



## **Standards Committee**

**Date**        **Friday 1 December 2017**  
**Time**        **10.00 am**  
**Venue**       **Committee Room 1A, County Hall, Durham**

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### **Business**

#### **Part A**

**Items during which the Press and Public are welcome to attend.  
Members of the Public can ask questions with the Chairman's agreement.**

1. Apologies for Absence
2. Declarations of Interest
3. Minutes of the Meeting held on 1 September 2017 (Pages 3 - 4)
4. Committee Work Programme (Pages 5 - 8)
5. Code of Conduct Update (Pages 9 - 16)
6. Standards Update (Pages 17 - 22)
7. DCLG Consultation - Disqualification Criteria for Councillors (Pages 23 - 44)
8. Social Media Guidance (Pages 45 - 48)
9. Such other business as in the opinion of the Chairman of the Meeting is of sufficient urgency to warrant consideration.

**Helen Lynch**  
Head of Legal and Democratic Services

County Hall  
Durham  
23 November 2017

**To: The Members of the Standards Committee**

Councillors E Bell, J Bell, J Clark, M Clarke, T Henderson, E Huntington,  
B Kellett, M McGaun, M McKeon, J Nicholson and A Savory

Parish and Town Councillors T Batson and R Harrison

**DURHAM COUNTY COUNCIL**

**STANDARDS COMMITTEE**

At a Meeting of **Standards Committee** held in Committee Room 1A, County Hall, Durham on **Friday 1 September 2017 at 9.30 am**

**Present:**

**Councillor B Kellett (Chairman)**

**Members of the Committee:**

Councillors M Clarke, T Henderson, M McGaun, M McKeon and J Nicholson

**Co-opted Members:**

Parish Councillor R Harrison and Town Councillor T Batson

**1 Apologies for Absence**

Apologies for absence were received from Councillors E Bell, J Bell, J Clark, E Huntington and A Savory.

**2 Declarations of Interest**

There were no declarations of interest.

**3 Minutes**

The Minutes of the meeting held on 2 June 2017 were agreed as a correct record and were signed by the Chairman.

**4 Annual Report of the Standards Committee 2016/2017**

Consideration was given to the report of the Head of Legal and Democratic Services which informed Members of the work of the Standards Committee during 2016/17 and set out the future direction which the Committee intended to take during 2017/18 (for copy see file of Minutes). Members were advised that the report would be presented to the County Council on 20 September 2017.

In discussing the Annual Report Members noted the increase in complaints relating to social media. Councillor Kellett advised that this had been raised as an issue of concern at the regional meeting of Standards Committee Chairs and Vice-Chairs in July 2017.

Following a question from Councillor McGaun about the complaints received about the use of social media and the findings that no further action be taken, the Governance Solicitor advised that the subject Members had been found to be engaging in political debate or had been acting in a private capacity when the posts were made.

New County Councillors had received training on the Code of Conduct in May 2017 and a session had been arranged for Parish and Town Councils on 3 October 2017, to which all Parish and Town Councillors were being encouraged to attend. The session would include the use of social media.

Councillor Nicholson appreciated that under the current regime sanctions were limited, and was informed that this was under review by a Parliamentary Committee but until such time as changes were made the merit of referring complaints to Local Investigation may be disproportionate.

**Resolved:**

That the report be noted and presented to County Council on 20 September 2017.

**5 Exclusion of the Public**

**Resolved:**

That under Section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

**6 Code of Conduct Complaints**

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which provided an update in respect of alleged breaches of the Code of Conduct since the last meeting (for copy see file of Minutes).

An increase in the number of complaints received about County Councillors was noted by Members who were advised that this may be attributed to the recent local elections.

Following discussion it was **Resolved:**

That the content of the report be noted.

## Standards Committee

1 December 2017



## Committee Work Programme

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### Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

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#### Purpose of the Report

1. To propose an annual programme of work to Members of the Standards Committee.

#### Background

2. This report proposes that the Committee agrees to an annual programme of work that is commensurate with the role and functions of the Committee.
3. As Members are aware, these are:
  - (a) promoting and maintaining high standards of conduct by Members and Co-opted Members of the Council and Parish and Town Council Members;
  - (b) assisting Members and Co-opted Members of the Council and Parish and Town Council Members to observe the Members' Code of Conduct and where appropriate, the Planning Code of Practice;
  - (c) advising the Council on the adoption or revision of the Members' Code of Conduct and the Planning Code of Practice;
  - (d) monitoring the operation of the Members' Code of Conduct and the Planning Code of Practice;
  - (e) advising, training or arranging to train Members and Co-opted Members of the Council and Parish and Town Council Members on matters relating to the Members' Code of Conduct and Planning Code of Practice;
  - (f) granting dispensations to Members and Co-opted Members of the Council from requirements relating to interests set out in the Members' Code of Conduct and Planning Code of Practice in circumstances where this function has not been delegated to the Monitoring Officer;
  - (g) the assessment and/or referral for investigation of allegations of

