

To: All Members of the STANDARDS AND  
GENERAL PURPOSES 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: 26 November 2021

### **Membership of the Standards and General Purposes Committee**

Cllr John Ward (Chairman)	Cllr Robert Knowles
Cllr Michael Goodridge (Vice Chairman)	Cllr Peter Marriott
Cllr Christine Baker	Cllr Peter Nicholson
Cllr Steve Cosser	Thomas Hughes (Co-Optee)
Cllr Maxine Gale	Stefan Reynolds (Co-Optee)
Cllr John Gray	

### **Substitutes**

Cllr Ruth Reed	Cllr Michaela Wicks
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Dear Councillors

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

DATE: MONDAY, 6 DECEMBER 2021  
TIME: 6.00 PM  
PLACE: COUNCIL CHAMBER, COUNCIL OFFICES, THE BURYS,  
GODALMING

The Agenda for the meeting is set out below.

Please note that due to current Covid restrictions, seating in the public gallery is extremely limited. This meeting will be webcast and can be viewed on [Waverley Borough Council's YouTube channel](#) or by visiting [www.waverley.gov.uk/webcast](http://www.waverley.gov.uk/webcast).

Yours sincerely

ROBIN TAYLOR  
Head of Policy and Governance

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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 27 September 2021 (to be laid on the table 30 minutes before the meeting commences).

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 Monday 29 November 2021.

5. **QUESTIONS FROM MEMBERS OF THE COUNCIL**

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

The deadline for receipt of questions is Monday 29 November 2021.

## **MONITORING OFFICER MATTERS**

### 6. ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS (Pages 5 - 24)

On 1 February 2021 the Standards Committee considered proposed revisions to the arrangements for how the Monitoring Officer deals with complaints against councillors or co-opted Members, alleging a breach of their Code of Conduct. The arrangements apply to complaints against Waverley Borough councillors and co-opted Members, and to complaints against Town and Parish councillors within Waverley.

The Standards Committee was broadly supportive of the proposed revisions to the arrangements but asked that parish councils and the Independent Persons be given the opportunity to comment on the changes before they were recommended to Full Council for approval. The consultation took place over the summer and feedback was received from three parish clerks and three Independent Persons.

The arrangements for how the Monitoring Officer deals with standards complaints now reflect the feedback received and are presented to the Committee (at Annexe 1) for consideration and recommendation to Full Council for approval.

#### **Recommendation**

That the Standards & General Purposes Committee considers the revised arrangements under which the Monitoring Officer will investigate an allegation of a breach of the code, and recommends them to Full Council for approval, with or without further amendments.

## **CONSTITUTIONAL MATTERS**

### 7. CHANGES TO THE SCHEME OF DELEGATION (Pages 25 - 28)

To consider a request for an amendment to the Scheme of Delegation regarding approval of variations to S106 agreements attached to planning permissions.

#### **Recommendation**

It is recommended that the Standards & General Purposes Committee considers the request to make an exception to the delegation (M.2) to the Head of Planning & Economic Development and makes an appropriate recommendation to Full Council.

### 8. EXCLUSION OF 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)**

**WAVERLEY BOROUGH COUNCIL**

**STANDARDS & GENERAL PURPOSES COMMITTEE**

**6 DECEMBER 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:** Cllr Paul Follows, Leader of the Council

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

**Key decision:** No

**Access:** Public

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**1. Purpose and summary**

- 1.1 On 1 February 2021 the Standards Committee considered proposed revisions to the arrangements for how the Monitoring Officer deals with complaints against councillors or co-opted Members, alleging a breach of their Code of Conduct. The arrangements apply to complaints against Waverley Borough councillors and co-opted Members, and to complaints against Town and Parish councillors within Waverley.
- 1.2 The Standards Committee was broadly supportive of the proposed revisions to the arrangements but asked that parish councils and the Independent Persons be given the opportunity to comment on the changes before they were recommended to Full Council for approval. The consultation took place over the summer and feedback was received from three parish clerks and three Independent Persons.
- 1.3 The arrangements for how the Monitoring Officer deals with standards complaints now reflect the feedback received and are presented to the Committee (at Annexe 1) for consideration and recommendation to Full Council for approval.

