



Standards Committee

Date Thursday 22 March 2018
Time 10.00 am
Venue Committee Room 2, County Hall, Durham

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, if any
3. Minutes of the Meeting held on 1 December 2017 (Pages 3 - 6)
4. Code of Conduct Update (Pages 7 - 18)
5. Standards Update (Pages 19 - 34)
6. Review of the Members Code of Conduct (Pages 35 - 56)
7. Protocol on Member/Officer Relations (Pages 57 - 110)
8. Social Media Guidance (Pages 111 - 120)
9. Review of Local Government Ethical Standards: Stakeholder Consultation (Pages 121 - 130)
10. 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
14 March 2018

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 December 2017 at 10.00 am**

Present:

Councillor B Kellett (Chairman)

Members of the Committee:

Councillors J Clark, M McGaun, M McKeon and J Nicholson

Co-opted Members:

Town Councillor T Batson and Parish Councillor R Harrison

1 Apologies for Absence

Apologies for absence were received from Councillors E Bell, J Bell, M Clarke, T Henderson, E Huntington and A Savory, and Independent Person John Dixon-Dawson.

2 Declarations of Interest

There were no declarations of interest.

3 Minutes

The Minutes of the meeting held on 1 September 2017 were agreed as a correct record and were signed by the Chairman.

4 Committee Work Programme

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which proposed an annual programme of work for the Standards Committee (for copy see file of Minutes).

Councillor Clark welcomed the structured approach to the annual programme of work. Following a query about the review of the Planning Code of Practice, Members discussed the Standards Committee's role in the process which was to advise the Council on the adoption or revision of the document.

Councillor Clark referred to member training and a potential link with the Member Development Support Group. The Head of Legal and Democratic Services advised that she had had an initial meeting with the Head of People and Talent Management to discuss the member development programme and how the Group, with this Committee, could reinforce the importance of Member attendance at training sessions.

Resolved:

That the proposed work programme as set out in Appendix 2 of the report be agreed.

5 Code of Conduct Update

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which provided Members with an update on activity since the last meeting in respect of complaints received by Durham County Council, and member training (for copy see file of Minutes).

Councillor Nicholson referred to the training session held by the Monitoring Officer on 3 October 2017 for Parish and Town Councils which she felt could have been better attended. A discussion ensued on the importance of training on the Code of Conduct and how attendance by Councillors could be improved, including whether it could be made mandatory.

Some Members suggested that training in the localities should be explored, however, Councillor McGaun was of the view that, given the size of the County and the number of Parish Councils, this may be impractical. The Member considered that sessions at 1.30pm and 5.30pm in County Hall, Durham were useful to accommodate Members.

The Head of Legal and Democratic Services advised that training in the localities was already available to Parish Councils upon request, and referred to the recent session held for Cornforth Parish Council, to which neighbouring Parish Councils had also been invited. County Hall was centrally located but there may be difficulties for those Parish Councils travelling from the outlying parts of the County. The Officer advised that as Monitoring Officer, she could encourage Parish Councillors to attend Code of Conduct training but that she could not require Parish Council attendance to be mandatory.

Resolved:

That the content of the report be noted.

Councillor McKeon left the meeting.

6 Standards Update

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which informed Members of the 'national picture' in Standards issues affecting Local Government (for copy see file of Minutes).

The report included information on current consultations, a court case, the review of governance arrangements of Local Enterprise Partnerships and a request by Thurrock Council for legislation for a new 'Right to Recall' Councillors in the event of significant conduct or ethical breach.

Resolved:

That the contents of the report be noted and Officers monitor the progress of the matters referred to and keep the Committee updated.

7 DCLG Consultation - Disqualification Criteria for Councillors

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which advised Members of a consultation paper on updating the disqualification criteria for local authority Members (for copy see file of Minutes).

Members discussed the consultation and supported the proposal that a person would be disqualified if he/she met the requirements set out in the Sexual Offences Act 2003, and the proposal to include criminal behaviour. However Members disagreed that a person would be disqualified if he/she was subject to a civil injunction. The Committee was concerned that an individual could be disqualified from holding public office by being the subject of a civil injunction through association, for example Members could be involved in a peaceful protest which had public support. This criteria could infringe on an individual's freedom of expression.

The Committee felt that rather than tackling bad behaviour through the proposed criteria, sanctions available within the standards regime should be strengthened. The Head of Legal and Democratic Services advised that the standards regime was to be reviewed by the Committee on Standards in Public Life and an announcement was expected in early 2018 of the launch of consultation which would be reported to the Committee for comments.

Resolved:

That the comments of the Committee be included in the Council's response to the DCLG's consultation paper.

8 Social Media Guidance

The Committee considered a report of the Head of Legal and Democratic Services and Monitoring Officer which proposed the development of guidance on the use of social media for Members of the Council (for copy see file of Minutes).

The proposed guidance was for Durham County Councillors but Councillors Batson and Harrison suggested that it would be useful if the guidance could be developed to also assist Parish and Town Councillors. The Head of Legal and Democratic Services advised that following the preparation of draft guidance she would liaise with CDALC to ensure that it was also relevant for Parish and Town Councillors.

Resolved:

That the proposal to develop social media guidance for Councillors be agreed and a further report be submitted to the next meeting of the Committee with a draft of the proposed guidance for consideration.

Standards Committee

22 March 2018



Code of Conduct Update

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

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 held on 1 December 2017 there has been a rise 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.
4. At the last meeting three complaints were reported as being under consideration, all of which have now been completed. These are complaints ref: COM 121, COM 123 and COM 124-125, and are included in Appendix 2 to this report. Since the last meeting fourteen new complaints have been received. Of these, ten are under consideration, with decisions having been issued on the remaining four.
5. The table is intended to provide an overview of complaints handling. Decision notices will also be available for member inspection.

Recommendation

6. Members are asked to note the report.

Appendix 1: Implications

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.

APPENDIX 2

**Code of Conduct Complaints - Update
22 March 2018**

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
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 stated that he owed her an apology, but did not offer any apology for his behaviour at the meeting on 11 September 2017.</p>	1 and 2	12 February 2018	No Further Action Required but Local Resolution Recommended – that the subject Councillor and the complainant enter into some form of conciliation
COM 123	Parish Councillor	9 October 2017 County Councillor	<p>The complainant alleges that the Councillor:-</p> <ul style="list-style-type: none"> (i) removed public notices displayed within the village on 7 and 10 October 2017; (ii) made false claims about a Residents Group; (iii) made false claims about residents of the village; (iv) acted inappropriately towards a constituent, resulting in a restraining order being issued. 	2 and 3	4 December 2017	No Further Action

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
COM 124-125	2 Parish Councillors	25 October 2017 Parish Councillor	<p>The complainant alleges that</p> <ul style="list-style-type: none"> (i) 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. (ii) 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. (iii) The Councillors have spoken aggressively and abruptly to various members of the Council at a number of Parish Council meetings since 5 April 2017. (iv) 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. 	1 and 2	12 February 2018	<p>No Further Action in respect of one of the subject Councillors.</p> <p>Local Resolution requiring the other subject Councillor to enter into conciliation with the complainant by the end of March.</p> <p>In addition the Clerk to supply confirmation of the approval of the minutes of meetings by the end of March.</p>
COM 126-132	7 Parish Councillors	25 November 2017 Local Resident	<p>The complainant alleges that all the Councillors:-</p> <ul style="list-style-type: none"> (i) have failed to reply to correspondence sent by the complainant in May 2016, thereby failing to behave in such a way that a reasonable person would regard as respectful; (ii) took a decision concerning the memorial stone outside the Village Hall where their financial interest in the outcome, or the interest of those with whom they are closely 	1 for all the subject Councillors and 2 for one of the subject Councillors	14 February 2018	No Further Action

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
			<p>associated, should have precluded the Councillors from participating;</p> <p>(iii) took a decision to spend public money on refurbishing the façade of the public house, similarly in breach of the requirements not to vote on matters affecting the financial interest of those with whom they are closely associated.</p> <p>The complainant also alleges that one of the subject Councillors:-</p> <p>(i) in April 2017 intimidated a local family over building works to their property, thereby infringing his obligation not to act in a way in which a reasonable person would regard as bullying or intimidatory;</p> <p>(ii) had stolen photographs belonging to the complainant and used them online without the complainant's consent, thereby failing to behave in such a way that a reasonable person would regard as respectful.</p> <p>The complainant also alleges that one of the subject Councillors had vandalised Christmas decorations on the village green, thereby failing to behave in such a way that a reasonable person would regard as respectful.</p>			
COM 133	Parish Councillor	13 December 2017 Local resident	On Tuesday 5 December a member of the public was exercising her dogs and it appears that one of them entered the Councillor's land to defecate. It is alleged that the Councillor became enraged and engaged in a tirade of abuse which included calling the person a 'moron' and 'stupid'. This followed what was said to be an aggressive note pushed through the door of the complainant's house the previous day by the Councillor concerning the use of her field as a	1 and 2	13 February 2018	No Further Action

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
			<p>dogs' toilet. It is alleged that this amounts to behaviour which a reasonable person would not regard as respectful, contrary to Paragraph 1 of the Code.</p> <p>The complainant alleges that he is one of a multitude of dog owners living on the estate and that the Councillor has targeted only his household in her 'campaign' to prevent dogs defecating in her field. This campaign appears to have consisted of the note through the door and making, through a third party, an unfounded allegation of anti-social behaviour against the member of the public with whom the contretemps was had on 5 December. The complainant considers that this amounts to victimisation, contrary to Paragraph 2 of the Code which requires Councillors not to behave in such a way that a reasonable person would regard as bullying or intimidatory.</p>			
COM 134	County Councillor	4 December 2017 Local Resident	<p>The complainant complained that the County Councillor had failed to complete his register of interests within 28 days of election, and when published on 6 December 2017 the complainant noted that it was undated and that the Councillor had not declared that he owned a farm, which he had stated as part of an ongoing planning inquiry.</p> <p>In addition it was noted by the Solicitor with conduct of the planning inquiry that the Councillor's representations at the Inquiry were critical of Council Officers and their actions.</p>	Part 1 paragraphs 4 and 6, Part 2 paragraph 11 and potentially paragraph 15	29 January 2018	The complaint has been referred to the Police to consider the Councillor's alleged failure to declare his disclosable pecuniary interest within 28 days of election and/or in a farm that he owns.

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
						The alleged failure to declare interests and comply with the Member/Officer Protocol is to be considered under the Council's local assessment criteria following the Police investigation.
COM 135	County Councillor	18 January 2018 On behalf of a Local Group	The complainant alleges that on 4 January 2018 the Councillor commented on Facebook that the DLI Museum at Aykley Heads was a "rotting unvisited concrete box" and that this comment was posted onto the local Group's Facebook page. He subsequently, on 16 January 2018, noted on Facebook that his comments had appeared in the Northern Echo and showed a lack of contrition following the outcry from the public. The complainant states that the DLI Museum is surrounded by the cremated remains of veterans and others, and that the museum was home to some very historical, emotive, important, sentimental items.	1	22 February 2018	No Further Action

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
COM 136	County Councillor	14 December 2017 Anonymous	It is alleged that the Councillor posted notices in his shop window which contained derogatory comments about Durham County Council and that he failed to declare his business in the Register of Member Interests.	1, 4, 6 (Member/ Officer Protocol), and Part 2 – Registration of Interests.		Currently being considered by the Legal Manager – Governance and Elections Law
COM 137	Town	25 January 2018 Town Councillor	The complainant complains that the Councillor in his capacity as Chairman has signed a lease Agreement that was dated 1 January 2017. The complainant asserts that on that date he was neither a Councillor nor an authorised signatory to the Agreement. The complainant asserts that the Agreement has since been used to support eviction proceedings. He complains that the Agreement has been backdated without lawful authority. He further complains that the Council's Standing Orders require such an agreement to be made under seal, and that this did not happen.	3 and 4		Currently being considered by the Governance Solicitor
COM 138	Town	1 February 2018 Town Councillor	The complainant complains that in October 2017 the Councillor argued aggressively with him in a public house about a council decision. He also complains that on 25 January 2018 he was with 2 constituents when the Councillor interrupted him to accuse him of corruption. He complains of a pattern of aggressive behaviour by the Councillor at Council meetings. He therefore complains that the Code of Conduct has been breached by reason of a failure to treat others with respect, contrary to paragraph 1, and by displaying bullying or intimidatory behaviour, contrary to paragraph 2 of the Code.	1 and 2		Subject Councillor requested to speak to Independent Person. Currently being considered by the Governance Solicitor

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
COM 139	County	5 February 2018 Local Resident	The complainant alleges that:- (i) the Councillor has a conflict of interest relating to issues of anti-social behaviour in the complainant's area but has failed to declare this, contrary to Paragraph 5 and/or Part 2; and (ii) the Councillor has discussed confidential matters relating to the complainant with a third party without the complainant's permission, contrary to paragraph 9.	Paragraph 5 of Part 1, and of Part 2. Paragraph 9 of Part 1	22 February 2018	No Further Action
COM 140	Town	14 February 2018 Town Councillor	The complainant alleges that the Councillor verbally attacked him at a meeting of the Town Council Allotments Sub-Committee on 6 February 2018, after losing a vote on a motion. It is said that around 30 members of the public were in attendance. It is alleged that the Councillor said that the complainant hated him and his family in an outburst that nobody present could understand. The complainant alleges that this is the third attack on him by the Councillor and that "this last outburst is a step too far". The complaint amounts to an allegation that the Councillor has failed to behave towards others, namely the complainant, in such a way that a reasonable person would regard as respectful, therefore breaching paragraph 1 of the Code.	1		Subject Councillor requested to speak to Independent Person. Currently being considered by the Governance Solicitor
COM 141	Town	14 February 2018 Town Councillor	It is alleged that on 15 November 2017 a meeting was taking place in the Chamber when the Councillor entered the Chamber before a Corporate Governance Meeting that was due to take place. The Chair of the meeting then going on apparently asked him to leave. It is said that he refused to do so, and expressed himself aggressively. He is alleged to have repeatedly shouted at the Chair of that meeting to "shut up" whilst pointing and shaking his finger.	1 and 2		Subject Councillor requested to speak to Independent Person. Currently being considered by the

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
			<p>The complainant then alleges that he asked the Councillor to cease shouting, to which he reacted by grabbing the complainant by the lower arm and screaming that he had 'had enough' of him before then letting go and sitting down.</p> <p>The complainant's allegations raise potential breaches of paragraphs 1 and 2 of the Code of Conduct which are the requirements to treat other people with respect and not to engage in behaviour which a reasonable person would regard as intimidating.</p>			Governance Solicitor
COM 142	County	26 February 2018 Local resident	<p>The complainant complains that whilst he was out canvassing on 16 February 2018 in a secluded area of the ward, the subject Councillor shouted at him, approached him and called him a liar. The Councillor is alleged to have told the complainant that he had 'had his chance' to be an Independent, but that 'time is up' for him. He is then said to have claimed that the complainant was breaching rules and that other people were running his campaign. The complainant claims that the Councillor was very aggressive and that the incident gave him concerns for his welfare.</p> <p>The complainant's allegations amount to allegations of a failure to treat others with respect, contrary to paragraph 1 of the Code, and of bullying, contrary to paragraph 2.</p>	1 and 2		Response awaited from the subject Councillor

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
COM 143-145	Town	2 March 2018 Town Councillor	<p>Complaint Ref: COM 143</p> <p>It is alleged that on 15 November 2017 a meeting was taking place in the Chamber when the Councillor entered the Chamber before a Corporate Governance Meeting that was due to take place. The complainant apparently asked him to leave and it is said that he refused to do so, and expressed himself aggressively. He is alleged to have repeatedly shouted at the complainant to “shut up” whilst pointing and shaking his finger.</p> <p>The complainant then alleges that the Vice-Chair asked the Councillor to stop shouting, to which he reacted by grabbing him by the arm and screaming that he had ‘had enough’ of him before then letting go and sitting down.</p> <p>The complainant’s allegation raises potential breaches of paragraphs 1 and 2 of the Code of Conduct which are the requirements to treat other people with respect and not to engage in behaviour which a reasonable person would regard as intimidating.</p> <p>Complaint Ref: COM 144</p> <p>The complainant alleges that during a meeting of the Town Council on 13 December 2017 the Councillor refused to allow any explanation or discussion on the accuracy of the Minutes of the meeting held on 15 November 2017, and said that he would sign them off as a true record and make a note that they were not accepted, even though the Council had resolved that they were not accurate.</p>	<p>1 and 2</p> <p>6</p>		Responses awaited from the subject Councillor

Ref No:	Subject Member	Date received and complainant	Allegations	Paragraphs of Code	Date of Decision Notice	Outcome
			<p>The complainant's allegation raises a potential breach of paragraph 6, actions which could be regarded as bringing the Council into disrepute.</p> <p>Complaint Ref: COM 145</p> <p>The complainant alleges that the Councillor informed Durham County Council that the Town Council had decided not to require polling cards to be distributed for two by-elections to be held in March 2018. It is alleged that he lacked proper authority to communicate this to DCC, because there had been no Town Council decision on the matter.</p> <p>The complainant's allegation raises a potential breach of paragraph 6, actions which could be regarded as bringing the Council into disrepute, and of paragraph 4, the use of the resources of the Council other than in accordance with its requirements.</p>	4 and 6		

Standards Committee

22 March 2018

Standards Update



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

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. As agreed by the Committee in December 2017, in the annual work programme this will be a standing agenda item with a quarterly update to the Committee.