- misconduct on the part of Members and Co-opted Members of the Council and Parish and Town Council Members, if requested to undertake this function by the Monitoring Officer;
- (h) the determination of allegations of misconduct on the part of Members and Co-opted Members of the Council and Parish and Town Council Members;
  - (i) dealing with any alleged breach by a Member of a Council Protocol, in accordance with procedures approved by the Committee;
  - (j) overview of the Officers' Code of Conduct; and
  - (k) overview of the Protocol on Member/Officer Relations.
4. To assist the Committee in delivering its functions, it is recommended that it periodically review Council Policies and Procedures including the Members' Code of Conduct, the Planning Code of Conduct, the Officers' Code of Conduct and the Protocol on Member/Officer Relations. Proposals to develop guidance on Social Media for Members appear elsewhere on this agenda, and this should also be kept under review.
5. It is also considered appropriate for the Committee to receive a quarterly review of the national picture on Local Government Standards, to include the details of any consultations by (for example) central Government.
6. A proposed rolling programme is therefore set out at Appendix 2, with this itself to be reviewed on a quarterly basis.
7. It is anticipated that the need for any training requirements would fall for discussion alongside the review of the relevant Code/Guidance/Protocol.
8. The agreement of the work programme does not prevent the Committee from adding to or amending the programme.

### **Recommendation**

9. Members are asked to agree the proposed work programme set out in Appendix 2.

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**Contact: Laura Renaudon, Governance Solicitor Tel: 03000 269886**

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## **Appendix 1: Implications**

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**Finance - None**

**Staffing - None**

**Risk - None**

**Equality and Diversity / Public Sector Equality Duty - None**

**Accommodation - None**

**Crime and Disorder - None**

**Human Rights - None**

**Consultation - None**

**Procurement - None**

**Disability Issues - None**

**Legal Implications** - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. It is anticipated that a planned work programme to deal with the specific roles and functions of the Committee, as set out in the Constitution, will assist compliance with this duty.

## Appendix 2: Draft Work Programme

Spring	<ol style="list-style-type: none"><li>1. Review of Code of Conduct</li><li>2. Review of Social Media Guidance (subject to later consideration on the agenda)</li><li>3. Review of national picture</li><li>4. Complaints update</li></ol>
Summer	<ol style="list-style-type: none"><li>1. Review of Planning Code of Conduct</li><li>2. Review of national picture</li><li>3. Complaints update</li></ol>
Autumn	<ol style="list-style-type: none"><li>1. Annual Report</li><li>2. Review of Officers' Code of Conduct</li><li>3. Review of national picture</li><li>4. Complaints update</li></ol>
Winter	<ol style="list-style-type: none"><li>1. Review of Member/Officer Protocol</li><li>2. Review of national picture</li><li>3. Complaints update</li></ol>

## Standards Committee

1 December 2017



## Code of Conduct Update

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### Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

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#### Purpose of the Report

1. To provide Members with an update on activity since the last meeting in respect of complaints received by Durham County Council and member training.

#### Complaints

2. Whilst it would not be appropriate to debate any complaint which has not yet been assessed, the Committee will wish to know the volume of complaints of alleged breaches of the Code of Conduct currently being assessed and the rate of progress in bringing complaints to a conclusion. Complaints are assessed in accordance with the Council's Procedure for Local Assessment of Complaints dated May 2016.
3. Since the last meeting of the Committee there has been almost a 50% decrease in the volume of complaints received. Attached at Appendix 2 is a table which sets out the status of those complaints which are currently regarded as live complaints or which have been completed since the last meeting of the Committee. Eight complaints have been under consideration since the last meeting. Three of them concern complaints reported at the last meeting of the Committee on 1 September 2017, one of which was withdrawn. Of the five complaints received since then, three remain under consideration, with decisions having been issued on the remaining two. The table is intended to provide an overview of complaints handling. Decision notices will also be available for member inspection.

#### Member Training

4. The Monitoring Officer held a training session on the Code of Conduct for all Parish and Town Councils on 3 October 2017 which was attended by representatives from 18 Parish Councils. Five Members of the Standards Committee attended a regional training session on the use of social media on 10/11 October 2017, and the Chair and Vice-Chair of the Committee observed a meeting of Newcastle City Council's Standards Committee on 13 October 2017. At the request of Cornforth Parish Council the Governance Solicitor provided Code of Conduct training to its members on 13 November 2017. Neighbouring

Parish/Town Councils Bishop Middleham and Mainsforth, Ferryhill, Chilton and Kirk Merrington were invited to the session. Two members of Bishop Middleham and Mainsforth Parish Council attended.

**Recommendation**

5. Members are asked to note the report.

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**Contact: Laura Renaudon, Governance Solicitor Tel: 03000 269886**

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## **Appendix 1: Implications**

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**Finance - None**

**Staffing - None**

**Risk - None**

**Equality and Diversity / Public Sector Equality Duty - None**

**Accommodation - None**

**Crime and Disorder - None**

**Human Rights - None**

**Consultation - None**

**Procurement - None**

**Disability Issues - None**

**Legal Implications** - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. It must also have in place arrangements under which allegations about breaches of the Codes of Conduct, of the Council's own members and of members of Parish/Town Councils for which the Council is the principal authority, can be investigated and decisions on allegations can be made.

