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Uttlesford District Council

Chief Executive: Dawn French

Standards Committee

Date: Monday, 17th June, 2019

Time: 5.00 pm

Venue: Committee Room - Council Offices, London Road, Saffron Walden,
Essex CB11 4ER

Chairman: Councillor N Reeve

Members: Councillors H Asker, S Barker, D Eke (Vice-Chair), M Foley,
N Gregory, A Khan and E Oliver

Other

Attendees: Mrs G Butcher-Doulton, Mr D Pearl and Mrs C
Wellingbrook-Doswell (Independent Persons)

Public Speaking

At the start of the meeting there will be an opportunity of up to 15 minutes for members of the public to ask questions and make statements subject to having given notice by 12 noon two working days before the meeting. A time limit of 3 minutes is allowed for each speaker. Please refer to further information overleaf.

AGENDA PART 1

Open to Public and Press

1 Apologies for Absence and Declarations of Interest

To receive any apologies for absence and declarations of interest.

2 Minutes of the Previous Meeting

5 - 8

To consider the minutes of the previous meeting.

- 3 Roles and responsibilities of the Standards Committee, Independent Persons and the Monitoring Officer**
- To receive a verbal report on the roles and responsibilities of the Standards Committee, Independent Persons and the Monitoring Officer.
- 4 Uttlesford District Council's Code of Conduct** 9 - 18
- To receive Uttlesford District Council's Code of Conduct.
- 5 Uttlesford District Council's procedure for consideration of complaints** 19 - 28
- To receive Uttlesford District Council's procedure for consideration of complaints.
- 6 Local Government Ethical Standards: A Review by the Committee on Standards in Public Life** 29 - 54
- To receive the report on Local Government Ethical Standards: A Review by the Committee on Standards in Public Life. This report has been considered by the Standards Committee on 18 March 2019 but has been referred back to the Committee in view of its change of membership.
- 7 Training needs for the Standards Committee**
- To discuss training needs for members of the Standards Committee.

MEETINGS AND THE PUBLIC

Members of the public are welcome to attend any of the Council's Cabinet or Committee meetings and listen to the debate. All agendas, reports and minutes can be viewed on the Council's website www.uttlesford.gov.uk. For background papers in relation to this meeting please contact committee@uttlesford.gov.uk or phone 01799 510548/369.

Members of the public and representatives of parish and town councils are permitted to speak or ask questions at any of these meetings. You will need to register with the Democratic Services Officer by midday two working days before the meeting.

The agenda is split into two parts. Most of the business is dealt with in Part I which is open to the public. Part II includes items which may be discussed in the absence of the press or public, as they deal with information which is personal or sensitive for some other reason. You will be asked to leave the meeting before Part II items are discussed.

Agenda and Minutes are available in alternative formats and/or languages. For more information please call 01799 510510.

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For information about this meeting please contact Democratic Services

Telephone: 01799 510369 or 510548

Email: Committee@uttlesford.gov.uk

General Enquiries

Council Offices, London Road, Saffron Walden, CB11 4ER

Telephone: 01799 510510

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Website: www.uttlesford.gov.uk

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Agenda Item 2

STANDARDS COMMITTEE held at COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, ESSEX CB11 4ER, on MONDAY, 18 MARCH 2019 at 5.00 pm

Present: Councillor D Jones (Chairman)
Councillors A Dean, N Hargreaves, T Knight, P Lees and B Light

Officers in attendance: A Bochel (Democratic Services Officer) and S Pugh (Assistant Director - Governance and Legal)

ST6 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies were received from Councillor Loughlin, and from Councillor Knight who would be arriving late.

ST7 **MINUTES OF THE PREVIOUS MEETING**

The minutes of the previous meeting were approved and signed by the Chairman as a correct record.

The Chairman noted the following:

- Guidance on Member use of social media had been circulated to all Members.
- He asked whether information on the Harvey v Ledbury Town Council case had been circulated to town and parish councils. The Assistant Director – Governance and Legal Services said he would look into this.
- He was grateful to the Independent Members who had run the previous training session for Standards Committee members.

In response to a Member question, the Assistant Director – Governance and Legal said procedure was that panel meetings that dealt with disciplinary hearings had to begin as public meetings, but would likely have a resolution to move into a private meeting on the basis that personal information would be discussed.