Consultations and Reports

Committee on Standards in Public Life: Ethical Standards Review

3. This consultation is reported elsewhere on the agenda.

Committee on Standards in Public Life: Parliamentary Intimidation

4. The CSPL's review was reported to the Committee's meeting in December. Since then the CSPL has published its findings in Command Paper 9543 of December 2017. It recommended as follows:
 - Government should bring forward legislation to shift the liability of illegal content online towards social media companies;
 - Social media companies must develop and implement automated techniques to identify intimidatory content posted on their platforms. They should use this technology to ensure intimidatory content is taken down as soon as possible;
 - Social media companies must do more to prevent users being inundated with hostile messages on their platforms, and to support users who become victims of this behaviour;

- Social media companies must implement tools to enhance the ability of users to tackle online intimidation through user options;
- All social media companies must ensure they are able to make decision quickly and consistently on the takedown of intimidatory content online;
- Twitter, Facebook and Google must publish UK-level performance data on the number of reports they receive, the percentage of reported content that is taken down, and the time it takes to take down that content, on at least a quarterly basis;
- Social media companies must urgently revise their tools for users to escalate any reports of potential illegal online activity to the police;
- The social media companies should work with the government to establish a 'pop-up' social media reporting team for election campaigns;
- Social media companies should actively provide advice, guidance and support to Parliamentary candidates on steps they can take to remain safe and secure while using their sites;
- Those in positions of leadership within political parties must set an appropriate tone during election campaigns, and make clear that any intimidatory behaviour is unacceptable. They should challenge poor behaviour wherever it occurs;
- Political parties must proactively work together to tackle the issue of intimidation in public life;
- Political parties should set clear expectations about the behaviour expected of their members, both offline and online through a code of conduct for members which specifically prohibits any intimidatory behaviour. Parties should ensure that members are familiar with the code. The consequences of any breach of the code should be clear and unambiguous;
- Political parties must ensure that party members who breach the party's code of conduct by engaging intimidation are consistently and appropriately disciplined in a timely manner;
- Political parties must collect data on the number of complaints against members for engaging in intimidatory behaviour, and the outcome of any disciplinary processes which result from these complaints;
- Leaders of political parties should always call out intimidatory behaviour, even when it is perpetrated by those in the party's fringes. Fringe group leaders and spokespeople should immediately denounce any intimidatory behaviour on the part of their members or supporters;
- The political parties must work together to develop a joint code of conduct on intimidatory behaviour during election campaigns by December 2018. The code should be jointly enforced by the political parties;

- Political parties must take steps to provide support for all candidates, including through networks, training, and support and resources. In particular, the parties should develop these support mechanisms for female, BAME, and LGBT candidates who are more likely to be targeted as subjects of intimidation;
- Political parties must offer more support and training to candidates on their use of social media. This training should include: managing social media profiles, block and mute features, reporting content, and recognising when behaviour should be reported directly to the police;
- The government should consult on the introduction of a new offence in electoral law of intimidating Parliamentary candidates and party campaigners;
- The government should bring forward legislation to remove the requirement for candidates standing as local councillors to have their home addresses published on the ballot paper. Returning Officers should not disclose the home addresses of those attending an election count;
- Local Authority Monitoring Officers should ensure that members required to declare pecuniary interests are aware of the sensitive interests provisions in the Localism Act 2011;
- MPs should actively co-operate with the police and other security services working to address the security threats facing Parliamentarians and Parliamentary candidates;
- The National Police Chiefs Council should ensure that local police forces have sufficient training to enable them to effectively investigate offences committed through social media. Local police forces should be able to access advice and guidance on the context in which MPs and Parliamentary candidates work;
- The College of Policing Authorised Professional Practice for elections should be updated to include offences relating to intimidation, including offences committed through social media;
- The Home Office and the Department for Digital, Culture, Media and Sport should develop a strategy for engaging with international partners to promote international consensus on what constitutes hate crime and intimidation online;
- The National Police Chiefs Council, working with the Crown Prosecution Service and the College of Policing, should produce accessible guidance for Parliamentary candidates giving clear advice on behaviour they may experience during a campaign which is likely to constitute a criminal offence;
- Nobody in public life should engage in intimidatory behaviour, nor condone or tolerate it. All those in public life have a responsibility to challenge and report it wherever it occurs;

- Those in public life should seek to uphold high standards of conduct, adhering to the Seven Principles of Public Life, and help prevent a decline in public trust in political institutions through their own conduct;
 - Those in public life must set and protect a tone in public discourse which is not dehumanising or derogatory, and which recognises the rights of others to participate in public life;
 - Those in public life have a responsibility not to use language which engenders hatred or hostility towards individuals because of their personal characteristics;
 - Press regulation bodies should extend their codes of conduct to prohibit unacceptable language that incites intimidation;
 - News organisations should only consider stories from freelance journalists that meet the standards of IPSO's Editors Code, or the Editorial Guidelines of Impress, as appropriate, and ensure that freelance journalists are aware of this policy; and
 - Those in public life should not engage in highly personalised attacks, nor portray policy disagreements or questions of professional competence as breaches of ethical standards.
5. The Prime Minister, when speaking on the suffrage centenary on 6 February 2018, endorsed the Committee's recommendations concerning the actions that social media companies should take. She also called for an annual internet safety transparency report, to provide data on what offensive content is being reported, how the social media companies are responding to complaints, and what material is being removed. She indicated that the Government would introduce a comprehensive new social media code of practice this year.
6. The full report may be accessed here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/666927/6.3637_CO_v6_061217_Web3.1_2_.pdf

Communities and Local Government Committee: Effectiveness of Local Authority Overview and Scrutiny Committees

7. Not directly relevant to the work of this Committee, but which may be of interest, is the Select Committee report of December 2017 into the effectiveness of local overview and scrutiny committees. The principal recommendations were:
- Overview and scrutiny committees should report to an authority's full council meeting rather than to the executive, mirroring the relationship between select committees and Parliament;

- Scrutiny committees and the executive must be distinct and that executive councillors should not participate in scrutiny other than as witnesses, even if external partners are being scrutinised;
- Councillors working on scrutiny committees should have access to financial and performance data held by an authority, and that this access should not be restricted for reasons of commercial sensitivity;
- Scrutiny committees should be supported by officers that are able to operate with independence and offer impartial advice to committees; There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts;
- Members of the public and service users have a fundamental role in the scrutiny process and that their participation should be encouraged and facilitated by councils;
- Overview and scrutiny committees should be given full access to all financial and performance information, and have the right to call witnesses, not just from their local authorities, but from other public bodies and private council contractors. They should be able to follow and investigate the spending of the public pound; and
- A pilot scheme to monitor the impact of elected chairs on the effectiveness of scrutiny should be undertaken.

Case Reports

Sandwell Metropolitan Borough Council

8. In December the Committee will recall that an attempt to prevent a local authority from continuing an investigation into alleged wrongdoing by elected council members had failed. The High Court decided that an investigation into wrongdoing allegations against councillor Mahboob Hussain of Sandwell Council and others should go ahead.
9. The Standards sub-committee at Sandwell subsequently found that Cllr. Hussain had breached the local code of conduct on 12 occasions and that he had brought his office in the Council into disrepute, had compromised the impartiality of officers, and had given an unfair advantage to his family and/or close associates. A further hearing to consider sanctions is due to be convened.

Conwy County Borough Council

10. Members may be aware that local government standards are a devolved matter, meaning that there are different regimes under the devolved administrations of the UK.

11. The Adjudication Panel for Wales has disqualified Conwy CBC's former Chair Stuart Anderson from office for 18 months. He was found to have breached the code, including by having insulted officers and a local head teacher, and had disclosed confidential medical information about one of the Council's officers to various people including members of the public. The Public Services Ombudsman for Wales had referred the case to the Adjudication Panel.

Recommendation

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

Contact: Laura Renaudon, Governance Solicitor Tel: 03000 269886

Appendix 1: Implications

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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Government Response to the Communities and Local Government Committee First Report of Session 2017-19 on the Effectiveness of Local Authority Overview and Scrutiny Committees

Presented to Parliament
by the Secretary of State for
Housing, Communities and Local Government
by Command of Her Majesty

March 2018

CM 9569



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Government Response to the Communities and Local Government Committee First Report of Session 2017–19 on the Effectiveness of Local Authority Overview and Scrutiny Committees

Introduction

In September 2017, the Communities and Local Government Select Committee relaunched the inquiry into the effectiveness of local authority overview and scrutiny committees that had been started by its predecessor earlier that year. The Select Committee published its report on 15 December 2017: <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/369/36902.htm>.

The Government will be looking at further ways to extend and improve transparency and is grateful both to the Committee for its consideration of the effectiveness of overview and scrutiny committees and to all those organisations and individuals who provided oral and written evidence.

Scrutiny can play a vital role in ensuring local accountability on a wide range of local issues. It is one of the key checks and balances in the system and the Government is committed to ensuring councils are aware of its importance, understand the benefits effective scrutiny can bring and have access to best practice to inform their thinking.

The Government firmly believes that every council is best-placed to decide which scrutiny arrangements suit its individual circumstances, and so is committed to ensuring that they have the flexibility they need to put those arrangements in place.

The Government is pleased the Select Committee acknowledges overview and scrutiny is functioning effectively in many local authorities and that committees are playing a key role in helping executives develop and review policy. The Government accepts, however, that in some councils scrutiny is not functioning as well as might be expected.

The Select Committee has made a number of recommendations, most, but not all, of which are for the Government to consider. The response in the following pages addresses only those recommendations aimed at the Government.

Recommendation 1: Proposed revisions to Government guidance on scrutiny committees (Page 7)

- a) That overview and scrutiny committees should report to an authority's Full Council meeting rather than to the executive, mirroring the relationship between Select Committees and Parliament.**
- b) That scrutiny committees and the executive must be distinct and that executive councillors should not participate in scrutiny other than as witnesses, even if external partners are being scrutinised.**
- c) That councillors working on scrutiny committees should have access to financial and performance data held by an authority, and that this access should not be restricted for reasons of commercial sensitivity.**

- d) That scrutiny committees should be supported by officers that are able to operate with independence and offer impartial advice to committees. There should be a greater parity of esteem between scrutiny and the executive, and committees should have the same access to the expertise and time of senior officers and the chief executive as their cabinet counterparts.**
- e) That members of the public and service users have a fundamental role in the scrutiny process and that their participation should be encouraged and facilitated by councils.**

Government Response:

The Government acknowledges that the current guidance was issued in 2006 and is happy to ensure it is updated. New guidance will be published later this year.

- a) The Government notes the evidence supplied to the Committee. Updated guidance will recommend that scrutiny committees report to the Full Council.
- b) The Government accepts the need to limit the executive's involvement in the scrutiny meetings. Updated guidance will make clear that members of the executive should not participate in scrutiny other than as witnesses.
- c) Scrutiny committees already have powers to access documents and updated guidance will stress that councils should judge each request to access sensitive documents on its merits and not refuse as a matter of course. We will also have discussions with the sector to get a better understanding of the issues some scrutiny committees appear to have in accessing information and whether there are any steps the Government could take to alleviate this.
- d) Updated guidance will make clear that support officers should be able to operate independently and provide impartial advice. It will also stress the need for councils to recognise and value the scrutiny function and the ways in which it can increase a council's effectiveness. However, the Government believes that each council should decide for itself how to resource scrutiny committees, including how much access to senior officers is appropriate to enable them to function effectively.
- e) The Government fully believes that local authorities should take account of the views of the public and service users in order to shape and improve their services. Scrutiny is a vital part of this, and scrutiny committees should actively encourage public participation. Updated guidance will make this clear.

Recommendation 2: That DCLG works with the Local Government Association and Centre for Public Scrutiny to identify willing councils to take part in a pilot scheme where the impact of elected chairs on scrutiny's effectiveness can be monitored and its merits considered (Paragraph 35).

Government Response:

The Government will give further consideration to this recommendation.

The Government fully accepts that the chair of a scrutiny committee can have a great impact on its effectiveness. As the then Minister told the Select Committee at the oral evidence session on 6 November 2017, a chair needs to have the requisite skills, knowledge and acumen to take on the functions and achieve the outcomes that the scrutiny committee needs to achieve.

The Government also accepts that, in some instances, the election, rather than the appointment, of a chair might help ensure that the right individual is ultimately selected, but feels that this is a decision for every council to make for itself - we note that the Select Committee is “wary of proposing that [election] is imposed upon authorities by Government”.

A local authority is already free to elect a chair if it wishes, and the updated guidance will recommend that every council bears this in mind when deciding on a method for selecting a chair.

The Government is happy to explore with the sector how best to establish the impact of elected chairs on scrutiny committees’ effectiveness, but is not yet convinced that running pilot schemes is the best way to achieve this. The Government will therefore discuss this recommendation with the sector, including the Local Government Association and Centre for Public Scrutiny, and write to the Select Committee on this matter when we publish updated guidance.

Recommendation 3: Councils should be required to publish a summary of resources allocated to scrutiny, using expenditure on executive support as a comparator (Paragraph 62)

Government Response:

The Government does not accept this recommendation.

Many councils do not have dedicated scrutiny support staff - officers work on issues and engage with committees as part of the flow of business - so this would make quantifying the support that scrutiny committees receive very difficult. In the Government’s view, the quality of the support is the more important issue.

The Government firmly believes that each individual authority is best-placed to decide for itself how to support scrutiny most effectively.

Recommendation 4: That the Government extend the requirement of a Statutory Scrutiny Officer to all councils and specify that the post-holder should have a seniority and profile of equivalence to the council’s corporate management team. To give greater prominence to the role, Statutory Scrutiny Officers should also be required to make regular reports to Full Council on the state of scrutiny, explicitly identifying any areas of weakness that require improvement and the work carried out by the Statutory Scrutiny Officer to rectify them (Paragraph 65).

Government Response:

The Government does not accept this recommendation.

As the then Minister outlined during the oral evidence he gave to the Select Committee, decisions about the allocation of resources for the scrutiny function are best made at a local level. Each council is best-placed to know which arrangements will suit its own individual circumstances. It is not a case of one size fits all.

The key requirement for effective scrutiny is that the culture of the council is right. Where councils recognise the benefits effective scrutiny can bring, and put in place suitable arrangements, it is working well. Local authorities with a strong culture of scrutiny may invite regular reports to full council on the state of scrutiny in the council and this idea will be reflected in the updated guidance.

Recommendation 5: The Department to put monitoring systems in place and consider whether the support to committees needs to be reviewed and refreshed. We invite the Department to write to us in a year's time detailing its assessment of the value for money of its investment in the Local Government Association and on the wider effectiveness of local authority scrutiny committees (Paragraph 76).

Government Response:

The Government does not accept this recommendation. Local authorities are independent bodies and it is for them to ensure that their scrutiny arrangements are effective.

The Government firmly believes that every council should be able to access the training it needs to carry out its functions effectively, and recognises that Government itself has a role to play in making this happen. That is why we provide funding to the Local Government Association for sector-led improvement work. It should be noted that this funding is to support local authorities on a wide range of improvement work. It is not purely to assist with overview and scrutiny.

The funding is determined annually and for 2017/18 is £21 million. The package of work that is funded from the grant is set out in a jointly agreed Memorandum of Understanding between the Department and the Local Government Association, which is refreshed annually to ensure that it remains relevant to the sector's needs.

The Government is, of course, very keen to ensure that this funding provides value for money and that local authorities feel that the training on offer serves their needs. To this end, the Department has quarterly performance monitoring and review meetings with the Local Government Association, which are chaired by the Director-General for Local Government and Public Services.

The Government notes that not all the councillors who provided evidence to the Select Committee felt that the scrutiny training provided was as effective as they would have liked, and that the Local Government Association wrote to the Committee on 20 December 2017 to provide more information on the feedback it received on its support work.

The Government will ensure that the 2018/19 Memorandum of Understanding with the Local Government Association clearly sets out our expectation that they remain responsive to feedback they receive to ensure all training, including scrutiny training, remains relevant and effective.

Recommendation 6: Scrutiny committees must be able to monitor and scrutinise the services provided to residents. This includes services provided by public bodies and those provided by commercial organisations. Committees should be able to access information and require attendance at meetings from service providers and we call on DCLG to take steps to ensure this happens (Paragraph 90).

Government Response:

Updated guidance will remind councils of the requirements set out in regulations that allow scrutiny members to access exempt or confidential documents in certain circumstances. As mentioned in response to the Select Committee's recommendation on guidance, the Department will also have discussions with the sector to get a better understanding of the issues some scrutiny committees appear to have in accessing information and whether there are any steps the Government could take to alleviate this.

In terms of service providers' attendance at meetings, when councils are tendering contracts with external bodies they should carefully consider including requirements to ensure they are as open and transparent as appropriate. Ultimately, however, it is up to each council to decide how best to hold to account those who run its services.

Recommendation 7: The Government to make clear how LEPs are to have democratic, and publicly visible, oversight. We recommend that upper tier councils, and combined authorities where appropriate, should be able to monitor the performance and effectiveness of LEPs through their scrutiny committees. In line with other public bodies, scrutiny committees should be able to require LEPs to provide information and attend committee meetings as required (Paragraph 96).

Government Response:

The Government agrees on the importance of clear and transparent oversight of Local Enterprise Partnerships (LEPs). The Industrial Strategy made clear the continuing important role of LEPs in delivering local economic growth.

The MHCLG Non-Executive Director Review (published in October 2017), looked at a range of governance issues for LEPs. The Review made a series of recommendations that we have accepted in full and are now implementing. As part of this we have published guidance for LEPs on a range of issues including publication of agenda and papers for LEP Board meetings. This will make the proceedings of LEPs more transparent for local people.

The National Assurance Framework for LEPs states that democratic accountability for the decisions made by the LEP is provided through local authority leader membership of LEP Boards. In places where not all local authorities are represented directly on the LEP board it is important that their representatives have been given a mandate through arrangements which enable collective engagement with all local authority leaders. Many LEPs already go much further in allowing democratic scrutiny of their decision making.

The MHCLG Non-Executive Director Review into LEP governance and transparency explored the extent to which scrutiny was embedded into LEP decision making. The review acknowledged that each LEP had their own arrangements to reflect: legal structure, the complexity and needs of the locality and local requirements to ensure value for money; engagement; and democratic accountability. The Review concluded that it was not appropriate to be prescriptive on the specific arrangements that all LEPs needed to adopt due to the variation in LEP operating models.

The Government committed in the Industrial Strategy White Paper to reviewing the roles and responsibilities of LEPs and to bringing forward reforms to leadership, governance, accountability, financial reporting and geographical boundaries. Working with LEPs, the Government committed to set out a more clearly defined set of activities and objectives in early 2018. MHCLG will write to the Select Committee following the conclusion of this Ministerial review into LEPs to provide an update.

Recommendation 8: We are concerned that effective scrutiny of the Metro Mayors will be hindered by under-resourcing, and call on the Government to commit more funding for this purpose. When agreeing further devolution deals and creating executive mayors, the Government must make clear that scrutiny is a fundamental part of any deal and that it must be adequately resourced and supported. (Paragraph 104)

Government Response:

The Government accepts this recommendation.

At the Budget it was announced that the government will make available to mayoral combined authorities with elected mayors a £12 million fund for 2018-19 and 2019-20, to boost the new mayors' capacity and resources. Combined Authorities could use some of this resource to ensure that scrutiny and accountability arrangements within the CAs are effectively resourced and supported.

Further to this, the recent Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017, developed with assistance from the Centre for Public Scrutiny and the National Audit Office, provides for the rules of operation for local overview and scrutiny and audit committees to robustly hold combined authorities and mayors to account. The order ensures that there are strong scrutiny arrangements in place consistently across every combined authority area and sets out clear requirements, strengthened appropriately to match the new powers and budgets being devolved, for the arrangement of overview and scrutiny and audit committees in all combined authorities.

Combined authorities are subject to existing relevant legislation applying to local authorities, including the strong finance and audit requirements around ensuring value for money and sustainability. Local democratic accountability, including through the scrutiny of directly-elected mayors, is a crucial and fundamental aspect of devolution.

Standards Committee

22 March 2018



Review of the Members Code of Conduct

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

Purpose of the Report

- 1 To invite members to approve a revised Code of Conduct for Members of the Authority.

Background

- 2 Under section 27 of the Localism Act 2011, Durham County Council has a statutory duty to promote and maintain high standards of conduct, whether of its Members or Co-opted Members. To comply with this duty, the Council must adopt a code dealing with the conduct that is expected of Members and co-opted members when they are acting in that capacity.
- 3 The only requirement for the Code is that its terms, when viewed as a whole, are consistent with the Nolan principles of public life:
 - (a) selflessness;
 - (b) integrity;
 - (c) objectivity;
 - (d) accountability;
 - (e) openness;
 - (f) honesty;
 - (g) leadership.
- 4 The Code must also include provisions that the Council considers appropriate in respect of the registration in its register, and disclosure, of:
 - (a) disclosable pecuniary interests; and
 - (b) interests other than disclosable pecuniary interests.

