

To: All Members of the STANDARDS  
COMMITTEE  
(Other Members for Information)

When calling please ask for:

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**Policy and Governance**

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Direct line: 01483 523224

Date: 22 January 2021

### **Membership of the Standards Committee**

Cllr John Robini (Chairman)  
Cllr Michael Goodridge (Vice Chairman)  
Cllr Brian Adams  
Cllr Paul Follows  
Cllr John Gray  
Cllr Jerry Hyman

Cllr Robert Knowles  
Cllr Penny Marriott  
Cllr Peter Marriott  
Tom Hughes (Co-Optee)  
Stefan Reynolds (Co-Optee)

Dear Councillors

A meeting of the STANDARDS COMMITTEE will be held as follows:

DATE: MONDAY, 1 FEBRUARY 2021

TIME: 5.00 PM

PLACE: ZOOM MEETING - VIRTUAL MEETING

The Agenda for the meeting is set out below.

The meeting can be viewed remotely in accordance with the provisions of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, via the Council's YouTube page.

Yours sincerely

ROBIN TAYLOR  
Head of Policy and Governance

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Alternatively, agendas may be downloaded to a mobile device via the free Modern.Gov app, available for iPad, Android, Windows and Kindle Fire.

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This meeting will be webcast and can be viewed by visiting [www.waverley.gov.uk/webcast](http://www.waverley.gov.uk/webcast).

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### **NOTE FOR MEMBERS**

Members are reminded that Contact Officers are shown in each report and members are welcome to raise questions, etc. in advance of the meeting with the appropriate officer.

### **AGENDA**

1. **MINUTES**

To confirm the Minutes of the meeting which took place on 5<sup>th</sup> October, available on the Council's website.

2. **APOLOGIES FOR ABSENCE**

To receive any apologies for absence.

3. **DISCLOSURES OF INTERESTS**

To receive from Members, declarations of interests in relation to any items included on the agenda for this meeting in accordance with the Waverley Code of Local Government Conduct.

4. **QUESTIONS BY MEMBERS OF THE PUBLIC**

The Chairman to respond to any written questions received from Members of the public in accordance with Procedure Rule 10.

The deadline for receipt of questions is 5pm Monday 28 January 2021.

5. **QUESTIONS FROM MEMBERS**

The Chairman to respond to any written questions received from Members in accordance with Procedure Rule 11.

The deadline for receipt of questions is 5pm 28 January 2021.

## **MONITORING OFFICER MATTERS**

6. **REVIEW OF ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS AGAINST COUNCILLORS AND CO-OPTED MEMBERS UNDER THE LOCALISM ACT 2011** (Pages 7 - 28)

This report proposes changes to the Council's arrangements, as set out within the Constitution, for how the Monitoring Officer deals with complaints submitted to him or her alleging breaches of the Councillor Code of Conduct. The Standards Committee are invited to consider and debate the proposed changes before agreeing what changes, if any, should be recommended to Full Council for adoption.

### **Recommendation**

It is recommended that the Standards Committee consider and debate the proposed changes before agreeing what changes, if any, should be recommended to Full Council for adoption.

7. **LGA NEW MODEL CODE OF CONDUCT** (Pages 29 - 68)

This report presents the new Model Code of Conduct, published in December 2020 by the Local Government Association (LGA). The LGA consulted widely on the new code before publishing the final version. The Committee is asked to give consideration to recommending to Full Council that the new model code be adopted.

Authorities remain responsible for their own local code and so there is no 'requirement' to adopt the code, either in part or in full. Authorities may choose to amend the model code prior to adopting it and/or can choose to amend it at any point in the future.

The Committee can, if it wishes, propose to Council amendments to the model code although none have been recommended by officers.

### **Recommendation**

It is recommended that the Standards Committee:

- (i) recommend to Full Council that the new LGA model code be adopted without any local amendments; and
- (ii) ask the Monitoring Officer to arrange councillor briefings on the new model code (once adopted).

## **CONSTITUTIONAL MATTERS**

8. **AMENDMENTS TO THE WAVERLEY CONSTITUTION - SCHEME OF DELEGATION AND VIRTUAL MEETING PROCEDURE RULES** (Pages 69 - 80)

This report sets out two matters for consideration by the Standards Committee:

1. Scheme of Delegation - it follows up on the discussion at the Committee's meeting on 5 October 2020, when it considered possible exceptions to delegated authority within the scheme of delegation. The committee asked officers to draft a possible form of wording that would ensure that once any decision is referred to a committee either by choice or because of a listed scheme exception in relation to any particular decision, then all future decisions relating to that matter must then be taken by the committee rather than being taken by the officer (even if those other decisions would have otherwise been allowable under the scheme without reference to a committee).
2. Virtual Meeting Procedure Rules – it proposes an addition to the Virtual Meeting Procedure Rules, to require that participants and observers at council and committee meetings refrain from using the Zoom chat facility other than to draw the attention of the chairman or committee officers to any technical issues.

### **Recommendation**

It is recommended that the Committee:

1. Considers whether to recommend to Council to limit the scope of the Scheme of Delegation to Officers once a matter has been brought to committee in order for a committee to retain 'ownership' of an issue, by insertion of the following wording:

*"If officers refer a particular matter to a committee (either by choice, or because there was a listed exception in the scheme of delegation to an officer's authority to otherwise make a particular decision in relation to that matter), then all future decisions relating to that matter must then be taken by the committee rather than being taken by the officer (even if those other decisions would have otherwise been allowable under the scheme without reference to a committee), unless the committee concerned expressly confirms that the officer may make future decisions under delegated authority."*

2. Considers whether to recommend to Council the adoption of Virtual Meeting Procedure Rule 9, as set out in Annexe 1.

### 9. EXCLUSION OF THE PRESS AND PUBLIC

To consider the following recommendation on the motion of the Chairman:

### **Recommendation**

That, pursuant to Procedure Rule 20 and in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following item on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the item, there would be disclosure to them of exempt information (as defined by Section 100I of the Act) of the description specified at the meeting in the revised Part 1 of Schedule 12A to the Local Government Act 1972.

**For further information or assistance, please telephone  
Georgina Hall, Democratic Services Officer, on 01483 523224 or by  
email at [georgina.hall@waverley.gov.uk](mailto:georgina.hall@waverley.gov.uk)**

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**WAVERLEY BOROUGH COUNCIL**

**STANDARDS COMMITTEE**

**1 FEBRUARY 2021**

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**Title:**

**Review of arrangements for dealing with standards allegations against Councillors  
and Co-opted Members under the Localism Act 2011**

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**Portfolio Holder:** Councillor John Ward, Leader of the Council

**Head of Service:** Robin Taylor, Policy and Governance, and Monitoring Officer

**Key decision:** No

**Purpose and summary**

1.1 This report proposes changes to the Council's arrangements, as set out within the Constitution, for how the Monitoring Officer deals with complaints submitted to him or her alleging breaches of the Councillor Code of Conduct. The Standards Committee are invited to consider and debate the proposed changes before agreeing what changes, if any, should be recommended to Full Council for adoption.

**2. Recommendation**

It is recommended that the Standards Committee consider and debate the proposed changes before agreeing what changes, if any, should be recommended to Full Council for adoption.

**3. Reason for the recommendation**

To ensure the Council's arrangements for handling standards allegations reflect

**4. Background**

4.1 Citizens have the right, under Waverley's Constitution, to complain to the Monitoring Officer if they have evidence which they think shows that a Councillor has not followed their code of conduct.

4.2 The arrangements apply to Waverley Borough Councillors and Town and Parish Councillors and co-opted members in the Waverley area.

4.3 The arrangements are set out within the Constitution. Paragraph 12 of the existing arrangements confirm that they should be kept under review.

4.4 The changes proposed aim to learn from the Monitoring Officer's experience of complaints and hearings since the arrangements were last reviewed. As well as considering how easy it has been to operate the arrangements, the Monitoring

Officer has considered feedback received from those who have been involved in the process, including complainants, councillors, colleagues and independent persons.

4.5 Annexe 1 shows the proposed changes as tracked changes. The following summarises the main changes proposed:

- I. Inclusion of an Executive Summary of arrangements with the process divided into 9 numbered 'steps'. As well as describing the stage this summary identifies what the possible outcomes are, including when the process may end and why. The intention is to ensure everybody involved understands where they are in the process at any given time.
- II. Reference to the role of the Independent Person at the top of the document.
- III. Confirmation that complaints by Borough Councillors about Borough Councillors will be referred to the relevant group leader(s) for resolution and only referred back to the Monitoring Officer if it has been impossible to resolve the matter within 28 days.
- IV. Confirmation that complaints by Town or Parish Councillors about Councillors at the same Town or Parish Council will only be considered by the Monitoring Officer if the Town or Parish Clerk has been given the opportunity to resolve them first. Where they have not, the complaint will initially be referred to the Town or Parish Clerk and only referred back to the Monitoring Officer if it has been impossible to resolve the matter within 28 days.
- V. Confirmation that complainants' identities (but not contact personal details) will be disclosed to subject members in most circumstances. The provision for the Monitoring Officer to agree, on an exceptional basis, for a complainant's identity to be withheld has been retained but further detail has been added to the guidance to confirm the circumstances under which this would be considered, including the application of the public interest test and only after consulting with the Independent Person.
- VI. Confirmation that many complaints can be resolved with an investigation, for example by advice being issued by the Monitoring Officer.
- VII. Confirmation that most complaints, if investigated, will be investigated on an informal basis and that formal investigations are relatively rare.
- VIII. Confirmation that other officers or act on the Monitoring Officer's behalf, at his or her discretion, in dealing with complaints.
- IX. Specific target timescales for responding to initial complainants and for dealing with matters on an informal basis whilst recognising this will depend on availability of others.



- X. Confirmation that the Monitoring Officer reserves the right to progress the complaint in the absence of input from any party, especially where it is clear that individuals are deliberately choosing not to engage or to engage unreasonably slowly with the process.
- XI. Clarification that hearing papers will be published 5 clear working days in advance of the meeting.
- XII. Confirmation that appeals against panel hearings decisions need to be submitted within 10 working days of the conclusion of the panel hearing.
- XIII. Confirmation that the Ombudsman will only consider complaints once they have been through the Council's own processes.

