

AGENDA

Meeting: Standards Committee
Place: Kennet Room - Wiltshire Council Offices, County Hall, Trowbridge
Date: Wednesday 26 September 2018
Time: 2.00 pm

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Derek Brown OBE	Cllr Paul Oatway QPM (Chairman)
Cllr Allison Bucknell	Cllr Fred Westmoreland
Cllr Ernie Clark	Cllr Stuart Wheeler
Cllr Peter Evans	Mr Richard Baxter (non-voting)
Cllr Peter Fuller	Mr Philip Gill MBE (non-voting)
Cllr Howard Greenman (Vice-Chairman)	Mr Michael Lockhart (non-voting)
Cllr Ruth Hopkinson	Miss Pam Turner (non-voting)
Cllr Bob Jones MBE	

Substitutes:

Cllr Richard Britton	Cllr Peter Hutton
Cllr Trevor Carbin	Cllr George Jeans
Cllr Sue Evans	Cllr Gordon King
Cllr Nick Fogg MBE	Cllr Brian Mathew
Cllr Chris Hurst	Cllr Graham Wright

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Public Participation

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

AGENDA

Part 1

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes** (*Pages 7 - 10*)

To confirm the minutes of the meeting held on 20 June 2018.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair:

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

If you would like to make a statement at this meeting on any item on this agenda, please register to do so at least 10 minutes prior to the meeting. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named on the front of the agenda for any further clarification.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on 19 September 2018 in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on 21 September 2018. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

- 6 **Status Report on Code of Conduct Complaints** (*Pages 11 - 16*)
To receive a report from the Monitoring Officer.
- 7 **Local Government and Social Care Ombudsman Complaint** (*Pages 17 - 48*)
To inform the Standards Committee of the findings and recommendations in the report of the Local Government and Social Care Ombudsman (“the Ombudsman”) published on the 27 April 2018 and to note the Council’s response.
- 8 **Local Government Ombudsman's Annual Review Letter 2017 - 2018** (*Pages 49 - 56*)
To receive a report from the Monitoring Officer.
- 9 **Code of Conduct Training Update** (*Pages 57 - 62*)
To receive a report from the Monitoring Officer.
- 10 **Recommendations from the Constitution Focus Group** (*Pages 63 - 138*)
To receive recommendations from the Constitution Focus Group.

(Appendix 2 – Revised Part 4 – Pages 79-110)
(Appendix 3 – Existing Protocol 1 – Pages 111-122)
(Appendix 4 – Revised Protocol 1 – Pages 123-134)
(Appendix 5 – Revised Part 11A – Pages 135-138)
- 11 **Constitutional Change: Adoption of procedures and fees in relation to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018** (*Pages 139 - 180*)
To note the report to the Licensing Committee, which includes consequential constitutional changes.
- 12 **Briefing: R (Harvey) v Ledbury Town Council** (*Pages 181 - 184*)
A briefing note from the Monitoring Officer is attached.
- 13 **Urgent Items**
Any other items of business, which the Chairman agrees to consider as a matter of urgency

Part II

Item(s) during consideration of which it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

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STANDARDS COMMITTEE

MINUTES OF THE STANDARDS COMMITTEE MEETING HELD ON 20 JUNE 2018 AT THE KENNET ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Derek Brown OBE, Cllr Peter Evans, Cllr Peter Fuller, Cllr Howard Greenman (Vice-Chairman), Cllr Ruth Hopkinson, Cllr Bob Jones MBE, Cllr Paul Oatway QPM (Chairman), Cllr Sue Evans (Substitute), Mr Richard Baxter, Mr Michael Lockhart and Miss Pam Turner

21 Apologies

Apologies were received from Councillors Allison Bucknell, Ernie Clark, Fred Westmoreland, Stuart Wheeler and Mr Philip Gill MBE.

Councillor Westmoreland was substituted by Councillor Sue Evans.

Following the annual meeting of Council, Councillors Ernie Clark and Stuart Wheeler were added to the Committee, and Councillors Anna Cuthbert and Russell Hawker were removed from the Committee.

22 Minutes

The minutes of the meeting held on 18 April 2018 were presented for consideration and it was,

Resolved:

To approve and sign as a true and correct record.

23 Declarations of Interest

There were no declarations.

24 Chairman's Announcements

It was announced that the Local Government Ombudsman had upheld a complaint of maladministration against the council in relation to a matter of adult care. The Cabinet would be reporting on how it would be responding to the issues raised on 3 July 2018. As Ombudsman complaints fell within the remit of

the Standards Committee it was requested that an update report be provided at the next meeting to assess the council's response.

