

**Committee: Standards Committee**

**Agenda Item**

**Date: 20 March 2017**

**3**

**Title: Review of Standards Code of Conduct and Procedure**

**Author: Interim Head of Legal Services**

Item for decision:  
yes

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## **Summary**

1. The Standards Committee met on 3 February to consider proposals for revising the Council's Code of Conduct for Members and its Procedure for dealing with allegations that the Code has been breached. This followed the work of the two teams of the Task Group, one dealing with the Code and one with the Procedure.
2. A meeting on 16 December of the full Task Group agreed its final proposals, which were considered on 3 February. The covering report to that meeting, but not the appendices are annexed to this report. (Appendix A.)
3. Most aspects of the revised Code and Procedure found favour with the meeting on 3 February but two aspects proved contentious. These could not be resolved at the meeting and are summarised in this report.
4. The meeting on 3 February approved some drafting changes to the Code and Procedures. These are included in the revised versions out in in Appendices B and C to this report.

## **Recommendations**

5. That the Standards Committee decides how it wishes to approach:
  - a. The relationship between the Nolan Principles and the requirements of the Code; and
  - b. The inclusion of rights of appeal. recommends the revised Code and Procedure annexed to this report to Council for adoption.
6. That the Standards Committee recommends a revised Code and Procedure for adoption by the Council on 4 April 2017.

## **Financial Implications**

7. None.

## **Background Papers**

8. Report to Standards Task Force meeting on 16 December 2016. The current Code and procedure are annexed to this report.

9. The Annexes to this report are:

- A. Report to Standards Meeting on 3 February (Pages 5-8)
- B. Current Code of Conduct. (Pages 9-16)
- C. Current Standards Procedure. (Pages 17-21)
- D. Draft Code of Conduct updated following meeting on 3 February. (Pages 22-30)
- E. Draft Standards Procedure updated following meeting on 3 February. (Pages 31-40)
- F. Solihull Metropolitan Borough Council Code of Conduct. (Pages 41-43)

**Impact**

10.

Communication/Consultation	None yet but this needs to be considered by the Standards Committee.
Community Safety	None
Equalities	The Code and Procedure take account of equalities issues. The main issue is whether the Procedure accommodates those who, by reason of disability or otherwise, would find it more difficult to exercise rights under the Procedure.
Health and Safety	None
Human Rights/Legal Implications	The proposed Code and Procedure are compliant with the Council's legal obligations under the Localism Act 2011 and the Human Rights Act, 2000.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

**Situation**

11. The draft Code of Conduct sets out the Nolan principles for good governance in the first paragraph. The Localism Act 2011 requires the Council to adopt a code of conduct which, when viewed as a whole, is consistent with the following principles—

- (a) selflessness;
- (b) integrity;
- (c) objectivity;

- (d) accountability;
- (e) openness;
- (f) honesty;
- (g) leadership.

12. The strong point of contention at the meeting on 3 February was whether breach of these principles should be a direct breach of the Code. On the one hand, the principles are of high importance and should inform the conduct of those in public life. It was argued that failure to incorporate these directly would weaken the Code and would not allow action to be taken in respect of matters that should fall within the Code. On the other hand, the principles are set out in general terms and are not rules. Their direct incorporation could lead to uncertainty for members and an increase in complaints that were not, in substance, about the ethical behaviour of councillors. However, the principles are accompanied by explanatory text in the draft Code.

13. Cllr Artus has supported the inclusion of a provision in the Code as a new paragraph 2, stating that

*"You must comply with the principles set out in the first paragraph of this Code."*

14. Mr Pearl has proposed an alternative paragraph 2:

*"Section 27 of the Localism Act 2011 places a duty on local authorities to ensure that its members maintain high standards of conduct as set out in the seven principles of public life (above in paragraph 1) and to require such authorities to adopt a Code of Conduct for their members."*

*"Section 28 requires a relevant authority to adopt a Code whose contents must be consistent with the seven principles of public life"*

*"This Code and the Code of Conduct Procedure are both consistent with the seven principles, and the authority has adopted this Code to ensure compliance with the conduct that is expected of members when they are acting in that capacity."*

15. Annex F to this report sets out the Code of Conduct adopted by Solihull Council. This is an example of a Code that incorporates the principles more directly, subject to qualifying text that is more specific than the text in paragraph 1 of the draft Code.

16. There was discussion at the last meeting about rights of appeal. On the one hand, rights of appeal are, in principle, desirable and, whilst judicial review and review by the Ombudsman may be remedies for procedural unfairness and illegality, they do not provide an appeal on the merits. On the other hand, a complaint will only be considered by a hearing panel if an external investigator has concluded that a member is in breach of the Code of Conduct and this view is supported by the Monitoring Officer after consulting an Independent Person. In this respect it differs from, say, a Magistrates' Court prosecution, for which the prosecutor's test is whether prosecution is in the public interest and whether there is a reasonable

prospect of conviction. There are also practical difficulties about how a right of appeal might be given. There is no scope for an external appeal on the merits and there is no reason to believe that an internal appeal would result in a more authoritative outcome than the decision made by the hearing panel.

## Risk Analysis

17.

Risk	Likelihood	Impact	Mitigating actions
<p>That members act in a manner not compatible with the principles of conduct set out in s.28(1) Localism Act 2011</p> <p>That the Council suffers reputational damage and that confidence in elected members and local government is undermined.</p>	2.	3.	<p>The adoption of a Code of Conduct and Procedure that are clearly drafted and that are proportionate and fair.</p> <p>Ensuring that members understand and accept their obligations under the Code and are able to seek advice about its application.</p>

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Annex A

**Committee:** Standards Committee

**Agenda Item**

**Date:** 3 February 2017

**4**

**Title:** Review of Standards Code of Conduct and Procedure

**Author:** Interim Head of Legal Services

Item for decision:  
yes

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**Summary**

18. The Standards Committee appointed a Standards Task Group to review the Council's Code of Conduct for Members and its Procedure for dealing with allegations that the Code has been breached. The Task Group has been working in two teams, one dealing with the Code and one with the Procedure.
19. A meeting on 16 December of the full Task Group agreed its final proposals. The revised Code and Procedure developed by the Task Group are set out in Appendices C and D to this report.
20. The Procedure has a wider application, in that it would also apply to complaints against parish councillors. The Council's Code has been widely adopted by parish councils, which may wish to bring their codes in line with changes made by Uttlesford DC.

**Recommendations**

21. That the Standards Committee recommends the revised Code and Procedure annexed to this report to Council for adoption.
22. That the Standards Committee considers the timing and form of the recommendation to Council. (See paragraph 13.)

**Financial Implications**

23. None.

**Background Papers**

24. Report to Standards Task Force meeting on 16 December 2016. The current Code and procedure are annexed to this report.

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**Impact**

- 25.

▪ Communication/Consultation	▪ None yet but this needs to be considered by the Standards
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	Committee.
▪ Community Safety	▪ None
▪ Equalities	▪ The Code and Procedure take account of equalities issues. The main issue is whether the Procedure accommodates those who, by reason of disability or otherwise, would find it more difficult to exercise rights under the Procedure.
▪ Health and Safety	▪ None
▪ Human Rights/Legal Implications	▪ The proposed Code and Procedure are compliant with the Council's legal obligations under the Localism Act 2011 and the Human Rights Act, 2000.
▪ Sustainability	▪ None.
▪ Ward-specific impacts	▪ None.
▪ Workforce/Workplace	▪ None.