Changes to the Code of Conduct

- 5 The existing code of conduct for members, affirmed by the Council at its last Annual General Meeting in May 2017, is attached at Appendix 2 to this report, with the proposed code of conduct prepared for consideration by Members attached at Appendix 3.
- 6 The Council's Monitoring Officer reviewed the Code of Conduct and noted that whilst the statutory provisions regarding Disclosable Pecuniary Interests were included, the provisions in relation to non-registrable personal or prejudicial interests were incomplete and could be simplified. The Code has therefore been updated to refer to the requirements in relation to Disclosable Pecuniary Interests (which must be declared by law) and "Other relevant interests" (which are a local requirement).
- 7 It is a legislative requirement that the Member Code of Conduct is consistent with the Nolan Principles of Public Life (see para 3 above). These principles are included within the current Code as an appendix. In the revised draft, these appear at the outset, followed by the general obligations on Members, which flow from the principles.
- 8 Section three of the current declarations of interests form currently includes provision for the recording of gifts and hospitality, the requirement to notify of gifts and hospitality (whether accepted or not). However, the current Code does not include the requirement for Members to declare gifts and hospitality. Therefore, an appropriate provision has been included in the revised draft to reflect this requirement. Historically, Members have been required to declare gifts and hospitality valued at £25 or more. The new Code proposes a slight increase in this threshold to £50 to reflect inflationary rises in the costs of gifts and hospitality since the threshold was first set several years ago.
- 9 Members will also note that the revised Code of Conduct has been updated to remove duplication and ensure that plain English is used as far as possible. Whilst the changes may appear radical, they are largely cosmetic in nature. The revised Code does not seek to impose additional obligations on Members than currently exist.

Recommendations and reasons

- 10 Members are requested to:
 - (a) Consider the revised draft Member Code of Conduct and provide any comments / further amendments; and
 - (b) Recommend to Council that the revised Member Code of Conduct is adopted as part of the Annual Review of the Constitution.

Background papers

None

Contact: Helen Lynch Tel: 03000 269732

Appendix 1: Implications

Finance – There are no finance implications associated with this report.

Staffing – There are no finance implications associated with this report.

Risk – There is no direct risk to the organisation as a result of the contents of this report.

Equality and Diversity / Public Sector Equality Duty – There are no public sector equality duty implications in relation to this report.

Accommodation– None

Crime and Disorder– Not applicable.

Human Rights– Not applicable.

Consultation– The draft Code will be shared with the Political Group Leaders prior to it being presented to Council as part of the wider review of the Annual Constitution. This will provide them and their Groups with an opportunity to consider and comment on the report.

Procurement– Not applicable.

Disability Issues– Not applicable.

Legal Implications– As the report explains, the Localism Act 2011 requires the Council to adopt a Member Code of Conduct, which is consistent with the Nolan Principles on Public Life. The revised Code reflects those principles and highlights their importance by bringing them to the forefront of the document, with the consequential obligations on Members flowing from those principles.

Appendix 2: Existing Code of Conduct for Members

**CODE OF CONDUCT
FOR MEMBERS**

Adopted by Durham County Council on 25 July 2012

CODE OF CONDUCT FOR MEMBERS

The County Council of Durham Code of Conduct for Members

The County Council of Durham (“the Council”) has adopted the following code which has effect from 26th July 2012 and which sets out the conduct that is expected of elected and co-opted members of the Council when they are acting in that capacity.

This means the code applies whenever you (a) conduct the business of the Council (including the business of your office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression you are acting as a representative of the Council.

‘Co-opted member’ means any person who is a member of any committee or sub-committee of the Council with a right to vote but is not one of its elected members

The code is intended to be consistent with Nolan’s Seven Principles of Public Life, and should be read in the light of those principles, namely that Council Members will act with selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Those Principles are not part of this Code but are set out in full at Annex 1 for information.

Part 1 - General Conduct

1. You must treat others with respect, including Council officers and other elected members.
2. You must not bully any person (including specifically any Council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct
3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Council.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute.
5. You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person any advantage or disadvantage.
6. You must comply with any Protocol adopted by the Council which seeks to regulate the conduct of its elected members or co-opted members and which the Council has specifically declared should fall within the provisions of this code of conduct and which is listed in Annex 4 to this Code.

7. When using or authorising the use by others of the resources of the Council, you must act in accordance with the Council's reasonable requirements (as set out in such protocol as it may adopt from time to time for these purposes) and must ensure they are not used for party political purposes.
8. You must not prevent, or attempt to prevent, another person from gaining access to information to which they are entitled by law.
9. You must not disclose information which is given to you in confidence, or information which you believe or ought reasonably to be aware is of a confidential nature, unless:
 - (a) You have the consent of a person authorised to give it; or
 - (b) You are required by law to do so; or
 - (c) The disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
 - (d) The disclosure is reasonable and in the public interest and made in good faith.
10. Where you have been involved in making any decision by the Council which is subsequently subject to scrutiny by an overview and scrutiny committee of the Council, you must not take part in that scrutiny process except to the extent you may be invited by the committee to give evidence to, or otherwise assist, it. In this paragraph, 'scrutiny' means the formal examination of a policy or decision previously approved or taken by or on behalf of the Council in order to reach a view as to its merits or effectiveness.

Part 2 - Registration of interests

11. You must register in the Council's Register of Members Interests information about your registerable personal interests. In this code of conduct 'your registerable personal interests' means
 - (a) any Disclosable Pecuniary Interest as set out in Annex 2; or
 - (b) any other interest held by you as set out in Annex 3.

You must register information about your registerable personal interests by giving written notice to the Monitoring Officer, who maintains the Register, within 28 days of:

- your appointment as a member of the Council; and
- any change taking place in your registerable personal interests.

(Note: Failure without reasonable excuse to register a Disclosable Pecuniary Interest is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code)

Where you think that disclosure of the details of any of your registerable personal interests could lead to you, or a person connected with you, being subject to violence or intimidation, the Monitoring Officer may at your request make a note on the Register that you have a personal interest, details of which are withheld.

Part 3 – Non-registerable interests

12. You will have a non-registerable personal interest when you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are, or ought reasonably to be, aware that a decision in relation to an item of business which is to be transacted might reasonably be regarded as affecting your well being or financial position, or the well being or financial position of a person described in paragraph 13 to a greater extent than most inhabitants of the area affected by the decision.

13. The persons referred to in paragraph 12 are:

- (a) a member of your family;
- (b) any person with whom you have a close association;
- (c) in relation to persons described in (a) and (b), their employer, any firm in which they are a partner, or company of which they are a director or shareholder.

(Note:

- (a) “A member of your family” means: your partner (i.e. your spouse, civil partner or anyone with whom you live in a similar capacity); your parent or parent-in-law; any child, stepchild or sibling of you or your partner; your grandparent, grandchild, aunt, uncle, nephew or niece; and the partners of any of those people.
- (b) You have a “close association” with someone if your relationship is such that a reasonable member of the public might think you would be prepared to favour or disadvantage that person when deciding a matter which affects them).

14. When you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are aware that you have a non-registerable interest in an item of business (as defined in paragraph 12) you must disclose that interest to the meeting before consideration of that item begins or (if later) when you become aware of the interest.

Part 4 - Non-Participation in Council Business

15. When you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are aware that you have a Disclosable Pecuniary Interest or that the criteria set out in paragraph 16 are satisfied in relation to any matter to be considered, or being considered at that meeting, you must :

Declare that fact to the meeting;

- (a) Not participate (or further participate) in any discussion of the matter at the meeting; and
- (b) Not participate in any vote (or further vote) taken on the matter at the meeting;
- (c) Leave the room whilst the matter is being discussed.

16. The criteria for the purposes of paragraph 15 are that:

- (a) You have a registerable or non-registerable personal interest in the matter which is such that a member of the public knowing the relevant facts would reasonably think it so significant that it is likely to prejudice your judgement of the public interest; and either
- (b) The matter will affect the financial position of yourself or one of the persons or bodies referred to in paragraph 13 or in any of your register entries; or
- (c) The matter concerns a request for any permission, licence, consent or registration which relates to or affects any of the persons referred to in paragraph 13 or in any of your register entries.

17. If a Council function can be discharged by you as a member acting alone and you are aware you have a registerable or non-registerable personal interest in any matter to be dealt with by in that way which meets the criteria set out in paragraph 16, you shall not deal with that matter in any way (except to enable it to be dealt with by someone else).

(Note: Failure, without reasonable excuse, to comply with paragraphs 15 to 17 in relation to a Disclosable Pecuniary Interest is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code)

18. Paragraphs 15 to 17 do not apply if (i) you have a relevant dispensation under section 33 of the Localism Act 2011 or (ii) the matter in question relates to any of the following functions of the Council:

- (a) housing, where you are a Council tenant provided the matter does not relate particularly to your tenancy or lease;
- (b) school meals or school transport, where you are a parent or guardian of a child in full-time education or a parent governor of a school, unless the matter relates particularly to the school your child attends;
- (c) statutory sick pay where you are in receipt of, or entitled to receipt of, such pay;
- (d) an allowance, payment or indemnity given to members;
- (e) any ceremonial honour given to members; and
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

Annex 1 to Code of Conduct

Nolan's Seven Principles of Public Life

Selflessness

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

Integrity

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

Objectivity

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

Accountability

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

Openness

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

Honesty

Holders of public office should be truthful.

Leadership

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

Annex 2 to Code of Conduct

Disclosable Pecuniary Interests

*(as defined by Regulations made by the Secretary of State under section 30
Localism Act 2011)*

Please Note: The following interests are Disclosable Pecuniary Interests if they are an interest of either (a) **yourself**, or (b) **your spouse or civil partner**, or (c) **a person with whom you are living as husband and wife**, or (d) **a person with whom you are living as if you were civil partners** (all of whom are referred to as “relevant persons”):-

Employment, office, trade, profession or vocation - Any employment, office, trade, profession or vocation carried on for profit or gain.

Sponsorship - Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by 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 which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the Council —

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

Land - Any beneficial interest in land which is within the area of the Council.

Licences - Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.

Corporate tenancies - Any tenancy where (to your knowledge)—

- (a) the landlord is the Council; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

Securities - Any beneficial interest in securities of a body where—

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

- (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

- (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Note: In the above descriptions, the following words have the following meanings –

“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;

“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.

Annex 3 to Code of Conduct

Other Registerable Personal Interests

The other interests which you must register under paragraph 11(b) of the code are:

1. Any body of which you are a member (or in a position of general control or management) to which you are appointed or nominated by the Council;
2. Any body which (i) exercises functions of a public nature or (ii) has charitable purposes or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member (or in a position of general control or management);
3. Any person from whom you have received within the previous three years a gift or hospitality with an estimated value of more than £50 which is attributable to your position as an elected or co-opted member of the Council.

Note: These mean only your interests and not those of your spouse or civil partner

Annex 4 to Code of Conduct

Associated Protocols

The Council has adopted the following Protocols which are intended to regulate the conduct of its elected members or co-opted members and which the Council has specifically declared should fall within the provisions of this code of conduct pursuant to paragraph 6 of the code:

Code of practice for members and officers dealing with Planning Matters
Protocol on Member/Officer Relations

Appendix 3: Proposed Code of Conduct for Members

**CODE OF CONDUCT
FOR MEMBERS**

Adopted by Durham County Council on XXX

CODE OF CONDUCT FOR MEMBERS

The County Council of Durham Code of Conduct for Members

The County Council of Durham (“the Council”) has adopted the following code which has effect from XXXX and which sets out the conduct that is expected of elected and co-opted members of the Council when they are acting in that capacity.

This means the code applies whenever you (a) conduct the business of the Council (including the business of your office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression you are acting as a representative of the Council.

‘Co-opted member’ means any person who is a member of any committee or sub-committee of the Council with a right to vote but is not one of its elected members

Part 1 – General Conduct

Members and co-opted Members of Durham County Council (“the Council”) are expected to undertake their duties as follows:

1. Represent the community and work constructively with employees and partner organisations to ensure the area is a safer place to live, work and visit.
2. Behave in a manner that is consistent with the following principles to achieve best value for residents and maintain public confidence in the Council:
 - a. Selflessness:** act solely in terms of the public interest and not act in such a way as to gain financial or other material benefits for themselves, their family or friends;
 - b. Integrity:** not placing themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;
 - c. Objectivity:** make choices on merit, in carrying out public business, including when making public appointments, awarding contracts, or recommending individuals for rewards and benefits;
 - d. Accountability:** be accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office;
 - e. Openness:** be as open as possible about all the decisions and actions they take, and give reasons for decisions and restrict information only when the wider public interest or the law clearly demands;
 - f. Honesty:** declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public

interest.

g. Leadership: promote and support these principles by leadership and example.

3. Act in accordance with the principles in paragraph 2 and, in particular:
 - (a) Champion the needs of residents - the whole community and all constituents, including those who did not vote for them - and put the public interest first;
 - (b) Deal with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially;
 - (c) Not allow other pressures, including the financial interests of themselves or others connected to them, to deter them from pursuing the interests of the Council or the good governance of the Council in a proper manner;
 - (d) Exercise independent judgement and not compromise their position by placing themselves under obligations to outside individuals or organisations who might seek to influence the way they perform their duties as a Member / Co-opted Member of the Council;
 - (e) Listen to the interests of all parties, including relevant advice from statutory and other professional officers, take all relevant information into consideration, remain objective and make decisions on merit;
 - (f) Be accountable for decisions and cooperate when scrutinised internally and externally, including by local residents;
 - (g) Contribute to making the Authority's decision-making processes as open and transparent as possible to ensure residents understand the reasoning behind those decisions and are informed when holding the Authority to account but restricting access to information when the wider public interest or the law requires it;
 - (h) Behave in accordance with all legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures, including on the use of the Council's resources;
 - (i) Value colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government;
 - (j) Always treat people with respect, including the organisations and public they engage with and work alongside;
 - (k) Provide leadership through behaving in accordance with these principles

when championing the interests of the community with other organisations as well as within this Authority;

- (l) Not disclose information given to them in confidence by anyone or information acquired, which they believe, or ought reasonably to be aware, is of a confidential nature, without express authority and/or unless the law requires it.

Part 2 - Registration of interests

Register of Interests

11.1 Members must:

- (a) register and, where appropriate, disclose those disclosable pecuniary interests that they are obliged to declare under the Localism Act and associated regulations; and
- (b) register any body of which they are a member (or in a position of general control or management) to which you were appointed or nominated by the Council; and
- (c) register details of their membership of any organisation or body whose rules or requirements of membership could be regarded as suggesting a degree of loyalty to that organisation or body. This could arise by reason of an organisation having an obligation of secrecy about its rules, its membership or conduct and/or a commitment of allegiance or support to that organisation or body. Such organisations or bodies may or may not be charitable concerns and they may also have a local, regional, national or international aspect; and
- (d) register details of membership of any trade union within the meaning of Section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

11.2 Registration of interests shall be completed by provision of details upon a signed prescribed form which is submitted to the Monitoring Officer at Durham County Council. Members must ensure they keep the register updated and acknowledge that its contents will be published on the Authority's website and will be open to the public to inspect.

12. Disclosable Pecuniary Interests Entered on the Register

12.1 If Members are present at a meeting of the Authority and

- (a) they are aware that they have a disclosable pecuniary interest under paragraph 11.1(a) above in any matter to be considered or being considered at the meeting; and
- (b) the interest is entered in the Authority's register

they may not participate in any discussion or further discussion of an item of business or in any vote or further vote taken on that item which affects or relates to the subject matter in which they have such an interest; and they will leave the room where the meeting is held while any discussion or voting takes place.

13. Disclosable Pecuniary Interests NOT Entered on the Register

- 13.1 If Members are present at a meeting of the Authority and
- (a) become aware that they have a disclosable pecuniary interest under paragraph 11.1(a) above in any matter to be considered or being considered at the meeting; **and**
 - (b) the interest is not entered in the Authority's register, they must disclose the interest to the meeting. Furthermore, they may not participate or further participate in any discussion of the matter at the meeting or participate in any vote or further vote taken on the matter at the meeting and will leave the room where the meeting is held while any discussion or voting takes place.
- 13.2 If an interest referred to in 11.1(a) above is not entered on the Authority's register and is not the subject of a pending registration, Members must notify the Authority's Monitoring Officer of the interest within 28 days of the date of the disclosure.
- 13.3 Members with the power to discharge an Authority function acting alone will have a disclosable pecuniary interest in any matter to be dealt with or being dealt with by them in the course of discharging that function:
- (a) they may not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by them); **and**
 - (b) If the interest is not entered on the Council's register and is not the subject of a pending registration, they must notify the Council's Monitoring Officer of the interest within 28 days of becoming aware of the interest.

14 Sensitive Interests

- 14.1 This applies to a situation where a Member considers that the disclosure of the details of your interest – including that of your spouse or partner – could lead to you, or a person connected with you, being subject to violence or intimidation.
- 14.2 In such circumstances you should share your concerns with the Council's Monitoring Officer. If the Monitoring Officer agrees with you, then the details of the interest will not be included in the Council's published Register of Interests, but the Register may state that you had registered an interest the details of which had been withheld under Section 32 of the Localism Act 2011.

14.3 If the Monitoring Officer has accepted that you have a sensitive interest under Section 32 of the Localism Act 2011, you should declare the existence of the interest at any meeting at which you are present but you need not declare the details of the interest.

14.4 If circumstances change and the information excluded from the Register on the grounds of sensitivity is no longer sensitive information, the Member must notify the Monitoring Officer within 28 days.

15. **Other Relevant Interests**

15.1 Members may have an Other Relevant Interest (which is not a disclosable pecuniary interest) in any matter to be considered or being considered at the meeting) where:

- (a) a decision in relation to that matter might reasonably be regarded as affecting the well-being or financial standing of them or a member of their family or a person with whom they have a close association, or an organisation or body under paragraph 11.1(b), 11.1(c) or 11.1(d) above, to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which they have been elected or otherwise of the authority's administrative area; **and**
- (b) the interest is one that a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice their judgement of the public interest.

15.2 Members with an Other Relevant Interest as described in 14.1. above,—

- (a) must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent; **and**
- (b) must not participate in any discussion or further discussion of an item of business or in any vote or further vote taken on that item which affects or relates to the subject matter in which they have an Other Relevant Interest at any meeting at which they are present and will leave the room where the meeting is held while any discussion or voting takes place.

16. **Gifts and Hospitality**

16.1 Members must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50 which they have been offered as a member from any person or body other than the Authority, whether the offer is accepted or declined.

16.2 The Monitoring Officer will place any notification received under paragraph 16.1 on a public register of gifts and hospitality.

16.3 The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality has been approved by the Authority for this purpose.

Standards Committee

22 March 2018



Protocol on Member / Officer Relations

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

Purpose of the Report

- 1 To invite members to consider a revised protocol on Member and Officer Relations.

Background

- 2 The protocol on Member/Officer relations is included in Part 5 of the Constitution. There is no statutory requirement for the Council to have such a protocol, however, it is considered good practice to do so. Such a protocol is beneficial as it sets out the respective expectations of Members and Officers. Whilst experienced Councillors and Officers may understand and appreciate the different roles that they have, newly elected Members and recently appointed employees may find it helpful to have the notes explained. Understanding what is, and is not, expected of each other can assist in maintaining and improving excellent Member/Officer working relationships.
- 3 It is some time since the existing Protocol (attached at Appendix 2) on Member/Officer Relations was adopted and reviewed. It is lengthy and repetitive in a number of areas. Therefore the protocol has been reviewed as part of the annual review of the Council's Constitution.