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**APPENDIX 2**

**Code of Conduct Complaints - Update  
1 December 2017**

<b>Ref No:</b>	<b>Subject Member</b>	<b>Date received and complainant</b>	<b>Allegations</b>	<b>Paragraphs of Code</b>	<b>Date of Decision Notice</b>	<b>Outcome</b>
COM116	Town Councillor	31 July 2017 Town Councillor	The complainant alleged that the Councillor signed the complainant's name to a number of proposed motions for discussion by the Council without her consent. She also alleged that he published one of those motions by posting it to Facebook.	1, 3 and 6	1 September 2017	Local Resolution – subject Member was asked to apologise to the complainant, to undergo Code of Conduct training, to enter into conciliation/mediation with the Clerk
COM117	County Councillor	9 August 2017 Member of the public	The complainant alleged that the Councillor accused him of being a drug dealer and money launderer on Facebook.	1 and 4		Complaint withdrawn
COM118	Town Councillor	21 August 2017 Member of the public	The complainant alleged that the Councillor 'stole' a personal photograph from her Facebook account and posted it on the North East Party Facebook page. The complainant considers that uploading a photograph of her to a political page was pointless and nasty.	1 and 5	1 September 2017	No Further Action

<b>Ref No:</b>	<b>Subject Member</b>	<b>Date received and complainant</b>	<b>Allegations</b>	<b>Paragraphs of Code</b>	<b>Date of Decision Notice</b>	<b>Outcome</b>
COM119	Parish Councillor	24 August 2017 Member of the public	The complainant alleged that on 18 August 2017 he observed a County Council operative cutting the grass belonging to stables that are owned by the Councillor. He observed the Council operative talking to the Councillor. He questioned the misuse of public funds and asked whether this was one of the perks of the job of a Parish Councillor.	3	25 September 2017	No Further Action
COM120	County Councillor	29 August 2017 Member of the public	The complainant alleged that the Councillor should have declared the nature of his relationship with a member of the action group relevant to the planning matter being considered, and alleged that there had been corruption in relation to the planning matter being considered. In support of her allegation, the complainant submitted a copy of a statement provided by a resident with whom she was in dispute. The statement included a picture of the Councillor's vehicle outside the resident's house. The statement was created for, and relied upon during criminal proceedings.	4, 5, 15 and 16	27 September 2017	No Further Action
COM121	Town Councillor	4 October 2017 Town Councillor	<p>The complainant alleges that at a meeting on 11 September 2017 during a debate regarding the lack of female representation in leadership roles at the Council the subject Councillor made an angry remark regarding a letter on the subject that had appeared in a local newsletter, and that he acted in an aggressive and threatening manner towards a member of the Council, ignoring the Chairman's repeated request to sit down.</p> <p>The complainant also alleges that during a telephone conversation on 19 September 2017 when the complainant asked the Councillor to consider making an apology for his behaviour at the next meeting, he became rude and angry, and hung up on her. The next day the complainant advises that the Councillor</p>	1 and 2		Currently being considered by the Governance Solicitor

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
			stated that he owed her an apology, but did not offer any apology for his behaviour at the meeting on 11 September 2017.			
COM 123	Parish Councillor	9 October 2017 County Councillor	The complainant alleges that the Councillor:- <ol style="list-style-type: none"> <li>1. removed public notices displayed within the village on 7 and 10 October 2017;</li> <li>2. made false claims about a Residents Group;</li> <li>3. made false claims about residents of the village;</li> <li>4. Acted inappropriately towards a constituent, resulting in a restraining order being issued.</li> </ol>	2 and 3		Currently being considered by the Legal Manager – Governance and Elections - subject Councillor requested to speak to Independent Person
COM 124-125	2 Parish Councillors	25 October 2017 Parish Councillor	The complainant alleges that <ol style="list-style-type: none"> <li>1. At a meeting in April 2017 the Councillors questioned why the complainant was in attendance and faced away from the complainant and the rest of the members throughout the meeting.</li> <li>2. Prior to the meeting of the Parish Council on 5 April 2017 one of the subject Councillors shouted across the table that the complainant had put the Council at risk by giving incorrect information and this was heard by Members of the Council.</li> <li>3. The Councillors have spoken aggressively and abruptly to various members of the Council at a number of Parish Council meetings since 5 April 2017.</li> <li>4. One of the subject Councillor's behaviour at a meeting of the Parish Council on 3 October 2017 was rude and inappropriate, and although he apologised at the request of the Vice-Chair, the complainant felt victimised and bullied.</li> </ol>	1 and 2		Currently being considered by the Governance Solicitor - subject Councillors requested to speak to the Independent Person



## Standards Committee

1 December 2017

## Standards Update



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## Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

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### Purpose of the Report

1. To inform Members of the 'national picture' on Standards issues affecting Local Government.

### Background

2. This report is for information, to update the Committee on national developments, consultations and court cases which relate to the work of the Committee. It is anticipated that this will be a standing agenda item with a quarterly update to the Committee.

### Consultations

#### Committee on Standards in Public Life: Parliamentary intimidation

3. The Committee on Standards in Public Life is conducting a review on the subject of intimidation of Parliamentary candidates with a call for evidence earlier this year. On 15 November it published the evidence received from online media networks and from several political parties (available at <https://www.gov.uk/government/collections/intimidation-of-parliamentary-candidates-review-evidence>).
4. Suggestions from the parties included
  - a. extending "imprint" rules to electronic material, which would prevent anonymous campaigning;
  - b. apply the code of practice under the Digital Economy Act 2017 to set out arrangements on responding to complaints of intimidating or bullying behaviour;
  - c. extend restrictions on publishing candidates' home addresses;
  - d. clearer CPS/Police guidance;
  - e. tougher laws against election intimidation; and
  - f. better self-regulation by political parties..