▪  
▪ **Situation**

26. The Task Force was set up to review the current Code of Conduct and Procedure. Its membership is: Cllrs Artus, Asker, Dean, Derek Jones and Knight, and the Council's three Independent Persons for Standards – Georgina Butcher, David Pearl and Catherine Wellingbrook-Dodswell. It was constituted to propose a revised Code and Procedure that:

- Meet the Council's legal obligations under the Localism Act, 2011;
- Are fair and proportionate; and
- Are clearly drafted and easily understood.

The current Code and Procedure are attached to this report as Appendices A and B respectively. The Task Force's proposed Code and Procedure are attached as Appendices C and D.

27. Whilst many of the differences between the two sets of documents are intended to bring clarity, rather than to make substantive changes, there are some important differences between them and members should read them carefully.

28. In respect of the Code, differences include:

- The provisions for disclosure of “disclosable pecuniary interests” is set in law and no substantive changes are proposed. However, the current code distinguishes between “other pecuniary” and non-pecuniary” interests. The proposed revision groups these together as “personal interests”.
- The current code applies a “prejudicial interest” test to “other pecuniary” interests but not to “non-pecuniary” interests. The proposed revision applies a prejudicial interest test to personal interests, whether they are financial in nature or not. If a member has an interest that is prejudicial in nature (i.e. it is so significant that it is likely to prejudice their judgment of the public interest) then they should not participate, whether the interest is financial or not (in the author’s view).
- The current code contains a section dealing with “Conflicts of interest for members of the Executive”. Its deletion is proposed to simplify the code. Its scope is unclear, the inclusion of separate provisions for members of the Executive is unusual and it is difficult to see what this adds to the other provisions of the Code.
- The proposed Code increases the threshold for declaring receipt of hospitality from £25 to £50. The £25 threshold has been in place for a number of years and Task Force members felt that it should be updated.

29. In respect of the Procedure, differences include:

- The proposed Procedure clarifies the role of the Monitoring Officer and seeks to avoid the Monitoring Officer acting as investigating officer and adviser to the Standards Hearing Panel.
- Under the present Procedure, a complaint has to be referred to a Hearing Panel where an investigation finds that a member has breached the Code. The proposed Procedure allows some flexibility in this. A formal hearing may not be necessary, for instance, if the subject member accepts the findings of an investigation and is prepared to offer an apology. In these circumstances, the outcome would be reported to the Standards Committee for information.
- Under the present Procedure, where the Investigating Officer finds that the subject member has not breached the Code, any member of the Standards Committee can “call in” the complaint for a hearing by a Panel. The proposed Procedure deletes this call-in where the Monitoring Officer and Independent Person accept a finding that a member is not in breach of the Code.
- The proposed Procedure is intended to deal more clearly with the process to be followed at hearings.

30. Changes to the Code and Procedure need to be approved by full Council. The next Council meeting is on 23 February, followed by the meeting on 4 April. It would be prudent to consult and inform all members about what is proposed before the Council makes a decision to address concerns and to provide

clarification. Council will then have a clear picture of what is before it when it meets. The short gap between this Standards Committee and full Council on 23 February does not allow a lot of time to do this. It might therefore be better to take this to Council on 4 April. An alternative approach put forward by the Task Force is to report this to Council on 23 February but to ask Council to defer making a decision on adoption until its meeting on 4 April. The views of the Standards Committee are sought, along with ideas on the best ways to engage other councillors in this.

31. There is also a need to consider parish councils, as the Uttlesford Code of Conduct has been widely adopted and UDC's Procedure applies when considering complaints against parish councillors. Parish councils could be informed of proposals to revise the Code and Procedure and invited to comment.
32. The Task Force is keen that the new procedures should be illustrated by a flowchart of the Procedure from Complaint to calling a Hearing and by a diagram showing a 'standardised' room setup for a hearing. More work is needed on these but they can be developed in consultation between members and officers. They do not need formal member approval, as they are illustrative.

- **Risk Analysis**

- 33.

Risk	Likelihood	Impact	Mitigating actions
<p>That members act in a manner not compatible with the principles of conduct set out in s.28(1) Localism Act 2011</p> <p>That the Council suffers reputational damage and that confidence in elected members and local government is undermined.</p>	2.	3.	<p>The adoption of a Code of Conduct and Procedure that are clearly drafted and that are proportionate and fair.</p> <p>Ensuring that members understand and accept their obligations under the Code and are able to seek advice about its application.</p>

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

## **THE COUNCILLORS' CODE OF CONDUCT Part 1**

### **General Provisions**

#### **1. Introduction and Interpretation**

This is the code of the conduct expected of members of Uttlesford District Council adopted under s.27 (2) Localism Act 2011. Uttlesford District Council considers that this code viewed as a whole is consistent with the principles contained in s.28 (1) of that Act which are set out in the Appendix to this Code.

This Code applies to you as a member of your authority. It is your responsibility to comply with the provisions of this Code.

In this Code:

“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

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

“meeting” means any meeting of your authority or of the cabinet or of any committee or sub-committee of your authority or its cabinet or of any joint committees, joint sub-committees, area forums, task groups or working groups.

“relevant authority” means the Council of which you are a member  
“relevant period” means the period of 12 months ending with the day on which you give notification of a disclosable pecuniary interest to the Monitoring Officer

“relevant person” means you or your spouse or your civil partner or a person you are living with as if they were your spouse or civil partner

“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

#### **2. Scope**

You must comply with this Code whenever you conduct the business of your authority (which includes the business of the office to which you are elected or appointed) or act, claim to act or give the impression you are acting as a representative of your authority.

#### **3. General Obligations**

3.1. You must treat others with respect.

3.2. You must observe any protocols or codes of practice adopted by your authority.

### 3.3. You must not:

- 3.3.1. do anything which may cause your authority to breach the Equality Act 2010.
  - 3.3.2. bully any person;
  - 3.3.3. intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct;
  - 3.3.4. do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
  - 3.3.5. disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
    - 3.3.5.1. you have the consent of a person authorised to give it;
    - 3.3.5.2. you are required by law to do so;
    - 3.3.5.3. 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
    - 3.3.5.4. the disclosure is reasonable and in the public interest; and is made in good faith and in compliance with the reasonable requirements of the authority;
  - 3.3.6. prevent another person from gaining access to information to which that person is entitled by law.
  - 3.3.7. conduct yourself in a manner which could be reasonably regarded as bringing your authority or your office into disrepute
  - 3.3.8. use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage
- 3.4. You must, when using or authorising the use by others of the resources of your authority:
- 3.4.1. act in accordance with your authority's reasonable requirements;
  - 3.4.2. ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - 3.4.3. have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

## **Part 2**

### **Members' Interests**

#### 4. Disclosable Pecuniary Interests

- 4.1. You have a disclosable pecuniary interest in any business of your authority if it is of a description set out in 4.2 below and is an interest of a relevant person and in the case of a relevant person other than yourself you are aware that that other person has the interest

4.2. “Disclosable pecuniary interests” are defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and are:-

Employment, office, trade, profession vocation	Any employment, office, trade, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any 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 relevant authority – 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 relevant authority
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer
Corporate tenancies	Any tenancy where to your knowledge – a) the landlord is the relevant authority; 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 relevant authority; and b) either - (i) the total nominal value of the securities

- exceeds £25000 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

## 5. Other Pecuniary Interests

You have a pecuniary interest in any business of your authority where either:-

- 5.1 it relates to or is likely to affect any person or body who employs or has appointed you or
- 5.2 a decision in relation to that business might reasonably be regarded as affecting your financial position or the financial position of a related person to a greater extent than the majority of (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision or (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