Councillor Knight entered the meeting.

ST8 **LOCAL GOVERNMENT ETHICAL STANDARDS: A REVIEW BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE**

Members considered the report, which set out the Executive Summary from the review by the Committee on Standards in Public Life on Local Government Ethical Standards and its recommendations and best practice suggestions.

In response to a Member question, the Assistant Director – Governance and Legal said the Local Government Association would take a lead on creating a model code, but there was no timetable as to when this would be.

The Assistant Director – Governance and Legal Services said Uttlesford District Council had circulated a model Code of Conduct to town and parish councils, and most had now adopted this code. He could circulate the list of parish councils who had yet to do so to the Committee.

Members noted that several of the recommendations of the Committee on Standards in Public Life's report would require legislation to enact. However this would take time, and there was no timetable set out for when this would happen.

Councillor Knight said she believed comments in the Review regarding political groups were less relevant to parish councils because parish councils rarely had political groups.

Members discussed whether and how a Chairman or Member of a parish council could take action on poor behaviour during a parish council meeting. The importance of training was discussed, though this was not mandatory for parish councillors. Most parish councils would have standing orders which enabled the Chairman to suspend a meeting if there had been disruptive behaviour.

In response to a question from the Chairman, the Assistant Director – Governance and Legal said he would circulate advice on Member use of social media to the Independent Members.

The Assistant Director – Governance and Legal Services noted that councillors would be given a right of appeal against suspension if imposed by a Standards Panel for breach of the Code.

In response to a question from Members, the Assistant Director – Governance and Legal said appropriate Code of Conduct training would be given to all members of Uttlesford District Council after the district elections in May. Training would also be given to members of the Planning and Licensing and Environmental Health Committees.

The Assistant Director – Governance and Legal said officers would investigate Uttlesford District Council's current insurance policy to investigate how best to provide legal indemnity to Independent Persons if their views or advice were challenged.

The Assistant Director – Governance and Legal said Uttlesford District Council would be implementing recommendation 23 of the Review on a voluntary basis, and was in the process of ensuring that its whistleblowing policy specified a named contact for the external auditor.

The Assistant Director – Governance and Legal noted that Best Practice Recommendation 3 from the Committee on Standards in Public Life suggested that principal authorities should review their code of conduct each year, but that

this could be problematic to implement because of the difficulty in keeping town and parish council codes in line with UDC's Code.

In response to a Member question, the Assistant Director – Governance and Legal said members of Uttlesford District Council were currently obliged to record hospitality received over the value of £50, but that this was not currently published as a register. However this could be done fairly easily.

The Chairman proposed that a standing item be created for officers to report back regularly on the recommendations and their implementation.

In response to a question from the Assistant Director – Governance and Legal Services, Members said it would be positive to organise a meeting with parish councillors at the Council Offices with refreshments available, in order to have a discussion about conduct in parish councils. It was suggested this might be done with the Chairs of parish councils to start with, as they had a large influence over the culture within the authorities. Discussion should include how to be effective as a Chairman.

The meeting ended at 6.15.

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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 adherence by members to 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 treat others with respect.
5. You must observe any protocols or codes of practice adopted by your authority.
6. 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
7. 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.

8. 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

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

Personal and Prejudicial interests.

10. 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

11. 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

12. 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

13. 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

14. 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.
15. 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.
16. 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.
17. 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

18. 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

19. 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

20. 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.
 -
- 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)

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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 Uttlesford District Council, London Road, Saffron Walden CB11 4ER. 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:

Simon Pugh, Monitoring Officer, spugh@utlesford.gov.uk or Council Offices, London Road, Saffron Walden, CB11 4ER.

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.

5.2 A 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.

Agenda Item 6

Committee:	Standards	Date:	7 June 2019
Title:	Local Government Ethical Standards: A Review by the Committee on Standards in Public Life		
Report Author:	Simon Pugh, Assistant Director, Governance and Legal. 01799 510416	Item for decision:	Yes

Summary

1. The Committee on Standards in Public Life has now published its report on Local Government Ethical Standards. This report sets out the Executive Summary from the report and its recommendations and best practice suggestions.