**2. Recommendation**

That the Standards & General Purposes Committee considers the revised arrangements under which the Monitoring Officer will investigate an allegation of a breach of the code, and recommends them to Full Council for approval, with or without further amendments.

**3. Reason for the recommendation**

To ensure the Council's arrangements for handling Standards allegations support an approach that is fair and clear to all concerned and encourages a timely resolution to complaints.

#### **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 has a Councillor within the Waverley area, or a co-opted member, has not followed their code of conduct. The arrangements are set out within the Constitution. Paragraph 12 of the existing arrangements confirm that they should be kept under review.
- 4.2 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.
- 4.3 The feedback received from parish clerks has been mixed: the opportunity to resolve matters informally at a local level has been welcomed by some, while others have expressed concern that the proposals appeared to be asking the clerks to act in place of the Monitoring Officer in carrying out informal investigations. They were concerned that this could be a conflict of interests and also jeopardise their ongoing working relationship with their parish councillors. As a result of this feedback the approach proposed in paragraph 3.5 has been modified to propose that the Monitoring Officer discusses the approach to be taken with the parish clerk.
- 4.4 The feedback from the Independent Persons referred to the wording of the document and in particular the way in which the arrangements described the process to the complainant and did not address the subject of the complaint. In light of these comments the wording in the document has been amended to be a more neutral description of how complaints are responded to.
- 4.3 Annexe 1 shows the proposed changes as tracked changes, taking account of the feedback received from parish clerks and Independent Persons. The following summarises the main changes proposed:
- (i) Inclusion of an Executive Summary of arrangements with the process divided into 9 numbered 'steps'.
  - (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 in the first place.
  - (iv) Confirmation that the approach to dealing with complaints about Town or Parish Councillors will be agreed by the Monitoring Officer, and the Town or Parish Clerk will be given the opportunity to resolve the complaint first.
  - (v) Confirmation that complainants' identities (but not contact personal details) will be disclosed to subject members in most circumstances.
  - (vi) Confirmation that many complaints can be resolved without 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 act on the Monitoring Officer's behalf 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.

## **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 The draft revised arrangements were sent to the town and parish clerks and to the Independent Persons, and the feedback received has been reflected in the revisions now presented to the Committee for consideration.

## **8. Other options considered**

8.1 The council is required to put in place arrangements under which it can investigate an allegation of a breach of a code of conduct, and to include the key elements as set out the Localism Act.

## **9. Governance journey**

9.1 Any changes to the arrangements will be subject to the agreement of Full Council, on the recommendation of the Standards & General Purposes Committee.

### **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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### **CONTACT OFFICER:**

Name: Robin Taylor  
Position: Head of Policy & Governance  
Telephone: 01483 523108  
Email: robin.taylor@waverley.gov.uk

Agreed and signed off by:

Legal Services: date

Head of Finance: date

Strategic Director: date

Portfolio Holder: date



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

**Executive summary of arrangements**

**A note on the role of the Independent Person**

- 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>A complaint is submitted in writing by email or letter and Waverley will acknowledge receipt of it within 5 working days.</u>		<u>5 working days</u>
<b><u>2</u></b>	<b><u>Can this complaint be considered under these arrangements?</u></b> <u>If the complaint is about an alleged breach by a councillor or co-opted Member in the Waverley area it will probably be dealt with under these arrangements. There are various reasons why it may not be possible to consider a complaint under these arrangements. In some cases, a complaint may be dealt with under the corporate complaints procedure instead.</u>	<u>If the complaint cannot be considered under these arrangements, the process ends here.</u>	<u>5 working days</u>
<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 <u>exceptional circumstances, it may be appropriate to withhold the complainant's identity for some of all or steps of the</u>		<u>15 working days (only where anonymity is requested)</u>