## 6. Non-Pecuniary Interests

You have a non-pecuniary interest in any business of your authority where either:-

- 6.1. it relates to or is likely to affect:-
  - 6.1.1. any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority
  - 6.1.2. any body:-
    - 6.1.2.1. exercising functions of a public nature;
    - 6.1.2.2. directed towards charitable purposes; or
    - 6.1.2.3. 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
  - 6.1.3. the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25 or
- 6.2. a decision in relation to that business might reasonably be regarded as affecting your wellbeing or the wellbeing of a related person to a greater extent than the majority of:-
  - 6.2.1. (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

6.2.2. (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

## **7. "Related Persons"**

For the purposes of paragraphs 5.2 and 6.2 "related person" means:-

- 7.1. a member of your family or any person with whom you have a close association
- 7.2. any person who employs or has appointed such persons, any firm in which they are a partner or any company of which they are directors
- 7.3. any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000.00 or one percent of the total issued share capital (whichever is the lower)
- 7.4. any body of which such persons are a member or in a position of general control or management and to which you are appointed or nominated by your authority
- 7.5. any body of a type described in paragraph 6.1.2 of which such persons are members or in a position of general control or management

## **8. Disclosure of Interests**

- 8.1. Subject to paragraph 8.2 where you or a relevant person have a disclosable pecuniary interest, any other pecuniary interest or a non-pecuniary interest in any business of your authority and you are present at a meeting of your authority at which the business is considered you must disclose to that meeting the existence and the nature of the interest if you are aware or ought reasonably to be aware of it.
- 8.2. Where you or a relevant person have an interest in any business of your authority which would be disclosable by virtue of paragraph 8.1 but by virtue of paragraph 12 (sensitive interests) details of the interest are not registered in your authority's published register of members' interests you must disclose to the meeting the fact that you have an interest and that the interest is a disclosable pecuniary interest (if that is the case) but need not disclose the nature of the interest to the meeting.
- 8.3. Where you or a relevant person have an interest in any business of your authority which would be disclosable by virtue of paragraph 8.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest and for the purposes of this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under s.22 Local Government Act 2000.

## **9. Effect of interests upon participation in meetings**

- 9.1. If you have a disclosable pecuniary interest in any business of your authority and are present at a meeting of the authority at which such business is to be considered or is being considered you must:-
  - 9.1.1. disclose the existence and nature of the interest in accordance with paragraph 8.1 (but subject to paragraph 8.2)

- 9.1.2. withdraw from the room or chamber where the meeting considering the business is being held unless you have obtained a dispensation from your authority
- 9.1.3. not participate or participate further in any discussion of the matter at the meeting
- 9.1.4. not participate in any vote or further vote taken on the matter at the meeting
- 9.2. if a function of your authority may be discharged by a member acting alone and you have a disclosable pecuniary interest in any matter to be dealt with or being dealt with in the course of discharging that function you 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 yourself) unless you have obtained a dispensation from your authority permitting you to do so
- 9.3. If you have a pecuniary interest other than a disclosable pecuniary interest in any business of your authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and you are present at a meeting of the authority at which such business is to be considered or is being considered you must:-
  - 9.3.1. disclose the existence and nature of the interest in accordance with paragraph 8.1 (but subject to paragraph 8.2)
  - 9.3.2. unless you have obtained a dispensation from your authority withdraw from the room or chamber where the meeting considering the business is being held in a case where paragraph 9.4 applies immediately after making your representations or in any other case when the business is under consideration
- 9.4. Where you have a pecuniary interest other than a disclosable pecuniary interest in any business of your authority unless you hold a dispensation you may attend a meeting for the purpose of making representations only

## **Part 3**

### **Registration of Members' Interests**

#### **10. Disclosable Pecuniary Interests**

##### 10.1. Under the Localism Act 2011:-

- 10.1.1 you are required to notify your authority's monitoring officer of any disclosable pecuniary interests as referred to in paragraph 4 which you have at the time notification is given before the end of 28 days beginning with the day on which you become a member or co-opted member of the authority.
- 10.1.2 you are also to notify your authority's monitoring officer of any disclosable pecuniary interest as referred to in paragraph 4 which is not entered in your authority's register of interests and is not subject of a pending notification before the end of 28 days beginning from the date of disclosure of that interest at a meeting of your authority

- 10.1.3 if a function of your authority may be discharged by a member acting alone and you are exercising such a function you are also required to notify your authority's monitoring officer of any disclosable pecuniary interest as referred to in paragraph 4 which is not entered in your authority's register of interests and is not subject of a pending notification before the end of 28 days beginning from the date you become aware that you have a disclosable pecuniary interest relating to the matter being to be dealt with or being dealt with in the course of discharging that function
- 10.2. Notifications of disclosable pecuniary interests to the monitoring officer under paragraph 10.1 shall be in writing
- 10.3. Notwithstanding the provisions of the Localism Act 2011:-
- 10.3.1 before the end of 28 days beginning from the date upon which this Code takes effect or within 28 days of your election or appointment to office (whichever is later) you must register in your authority's Register of Members' Interests maintained under s.29 Localism Act 2011 your disclosable pecuniary interests as referred to in paragraph 4
- 10.3.2 you must within 28 days of becoming aware of any new disclosable pecuniary interest or change to any disclosable pecuniary interest registered under paragraph 10.1 or paragraph 10.2 register details of that new disclosable pecuniary interest or change by providing written notification to your authority's monitoring officer

## **11. Other Pecuniary Interests and Non-Pecuniary Interests**

- 11.1. Before the end of 28 days beginning from the date upon which this Code takes effect or within 28 days of your election or appointment to office (whichever is later) you must register in your authority's Register of Members' Interests maintained under s.29 Localism Act 2011 your pecuniary interests of a description referred to in paragraph 5.1 and your non-pecuniary interests of a description referred to in paragraph 6.1 by providing written notification to your authority's monitoring officer
- 11.2. You must within 28 days of becoming aware of any new interest registerable under paragraph 11.1 or change to any interest registered under that paragraph register details of that new interest or change by providing written notification to your authority's monitoring officer

## **12. Sensitive interests**

Where you have an interest registerable under paragraphs 10.1, 10.2, 10.4 or 11.1 and the nature of the interest is such that you and your authority's monitoring officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the authority's register then copies of the register available for inspection and any published version of the register shall not include details of the interest but may state that you have an interest details of which are withheld under s.32(2) Localism Act 2011 and/or this paragraph

## **Part 4**

### **13. Conflicts of interest for members of the Executive**

- 13.1 This part applies only to members of the Council's executive (cabinet)
- 13.2 For the purpose of this part a "conflict of interest" includes (but is not limited to) disclosable pecuniary interests, other pecuniary interests and non-pecuniary interests
- 13.3 Where a member of the executive is present at a meeting of the council or a committee or sub-committee of the council or at a meeting of the executive or a committee or sub-committee of the executive and the member has a disclosable pecuniary interest, another pecuniary interest or a non-pecuniary interest the provisions of paragraphs 8 and 9 of this Code shall apply.
- 13.4 Where a member of the executive is present at a meeting of the executive or at a meeting of a committee or sub-committee of the executive and the member has a conflict of interests which is not a disclosable pecuniary interest, another pecuniary interest or a non-pecuniary interest the member concerned shall declare the existence and nature of that interest to the meeting at the commencement of the meeting or when the item to which the interest relates comes under consideration.
- 13.5 The Council's head of paid service or those authorised by him may grant a dispensation to a member of the executive allowing him to speak and/or vote on issues where a member has such a conflict of interests as is referred to in paragraph 13.4 of this Code
- 13.6 Where a member of the executive has any conflict of interest and is not a decision maker with regard to an executive function but is consulted by another member of the executive or by an officer who is to make an executive decision then the member with such a conflict of interest shall declare the existence and nature of the interest and shall not take part in the consultation unless he has a dispensation from :-
- 13.6.1 the authority under the Localism Act 2011 in the case of a conflict of interests with is either a disclosable pecuniary interest or another pecuniary interest or
- 13.6.2 The head of paid service or those authorised by him in the case of any other conflict of interest.