Changes to the Protocol

- 4 A revised draft of the protocol has been prepared which is attached at Appendix 3. It has been re-written to remove duplication and ensure it is written in plain English. Whilst the protocol is significantly shorter, the revised draft does not seek to add or remove any principles from the existing Protocol.

Recommendations and reasons

- 5 Members are requested to:
 - (a) Consider the revised draft Member / Officer Protocol and provide any comments / further amendments; and
 - (b) Recommend to Council that the revised Protocol is adopted as part of the Annual Review of the Constitution.

Background papers

None

Contact: Helen Lynch Tel: 03000 269 732

Appendix 1: Implications

Finance – There are no finance implications associated with this report.

Staffing – There are no finance implications associated with this report.

Risk – There is no direct risk to the organisation as a result of the contents of this report.

Equality and Diversity / Public Sector Equality Duty – There are no public sector equality duty implications in relation to this report.

Accommodation– None

Crime and Disorder– Not applicable.

Human Rights– Not applicable.

Consultation– The draft protocol will be shared with the Political Group Leaders prior to it being presented to Council as part of the wider review of the Annual Constitution. This will provide them with an opportunity to consider and comment on the report. .

Procurement– Not applicable.

Disability Issues– Not applicable.

Legal Implications– There are no specific legal implications arising from this report. As explained at paragraph 2 refers, there is no statutory requirement for Councils to adopt a Protocol on Member Officer Relations but it is good practice to do so. In recent years a number of local authorities, where there have been significant governance failings, have been criticised for not having a Protocol in place. The authority already has a protocol in place but this would benefit the updates/provisions proposed.

Appendix 2: Existing Protocol

Protocol on Member/Officer Relations

1. INTRODUCTION

- 1.1 The purpose of this Protocol is to guide Members and Employees of the County Council in their relations with one another.
- 1.2 Given the variety and complexity of such relations, the Protocol does not seek to be prescriptive and it may not cover all situations. However, it does seek to provide guidance on some of the issues that most commonly arise. The approach to these issues will serve as a guide to dealing with other issues.
- 1.3 The Protocol is a written statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty.
- 1.4 It also seeks to reflect the principles underlying the respective rules of conduct that apply to Members and Employees. Its purpose, therefore, is to enhance and maintain the integrity (real and perceived) of local government by demanding very high standards of personal conduct.
- 1.5 Members and Employees are servants of the public and they depend on each other in carrying out the work of the Authority. Members are responsible to the electorate and serve only so long as their term of office lasts, while Employees are responsible to the Council. Their job is to give advice to the Council, as well as to individual Members, and to carry out the Council's work under the direction and control of the Council and its various bodies
- 1.6 Mutual respect between Members and Employees is essential to good local government. However, close personal familiarity between individual Members and Employees can damage this relationship and prove embarrassing to other Members and Employees.
- 1.7 The relationship has to function without compromising the ultimate responsibilities of Employees to the County Council as a whole, and with due regard to such technical, financial, professional and legal advice that Employees can legitimately provide to Members. The Protocol seeks to set a framework that assists the working relationships between Members and Employees.

2. ROLES OF MEMBERS

- 2.1 Members undertake many different roles. Broadly these are:
 - Members express political values and support the policies of the party or group to which they belong (if any)
 - Members represent their electoral division and are advocates for the citizens who live in the area

- Members are involved in active partnerships with other organisations as community leaders
- Members contribute to the decisions taken in full Council and in its various bodies on which they serve, as well as joint committees, outside bodies and partnership organisations
- Members help develop and review policy and strategy
- Members monitor and review policy implementation and service quality
- Members are involved in quasi-judicial work through their membership of regulatory committees

3. ROLES OF EMPLOYEES

3.1 Briefly, Employees have the following main roles:

- Managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services
- Providing advice to the Council and its various bodies and to individual Members in respect of the services provided
- Initiating policy proposals
- Implementing agreed policy
- Ensuring that the Council always acts in a lawful manner

4. RESPECT AND COURTESY

4.1 For the effective conduct of County Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members and Employees. This plays a very important part in the County Council's reputation and how it is seen in public. It is very important that both Members and Employees remember their respective obligations to enhance the County Council's reputation and to do what they can to avoid criticism of other Members, or other Employees, in public places.

Undue Pressure

4.2 It is important in any dealings between Members and Employees that neither should seek to take unfair advantage of their position.

- 4.3 In their dealings with Employees (especially junior Employees) Members need to be aware that it is easy for them to be overawed and feel at a disadvantage. Such feelings can be intensified where Members hold senior official and/or political office.
- 4.4 A Member should not apply undue pressure on an Employee either to do anything that he is not empowered to do or to undertake work outside normal duties or outside normal hours. Particular care needs to be taken in connection with the use of County Council property and services.
- 4.5 Similarly, an Employee must neither seek to use undue influence on an individual Member to make a decision in his favour, nor raise personal matters to do with their job, nor make claims or allegations about other Employees. *(The County Council has formal procedures for consultation, grievance and discipline, and Employees have the right to report possible wrongdoing under the Council's Confidential Reporting Code).*

Familiarity

- 4.6 Close personal familiarity between individual Members and Employees can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, such as personal details.
- 4.7 Such familiarity could also cause embarrassment to other Members and/or other Employees and even give rise to suspicions of favouritism.
- 4.8 For the above reasons close personal familiarity must be avoided.

Breach of Protocol

- 4.9 If a Member considers that he has not been treated with proper respect or courtesy he may raise the issue with the Employee's line manager. If direct discussion with the manager does not resolve the complaint it should be referred to the Head of Service or Corporate Director responsible for the employee concerned. Breach of the Protocol may give rise to disciplinary proceedings against an Employee if the circumstances warrant it.
- 4.10 If an employee considers that a Member has contravened the protocol he should consult his line manager who will if necessary involve the Head of Service or Corporate Director. In certain circumstances breach of the Protocol may also constitute a breach of the Members' Code of Conduct. If the breach is sufficiently serious this may warrant a formal reference to the Monitoring Officer as a complaint to be considered for potential investigation by the Standards Committee. Many complaints will be capable of informal resolution without the need for involvement of the Standards Committee. The Monitoring Officer or the Chief Executive will assist in this process if necessary.

5. PROVISION OF ADVICE AND INFORMATION TO MEMBERS

- 5.1 Members are free to approach Employees of the Council to provide them with such information and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent.
- 5.2 Employees should always endeavour to respond to requests for information promptly and should in any event inform the Member if there is likely to be any appreciable delay in dealing with an enquiry. As a minimum the timescale for responding to correspondence should be observed i.e. either a full response or, if this is not possible, an acknowledgement that fully explains what is happening within 5 working days of the receipt of the enquiry.
- 5.3 The legal rights of Members to inspect County Council documents are covered partly by statute and partly by common law.
- 5.4 The Access to Information Rules of the Constitution explain the position with regard to access to papers relating to the business of a Council body.
- 5.5 The exercise of the common law right depends upon a Member's ability to demonstrate a "need to know". In this respect a Member has no right to "a roving commission" to examine any documents of the County Council. Mere curiosity is not sufficient.
- 5.6 The information sought by a Member should only be provided by the respective Service as long as it is within the limits of the Service's resources. For their part, Members should seek to act reasonably in the number and content of the requests they make.
- 5.7 It is important for Services and their staff to keep Members informed both about the major issues concerning the County Council and, more specifically, about issues and events affecting the area that he represents. Local Members should be informed about proposals that affect their electoral division and should also be invited to attend County Council initiated events within their electoral division. (*Further details are contained in the Local Member Consultative Charter*).
- 5.8 If a Member asks for specific information relating to the work of a particular Service, and it appears possible or likely that at a subsequent meeting an issue could be raised or question asked on the basis of the information provided, then the appropriate Cabinet Member or Committee Chairman concerned should be advised about the information provided.

5.9 Members may be entitled under the Freedom of Information Act 2000 to receive information which falls outside their common law rights based on the “need to know”. Employees are encouraged to supply documents to Members without the need for a formal FOI request if it is apparent from the Member’s enquiry that any individual would be entitled to receive such documentation. The Council’s Freedom of Information and Data Protection Coordinator will be able to advise in consultation if necessary with the Monitoring Officer on whether any request would fall within the Freedom of Information Act.

6. PROVISION OF SUPPORT SERVICES TO MEMBERS

6.1 The only basis on which the County Council can lawfully provide support services (e.g. stationery, word processing, printing, photocopying, transport, etc) to Members is to assist them in discharging their role as Members of the County Council. Such support services must therefore only be used on County Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

Correspondence

6.2 Official letters on behalf of the County Council should be sent in the name of the appropriate Employee, rather than over the name of a Member. There are circumstances where a letter sent in the name of a Member is perfectly appropriate, for example, in response to a letter of enquiry or complaint sent direct to that Member. Letters which, for example, create obligations or give instructions on behalf of the County Council should never be sent out in the name of a Member.

Media

6.3 Communication with the media can be an important part of a Member’s workload. In general, Members provide comment and views while Employees provide factual information. If a Member is unsure about the circumstances of a particular issue he should contact the appropriate Corporate Director or Head of Service concerned or ask the Press Office to do so.

7. POLITICAL ACTIVITY

7.1 There are a number of constraints that apply to an employee who occupies a post that is designated as “politically restricted” under the terms of the Local Government and Housing Act 1989.

7.2 In summary, such employees are prevented from:

- (a) being a Member of Parliament, European Parliament or local authority;
- (b) acting as an election agent or sub-agent for a candidate for election as a member of any the bodies referred to in a);
- (c) being an officer of a political party or any branch of a political party or a member of any committee or sub-committee of such a party or branch, if his duties would be likely to require him –
 - (i) to participate in the general management of the party or branch;
 - or
 - (ii) to act on behalf of the party or branch in dealings with persons other than members of the party;
- (d) canvassing on behalf of a political party or a candidate for election to any the bodies referred to in a);
- (e) speaking to the public with the apparent intent of affecting public support for a political party; and
- (f) publishing any written or artistic work of which he is the author (or one of the authors) or acting in an editorial capacity in relation to such works, or to cause, authorise or permit any other person to publish such work or collection - if the work appears to be intended to affect public support for a political party.

7.3 It is common for party groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant decision making body. Employees may properly be called upon to support and contribute to such deliberations by party groups provided they maintain a stance which is politically impartial. Support may include a range of activities including briefings for Members relating to their roles e.g. chairperson or spokesperson. Employees should be required to give information and advice to political groups on Council business only and not on matters which are purely of a party political nature. Such advice should be available to all party groups and not solely to the majority group. It is important that the political neutrality of Employees is preserved and that group confidentiality is maintained by Employees.

7.4 Usually the only Employees involved in attending group meetings will be the Chief Executive, Corporate Directors and Heads of Service and they will generally leave the meeting after making their presentation and answering questions.

- 7.5 Employees are employed by the County Council as a whole. They serve the County Council and are responsible to the Chief Executive and their respective Corporate Directors/Heads of Service, and not to individual Members of the Council whatever office they might hold.
- 7.6 Both Members and Employees are subject to their own Code of Conduct which can be found in the Constitution. This Protocol provides guidance on working relationships between Members and Employees. It is essential that both are familiar with the detailed obligations in their respective Codes of Conduct which will prevail in the event of any conflict between the Code and this Protocol.

8. **CONCLUSION**

- 8.1 It is hoped that, by following good practice and securing sensible and practical working relationships between Members and Employees, we can provide one of the cornerstones of a successful local authority and thereby enhance the delivery of high value quality services to the people of County Durham. Mutual understanding, openness and respect are the greatest safeguard of the integrity of the Council, its Members and Employees.
- 8.2 Further information to build on this guidance is attached as an Appendix.

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Appendix A: Further Guidance on Officer Support Provided to Members According to their Role

KEY MESSAGES

- Officers support the whole Council
- The type of officer support available to members is tailored according to the roles that members play. Specific guidance is provided for:
 - Chairman and Vice-chairman
 - Leader and Deputy Leader
 - Cabinet members
 - Chair and Vice-chairs of COSMB and scrutiny committees
 - Ward councillors
- Key points for ward members:
 - Members Services is the key point of contact for information and queries – with links to the Members Resource Centre and service contacts
 - Regular information is available through:
 - Press release lists in the Members Resource Centre
 - The new Members' Update
 - Durham County News
 - Members' seminars
- Consultation with members
 - Every effort will be made to ensure that Members have a realistic time scale to respond to consultations
 - When preparing reports to Cabinet and/or committees, officers will include details of any consultation undertaken with and any comments received from members
 - Officers will ensure that appropriate consultation is undertaken with Cabinet members on issues relating to their thematic areas
 - Members will be consulted on all issues which impact on their ward. Such issues typically include:
 - Ward specific changes to service delivery
 - Planning applications and proposals
 - Regeneration initiatives
 - Programmed maintenance of street lights, carriageways and/or footpaths
 - Roadwork improvement schemes
 - Members will be notified of consultation proposed in their ward before consultation commences and is in the public domain
 - Members will be consulted on issues in order to fulfil their community leadership role. Typical issues include:
 - Changes to service delivery
 - Changes to access to services
 - Charges and concessions
 - Issues relating to community resources
 - Determination of grant aid to the voluntary sector

- Contact information on which officer to contact is available through
 - Intranet – [Management Contact Directory](#) (of the main responsibilities of senior officers – 4th tier and above with key locality posts so that you can go to the most appropriate contact
 - [Management Contact Directory](#)
 - Customer Services
 - Member Services
- Members should expect a response to enquiries within 5 working days.
- On request the Chief Executive and members of the Corporate Management Team will be available to discuss forthcoming agenda items for Cabinet with Leaders/Spokespersons of political groups.

1. **Officers**

1.1 Both the traditional and legal position of local authority officers is that they are employees of, and serve, the whole Council. Officers support and advise the Council, and the constituent parts of its decision-making machinery; implement Council decisions and may themselves take decisions formally delegated to them through the approved Scheme of Delegation. All officers are required to be politically neutral, and for senior officers this is enforced through the political restrictions of the 1989 Local Government and Housing Act. This position is also enshrined in the national model code of conduct for officers and the Council's Employees' Code of Conduct.

1.2 Within this context, it is important to recognise the differing roles of certain officers:-

- The Chief Executive, Assistant Chief Executive and Corporate Directors form the Corporate Management Team, which provides a formal interface between members and officers and has a leading role in relation to policy co-ordination and performance management.
- Heads of Service are directly responsible for the day to day delivery of services within the Council's established policy and decision-making framework.
- Officers within services themselves are primarily accountable to their Service Heads and when assisting members should always do so within the parameters of whatever authority they have been given by their Service Head.

2. Members' expectations of officers

2.1 Members can expect from Officers:

- (a) A commitment to the authority as whole, and not to any political group.
- (b) A working partnership.
- (c) An understanding of and support for respective roles, workloads and pressures.
- (d) Reasonable and timely response to enquiries and complaints.
- (e) Professional advice, not influenced by political views or preference, which does not compromise the political neutrality of Officers.
- (f) As envisaged by, amongst other things, the Council's Concordat for Communications and Consultation with Members regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold.
- (g) Awareness of and sensitivity to the political environment.
- (h) Respect, dignity and courtesy and not acting in a discriminatory way through behaviour or speech.
- (i) Relevant training and development in order to carry out their role effectively.
- (j) Integrity, mutual support and appropriate confidentiality
- (k) That employees will not use their relationship with members to advance their personal interests or to influence decisions improperly.
- (l) That officers will at all times comply with the relevant Code of Conduct.
- (m) Support for the role of members as the local representatives of the Council, within the parameters of support approved by the authority.
- (n) That Officers will promote equality of opportunity in all Council matters.

3. Officers' Expectations

3.1 Officers can expect from Members:

- (a) A working partnership.
- (b) An understanding of and support for respective roles, workloads and pressures.

- (c) Political leadership and direction.
- (d) Respect, dignity and courtesy and not acting in a discriminatory way through behaviour or speech..
- (e) Integrity, mutual support and appropriate confidentiality.
- (f) Not to be subject to bullying or harassment or to be put under undue pressure. Members should have regard to the seniority of Officers in determining what are reasonable requests, having regard to the relationship between members and officers, and the potential vulnerability of officers, particularly at junior levels.
- (g) That members will not use their position or relationship with officers to advance their personal interests or those of others or to influence decisions improperly.
- (h) That members will at all times comply with the Council's Members' Code of Conduct.
- (i) That members will promote equality of opportunity in all Council matters.

4. Limitations Upon Behaviour

4.1 The distinct roles of Members and Officers necessarily impose limitations upon behaviour. By way of illustration, and not as an exclusive list:-

- (a) Close personal, as opposed to working, relationships between councillors and officers can confuse these separate roles and detrimentally affect the proper discharge of the authority's functions, not least by creating the perception in others that a particular member or officer may be securing advantageous treatment.
- (b) The need to maintain the separate roles means that there are limits to the matters on which members may seek the advice of officers, both in relation to personal matters and party political issues.
- (c) Relationships with a particular individual or party groups should not be such as to create public suspicion that an employee favours that member or group above others. The issue of officer attendance and advice to political groups is specifically covered in further guidance in Appendix B.

5. The Chairman, Vice-chairman and Officers of the Council

5.1 The Council have recently approved a protocol for the Chair and Vice-chair which is the core content for this part of the guidance.