4.6 In addition, a number of other smaller changes have been made to try and improve the document.

## **5. Relationship to the Corporate Strategy and Service Plan**

5.1 The council is required by law to set out its arrangements for handling standards allegations and to keep these under review.

## **6. Implications of decision**

### **6.1 Resource (Finance, procurement, staffing, IT)**

There are no costs arising from revisions to the arrangements for handling standards allegations. As is currently the case, there may be costs associated with investigations into standards allegations.

### **6.2 Risk management**

N/A

### **6.3 Legal**

The council is required by law to set out its arrangements for handling standards allegations and to keep these under review.

### **6.4 Equality, diversity and inclusion**

There are no direct equality, diversity or inclusion implications in this report. Equality impact assessments are carried out when necessary across the council to ensure service delivery meets the requirements of the Public Sector Equality Duty under the Equality Act 2010. However, Ombudsmen investigations can help to ensure that the Council delivers its services to all customers in a fair and equal way, and that any shortfall is rectified immediately.

### **6.5 Climate emergency declaration**

There are no direct implications for the council's climate emergency declaration.

**7. Consultation and engagement**

7.1 N/A

**8. Other options considered**

8.1 N/A

**9. Governance journey**

9.1 Any changes to the arrangement will be subject to the agreement of the Full Council.

**Annexes:**

Annexe 1 – Revised Arrangements for dealing with standards allegations against Councillors and Co-opted Members

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**Background Papers**

There are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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**Arrangements for dealing with Standards Allegations against Councillors and co-opted MemberCouncillors under the Localism Act 2011**

**Executive summary of arrangements**

**Please Note:**

- At ANY stage, the Monitoring Officer MAY choose to consult the designated 'Independent Person' and MUST do so before:
  - Deciding to commission a formal investigation into a complaint;
  - Accepting an anonymous complaint;
  - Agreeing to withhold a complainant's identity.
- The Independent Person has a valuable role to play in this process and the Monitoring Officer will reflect carefully on any view they give before making his or her own decisions during the process.
- Please see section 11 of these arrangements for more information about the Independent Person and their role in the process.

<b><u>Step</u></b>	<b><u>What</u></b>	<b><u>Possible outcomes</u></b>	<b><u>Timescales</u></b>
<b><u>1</u></b>	<b><u>Submission and acknowledgement of your complaint</u></b> <u>Your complaint is submitted in writing by email or letter and Waverley will acknowledge receipt of it within 5 working days.</u>		<b><u>5 working days</u></b>
<b><u>2</u></b>	<b><u>Is your complaint valid under these arrangements?</u></b> <u>If your complaint is about an alleged breach by a councillor or co-opted Councillor in the Waverley area it will probably be dealt with under these arrangements. There are various reasons why a complaint may be judged to be invalid. In some cases, your complaint may be dealt with under the corporate complaints procedure instead.</u>	<u>If your complaint is determined to be invalid, the process ends here.</u>	<b><u>5 working days</u></b>
<b><u>3</u></b>	<b><u>As a matter of fairness and natural justice, the councillor being complained about will usually be told who the complainant is and will also receive details of the complaint.</u></b> However, in exceptional circumstances, it may be appropriate to withhold the complainant's identity for some of all or steps of the		<b><u>15 working days (only where anonymity is requested)</u></b>

	<u>process. Requests for your identity to be withheld will be considered by the Monitoring Officer on a case-by-case basis against the criteria set out within these arrangements. The Monitoring Officer will always consult the Independent Person before deciding to accept an anonymous complaint or withhold a complainant's identity.</u>		
<u>4</u>	<b><u>Initial review of your complaint by Monitoring Officer.</u></b> <u>This is likely to involve reading any relevant correspondence and documentation including your complaint and may involve an initial informal discussion between the Monitoring Officer and the councillor you are complaining about.</u>	<u>The MO may decide at this point that there is obviously no case for the councillor to answer. If so, the MO will write to you confirming his or her judgement and explaining the reasons for it. Where this is the case, and the process ends here.</u>	
<u>4</u>	<b><u>The Monitoring Officer will consider whether he or she can appropriately and satisfactorily deal with your complaint without an investigation.</u></b> <u>Many matters can be appropriately and satisfactorily dealt with without the need for an investigation, for example by the Monitoring Officer issuing written or verbal advice to others.</u>	<u>If no investigation is needed, the MO will write to you confirming his or her judgement and any action taken to resolve the matter and explaining the reasons for it. Where this is the case, the process ends here.</u>  <u>Exceptionally, at the end of this stage the Monitoring Officer, after consulting the Independent Person, may conclude there is no realistic prospect of resolving the matter informally and commission an external formal investigation (step 7)</u>	
<u>5</u>	<b><u>Informal investigation if necessary and appropriate</u></b> <u>If an investigation is necessary then wherever possible and appropriate the</u>	<u>At the end of this stage the MO may write to you explaining why he or she judges there to</u>	

	<p><u>Monitoring Officer will try to do this on an informal basis. This is likely to involve talking to the parties involved to establish what has happened. The Monitoring Officer will try to establish if there is any evidence of a breach of the code.</u></p>	<p><u>be no evidence of a breach of the code. If so, the process ends here.</u></p>	
<b>6</b>	<p><b><u>Consideration of informal investigation findings</u></b>  <u>If, having informally investigated your complaint, the Monitoring Officer concludes there appears to be evidence of a code by the councillor (or is unable to conclude with certainty whether or not there has been), he or she will either:</u></p> <p style="padding-left: 40px;">(i) <u>Seek to resolve the matter on an informal basis. This could include, for example, writing to the councillor concerned and/or their group leader with his or her findings and providing advice about future conduct.</u></p> <p style="text-align: center;"><u>OR</u></p> <p style="padding-left: 40px;">(ii) <u>Commission an external investigator to investigate your complaint on a formal basis.</u></p> <p><u>Please note that where there is evidence of a breach of the code, the vast majority of cases can be dealt satisfactorily on an informal basis. <b>Formal investigations are relatively rare and are a last resort.</b></u></p> <p><u>The Monitoring Officer will always consult the Independent Person before deciding to commission a formal investigation and may consult them at any other time.</u></p>	<p><u>At the end of this stage the MO may write to you explaining his or her findings and explaining what actions has been taken to resolve your complaint on an informal basis. Where that is the case, the process ends here.</u></p> <p><u>Alternatively the Monitoring Officer may conclude, after consulting with the IP, that there should be a formal investigation (please see step 7).</u></p>	<p><u>Where an informal approach is taken, the Monitoring Officer will aim to resolve and close your complaint within 30 working days of confirming your complaint is valid (or making a decision on anonymity where this is requested).</u></p>
<b>7</b>	<p><b><u>Formal investigation</u></b>  <u>If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer who may be an officer of another authority or an external investigator. The investigator will review all documentation (which may include online material or recordings of public meetings) and may (or may not) interview you, the councillor being complained about or any other individual.</u></p>	<p><u>At the end of this stage, the Monitoring Officer may conclude, on the basis of the formal investigation report submitted to him or her, that there is <i>no</i> evidence of a breach of the code. In which case, the process ends here.</u></p>	<p><u>Timescales will depend on the specific situation.</u></p>

	<p><u>The investigator will share drafts of their report with both you and the councillor complained about and provide both with the opportunity to comment before submitting his final draft to the Monitoring Officer.</u></p> <p><u>At the formal investigation stage, the councillor complained about has a right to also consult the Independent Person. The complainant does not have this right.</u></p>	<p><u>Alternatively, the Monitoring Officer may conclude, on the basis of the formal investigation report submitted to him or her, that there is evidence of a breach of the code. In which case, the matter will progress.</u></p>	
<b>8</b>	<p><b><u>Local Resolution?</u></b></p> <p><u>The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future.</u></p>	<p><u>This step may be skipped if the Monitoring Officer judges there is no prospect of a local resolution.</u></p> <p><u>Alternatively, this may be the last stage of the process if the matter can satisfactorily be resolved in this way.</u></p>	
<b>9</b>	<p><b><u>Panel Hearing?</u></b></p> <p><u>If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel of three Councillors drawn from the Group appointed by the Council, which will conduct a local hearing before deciding whether the councillor has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the councillor.</u></p> <p><u>Meetings of the Hearings Panel will be held in public unless the Monitoring Officer agrees there are exceptional circumstances that prevent this.</u></p> <p><u>In the case of a complaint involving a Town or Parish Councillor, as well as the three Councillors, there will be a Town or Parish</u></p>	<p><u>At the end of this stage, the Hearings Panel may conclude that the councillor did not breach their code of conduct.</u></p> <p><u>Alternatively, the Hearings Panel may conclude that the councillor did breach their code of conduct. Where this is the case, the panel will decide what action, if any should be taken.</u></p>	

<p><u>Councillor attending as a non-voting Councillor.</u></p> <p><u>If the Hearings Panel concludes that the councillor did fail to comply with the Code of Conduct, the Chairman will inform the councillor of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the councillor's failure to comply with the Code of Conduct.</u></p> <p><u>Section 8 of these arrangements set out what action can be taken as a result of the Hearings Panel's conclusions.</u></p> <p><u>The Hearings Panel has no power to suspend or disqualify the councillor or to withdraw councillors' allowances or special responsibility allowances.</u></p> <p><u>In the case of Town or Parish complaints, the conclusion will be referred to that Town or Parish Council for such action they consider appropriate.</u></p>		
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## 1. Context

~~Waverley Borough Council is committed to high standards of conduct by its councillors and co-opted members.~~

This procedure ~~should be~~ is used to deal with complaints from any individual relating to alleged breaches of the submitted under the Member Councillors' Code of Conduct adopted by Waverley Borough Council and the Codes of Conduct adopted by Parish and Town Councils in the Waverley area.

