 'abuse' and usually have the same public platform on which to respond.

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<sup>7</sup> It should be noted that Councillor Mason's conduct was viewed particularly seriously as his accusation was premeditated and utterly unrelated to any matter on the agenda; the accusation had no demonstrable justification; one of the accused was a Council officer with no right of reply; and the accusation was made as the councillor accused of being a liar was being appointed as Mayor - a particularly special occasion that was ruined by Councillor Mason's unprovoked attack.

It was also considered relevant that in this instance the member's use of the term 'liar' had some justification as there was evidence that councillors to whom he had addressed his insult had not told the truth. The Judge noted that while the term 'liar' was well known to be considered 'unparliamentary language', this was not relevant to considerations unless the relevant Council had a custom or tradition of enforcing the same rules of debate.<sup>8</sup>

5.20 Councillor Seaton strongly felt that Councillor Murphy's criticism of him had crossed the line because Councillor Murphy attacked his personal integrity when accusing him of being a liar. Councillor Seaton said that he welcomes robust debate, however this was no longer simply part of the '*rough and tumble*' of local politics but a '*slandorous*' attack that was without merit.

5.21 Councillor Murphy rejected the allegation that he had called Councillor Seaton a liar, stressing that he had been careful to only suggest that Councillor Seaton was getting a reputation for telling lies. Councillor Murphy pointed out that he made the comment in response to a wholly unnecessary and inaccurate attack on him by Councillor Seaton in the chamber; he also told us that Councillor Seaton had previously accused him of telling lies<sup>9</sup>. With regards his other comments; Councillor Murphy acknowledged that they were critical but considered them to be fair and sufficiently qualified. Councillor Murphy said that it is an undisputable fact that allegations of misogyny had been made against Councillor Seaton and that, from his perspective, Councillor Seaton does seem to sometimes try to control and bully others.

5.22 A councillor's right to free speech means that they can make comments, in a political context, that might be considered provocative, offensive and exaggerated. In addition, value judgments are tolerated even if untrue, so long as they have some – any – factual basis. Taking account of the Nolan principle of leadership however, there is general ethical obligation on councillors to consider carefully, when using their position to criticise another councillor, whether they can substantiate any assertions they make with evidence. While the Code is not intended to constrain members' ability to question and probe each other, it must be done in an appropriate way. People who stand for public office must be prepared to have their integrity questioned (to an extent), however individuals should not be subject to unreasonable or excessive personal attack. Further, if a councillor uses their position to cast negative aspersions against another in bad faith or for an improper motive, then the councillor is likely to be in breach of the members' code of conduct<sup>10</sup>.

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<sup>8</sup> It should be noted that despite upholding the appeal on the grounds that it did not pass the 'disrespect test', the Judge said that he would have likely supported a finding that the conduct brought the councillor's authority into disrepute had the original Standards Committee concluded as such.

<sup>9</sup> This was acknowledged as a fact by Councillor Seaton.

<sup>10</sup> In the case of Buchanan (APE0417 2009) the First-Tier Tribunal found that the councillor could not have reasonably believed in the truth of the serious misconduct allegations he had made about another. The Tribunal found that the councillor had acted maliciously, as he had made his complaints as an act of revenge to cause damage to the other person because that person had previously complained about him and damaged his political career. The Tribunal concluded that the councillor's conduct was disreputable and disqualified him from office.

- 5.23 In a finely balanced judgement, we have concluded that Councillor Murphy has breached the Council's Code by failing to promote and support high standards of conduct and leadership when serving in his public post. While we do not consider that Councillor Murphy's comments said in the meeting of **6 May 2019** (which led to the vote to silence Councillor Murphy) amount to a failure to comply with the Code, we do consider that the comments he made on Facebook were inappropriate. Standards Board guidance consistently made it clear that attacking the 'thing said' rather than the 'person saying it' was far less likely to be considered a breach of the Code. While we note that Councillor Murphy did qualify his assertions about Councillor Seaton to an extent, he still effectively expressed the view that Councillor Seaton was a liar, a bully and a misogynist. We consider this no more than a personal attack on Councillor Seaton's character rather than a genuine attempt to challenge or question any 'issue' relevant to the business at hand or on making a political point.
- 5.24 In reaching our conclusion we note that Councillor Murphy's comments about Councillor Seaton were made on the live webcast of the meeting during a discussion on an item where the Council had resolved that Councillor Murphy could no longer contribute. We are confident that the Council did not introduce this functionality so that councillors can abuse their colleagues in online discussions as they take part in a Council meeting. We would invite the Council to consider whether members need any guidance in this regard.