### **APPENDIX TO CODE OF CONDUCT**

#### **THE PRINCIPLES CONTAINED IN s.28 (1) LOCALISM ACT 2011**

1. Selflessness
2. Integrity
3. Objectivity
4. Accountability
5. Openness
6. Honesty
7. Leadership

## **Annex C: Current Procedure**

### **PROCEDURE FOR DEALING WITH COMPLAINTS TO THE STANDARDS COMMITTEE**

1. The Standards Committee can only investigate complaints of a breach of the Code of Conduct by individual members. It cannot investigate complaints against the whole council, the cabinet, committees or council officers.
2. Complaints must be in writing. If a complainant is unable to make a complaint in writing personally council officers will assist. The council will supply a complaints form to assist complainants in making their complaint but its use is not compulsory and a letter or e-mail complaint will suffice.
3. Upon receipt of a complaint an acknowledgement will be sent to the complainant. The subject member will be informed that a complaint has been made and be told the substance of the complaint unless in the opinion of the Monitoring Officer to do so could prejudice a fair investigation.
4. The complainant will be offered the opportunity to advance reasons why his or her name should not be disclosed to the subject member and will be informed that if no response is received within 10 working days the subject member will be informed of the complainant's identity. In the event that the complainant does advance reasons as to why his or her name should not be revealed to the subject member at that time the Monitoring Officer will consult with an independent person. In the event that following such consultation the Monitoring Officer decides that the complainant's identity should be revealed then the complainant will be notified of that decision and will be given a period of 5 working days to decide whether to proceed with the complaint. If the complaint is not withdrawn the subject member will be informed of the complainant's name.
5. The Monitoring Officer or his or her deputy will consult with an independent person with regard to all complaints received. Such consultation may be at a meeting, by telephone or in writing. Following such consultation the Monitoring Officer or his or her deputy will take one of the following decisions:-
  - a. To take no action
  - b. To take action other than an investigation (e.g. to ascertain whether the subject member may be willing to apologise, undergo training or undergo mediation)
  - c. To require an investigation

Whilst the Monitoring Officer is solely responsible for taking the decision, where the independent person has expressed a view that the allegation should be

investigated the Monitoring Officer may refer the matter to the Standards Committee if he or she is of a view that an investigation is unnecessary and the Standards Committee will then determine how the allegation should be dealt with.

6. Not all complaints will be passed for action. The subject of the complaint must have been a member of the council at the time the facts alleged occurred. The Code of Conduct must also apply to the acts complained of. Members are only bound by the Code of Conduct when they are conducting the business of the council (including acting as a councillor) or when they are acting, claiming to act or give the impression that they are acting as a representative of the council. Conduct by members in their private capacity does not engage the Code of Conduct. The complaint, if proved, must also be capable of amounting to a breach of the Code of Conduct. No findings of fact are made at this stage. The decision as to whether to investigate a complaint is made on the assumption that the facts as alleged are true. Findings of fact are only made after an investigation and report to a sub-committee.
7. Even when the aforementioned conditions are satisfied this does not necessarily mean that a case will be passed for action. There is a balance to be struck between the desirability of ensuring that issues regarding the Code of Conduct are dealt with appropriately against the costs involved of carrying out an investigation and hearing. The Standards Committee are of the view that there is little public benefit in investigating allegations which are not sufficiently serious, politically motivated, malicious or vexatious. In reaching a decision whether to refer a case for action the following criteria will be applied:-
  - a. Complaints which are not supported by sufficient information are unlikely to be referred.
  - b. If the complaint has been or should be investigated or dealt with elsewhere further action is unlikely to be justified.
  - c. Stale complaints are unlikely to be referred. The Standards Committee expects that complainants would normally make their complaint within six months of the relevant facts coming to light.
  - d. Regard will be had to the very high degree of protection given to freedom of expression by Article 10 of the European Convention on Human Rights
  - e. Where a member who is the subject of a complaint has acknowledged the breach of the Code and made a sincere apology the complaint is unlikely to be referred unless it is considered that such apology would be insufficient.
8. Where a case is accepted for investigation the Monitoring Officer will arrange for an investigation to be carried out.
9. At the conclusion of the investigation the investigating officer may prepare a draft report which he sends to the complainant and the subject member for comment. The investigating officer may or may not amend the report in the light of representations received. Alternatively the investigating officer may in his or her sole discretion proceed to a final report.

10. In the final report the investigating officer will set the facts which have been agreed and any conflicting evidence he has received from the complainant, the subject member and any witnesses. The investigating officer will make any findings of fact and state whether in his or her opinion the facts as found constitute a breach of the Code of Conduct.
11. Where there has been a finding on no breach of the Code of Conduct the report shall be circulated to all members of the Standards Committee. Any member shall be entitled to make a request to the Monitoring Officer that a meeting of the Standards Committee be convened for the purpose of a hearing to consider the report. If no member of the Standards Committee requests a hearing within 10 working days of the report being circulated the findings of the investigating officer become final and the decision stands.
12. In the event that a member of the Standards Committee does request a hearing the hearing the public and press shall be excluded from the hearing under s.100I and paragraphs 1 and 2 Schedule 12A Local Government Act 1972 unless the subject member requests otherwise it being generally considered in the public interest to apply the exemption as the member's right to privacy until such time as the findings of the investigating officer have been reversed outweigh the public interest in making the information available.
13. Where the investigating officer finds that there has been a breach of the Code of Conduct or where a member of the Standards Committee has requested a hearing under paragraph 12 above there will be a hearing to consider the complaint and the investigating officer's report. Unless paragraph 12 above applies the hearing will normally be held in public.
14. The procedure for a hearing will be as follows:
  - a. The investigating officer will usually have interviewed all relevant witnesses and a summary of their evidence will appear in the report
  - b. Live evidence will not usually be called by the Investigating Officer at the hearing
  - c. The subject member may apply for permission to call live rebuttal evidence. The Monitoring Officer (or his or her deputy if the Monitoring Officer carried out the investigation) shall determine with the Chairman of the Standards Committee (or another voting member of the Standards Committee in the absence of the Chairman) whether live witness evidence will be permitted.

- d. Any request for permission to call live evidence shall be in writing, state the name of the witness concerned and give a summary of the evidence the witness is likely to give.
  - e. Where a witness has given evidence which is referred to in the investigating officer's report and the subject member wishes that person to be subject to cross examination at the hearing the subject member may request the investigating officer to endeavour to arrange for that witness's attendance. The subject member should however be aware that witnesses cannot be required to attend Standards Committee hearings. Further the investigating officer may decide not to request the witness to attend. In either event the evidence is admissible but when evidence is in dispute and is no subject to cross examination the Committee will need to determine what weight to give to it.
  - f. The subject member will have the opportunity of attending and addressing the hearing and calling evidence if having first been given permission to do so.
15. Having received evidence and hearing submissions the Committee will announce its findings of fact, its findings as to whether there has been a breach of the Code of Conduct and what sanction (if any) should apply.
16. The range of sanctions available is:-
- a. To find that no further action is required.
  - b. To censure the member (this is the only sanction available if the member is no longer a councillor at the date of the hearing)
  - c. To recommend that a member's access to council premises or the use of council resources be restricted providing that such restrictions do not prevent the member performing his functions as a councillor
  - d. To recommend that the member makes a written apology in a form acceptable to the Standards Committee.
  - e. To recommend that the member undertakes specified training.
  - f. To recommend that the member undertakes specified conciliation or mediation.