It was also announced that the Committee's response to the stakeholder consultation on local government ethical standards had been submitted, and updates would follow as the review by the Committee for Standards in Public Life progressed.

25 **Public Participation**

There were no questions or statements submitted.

26 **Status Report on Code of Conduct Complaints**

A report was received from the Monitoring Officer detailing the total number of Code of Conduct complaints submitted since the start of the year, how many had been referred for investigations and the outcomes. It was stated there had been a large number of complaints submitted in May, but that the overall figure was in line with previous years.

Clarification was sought on two complaints from 2017 which had not yet been resolved. It was explained that lengthy investigations had resulted in delays in the process, but that it was expected the complaints would be concluded by the next meeting of the Committee.

A further report was received as detailed in Agenda Supplement 1 on proposed changes to the Assessment Criteria for complaints, and procedure notes for Review Sub-Committees. In particular these related to complaints not automatically failing to be investigated if a councillor resigned from the relevant council, lack of attendance at review meetings and a specific procedure for reviews following an investigation. It was also confirmed that the documents did not form part of the Constitution and could be amended by the Committee itself.

At the conclusion of discussion, it was,

Resolved:

- 1) **To note the Code of Conduct Complaints Update.**
- 2) **To approve the changes to the Assessments Criteria and Review Sub-Committee Meeting Procedure as set out in the Appendix 1 and Appendix 2 of the supplementary report.**
- 3) **To approve the Meeting Procedure set out in Appendix 3 in relation to reviews following an investigation.**

27 **Constitution Focus Group Update**

A report was received from the Monitoring Officer detailing a proposed change to Part 3C of the Constitution, Delegation of Executive Functions, recommended by the Constitution Focus Group.

The change was in relation to the role of Portfolio Holders, councillors appointed by the Leader of the Council to assist Cabinet Members with their responsibilities but who did not hold any decision-making authority. The positions received a special responsibility allowance but had not to date been defined within the Constitution, and wording had been proposed to address this.

In discussion it was clarified there was no upper limit set on the number of Portfolio Holders at present, and some members considered that this should be clarified when it was before Full Council.

Resolved:

To recommend the changes detailed at Appendix 1 to the report for approval by Full Council.

28 **Code of Conduct Training and Register of Interests Update**

At its last meeting on 18 April 2018 the Standards Committee were advised that the Monitoring Officer had written to all parish, town and city clerks in line with the Committee's wishes seeking information on their codes of conduct, registration of interests, training and invited them to share any responses they had submitted in respect of the review of local government ethical standards being undertaken by the Committee on Standards in Public Life.

A report was received outlining responses received to the letter, and training provision that was available. It was noted that current provision for training for parishes was limited in both scope and resources, and that there was no obligation for Wiltshire Council to provide training. However, the Committee considered that it was useful for parishes and Wiltshire Council to encourage best practice where it could, without overburdening local councils, and was supportive of discussions on provision of e-learning platforms.

In relation to Codes of Conduct 64% of councils had responded to confirm which Code they had adopted, with around half of those using the Wiltshire Council Code. The Committee expressed its disappointment that there had not been confirmation from all councils as it was a legal requirement to adopt a Code, and discussed using the area boards to encourage parishes to meeting their obligations.

The Committee was also informed that only 9 council had confirmed they had fully updated their registers of interest, with 83 saying they were reminding their councillors. Given the potentially criminal sanctions for non-declaration of interests the Committee considered that further work was needed to encourage parishes to meet this requirement, recognising that parishes were their own

legal entities, including further work with clerks, whom many parishes were heavily reliant upon to meet their obligations.

At the end of discussion, it was,

Resolved:

To note the position regarding the responses received to date in relation to the matters covered in the letter to parish, town and city councils and to seek to develop e-learning platforms for parish training, and pursue further action to encourage parishes to meet their Code of Conduct and Register of Interest obligations.

29 **Date of Next Meeting**

The date of the next meeting was confirmed as 26 September 2018.

30 **Urgent Items**

There were no urgent items.

(Duration of meeting: 3.00 - 4.00 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

Wiltshire Council

Standards Committee

20 June 2018

Code of Conduct Complaints - Status Report

Statutory Background

1. All local authorities are required, by s.28 Localism Act 2011, to adopt a code of conduct for their members. All such codes are required to cover the following:
 - The principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership
 - The registration and disclosure of pecuniary and other interests
2. Wiltshire Council, as a principal authority, is required to have in place arrangements for investigating and determining allegations that a member of the Council, or a member of a parish council within the council's area, has failed to comply with the relevant Code of Conduct. These arrangements must include the appointment of at least one independent person, whose views must be taken into account before a decision is made on any alleged breach of a code of conduct.