## 2. The Borough, Town and Parish Codes of Conduct

Upon taking office, Borough, Town or Parish Councillors and co-opted Councillors within the Waverley area must sign a 'code of conduct' which commits them to high standards of conduct and behaviour.

Waverley Borough Council has adopted a Code of Conduct for member councillors, which is attached as Appendix One to these arrangements and is available on



Waverley Borough Council's website at [www.waverley.gov.uk](http://www.waverley.gov.uk) and on request from Reception at the Council Offices.

The Code of Conducts of Town and Parish Councils are available for inspection on either Waverley Borough Council's website or the relevant Town or Parish website (if the Parish Council has one) and may also be viewed by arrangement with the Town or Parish Clerk.

### 3. Making a complaint

If you wish to make a complaint, please write or email to:

The Monitoring Officer  
Waverley Borough Council  
Council Offices  
The Burys  
Godalming  
Surrey  
GU7 1HR

[monitoring.officer@waverley.gov.uk](mailto:monitoring.officer@waverley.gov.uk)

The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of ~~Member~~Councillors' Interests and who is responsible for dealing with complaints about ~~member~~councillor misconduct.

Please provide us with your name and a contact address or email address so that we can acknowledge receipt of your complaint and keep you informed of its progress.

~~Requests not to disclose your name and address to the member against whom you make the complaint without your prior consent will only be agreed by the Monitoring Officer in exceptional circumstances. If the Monitoring Officer determines that your complaint is to be formally investigated, requests for your name and address to be kept confidential would only be considered for safeguarding reasons or if disclosure could reasonably be expected to prejudice the investigation. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.~~

The Monitoring Officer or an officer acting on his or her behalf will acknowledge receipt of your complaint within five working days of receiving it and will keep you informed of the progress of your complaint.

Where a complaint concerns an issue between two Waverley Borough Councillors, the Monitoring Officer will initially refer the matter to the appropriate Group Leader(s) to resolve amongst themselves, if at all possible. Every effort should be made to resolve the matter within 28 days and if this is not possible the matter may be referred back to the Monitoring Officer

Complaints by Town or Parish Councillors about Councillors at the same Town or Parish Council will only be considered by the Monitoring Officer if the Town or

Parish Clerk has been given the opportunity to resolve them first. Where they have not, the complaint will initially be referred to the Town or Parish Clerk and only referred back to the Monitoring Officer if it has been impossible to resolve the matter within 28 days.

Where the Monitoring Officer considers that he or she should not perform any or all of the Monitoring Officer functions under these arrangements owing to an actual or potential conflict of interest, the Monitoring Officer will instruct a Deputy Monitoring Officer or other suitably qualified and experienced officer to act in his or her place.

#### **4. Will your complaint be investigated and how?**

##### **Is your complaint 'valid'?**

4.1 A 'valid' complaint is one which alleges a breach by a named councillor (or councillors) of his or her code of conduct.

4.2 The Monitoring Officer or an officer acting on his or her behalf will review every complaint received and apply the following criteria make-before making a decision as to whether it will be treated as a 'valid complaint' about a councillor.

4.3 A decision by the Monitoring Officer that a complaint is 'valid' only means it will be dealt with according to this procedure. It does not mean the complaint is justified. No judgement is made at this point about whether there is any evidence of a breach of the code by a councillor.

##### **What sorts of complaints are invalid?**

4.4 The following types of complaint will not be considered as 'valid complaints' under this procedure:

- a) Complaints which are submitted anonymously, unless there is a clear public interest in doing so;
- b)a) Complaints which do not identify a subject MemberCouncillor (the councillor who is being complained about);
- e)b) Complaints which relate only to a MemberCouncillor's personal or private life;
- d)c) Complaints concerning a failure to respond to a request from a constituent or other individual;
- e)d) Complaints which relate to the alleged actions of employees of the Council or non-voting co-optees which are subject to a different code and the corporate complaints process;
- f)e) Complaints which relate to a decision of an employee or a Committee;
- g)f) Complaints which relate to a person who is no longer a MemberCouncillor of the Council or which refer to alleged incidents before the person became a MemberCouncillor of the Council;
- h) Complaints which refer to alleged incidents which happened so long ago that there would be little benefit in taking action now; more than 2 months ago.

- ~~i)~~ Complaints containing trivial allegations, or which ~~appear~~ are judged by the Monitoring Officer to be simply
    - ~~—~~vexatious, malicious, politically motivated or tit-for-tat;
  - ~~h)~~
- j) Complaints regarding alleged behaviour by a councillor which ~~has is, or has within the past 3 months, been subject to investigation or action determined by the Monitoring Officer or Panel Hearing.~~ already been the
  - ~~i)~~ subject of an investigation or some form of action;
  - i) Complaints which do not relate to the MemberCouncillors' Code of Conduct.
- ~~k)~~ —

### What information will be shared with the councillor being complained about?

4.5 In all cases where the complaint names a MemberCouncillor of a relevant authority, the MemberCouncillor will be notified of the complaint. If the Monitoring Officer decides that the complaint is 'invalid', this notification is made for information only.

4.6 As a matter of fairness and natural justice, the Councillor being complained about will usually be told who the complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to withhold the complainant's identity for some or all steps within the process.

4.7 Requests for your identity to be withheld will be considered by the Monitoring Officer on a case-by-case basis against the criteria set out within these arrangements.

4.8 The Monitoring Officer will always consult the Independent Person before deciding to accept an anonymous complaint or withhold a complainant's identity.

4.9 The Monitoring Officer may withhold the complainant's identity and/or details of the complaint if they are satisfied that there are reasonable grounds for believing that the complainant or any other person (e.g. a witness):

- (a) is either vulnerable or at risk of threat, harm or reprisal;
- (b) may suffer intimidation or be victimised or harassed;
- (c) works closely with the councillor they are complaining about;
- (d) suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this);

OR where early disclosure of the complaint:

- (a) may lead to evidence being compromised or destroyed; or
- (b) may impede or prejudice the investigation; or
- (c) would not be in the public interest.

Relevant public interest factors favouring disclosure (not an exhaustive list) include:

(a) to facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others;

(b) to raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern;

(c) justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Member when it may not be in the public interest to disclose it to the world at large;

(d) bringing out in the open serious concerns about the behaviour/conduct of an individual.

4.10 The Monitoring Officer, in consultation with the Independent Person, will balance whether the public interest in accepting the complaint outweighs the complainant's wish to have their identity (or that of another person) withheld from the councillor being complained about.

4.11 If the Monitoring Officer decides to refuse the complainant's request for confidentiality, they will offer the complainant the option to withdraw their complaint.

4.12 The complainant will be notified of the Monitoring Officer's decision, with reasons, within 15 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

4.13 If the complaint relates to an employee or is a service related issue, the Monitoring Officer will refer the complaint to the relevant service in order for them to respond to the complainant directly. The complainant will be informed about the corporate complaints process.

4.14 In any case where the Monitoring Officer decides that the complaint is 'invalid', they will write to the complainant explaining why their complaint cannot be dealt with under this procedure. There is no appeal process for decisions taken by the Monitoring Officer at this stage.

4.15 Many matters can be appropriately and satisfactorily dealt with without the need for an investigation, for example by the Monitoring Officer issuing written or verbal advice to others. If the Monitoring Officer judges that the matter can be appropriately and satisfactorily dealt with in this way, an investigation will not take place.

If the complaint is judged to be valid, the Monitoring Officer will consider whether 4.16 If the Monitoring Officer considers that an some form of investigation is necessary, he or she will give consideration as to whether that investigation will be done informally. Wherever possible, the Monitoring Officer will endeavour to deal with complaints in this way.

- 4.17 ~~Alternatively, the Monitoring Officer may judge that an investigation is appropriate or whether it your complaint merits formal investigation. This decision may be made immediately or it may be made after the Monitoring Officer has taken informal action but has ultimately decided this insufficient.~~
- 4.18 ~~The Monitoring Officer will always consult the Independent Person before making the decision to commission a formal investigation (and may consult the IP at any other time they choose to). not commence any formal investigation without consulting the Independent Person.~~
- 4.19 The Monitoring Officer will inform the subject membercouncillor or co-opted membercouncillor of receipt of the allegation and its details and of their right to consult the Monitoring Officer and Independent Person if the matter progresses to a formal investigation stage. ~~This decision will normally be taken within 30 days of receiving your complaint.~~ Where the Monitoring Officer has taken a decision, he/she will inform you, the membercouncillor and the Independent Person of his/her decision in writing and the reasons for that decision.
- 4.20 Where an informal approach is taken, the Monitoring Officer will aim to resolve and close your complaint within 30 working days. Where matters progress to a formal stage, the timescales will depend upon the detail of the complainant and also the availability of the various parties involved to engage with the investigation process. However, the Monitoring Officer reserves the right to progress the complaint in the absence of input from any party, especially where it is clear that individuals are deliberately choosing not to engage or to engage unreasonably slowly with the process.
- 4.10 Where ~~he/she requires~~ additional information is required in order to come to a decision, ~~he/she the Monitoring Officer~~ may come back to you for such information and may request information from the membercouncillor against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.
- 4.11 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally without the need for a formal investigation. Such informal resolution may involve the membercouncillor accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the authority. Where the membercouncillor or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.12 If your complaint alleges criminal conduct or breach of other regulation by any person, including the alleged non-disclosure of disclosable pecuniary interests, the Monitoring Officer has the power to call in the Police and other regulatory agencies and may determine that it is not possible to commence his own investigation until the Police or other regulatory agencies have concluded their own investigations of the matter. At this stage, any media enquiries will be advised that a review of a complaint is in process and that it would not be appropriate to comment.

## **5. How is the investigation conducted?**

5.1 If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer who may be an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see and who the Investigating Officer needs to interview.

5.2 The Investigating Officer would normally write to the [membercouncillor](#) against whom you have complained and provide him/her with a copy of your complaint and an explanation of the arrangements for the investigation and ask the [membercouncillor](#) to provide his/her explanation of events and to identify what documents he needs to see and who he needs to interview. ~~In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member or delay notifying the member until the investigation has progressed sufficiently.~~

5.3 At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the [membercouncillor](#) concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration. The report will include details of the allegation, the evidence considered and the investigation's findings.