- g. To recommend that the member be removed from a committee or committees of the Council (this can only be done by Full Council and if the member is a member of a recognised political group on the Council with the consent of his or her group leader)
  - h. To recommend that the member be removed from an outside body or bodies to which the member has been appointed by the Council (this can only be done by Full Council and if the member is a member of a recognised political group on the Council with the consent of his or her group leader)
  - i. To recommend that the member be removed from the Cabinet (this can only be done by the Leader of the Council)
  - j. To require the decision of the Standards Committee to be published.
17. A finding that there has been no breach of the Code of Conduct (whether by the investigating officer or by the Standards Committee) shall only be published if the subject member requests that this should be done.

## **Annex D: Draft revised code of conduct. (Updated**

### **THE COUNCILLORS' CODE OF CONDUCT Part 1**

### **THE COUNCILLORS' CODE OF CONDUCT Part 1**

#### **Introduction and Interpretation**

1. This is the Code of Conduct adopted by Uttlesford District Council. It sets out standards of conduct expected of elected and co-opted members of the Council. It is also intended to promote the following principles:

- *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 friends.
- *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 doing so.
- *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 when it occurs.

#### **What does the Code cover?**

2. The Code covers three main areas:

- It sets out some general obligations regarding the behaviour of elected and co-opted members.
- It explains how members should behave if they have a personal interest in an item of Council business.
- It sets out rules requiring registration of interests for public inspection.

## When does the Code apply?

3. You must comply with this Code whenever you are carrying out your Council duties for which you were elected or appointed. The Code also applies when you act, claim to act or give the impression you are acting as a representative of the Council. It does not apply to your conduct in your private life. However, conduct that falls short of the high standards expected of those in public life can damage the reputation of the Council and its members, even if it is not within the scope of the Code. The Code applies to elected councillors and it also applies to co-opted members.

## General obligations regarding behaviour

4. You must comply with the principles set out in the first paragraph of this Code.

Or

*"Section 27 of the Localism Act 2011 places a duty on local authorities to ensure that its members maintain high standards of conduct as set out in the seven principles of public life (above in paragraph 1) and to require such authorities to adopt a Code of Conduct for their members.*

*"Section 28 requires a relevant authority to adopt a Code whose contents must be consistent with the seven principles of public life*

*"This Code and the Code of Conduct Procedure are both consistent with the seven principles, and the authority has adopted this Code to ensure compliance with the conduct that is expected of members when they are acting in that capacity."*

5. You must treat others with respect.
6. You must observe any protocols or codes of practice adopted by your authority.
7. You must not:
  - a. Do anything which may cause the Council to breach the Equality Act 2010 or otherwise act unlawfully.
  - b. Bully any person;
  - c. Intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a

member (including yourself) has failed to comply with his or her authority's code of conduct;

- d. Do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
  - e. Disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
    - i. You have the consent of a person authorised to give it;
    - ii. You are required by law to do so;
    - iii. The disclosure is made 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
    - iv. The disclosure is reasonable and in the public interest; and is made in good faith and in compliance with the reasonable requirements of the authority;
  - f. Prevent another person from gaining access to information to which that person is entitled by law.
  - g. Conduct yourself in a manner which could be reasonably regarded as bringing the Council or your office into disrepute
  - h. Use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage
8. You must, when using or authorising the use by others of the resources of your authority:
- a. Act in accordance with your authority's reasonable requirements;
  - b. Ensure that such resources are not used improperly for political purposes (including party political purposes); and
  - c. Have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

## **Members' Interests in Council Business**

### **Disclosable pecuniary interests.**

9. Disclosable pecuniary interests (DPIs) are defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. An explanation of what is a DPI is set out in Appendix A to this Code. It is very important that members

understand what amounts to a DPI, that they identify carefully all the DPIs relevant to them and that they take the action required by law. Breach of the requirements related to DPIs may amount to a criminal offence.

### **Personal Interests**

10. Personal interests are interests you have in business considered by the Council that do not fall within the definition of a disclosable personal interest but which should be declared in the interests of transparency. They are defined in Appendix B to this Code.

### **Personal and Prejudicial interests.**

11. To decide whether a personal interest is prejudicial, members should apply the following test:

*“Would a member of the public with knowledge of the relevant facts reasonably regard my interest as so significant that it is likely to prejudice my judgement of the public interest?”*

If the answer is “yes”, then you should treat your interest as “personal and prejudicial”.

### **Disclosure of Members’ Interests**

12. If you are present at a Council meeting that is considering business in which you have an interest, you must disclose the existence and nature of the interest to the meeting. Council meetings for this purpose also include:

- Meetings of committees, sub-committees, working groups and panels.
- Meetings of the Cabinet and of committees and sub-committees of the Cabinet.

This provision only applies if you are aware or ought reasonably to be aware of the interest.

### **Decisions made by Cabinet members**

13. If you are a Cabinet member with an interest in any business of the Council which would be disclosable by virtue of paragraph 11 and you have made a decision on behalf of the Cabinet in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest. This applies to decisions made on behalf of the Cabinet outside meetings as well as to those made at meetings.

### **Disclosure of Sensitive Interests**

14. If details of your interest are not published in the Register of Members' Interests because they have been classed as "sensitive", you must disclose the fact that you have an interest and the type of interest (disclosable pecuniary or personal) but need not disclose the nature of the interest.

## **Participation in meetings if you have an interest**

15. If you have a **disclosable pecuniary interest** in any Council business then, unless you have a dispensation from the Council's Monitoring Officer, you must:
- Withdraw from the room or chamber where the meeting considering the business is being held.
  - Not participate or participate further in any discussion of the matter at the meeting.
  - Not participate in any vote or further vote taken on the matter at the meeting.
16. If you have a **personal and prejudicial interest** in any Council business then, unless you have a dispensation from the Council's Monitoring Officer:
- You may attend a meeting for the purpose of making representations only.
  - You must not participate or participate further in any discussion of the matter at the meeting.
  - You must not participate in any vote or further vote taken on the matter at the meeting.
17. If you have a **personal interest that is neither a disclosable pecuniary interest nor a prejudicial interest**, you may participate in discussion of the matter and may vote.
18. If a Council function may be discharged by a member acting alone and you have a disclosable pecuniary interest in such a matter, you 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 yourself) unless you have obtained a dispensation from the Monitoring Officer permitting you to do so.

## **Registration of Members' Interests**

### ***Disclosable Pecuniary Interests***

19. You are required to notify The Council's monitoring officer of any disclosable pecuniary interests as follows:
- You must give notice of all disclosable pecuniary interests within 28 days of being elected or appointed as a member of the Council.
  - If you are re-elected or reappointed, you must give notice within 28 days of re-election or re-appointment of any disclosable pecuniary interests that are not already entered in the Register of Members' Interests

- If you are obliged, at a meeting or as part of a record of an executive decision, to declare a disclosable pecuniary interest which is not entered on the Register of Members' Interests, you must notify the Council's Monitoring Officer within 28 days of the declaration.
- Notify the Monitoring Officer of new disclosable pecuniary interests within 28 days of becoming aware of them.