	<p><u>process. Requests for a complainant's 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></p>		
<u>4</u>	<p><b><u>Initial review of complaint by Monitoring Officer.</u></b>  <u>This is likely to involve reading any relevant correspondence and documentation including the complaint and may involve an initial informal discussion between the Monitoring Officer and the councillor who is being complained about.</u></p>	<p><u>The MO may decide at this point that there is no case for the councillor to answer. If so, the MO will write to the complainant confirming his or her judgement and explaining the reasons for it. Where this is the case, and the process ends here.</u></p>	
<u>4</u>	<p><b><u>The Monitoring Officer will consider whether they can appropriately and satisfactorily deal with the 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></p>	<p><u>If no investigation is needed, the MO will write to the complainant 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></p> <p><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></p>	
<u>5</u>	<p><b><u>Informal investigation if necessary and appropriate</u></b></p>	<p><u>At the end of this stage the MO may write to the complainant and</u></p>	

	<p><u>If an investigation is necessary then wherever possible and appropriate the 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>the councillor being complained about explaining why they judge there to be no evidence of a breach of the code. If so, the process ends here.</u></p>	
<b><u>6</u></b>	<p><b><u>Consideration of informal investigation findings</u></b>  <u>If, having informally investigated the complaint, the Monitoring Officer concludes there appears to be evidence of a breach of the code by the councillor (or is unable to conclude with certainty whether or not there has been), they will either:</u></p> <p><u>(i) 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><u>OR</u></p> <p><u>(ii) Commission an external investigator to investigate the 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.</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 the complainant and the councillor being complained about explaining their findings and explaining what actions has been taken to resolve the 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 the complaint within 30 working days of confirming the complaint can be considered under these arrangements (or making a decision on anonymity where this is requested).</u></p>
<b><u>7</u></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)</u></p>	<p><u>At the end of this stage, the Monitoring Officer may conclude, on the basis of the formal investigation report submitted, that there is no evidence of a breach of the code.</u></p>	<p><u>Timescales will depend on the specific situation.</u></p>

	<p><u>interview the complainant, the councillor being complained about or any other individual.</u></p> <p><u>The investigator will share drafts of their report with both the complainant and the councillor being complained about and provide both with the opportunity to comment before submitting their 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>In which case, the process ends here.</u></p> <p><u>Alternatively, the Monitoring Officer may conclude, on the basis of the formal investigation report submitted, 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, they will consult with the Independent Person and with the complainant and seek to agree what they 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 the complainant is 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 a 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. Papers may be withheld from the public if there is a reason to do so.</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>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 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 sets 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 it considers 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 MemberCouncillor s' 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 Members 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

3.1 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.

3.2 Complaints about the conduct of a councillor or co-opted Member should be made in writing to:

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

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

3.3 Complaints should include the name and contact details of the complainant to enable the complaint to be acknowledged, and status updates provided. The Monitoring Officer ~~or an officer acting on their behalf~~ will acknowledge receipt of the complaint within five working days of receiving it.

~~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.~~

3.4 ~~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~~

3.5 ~~Where complaints are made about Town or Parish Councillors, the Monitoring Officer will advise the Town or Parish Clerk of the details of the complaint and will consult them, in confidence, over how the complaint is handled. This may include~~



referring the matter back to the Clerk in the first instance to seek to resolve the matter informally if this is considered a suitable and appropriate approach to take and if the Clerk agrees to take this approach.

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.

3.6 Where the Monitoring Officer considers that they 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 their place.

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

##### Can the complaint be considered under these arrangements?

4.1 Complaints that allege a breach by a named councillor (or councillors) of their code of conduct can be considered under these arrangements.

4.2 The Monitoring Officer or an officer acting on their behalf will review every complaint received and apply the following criteria ~~make before making~~ a decision as to whether or not this is the case. ~~it will be treated as a 'valid complaint' about a councillor.~~

##### Which complaints will not be considered under these arrangements?

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

- ~~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 Member Councillor or co-opted Member (the person who is being complained about);~~
- ~~e) b) Complaints which relate only to a Member Councillor's or co-opted Member'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 who 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 Member Councillor or which refer to alleged incidents before the person became a Member Councillor;~~
- ~~h) Complaints which refer to alleged incidents which happened ~~so long~~ ago that there would be little benefit in taking action now; ~~more than 23~~ months ago (unless the Monitoring Officer agrees there are exceptional circumstances necessitating the investigation of historic complaints).~~
- ~~g) months ago (unless the Monitoring Officer agrees there are exceptional circumstances necessitating the investigation of historic complaints).~~