6. **Leader/Cabinet Members and Officers**

- 6.1 The Leader is elected annually by the full Council, along with the other members of the Cabinet. The Leader's principal role is to chair the Cabinet; agree the business to be considered by the Cabinet and to take particular responsibility for issues which transcend the individual responsibilities of the members of Cabinet and are of considerable corporate significance, such as budget preparation, preparation of the Medium Term Financial Plan and Council Plan and Partnership working with other local public, private and voluntary bodies.
- 6.2 The role of a Deputy Leader is to support the Leader of the Council and, in the Leader's absence or where the Leader is unable to act, to act as Cabinet Chair and to take particular responsibility for relevant issues which would normally be dealt with by the Leader.
- 6.3 The roles of the other Members of the Cabinet are to represent and consult individually with Officers regarding their respective areas of responsibility
- 6.4 As a result of their additional responsibilities as members of the executive, the working relationships between Cabinet members and officers as employees may be different from, and more complex than those of members without such responsibilities and this is recognised in the expectations they are entitled to have. However the following guidance is designed to ensure that the Leader and Cabinet members nevertheless work to a set of ground rules designed to maintain high standards of conduct, public accountability and mutual respect between councillors and officers, and a clear understanding of the executive and scrutiny functions within the Council's new decision-making structures.
- 6.5 The Leader and Cabinet Members, along with all other Councillors, must observe the Code of Conduct for Members. This covers personal conduct, public duty and private interests, acceptance of gifts and hospitality, use of Council facilities, and the basic principles of working relationships between councillors and officers.
- 6.6 Subject to this overarching principle, and the overall context of the primacy of Council, the Leader and other Cabinet members, in Cabinet, represent the executive body of the authority, with responsibility for taking executive decisions and for making recommendations on matters beyond their executive powers to the full Council.
- 6.7 In addition to the standard agenda items, the business of Cabinet will comprise:-
- reports from the Corporate Management Team
 - reports from the Head of Paid Service, Monitoring Officer or the Chief Finance Officer

- reports from scrutiny committees referred to Cabinet
 - proposals for its Notice of Key Decisions
 - Cabinet proposals referred back by the COSMB following the exercise of call-in
 - Cabinet proposals referred back by the Council which fall to the Cabinet to determine
 - proposals referred to it by the Council, which fall to the Council to determine.
- 6.8 Non-Cabinet members can raise items that they may wish to see discussed by the Cabinet either through officers or the relevant member of Cabinet, who will consider the request and, if considered appropriate, request officers to prepare a report.
- 6.9 Scrutiny committee reports/recommendations will be placed on the agenda of a Cabinet meeting in accordance with the Scrutiny Committee Procedure Rules and the Cabinet Procedure Rules.
- 6.10 The Access to Information Procedure Rules regulate decision-making by the Cabinet and the taking of key decisions by an officer or under executive joint arrangements.
- 6.11 Notice of Key Decisions will be prepared by the Head of Legal and Democratic Services, on behalf of the Leader on a monthly basis, in accordance with the provisions of the Access to Information Procedure Rules.
- 6.12 As Cabinet decisions are made collectively, the principal interface between the Cabinet and the officer structure will be through meetings of the Cabinet together with the Chief Executive, Assistant Chief Executive, Corporate Directors, as the Corporate Management Team. Prior to publication of Cabinet papers an informal briefing meeting will be held between Cabinet Members and the Corporate Management Team to determine the agenda for the forthcoming Cabinet meeting. This Agenda meeting will be programmed into the Cabinet timetable. Reports for formal Cabinet meetings will be published in accordance with the Access to Information Procedure Rules, the Local Member Consultative Charter and this guidance. Formal Cabinet meetings will be serviced by the Corporate Management Team, together with any other necessary Officers, in particular the Head of Legal and Democratic Services and the nominated Democratic Services Officer(s).
- 6.13 The Chief Executive will be the principal advisor to the Cabinet. Individual Cabinet members with functional responsibilities will also have principal advisors in accordance with those functional responsibilities. These advisors will be drawn from the Corporate Management Team. The Chief Executive (with the support of the rest of the Corporate Management Team) will act as Principal Advisor to the Leader and/or Deputy Leader.

6.14 In undertaking the roles inherent in the Council's new political management system, Cabinet members, CMT and other officers should respect the following protocols:

- (a) As "visible" and accountable elected representatives, with defined responsibilities, Cabinet members need to be properly briefed on all significant aspects of the work of the one or more services that operate within their remit. Corporate Directors of Services, as principal advisors, should ensure a proper information flow so as to ensure that Cabinet members with functional responsibilities can effectively undertake their role.
- (b) Good communications can best be achieved through planned and programmed meetings and briefing arrangements. On the basis that Corporate Directors should be ensuring that the information needs of Cabinet members are met, Cabinet members should in turn seek to avoid making requests for unanticipated briefings, or detailed information-gathering exercises, which can unbalance planned service workloads.
- (c) Cabinet Members should channel requests for information, advice and other support via the Corporate Director of Service or via such arrangements as are agreed and established with the Corporate Director (eg Director's PA, specific heads of service on specific issues or otherwise). Cabinet members should not normally approach other staff direct with requests for information (except in cases of urgency) or seek to commission work from individual staff, as this can create conflict with day to day line management accountabilities.
- (d) While Cabinet members will wish to work with Corporate Directors and senior managers in the development of policies and programmes, they should recognise that there are categories of officer-level meetings, both inside and outside the Council where attendance by a Cabinet members (or other councillor) may not be appropriate.
- (e) Cabinet members (and other councillors) have collective responsibility to the Council for the conduct of employment policy and the Council acts as the employing body for all Council staff. Employment policies, having been set by the Council, are implemented via Corporate Directors. Cabinet Members should avoid becoming over-involved in issues of individual performance of officers, or individual cases of eg grievance, disciplinary action or harassment. Cabinet members have can, however, to bring to the notice of relevant Corporate Directors any instances within their area of responsibility, where they have evidence that there are problems of inefficiency or ineffectiveness and to be kept informed of what course of action is being pursued in such circumstances.

- (f) Under the Council's system of decision-making, Cabinet members are expected to justify and account for any proposals relevant to their portfolio to the Council and to the Corporate Overview and Scrutiny Management Board (COSMB) and Scrutiny Committees as appropriate. When fulfilling this responsibility, Cabinet members should take appropriate advice from relevant Corporate Directors, and Corporate Directors should ensure that full and proper professional, legal and financial advice is provided to Cabinet members. Scrutiny Procedure Rules require the attendance of the relevant portfolio holder at any meeting dealing with a scrutiny call-in.
- (g) When new policies and proposals are brought forward, Cabinet Members may wish to discuss with Corporate Directors, and via Corporate Directors with senior officers preparing reports, the content of such reports and the framing of recommendations. While Cabinet members may wish to make suggestions on content and drafting, to achieve clarity of presentation, simplify jargon, or better explain issues, they should not attempt to edit out or override any content of a report which Corporate Directors or senior officers feel it is important to put before the Council. This is especially relevant to matters of a professional or technical nature, and the Corporate Management Team or statutory officers must be able to retain a right to report direct to the Council and all committees where they consider it necessary.
- (h) A number of officers exercise statutory functions or have individual responsibilities. Cabinet Members should not attempt to interfere with these roles. These include the functions of Proper Officer (eg witnessing and receipt of declarations of acceptance of office; and signature of summons to a Council meeting etc); Monitoring Officer (eg maintaining the Council's Constitution; ensuring lawfulness and fairness of decision-making and supporting the Standards Committee) and Chief Finance Officer (e.g. ensuring financial prudence of decision-making; administering the authority's financial affairs and giving financial advice).

6.15 Where reports are called in for scrutiny, Cabinet members (if asked to do so) should attend to answer questions. Cabinet members should normally be sufficiently briefed to answer the majority of questions themselves, and to be able to provide justification for the recommendations in a report. On more technical or professional issues, however, Cabinet members may wish to call on Corporate Directors or specialist officers to answer questions and explain the basis for recommendations.

- 6.16 The same principles should apply where Cabinet members wish to discuss issues relating to their portfolios with individual Councillors or groups of Councillors. Cabinet members should also always ensure, in accordance with the Concordat for Consultation and Communication with Members, that they consult on issues affecting individual wards. Cabinet members should also make themselves available for discussion with Leaders/Spokespersons of other political groups in respect of forthcoming Cabinet business. On request the Chief Executive and members of the Corporate Management Team will be available to discuss forthcoming agenda items for Cabinet with Leaders/Spokespersons of political groups.
- 6.17 Notwithstanding the above, it should be recognised that the following principles are paramount:-
- (a) Chief Officers are employed to serve the whole Council and remain ultimately accountable to the whole Council.
 - (b) All Officers are required to be politically neutral and for senior officers this is enforced through the political restrictions of the Local Government and Housing Act 1989. All officers are required to abide by the Council's Code of Conduct for Employees. The impartiality of Officers must therefore be respected and they must not be asked to undertake work of a party political nature.
 - (c) Chief Officers have individual responsibilities as defined in their job descriptions. In some cases these will include professional or technical responsibilities of a statutory nature (eg regulatory functions, Proper Officer functions).
 - (d) Chief Officers with professional responsibilities may also have a duty to observe codes and standards set by outside professional bodies (eg accountancy, law, structural engineering). There may be occasions on which these require to be treated as over-ruling the views of Cabinet members or Council policy decisions (and should such circumstances arise Chief Officers will need to report the position via the decision-making process).
 - (e) Certain Officers eg Head of Paid Service (Chief Executive), Monitoring Officer (Head of Legal and Democratic Services) and Chief Finance Officer (Section 151 Officer or Corporate Director of Resources) have other responsibilities, which in law have primacy over and above their obligations to the Council and individual members, and members must therefore respect these obligations, not obstruct those officers in the discharge of their duties and must not victimise them for fulfilling their responsibilities.
 - (f) The Chief Executive and the Corporate Management Team have a collective responsibility to advise the Council on its priorities, allocation of resources and forward programmes.

- (g) Officers should conduct themselves with integrity, impartiality and honesty. They should give honest and impartial advice to the Leader and Cabinet Members without fear or favour, and make all information relevant to a decision available to them. They should not deceive or knowingly mislead Cabinet Members, other Councillors or the public, or withhold information that may be relevant to a decision.

7. Chairs and Members of COSMB and Scrutiny Committees and Officers

- 7.1 The primary role of the Chair and Members of the COSMB and Scrutiny Committees is to scrutinise the decisions of Cabinet.
- 7.2 This scrutiny process will operate on the basis of a call-in procedure. This will be regulated in accordance with the provisions of the Procedure Rules for Scrutiny as will the attendance of Cabinet members, Senior Officers, or other parties at meetings of the COSMB and Scrutiny Committees.
- 7.3 The Scrutiny Manager will be the Principal Advisor to the COSMB. She or he will meet with Chair and Vice-Chair to discuss any items which may have been called-in and will arrange in liaison with the nominated Scrutiny and Democratic Services Officers, if required, for the attendance of any Cabinet Members, Senior Officers or other parties at the proposed COSMB meeting at which the called-in item or items are to be discussed.
- 7.4 The Chair and Members of the COSMB along with all other councillors must observe the Code of Conduct for Members.
- 7.5 Over and above these requirements, the Chair and Members of the Committee have responsibility for ensuring the scrutiny process operates fairly and openly. In particular, they will have responsibility for ensuring that Members of the Cabinet and officers are not questioned (whether through the nature, tone or language used), in such a manner as could be considered by a reasonable person to be hostile, offensive, derogatory, harassing, bullying, victimising, discriminatory or otherwise unacceptable or inappropriate behaviour by a Member. Equally, it has to be recognised that COSMB and Scrutiny Committees have no jurisdiction to deal with matters, which are of a disciplinary nature for the relevant Political Group (in respect of members) or the relevant Chief Officer/Chief Executive (in respect of officers).
- 7.6 The Chair and Members of the Committee should expect executive Councillors and Officers to be as open as legally possible with the Committee. In a public forum information should not however be disclosed where it is categorised as exempt under the Access to Information Procedure Rules. The Chair and Members of the Committee will still need to demonstrate the same need to know in respect of access to information as other Councillors.
- 7.7 The Chair of the Committee should keep separate his/her role as chair and as constituency Councillor, and should seek to ensure that no conflicts of interest arise. He/she should not seek to use his/her position to influence events unduly.

- 7.8 In accordance with the Code of Conduct, Members must not use Council resources for party political purposes. They must uphold the political impartiality of the officer body, and not ask officers to act in any way which would conflict with the Employee Code of Conduct, this Protocol, any other part of the Constitution or National Conditions of Service.
- 7.9 Officers are required to assist the COSMB in the delivery of its role. The Chair and Members of the Committee, as with all Councillors undertaking scrutiny, will however have to be aware of the resource consequences of any proposals. In some instances requests for research in pursuit of scrutiny may have to be refused on grounds of expense or time. In any event information currently under confidential review by the Cabinet will not normally be available on request to Councillors undertaking scrutiny.
- 7.10 The Council's five Scrutiny Committees will each perform a policy and performance review role in connection with their respective areas of remit and terms of reference.
- 7.11 All of the Scrutiny Committees may call on the Leader, the Deputy Leader, other Cabinet Members and Senior Officers to answer questions on decisions made by the Cabinet and by delegated Officer decision respectively either by attending COSMB or Scrutiny Committee meetings by invitation or by responding in writing. Invitations should be issued in writing from the Chair of the relevant COSMB or Scrutiny Committee and should indicate the subject matter which is to be addressed. Seven working days notice must be provided wherever practicable.
- 7.12 Each Scrutiny Committee will have a Scrutiny Officer and a designated Democratic Services Officer to support its operation. Other officers should also assist the work of the Committees in order that they can fulfill their role and responsibilities.

8. Chairs and Members of Other Committees and Officers

- 8.1 Whilst it is clearly important that there should be a close working relationship between the Chairperson and/or Vice-Chairperson of a Committee and a Corporate Director and other Officers of any Service which reports to that Committee, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officers' ability to deal impartially and fairly with other members and other party groups.
- 8.2 Whilst the Chairperson and/or Vice-Chairperson of a Committee will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Corporate Director will be under a duty to submit a report on a particular matter. Any issues arising between a Chairperson and/or Vice-Chairperson and a Corporate Director in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.

- 8.3 In relation to action between meetings, it is important to remember that the Council's Constitution only allows for decisions (relating to the discharge of any of the Council's functions) to be taken by the Committee or an Officer. In the latter case such decisions may need to be taken in consultation with a Chairperson and Vice-Chairperson or some other Member of the Council. The Constitution does not allow for such decisions to be taken by a Chairperson or indeed by any other single Member.
- 8.4 Chairs and members of licensing and planning committees should be mindful of the fact that they are exercising a quasi-judicial function, in which they apply the relevant law, take advice from officers and to which party whips do not apply. The paragraphs of the Code of Conduct relating to personal and prejudicial interests are highly significant to this role. Members of planning committees should also adhere to the Code of Practice on Planning contained in the Constitution. Members should be scrupulously careful to avoid actions or statements that could support a claim that they have approached the matter from a standpoint of prejudice or bias.

9. **Ward Members and Officers**

- 9.1 Although all Members have a primary, overall responsibility and accountability to the Council as a whole, they also have a wider duty to represent their constituents and local communities.
- 9.2 Ward Councillors should aim to ensure that the Council is aware of the views and interests of those people who elect them. They may take a lead role in developing local networks of organisations and individuals, providing local interpretations of the Sustainable Community Strategy and the Council Plan and they may promote local democratic engagement. The White Paper, Modern Local Government; In Touch with the People, described this role as follows:-

“each Councillor will become a people’s champion of their local community, defending the public interest in the Council. They will bring their constituents’ views, concerns and grievances to the Council through the Council’s structure.”

- 9.3 A community Member's “champion role” has a number of key elements. The following are some of the principal ones:-

Signposting – community Members know how the system works and who to contact. They are well placed to advice local people about local issues and can point people in the right direction;

Monitoring – community Members can help local people to make progress by overseeing and intervening on their behalf;

Advocacy – community Members have the necessary status, skills and ability to tackle failure. When things go wrong or break down, as elected representatives, they are well placed to intervene and to seek redress on behalf of local people; and

Representing – community Members can spot emerging issues and trends. They will know when a series of individual issues indicates that there is a real failure in the system that needs to be taken up by the Council itself and they can feed views into the local authority.

- 9.4 Whichever of these roles Ward Councillors perform, they need to be properly supported if they are to be effective.
- 9.5 Members Services and individual Democratic Services Officers will support Ward Councillors by (amongst other things) providing information and documentation (subject to guidance regarding access to information and Council documents); undertaking research about local issues; putting them in contact with individuals and groups in their Wards and adjoining Wards; arranging Ward Surgeries and local meetings on their behalf; arranging informal meetings with Officers and other Members; highlighting issues of local interest ensuring access to Council meetings, agendas, minutes and facilities ; maintaining the Members' Resource Centre; liaising with ICT to co-ordinate a support service in connection with computers and new technology at Members' homes.
- 9.6 All officers should ensure that the Council's Concordat for Communication and Consultation with Members is followed at all times.
- 9.7 All officers and, where appropriate, Members of the Cabinet should consult with Ward Members on issues which relate to their Ward. Such issues may typically include:-
- changes in service delivery
 - planning applications and proposals
 - regeneration initiatives
- 9.8 All officers should identify any issues which may have implications for more than one Ward and consult with all the Ward Members who may be affected.
- 9.9 All officers should always try to ensure, so far as it is reasonably practicable to do so, that Members have a realistic timescale in which to respond to consultation on matters affecting or relating to their Ward or constituents. Where, however, urgent action is required to address a particular issue which, for instance, does not realistically allow time for Ward Members to consult their constituents, officers should inform the Members concerned as soon as possible of any actions taken.

- 9.10 All officers acting within the remit of their delegated powers should ensure that they identify at an early stage any issues which should be drawn to the attention of Ward members or which should form part of a prior consultation exercise with them.
- 9.11 Whenever a public meeting is organised by or on behalf of the Council to consider a local issue all the Members representing the Ward or Wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise.

10. Consultation with Members

General Provisions

- 10.1 Decisions made by officers under delegated powers fall into two principal categories, namely:
- Decisions delegated to officers in consultation with Cabinet Members (which may or may not be key decisions)
 - Other Decisions delegated to officers (which are not required to be taken in consultation with Cabinet Members) and which may or may not be key decisions
- 10.2 Officers to whom decisions have been delegated have a duty to ensure that effective consultation takes place. Consultation between officers and Members will be undertaken within the terms of the Concordat, the Authority's Consultation Strategy and the approved Protocol on Member/Officer Relations.
- 10.3 Every effort will be made to ensure that Members have a realistic time scale to respond to consultation and, where appropriate and reasonably practicable, this time scale will be sufficient to enable Members to consult with their constituents. Members will be informed of any time restrictions which may apply relating to the process of consultation, particularly where urgent action is needed in the Council's and/or the public interest.
- 10.4 When preparing reports to Cabinet and/or Committees, officers will include details of any consultation undertaken with and any comments received from Members
- 10.5 Some officer delegated decisions will be Key Decisions (as defined in the Constitution) and will be subject to the requirements of the regulations relating to such decisions, (eg requirements relating to recording and publicising decisions) and to the call in provisions outlined in the Constitution.

Decisions by Officers in Consultation with Cabinet Members

10.6 Officers to whom decision making powers have been delegated, subject to consultation with Cabinet Members, (as detailed in the Constitution), will ensure that such consultation takes place.

Other Decisions delegated to Officers

10.7 Officers acting within the remit of their delegated powers will ensure that they identify, at an early stage, issues upon which Members should be consulted. These will include:

- issues of interest to Cabinet Members
- issues of interest to Ward Members
- issues of general interest to all Members

10.8 Officers will ensure that appropriate consultation takes place.

Consultation with Cabinet Members

10.9 Officers will ensure that appropriate consultation is undertaken with Cabinet Members on issues relating to their thematic areas.

Issues for Consultation with Ward Members

- (a) Members will be consulted on all issues which impact upon their ward. Such issues may typically include:
 - Ward specific changes to service delivery
 - Planning applications and proposals
 - Regeneration initiatives
 - Programmed maintenance of street lights, carriageways and/or footpaths
 - Roadwork improvements schemes
- (b) Officers will identify issues which may have cross boundary implications and will consult with Members accordingly.
- (c) Members will be notified of consultation proposed in their Ward before the consultation commences and is in the public domain.

Issues for wider consultation with Members

- (a) There are a number of issues upon which Members will need to be consulted in order to fulfil their roles as Community Leaders. These may typically include:-

- Issues relating to changes in service delivery
 - Issues relating to access to services
 - Charges and concessions
 - Issues relating to community resources
 - Determination of grant aid to the voluntary sector
- (b) Officers will ensure that appropriate consultation takes place with Members.