## 6: Conclusion and recommendations

- 6.1 The investigation has established that Councillor Murphy did act as alleged and in the case of the first two allegations, did so in his councillor capacity; as such, the Code of Conduct was engaged. Councillor Murphy is clearly a committed and hardworking member of the Council who is passionate about representing his local community. We have concluded though that Councillor Murphy's comments about Councillor Seaton on Facebook went beyond the "rough and tumble" of local politics and instead amounted to online personal abuse.
- 6.2 The Council's arrangements for dealing with standards complaints states that when the investigator considers that there has been a breach of the Code the Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or seek an alternative resolution. In considering what action the Monitoring Officer should consider taking, we are not sure that further examination of the concerns highlighted or formal determination of these allegations through a public hearing is necessarily justified, particularly given the limited nature of the sanctions available. While I think that Councillor Murphy's conduct did on this occasion cross the line, it is a finely balanced decision. It is also evident that his conduct was not without provocation, in that when trying to get Councillor Murphy excluded from the meeting of 16 May 2019, Councillor Seaton made comments about Councillor Murphy that are in many ways similar to those complained about. There appears to be a long standing and ongoing public 'spat' between Councillors Murphy and Seaton which in our view has done little for the reputation of either; councillors are required to set standards of

behaviour and not allow their conduct to descend to the levels they might perceive in others.

- 6.3 In light of the comments above, our recommendation is that Councillor Murphy be offered some training in relation to his use of Social Media when acting as a councillor. If Councillor Murphy refuses the offer of training, our recommendation is that this matter be referred to the Council's Hearings Panel for local hearing

<b>CONSTITUTION AND ETHICS COMMITTEE</b>	AGENDA ITEM No. 11
<b>8 FEBRUARY 2021</b>	<b>PUBLIC REPORT</b>

Report of:	Fiona McMillan, Director Law and Governance and Monitoring Officer		
Cabinet Member(s) responsible:	Councillor David Seaton, Cabinet Member Finance		
Contact Officer(s):	Dan Kalley, Senior Democratic Services Officer	Tel. 296334	

**WORK PROGRAMME, FUTURE DATES AND MEMBER ISSUES**

<b>R E C O M M E N D A T I O N S</b>	
<b>FROM:</b> Fiona McMillan, Director of Law and Governance and Monitoring Officer	<b>Deadline date:</b> N/A
<p>It is recommended that the Constitution and Ethics Committee</p> <p>1. Notes and agrees the Work Programme with any additional items or suggestions to be included</p>	

**1. ORIGIN OF REPORT**

1.1 This is a standard report to the Constitution and Ethics Committee which forms part of its agreed work programme. This report provides details of the Draft Work Programme for the following municipal year as it stands.

**2. PURPOSE AND REASON FOR REPORT**

2.1 The programme can be refreshed throughout the year in consultation with the senior officer and the Committee membership to ensure that it remains relevant and up to date. In addition, any delays in reporting issues are recorded so that they do not drop off the committee agenda.

2.2 This is also an opportunity for Members of the Committee to raise any issues of concern under the Committee's terms of reference for discussion or addition to the work programme.

**3. TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If yes, date for Cabinet meeting	<b>N/A</b>
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**4. IMPLICATIONS**

**Financial Implications**

4.1 There are none.

### **Legal Implications**

4.2 There are none.

### **Equalities Implications**

4.3 There are none.

## **5. APPENDICES**

5.1 Appendix A - Work Programme 2020/21.



## APPENDIX A

DATE: 8 FEBRUARY 2021			
		Section / Lead	Description
	Review urgent decision wording in constitution	Fiona McMillan Legal	To review the wording of urgency in the Council constitution
	LGA model code of conduct and Review of Council code of conduct	Fiona McMillan Legal	To review and comment on the LGA model code of conduct at this stage before further guidance is released.
	Conducting Task and Finish and Working Groups in Public	Fiona McMillan/Paulina Ford	Following recommendation from Full Council to look at the feasibility of holding task and finish groups in public and recommendations back to Council
	Motions and additional Council meetings	Fiona McMillan/Pippa Turvey	Following recommendation from Full Council to look at how motions are debated and additional Council meetings.
	<b>INFORMATION AND OTHER ITEMS</b>		
	Dispensations Issues	Fiona McMillan Legal	To receive an update on the use of dispensations.
	Update on National Issues	Fiona McMillan Legal	To receive a report on any issues of national importance
	Report on Code of Conduct Issues	Fiona McMillan	To receive an update as to any code of conduct cases
	Work Programme 2020 / 2021	Democratic Services Dan Kalley	

**DATES: TBC**

		<b>Section / Lead</b>	<b>Description</b>
	Member Officer Protocol	Fiona McMillan Legal	To review at future date.
	Model code of conduct and social media policy	Fiona McMillan	Once guidance issued to review again the Council's code of conduct
	<b>INFORMATION AND OTHER ITEMS</b>		
	Dispensations Issues	Fiona McMillan Legal	To receive an update on the use of dispensations.
	Update on National Issues	Fiona McMillan Legal	To receive a report on any issues of national importance
	Report on Code of Conduct Issues	Fiona McMillan	To receive an update as to any code of conduct cases
	Work Programme 2021 / 2022	Democratic Services Dan Kalley	