5.4 Having received and taken account of any comments that you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer which will include his/her findings as to whether there may have been a breach of the Code of Conduct.

## **6. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

6.1 The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the [membercouncillor](#) concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that he/she is satisfied that no further action is required and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report. The Monitoring Officer will ask the Independent Person to comment on the investigation report.

## **7. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**



The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

### 7.1 Local Resolution

7.1 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the [membercouncillor](#) accepting that his/her conduct was unacceptable and offering an apology and/or other remedial action by the authority. If the [membercouncillor](#) complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Panel Lead [MemberCouncillor](#).

### 7.2 Local Panel Hearing

7.2 If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the [membercouncillor](#) concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel of three [MemberCouncillors](#) drawn from the Group appointed by the Council, which will conduct a local hearing before deciding whether the [membercouncillor](#) has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the [membercouncillor](#). In the case of a complaint involving a Town or Parish [MemberCouncillor](#), as well as the three [MemberCouncillors](#), there will be a Town or Parish Councillor attending as a non-voting [MemberCouncillor](#).

7.3 ~~Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.~~ At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the [membercouncillor](#) has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you, as the complainant, to attend and give evidence to the Hearings Panel. The [membercouncillor](#) will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

7.4 The Hearings Panel, with the benefit of any prior advice in writing from the Independent Person, may conclude that the [membercouncillor](#) did not fail to comply with the Code of Conduct and so dismiss the complaint. If the Hearings Panel concludes that the [membercouncillor](#) did fail to comply with the Code of Conduct, the Chairman will inform the [membercouncillor](#) of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the [membercouncillor](#)'s failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the [membercouncillor](#) an opportunity to

make representations in writing to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

**7.5** Meetings of the Hearings Panel will be held in public unless the Monitoring Officer agrees there are exceptional circumstances that prevent this. The agenda for the meeting will be ~~publicised~~ published 5 clear working days in advance of the hearing meeting. Meeting papers that do not contain exempt information will be shared with all membercouncillors of the panel, the Independent Person, the Investigating Officer and any witnesses. Meeting papers will not be shared in advance with the press and public but will be made available at the commencement of the hearing.

## **8. What action can the Hearings Panel take where it finds that a membercouncillor has failed to comply with the Code of Conduct?**

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual Waverley membercouncillors as necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may:

- 8.1 publish its findings in respect of the membercouncillor's conduct;
- 8.2 report its findings to Council or to the Town or Parish Council for information;
- 8.3 recommend to the membercouncillor's Group Leader (or in the case of un-grouped membercouncillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 recommend to the Leader of the Council that the membercouncillor be removed from the Executive, or removed from particular Portfolio responsibilities;
- 8.5 instruct the Monitoring Officer to arrange training for the membercouncillor;
- 8.6 remove the MemberCouncillor from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;
- 8.7 withdraw, facilities provided to the membercouncillor by the Council, such as a computer, website and/or email and Internet access; or
- 8.8 exclude, the membercouncillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the membercouncillor or to withdraw membercouncillors' allowances or special responsibility allowances.

In the case of Town or Parish complaints, the conclusion will be referred to that Town or Parish Council for such action they consider appropriate.

## **9. What happens at the end of the hearing?**



At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the [membercouncillor](#) failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel and send a copy to you, to the [membercouncillor](#) and the Independent Person and make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council. The decision will also be placed on the Waverley Borough Council website, unless no breach is found and the [membercouncillor](#) requests it should not be publicised.

## 10. Who is on the Hearings Panel?

The Hearings Panel is drawn from the [membercouncillors](#) appointed by the Council. The Independent Person's views are sought and taken into consideration before the Hearings Panel takes any decision on whether the [membercouncillor](#)'s conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## 11. Who is the 'Independent Person'?

Waverley Borough Council has appointed three Independent Persons. These are [membercouncillors](#) of the Community who have applied for the post following advertisement of a vacancy for the post and have been appointed by a positive vote from a majority of all the [membercouncillors](#) of Council.

A person cannot be "independent" if he/she:

- 11.1 is, or has been within the past five years, a [membercouncillor](#), co-opted [membercouncillor](#) or officer of the Council; or
- 11.2 is, or has been within the past five years, a [membercouncillor](#), co-opted [membercouncillor](#) or officer of a parish council of which the authority is the principal authority; or
- 11.3 is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means:
  - 11.3.1 spouse or civil partner;
  - 11.3.2 living with the other person as husband and wife or as if they were civil partners;
  - 11.3.3 grandparent of the other person;
  - 11.3.4 a lineal descendent of a grandparent of the other person;

- 11.3.5 a parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
- 11.3.6 a spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
- 11.3.7 living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

The role of the independent person is set out in Section 28 of the Localism Act 2011. As part of its arrangements under which decisions on allegations can be made, each principal authority must appoint at least one independent person.

The views of an Independent Person **must** be sought by the Council before it takes a decision on whether an allegation may be investigated, and **may** be sought by the Council at any other stage (e.g. before a final hearing is arranged or where a local resolution may be appropriate). Where the authority voluntarily chooses to seek the independent person's views on an allegation that it has not decided to investigate, there is no requirement for the authority to take the views of the Independent Person into account.

If a matter progresses to the formal investigation stage, A a membercouncillor against whom an allegation has been made has the right to consult the Independent Person should they wish to do so.

## 12. Review of these arrangements

The Council may by resolution agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter. The Council will keep these arrangements under review and identify any improvements to the processes and ensure that they are helping the Council maintain high standards of conduct.

## 13. Appeals

- (a) There is no right of appeal for you as complainant against a decision of the Monitoring Officer or of the Hearings Panel.
- (b) If the MemberCouncillor or co-opted membercouncillor wishes to appeal against the decision of the Hearings Panel, the MemberCouncillor will have a right to have the decision reviewed by another three membercouncillors of the Standards Panel who have not been involved. The Monitoring Officer will determine whether This-this will either involve a full rehearing of the case or be dealt with by way of written representation from the membercouncillor. Appeals must be submitted within 10 working days of the conclusion of Panel Hearing.

## 14. Your right to complain to the Local Government Ombudsman

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government [and Social Care](#) Ombudsman. **INCLUDE CONTACT DETAILS HERE.** [The Ombudsman will not re-hear your complaint but will consider whether Waverley Borough Council has dealt with it properly. They will not consider complaints from the public until the authority has gone through its own process and reached a conclusion.](#)

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**WAVERLEY BOROUGH COUNCIL**

**STANDARDS COMMITTEE**

**1 FEBRUARY 2021**

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**Title:**

**New LGA Model Code of Conduct**

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**Portfolio Holder:** Councillor John Ward, Leader of the Council

**Head of Service:** Robin Taylor, Policy and Governance, and Monitoring Officer

**Key decision:** No

**Purpose and summary**

This report presents the new Model Code of Conduct, published in December 2020 by the Local Government Association (LGA). The LGA consulted widely on the new code before publishing the final version. The Committee is asked to give consideration to recommending to Full Council that the new model code be adopted.

Authorities remain responsible for their own local code and so there is no 'requirement' to adopt the code, either in part or in full. Authorities may choose to amend the model code prior to adopting it and/or can choose to amend it at any point in the future.

The Committee can, if it wishes, propose to Council amendments to the model code although none have been recommended by officers.

**2. Recommendation**

It is recommended that the Standards Committee:

- (i) recommend to Full Council that the new LGA model code be adopted without any local amendments; and
- (ii) ask the Monitoring Officer to arrange councillor briefings on the new model code (once adopted).

**3. Reason for the recommendation**

Adopting the LGA Model Code of Conduct will ensure that the Code follows best practice for the sector.

**4. Background**

4.1 All councils are required to have a local Member Code of Conduct. Waverley Borough Council's current code is attached as Annexe 1. Councillors, upon taking up office, sign an oath which binds them to comply with their code of conduct.

4.2 Town and Parish Councils in the Waverley area are each responsible for agreeing their own local code but by and large these mirror Waverley's own code.

- 4.3 In December 2020 the Local Government Association (LGA) published their new Model Member Code of Conduct (attached as Annexe 2). The LGA has developed this new model code in consultation with the sector and offers it as a template for councils to adopt in whole and/or with local amendments. The LGA have committed to undertaking an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation.
- 4.4 For information, an explanatory note published by LLG (Lawyers in Local Government) is attached as Annexe 3.
- 4.5 The LGA documentation is largely self-explanatory. However, there are a few things worth noting about the new code:
- (i) The model code seeks to build upon the Committee for Standards in Public Life's seven 'Nolan Principles' of public life (selflessness; integrity; objectivity; accountability; openness; honesty and leadership). It builds on these principles with a set of 'general principles' developed specifically for the role of the councillor. Helpfully, these are phrased in the first person, reminding anyone reading the document that the code of conduct belongs to councillors. It is they who must own, champion and embody it. Monitoring Officers and others have a professional responsibility to support councillors in upholding high standards of conduct but ultimately only councillors can make or break their own code.
  - (ii) Earlier consultation drafts of the model code used the phrase 'civility' (where most authorities' codes, including Waverley's, had long used the terminology of 'respect'). Some consultees supported this shift in terminology. Others did not. There were pros and cons to this proposed change in focus. Ultimately, the LGA decided to use the more familiar word 'respect' rather than 'civility' in their final model code. Helpfully, the new model code provides a definition of respect in case it is not immediately obvious or perhaps as a useful reminder to reflect upon. It clarifies that councillors can 'express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner' but that councillors should not 'subject individuals, groups of people or organisations to personal attack'. The new model code also clarifies that councillors have a right to expect respectful behaviour from the public, other councillors and employees. (code para 1)
  - (iii) The model code contains specific references to councillors not bullying or harassing others. The original LGA model code did not contain these references although many authorities, including Waverley, had already amended their codes in recent years to clarify this duty. Helpfully, the model code explicitly refers to definitions of bullying and harassment (from ACAS and the Protection of Harassment Act 1997 respectively) (code para 2).
  - (iv) The preamble to the code makes it clear that the code applies to 'all forms of communication and interaction' including online meetings, on

the telephone and via social media ('application of the code of conduct'). This is helpful given so many alleged breaches of the code relate to electronic communications of one form or another (and this was the case prior to the increased levels of remote working brought about by Covid).