Council Structure and Procedures

3. Wiltshire Council's arrangements for considering complaints about alleged code of conduct breaches are set out in Protocol 12 to the Constitution. All complaints are subject to an initial assessment on behalf of the Monitoring Officer, having sought comments from the Subject Member (the councillor who is the subject of the complaint). This initial assessment may conclude that no further action should be taken; it may refer the complaint for investigation or it may recommend that an alternative resolution be explored with the parties.
4. Both parties (the Complainant and the Subject Member) have a right to a review of the initial assessment. This is considered by the Review Sub-Committee of the Standards Committee.
5. If it is determined that a formal investigation should be undertaken (either at the initial assessment stage or by the Review Sub-Committee), an investigating officer is appointed by the Monitoring Officer. If the investigating officer finds that there has been a breach of the Code of Conduct, and the Monitoring Officer on reviewing the investigation report concludes that alternative resolution is not appropriate, then a Standards Hearing Sub-Committee will be convened. This will conduct a hearing into the complaint to determine whether there has been a breach of the Code and, if so, what sanctions, if any, should be applied to the Subject Member. If the Subject Member is a member of a town or parish council, the Hearing Sub-Committee's

decision regarding sanctions will be in the form of a recommendation to the relevant council.

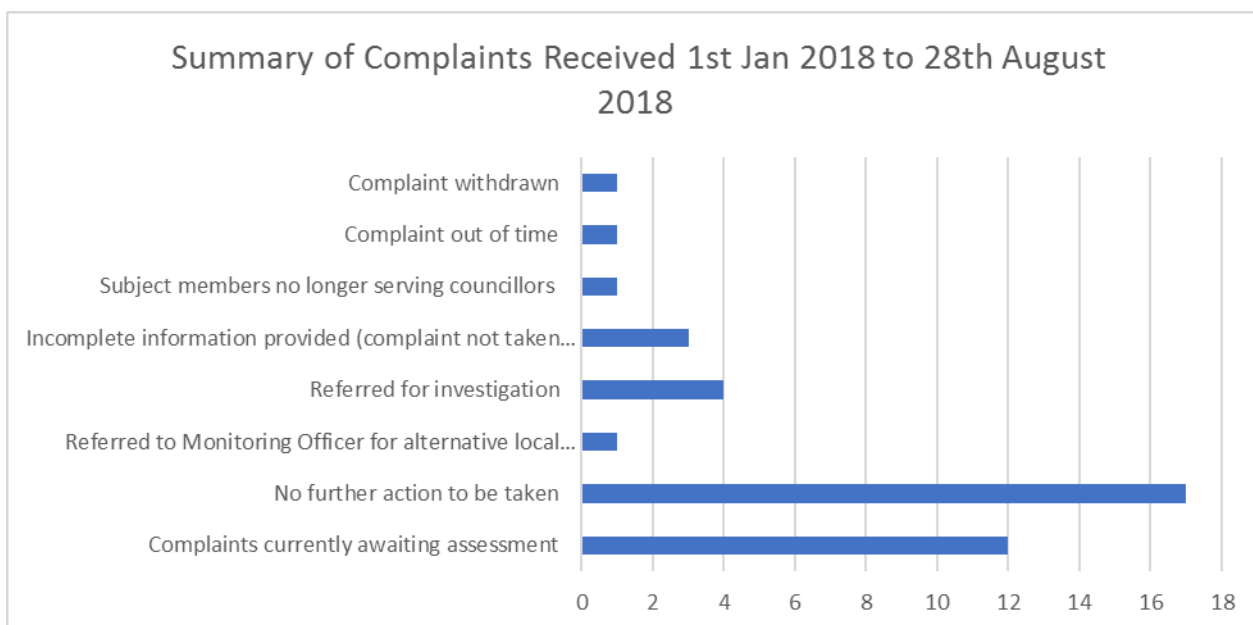
- The full Standards Committee has oversight of the operation of the procedures for dealing with Code of Conduct complaints as well as a general responsibility to promote and maintain high standards of conduct by elected and co-opted members and officers.

Summary of complaints received 1 January 2018 to 28 August 2018

- Between 1 January 2018 and 28 August 2018, the Monitoring Officer received 40 complaints under the Code of Conduct. Of these complaints, ten concerned members of Wiltshire Council, while the remainder were against members of town and parish councils within the authority’s area.