Recommendations

2. That officers report back periodically to the Standards Committee on implementation of the recommendations and best practice suggestions set out in the Committee on Standards in Public Life's report.

Financial Implications

3. None direct.

Background Papers

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Local Government Ethical Standards: A Review by the Committee on Standards in Public Life – the full report. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF

Impact

- 5.

Communication/Consultation	UDC's consultation response is attached to this report. The full CSPL report summarises consultation responses. The CSPL report has been submitted to the Prime Minister and there is no current indication of further consultation.
Community Safety	None direct
Equalities	Promotion of ethical standards in local government includes promoting and respecting equalities principles and legislation. The Code directly prohibits breach of the Equality Act 2010.
Health and Safety	None.
Human Rights/Legal Implications	The report sets out recommendations requiring legislative change.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	Promotion of ethical standards in local government is an important part in ensuring a respectful workplace environment. The Code directly prohibits bullying.

Situation

6. The Committee on Standards in Public Life has now issued its report on Ethical Standards in Local Government. The Standards Committee considered how to respond to the consultation which preceded the report on 16 April 2018. This led to the response from the Council reproduced in Appendix D to this report.
7. The executive summary of the report is set out in Appendix A. The report's recommendations are set out in Appendix B. Best practice suggestions from the report are set out in Appendix C. Appendices B and C also include comments from the author of this report.
8. The report has been submitted to the Prime Minister. It is the CSPL's final report and comments are not being invited from local authorities. It is possible that the Government will consult further regarding the implementation of recommendations for legislative change but no announcements have been made.

9. Some of the recommendations accord with the views expressed by the Standards Committee. Members will be pleased by the recommendation that sanctions are strengthened to include the power to suspend for up to six months. However, this will require primary legislation. It should also be noted that a right of appeal to the Local Government Ombudsman is recommended and that this will involve re-investigation of the complaint.
10. The proposed removal of criminal sanctions in relation to breach of the disclosable pecuniary interests rules is welcome. There have been few prosecutions and, importantly, the rules are unclear and members may breach them unintentionally. The proposal that members can speak and/or vote if they have a non-prejudicial disclosable pecuniary interest is sensible and aligns with UDC's approach to personal interests.
11. The proposal for a revised model Code is sensible, although UDC has of course developed a much improved Code of Conduct itself. Best practice recommendations for the content of a model Code are sensible and go beyond UDC's current Code. However, it might be sensible to review UDC's Code in the light of a new model Code when available.
12. There are some helpful comments about the importance of promoting an ethical culture. However, it is much simpler to do this within a primary authority such as Uttlesford DC than it is for UDC's Standards Committee and Monitoring Officer to promote an ethical culture within 50+ town and parish councils. In fact, the report proposes very little change with regard to parish councils beyond recommending that clerks hold a professional qualification. In the report writer's experience, the bulk of complaints originate from parish level.
13. Some of the recommendations and best practice suggestions can be implemented without a need for legislative change. Some will amendment of secondary legislation (statutory instruments). Some will involve amendment of primary legislation (Acts of Parliament). It is unclear what capacity there is for the Government to undertake legislative change or what priority the report's recommendations will be given.

Risk Analysis

14.

Risk	Likelihood	Impact	Mitigating actions
That elected members (UDC, town and parish) do not act in an ethical manner and in compliance with their Code of	3	3	Promoting an ethical culture within UDC and town and parish councils within UDC's area. Taking effective measures to deal with

Conduct			unethical behaviour and breach of the Code of Conduct.
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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.

Appendix A: Executive summary from CoSPL Report

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life.

High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.

We are also concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public office-holders. We recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

Codes of conduct

Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. There is considerable variation in the length, quality and clarity of codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important

areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.

There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. The scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

Declaring and managing interests

The current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

Investigations and safeguards

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically-motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

Sanctions

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.

Town and parish councils

Principal authorities have responsibility for undertaking formal investigations of code breaches by parish councillors. This should remain the case. This responsibility, however, can be a disproportionate burden for principal authorities. Parish councils should be required to adopt the code of their principal authority (or the new model code), and a principal authority's decision on sanctions for a parish councillor should be binding. Monitoring Officers should be provided with adequate training, corporate support and resources to undertake their role in providing support on standards issues to parish councils, including in undertaking investigations and recommending sanctions. Clerks should also hold an appropriate qualification to support them to uphold governance within their parish council.