Appendix B: Further Guidance on Officers Attending Political Groups

KEY MESSAGES

- Group meetings are not decision-making bodies and must not be misinterpreted as such
- Support should be given to Groups on a fair and proportionate basis.
- Requests for attendance at group meetings must be made through the members of the Corporate Management Team

1. Officers and Party Groups

- 1.1 There is statutory recognition for Party Groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Party Groups therefore have an important part to play in the development of policy and the political management of the Authority. In view of this it is in the interests of the Authority to support the effective operation of political groups insofar as Council business is concerned and senior officers with the consent of the chief executive may therefore properly be called upon to support and contribute to deliberations by such groups.
- 1.2 The support provided by Officers can take many forms, ranging from a briefing meeting with a Chairperson or Spokesperson prior to a Cabinet or Committee meeting, to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 1.3 Certain points must however be clearly understood by all those participating in this type of process. Members and Officers alike, given the particular risks it can pose in terms of the impartiality of Officers. In particular:-
 - (a) Political Group meetings, whilst they are an important part in the preliminaries to the decision-making process, are not formal decision-making bodies of the Council and, as such, are not empowered, even under the new constitutional arrangements, to make decisions on behalf of the Council. Conclusions reached at such meetings do not, therefore, rank as Council decisions and it is essential that Members and Officer understand and interpret such decisions accordingly.
 - (b) Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of *Council* business and, where a report is presented, should be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Council. Officers must not be involved in advising on matters of party business or political

implications. They should remain politically neutral. The observance of this distinction will be assisted if Officers are only expected to be present and remain in attendance at Group meetings when matters of Council business are being discussed.

- (c) Similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Council meeting when the matter in question is considered formally.
- 1.4 Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons will not be bound by the Code of Conduct for Members (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons Officers may not be able to provide the same level of information and advice as they would to a Members only meeting.
 - 1.5 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the contents of any such discussions to another party group.
 - 1.6 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Chief Executive who will then discuss them with the relevant Group Leader(s).
 - 1.7 All Members should appreciate that the only basis on which the Council can lawfully provide support services (eg personal computers, stationery, typing, printing, photocopying, transport etc) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in order to support Members in connection with any party political or campaigning activity or for Members private purposes. In particular, Members should not personalize the stationery they receive from the Council by adding political logos or referring to themselves as a specific political party member or representative. Members should also not ask Officers to provide support services other than those which are to be used for Council business purposes.
 - 1.8 All Members should comply with the provisions of the Protocols relating to the use of Personal Computers and other facilities and services.

Appendix C: Further Guidance on Press and PR

KEY MESSAGES

- A local authority shall not publish any material which, in whole or in part appears to be designed to affect support for a political party.
- The names of non-executive members, and a short quote from them, may be included in press releases relating to a ward –specific issue in their ward or, in the case of Group Leaders, to a Council/County-wide issue. This may only occur where the members concerned are speaking on behalf of the Council or in support of Council policy.
- Special rules apply during election periods.

1. Publicity Material and Press Releases

1.1 The guiding principles as to the publication of publicity material and the issuing of press releases by local authority staff are to be found in the Local Government Act 1986 and the related Code of Conduct or Code of Recommended Practice on Local Authority Publicity as revised by the Secretary of State on 2nd April, 2001. For practical purposes the LGIU publication *The Right Side of the Law* is adopted.

1.2 The following is an extract from the 1986 Act:

“A local authority shall not publish any material which, in whole or in part, appears to be designed to affect support for a political party.

In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and in particular the following matters;

- *whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another;*
- *where material is part of a campaign the effect which the campaign appears to be designed to achieve.”*

1.3 A copy of the Code of Conduct or Code of Recommended Practice on Publicity is reproduced below.

1.4 The Council is not therefore permitted to fund the publication of publicity material and/or the production of press releases which are party political. To assist in defining this the following checklist can be used:

- party political logos should not be used
 - party political names should not be used except where they are necessary in describing a position
 - publicity should not be used to publicise individual Councillors unless they are acting on behalf of or representing the Council.
- 1.5 The names of non-executive members, and a short quote from them, may be included in press releases relating to a ward –specific issue in their ward or, in the case of Group Leaders, to a Council/County-wide issue. This may only occur where the members concerned are speaking on behalf of the Council or in support of Council policy.
- 1.6 If these rules are respected there is no reason whatsoever as to why effective publications and other material cannot be produced and issued without contravening the law. Such material can be written by paid officers and printed by the local authority.
- 1.7 Any publication or press release which breaches any of the above will be deemed political and will need to be funded by the political party and Officers will not be able to participate.
- 1.8 Members acting as spokespersons for the Council, when responding to the press and media and making public statements on behalf of the Council should liaise with the authority’s Communications Team on the form and content of any response or statement.

2. Code of Conduct – Publicity

Background

- 2.1 The following code has been issued by the Secretaries of State for the Environment, Scotland and Wales in pursuance of their powers under Section 4(1) of the Local Government Act 1986. The Code was drawn up following consultations with interested parties in Local Government required by Section 4(4) of the 1986 Act. It has been approved by a resolution of each House of Parliament. Local Authorities are required by Section 4(1) of the 1986 Act, as amended by Section 27 of the Local Government Act 1988 to have regard to the Code in coming to any decision on publicity.

Introduction

- 2.2 Local Authorities are accountable to their electorate. Local accountability requires local understanding. This will be promoted by local authorities explaining their objectives and policies to their electors and ratepayers. In recent years authorities have increasingly used publicity to keep the public informed and to encourage greater participation. Local authorities also need to tell the public about the services which they provide. Increasingly, local authorities see the task of making the public aware of the services available as an essential part of providing all kinds of services. Good, effective publicity, aimed at improved public awareness of a Council’s activities, is to be welcomed. This Code is not intended to discourage such publicity.

- 2.3 Publicity is, however, a sensitive matter in any political environment, because of the impact which it can have. Expenditure on publicity by some local authorities is significant. It is essential, therefore, to ensure that local authority decisions on publicity are properly made, in accordance with clear principles of good practice. The purpose of the Code is to set out such principles. It reflects the conventions which should apply to all publicity at public expense and which traditionally have applied in both central and local government.
- 2.4 The principles set out below recognise the political nature of local government. They take account of the fact that some local authority publicity will deal with issues that are controversial because of particular local circumstances, or because of a difference of view between political parties locally or nationally. The principles do not prohibit the publication of information on politically sensitive or controversial issues, not stifle public debate. They set out the matters a local authority should consider, to safeguard both the proper use of public funds and those members of the public at whom publicity is directed. They apply to all publicity, but some aspects will be especially relevant to publicity which deals with controversial or sensitive issues. The underlying objective of the Code is to ensure the proper use of public funds for publicity.

Scope of the Code

- 2.5 The Code is not concerned with the interpretation of Section 2 of the Local Government Act 1986. (That section provides that a local authority shall not publish (or assist others to publish) material which, in whole or in part, appears to be designed to affect public support for a political party). The Code is concerned with all the other publicity which a local authority may publish. In particular, it highlights factors which should be borne in mind about decisions on publicity which deals with matters or issues which are, politically or otherwise, controversial, but which are not prohibited by Section 2.
- 2.6 Section 6 of the 1986 Act defines publicity as “any communication, in whatever form, addressed to the public at large or to a section of the public”. The Code will therefore be relevant across the whole range of local authorities’ work. It covers all decisions by a local authority on publicity and most public relations activities, such as paid advertising and leaflet campaigns, and local authority sponsorship of exhibitions and conferences, as well as assistance to others to issue publicity. The Code has no relevance to the methods which a local authority may use to make its views known where these do not involve publicity in the sense of the 1986 Act.
- 2.7 The Code does not affect the ability of local authorities to assist charities and voluntary organisations which need to issue publicity as part of their work, but it requires local authorities, in giving such assistance, to consider the principles on which the Code is based and to apply them accordingly.
- 2.8 By virtue of Section 6(6) of the 1986 Act, nothing in the Code is to be construed as applying to any decision by a local authority in the discharge of their duties under the Local Government (Access to Information) Act 1985.

3. **Code of Recommended Practice**

Subject Matter

- 3.1 Local Authorities have a variety of statutory powers which enable them to produce publicity and circulate it widely, or to assist others to do so. Those commonly used include the powers in Section 111, 142, 144 and 145 of the Local Government Act 1972, Sections 69, 88 and 90 of the Local Government (Scotland) Act 1973 and Section 15 and 16 of the Local Government and Planning (Scotland) Act 1982, but there are several others.
- 3.2 Some of these powers relate directly to the publishing authority's functions. Others give a more general discretion to publicise matters which go beyond an authority's primary responsibilities. For example, Section 142 (1A) of the 1972 Act and 88(1) of the 1973 Act authorise local authorities to arrange for the publication within their area of information as to the services available in the area provided by them or by other local authorities; and Section 54 of the Public Health (Control of Disease) Act 1984 empowers local authorities to arrange for the publication within their area of information on questions relating to health or disease.
- 3.3 This discretion provides an important degree of flexibility, but also heightens the need for a responsible approach to expenditure decisions.
- 3.4 In considering the subject areas in which publicity is to be issued, the following matters will be important:
- (i) the publicity should be relevant to the functions of the authority
 - (ii) it should not duplicate unnecessarily publicity produced by central government, another local authority or another public authority.

Costs

- 3.5 Local authorities are accountable to the public for the efficiency and effectiveness of their expenditure, in the first instance through the audit arrangements.
- 3.6 For publicity, as for all other expenditure, the aim should therefore be to achieve the greatest possible cost-effectiveness.
- 3.7 To achieve this, there may well be cases where the benefit of higher expenditure to gain better presentation or improve other aspects of publicity will justify the extra cost.
- 3.8 Local authorities should therefore always have in mind the extent to which expert advice is needed for publicity.

- 3.9 In some cases publicity may justify its costs by virtue of savings which it achieves. More commonly it will be necessary to take a view of the importance of the unquantifiable benefits as compared with other uses to which the resources could be put.
- 3.10 In deciding whether the nature and scale of proposed publicity, and consequently its cost, are justified, the following matters will be relevant;
- (i) whether the publicity is statutorily required or is discretionary
 - (ii) where it is statutorily required, the purpose to be served by the publicity
 - (iii) whether the expenditure envisaged is in keeping with the purpose and expected effect of the publicity

Content and Style

- 3.11 Local authorities produce a variety of publicity material. It ranges from factual information about the services provided by the authority, designed to inform clients or attract new ones, to material necessary to the administration of the authority, such as staff recruitment advertising. There will also be publicity to explain or justify the Council's policies either in general, as in the annual report, or on specific topics, for example as background to consultation on the line chosen for a new road.
- 3.12 Any publicity describing the Council's policies and aims should be as objective as possible, concentrating on facts and explanations or both.
- 3.13 Where publicity is used to comment on, or respond to, the policies and proposals of central government, other local authorities or other public authorities, the comment or response should be objective, balanced, informative and accurate. It should aim to set out the reasons for the Council's views, and should not be a prejudiced, unreasoning or political attack on the policies or proposals in question or on those putting them forward. Slogans alone will not be an adequate means of justifying or explaining the authority's views or their policy decisions.
- 3.14 Publicity relating to the provision of a service should concentrate on providing factual information about the service.
- 3.15 In some cases promotional publicity may be appropriate – for example about the local authority's sports and leisure facilities or about tourist attractions.
- 3.16 Publicity touching on issues that are controversial, or on which there are arguments for and against the views or policies of the Council is unavoidable, particularly given the importance of wide consultation whenever material issues arise. Such publicity should be handled with particular care. Issues must be presented clearly, fairly and as simply as possible, although Councils should not over-simplify facts, issues or arguments. Again, it is unlikely that slogans alone will achieve the necessary degree of balance, or capture the complexities of opposing political arguments.

- 3.17 Publicity should not attach, nor appear to undermine, generally accepted moral standards.
- 3.18 Publicity campaigns by local authorities are appropriate in some circumstances: for example, as part of consultation processes where local views are sought, or to promote the effective and efficient use of local services and facilities, or to attract tourists or investment. Publicity campaigns may also be an appropriate means of influencing public behaviour or attitudes on such matters as health, safety, crime prevention or equal opportunities.
- 3.19 Legitimate concern is, however, caused by the use of public resources for some forms of campaigns which are designed to have a persuasive effect. Publicity campaigns can provide an appropriate means of ensuring that the local community is properly informed about a matter relating to a function of the local authority and about the authority's policies in relation to that function and the reasons for them. But local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.

Dissemination

- 3.20 The main purposes of local authority publicity are to increase public awareness of the services provided by the authority and the functions it performs to allow local people to have a real and informed say about issues that affect them; to explain to electors and ratepayers the reasons for particular policies and priorities; and in general to improve local accountability.
- 3.21 Information and publicity produced by the Council should be made available to all those who want or need it. Local authorities should not discriminate in favour of, or against, persons or groups in the compilation and distribution of material for reasons not connected with the efficiency and effectiveness of issuing the publicity.
- 3.22 Where material is distributed on matters closely affecting vulnerable sections of the community – for example, the elderly – particular care should be taken to ensure that it is unambiguous, readily intelligible and unlikely to cause needless concern to those reading, seeing or listening to it.
- 3.23 Local authority newspapers, leaflets, other publicity distributed unsolicited from house to house and information on websites are able to reach far wider audiences than publicity available on application to the Council. Councils should give particular attention to the use of electronic and other new media communications systems. However, Councils should ensure that they do not rely solely on such mechanisms and that they do not exclude those without access or easy access to such systems.
- 3.24 Such publicity should be targeted as appropriate for its purposes, taking particular care with material touching on politically controversial issues.

- 3.25 Local Authority newspapers or information bulletins are a special case. They are often a cost-effective means of disseminating information or facilitating consultation and can provide a means for local people to participate in debate on decisions the Council is to take. The advantage of using websites and other information technology for consultations should also be considered. Inevitably, such publications will touch on controversial issues and where they do, they should treat such issues in an objective and informative way, bearing in mind the principles set out in paragraphs 11 – 19 of the Code.
- 3.26 Where it is important for information to reach a particular target audience, consideration should be given to using the communications networks of other bodies, for example those of voluntary organisations, and making use of electronic communications systems.

Advertising

- 3.27 Advertising, especially on billboards or on television and radio is a highly intrusive medium. It can also be expensive. It may, however, provide a cost-effective, efficient means of conveying public information to the widest possible audience. Advertising on local radio networks has, for example, been used as a relatively inexpensive means of telling potential clients about local authority services. Advertising can also be the most cost-effective means of publicising a local authority's activities on promoting the social, economic and environmental well-being of the area.
- 3.28 The primary criterion for decisions on whether to use advertising should be cost-effectiveness.
- 3.29 Advertisements are not normally likely to be appropriate as a means of explaining policy or commenting on proposals, since an advertisement by its nature summarises information, compresses issues and arguments and markets views and opinions.
- 3.30 Advertising in media which cover an area significantly wider than that of the authority is not likely to be an appropriate means of conveying information about a local authority's policies as opposed to attracting people to the authority's area or to use its facilities.
- 3.31 The attribution of advertising material, leaflets and other forms of publicity that reach the public unsolicited should be clearly set out.
- 3.32 It is not acceptable, in terms of public accountability, to use the purchase of advertising space as a disguised means of subsidy to a voluntary, industrial or commercial organisation. Such support should be given openly through the normal grant arrangements. However, the condition attached to a grant may require the provision of publicity, including publicity for the work of the authority.

- 3.33 Any decision to take advertising space in a publication produced by a voluntary, industrial or commercial organisation should be made only on the grounds that it provides an effective and efficient means of securing the desired publicity.
- 3.34 Local authorities should never use advertising as a means of giving financial support to any publication associated with a political party.

Recruitment Advertising

- 3.35 Local authorities have respected in their employment policies the tradition of a politically impartial public service. Their recruitment publicity should reflect this tradition, and the fact that local authority employees are expected to serve the authority as a whole whatever its composition from time to time.
- 3.36 The content of recruitment publicity and the media chosen for advertising job vacancies should be in keeping with the objective of maintaining the politically independent status of local authority employees.
- 3.37 Advertisements for employees should not be placed in party political publications.

Individual Councillors

- 3.38 Publicity about individual Councillors may include the contact details, the positions they hold in the Council (for example, member of the Cabinet or Chair of the Scrutiny Committee), and their responsibilities. Publicity may also include information about individual councillors' proposals, decisions and recommendations only where this is relevant to their position and responsibilities within the Council. All such publicity should be objective and explanatory, and whilst it may acknowledge the part played by individual Councillors as holders of particular positions in the Council, personalisation of issues or personal image making should be avoided.
- 3.39 Publicity should not be, or liable to misrepresentation as being, party political. Whilst it may be appropriate to describe policies put forward by an individual Councillor which are relevant to her/his position and responsibilities within the Council, and to put forward her/his justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating policies of those of a particular political party or directly attacking policies and opinions of other parties, groups or individuals.

Elections, Referenda and Petitions

- 3.40 The period between the notice of an election and the election itself should preclude proactive publicity in all its forms of candidates and other politicians involved directly in the election. Publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them with individual Members or groups of Members. However, it is

acceptable for the authority to respond in appropriate circumstances to events and legitimate service enquiries provided that their answers are factual and not party political. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for a member level response to an important event outside the authority's control. Proactive events arranged in this period should not involve Members likely to be standing for election.

3.41 The Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000 (which apply under the Local Government Act 2000 (as amended) to County Councils, District Councils and London Borough Councils) prohibit an authority from incurring any expenditure to:-

- publish material which appears to be designed to influence local people in deciding whether or not to sign a petition requesting a referendum on proposals for an elected mayor;
- assist anyone else in publishing such material; or
- influence or assist others to influence local people in deciding whether or not to sign a petition

3.42 Publicity in these circumstances should, therefore, be restricted to the publication of factual details which are presented fairly about the petition proposition and to explaining the Council's existing arrangements. Local authorities should not mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view in relation to petitions generally or on a specific proposal.

3.43 County Councils, District Councils and London Borough Councils should ensure that any publicity about a referendum under Part II of the Local Government Act 2000 (as amended) either prior to or during the referendum period is factually accurate and objective. The referendum period means the period beginning with the date on which proposals under Part II of the 2000 Act are being sent to the Secretary of State and ending with the date of the referendum. The publicity should not be capable of being perceived as seeking to influence public support for, or opposition to, the referendum proposals and should not associate support for, or opposition to, the proposals with any individual or group. Local authorities must conform with any specific restrictions on publicity activities which are required by Regulations under Section 45 of the 2000 Act.

Assistance to Others for Publicity

3.44 The principles set out above apply to decisions on publicity issued by local authorities. They should also be taken into account by local authorities in decisions on assistance to others to issue publicity. In all such decisions local authorities should, to the extent appropriate:

- (a) incorporate the relevant principles of the Code in published guidance for applicants for grants;

- (b) make the observance of that guidance a condition of the grant or other assistance;
- (c) undertake monitoring to ensure that the guidance is observed.

3.45 It is appropriate for local authorities to help charities and voluntary organisations by arranging for pamphlets or other material produced and paid for by the organisation to be available for collection by the public in public libraries and other suitable locations. Such material should not offend against any legal provision (authorities may be able to draw on their powers of well-being in section 2 of the Local Government Act 2000) (as amended), but (subject to this) any such facility should be made available on a fair and equal basis.