- Of the cases received, the position is as follows:

Complaints currently awaiting assessment	12
No further action to be taken	17
Referred to Monitoring Officer for alternative local resolution	1
Referred for investigation	4
Incomplete information provided (complaint not taken forward)	3
Subject members no longer serving councillors (complaints not taken forward)	1
Complaint out of time	1
Complaint withdrawn	1



- In relation to the current number of complaints awaiting assessment six complaints have been received since 22 August 2018. Not all complaints are submitted with full information and this delays the sending of the complaint to the subject member. In addition, once we have received the subject member’s response, which can take ten

working days, there may be a gap of up to two weeks before a scheduled assessment takes place.

A monthly breakdown of complaints received is attached at **Appendix 1**

Reviews

10. 13 requests for a review were received between 1 January 2018 and 28 August 2018. The Deputy Monitoring Officer's decisions of "no further action" were upheld by 12 of the review sub-committees. The 13th review upheld the Deputy Monitoring Officer's decision of "refer for investigation".
11. Where the complaints had been assessed as no further action, all requests for a review were received from the complainants.

Investigations

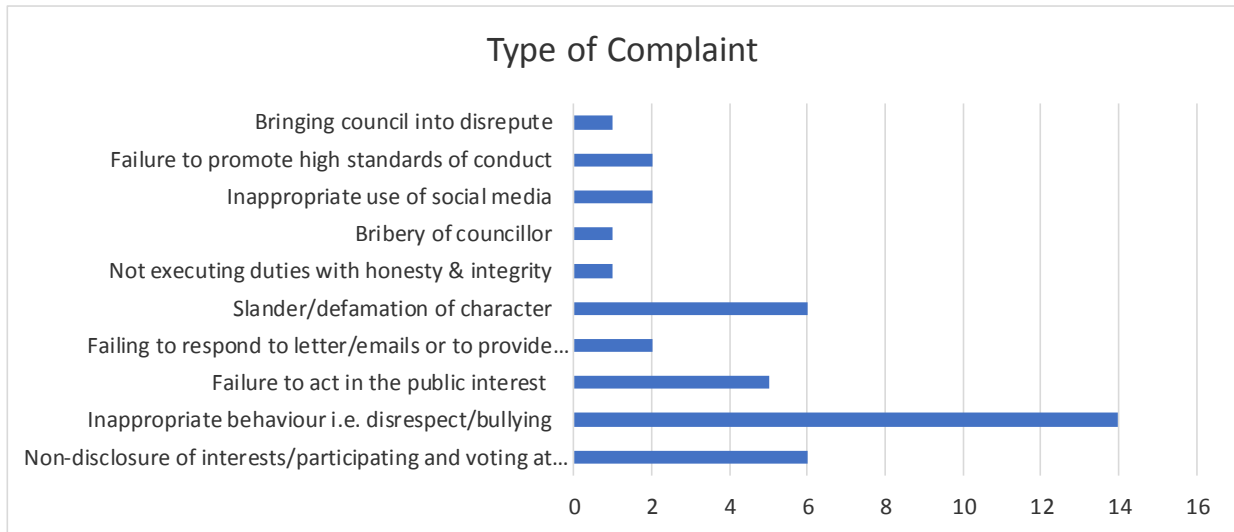
12. Since the beginning of 2018 five complaints have been referred for investigation on assessment. Three of these investigations are currently in progress and one is the subject of a request for review as detailed above.
13. In the case of the fifth complaint referred for investigation, the subject member resigned following the assessment decision and therefore no further action was taken in respect of the complaint.
14. Progress of the open investigations referred during 2016 is shown in the table below:

Reference	Date of Assessment	Progress
WC-ENQ00167	09/09/2016	No further action proposed
WC-ENQ00172	04/10/2016	No further action proposed

Types of Complaint

15. The types of complaints received in 2018 are categorised as follows:

Type of complaint	Number
Non-disclosure of interests/participating and voting at meetings	6
Inappropriate behaviour i.e. disrespect/bullying	14
Failure to act in the public interest	5
Failing to respond to letter/emails or to provide information/lack of communication	2
Slander/defamation of character	6
Not executing duties with honesty & integrity	1
Bribery of councillor	1
Inappropriate use of social media	2
Failure to promote high standards of conduct	2
Bringing council into disrepute	1
Total	40