- ~~h)~~ Complaints containing trivial allegations, or which ~~appear are judged by the Monitoring Officer~~ to be ~~simply~~ vexatious, malicious, politically motivated or tit-for-tat;
- ~~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~~ subject of an investigation or some form of action;
- ~~i)~~ Complaints which do not relate to the ~~Member~~Councillors' 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 ~~Member~~Councillor of a relevant authority, the ~~Member~~Councillor will be notified of the complaint. If the Monitoring Officer decides that the complaint ~~cannot be considered under these arrangements 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 the complainant's 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 ~~cannot be considered under these arrangements, is 'invalid',~~ they will write to the complainant explaining why ~~their complaint cannot be dealt with under this procedure~~ this is the case. 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 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.

~~Alternatively, the Monitoring Officer may judge that an investigation is appropriate or whether it~~ the 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 councillor ~~subject member~~ or co-opted ~~member~~ Member being complained about 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, they will inform ~~you~~ the complainant, the ~~member~~ councillor and the Independent Person of their 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 the complaint within 30 working days. Where matters progress to a formal stage, the timescales will depend upon the detail of the complaint 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.

4.21 ~~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 the complainant or the councillor being complained about for such information and may request information from the member 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.~~

4.22 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 ~~member~~ councillor accepting that their conduct was unacceptable and offering an apology or other remedial action by the authority. Where the ~~member~~ councillor or the authority make a reasonable offer of local resolution, but ~~you~~ the complainant is are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.23 ~~If your the~~ 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 their 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, they will appoint an Investigating Officer who may be an officer of another authority or an external investigator. The Investigating Officer will decide whether they need to meet or speak to you-the complainant to understand the nature of the complaint and so that you-they can explain your-their 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 being complained about against whom you have complained and provide them with a copy of your-the complaint and an explanation of the arrangements for the investigation and ask the membercouncillor to provide their explanation of events and to identify what documents they need to see and who they need 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 their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you-the complainant and to the membercouncillor concernedbeing complained about, to give you-them both an opportunity to identify any matter in that draft report which you-they disagree with or which you-they 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-the complainant and councillor being complained about may make on the draft report, the Investigating Officer will send their final report to the Monitoring Officer which will include their 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 they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you-the complainant and to the membercouncillor concerned-being complained about (and to the Town or Parish Council, where the complaint relates to a Town or Parish Councillor), to advise that they are satisfied that no further investigative action is required and to provide a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their 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 the~~ complainant to ~~discuss and seek to agree what you~~ what ~~they~~ 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 their 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 Committee Chairman.

## 7.2—Local Panel Hearing

7.2 If the Monitoring Officer considers that local resolution is not appropriate, or ~~you the complainant states that they~~ 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 a 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 their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the ~~membercouncillor~~ has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask ~~you the complainant, as the complainant,~~ to attend and give evidence to the Hearings Panel. The ~~membercouncillor~~ will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Panel as to why they consider that they 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 they 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 they have 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 Chairman of the Hearings Panel and send a copy to the complainant, 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~~five Independent Persons. These are membercouncillors members 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 they:

- 11.1 are, or have been within the past five years, a membercouncillor, co-opted membercouncillor or officer of the Council; or
- 11.2 are, or have 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 are 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 Chairman of the Hearings Panel the right to depart from these arrangements where they consider 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-the complainant against a decision of the Monitoring Officer or of the Hearings Panel.
- (b) If the MemberCouncillor or co-opted ~~member~~member wishes to appeal against the decision of the Hearings Panel, they 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. The complainant's right to complain to the Local Government Ombudsman

If you-the complainant feels that the authority has failed to deal with your-their complaint properly, you-they may make a complaint to the Local Government and Social Care Ombudsman. INCLUDE CONTACT DETAILS HERE. The Ombudsman will not re-hear the 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.



**WAVERLEY BOROUGH COUNCIL**

**STANDARDS & GENERAL PURPOSES COMMITTEE**

**6 DECEMBER 2021**

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**Title:**

**Scheme of Delegation**  
**– Proposed amendment re variation to S106 agreement**

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

**Key decision:** No

**Access:** Public

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**1. Purpose and summary**

- 1.1 To consider a request for an amendment to the Scheme of Delegation regarding approval of variations to S106 agreements attached to planning permissions.