### ***Personal Interests***

20. You are required to notify The Council's monitoring officer of any personal interests that are not registrable as disclosable pecuniary interests as follows:

- The name of any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council.
- The name of any body:
  - exercising functions of a public nature; or
  - directed towards charitable purposes; or
  - 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
- The name of any person or body from whom you have received a gift or hospitality with an estimated value of at least £50.

### ***Sensitive interests***

21. Where you have an interest that is registrable and the nature of the interest is such that you and The Council's monitoring officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the authority's register then copies of the register available for inspection and any published version of the register shall not include details of the interest but may state that you have an interest details of which are withheld under s.32(2) Localism Act 2011 and/or this paragraph.

## **APPENDIX A: DISCLOSABLE PECUNIARY INTERESTS**

A1. You have a disclosable pecuniary interest in any business of the Council if:

- it is of a kind described in A2 below;
- it is an interest held by you or by another "relevant person" as set out in A3 below; and
- in the case an interest held by another "relevant person", you are aware that the other person has the interest.

A2. The table below sets out the nature of “disclosable pecuniary interests”. As an elected or co-opted member, you fall within the description “relevant person”, as well as others described in A3 below.

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 financial benefit (other than from the Council) 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 Council’s area.
Licences	Any licence (alone or jointly with others) to occupy land in the Council’s area 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 Council’s area; and  b) either -  (i) the total nominal value of the securities exceeds £25000 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.

A3 As explained, you will have a disclosable pecuniary interest if you or another “relevant person” has an interest described in A2. The following are “relevant persons”:

- You, as an elected or co-opted member of the Council.
- Any of the following:

- Your spouse or civil partner,
- A person with whom you are living as husband and wife,
- A person with whom you are living as if you are civil partners.

A4. You will only have a disclosable pecuniary interest through another person if you are aware that the other person has that interest.

A5. The following are statutory definitions to be used for the interpretation of the table in A2:

“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 a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014, other than a society registered as a credit union
“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;
“member”	includes a co-opted member;
“relevant period”	means the period of 12 months ending with the day on which a member gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Localism Act;
“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.

## APPENDIX B: PERSONAL INTERESTS

Even if an interest does not amount to a disclosable pecuniary interest, you will have a personal interest in an item of Council business in these circumstances:

B1. The item of business relates to or is likely to affect any person or body who employs or has appointed you. Or

B.2 A decision in relation to that business might reasonably be regarded as affecting your financial position or wellbeing or that of a related person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected by the decision. Or

B.3 The item of business relates to or is likely to affect:

- Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council.

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- Any body of which you or a related person are a member or in a position of general control or management which does one or more of the following:
  - exercises functions of a public nature;
  - is directed towards charitable purposes; or
  - seeks, as one of its principal purposes to influence public opinion or policy (including any political party or trade union)
- The interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50.

B.4 “Related Persons”. The following are “related persons” in determining whether you have a personal interest:

- A member of your family or any person with whom you have a close business or personal association.
- Any person who employs or has appointed such persons, any firm in which they are a partner or any company of which they are directors.
- Any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000.00 or one percent of the total issued share capital (whichever is the lower)

## **Annex E: Draft revised Code of Conduct procedure**

### **Uttlesford District Council Procedure for Considering a Complaint under the Code of Conduct for Councillors**

Our Code of Conduct for Councillors is available on our website at [address]. A paper copy may be obtained on request to the Council's Monitoring Officer.

If you wish to make a complaint under our Code of Conduct, or under the Code of Conduct for one of the town or parish councils within Uttlesford, please send your complaint in writing to:

[Name], Monitoring Officer, [email address] or Council Offices, London Road, Saffron Walden, CB11 4ER.

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#### **1. Purpose of the Code of Conduct procedure**

This procedure covers the following topics:

- Some definitions.
- The sort of complaints we can consider.
- Making a complaint.
- Assessing the complaint.
- Investigating the complaint.
- Considering the Investigating Officer's report.
- The procedure for hearings before a Hearing Panel of the Standards Committee.
- What sanctions can be imposed if a complaint is upheld.

#### **2. Some definitions**

**2.1 "Assessment Panel":** Assessment panels meet to decide on how to proceed with a complaint in cases where this is not agreed between the Monitoring Officer and the Independent Person assigned to a complaint. Assessment panels are made up of three members of Uttlesford District Council who are also members of its Standards Committee.

**2.2 "Code of Conduct":** Local councils, including Uttlesford District Council and parish councils within its area, must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. The Code is expected to promote principles of

selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These principles are explained in the Code itself.

**2.3 “Hearing Panel”:** Hearing panels meet to consider complaints that members have breached the code of conduct. Hearing panels are made up of three members of Uttlesford District Council who are also members of its Standards Committee, together with a non-voting Independent Person.

**2.4 “Independent Person”:** This is a statutory role established by the Localism Act 2011. Uttlesford District Council is obliged to appoint at least one “independent person”. In fact, it has appointed three.

- The An Independent Person’s views must be sought, and taken into account, by UDC before it makes decisions on allegations that it has decided to investigate.
- The An Independent Person’s views must also be sought in the circumstances set out in this procedure.
- The views of an Independent Person may also be sought by a member or co-opted member of UDC or of one of the parishes in its area if that member’s behaviour is the subject of an allegation.
- One of the Independent Persons will participate in hearing panels alongside elected members.

**2.5 “Investigating Officer”:** This is a person appointed by UDC to investigate a complaint against a member or a co-opted member.

**2.6 “Member”:** This term is used in this procedure to refer to an elected councillor or co-opted member of UDC or of one of the town or parish councils in its area.

**2.7 “Monitoring Officer”:** This is a statutory role provided for by the Local Government and Housing Act, 1989. UDC is obliged to designate one of its officers as Monitoring Officer.

- The Monitoring Officer has an oversight role in ensuring that local authorities act lawfully and address instances of maladministration.
- In the context of this procedure, the role of the Monitoring Officer is not to carry out formal investigation of complaints but to make some decisions on how to respond to complaints, in consultation with an Independent Person, and to provide advice and support to Hearing Panels.
- The Monitoring Officer is responsible for initiating steps towards the informal resolution of a complaint where informal resolution is identified as appropriate by the Monitoring Officer and the Independent Person who is advising on the complaint.
- The Monitoring Officer is also responsible for keeping a clear and auditable record of how complaints are considered.

**2.8 “Standards Committee”:** This is a committee made up of elected members of Uttlesford District Council. Its main role is to promote and maintain high standards

of conduct by councillors and co-opted members. The membership of Hearing Panels is drawn from UDC's Standards Committee.

### **3. The sort of complaints we can consider.**

- 3.1 This procedure applies to complaints that a member has acted in a way that breaches the Code of Conduct. Uttlesford District Council ("UDC") has a code of conduct for councillors and so do most town and parish councils. Some parish councils have the same code of conduct as UDC but some have their own codes.
- 3.2 The Code of Conduct only applies to councillors when they are conducting council business or are acting, claiming to act or are giving the impression that they are acting as a representative of the council to which they are elected. The Code of Conduct does not apply to their private lives.
- 3.3 We cannot consider complaints under this procedure that do not allege a breach of the Code. It is not a way simply of challenging decisions with which someone disagrees. There may be other ways of pursuing complaints or challenges to actions or decisions taken by councillors that do not relate to the Code of Conduct; for instance through a council's complaints procedure, by complaining to the Local Government Ombudsman or through a statutory appeal process.
- 3.4 We can only consider complaints about councillors elected to UDC or to one of the town or parish councils within Uttlesford.