5. The Committee will also consider the broader implications of its review for other candidates for public office and other public office holders (such as Councillors).
6. The review will:
  - Examine the nature of the problem and consider whether measures already in place to address such behaviour are satisfactory to protect the integrity of public service; and whether such measures are (a) effective, especially given the rise of social media, and (b) enforceable;
  - Produce a report for the Prime Minister, including recommendations for action focused on what could be done in the short- and long-term and identifying examples of good practice.

The review will recognise the important role of legitimate scrutiny of those standing for public office by the public and the press.

### **Law Commission: Misconduct in Public Office**

7. The Law Commission launched a second consultation on the law of misconduct in public office on 5 September 2016. The consultation period has closed and the Commission is analysing the responses, with a view to publishing a final report in 2017.
8. The stated reform objectives are to decide whether the existing offence of misconduct in public office should be abolished, retained, restated or amended, and to pursue whatever scheme of reform is decided upon.
9. Misconduct in public office is a common law offence: it is not defined in any statute. It carries a maximum sentence of life imprisonment. The offence requires that: a public officer acting as such; wilfully neglects to perform his or her duty and/or wilfully misconducts him or herself; to such a degree as to amount to an abuse of the public's trust in the office holder; without reasonable excuse or justification.
10. The offence is widely considered to be ill-defined and has been subject to recent criticism by the Government, the Court of Appeal, the press and legal academics.
11. In general terms, those consultees who responded to the background paper agreed with the Law Commission that the law is in need of reform, in order to ensure that public officials are appropriately held to account for misconduct committed in connection with their official duties.

## **DCLG: Disqualification criteria for Councillors and Mayors**

12. This consultation runs from 18 September to 8 December 2017, and is discussed elsewhere on the Committee's agenda.

### **Case Reports**

#### **Hussain v Sandwell MBC [2017] EWHC 1641**

13. An attempt to prevent a local authority from continuing an investigation into alleged wrongdoing by elected council members has failed. The High Court decided that an investigation into wrongdoing allegations against councillor Mahboob Hussain of Sandwell Council and others should go ahead.
14. The Councillor was alleged (among other things) to have procured the sale of council assets to family friends at a substantial undervalue. He was also alleged 'to have used his power and influence as a senior politician within the council to have parking tickets issued to his family expunged'. There had been various media allegations of 'serial and longstanding wrongdoing by elected members, especially in relation to the disposal of council property'.
15. The Council conducted a 'pre-formal' investigation, that is, outside of the formal provisions of the Localism Act 2011, and the councillor challenged its power to do so. The Court dismissed the challenge on the basis that section 111 of the 1972 Act (incidental powers) can be used in connection with the duty to obtain best consideration when disposing of land (under section 123) and the duty to have proper financial administration arrangements (under section 151). The Council was therefore entitled to conduct the 'pre-formal' investigation.
16. Other challenges based on bias, pre-determination and the unfair publication of documents were also dismissed. The Council's Standards hearing was due to have been convened in September but was postponed.

### **Governance Review**

17. DCLG appointed Mary Ney, the former chief executive of Greenwich LBC, to review the governance arrangements of Local Enterprise Partnerships. Her review was published on 1 November (available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655188/Review\\_of\\_local\\_enterprise\\_partnership\\_governance\\_and\\_transparency.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655188/Review_of_local_enterprise_partnership_governance_and_transparency.pdf)) and recommends that LEPs should tighten their governance over actual or perceived conflicts of interest, including a

requirement to keep a publicly-available register of interests. Regional disparities in approach were found to exist. DCLG indicates that it will seek to implement all of the recommendations.

### **'Right to Recall'**

18. Thurrock Council has written to the Communities Secretary Sajid Javid to request legislation for a new 'Right to Recall' councillors in the event of significant conduct or ethical breach, similar to that put in place for Members of Parliament by the Recall of MPs Act 2015.
19. The council said that it is also looking into the possibility of introducing its own recall scheme and has asked its monitoring officer to investigate ways that this could be established without new legislation.
20. The Council's deputy leader is quoted as saying: "The council's Monitoring Officer has been looking into the legalities of such a change, and I'm pleased there were many voices across the council chamber who were in favour of a higher form of accountability."
21. "If changes were to be implemented then, should a councillor fall foul of an agreed set of criteria – like not attending meetings, conviction of a crime or breaching the members code of conduct – voters would have the choice to recall their representative and go to the ballot box to choose another candidate.
22. "As councillors, we are effectively immune from our residents calling time on any bad practices until a future election. It is the belief of this council that significant lapses of judgement and behaviour do warrant sanction far sooner in some instances, and that our bosses – the electorate – should have a say in calling time on such elected representatives."
23. No reply from Mr. Javid (if any) has been published.

### **Recommendation**

24. Members are asked to note the report and request that Officers monitor the progress of the matters referred to and keep the Committee updated.

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**Contact: Laura Renaudon, Governance Solicitor Tel: 03000 269886**

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## **Appendix 1: Implications**

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**Finance - None**

**Staffing - None**

**Risk - None**

**Equality and Diversity / Public Sector Equality Duty - None**

**Accommodation - None**

**Crime and Disorder - None**

**Human Rights - None**

**Consultation - None**

**Procurement - None**

**Disability Issues - None**

**Legal Implications** - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. Keeping Members aware of the national picture on Standards issues is expected to facilitate compliance with this duty.