- (v) The model code contains new duties to undertake code of conduct training and to cooperate with any code of conduct investigation undertaken (code para 8).
- (vi) The new model code uses the terminology of 'disclosable pecuniary interests' (see code Appendix B table 1), 'other registerable interests' (see code Appendix B table 2) and 'non-registerable' interests (see code Appendix B paras 7-10). This terminology will be partly familiar and partly unfamiliar to those used to the current Waverley code. If adopted, it will be important that officers and councillors familiarise themselves with this new way of thinking about and describing interests. If adopted, councillors will be expected to use this terminology when registering and disclosing interests. Officers regard the new ways of describing interests within the model code as helpful.

#### 'Disclosable pecuniary interests'

The model code reiterates the legal duty to register and disclose 'disclosable pecuniary interests' and lists what these are (see table 1 within the model code).

#### 'Other registerable interests'

It also confirms that councillors 'must' register a specific set of 'other registerable interests' (see table 2 within the model code).

#### 'Non-registerable interests'

The model code also covers the need to disclose interests, when a matter arises at a meeting, that do not fall into either of the above categories but which directly relate to a councillor's 'financial interest or wellbeing'. The code is clear that councillors 'must' disclose this type of interest when it arises (para 7). The code sets out when this type of interest will be deemed to have arisen (para 8) and the two tests councillors should apply when considering whether or not they should participate and vote (para 9).

- 4.6 The new code also sets out new provisions for dealing with 'sensitive' interests which means those which 'could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation'. In short, the code allows for these types of interest to be registered with the Monitoring Officer but not put on public record.

## **5. Relationship to the Corporate Strategy and Service Plan**

- 5.1 This report supports the Council's Corporate Strategy priority of 'Open, democratic and participative governance'.

## **6. Implications of decision**

### **6.1 Resource (Finance, procurement, staffing, IT)**

There are no direct resource implications arising from this report.

### **6.2 Risk management**

N/A

### **6.3 Legal**

The principal statutory provisions relating to standards of conduct for Councillors are contained in the Localism Act 2011. Section 27(1) of the 2011 Act provides that the Council must promote and maintain high standards of conduct by Councillors and Co-opted Members of the authority.

Sections 27 and 28 of the Localism Act require the Council to adopt a Code of Conduct consistent with the Nolan Principles of good governance and to appoint at least one Independent Person whose views must be sought and taken into account before the Council makes any decision about an alleged breach of the Code that has been investigated.

There is no obligation by the Council to adopt a particular model Code of Conduct. The statutory duty is to adopt a code of conduct which complies with the statutory requirements referred to above.

### **6.4 Equality, diversity and inclusion**

There is a general obligation in the Code of Conduct in which Members undertake to "not do anything which may cause the Council to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2010)".

### **6.5 Climate emergency declaration**

There are no direct climate emergency implications arising from this report.

## **7. Consultation and engagement**

- 7.1 N/A

## **8. Other options considered**

- 8.1 The Council may choose not to adopt the new Model Code, or to make amendments to it, to meet local circumstances.



## **9. Governance journey**

9.1 The recommendation of the Standards Committee will be reported to Full Council.

### **Annexes:**

Annexe 1 – Waverley Members' Code of Conduct

Annexe 2 – New LGA Model Code of Conduct (December 2020)

Annexe 3 – New LGA Model Code of Conduct - LLG Explanatory note

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### **Background Papers**

There are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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### **CONTACT OFFICER:**

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# The Waverley Members' Code of Conduct

The Waverley Members' Code of Conduct was adopted by Council on 17 July 2012, and subsequently amended by Council on 18 October 2016, 19 March 2019 and 9 June 2020.

## Introduction and Interpretation

1. (1) This Code applies to you as a Member of Waverley Borough Council ("the Council") when you act in your role as a Member, including the use of email or social media platforms.
  - (2) You are a representative of the Council and the public will view you as such. Your actions can impact on how the Council as a whole is viewed.
  - (3) Waverley is under a duty to promote and maintain high standards of conduct by Members. This Code is based on and is consistent with the seven "Nolan principles" of public life set out in Section 28 of the Localism Act 2011 which Waverley endorses:
    - (a) **Selflessness.** Holders of public office should act solely in terms of the public interest.
    - (b) **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 families, or their friends. They must declare and resolve any interests and relationships.
    - (c) **Objectivity.** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
    - (d) **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.
    - (e) **Openness.** Holders of public office should act and taken decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
    - (f) **Honesty.** Holders of public should be truthful.
    - (g) **Leadership** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support these principles and be willing to challenge poor behaviour wherever it occurs.
  - (4) It is your responsibility to comply with the provisions of this Code when acting in your capacity as a Member.

- (5) In this Code:
- (i) “Member” includes elected councillors, and co-opted or appointed members.
  - (ii) A “Disclosable Pecuniary Interest” is an interest within the prescribed descriptions set out in Annexe 1 that you have personally, or that is an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners, and you are aware that that person has the interest.
  - (ii) “meeting” means any meeting of
    - (a) the Council
    - (b) the Executive
    - (c) any of the Council’s committees, sub-committees, joint committees, joint sub-committees, area committees, working groups, panels or Boards.
- (6) If you are unsure about whether or not the code of conduct applies to a particular situation, you should consult the Monitoring Officer or Deputy Monitoring Officer.
- (7) A failure of a Member to comply with this Code of Conduct will be dealt with in accordance with the Arrangements approved by the Council under which allegations of such failure can be investigated and decisions on such allegations be made.
- (8) Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may also result in a criminal conviction and a fine of up to £5,000 and/or disqualification from office for a period of up to five years.

## General Obligations

2. (1) **You must** always treat others (including member colleagues, officers, other organisations and members of the public) with respect.
- (2) **You must not do** anything which may cause the Council to breach any of the equality enactments (as defined in section 33 of the Equality Act 2010).
- (3) **You must not** conduct yourself in a manner which is contrary to the Council’s duty to promote and maintain high standards of conduct by Members.

- (4) **You must not** 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 legal advice provided that the third party agrees not to disclose the information to any other person; or
  - (iv) the disclosure is:
    - (aa) reasonable and in the public interest;
    - (bb) made in good faith and in compliance with the reasonable requirements of the Council; and
    - (cc) you have consulted the Monitoring Officer or taken other independent legal advice prior to its release.

This particularly includes Waverley Borough Council reports which are exempt, which remain confidential until released by a resolution of the Executive or Committee of the Council.

- (5) **You must not** prevent another person from gaining access to information to which that person is entitled by law.
- (6) **You must not** use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person an advantage or disadvantage.
- (7) **You must not** undertake any action that could be regarded as harassment, intimidation and/or bullying of member colleagues, officers, or members of the public.
- (8) In addition to compliance with this Member Code of Conduct, you are expected to comply with the following codes:
- (i) Planning Code of Best Practice
  - (ii) Member/Officer Protocol

3. When using or authorising the use by others of the resources of the Council:

- (1) **Do** act in accordance with the Council's reasonable requirements and policies;

- (2) **Do** ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (3) **Do** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

### **Gifts and Hospitality**

4. (1) **Do** exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a Member.
- (2) **Do not** accept significant gifts or hospitality from persons seeking to acquire, develop or do business with the Council or from persons who may apply to the Council for any permission, licence or other significant advantage.
- (3) **Do** register with the Monitoring Officer any gift with an estimated value of at least £50 or hospitality with an estimated value of at least £100 within 28 days of its receipt.

### **Registration of Interests**

5. (1) As a Member of the Council **you must** avoid participating in any decision where you could reasonably be seen as having an interest which compromises your honesty or objectivity. Equally, you should avoid any action which might reasonably lead others to conclude that you were not acting selflessly or with integrity. In order to assist with this and promote openness and accountability, the Monitoring Officer must, by law, establish and maintain a register of interests, open for inspection by the public at the Council's offices and publicly accessible on the Council's website.
- (2) **You must** notify the Monitoring Officer of your Disclosable Pecuniary Interests, or other interests which the Council has decided are appropriate for registration (those listed in paragraph 5(4)). On election, you must do this within 28 days of being elected or appointed to office. Details of disclosable pecuniary interests are set out in the Annexe to this Code. You should give sufficient detail of the interests for a member of the public to understand where there might be a conflict of interest.
- (3) **Do** similarly notify the Monitoring Officer of any Disclosable Pecuniary Interest or other interests not already registered within 28 days of your re-election or re-appointment to office. If any of these change you should update your Register of Interests entry promptly.
- (4) **Do** be aware that Disclosable Pecuniary Interests include not only your interests but also the interests of your spouse or civil partner, a person with whom you

are living as husband or wife or a person with whom you are living as if they were a civil partner, so far as you are aware of the interests of that person. They also apply to any past and reasonably expected future occupational pension, office, trade, profession or vocation as well as present ones.

- (5) **Do** be aware that the Council has decided that it is appropriate for you to register and disclose non-pecuniary interests that arise from your membership of or your occupation of a position of general control or management in the following bodies –
- (i) bodies to which you have been appointed or nominated by the Council;
  - (ii) bodies exercising functions of a public nature;
  - (iii) bodies directed to charitable purposes;
  - (iv) bodies one of whose principal purposes include the influence of public opinion or policy.
- (6) **Sensitive Information** Where a Member of the council has an interest (whether or not a Disclosable Pecuniary Interest) and the nature of the interest is such that they, and the Monitoring Officer, consider that disclosure of the details of the interest could lead to the Member (or a person connected to them) being subject to violence or intimidation, then:
- (a) if the interest is entered in the Register of Interests, copies of the register that are made available for inspection or published on the Council's website, must not include details of the interest (but may state that the Member has an interest the details of which are withheld under this provision of the Code).
  - (b) where a disclosable pecuniary interest is not entered on the Register of Interests and would otherwise require disclosure at a meeting, the Member shall be entitled to merely disclose at the meeting the fact that they have such an interest in the matter concerned.
- (7) **Removal of entries in the register** An entry in the register of interests will be removed once the person concerned no longer has the interest or is neither a councillor nor a co-opted Member of the council (other than transitorily on re-election or re-appointment).