### **4. Making a complaint**

- 4.1 Complaints should be made in writing, which includes email. They should be addressed to UDC's Monitoring Officer and set out full details of the complaint.
- 4.2 If a member of the public has difficulty in putting a complaint in writing, the Monitoring Officer shall arrange other means to record and register the complaint. If the scope or nature of a complaint is not clear, the Monitoring Officer may ask for more detail. In these circumstances the Monitoring Officer must ask the complainant to confirm that the complaint has been accurately recorded.
- 4.3 The Monitoring Officer will offer advice and assistance but will remain impartial between the complainant and the councillor who is the subject of the complaint.
- 4.4 'Anonymous' complaints will not normally be accepted. If a complainant requests anonymity, they must explain why. The Monitoring Officer will consult an Independent Person before deciding whether to accept a complaint on an anonymous basis. The Monitoring Officer shall record the reason for granting anonymity, if allowed.

- 4.5 Within 5 working days of receipt of the complaint in final form the Monitoring Officer shall acknowledge the complaint and provide a copy of the Code of Conduct and this procedure to the complainant.
- 4.6 Once a complaint is in final form, the Monitoring Officer shall send a copy of the complaint to the member who is the subject of the complaint. The Monitoring Officer will aim to do this within 5 working days. However, the Monitoring Officer may decide not to do this if this might prejudice the investigation. The Monitoring Officer shall consult an Independent Member of the Standards Committee before withholding a copy of the complaint from the member who is the subject of the complaint.
- 4.7 If, at any stage, a complainant wishes to withdraw a complaint, the Monitoring Officer shall consult the Independent Person and may consult the member who is the subject of the complaint. Ordinarily consideration of a complaint would cease if the complainant wished to withdraw it. However, there may be circumstances in which it would be appropriate, in the public interest, to pursue a complaint despite the wishes of the complainant.
- 4.8 In the event that the Monitoring Officer receives a complaint that a councillor has failed to declare a disclosable pecuniary interest (“DPI”) and there is evidence that a serious potential DPI offence may have been committed, they will make immediate contact with the Police through a nominated single point of contact. In these circumstances this procedure under the Code will be suspended pending consideration of the complaint by the Police. For the avoidance of doubt there is no requirement for the Monitoring Officer to refer cases to the Police where it appears there may have been a genuine error or oversight by the member concerned and no advantage has been secured by them.

## **5. Assessing the Complaint**

- 5.1 Once the substance of a complaint is clear, the Monitoring Officer shall consult the Independent Member about how to proceed. Options at this stage include:
- No further action.
  - Informal resolution.
  - Formal investigation.
    - The Monitoring Officer shall, where appropriate, ascertain if the complainant and the member who is the subject of the complaint are prepared to attempt resolution of the complaint by informal means. Informal means may include mediation. In the event that informal resolution is not possible, the formal procedure will continue. Informal resolution may not be appropriate where a serious breach of the Code is alleged, where third party rights may be adversely affected or where there is a wider public interest in pursuing a formal investigation.

5.2A number of factors, not limited to those below, will inform the Monitoring Officer's decision.

- Whether the alleged action relates to a breach of the code of conduct.
- When the action complained about occurred. (Complaints should be made in a timely manner and should usually be made within three months of the alleged breach.)
- Whether the alleged action is considered to be serious or minor/trivial.
- Whether the complaint appears to be politically motivated, vexatious or retaliatory.
- Whether the allegations relate to actions occurring whilst the member was acting in their official capacity or in their private capacity.
- Whether it is in the public interest to investigate.
- Whether the matter is considered suitable for alternative resolution and if so whether the member and the complainant are prepared to consider this alternative.
- Whether the complaint should be pursued by other means; e.g. through a parish or town council complaints procedure, through an appeals process or through complaint to the Local Government Ombudsman.
- Whether there is sufficient information on which to consider the complaint.
- In deciding whether to investigate a complaint, careful regard will be had to the right of members to freedom of expression and their role in contributing to political debate.
- Regard will also be had to whether an investigation is appropriate if a member has admitted the breach and has offered a sincere apology.
  - If the Monitoring Officer and Independent Member cannot agree on how to proceed, an assessment panel of the Standards Committee shall decide.

## **6. Investigating the Complaint**

6.1 When there is a decision to investigate a complaint, the Monitoring Officer shall formally appoint an investigating officer with appropriate skills and experience. The appointment shall take account of any potential 'conflict' between the Investigating Officer and Member. If there is no suitable internal appointee, an

officer from another authority or an external investigator may be appointed. The Investigating Officer must be prepared to attend any subsequent hearing.

6.2 On appointment, the Investigating Officer shall contact, and where possible meet, the complainant, to ensure a full understanding of the nature and substance of the complaint. The Investigating Officer shall acquire a copy of any documentation offered or referred to as evidence, and take details of any witness or witnesses prepared to provide evidence. At this point, the Complainant may not extend the scope of the complaint but may clarify any matters.

6.3 The Investigating Officer shall contact witnesses and either obtain signed and dated statements from them concerning the complaint, or interview them and obtain a signed and dated record of the interview from them.

6.4 Witnesses should generally be prepared to attend a hearing, and have their evidence examined and cross-examined.

6.5 Throughout the investigation process, any interviewee, including the complainant and the member, has the right for a 'friend' to attend. The 'friend' shall not normally act in a legal capacity.

6.6 After interviewing the parties and witnesses and considering the evidence, the Investigating Officer shall produce a draft report summarising the investigation and making provisional findings of fact. The draft report shall also indicate whether the Investigating Officer considers that there has been a breach of the Code of Conduct, with reasons.

6.7 The Investigating Officer shall send a copy of the draft report to both the complainant and the member, marked 'In Confidence', and invite the parties to identify anything in the report with which they disagree, or which they believe requires further consideration. The Investigating Officer shall receive and take account of any comments. If necessary, in the interests of accuracy and justice, this process may be repeated.

6.8 The Investigating Officer shall then submit a final report to the Monitoring Officer.

## **7. Considering the Investigating Officer's report.**

7.1 The Monitoring Officer shall, on receipt, review the report and seek any clarifications necessary.

7.2 The Monitoring Officer will then send a copy of the final report to the Independent Person, to the complainant and to the member.

7.3 If the report concludes that the member has not breached the Code of Conduct, and the Monitoring Officer and the Independent Person accept the finding, the Monitoring Officer shall send all members of the Standards Committee a copy of the report for information.

7.4 If the report finds that the member has breached the Code of Conduct, the Monitoring Officer may consider that the matter does not require a formal hearing and informal resolution may resolve it. In this case, the Monitoring Officer shall consult the Independent Person and may propose a fair resolution that helps to ensure higher standards of conduct in the future. This may require the Member to acknowledge that their conduct was unacceptable. It may include a requirement for any of an apology, a process of conciliation, training or some other remedial action.

7.5 If informal resolution is not appropriate or proves not to be possible, the Monitoring Officer shall refer the matter for a formal hearing.

7.6 If the complaint is resolved informally, the Monitoring Officer will report the matter to the Standards Committee for information, but will take no further action.

7.7 In all other circumstances, the Monitoring Officer shall refer the Investigating Officer's report to a panel of the Standards Committee for a formal hearing.

## **8. The procedure for hearings before a Hearing Panel of the Standards Committee.**

8.1 Formal hearings will be conducted by a panel of three councillors drawn from membership of the Standards Committee on the basis of availability plus one of the Independent Persons.

8.2 A member of the Standards Committee, against whom a Code of Conduct complaint has been made, shall not be selected as a member of a Hearings Panel until consideration of the complaint has been concluded.