Appendix D: Further Guidance on Access to Information

KEY MESSAGES

- Members are free to approach any Council service to provide them with information, explanation and advice (about that service's functions) as they might reasonably need to assist them in their role as members of the Council subject to the guidance here and the provisions of the Constitution.
- The 'need to know' principle is described in this guidance – there is no 'roving commission' and mere curiosity is not enough.
- Draft documents or documents which do not relate to business to be considered by or transacted at a Council, Cabinet or Committee meeting are not covered by the need to know principle.
- A member of one party group does not have a 'need to know' and therefore right to inspect a document which forms the internal workings of another party group.
- Members should not prepare responses to FOI requests personally – any requests that appear to be FOI requests should be passed as soon as possible to the FOI team.
- The degree to which member's personally held information e.g. emails is disclosable under FOI depends on the role that the member holds.
- Contact details and further advice are contained within this guidance.

1. Members' Access to Information and the Council Documents

- 1.1 Subject to the guidance below, members are free to approach any Council Service to provide them with such information, explanation and advice (about that Service's functions) as they may reasonably need in order to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a Service's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the relevant Corporate Director, Head of Service or another nominated Senior Officer of the Service concerned although this should not in any way prevent appropriate information gathering from taking place by means of contact with Ward, Estate or "Patch" Officers, in the usual way. A member may also, on application to the Head of Legal and Democratic Services inspect any document which has been considered by the Council and be supplied with a copy of such document.
- 1.2 As regards the legal rights of members to inspect Council documents, these are covered partly by statute and partly by common law.
- 1.3 Members have a statutory right to inspect any Council document which contains material relating to any business which is to be transacted at a Council, Cabinet in public or Committee meeting. This right applies irrespective of whether the member is a member of the Cabinet or Committee

concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not however apply to documents relating to certain items which may appear on the “Not for Publication” part of the agenda for meetings. The items in question are those which contain exempt information relating to eg any individual; the financial or business affairs of any particular person (including the authority holding the information); any action taken or to be taken in connection with the prevention, investigation or prosecution of crime. A member should also not knowingly inspect and/or call for a copy of any document relating to a matter in which he/she is professionally interested or in which he/she has directly or indirectly any personal, prejudicial interest. In addition, the Head of Legal and Democratic Services or any solicitor to the Council may decline to allow inspection of any document which is , or in the event of legal proceedings, would be protected by privilege arising from the relationship of Solicitor and Client.

- 1.4 The common law right of members is much broader and is based on the principle that any Member has a prima facie right to inspect Council documents so far as his/her access to the documents is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Council. This principle is commonly referred to as the “need to know” principle.
- 1.5 In some circumstances (eg a Committee Member wishing to inspect non-personal or non-confidential documents relating to the functions of that Committee) a Member’s “need to know” will normally be presumed. In other circumstances (eg a Member wishing to inspect Council documents which contain personal or confidential information about third parties, such as Council Tenants) there will be a presumption against disclosure and a Member will be expected to justify the request in specific terms in order to make their “need to know” clear. In certain cases, additional guidance regarding the circumstances when inspection may or may not be allowed may also have been approved by the Council.
- 1.6 Whilst the exercise of this common law right principally depends therefore upon the Member’s ability to demonstrate that he/she has the necessary “need to know” and that there are no legitimate reasons for non-disclosure, a Member has no right to “a roving commission” to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know”. The “need” is so that Members can perform their roles as Councillors. It can be limited by conflict of interest, confidentiality and practicality. The question as to whether a “need to know” has been reasonably and satisfactorily established must initially be determined by the particular Corporate Director of Service whose Service holds the document in question (with advice from the Head of Democratic Services). In the event of dispute, the question falls to be determined by the relevant Council body eg a Committee in connection with whose functions the document is held.

- 1.7 As a general requirement, where a request to inspect or copy Council documents is likely to involve the significant use of resources, approval to the use of those resources should be requested by following the need to know determination procedure specified in the preceding paragraph.
- 1.8 Whilst the term “Council document” is very broad and, prima facie, includes for example any document produced with Council resources, it does not cover draft documents or documents which do not relate to business to be considered by or transacted at a Council, Cabinet or Committee meeting. It is also accepted by convention that a Member of one party group will not have a “need to know” and therefore a right to inspect, a document which forms part of the internal workings of another party group.
- 1.9 Further and more detailed advice relevant to particular circumstances regarding Members’ right to inspect Council documents may be obtained from the Head of Legal and Democratic Services.
- 1.10 Finally any Council information provided to a Member must only be used by the Member for the purpose for which it was provided i.e. in connection with the proper performance of the Member’s duties as a Member of the Council. Members necessarily acquire much information that has not yet been made public and is still confidential. It is betrayal of trust and the Code of Conduct to breach such confidences. Members should never therefore disclose or use confidential information for the personal advantage of themselves or of anyone known to them, or to the disadvantage or the discredit of the Council or anyone else.
- 1.11 The Freedom of Information Act 2000 has brought additional rights, responsibilities and safeguards regarding confidential information. The Act became fully operational in January, 2005 insofar as the public right of access provisions are concerned. A “Publication Scheme” has also been produced by the Council, and this can be accessed on the Council’s website at [ADD LINK](#). Some practical FOI Tips (for members receiving potential FOI requests) are:
- (a) Pass on without delay any request. (They will usually say FOI or they will not be normal daily constituency work.)
 - (b) The council has **20 working days** to respond with information or explain, as fully as possible, why it is not going to do so. (Delays can lead to complaints to the Information Commissioner’s Office)
 - (c) The elected members of a local council are likely to have three different roles
 - (i) As a member of the council, for example, as a member of a committee.
 - (ii) As a representative of residents of their ward,
 - (iii) As a political party representative.

The FOIA has a different effect depending on their role.

- (d) Individual councillors are not authorities for the purposes of the FOIA. However, depending on their role, the information can be accessible.
- (e) Does this mean anything a member does can be disclosed? No. It will depend on whether they hold it for their role as an elected member or on behalf of the Council.
 - (i) If held for their role as an elected member, then it is not likely to be disclosed. What does this cover? This will cover such things as correspondence with residents in their ward. Or, emails discussing council business with other members. Campaigning for their party would be considered as part of their role as an elected member.
 - (ii) If their role is on behalf of the Council their correspondence or information may be disclosable. What does this mean? For example, being a cabinet member or having executive responsibility for a service area. It would cover things such as representing the authority on a regional forum.
- (f) What would be covered? Information received, created or held by a councillor on behalf of the local authority will be covered. For example, where a councillor is acting in an executive role as part of a council cabinet. Or, if the information created or received by a councillor but held on a local authority's computer system or at its premises will only be covered if it is held for the authority's own business.
- (g) As Councillors are not subject to FOI, they do not need to respond to requests. However, the Council (as an organisation subject to the Act) has to respond. Therefore, the Council Officers will prepare any responses to FOI requests that are directed at Members.

If you receive a request, what do you do? Send it to the information management team. They can be contacted by email at Foi@durham.gov.uk

If you prefer to post it to them, their address is

Information Management Team

Room 4/10

Assistant Chief Executive's Office

Durham County Council

County Hall

Durham

DH1 5UF

If you want to discuss any Freedom of Information issues or related issues, you can telephone them on **03000-268-035**

Appendix 3: Revised Draft Protocol

Protocol on Member Officer Relations

1. Status of this Protocol

- 1.1 This Protocol seeks to offer guidance on some of the issues which most commonly arise in relation to the relationships between Members and Officers.
- 1.2 The Protocol is partly a statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty. In particular, it covers the behaviour that is expected between Members and Officers.
- 1.3 The Protocol gives guidance only but it may be taken into account if there is a complaint about a Member or an Officer. Members must observe the Members' Code of Conduct. Any complaints received in relation to alleged breaches of the Code of Conduct will be considered initially by the Monitoring Officer. Officers are also obliged to comply with the Code of Conduct for Employees. Any complaints received about Officers behaviour or conduct will be considered by the relevant managers.

2. Roles of Members and Officers

Officers and Members both serve the public but they have different roles. Officers are employees of the Council and are politically neutral. Their role is to advise Members and implement the policies of the Council to the best of their abilities. Members are office holders and will often belong to a political party. They are obliged to exercise their own judgement in respect of matters before them but may also legitimately pursue party political objectives. Employees are answerable to the Chief Executive, not to individual Members (whatever office they hold), but there should be good communication between senior officers and Members with special responsibility for their area of work.

3. Expectations

3.1 What Members can expect from Officers:

- (a) A commitment to the authority as a whole, not to any political group;
- (b) A working partnership;
- (c) An understanding of and support for respective roles, workloads and pressures;
- (d) Timely responses to enquiries and complaints;

- (e) Professional advice, not influenced by political views or preference;
- (f) Regular up-to-date information on matters that can be reasonably considered appropriate and relevant to the Member's needs, having regard to any individual responsibilities that they have and positions that they hold;
- (g) Awareness and sensitivity to the political environment;
- (h) Respect and courtesy;
- (i) Training and development in order to carry out their roles effectively;
- (j) Not to have personal issues raised with them by Officers outside the agreed procedures;
- (k) Officers should not try to persuade individual Members to make a decision in their personal favour or raise things to do with their employment with individual Members. Nor should they approach individual Members with allegations about other Officers. They should use the Council's grievance, confidential reporting and disciplinary procedures instead; and
- (l) Compliance with the Employee Code of Conduct.

3.2 *What Officers can expect from Members:*

- (a) A working partnership;
- (b) An understanding of and support for respective roles, workloads and pressures;
- (c) Political policy direction and leadership;
- (d) Respect and courtesy;
- (e) Members should generally restrict their discussion on strategic or significant issues to more senior officers (that is the Chief Executive, Corporate Directors or Heads of Service); Members should raise all queries on operational matters initially with Corporate Directors or Heads of Service who will ensure that Members receive a timely response.
- (f) Members are encouraged to use regular briefings and/or normally make appointments before visiting Officers in order to try to avoid frequent unscheduled interruptions;

- (g) Members should not pressure Officers to work outside their normal hours or to do anything they are not allowed to do or that is not part of their normal work;
- (h) Not to be subject to bullying, harassment or intimidation. Members should have regard to the seniority and experience of Officers in determining what constitutes a reasonable request. Members with special responsibilities should be particularly aware of this;
- (i) Members should not use their position or relationship with Officers to advance their personal interests or those of others or to influence decisions improperly;
- (j) Members should not make detrimental remarks about individual Officers during meetings, in public or to the media; and
- (k) Members should at all times comply with the Member Code of Conduct.

4. Limitations on behaviour

The distinct roles of Members and Officers necessarily impose limitations upon behaviour. By way of illustration and not as an exclusive list:

- (a) Personal relationships between individual Members and Officers can confuse the separate roles and get in the way of the proper discharge of the authority's functions. In this situation, others may feel that a particular Member or Officer may be treated more Favourably.
- (b) Personal relationships should be avoided. Where they do exist the officer concerned must notify his or her manager.
- (c) The need to maintain the separate roles means that there are limits to the matters on which Members may seek the advice of Officers, both in relation to personal matters and party political issues;
- (d) Relationships with particular individuals or party groups should not be such as to create public suspicion that an employee Favours that Member or group above others.

5. Politeness and respect

- 5.1 Members and Officers should show each other politeness and respect. Members have the right to challenge Officers' reports or actions, but they should avoid personal and/or public attacks; and ensure their criticism is fair and constructive.
- 5.2 Officers should not publicly criticise Council decisions even if they do not personally agree with those decisions.

6. Complaints about Members or Officers

- 6.1 If an Officer feels a Member is not treating them with politeness and respect, they should consider talking to the Member directly. If they do not feel able to do this, or talking to the Member does not help, they should talk to their Head of Service or Corporate Director immediately. The Head of Service or Corporate Director will talk to the Member or the Leader of their political group and/or other senior officers as appropriate. The Officer will be told the outcome. Officers may also make a complaint alleging a breach of the Members' Code of Conduct.
- 6.2 If a Member feels an Officer is not treating them with politeness and respect, they should consider talking to the Officer directly. If they do not feel able to do this or talking to the Officer does not help, they should talk to the Officer's Head of Service or Corporate Director immediately. If the problem continues the Head of Service or Director will consider whether to use the Council's disciplinary procedures.

7. Members' enquiries

- 7.1 Officers should answer Members' enquiries, in whatever form, within five working days. If that is not possible, they should send a holding reply. Where a Senior Officer considers that the enquiry received is inappropriate, the Member should be advised of this and the reason or reasons why the enquiry is considered to be inappropriate. Members should contact a more senior officer in the event that a response is not received within this time. The Chief Executive may be asked to resolve any issues arising from unreasonable delays in responding to Members' enquiries.

Casework

- 7.2 Where a Member is making an enquiry of Officers as part of their ward casework, Officers will normally assume that they have the implicit consent of an individual to disclose personal information about them to the Member but only where:

-) the Member represents the ward in which the individual lives;
-) the Member makes it clear that they are representing the individual in any request for their personal information to the local authority; and
-) the information is necessary to respond to the individual's complaint.

In all other cases Officers may need to seek the explicit consent of the individual to share their personal data with the Member in order to comply with the Data Protection Act 1998.

- 7.3 Personal information about third parties (i.e. individuals who have not sought the Member's assistance) may only be shared with a Member where the law permits this. See also paragraphs 8.1.3 and 8.1.4 below.

8. Information and advice

8.1 Requests for written information

- 8.1.1 Members should be provided with adequate information about services or functions on which they may be called upon to make decisions or to scrutinise the decisions of others, or which affect their constituents. This information will normally be made routinely available by Officers in the form of reports, departmental plans etc.. Members are encouraged to make use of existing sources of information wherever possible.
- 8.1.2 Written information supplied to a Member regarding the implications of current Council policies or containing statistical information about Council services may be copied to the relevant Cabinet Member.
- 8.1.3 The Leader of the Council or Leader of any other political group may request the Chief Executive or the relevant Corporate Director, or other designated Officer to prepare reports on matters relating to the authority for consideration by the group. Such requests must be reasonable and should not seek confidential information in relation for instance to casework or personal details of applicants for services.
- 8.1.4 Wherever possible, such requests will be met. However, if the Officer considers that the cost of providing the information, or the nature of the request is unreasonable or inappropriate, the request will be referred to the Chief Executive for determination, where necessary in consultation with the Leaders of the political groups. Requests will also only be met where they comply with data protection or other legal requirements.
- 8.1.5 Officer reports to political groups should be limited to a statement of relevant facts, identification of options and the merits and demerits of such options for the authority. Reports should not deal with any political implications of the matter.

8.2 Briefings

- 8.2.1 In order for them to discharge their responsibilities Cabinet Members will be briefed by senior officers (Corporate Directors or Heads of Service) on service issues, proposals and policy development either on an ad hoc or a regular basis, in accordance with the requirements of the Member involved.
- 8.2.2 The other political party groups may also have nominated Shadow Portfolio Holders and, if those leads so request, the relevant senior officers will make themselves available to meet with them to brief them on service issues. The other political party groups should be aware that at times the amount of information that officers can share with them may be limited due to issues of confidentiality.

8.2.3 The content of these informal briefing sessions shall remain confidential as between Officers and the political group concerned.

8.3 *News items*

When an event or development occurs in the city which has or will have a significant impact on the Council or city residents, the Chief Executive will ensure that the Leaders of all political groups are informed as soon as possible.

8.4 *Ward Members*

8.4.1 Senior officers should ensure that Ward Members are given information relevant to their ward where appropriate. As well as letting Ward Members know when there has been a significant incident in their ward, Ward Members should be notified about the following types of issue:

-) Public consultation events affecting their wards;
-) Proposed changes to services sited within their wards;
-) Applications and proposals in their wards

8.4.2 Ward Members should be invited by Officers to public events, such as openings, festivals etc., in their wards regardless of political affiliation.

8.4.3 If Officers organise a public meeting about a specific ward issue, all the Ward Members should be invited and given as much notice as possible.

8.4.4 If Officers undertake consultation about specific ward issues they should consult the Members for that ward at the start of the consultation.

8.4.5 Ward Members should be told in advance about anything which particularly affects their ward and which is potentially controversial.

8.5 *Officer attendance at Group Meetings*

8.5.1 The Leader of the Council or Leader of any other political group may ask the Chief Executive or Corporate Director to give or arrange a private briefing for the party group on a matter of relevance to the Council.

8.5.2 Any briefings offered to or requested by a party group will be offered to the other party groups.

8.5.3 While Officers may attend political group meetings at which individuals who are not elected Members may be present, Members need to understand that those Officers' ability to share confidential information with the Group may be limited. In particular Officers will not be able to share personal information with third parties present if to do so would cause the Council to breach the Data Protection Act 1998.

- 8.5.4 Officers must not attend regional and/or constituency party political meetings.
- 8.5.5 Decisions at group meetings are not Council or Cabinet decisions and party groups do not have any delegated authority to make formally binding decisions.

8.6 *Advice for Members with special responsibilities*

- 8.6.1 The Chairman, Cabinet Members and Committee Chairs can ask the Chief Executive, Corporate Directors and Heads of Service for extra background information and advice on different courses of action.
- 8.6.2 Although these Members have additional responsibilities and different relationships because of their more frequent contact with Officers, these Members must still respect the impartiality of Officers. This includes not asking them to undertake work of a party political nature, or to do anything which would prejudice that impartiality.
- 8.6.3 The Leaders of minority political groups can ask the Chief Executive, Corporate Directors or Heads of Service for background information or more details about items coming to the next meeting of a Committee or Cabinet. The appropriate Chair or Cabinet Member will be entitled to receive the same information.
- 8.6.4 Party group Leaders can ask for advice on presenting their budget in a correct and accurate form. This will be given in confidence.

9. Members' briefings on agendas and reports

9.1 *Briefings on agendas*

The Chief Executive, Corporate Directors and Heads of Service will give briefings on full Council, Cabinet and Committee agendas to the Leader and Deputy Leader and Committee Chairs as appropriate.

9.2 *Consultation on agendas*

The Leader will be consulted on agendas for the Cabinet. Committee Chairs will be consulted on agendas for their Committees.

9.3 *Requests for reports*

- 9.3.1 Instructions for reports to come to Cabinet or Committees can only come from the Leader, Cabinet, a Cabinet Member in respect of the Cabinet and a Committee or a Committee Chair in respect of Committees. Cabinet Members may ask for reports to come to their Cabinet Member meetings.

9.3.2 Whilst Cabinet Members have political responsibility for drawing up proposals for consideration or for the agenda for a forthcoming meeting, it must be recognised that in some situations an Officer will be under a professional duty to submit a report. Similarly, senior officers will always be fully responsible for the contents of any report submitted in his/her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. Any issues arising between a Cabinet Member and a senior officer in this respect should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.

10. Support services to Members and Political Groups

Support services should only be used for Council business. They should never be used for private purposes, for party political or campaigning activity.

11. Correspondence

11.1 Between Members and Officers

If emails or letters between Officers and Members are copied to someone else, they should say so. Blind copies should not be sent. Members should not forward information received from an Officer to a constituent or member of the public if that information is expressed to be private or confidential.