## Disclosure of Interests and Participation

6. (1) **Do** disclose to a meeting at which you are present any disclosable pecuniary interest, or other interest which the Council has decided is appropriate for disclosure (see paragraph 5(4) above) as soon as you become aware of it.
- (2) **Do** notify the Monitoring Officer of any interest not already registered that is disclosed to a meeting under paragraph 6(1) above within 28 days of the disclosure.
- (3) **Do not** participate in any discussion, or vote, where you have a disclosable pecuniary interest in a matter. **Do** withdraw from the meeting during the consideration of the matter.
- (4) **Do** declare any other non-pecuniary interest(s) that you consider to have sufficient weight so as to undermine your ability to make an open-minded and objective decision. Where this is the case, **do** exclude yourself from consideration of the item by withdrawing from the chamber for the duration of it being discussed.

In making a judgement about whether a non-pecuniary interest is of sufficient weight as to undermine your objectivity, you should consider what an ordinary member of the public, with knowledge of the relevant facts, would think.

7. Notwithstanding the provisions of Paragraph 5 (1), **you may** participate in any business of the Council where that business relates to the Council's functions in respect of:
  - (a) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
  - (b) agreeing an allowance, payment or indemnity given to councillors or co-opted members; and
  - (c) setting council tax or a precept under the Local Government Finance Act 1992.

### **Decision-making and Predetermination**

8. (1) Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life, you should not be prohibited from participating in a decision in your political role as a Member.
- (2) However, **do not** place yourself under any financial or other obligation to outside individuals or organizations that might seek to influence you in the performance of your official duties.
- (3) When making a decision, **do** consider the matter with an open mind and on the facts before the meeting at which the decision is to be made, listening to the advice of relevant parties, including advice from officers, and taking all relevant



information into consideration, remaining objective and making decisions on merit. Whilst this is particularly relevant for Planning and Licensing Committees, it also applies to other decision-making.

## **Dispensations**

9. (1) A councillor or co-opted member with a disclosable pecuniary interest in a matter may submit a written request to the Monitoring Officer for the grant to a dispensation allowing that councillor or co-opted member to participate in any discussion and/or vote on that matter at a meeting.
- (2) The Monitoring Officer may, after having had regard to all relevant circumstances, grant a dispensation allowing that councillor or co-opted member only if they consider that without the dispensation:
- (a) the number of persons prohibited from participating in any particular business in relation to the matter would be so great a proportion of the body transacting the business as to impede the transaction of that business, or
  - (b) each member of the Executive would be prohibited from participating in any particular business to be transacted by the Executive in relation to the matter.
  - (c) the representation of different political groups on the body transacting the particular business would be so upset as to alter the likely outcome of any vote relating to that business, or
  - (d) granting the dispensation is in the interests of persons living in the borough, or
  - (e) it is otherwise appropriate to grant the dispensation.
- (3) Any dispensation granted must specify the period for which it has effect, and the period specified may not exceed four years.

## **ANNEXE 1 – DISCLOSABLE PECUNIARY INTERESTS**

### **1. Employment, office, trade, profession or vocation**

Any employment, occupational pension, office, trade, profession or vocation carried on for profit or gain. If your employment relates to any Waverley service or function you should give full details, including any details of past, present or future contracts with an organisation seeking any permission or licence for Waverley.

### **2. Sponsorship**

Any payment or provision of any other financial benefit (other than from the Council) made or provided within the period of 12 months ending with the day on which you give a notification for the purposes of section 30(1) or section 31(7) of the Localism Act 2011 in respect of any expenses incurred 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.

### **3. Contracts**

Any contract which is made between you (or a body in which you have 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.

### **4. Land and property**

Any beneficial interest in land or property which is within the area of the Council. This includes your own home if you own it.

### **5. Licences or Tenancies**

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

### **6. Corporate Tenancies**

Any tenancy where (to your knowledge)-

- (a) the landlord is the Council; and
- (b) the tenant is a body in which you have a beneficial interest.

### **7. Securities and Shares**

Any beneficial interest in securities of a body where-

- (a) that body (to your knowledge) has a place of business or land in the area of the Council; and
- (b) either-
  - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

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

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## **Local Government Association**

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

#### **Joint statement**

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

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

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

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

## **Introduction**

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

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

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

## **Definitions**

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

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

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

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

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

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

## **General principles of councillor conduct**

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

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

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

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

In undertaking my role:

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

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

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

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

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

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

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

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

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

## **Standards of councillor conduct**

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

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

### **General Conduct**

#### **1. Respect**

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

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

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

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



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

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

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

### **As a councillor:**

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

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

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

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

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

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

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

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

**As a councillor:**

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

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

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

**As a councillor:**

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

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

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

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

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

## **5. Disrepute**

**As a councillor:**

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

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

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

## **6. Use of position**

**As a councillor:**

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

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

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

**As a councillor:**

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

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

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

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

Examples include:

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

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

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

### **As a Councillor:**

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

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

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

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

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

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

### **9. Interests**

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

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

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

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

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

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

## **10. Gifts and hospitality**

**As a councillor:**

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

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

## **Appendices**

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

The principles are:

#### **Selflessness**

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

#### **Integrity**

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

#### **Objectivity**

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

#### **Accountability**

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

#### **Openness**

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

#### **Honesty**

Holders of public office should be truthful.

#### **Leadership**

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

## Appendix B Registering

### interests

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

**"Disclosable pecuniary interest"** means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

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

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

### Non participation in case of disclosable pecuniary interest

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

### Disclosure of Other Registerable Interests

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

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

## Disclosure of Non-Registerable Interests

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

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

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

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

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

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



**Table 1: Disclosable Pecuniary Interests**

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

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

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

	spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.
--	---

\* 'director' includes a member of the committee of management of an industrial and provident society.

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

**Table 2: Other Registerable Interests**

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

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

The recommendations cover:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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## LGA Model Member Code of Conduct

### Explanatory Note

#### 1. Introduction

- 1.1 The LGA have published their Model Code of Conduct following consultation with the sector. At the time of writing this explanatory note, the LGA have temporarily withdrawn the publication. A revised LLG note will be produced with a live link to the code of conduct once it is re-published.

#### 2. Consultation

- 2.2 An online questionnaire was available for 10 weeks between Monday 8 June until Monday 17 August. A total of 1,463 responses were received by the LGA including members, officers, councils, stakeholder organisations and individuals.

#### 3. Key Results from the Consultation

The LGA have published the following key results from the consultation responses they received.

- Almost all survey respondents (97 per cent) supported the proposal that councillors demonstrate the behaviours set out in the Code when they are publicly acting as, identifying as, and/or giving the impression that they are acting as a councillor, including when representing their council on official business and when using social media.
- Just over half of the survey respondents (55 per cent), thought that the code was sufficiently clear about which parts of the code are legal requirements, which are obligations, and which are guidance. A third (36 per cent) thought it was not clear while nine per cent did not know.
- Respondents were generally evenly split regarding their preference for the tense of the wording used in the code, however, there was slightly more support for the personal tense ("I will") which was chosen by 45 per cent over the passive tense ("Councillors should") (40 per cent).
- Almost all survey respondents supported each of the 12 specific obligations to either a great or a moderate extent. However, there was slightly less support for the obligation to register any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt than the others – 96 per cent compared to 99 to 100 per cent.
- Four in five survey respondents (80 per cent) thought that the concept of 'acting with civility' is sufficiently clear to a great or moderate extent. A further 12 per cent thought it was clear to a small extent while just seven per cent did not think it was clear.
- A combined total of 85 per cent of survey respondents thought the concept of 'bringing the council into disrepute' is sufficiently clear to a great or moderate extent. Nine per cent thought it was clear to a small extent while five per cent did not think it was clear.
- Most survey respondents (93 per cent) supported the definition of bullying and harassment used in the code in a local government context to a great or moderate degree while four per cent did so to a small extent.



- Respondents were evenly split about whether there was sufficient reference to the use of social media in the code, however, a slightly higher proportion of respondents (43 per cent) said no, than those who answered yes (41 per cent).
- Over four in five survey respondents (81 per cent) were in support of the code going beyond the current requirement to declare interests of the councillor and their partner to a great or moderate degree. A further eight per cent supported it to a small degree and another eight per cent did not support it at all.
- Almost all survey respondents (97 per cent) supported the proposed requirement that councillors do not accept significant gifts to a great or moderate degree. Two per cent supported it to a small degree while less than one per cent did not support it at all.
- Most survey respondents (72 per cent) supported £25 as the threshold for registering gifts and hospitality, although almost four in ten (39 per cent), felt that the amount should be reviewed annually with the code's review. Nine per cent of respondents thought that the threshold should be lower than £25 while 16 per cent felt that it should be higher.
- Respondents most commonly ranked explanatory guidance on the code as the most useful type of accompanying guidance, followed by supplementary guidance that focuses on specific areas, e.g., social media and case studies and examples of good practice.

#### **4. Key Points from the Final Member Code of Conduct**

(Numbers in brackets refer to pagination in the code of conduct)

##### **4.1 Definitions**

4.1.1 Councillor is defined as 'a member or co-opted member of a local authority or a directly elected mayor'.

4.1.2 A "co-opted member" is defined pursuant to the [Localism Act 2011 Section 27\(4\)](#)

4.1.3 Local Authority includes 'county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities'.

##### **4.2 Tense**

4.2.1 First person direct to Councillors.

##### **4.3 Nolan Principles**

4.3.1 Encompasses the Nolan principles. Also includes that 'public resources are used prudently in accordance with a local authority's requirements and in the public interest'.