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## Standards Committee

1 December 2017



### DCLG Consultation – Disqualification Criteria for Councillors

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## Report of Helen Lynch, Head of Legal & Democratic Services & Monitoring Officer

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### Purpose of the Report

- 1 This report advises Members that the Department for Communities and Local Government (“DCLG”) has published a consultation paper on updating disqualification criteria for local authority members.

### Background

- 2 In 2016, the Minister for Local Government indicated that there would be a review of the provisions in the Local Government Act 1972 relating to the disqualification of local authority members and whether the provisions of the Localism Act 2011 have any implications for any new rules on this matter.
- 3 The Department for Communities and Local Government (DCLG) has now published its consultation paper, which is attached at Appendix 2 to this report. The consultation will close on 8 December 2017.

### Existing Disqualification Criteria

- 4 Section 80 Local Government Act 1972 provides that a person is disqualified from standing as a candidate or being a member of a local authority in certain circumstances, including if they:-

Have, within 5 years before being elected, or at any time since being elected, been convicted of an offence and received a sentence of imprisonment (suspended or not) for not less than 3 months without the option of a fine.

Any changes to the existing criteria would therefore require changes to the primary legislation.

### DCLG – Consultation on updating the disqualification criteria for local authority members

- 5 Publishing the consultation paper, the Local Government Minister said:-

*“Councillors hold an important position of trust and authority in communities across England. We need to hold them to the highest possible standards. The current rules are letting residents and councillors down by preventing*

*people who should never be considered for such roles from standing for election.*

*The changes the government is proposing would help make sure anyone convicted of a serious crime, regardless of whether it comes with a custodial sentence, will not be able to serve as a councillor.”*

- 6 The DCLG consultation paper states that councillors “should be community champions” and it is therefore “vital that they have the trust of the electorate”. The Government considers “there should be consequences where councillors fall short of the behaviour expected of anyone in a free, inclusive and tolerant society that respects individuals and society generally, and where this has led to enforcement action against an individual.” It therefore considers that the existing law on disqualification “should be updated to reflect new options which exist to protect the public and address unlawful and unacceptable behaviour”.
- 7 The Government therefore proposes that a person will be disqualified from standing for, or holding office as a councillor or an elected Mayor, if he/she is subject to:-
  - (i) the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as ‘being on the sex offenders register’);
  - (ii) a civil injunction granted under s.1 Anti-Social Behaviour, Crime and Policing Act 2014; or
  - (iii) a Criminal Behaviour Order made under s.22 Anti-Social Behaviour, Crime and Policing Act 2014.
- 8 The detailed proposals are set out in the consultation paper. There are 6 questions to the consultation, which are set out at page 16 of the paper.

### **Sexual Offences**

- 9 The Government considers that anyone subject to sex offender notification requirements (i.e. ‘on the sex offenders register’) should be barred from standing for election, or holding office, as a councillor. The bar would end once he/she is no longer subject to the notification requirements. The length of time a person will be on the register is set out in the Sexual Offences Act 2003.

### **Anti-Social Behaviour**

- 10 The Government considers that anyone subject to an anti-social behaviour sanction issued by the court should be barred from standing for election, or holding office, as a councillor.

Anyone given a Civil Injunction or a Criminal Behaviour Order under the Anti-Social Behaviour, Crime and Policing Act 2014 would therefore no longer be

able to hold office. Again, the bar would end once he/she is no longer subject to the Injunction or Order.

### **General Comments on the consultation paper**

- 11 The proposals referred to at paragraphs 9 and 10 above would not apply retrospectively. This means an existing councillor who is on the sex offenders register or subject to a Civil Injunction or Criminal Behaviour Order when the changes come into force would not be affected. However, they would be prevented from standing for re-election after the changes come into force.
- 12 The proposals will also apply to co-opted members.

### **Recommendations and reasons**

- 13 The Standards Committee is recommended to consider the consultation paper at Appendix 2 and whether it wishes to make any comments/suggestions as to what response the Council should provide to the consultation.

### **Background papers**

- 14 None

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## **Appendix 1: Implications**

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**Finance** – There are no financial implications

**Staffing** – There are no staffing implications

**Risk** – There is no risk in relation to the recommendations to the report.

**Equality and Diversity / Public Sector Equality Duty** – There are no specific equality and diversity/public sector equality duty implication in relation to this report. However, one of the questions within the consultation paper asks “Do you consider that the proposals set out in the consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?”

**Accommodation**– Not applicable.

**Crime and Disorder**– There are no crime and disorder implications associated with the recommendations to this report.

**Human Rights**– There are no Human Rights implications associated with the recommendations to this report.

**Consultation**– The Council’s Constitution Working Group also considered the consultation document at its meeting on 17 November 2017. The consultation closes on 8 December 2017.

**Procurement**– Not applicable

**Disability Issues**– There are no disability issues associated with the recommendations in this report.

**Legal Implications**– The existing provisions relating to the disqualifications for election and holding office as a member of a local authority are set out in section 80 of the Local Government Act 1972.

The Council has a statutory duty under s.27 of the Localism Act 2011 to promote and maintain good standards of ethical conduct. Consideration of and contribution to consultation exercises is consistent with that duty.