Supporting officers

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

Councils' corporate arrangements

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

Leadership and culture

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of

behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive.

An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision-making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.

Appendix B: List of CoSPL recommendations

Number	Recommendation	Responsible body
1	<p>The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.</p> <p>Comment: A clear and effective model code would help to ensure that local codes are fit for purpose and would encourage consistency nationally and at local and parish level. UDC has adopted its own Code which improves on the model codes promoted when the Localism Act, 2011, came into force. No legislative change is needed to implement this recommendation.</p>	Local Government Association
2	<p>The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.</p> <p>Comment: A home address can be excluded from the register of interests if it is classed as a "sensitive interest". This will only be the case if disclosure of the information "could lead to you or a person connected with you being subject to violence or intimidation". The proposed change would align with the recent change in the law which means that the home addresses of election candidates are not included on nomination forms. The change would require the amendment of secondary legislation.</p>	Government
3	<p>Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.</p> <p>Comment: The issue here is one of balance between legitimate expectations regarding the conduct of those in public life and respect for how they behave in private life.</p>	Government

In practice, it is not always clear whether a councillor is acting in an official capacity. This change would require the amendment of primary legislation.

- 4 Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.** Government

Comment: See previous comment. The example given in the report is of a councillor threatening to cause someone a detriment by implying they would do so through their influence as a councillor. The conduct of an individual improperly purporting to act as a councillor does not fall within the scope of the code, even though the councillor in question would clearly be misusing their office. For example, a councillor may threaten to cause someone a detriment by implying they would do so through their influence as a councillor.

- 5 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.** Government

Comment: This recommendation needs to be read alongside Recommendation No.7. This recommendation extends the class of disclosable pecuniary interest that need to be registered. UDC’s Code already has requires registration of these interests as “personal interest”. This change would require amendment of secondary legislation to make it mandatory nationally.

- 6 Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.** Government

Comment: UDC’s Code is in line with this recommendation for registering hospitality over £50 but it

does not include a requirement to register hospitality totalling over £100 over a year from a single source. It is not clear from the report whether this would involve amendment of primary or secondary legislation. No legislative change is needed for the LGA to create an updated model Code including this requirement. Whilst UDC could amend its Code to include a requirement to register hospitality totalling over £100 over a year from a single source, it might be better to do this as part of consideration of a new model Code.

- 7 Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter”.** Government

Comment: At present, a councillor with a disclosable pecuniary interest cannot speak or vote and must withdraw from the meeting, even if the interest is trivial or insignificant. The proposal allows participation unless the interest is “prejudicial”. This is a return to the position preceding the Localism Act and is in line with UDC provisions relating to personal interests that are not disclosable pecuniary interests. This will require primary legislation.

- 8 The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.** Government

Comment: This will require primary legislation. The basis for this recommendation is to ensure that the Independent Person’s judgment and independence is not compromised by a long period of involvement in a single authority. On the other hand, it can be difficult to recruit suitable Independent Persons. If done properly, being an IP requires a high degree of understanding of the Standards regime and of the work of councillors> Making

this mandatory risks losing good IPs and arguably this should be a matter for local discretion.

- 9 The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.** Government

Comment: This would require secondary legislation. Currently, there is no requirement for the Independent Person's view on a case to be formally recorded, for example, in a formal decision issued by the Monitoring Officer or a standards committee. Whilst there may be reasons that the decision-maker ultimately reaches a different view from the Independent Person, the safeguard that they provide would be stronger if their view was always made transparent.

- 10 A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.** Government

Comment: This ties in with Recommendation 16, proposing a power to suspend councillors for up to six months. The report says that more safeguards would need to be put in place to ensure that this sanction is imposed fairly and that councillors are properly protected from potential misuse of the standards process. The report recommends that the Independent Person would have to confirm that, in their view, a breach of the code had taken place, and that they agree that suspension would be proportionate, in order for the local authority to impose suspension for that breach.

- 11 Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.** Government / all local authorities

Comment: This may need secondary legislation. The Council would also need to make sure that its insurance cover extended to such an indemnity.