8.3 Agendas for hearings panels shall be published and hearings panels shall be held in public unless:

- This would involve disclosure of exempt information as defined by Schedule 12A, Local Government Act, 1972; and
- In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

8.4 Before a hearing panel meets, the Monitoring Officer shall write to the member and to the complainant, asking each:

- Whether they accept the finding in the report
- Whether they dispute any factual part of the report, identifying any areas of dispute.

- Whether they wish to call any witnesses at the hearing. (Only witnesses identified to the Investigating Officer by the complainant or by the member may be called as witnesses. In law, witnesses do not have to attend a hearing panel.
- Whether the complainant wishes to be present at the hearing. (The complainant shall be invited, but is not obliged, to attend the hearing. If the complainant is not present, the procedure below shall be adapted accordingly.)
- Whether they wish to be accompanied at the hearing.

8.5 In advance of a meeting of a Hearing Panel its members shall seek to agree who will chair the hearing. The Chair may issue directions about the conduct of the hearing. A member of a Hearing Panel shall not act as Chair unless they have received relevant training.

8.6 Subject to the discretion of the Chair, the hearing shall be conducted as follows:

- a. The Investigating Officer will be invited to present their report and to call witnesses. The complainant, the member and the Panel (including the Independent Person), in that order, may ask questions or seek clarification both of the Investigating Officer and any witnesses.
- b. The complainant will be invited to comment on the report and its findings and to call witnesses. The Investigating Officer, the member and the Panel, in that order, may ask questions or seek clarification both of the complainant and any witnesses.
- c. The member will be invited to comment on the report and its findings and to call any witnesses. The Investigating Officer, the complainant and the Panel, in that order, may ask questions or seek clarification both of the member and any witnesses.
- d. The Investigating Officer, the complainant and the member will be invited, in that order, to make brief concluding remarks.

8.7 The Chair and Panel, including the Independent Person, may ask for advice at any stage from the Monitoring Officer.

8.8 Once the hearing has been concluded, the Hearing Panel, with the Independent Person, will retire to consider its decision. It may call on the Monitoring Officer to provide advice and guidance. The Hearings Panel is required to do the following: (i) to decide on the facts, (ii) to decide on whether these facts constitute a breach of the Code of Conduct, and (iii) to decide on the appropriate sanction.

8.9 In deciding whether or not to uphold the complaint the Hearing Panel must apply, as the standard of proof, the balance of probability, with the burden of proof

resting on the Investigating Officer. The Hearing panel may only make an adverse finding if satisfied, on this basis, that the member has breached the Code of Conduct.

- 8.10 The Hearing Panel will then return and announce its findings on whether there has been a breach of the Code, with reasons.
- 8.11 Following announcement of the Hearing Panel's findings, the complainant and the member will be invited to make submissions, if necessary, regarding remedies or sanctions.
- 8.12 The Hearing Panel will then consider what, if any, sanction it wishes to impose. It shall retire whilst it considers this. It will then announce its decision and give reasons.
- 8.13 Following the hearing, the Monitoring Officer shall draft a record of the decision for approval by the Hearing Panel. Once the record of decision has been settled, a copy shall be sent to each of the parties.

## **9. Appealing a Decision about a Complaint**

- 9.1 There is no right of appeal against a decision on a Code of Conduct complaint. If the complainant or the member considers that the complaint has not been considered properly by UDC, they may be able to complain to the Local Government Ombudsman or seek permission for judicial review.

## **10. Sanctions available to a Hearings Panel**

- 10.1 The Hearings Panel has powers to take action in respect of individual councillors as necessary to promote and maintain high standards of conduct.
- 10.2 The Hearings Panel may do one, or a combination, of the following:
- a. Issue a formal Censure or Reprimand to the Member
  - b. Report its findings to Council (or to the Parish or Town Council) for information
  - c. Recommend the Member's Group Leader (or in the case of ungrouped members, recommend the Council or Committees) to remove the Member from appointments to Committees or Sub-Committees of the Council
  - d. Recommend the Leader of the Council to remove the Member from any appointment to the Cabinet, or from particular Portfolio responsibilities
  - e. Instruct the Monitoring Officer to (or recommend that the Parish or Town Council) arrange training for the Member

- f. Recommend to the Council (UDC) or its Cabinet, or to the Parish or Town Council that all outside appointments to which he has been appointed or nominated by that Authority are removed
- g. Exclude (or recommend that the Parish or Town Council exclude), the Member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings
- h. If relevant, recommend that the Council removes the Member from the post of Leader of the Council.
- i. Publish its findings in respect of the Member's conduct.

In cases where a Hearings Panel makes an adverse finding against a Member, its decision will be published on the Standards Committee pages of the Council's website. This includes decisions relating to members of Town or Parish councils.

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Annex F: Solihull Council Code of Conduct

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- **Solihull Metropolitan Borough Council**
- **Code of Conduct for Councillors**
- I .....

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▪ **being a duly elected Councillor/Co-opted Member for Solihull Metropolitan Borough Council hereby declare that I will undertake my duties as follows:**

1. I will represent the interests of the whole community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

2. **As a holder of public office** and as required by law I will behave in a manner that is consistent with the following principles to achieve best value for all our residents and maintain public confidence in the Council and any other body to which I am appointed by the Council and the office of councillor.

- **a. SELFLESSNESS:** I will act solely in terms of the public interest. I will not act in such a way as to gain financial or other material benefits for myself, my family, or my friends.
- **b. INTEGRITY:** I will not place myself under any financial or other obligation to outside individuals or organisations that might seek to influence me in the performance of my official duties.
- **c. OBJECTIVITY:** I will 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:** I will be accountable for my decisions and actions to the public and will submit myself to whatever scrutiny is appropriate to my office.
- **e. OPENNESS:** I will be as open as possible about all the decisions and actions I take. I will give reasons for my decisions and restrict information only when the wider public interest or the law clearly demands.
- **f. HONESTY:** I will declare any private interests relating to my public duties and take steps to resolve any conflicts arising in a way that protects the public interests.
- **g. LEADERSHIP:** I will promote and support these principles by leadership and example.

3. As a Member of the Council I will act in accordance with the principles in paragraph 2 and, in particular, I will

- a. Champion the needs of the whole community and all my constituents, including those who did not vote for me, 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 myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the Council or the good governance of the Council in a proper manner.
- d. Exercise independent judgement and not compromise my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a Member/Co-opted Member of the Council.
- e. Take account of all relevant information, including advice from statutory and other professional officers. I will remain objective and make decisions on merit.
- f. Be accountable for my decisions and cooperate when scrutinised internally and externally, including by local residents.
- g. Contribute to ensuring that decision-making processes are as open and transparent as possible to ensure the community understands the reasoning behind decisions and are informed when holding me and other Members to account.
- h. Behave in accordance with all my legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures, including on the use of the Council's resources.
- i. Under no circumstances will I disclose confidential information (be that confidential by virtue of legislation or otherwise) unless I have express authority to do so and/or the law so requires.
- j. Value my colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- k. Always treat people with respect, including the organisations and public I engage with, fellow members and those I work alongside.
- l. Provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Council.

4. I will register and disclose those interests that I am required by law to declare. I will do this by completing and submitting a signed declaration of my interests to the

Monitoring Officer of the Council. I will keep the register updated and acknowledge that its contents are open to the public to inspect.

5. I will comply with any code of conduct for councillors that is properly established by the Council.

- Signed:.....
- Full name:.....
- Date:.....
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