**2. Recommendation**

It is recommended that the Standards & General Purposes Committee considers the request to make an exception to the delegation (M.2) to the Head of Planning & Economic Development and makes an appropriate recommendation to Full Council.

**3. Reason for the recommendation**

To ensure transparent and open decision-making.

**4. Background**

- 4.1 On 28 September 2021, the Eastern Planning Committee considered an application (S52/2021/01396) to modify the Section 106 legal agreement attached to the outline planning permission WA/2018/1815, seeking changes to the affordable housing clauses, including amending the tenure and bed size of the affordable housing and the definition of affordable rented units. The affordable housing to be provided would remain at 30% of the total units, as agreed at the outline planning permission stage. The application had been called into committee by the Local Ward Councillor for further consideration as to whether the changes to the affordable housing tenure mix should be agreed.
- 4.2 At the meeting of Full Council on 19 October, Cllr Maxine Gale asked that consideration be given to amending the Scheme of Delegation to Officers to ensure that any application to change or amend previously agreed housing tenure splits are automatically referred to the appropriate Planning Committee for decision and not dealt with under delegated powers.

- 4.3 Section 106A of the Town and Country Planning Act 1990 requires 5 years to have elapsed since the time of the original legal agreement before it can be varied by way of an application. However, as long as all parties who are included on the original Section 106 agreement agree to the proposed changes, a variation can be made prior to the 5 years referenced above.
- 4.4 The current Scheme of Delegation to the Head of Planning & Economic Development includes the following provisions:

	Authority	After consultation with	Function
M.2	To agree variations to Section 106 legal agreements under the Town and Country Planning Act 1990 which relate to planning applications determined by a Planning Committee.	The Chairman of the Planning Committee and Ward Councillors	Non-executive
M.6	To agree the terms of, and variations to, Section 106 Legal Agreements under the Town and Country Planning Act 1990 in connection with the grant of planning permission under delegated powers and Section 106 agreements following a refusal on appeal.	N/A	Non-executive

- 4.5 Delegation M.2 already requires the Head of Planning & Economic Development to consult with the Chairman of the relevant Planning Committee and Ward Councillor(s) before agreeing any variation to a Section 106 agreement attached to a planning permission granted by a Planning Committee. This gives the opportunity for a discussion about the implications and significance of the proposed variation, and for the application to be called-in to the Planning Committee if it is felt necessary. Whilst the proposed variation under application S52/2021/01396 was significant, it doesn't necessarily follow that all proposed variations will be, or that they will be adverse, and a blanket exception to the Scheme of Delegation may result in applications having to be referred to a Planning Committee even when there is agreement to approve the variation.
- 4.6 The Committee is asked to consider whether an explicit exception is required to the delegation set out at M.2: **"To agree variations ...except where the variation proposed relates to the proposed tenure mix of the affordable housing provision."**

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

- 5.1 The Scheme of Delegation to Officers is part of the council's decision-making arrangements and supports open and transparent governance.

## **6. Implications of decision**

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

Any exceptions to the Scheme of Delegation add to the workload of the Planning Committees. Maintaining the conditional delegation as currently stated strikes a balance between delegated decision-making where there is consensus, and referral to a Planning Committee where there is not.

### **6.2 Risk management**

### **6.3 Legal**

Delegations to officers ensure that the Council's decision-making is efficient without undue bureaucracy, with functions and responsibilities lying at the appropriate level of delegation.

### **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.

### **6.5 Climate emergency declaration**

There are no climate emergency implications to this decision.

## **7. Consultation and engagement**

7.1 N/A.

## **8. Other options considered**

8.1 The options are to rely on the existing conditional delegation, which allows for an application to vary a S106 agreement to be referred to committee by the appropriate Ward Member or Planning Committee Chairman; or create an explicit exception for any application to vary the tenure of affordable housing provided under a S106 agreement to automatically be referred to a Planning Committee.

## **9. Governance journey**

9.1 If the Standards & General Purposes Committee recommends an amendment to the Scheme of Delegation, this will be referred to Full Council for approval.

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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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Agreed and signed off by:  
Legal Services: date  
Head of Finance: date  
Strategic Director: date  
Portfolio Holder: date