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| 12 | Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions. | Government |
| | Comment: This would require primary legislation. It is in line with representations made by UDC to the Committee's consultation. | |
| 13 | Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct. | Government |
| | Comment: This would require primary legislation. It ties in with Recommendation 16. | |
| 14 | The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority. | Government |
| | Comment: This would require primary legislation. It ties in with Recommendation 16. It is worth noting that the Ombudsman will investigate as well as deciding whether suspension is justified. | |
| 15 | The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied. | Government |
| | Comment: This would require secondary legislation. Councils can adopt this on a voluntary basis. | |
| 16 | Local authorities should be given the power to suspend councillors, without allowances, for up to six months. | Government |
| | Comment: This will require primary legislation. It reflects | |

UDC's Standards Committee's strong view on the desirability of tougher sanctions.

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| 17 | The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary. | Government |
| | Comment: This may require primary legislation. | |
| 18 | The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished. | Government |
| | Comment: This will require primary legislation. UDC's representations to the CSPL suggested this. There are various issues with the criminal element of the disclosable pecuniary interests regime. There are also other criminal offences that would cover corrupt behaviour by councillors. | |
| 19 | Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks. | Parish councils |
| | Comment: This is a good practice recommendation. UDC has been working with the Essex Association of Local Councillors to promote good governance at parish level and this recommendation supports this. | |
| 20 | Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code. | Government |
| | Comment: This will require primary legislation. Most UDC town and parish councils have adopted UDC's revised Code. It makes sense for codes to be consistent across Uttlesford. | |
| 21 | Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority. | Government |
| | Comment: This will require primary legislation. It would | |

remove an area of legal uncertainty and strengthen the role of the Standards Committee.

- 22 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.** Government

Comment: This would require secondary legislation. The statutory officers are Head of Paid Services (Chief Executive), Section 151 Officer (Director of Finance and Corporate Services) and Monitoring Officer (Assistant Director, Governance and Legal).

- 23 The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.** Government

Comment: This would require secondary legislation but could be implemented on a voluntary basis. External auditors are listed as 'prescribed persons', under the Public Interest Disclosure Act 1998. This gives employment protections to officers who make public interest disclosures to external auditors. The recommendation is made because the evidence received by the Committee suggested that local authorities will not tend to specify a named contact or provide contact information within the external auditor. This would have the effect of deterring whistleblowers from contacting the auditor, or make it difficult to report a concern. UDC's whistleblowing Code identifies "the External Auditor" as a person to whom disclosures may be made but does not include contact information. It would be simple to add this.

- 24 Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.** Government

Comment: This would require primary legislation. This would extend "whistleblower" employment protection to employees who make disclosures to councillors.

- 25** **Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.**
- Political groups
National political parties

Comment: This does not involve legislation. Implementation is a matter for political groups and parties. Induction training will be provided for all new councillors following the elections in May.

- 26** **Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.**
- Local Government Association

Comment: This does not involve legislation.

Appendix C: List of CoSPL Best Practice Recommendations

The best practice recommendations are directed to local authorities, and the Committee on Standards in Public Life expects that any local authority can and should implement them. It intends to review the implementation of its best practice recommendations in 2020.

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

Comment: UDC's Code includes prohibitions on bullying and harassment in its Code of Conduct but does not include a definition and examples. Ideally this would be picked up through a new model Code led by the Local Government Association. Whilst changing UDC's Code on a regular basis is relatively straightforward, ensuring that town and parish councils align their codes involves a greater amount of work.

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

Comment: Again, ideally this would be picked up through a new model Code led by the Local Government Association. Whilst changing UDC's Code on a regular basis is relatively straightforward, ensuring that town and parish councils align their codes involves a greater amount of work.

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

Comment: This is fine but it is not clear how this fits with a move to a model Code.

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

Comment: It is straightforward to review and to implement any changes needed. UDC's Code is published on its website in section called: "Councillor Code of Conduct and Register of Interests" and "Complaints about councillors".

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

Comment: UDC members are obliged to register hospitality received over the value of £50 but this is not currently published as a register.

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

Comment: UDC's procedure for standards complaints sets out the criteria by which complaints are assessed but and which is published on our website.

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

Comment: UDC is fortunate to have three Independent Persons.

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

Comment: UDC has implemented this under its procedure for considering Code of Conduct complaints. An IP is consulted on whether to undertake a formal investigation in all cases.