**Department for  
Communities and  
Local Government**

**Disqualification criteria for Councillors and  
Mayors**

Consultation on updating disqualification criteria for local  
authority members

September 2017  
Department for Communities and Local Government

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September 2017

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# Scope of the consultation

**A consultation paper issued by the Department for Communities and Local Government on behalf of the Secretary of State**  
**Topic of this consultation**

<p><b>Topic of this Consultation:</b></p>	<p>This consultation paper sets out the government’s proposals for updating the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly.</p>
<p><b>Scope of this consultation:</b></p>	<p>The Department for Communities and Local Government is consulting on proposals to update the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly, if they are subject to:</p> <ul style="list-style-type: none"> <li>• the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as ‘being on the sex offenders register’);</li> <li>• a civil injunction granted under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014; or</li> <li>• a Criminal Behaviour Order made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014.</li> </ul> <p>Any changes to the disqualification criteria would require changes to primary legislation, in particular the Local Government Act 1972, the Local Democracy, Economic Development and Construction Act 2009, and the Greater London Authority Act 1999.</p> <p>The proposed changes would not act retrospectively.</p>
<p><b>Geographical scope:</b></p>	<p>The proposals in this consultation paper apply to certain authorities in England, including local authorities, combined authorities and the Greater London Authority. They do <u>not</u> apply to authorities in Wales, Scotland or Northern Ireland.</p>
<p><b>Impact Assessment:</b></p>	<p>No impact assessment has been produced for this consultation.</p>

# Basic Information

<b>To:</b>	This consultation is open to everyone. We particularly seek the views of individual members of the public, prospective and current councillors and those bodies that represent the interests of local authorities and councillors at all levels.
<b>Body responsible for the consultation:</b>	The Local Government Stewardship Division in the Department for Communities and Local Government is responsible for conducting the consultation.
<b>Duration:</b>	The consultation will begin on Monday 18 September 2017. The consultation will run for 12 weeks and will close on Friday 8 December 2017. All responses should be received by no later than 5pm on Friday 8 December 2017.
<b>Enquiries:</b>	<p>If you have any enquiries, please contact:</p> <p>Stuart Young email: <a href="mailto:stuart.young@communities.gsi.gov.uk">stuart.young@communities.gsi.gov.uk</a></p> <p>DCLG Tel: 0303 44 40000</p> <p>How to respond:</p> <p>Please respond by email to: <a href="mailto:Section80consultation@communities.gsi.gov.uk">Section80consultation@communities.gsi.gov.uk</a></p> <p>Alternatively, please send postal responses to:</p> <p>Stuart Young Department for Communities and Local Government 2nd Floor, NE, Fry Building 2 Marsham Street London SW1P 4DF</p> <p>Responses should be received by 5pm on Friday 8 December 2017.</p>
<b>How to respond:</b>	<p>You can respond by email or by post.</p> <p>When responding, please make it clear which questions you are responding to.</p> <p>When you reply it would be very useful if you could confirm whether you are replying as an individual or submitting an official response on behalf of an organisation, and include:</p> <ul style="list-style-type: none"> <li>- your name</li> </ul>

	<ul style="list-style-type: none"><li>- your position (if applicable)</li><li>- the name and address of your organisation (if applicable)</li><li>- an address, and</li><li>- an email address (if you have one)</li></ul>
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# Introduction

1. Local authority members (i.e. councillors), mayors of combined authorities, members of the Greater London Assembly and the London Mayor take strategic decisions that affect all our lives. They decide how best to use taxpayers' money and manage local authority resources, including property, land and assets. They also have a leading role to play in building and preserving a society where the rights and freedoms of individuals are respected. They should be community champions. It is vital, therefore, that they have the trust of the electorate.
2. The Government considers that there should be consequences where councillors, mayors and London Assembly members fall short of the behaviour expected of anyone in a free, inclusive and tolerant society that respects individuals and society generally, and where this has led to enforcement action against an individual.
3. Existing legislation prevents individuals standing, or holding office, as a local authority member, London Assembly member or directly-elected mayor if they have, within five years of the day of the election, or since their election, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment, suspended or not, for a period of not less than three months without the option of a fine.
4. The Government considers that the law should be updated to reflect new options which exist to protect the public and address unlawful and unacceptable behaviour.
5. This consultation proposes updating the disqualification criteria in section 80 of the Local Government Act 1972, paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, and section 21 of the Greater London Authority Act 1999 to prohibit those subject to the notification requirements (commonly referred to as 'being on the sex offenders register') and those subject to certain anti-social behaviour sanctions from being local authority members, London Assembly members or directly-elected mayors.
6. This consultation does not propose changing the disqualification criteria for Police and Crime Commissioners (PCCs). For the purposes of this consultation, 'local authority member' also extends to directly-elected mayors and co-opted members of authorities, and 'local authority' means:
  - a county council
  - a district council
  - a London Borough council
  - a parish council

The disqualification criteria in section 80 of the Local Government Act 1972, paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, and section 21 of the Greater London Authority Act 1999 do not cover the Council of the Isles of Scilly or the Common Council of the City of London. Therefore, the proposals in this consultation do not extend to these councils.

# The Current Disqualification Criteria

7. Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:
  - are employed by the local authority;
  - are employed by a company which is under the control of the local authority;
  - are subject to bankruptcy orders;
  - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine;
  - are disqualified under Part III of the Representation of the People Act 1983;
  - are employed under the direction of various local authority committees, boards or the Greater London Authority; or
  - are a teacher in a school maintained by the local authority.
  
8. Paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 sets out the criteria on disqualification from standing as, or being, a directly-elected mayor of a combined authority. A person is disqualified from being elected or holding office as the mayor of a combined authority if they:
  - hold any paid office or employment (other than the office of mayor or deputy mayor), including any appointments or elections made by or on behalf of the combined authority or any of the constituent councils of the combined authority;
  - are subject to bankruptcy orders;
  - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine; or
  - is disqualified for being elected or for being a member of a constituent council under Part 3 of the Representation of the People Act 1983.
  
9. Section 21 of the Greater London Authority Act 1999 disqualifies someone from being the Mayor or an Assembly member if they:
  - are a member of staff of the Authority;
  - hold an office that disqualifies the holder from being Mayor or an Assembly member;
  - are subject to bankruptcy orders are bankrupt or have made a composition agreement with creditors;
  - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine;

- are disqualified under section 85A or Part III of the Representation of the People Act 1983 from being the Mayor or an Assembly member; or
- are a paid officer of a London borough council who is employed under the direction of:
  - a council committee or sub-committee whose membership includes the Mayor or someone appointed on the nomination of the Authority;
  - a joint committee whose membership includes a member appointed on the nomination of the council and a member appointed on the nomination of the Authority;
  - the council executive, or one of its committees, whose membership includes the Mayor or someone appointed on the nomination of the Authority;
  - a member of the council's executive who is the Mayor or someone appointed on the nomination of the Authority.

# Sexual Offences

10. The Government considers that anyone who is subject to sex offender notification requirements, commonly referred to as 'being on the sex offenders register', should be barred from standing for election, or holding office, as a local authority member, directly-elected mayor or member of the London Assembly. The period of time for which they would be barred would end once they were no longer subject to these notification requirements.
11. An individual can become subject to notification requirements by committing certain criminal acts or being issued with certain types of civil order:
  - Being subject to sex offender notification requirements is an automatic consequence of being cautioned or convicted of a sexual offence listed in Schedule 3 of the Sexual Offences Act 2003 (see: <http://www.legislation.gov.uk/ukpga/2003/42/schedule/3>).
  - Sexual Harm Prevention Orders are civil orders intended to protect the public from offenders convicted of a sexual or violent offence who pose a risk of sexual harm to the public by placing restrictions on their behaviour. Offenders who are subject to Sexual Harm Prevention Orders become subject to notification requirements.
  - Notification Orders are civil orders intended to protect the public in the UK from the risks posed by sex offenders who have been convicted, cautioned, warned or reprimanded for sexual offences committed overseas. Such offenders may be British or foreign nationals convicted, cautioned etc. abroad of a relevant offence. Offenders who are subject to Notification Orders become subject to notification requirements.
12. The duration of the notification requirement period (i.e. how long a person is on the sex offenders register) is set out in the Sexual Offences Act 2003 and in the table below. The courts have no discretion over this.

<b>Where the (adult) offender is:</b>	<b>The notification period is:</b>
Sentenced to imprisonment for life or to a term of 30 months or more	An indefinite period
Detained in a hospital subject to a restriction order	An indefinite period
Sentenced to imprisonment for 6 months but less than 30 months imprisonment	10 years
Sentenced to imprisonment for 6 months or less	7 years
Detained in a hospital without being subject to a restriction order	7 years
Cautioned	2 years

Conditional discharge	The period of the conditional discharge
Any other description (i.e. community sentence, fine)	5 years

These periods are halved for offenders who are under 18 on the date of the caution, conviction or finding, as defined within the 2003 Act.

13. Offenders who are subject to the notification requirements must notify the police of (amongst other things) their: name, date of birth, national insurance number, home address, passport number, bank account and credit card details. They must do this annually, any time the details change or when they travel abroad. They must also notify the police when they stay or reside with a child for more than 12 hours.
  14. Further information on the Sexual Offences Act 2003 can be found at: <https://www.gov.uk/government/publications/guidance-on-part-2-of-the-sexual-offences-act-2003>.
  15. The Government does not propose including another type of civil order, the Sexual Risk Order, as this person would not have been convicted or cautioned of a sexual offence under the Sexual Offences Act 2003 and are not subject to notification requirements for registered sex offenders. A Sexual Risk Order does require the individual to notify to the police their name and their home address. A Sexual Risk Order can be sought by the police against an individual who has not been convicted, cautioned etc. of an offence under Schedule 3 or Schedule 5 of the 2003 Act but who is nevertheless thought to pose a risk of harm to the public in the UK and/or children or vulnerable adults abroad.
- Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. who is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**
- Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

# Anti-Social Behaviour

16. Anti-social behaviour blights people's lives and can leave victims feeling powerless. These are a range of powers to the courts, police and local authorities to tackle the problems in the table below.
17. The Government considers that an individual who is subject to an anti-social behaviour sanction that has been issued by the court, i.e. a Civil Injunction or a Criminal Behaviour Order, should be barred from standing for election, or holding office, as a local authority member, directly-elected mayor or member of the London Assembly. The period of time for which they would be barred would end once they were no longer subject to the injunction or Order.