##### **4.3 Application of the Code**

4.3.1 The Code applies to councillors when they are: -





- Acting in that capacity
- Representing the Council
- Claiming to act or represent
- Give the impression they are claiming to act or represent
- Refer publicly to their role
- Use knowledge obtained from their role

4.3.2 The Code specifically applies 'in electronic and social media communication, posts, statements and comments'.

#### 4.4 Standards

4.4.1 The word **Respect** (1.1) has replaced Civility (which was originally suggested in the draft code).

#### 4.5 Bullying, harassment and discrimination

4.5.1 There is a specific obligation to promote equalities and not to discriminate unlawfully against any person (2.3.1) with reference to the Equalities Act.

#### 4.6 Impartiality

4.6.1 Councillors must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority (3.1)

#### 4.7 Confidentiality

4.7.1 Councillors must not disclose information they have received which they believe or ought reasonably to be aware is of a confidential nature (4.1a&b).

4.7.2 Disclosure in the public interest and in good faith is allowed provided the councillor has consulted the Monitoring Officer prior to its release (4.1iv1,2&3)

#### 4.8 Disrepute

4.8.1 Councillors must not bring their role or authority into disrepute ((5.1).

#### 4.9 Use of Position

4.9.1 Councillors must not use their position improperly to their advantage or disadvantage (6.1).

#### 4.10 Use of Council Resources

4.10.1 Councillors must ensure that resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or their office (7.2b).

#### 4.11 Compliance

4.11.1 Councillors must commit to undertaking code of conduct training (8.1), cooperate with investigations (8.2) and comply with sanctions (8.4).



#### 4.12 Reputation

4.12.1 Declarations of interest must be registered and declared (9.1). Detailed provisions are contained within Appendix B. The code states 'If in doubt, you should always seek advice from your Monitoring Officer'.

#### 4.13 Appendix B

4.13.1 Registration of interests required are those which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) and Table 2 (Other Registerable Interests) of the code.

#### 4.13.2 Declaring Interests and Meeting Participation

- Disclosable Pecuniary Interests: -  
Councillors must declare, not participate, or vote and leave the room (subject to dispensation)
- Other Registrable Interests: -  
Councillors must declare, only speak if the public are allowed to speak, not participate in the discussion or vote and leave the room (subject to dispensation).
- Non-Disclosable Pecuniary Interest Directly Relating to Finance or Well-Being of Councillors or Relative or Close Associate: -  
Councillors must declare, only speak if the public are allowed to speak, not participate in the discussion or vote and leave the room (subject to dispensation).

#### 4.13.3 Table 1- Pecuniary Interests

Sets out an explanation of Pecuniary Interests and includes: -

- Employment or Trade
- Sponsorship
- Contracts (including partners lived with)
- Land or Property (including partners lived with)
- Licences
- Corporate Tenancies (including partners lived with)
- Securities (including partners lived with)

(Note a director includes a member of the committee of management of an industrial and provident society).

#### 4.13.4 Table 2- Other Registerable Interests

Sets out an explanation of Other Registrable Interests in respect of bodies to which councillors are appointed or nominated to by the council and includes: -

- exercising functions of a public nature



- directed to 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.

#### 4.14 Gifts & Hospitality

4.14.1 Councillors receiving gifts or hospitality with a value of £50 or more must register these with the Monitoring Officer within 28 days (10.2). Any significant gift or hospitality refused must also be registered with the Monitoring Officer (10.3) (*note no timescale is placed against refused gifts*).

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

### 5. **Committee on Standards In Public Life (CSPL) Recommendations**

5.2 It is accepted that many of the recommendations made by the CSPL would require changes to the law. However, the following is noted: -

- Despite the Draft Member Code of Conduct including a bar on attending committees for up to 2 months as a sanction, the published code **contains no reference to a sanction of any kind**.
- Therefore, there is no power to suspend councillors, without allowances, for up to six months
- There is no reference to a role for the Local Government Ombudsman
- There is no discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes
- There is no mention of an independent person.
- The code does not reference section 31 Localism Act 2011 (but it gives a nod towards it)
- Gifts and Hospitality has risen from the proposed £25 to £50 recommended by the CSPL
- There is some support evidenced for a change to the authorities for Disclosable Pecuniary Interests but only where a member is nominated or appointed by the council
- Broadly the Code encompasses the CSPL recommendation when a member is acting in an official capacity which includes reference to social media but this does require a change of legislation to engage presumption ((s27)(2) Localism Act 2011)

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**WAVERLEY BOROUGH COUNCIL**

**STANDARDS COMMITTEE**

**1 FEBRUARY 2021**

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**Title:**

**AMENDMENTS TO THE WAVERLEY CONSTITUTION –  
SCHEME OF DELEGATION AND VIRTUAL MEETING PROCEDURE RULES**

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**Portfolio Holder:** Not applicable (non-Executive function)

**Head of Service:** Robin Taylor, Head of Policy & Governance (Monitoring Officer)

**Key decision:** No

**Access:** Public

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**1. Purpose and summary**

This report sets out two matters for consideration by the Standards Committee:

1. Scheme of Delegation - it follows up on the discussion at the Committee's meeting on 5 October 2020, when it considered possible exceptions to delegated authority within the scheme of delegation. The committee asked officers to draft a possible form of wording that would ensure that once any decision is referred to a committee either by choice or because of a listed scheme exception in relation to any particular decision, then all future decisions relating to that matter must then be taken by the committee rather than being taken by the officer (even if those other decisions would have otherwise been allowable under the scheme without reference to a committee).
2. Virtual Meeting Procedure Rules – it proposes an addition to the Virtual Meeting Procedure Rules, to require that participants and observers at council and committee meetings refrain from using the Zoom chat facility other than to draw the attention of the chairman or committee officers to any technical issues.

**2. Recommendation**

It is recommended that the Committee:

1. Considers whether to recommend to Council to limit the scope of the Scheme of Delegation to Officers once a matter has been brought to committee in order for a committee to retain 'ownership' of an issue, by insertion of the following wording:

*"If officers refer a particular matter to a committee (either by choice, or because there was a listed exception in the scheme of delegation to an officer's authority to otherwise make a particular decision in relation to that matter), then all future decisions relating to that matter must then be taken by the committee rather than being taken by the officer (even if those other decisions would have otherwise been allowable under the scheme without reference to a committee), unless the*

*committee concerned expressly confirms that the officer may make future decisions under delegated authority.”*

2. Considers whether to recommend to Council the adoption of Virtual Meeting Procedure Rule 9, as set out in Annexe 1.

### **3. Reason for the recommendation**

- 3.1 The constraint on the scope of the scheme of delegation has been brought to the committee at the request of a number of Councillors. It is important that when elected councillors express concern that any element of the Council’s Constitution and associated documentation are not having the desired effect in respect of how governance and decision-making happens at the Council, that this issue is debated by the Standards Committee, the advice of officers is received, and there is an opportunity for the Standards Committee to put forward any recommendations they judge to be appropriate to Full Council for a decision.
- 3.2 The proposed new Virtual Meeting Procedure Rule addresses concerns that officers have about the potential for comments in the Zoom chat facility to distract from the meeting proceedings, and for observers to influence the meeting proceedings in a way that is untransparent.

### **4. Background**

#### **Limitations on the Scheme of Delegation**

- 4.1 number of councillors have proposed that there should be a limitation on the scope of the Scheme of Delegation such that where an “issue” has been referred to a committee for decision, all further decisions regarding that “issue” should be “owned” by that committee and not dealt with under delegated authority, even where this might otherwise be allowed due to the nature of the decision being taken.
- 4.2 The Standards Committee discussed this at their meeting on 5 October 2020, and resolved that a change to the Scheme of Delegation to limit its scope was needed and that Officers should bring back to the Committee a form of words that had been agreed with the Chairman and Vice-Chairman.
- 4.3 The following wording was proposed. This is the same as the previous wording included within the report but with the addition of the wording highlighted in yellow which has been suggested by the Chairman and Vice-Chairman:

“If officers refer a particular matter to a committee (either by choice, or because there was a listed exception in the scheme of delegation to an officer’s authority to otherwise make a particular decision in relation to that matter), then all future decisions relating to that matter must then be taken by the committee rather than being taken by the officer (even if those other decisions would have otherwise been allowable under the scheme without reference to a committee), **unless the committee concerned expressly confirms that the officer may make future decisions under delegated authority.”**

- 4.4 The previous report set out a number of issues for the committee to consider before making a change of this type. These all still apply so that advice is replicated again here:
- With regards to the possibility of revising the scheme of delegation to include a provision so that once any decision is referred to a committee either by choice or because of a listed scheme exception in relation to any particular decision, then all future decisions relating to that matter must then be taken by the committee rather than being taken by the officer (even if those other decisions would have otherwise been allowable under the scheme without reference to a committee) the committee is advised to give consideration to any potential unintended negative consequences of automatically constraining delegated officer authority in this way as well as any potential benefits.
  - Adding a caveat of this type would automatically ensure committee decision-making on all aspects of a matter once a matter had been considered by a committee. It would essentially override all other delegated authority as set out within the scheme from that point forwards.
  - A key reason for a scheme of delegation is to ensure that where the Council considers decisions do not need to be made by committee and can instead be made appropriately and properly by officers instead, that this can happen, avoiding unnecessary procedure and ‘rubber stamping’ of decisions.
  - Ultimately the Council has to judge, and it is for full Council to determine, what the correct balance is between those matters that are retained for decision at committee level, those delegated to officers and exceptions to that delegated authority.
  - Options available to the committee include:
    - a. deciding that no changes are needed to the scheme;
    - b. deciding to add, remove or revise any specific listed exceptions to any named officer’s authority within the scheme
    - c. deciding to add a ‘catch all’ statement to the start of the scheme of the type listed in paragraph 1.1(i) above.