Appendix D: UDC's representations to the Committee on Standards in Public Life



UTTLESFORD DISTRICT COUNCIL

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Review of Local Government Ethical
Standards
Committee on Standards in Public Life
GC:07
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London
SW1A 2HQ

Your ref:
Our ref: SRP / 010147
Please ask for Simon Pugh on 01799
510416
email: spugh@uttlesford.gov.uk

17 May, 2018

Dear Sir/Madam

Review of Local Government Ethical Standards: Stakeholder Consultation

I am responding on behalf of Uttlesford District Council. This response is sent with the approval of our Standards Committee. The response follows the form taken by the consultation document.

- 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.***

We do not agree that the existing structures, processes and practices are adequate. The main issues, on which we will expand later in this response, are:

- The absence of meaningful sanctions.
- The weak legal obligations placed on local authorities with regard to standards and the adoption of adequate codes.
- Uncertainty over the nature of “disclosable pecuniary interests” and the associated obligations on members.
- Weak accountability of parish councils.
- The narrow limits of the applicability of the regime with regard to private life.
- Uncertainty over the respective powers of parish and district councils to impose sanctions, such as they are.
- The desirability of strengthening the role of the Independent Persons.

The Standards Board regime had its faults but we suggest that a good starting point would be to examine the changes made by the Localism Act 2011 and to review whether the changes have made things better or worse.

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?**

See above.

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?**

They are likely to vary. The legal requirements for a code of conduct, set out in section 28, Localism Act, 2011, are minimal and the content largely left to local authorities. Whilst some discretion is welcome, codes are likely to vary in form and content. In many cases, councils will have kept the old model code and will have bolted on provisions regarding disclosable pecuniary interests.

The absence of a model code will lead to a lack of consistency between councils, which will not encourage public confidence. The quality of drafting will also vary. A poorly drafted code will lead to uncertainty and lack of confidence and will increase the risk of non-compliance.

One specific issue regarding the appropriate range of behaviours is that the code's application is limited to behaviour whilst acting, or purporting to act, as a councillor. This goes back to **Livingstone v Adjudication Panel for England** [2006] EWHC 2533 (Admin). Whilst clearly it is important to respect private life, behaviour in a private capacity can be very damaging for the reputation of local authorities and can severely damage public confidence. We encourage the Committee to give its consideration to this issue.

Uttlesford DC has recently overhauled its Code of Conduct. We regard it as a good model, in both scope and clarity. We append a copy.

We suggest a return to a model code, drafted in plain language, setting out minimum standards of behaviour. Local authorities could, if they wished, supplement this.

- 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.**

The definition of a disclosable pecuniary interest in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations is wide. The circumstances in which the restriction on speaking and voting apply are uncertain. (Section 31(1)(b) refers to having an interest “in any matter to be considered, or being considered, at the meeting”.) The scope of this is not always clear in practice. This is undesirable, given that speaking and voting, when this is precluded by section 31, is a criminal offence. The lack of clarity regarding the circumstances in which a member holds a DPI presents an unjustified risk to members who inadvertently may find themselves referred to the Police or facing criminal proceedings.

We invite the Committee to consider whether the “disclosable pecuniary interests” regime is appropriate and whether breach should carry a criminal sanction. We suggest that it would be more appropriate to address corrupt behaviour through the general criminal law. The Model Code’s definitions of “personal” and “personal and prejudicial” interests worked well in regulating participation by members.

Investigations and decisions on allegations

- e. *Are allegations of councillor misconduct investigated and decided fairly and with due process?*

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?

We have recently reviewed our processes to ensure clarity and fairness. A copy is appended. Key provisions include early involvement of Independent Persons, scope for filtering out trivial or vexatious complaints, the separation of investigatory and advisory roles to ensure fairness at the hearing stage and a clear procedure for hearings.

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?

The legal requirement is for an Independent Person to be consulted “before it makes a decision on an allegation that it has decided to investigate”. There is discretion to involve the IP at an earlier stage and it is our practice to consult when complaints are received. There is a strong argument for the IP to have a role in deciding whether a complaint should be investigated or what alternative steps should be taken.

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?