## Anti-Social Behaviour (ASB) Powers

Type	Power	Description
Issued by the court to deal with individuals	<b>Civil Injunction</b>	A civil order with a civil burden of proof. The injunction can include both prohibitions and positive requirements to tackle the underlying causes of the behaviour. Applications can be made by police, councils, social landlords, Transport for London, Environment Agency, Natural Resources Wales and NHS Protect.
	<b>Criminal Behaviour Order</b>	A court order available on conviction. The order can be issued by any criminal court against a person who has been convicted of an offence. It is aimed at tackling the most persistently anti-social individuals who are also engaged in criminal activity. The order can include both prohibitions and positive requirements. Applications are made by the prosecution, in most cases by the Crown Prosecution Service, either at its own initiative or following a request from the police or council.
Used by the police to move problem groups or individuals on	<b>Dispersal Power</b>	A flexible power which the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to a local community. It allows the police to deal instantly with someone's behaviour and prevent it escalating. The use of the power must be authorised by an officer of at least inspector rank, to be used in a specific locality for up to 48 hours or on a case by case basis. This is to ensure that the power is used fairly and proportionately and only in circumstances in which it is necessary.

Issued by councils, the police and social landlords to deal with problem places	<b>Community Protection Notice</b>	A notice designed to deal with particular problems which negatively affect the community's quality of life. The Notice can be issued to anyone aged 16 or over, businesses or organisations. This is a two-stage power and a written warning has to be issued first. Failure to stop the behaviour or take action to rectify the problem would lead to the notice being issued. The power can be used by councils, police and social landlords (if designated by the council).
	<b>Public Spaces Protection Order</b>	Designed to deal with anti-social behaviour in a public place and apply restrictions to how that public space can be used to stop or prevent anti-social behaviour. The order is issued by the council. Before the order can be made, the council must consult with the police and whatever community representatives they think appropriate, including regular users of the public space. Before the order is made the council must also publish the draft order.
	<b>Closure Power</b>	A fast and flexible two-stage power. Can be used to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder, including residential, business and licensed premises. The police and councils are able to issue Closure Notices for up to 48 hours and the courts are able to issue Closure Orders for up to six months if satisfied that the legal tests have been met. Following the issue of a Closure Notice, an application must be made to the magistrates' court for a closure order.

**Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

# Retrospection

18. Legislation does not generally apply retrospectively, the principle being that the law should operate in a clear and certain manner and the public is entitled to know the state of the law at a particular time.
19. The proposals in this consultation would not apply retrospectively, i.e. any incumbent local authority member, directly-elected mayor or member of the London Assembly, who is on the sex offenders register or subject to a Civil Injunction or Criminal Behaviour Order at the time the changes come into force would not be affected.
20. Such individuals would of course be prevented from standing for re-election after the changes came into force.

# Questions

**Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?**

**Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q5. Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?**

**Q6. Do you have any further views about the proposals set out in this consultation paper?**

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

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## Standards Committee

1 December 2017

## Social Media Guidance



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## Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

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### Purpose of the Report

1. To propose that the Committee develops some Guidance on the use of social media for Members of the Council.

### Background

2. Members will be aware that a significant number of the complaints received about Councillors (parish or county) both nationally and locally relate to the perceived inappropriate use of social media platforms. The number of local complaints has been increasing. In 2014 and 2015 there were two complaints in each year on this issue. In 2016 there were nine, and in 2017 to date there have been sixteen. Particular issues are that it is not always clear to the public, or to Members themselves, when a councillor is acting 'as a councillor' and thus subject to the requirements of their relevant Code of Conduct. It is also not always clear where the difference lies between robust political debate and correspondence that is disrespectful (or worse) when the Code is engaged.
3. It is therefore considered appropriate to develop Guidance to assist councillors on this topic. The existing local guidance for Members on the issue is briefly contained in the Members' Handbook:

*Members who choose to use social media such as facebook, twitter or blogs for political purposes or in their community leadership roles should make clear when they are expressing their own personal views. Members are reminded however, that they and what they say may be associated with the council and as such, they should be careful not [to] breach the law or the council's policies or code of conduct and should not bring the council into disrepute.*

*While political comment and democratic debate are welcome, action may be taken in instances where councillors post offensive or unlawful comments, videos or images, which can in any way be linked to the council and which breach its policies or damage its reputation. Where councillors post defamatory or unlawful comments, they run the risk of legal action being taken against them.*

4. The issue has also been raised in Member Training, such as in the general induction training for new County Councillors on 15 May 2017, and again in a session on “Media and Social Media” delivered in July 2017. It was also covered at Code of Conduct training for Town and Parish Councillors in October 2017.
5. A number of other Councils have issued more extensive guidance to Members, in formats that largely distil the guidance issued by IDeA in March 2010 (“Connected Councillors: A guide to using social media to support local leadership”) and/or other guidance available on the Local Government Association website ([www.local.gov.uk](http://www.local.gov.uk)). It is suggested that any local guidance should be no more than a few pages in length, and should cover the key issues of ‘netiquette’, the interaction with the Code of Conduct, and the legal considerations that may apply to publication.

### **Recommendation**

6. Members are asked to agree the proposal to develop social media guidance for Councillors and to request the Monitoring Officer to bring a further report to the next meeting of the Committee with a draft of the proposed guidance for consideration.

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**Contact: Laura Renaudon, Governance Solicitor      Tel: 03000 269886**

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## **Appendix 1: Implications**

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**Finance - None**

**Staffing - None**

**Risk - None**

**Equality and Diversity / Public Sector Equality Duty - None**

**Accommodation - None**

**Crime and Disorder - None**

**Human Rights - None**

**Consultation - None**

**Procurement - None**

**Disability Issues - None**

**Legal Implications** - The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. It is anticipated that specific guidance on the use of social media by Members will help achieve compliance with this duty as well as potentially reducing the number of related complaints received about Councillors.

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