11.2 Letters on behalf of the Council

Letters on behalf of the Council will normally be sent by Officers rather than Members. The Leader or Committee Chairs may write some letters on behalf of the Council, for example representations to government ministers. Members must never send letters that create obligations or give instructions on behalf of the Council.

12. The Council as an Employer

The Council as a whole employs its Officers. The appointment and dismissal of Officers and any disciplinary or grievance proceedings will be carried out in accordance with the Officer Employment Procedure Rules and any other agreed policies and procedures.

13. Responsibility for this Code

The Monitoring Officer has overall responsibility for this Protocol and will periodically review its operation.

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Standards Committee

22 March 2018



Social Media Guidance

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

Purpose of the Report

1. To discuss draft Social Media Guidance and approve for consultation.

Background

2. Members will recall that in December they agreed to pursue a proposal to develop social media guidance, and asked the Monitoring Officer to bring a draft of that guidance to this meeting.
3. Draft Guidance is attached at **Appendix 2**.
4. CDALC are aware of the proposals to develop guidance and have expressed a wish to have the opportunity to input into its development. Similarly other County Councillors or stakeholders may wish to be involved so it is proposed to issue the draft Guidance for consultation.
5. It is proposed to consult:
 - a. County Councillors;
 - b. CDALC; and
 - c. The current Independent Persons.
6. It is proposed to issue the Guidance for consultation for a period of six weeks, which should give sufficient time for adequate consideration by consultees, and would enable the Committee to consider the outcome of the consultation at its next meeting in June 2018.
7. It is proposed that the Guidance will have the status of guidance issued by the Standards Committee, pursuant to the Committee's constitutional function of promoting and maintaining high standards of conduct by Members and Co-Opted Members of the Council and Parish and Town Council Members.

8. If that is agreed by the Committee, the Guidance would not constitute formal policy adopted by the Council but the Committee could have regard to the guidance when determining complaints against Councillors.
9. If the Committee instead consider that the Guidance ought to have the status of policy then it would need to go through full Council in order to be binding upon Members as part of the Code of Conduct. It is proposed that this question will also be asked as part of the consultation exercise.

Recommendation

10. Members are asked to comment on the draft Guidance with a view to agreeing a version of it for consultation as set out in the report. The consultation will last for six weeks and will invite views both on the content of the draft Guidance and the status it ought to have.

Contact: Laura Renaudon, Governance Solicitor Tel: 03000 269886

Appendix 1: Implications

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.

Appendix 2: Draft Social Media Guidance

Social Media Guidance for Councillors

1. Three of the important Nolan Principles applying to those in public life are “Openness”, “Accountability” and “Leadership”. That means Councillors should be as open as possible about the actions and decisions they take, submit to an appropriate level of public scrutiny, and lead by example. Social media can be a vital tool for public debate and its use by Councillors is encouraged.
2. There are however some pitfalls to be aware of, and this local Guidance is produced to help Councillors avoid these. This Guidance does not tell Councillors what social media is, or which blogs or networks might be used effectively. It assumes that Councillors are aware of those. It deals with the pitfalls that specifically apply to the role of local Councillors.

A LEGAL CONSIDERATIONS

3. Like anyone else publishing material, Councillors will need to be aware of the laws that apply to published material. Some of the main ones are these:
 -) **Defamation:** if you publish an untrue statement about a person that is damaging to their reputation you may be liable to pay damages;
 -) **Copyright:** publishing information that is not yours, without permission, may also result in an award of damages against you;
 -) **Harassment:** it is an offence to repeatedly pursue a campaign against a person that is likely to cause alarm, harassment or distress;
 -) **Data protection:** do not publish personal data of other people, including photographs, without their express permission to do so;
 -) **Incitement:** it is an offence to incite any criminal act;
 -) **Discrimination and ‘protected characteristics’:** it is an offence to discriminate against anyone based on protected characteristics (as defined in the Equality Act 2010);
 -) **Malicious and obscene communications:** it is an offence to send malicious or obscene communications

4. Additional considerations apply to Councillors.

Bias and pre-determination

5. Statements of opinion made by a Councillor online may give the appearance of that Councillor's mind being made up about certain matters. Members sitting on regulatory committees such as planning or licensing should avoid publishing anything that suggests they do not have an open mind about anything they are likely to be involved in determining. Otherwise the Council's decision is open to challenge and could be invalidated, and the 'disrepute' provisions of the Code could be engaged.

Equality and discrimination

6. The Council is a public authority required to comply with the Equalities Act 2010. As noted above it is an offence to discriminate against anyone based on their protected characteristics. The Council must also have 'due regard' to the Public Sector Equality Duty (which consists of eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations) and that applies to Councillors when appearing to act in their official capacity.

Electioneering

7. Council resources, including any the use of social media on Council mobile devices or IT equipment, should not be used for political/campaign purposes. Particular care should also be taken when using social media during the pre-election period. The Electoral Commission has further guidance including on the requirements to provide a return of expenditure on election advertising which includes web advertising.

Human Rights

8. Article 8 of the European Convention provides that public authorities should not interfere with the right of individuals to a private and family life without lawful authority to do so, and where it is necessary, proportionate, and in pursuit of one of the aims set out in Article 8(2). (These are national security, public safety, economic well-being, health or morals, prevention of crime or disorder, or

protecting others' rights). Observing the use of social media by other people (even on 'open' profiles) can engage Article 8 and so Councillors should avoid 'sleuthing' activities that might amount to unlawful surveillance.

B CODE OF CONDUCT

9. The Code applies to Councillors who are or appear to be acting in an official capacity. As Members are aware, the Code does not apply to purely private matters. How Councillors present their profile online will be important (eg whether or not expressly as a Councillor) but not necessarily conclusive.
10. One way for Councillors to deal with the issue is to have two separate accounts, one for private matters and the other for council activities. However, care would still need to be taken to avoid giving the impression of acting as a Councillor when using the private account. For example a discussion about Council decision-making, even on a 'private' profile, could lead to the conclusion that the Code is engaged. Private profiles that carry a party political slogan may be more likely to result in the Code being engaged even if council activity is not expressly mentioned.
11. The particular sections of the (County Council's) Code most likely to give rise to complaints are the requirements to treat others with respect; not to bring the office of Councillor or the Council into disrepute; and prohibiting the disclosure of confidential information.
12. You should also consider your position carefully as to whether your online 'followers' or 'friends' are "close associates", for the purpose of declaring interests and participation in meetings where their well-being or financial position would be affected.

C 'NETIQUETTE'

13. Councillors should have a clear commenting policy. They will need to monitor and, where appropriate, censor or remove the contributions made by others to their sites. Allowing defamatory or offensive statements to remain on a site can become the Councillor's own legal problem as the 'publisher' of the material, and could also give rise to Code issues where allowing comments to remain could be seen as condoning or endorsing them.
14. Similarly, 'liking', 'sharing' or 're-tweeting' posts could be seen as an endorsement of them and legally this can be a separate instance of publication, by the Councillor, to which all the legal and Code considerations would apply.
15. Beyond that it is generally best to allow disagreement rather than to seek to censor it. However there is no need to respond to everything and unhelpful online arguments should be avoided. Be professional, respectful and polite, even (or especially) when corresponding with those who do not return the courtesy.
16. Promptly admit to mistakes.
17. Avoid using social media when you are tired, angry, upset or your judgment may be impaired.
18. Think carefully about who to 'follow' or 'befriend' online. Online 'friendships' with council officers should be avoided as they may compromise the appearance of impartial advice. It is inadvisable to 'follow' anyone without a good reason – some constituents may find it uncomfortable (and see the Human Rights comments above). Many Councillors wait to be 'followed' before returning the compliment.

D USE OF SOCIAL MEDIA DURING COMMITTEE MEETINGS

19. Using social media during the progress of committee meetings is generally best avoided. This is particularly the case for regulatory committees such as planning or licensing. The local Planning Code requires Councillors to alert officers to any lobbying material they have received, which would be difficult if it arrives on Twitter and is read by the Councillor during the course of a meeting.
20. It is also important for Councillors not to give the impression that insufficient attention is being given to the discussion at the meeting. That could lead to the relevant decision coming under challenge if Councillors are perceived to have made a decision without having properly listened to the debate. It could also result in Code complaints of a failure to treat others with respect or of bringing the Council into disrepute.

FURTHER READING

1. "Connected Councillors: A guide to using social media to support local leadership", IDeA, March 2010 and other guidance available on the Local Government Association website (www.local.gov.uk).
2. LGA's Knowledge Hub may contain useful information (<https://knowledgehub.local.gov.uk/>)
3. Sign on to Twitter at <https://twitter.com/> and Facebook at <https://en-gb.facebook.com>

Standards Committee

22 March 2018



Review of Local Government Ethical Standards: Stakeholder Consultation

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

Purpose of the Report

1. To advise Members of the current review by the Committee on Standards in Public Life ("CSPL") of local government ethical standards, and to seek the views of the Committee in relation to the consultation questions.

Background

2. The CSPL is undertaking a review of local government ethical standards. Its terms of reference are to:
 - (i) examine the structures, processes and practices in local government in England for:
 - a. maintaining codes of conduct for local councillors;
 - b. investigating alleged breaches fairly and with due process;
 - c. enforcing codes and imposing sanctions for misconduct;
 - d. declaring interests and managing conflicts of interest;
 - e. whistleblowing;
 - (ii) assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
 - (iii) make any recommendations for how they can be improved;
 - (iv) note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

Current Standards Regime

3. The current Standards Regime is as set out in Chapter 7 of the Localism Act 2011. It is worth bearing in mind that local arrangements

may exceed existing statutory requirements. The main statutory requirements are:

- a. All 'relevant authorities' (which include parish councils) have a duty to promote and maintain high standards of conduct by members;
 - b. All relevant authorities must have a code of conduct;
 - c. Codes of conduct must be consistent with the Nolan principles;
 - d. Codes of conduct must require the registration of pecuniary interests, and such non-pecuniary interests as the relevant authority deems appropriate;
 - e. Registers of interests must be published;
 - f. Members may not, without a dispensation, participate in discussion or voting on matters affecting their registrable pecuniary interests;
 - g. All relevant authorities except for parish councils must have in place arrangements by which allegations can be investigated and under which decisions can be made. (However, parish councils are otherwise subject to the arrangements of their principal authority);
 - h. Such arrangements must include provision for the appointment of an Independent Person whose views must be taken into account before making a decision on an allegation it has decided to investigate;
 - i. Failure to comply with the provisions as to the registration of pecuniary interests and participating in discussion are an offence, punishable by unlimited fines and disqualification for up to 5 years;
 - j. A decision by a relevant authority on finding a breach of the code of conduct after an investigation may include sanctions. Sanctions available to the relevant authority are:
 - i. Censure of the member;
 - ii. Removal of the member from committees or sub-committees;
 - iii. Removal of the member from outside appointments;
 - iv. Restricting the Member's access to the relevant authority's resources for up to six months;
 - v. Requiring the Member to apologise;
 - vi. Requiring the Member to undergo training; and
 - vii. Requiring the Member to undertake conciliation.
4. This Council has a Standards Committee, but it is not a legislative requirement.

Former Standards Regime

5. Prior to the Localism Act, the Local Authorities (Model Code of Conduct) Order 2007 prescribed a model code of conduct to relevant authorities. Relevant authorities were required to have Standards Committees, who could disqualify members for up to six months.
6. Standards for England (previously the Standards Board) was responsible for a national overview of local investigations into member conduct allegations. In certain cases the Board itself investigated allegations. It could not impose sanctions on members, but it could refer cases to the First-Tier Tribunal (previously the Adjudication Panel) or to the relevant authority's own standards committee for determination. The Tribunal could disqualify members for up to five years.
7. The Standards Board was abolished as a result of the Localism Act. Criticisms of the former regime were that it was over-centralised, was a vehicle for vexatious complaints, and that it was largely unnecessary because poor behaviour can be expected to meet its end in the ballot box. Criticisms of the new regime however are that it has gone too far in removing the capacity for, or the likelihood of, effective sanctions against councillor misconduct to be applied. Serious sanctions such as disqualification can result from criminal offences such as the failure to declare interests, but not from unacceptable personal behaviour of councillors, which is different but which can be equally as corrosive.

Consultation Questions

8. The CSPL's call for evidence is attached at **Appendix 2**. It asks about the following issues:
 - (a) Whether the existing set-up ensures high standards of conduct and if not why not;
 - (b) What significant gaps exist in the standards regime;
 - (c) Whether local codes of conduct are clear and cover appropriate behaviours;
 - (d) Whether the requirement for the local code of conduct to be consistent with the Nolan Principles, and to include appropriate provision for registering and declaring interests, is appropriate;
 - (e) Whether misconduct allegations are investigated fairly and with due process (and asks about the roles of the Independent Person and the Monitoring Officer)
 - (f) Whether existing sanctions are sufficient to enforce compliance or what additional sanctions should be available;

- (g) Whether the arrangements for declaring and managing conflicts of interest are satisfactory;
- (h) Whether whistleblowing arrangements are satisfactory;
- (i) What steps could be taken by either local authorities or central government to improve standards; and
- (j) The problem of intimidation of local councillors and any measures that could be put in place to address it.

Commenting on the questions

9. Members are asked to comment on the consultation questions. The CSPL's identification of stakeholders recognises that individual councillors or Standards Committees may wish to give a separate response from that of their local authority corporately. The Committee are therefore asked to decide whether they wish to respond separately, as a Standards Committee, or if they would prefer to feed into the Council's corporate response (which under constitutional arrangements is delegated to Chief Officers – Table 1, paragraph 4 (c) (j)).
10. It is considered appropriate for the Standards Committee to respond in its own right, as this would reflect the governance regime within the Council and the importance of the issues raised.

Recommendation

11. It is recommended that
- 11.1 Members of the Committee resolve to issue a collective response to the consultation;
 - 11.2 The response to be formulated by the Monitoring Officer following discussion by the Committee.

Contact: Laura Renaudon, Governance Solicitor Tel: 03000 269886

Appendix 1: Implications

Finance - None

Staffing – the report itself carries no staffing implications; however, any changes to the standards regime resulting from the current consultation may require additional resources in future.

Risk – the report itself carries no risk implications; however any changes to the standards regime resulting from the current consultation may have risk implications.

Equality and Diversity / Public Sector Equality Duty - None

Accommodation - None

Crime and Disorder - None

Human Rights – the report itself carries no Human Rights implications; however, any changes to the standards regime resulting from the current consultation may do so.

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. The current consultation exercise requires the Committee to consider the efficacy of that statutory duty. Any changes to the standards regime resulting from the current consultation may require legislative change.

Appendix 2: CSPL Call for Evidence

Review of Local Government Ethical Standards: Stakeholder Consultation

The Committee on Standards in Public Life is undertaking a review of local government ethical standards.

Robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government.

As part of this review, the Committee is holding a public stakeholder consultation. The consultation is open from 12:00 on Monday 29 January 2018 and closes at 17:00 on Friday 18 May 2018.

Terms of reference

The terms of reference for the review are to:

1. Examine the structures, processes and practices in local government in England for:
 - a. Maintaining codes of conduct for local councillors;
 - b. Investigating alleged breaches fairly and with due process;
 - c. Enforcing codes and imposing sanctions for misconduct;
 - d. Declaring interests and managing conflicts of interest; and
 - e. Whistleblowing.
2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
3. Make any recommendations for how they can be improved; and
4. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

The review will consider all levels of local government in England, including town and parish councils, principal authorities, combined authorities (including Metro Mayors) and the Greater London Authority (including the Mayor of London).

Local government ethical standards are a devolved issue. The Committee's remit does not enable it to consider ethical standards issues in devolved nations in the UK except with the agreement of the relevant devolved administrations. However, we welcome any evidence relating to local government ethical standards in the devolved nations of the UK, particularly examples of best practice, for comparative purposes.

Submissions will be published online alongside our final report, with any contact information (for example, email addresses) removed.

Consultation questions

The Committee invites responses to the following consultation questions.

Please note that not all questions will be relevant to all respondents and that submissions do not need to respond to every question. Respondents may wish to give evidence about only one local authority, several local authorities, or local government in England as a whole.

Please do let us know whether your evidence is specific to one particular authority or is a more general comment on local government in England.

Whilst we understand submissions may be grounded in personal experience, please note that the review is not an opportunity to have specific grievances considered.

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.
- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood? Do the codes cover an appropriate range of behaviours? What examples of good practice, including induction processes, exist?
- d. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

Investigations and decisions on allegations

- e. Are allegations of councillor misconduct investigated and decided fairly and with due process?
 - i. What processes do local authorities have in place for investigating and deciding upon allegations? Do these processes meet requirements for due process? Should any additional safeguards be put in place to ensure due process?
 - ii. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process? Should this requirement be strengthened? If so, how?
 - iii. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so? How could Monitoring Officers be protected from this risk?

Sanctions

- f. Are existing sanctions for councillor misconduct sufficient?
 - i. What sanctions do local authorities use when councillors are found to have breached the code of conduct? Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

- ii. Should local authorities be given the ability to use additional sanctions? If so, what should these be?

Declaring interests and conflicts of interest

- g. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.
 - i. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?
 - ii. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

Whistleblowing

- h. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

Improving standards

- i. What steps could *local authorities* take to improve local government ethical standards?
- j. What steps could *central government* take to improve local government ethical standards?

Intimidation of local councillors

- k. What is the nature, scale, and extent of intimidation towards local councillors?
 - i. What measures could be put in place to prevent and address this intimidation?

Who can respond?

Anyone with an interest may make a submission. The Committee welcomes submissions from members of the public.

However, the consultation is aimed particularly at the following stakeholders, both individually and corporately:

- Local authorities and standards committees;
- Local authority members (for example, Parish Councillors, District Councillors);
- Local authority officials (for example, Monitoring Officers);
- Think tanks with an interest or expertise in local government;
- Academics with interest or expertise in local government; and
- Representative bodies or groups related to local government.

How to make a submission

Submissions can be sent either in electronic format or in hard copy.

Submissions must:

- State clearly who the submission is from, i.e. whether from yourself or sent on behalf of an organisation;
- Include a brief introduction about yourself/your organisation and your reason for submitting evidence;
- Be in doc, docx, rtf, txt, ooxml or odt format, not PDF;
- Be concise – we recommend no more than 2,000 words in length; and
- Contain a contact email address if you are submitting by email.

Submissions should:

- Have numbered paragraphs; and
- Comprise a single document. If there are any annexes or appendices, these should be included in the same document.

It would be helpful if your submission included any factual information you have to offer from which the Committee might be able to draw conclusions, and any recommendations for action which you would like the Committee to consider.

The Committee may choose not to accept a submission as evidence, or not to publish a submission even if it is accepted as evidence. This may occur where a submission is very long or contains material which is inappropriate.

Submissions sent to the Committee after the deadline of 17:00 on Friday 18 May 2018 may not be considered.

Submissions can be sent:

1. Via email to: public@public-standards.gov.uk
2. Via post to:
Review of Local Government Ethical Standards
Committee on Standards in Public Life
GC:07
1 Horse Guards Road
London
SW1A 2HQ

If you have any questions, please contact the Committee's Secretariat by email (public@public-standards.gov.uk) or phone (0207 271 2948).