### **Virtual Meeting Procedure Rules**

- 4.4 The Virtual Meeting Procedure Rules were agreed by Council on 9 June 2020, to address the way in which the Regulations allowing remote attendance by councillors at meetings would be reflected in Waverley’s own Procedure Rules.
- 4.5 Waverley has successfully held all council and committee meetings virtually, with remote attendance by councillors and officers and members of the public, and webcasting to YouTube. However, the use of the “chat” function by councillors within Zoom during meetings can be distracting and lead to exchanges between councillors that are running in parallel to the open discussion of the meeting. It also makes it harder for the committee officers running the Zoom meeting to identify requests from councillors for help with technology.
- 4.6 Therefore, officers recommend an additional Virtual Meeting Procedure Rule (#9)

relating to etiquette during formal council and committee meetings, as set out in the attached Annexe.

## **5. Relationship to the Corporate Strategy and Service Plan**

5.1 This report supports the Council's aims for 'open, democratic and participative governance'.

## **6. Implications of decision**

### **6.1 Resource (Finance, procurement, staffing, IT)**

There are no direct resource implications arising from this report.

### **6.2 Risk management**

N/A

### **6.3 Legal**

Any legal implications are discussed within the body of this report.

### **6.4 Equality, diversity and inclusion**

There are no direct equality, diversity or inclusion implications in this report.

### **6.5 Climate emergency declaration**

There are no direct climate emergency implications arising from this report.

## **7. Consultation and engagement**

7.1 N/A.

## **8. Other options considered**

8.1 N/A.

## **9. Governance journey**

9.1 The Standards Committee may make recommendations to Council in relation to changes to the Scheme of Delegation and Virtual Meeting Procedures Rules.

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Annexe 1. Virtual Meeting Procedure Rules

## **Background Papers**

There are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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**WAVERLEY BOROUGH COUNCIL**  
**VIRTUAL MEETINGS PROCEDURE RULES**

These rules have been made in order to implement The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 (the ‘Regulations’) and will remain in force until those Regulations are repealed.

Any Procedure Rules that have not been specifically referenced, but that are nonetheless inconsistent with the Regulations will be disappplied by virtue of Regulation 5(5).

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**VMPR 1      No Requirement to Hold an Annual Meeting**

*Amends Council PR1 (Annual Meeting)*

The requirement to hold an Annual Meeting is to be disregarded and, prior to 7th May 2021, an Annual Meeting of Council may only take place:

- (a) where called by the Mayor in consultation with the Chief Executive and Group Leaders; or
- (b) following a resolution calling for an Annual Meeting being passed at an ordinary or extraordinary meeting of Council.

**VMPR 2      Access to Information**

*Amends Council PR 6 (notice and summons to meeting) and*

*Access to Information PR 5 (access to agenda and reports before the meeting), etc*

For all purposes of the Constitution, the terms “notice”, “summons”, “agenda”, “report”, “written record” and “background papers” when referred to as being a document that is:

- (i) “open to inspection” shall include for these and all other purposes as being published on the website of the council; and
- (ii) to be published, posted or made available at offices of the Authority shall include publication on the website of the Authority.

**VMPR 3      Remote Access to Meetings**

*Amends Council PR 6 (notice and summons to meeting) and*

*Access to Information Procedure Rule 3 (rights to attend meetings)*

- (a) For all purposes of the Constitution the term “meeting” is not limited in meaning to a meeting of persons all of whom, or any of whom, are present in the same place, for which purposes any reference to:
  - (i) “place” is to be interpreted as where a meeting is held, or to be held, includes reference to more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers: and

- (ii) “open to the public” includes access to the meeting being through remote means including (but not limited to) video conferencing, live webcast, and live interactive streaming and where a meeting is accessible to the public through such remote means the meeting is open to the public whether or not members of the public are able to attend the meeting in person; and
- (b) If the Chair is made aware that the meeting is not accessible to the public through remote means, due to any technological or other failure of provision, then the Chair shall adjourn the meeting immediately. If the provision of access through remote means cannot be restored within a reasonable period, then the remaining business will be considered at a time and date fixed by the Chair. If he or she does not fix a date, the remaining business will be considered at the next ordinary meeting.

**VMPR 4 Members in Remote Attendance**

*Amends Council PR 8 (quorum)*

- (a) A Member in remote attendance is present and attends the meeting, including for the purposes of the meeting’s quorum, if at any time all three of the following conditions are satisfied, those conditions being that the Member in remote attendance is able at that time:
  - (i) to hear, and where practicable see, and be so heard and, where practicable, be seen by, the other Members in attendance.
  - (ii) to hear, and where practicable see, and be so heard and, where practicable, be seen by, any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting; and
  - (iii) to be so heard and, where practicable, be seen by any other members of the public attending the meeting.
- (b) A Member in remote attendance will be deemed to have left the meeting where, at any point in time during the meeting, any of the conditions for remote attendance contained in (a) above are not met. In such circumstance the Chair may, as they deem appropriate:
  - (i) adjourn the meeting for a short period to permit the conditions for remote attendance of a Member contained in (a) above to be re-established;
  - (ii) count the number of Members in attendance for the purposes of the quorum;
  - or
  - (iii) continue to transact the remaining business of the meeting in the absence of the Member in remote attendance.

**VMPR 5 Remote Attendance by Members of the Public**

*Amends Council PR10 (questions by the public),*

*Amends any scheme for public participation in respect of planning, licensing and other committees and Executive PR 2.9*

- (a) A member of the public entitled to attend the meeting in order to exercise a right to speak at the meeting is in remote attendance at any time if all three of the following

conditions are satisfied, those conditions being that the member of the public in remote attendance is able at that time:

- (i) to hear, and where practicable see, and be so heard and, where practicable, be seen by, Members in attendance;
  - (ii) to hear, and where practicable see, and be so heard and, where practicable, be seen by, any other members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting; and
  - (iii) to be so heard and, where practicable, be seen by any other members of the public attending the meeting.
- (b) A member of the public in remote attendance will be deemed to have left the meeting where, at any point in time during the meeting, any of the conditions for remote attendance contained in Standing Order 5A(a) above are not met. In such circumstance the Chair may, as he or she deems appropriate:
- (i) adjourn the meeting for a short period to permit the conditions for remote attendance contained in Standing Order 5A(a) above to be re-established;
  - (ii) suspend consideration of the item of business in relation to the member of public's attendance until such time as a following item of business on the agenda has been transacted and the conditions for the member of the public's remote attendance have been re-established or, on confirmation that this cannot be done, before the end of the meeting, whichever is the earliest; or
  - (iii) continue to transact the remaining business of the meeting in the absence of the member of the public in remote attendance.

#### **VMPR 6 Remote Voting**

*Amends Council PR 17 (voting)*

Unless a recorded vote is demanded, [which may be confirmed by the requisite number of Members confirming the demand verbally when requested by the Chair,] the Chair will take the vote

- (a) by use of the electronic polling system for Remote Voting, and electronic voting in the Chamber, or where an electronic voting system is not working correctly or unavailable,
- (b) by the affirmation of the meeting if there is no dissent [by assent]; or
- (c) the Chair will take the vote by roll-call and the number of votes for or against the motion or amendment or abstaining from voting will be recorded.

#### **VMPR 7 Members excluded from the meeting**

*Amends Council PR 21 (Member Conduct)*

Where a Member is required to leave the meeting, the means of remote attendance and access is to be severed whilst any discussion or vote takes place in respect of the item or items of business which the member or co-opted member may not participate.

## **VMPR 8. Exclusion of Public and Press**

*Amends Council PR 20 (Exclusion of public and press)*

- 8.1 There are times when council meetings are not open to the public, when confidential, or “exempt” issues (as defined in Schedule 12A of the Local Government Act 1972) are under consideration. Where the technology is available, the Democratic Services Officer or meeting facilitator will ensure that there are no members of the public in remote attendance or remotely accessing the meeting and are able to hear or see the proceedings once the exclusion has been agreed by the meeting.
- 8.2 Any Member in remote attendance who fails to disclose that there are in fact persons present who are not so entitled will be in breach of their Members’ Code of Conduct responsibilities.

## **VMPR 9. Meeting etiquette (New)**

- 9.1 Councillors must not use the chat function within Zoom in formal Committee and Council meetings.
- Any discussion within the chat function is not viewable by the general public and therefore does not comply with the requirement within the remote meeting regulations for proceedings (including debate and discussion) to, a minimum, to be audible by the public. In the same way as side discussions would not be taking place in a physical setting within the Council Chamber or a Committee Room, the chat function should not be used to post content, discussion, debate, criticism or other commentary during a meeting.
  - The only exceptions should be where a member is reporting connectivity issues to Officers, or to inform Officers that they or another Councillor has had to leave a meeting, or that another Councillor wishes to access a meeting but cannot for any reason.
  - Councillors should be aware that the chat content is viewable to any member of the public or representative attending the remote meeting as a participant (either to ask a question or in any other capacity). Notwithstanding the above points, Councillors should be aware that any content posted using the chat function is viewable by those other parties.
- 9.2 Councillors must not engage in discussion on the YouTube, or any other social media or other forum’s, chat or discussion function during a formal Committee or Council meeting.
- Any debate, discussion or other discourse regarding an agenda item should take place within the remote meeting itself, verbally, or within the Council Chamber (in the case of a physical meeting). Should Councillors wish to engage with members of the public regarding an agenda item, they should do so either before the meeting, or after the meeting has concluded. By

comparison, during the course of physical meetings, Councillors would not be engaging in discussion with the public in the public gallery.

9.3 Councillors who register to speak on an item but who are not a member of that Committee are entitled to speak for 4 minutes or for whatever length of time permitted by the Chair of the meeting, but are otherwise to not engage verbally or otherwise in the meeting.

- There is no right for a Councillor who is not a member of the Committee to raise points of order, points of personal explanation, to participate in debate, or otherwise become a part of the meeting. Councillors should speak within their allotted time and then allow the meeting to proceed.
- The above point also applies to Councillors who attend a meeting within Zoom in order to view proceedings, but who have not registered to speak. Councillors attending in such capacity must not interject, either verbally or using the chat function within Zoom. The Constitution provides opportunities for any Councillor to register to speak on any item, but outside of those Constitutional provisions Councillors who are not a member of the Committee must not interrupt proceedings – be that in a virtual or physical setting.

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