The involvement of the IP provides a safeguard at the stage of deciding whether to investigate a complaint. Monitoring Officers should not then proceed to investigate and decide upon Code breaches. The roles must be separate. Similarly, when a member panel or committee decides upon an alleged Code breach, the roles of investigator and clerk to the hearing should be kept separate.

Sanctions

f. Are existing sanctions for councillor misconduct sufficient?

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

Our clear experience is that existing sanctions are woefully inadequate. The available sanctions go no further than censure or reprimand. Censure by the district council is often disregarded, and may be seen as a “badge of honour”, particularly at parish council level. Standards Committees or similar can make recommendations regarding membership of committees but have no power to enforce. Where political proportionality rules apply, allocation of committee places rests in practice with the political group and not the Council.

Local authorities should have, at the least, a power of suspension from committees or Council participation. Possibly powers should be graduated to increase in severity in the event of further breach or non-compliance with recommendations (such as to undertake training). In these circumstances triggering a “right of recall” procedure might be an effective sanction, as well as a power of suspension, although this would need careful thought.

There is some uncertainty whether powers of sanction in relation to parish councillors rest at district or parish level. The law should be clarified to give district councils direct power of sanction, rather than being confined to making recommendations which can be ignored at parish level. See **R. (on the application**

of Taylor) v Honiton Town Council, [2016] EWHC 3307 (Admin) and paragraph 36 on this specific point.

The case of R (on the application of Harvey) v Ledbury Town Council (Claim No: CO/3680/2017) before the High Court (judgment reserved) also suggests a need for greater clarity over the circumstances in which sanctions may be imposed. The claim, in this case, is that Herefordshire Council's jurisdiction over standards complaints prevented the Town Council imposing sanctions on a councillor accused of bullying members of its staff.

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.*
- 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?*
 - 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.*

The possession of a disclosable pecuniary interest means that a member can take no part in the meeting, and cannot exercise speaking rights available to the public. However, the provisions of the Model Code allowed the exercise of public speaking rights where a member had a personal and prejudicial interest. Where the substance of the Model Code has been retained locally, this leads to a lack of clarity as to speaking rights, depending on the nature of the interest and the nature of the business under consideration. This must be confusing for the public. We suggest allowing those with a DPI to exercise public speaking rights.

We have retained, as a class of lesser interests, the Model Code's classification of "personal" and "personal and prejudicial" interests. We commend this approach. There is no legal obligation to do this, and there is no statutory regulation, in the Localism Act or elsewhere, of participation of members with non-pecuniary personal interests, which may be very strong.

Whistleblowing

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

We have a Whistleblowing Code and procedures for employees, but not for councillors or the public. We can see the merits of expanding arrangements to cover the public and councillors.

Improving standards

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

Local authorities need to promote a culture in which ethical behaviour is seen as the norm and codes of conduct are respected. They also need to ensure that councillors receive proper training on their Code of Conduct and on ethical behaviour.

Local authorities should also actively promote a culture of openness, both internally and externally.

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

Independent members cannot vote. We recommend that councils should have discretion to permit independent members to vote when dealing with standards-related issues in committee and at hearings.

Serious consideration should be given, by central government working with representative local government bodies, to the effectiveness of governance arrangements and accountability at parish level. Short of judicial review, there is no independent oversight. It is parish councils that generate by far the majority of complaints. Often these are “badged” as standards complaints but, in essence, are complaints of maladministration or poor governance. The Local Government Ombudsman has no power to consider complaints at parish council level and this leaves a gap.

We consider that the changes made by the Localism Act 2011 were a backward step. Central Government should review the impact of the changes made and consider reversing the changes made with a view to more comprehensive and consistent codes, effective sanctions and possibly a role for an independent body similar to the Standards Board.

Intimidation of local councillors

k. *What is the nature, scale, and extent of intimidation towards local councillors?*

What measures could be put in place to prevent and address this intimidation?

Locally, this is quite limited but it can be an issue, especially with social media campaigns. We support the recommendations made in the CSPL report “Intimidation in Public Life”.

Conclusion

We very much welcome this consultation and look forward to following the Committee’s deliberations and to receiving its conclusions. If there is any way in which we can be of assistance to the Committee, please let me know.

Yours faithfully,



Simon Pugh
Assistant Director - Governance and Legal