Proposal

16. To note the current position on Code of Conduct Complaints

Ian Gibbons, Director of Legal and Democratic Services, and Monitoring Officer

Report Author: Sukdave Ghuman, Team Leader, Public Law and Compliance

Sukdave.ghuman@wiltshire.gov.uk

Appendix 1

Summary of Complaints Received 1 January 2017 to 28 August 2018

	Cases received (*denotes unitary cllr)	Cases open (cumulative)	Assessed investigation	Assessed no further action	Assessed alternative resolution/ *complaint withdrawn	Pending assessment (*assessed & decision notice being finalised)	Other	Cases closed	Requests for review received
2018									
January	5 & 1*	14	0	6	0	0	0	7	2 (upheld)
February	0	12	0	0	0	0	0	2	0
March	1*	10	1	0	0	0	0	3	4 (upheld)
April	3 & 2*	9	1	2	1	0	1*	6	0
May	7 & 1*	17	1	6	0	0	1*	0	1 (upheld)
June	5 & 1*	20	1	2	0	0	2* & 1**	3	0
July	5	22	0	2	0	3	0	3	5 (upheld)
August	5 & 4*	21	0	0	0	9	0	10	1 (pending)
	40	N/A	4	18	1	12	5	34	13

* further information not provided – complaint not taken forward

** subject member resigned – complaint not taken forward

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Wiltshire Council

Standards Committee

26 September 2018

Local Government and Social Care Ombudsman Complaint

Purpose of Report

1. The purpose of the report is to inform the Standards Committee of the findings and recommendations in the report of the Local Government and Social Care Ombudsman (“the Ombudsman”) published on the 27 April 2018 and to note the Council’s response.

Background

2. Mr. and Mrs. N have an adult son, Mr P, who has complex needs that are eligible for support. Mr N. is disabled and Mrs. N is the carer for both Mr. N. and Mr. P. Mr P attended a day care facility on weekdays and the same respite centre for many years. The Council has provided transport and residential respite care
3. In June 2016, Mr P’s transport funding was reduced, further to a house move, with a request that Mrs. N undertake two journeys per week between her home and the day care centre or alternatively fund the trips at a cost of £30 per trip. A further decision was taken to reduce respite care from 104 nights per year to 68 nights per year. Mrs N complained, initially under the Council’s Complaints Procedure, both in relation to transport and respite care provision. Mrs N subsequently complained to the Ombudsman.

Ombudsman’s Conclusions

4. The Ombudsman concluded that the Council was at fault in the way in which it reduced the level of respite and transport provision. The request that transport be provided or funded by the family, was not based upon an assessment of need and therefore, in breach of the requirements of the Care Act.
5. The Ombudsman further concluded that the Council was at fault in the use and application of the Matrix Assessment Tool and for introducing the reduction in respite care as quickly as it did. The Matrix Assessment Tool involved a four-stage assessment process, that assisted in the assessing of needs and allocation of available resources.
6. The Ombudsman also concluded that the Council was also at fault for having processed the complaint by way of a two-stage complaint process, rather than as a one stage process as required under the statutory scheme for adult care complaints.
7. A copy of the Ombudsman’s report is attached at **Appendix 1**.

Ombudsman Recommendations

7. The Ombudsman's recommendations are set out in paragraph 101 – 103 of the Ombudsman's report and are included for ease of reference below:

- Apologise to Mrs N.
- Restore the previous level of respite care pending a reassessment compliant with the Care Act 2014.
- Confirm it will offer her 24 days' respite care, to be taken at a time of her choosing, in recognition of the respite care wrongly withdrawn.
- Pay Mrs N £747.50 in recognition of the money she paid the Council for transport.
- Pay Mrs N £500 in recognition of distress and time and trouble.
- Review its policy and procedure on respite care, to reflect the requirements of the Care Act 2014.
- Review other files for evidence of use of the Matrix Assessment Tool. It should write promptly to anyone similarly affected and review their cases.
- Review the files of anyone whose transport was cut, to ensure these cuts were compliant with the Care Act.
- Inform the Ombudsman of the numbers of people involved and undertake to review all cases, within a further three months.
- Ensure all staff receive training in the requirements of the Care Act and the relevant guidance.
- Review all relevant documents to ensure they reflect the current law.

8. This matter was reported, as required, to Cabinet on 3 July 2018 setting out the actions taken and being taken in response to the recommendations. A copy of the Cabinet report and minute is included as **Appendix 2** and may be found on the [following link](#).

9. Cabinet resolved to:

a) Note the findings and recommendations in the Ombudsman's report published on 27 April 2018;

b) Confirm the Council's acceptance of the Ombudsman's findings and recommendations and the actions to remedy the injustice as set out in the report.

c) Authorise the Director of Adult Care Services in consultation with the Cabinet Member for Adult Social Care, Public Health and Public Protection to take the necessary steps to address the issues raised in the Ombudsman's report.

d) Require that a progress report is made to the Standards Committee and to the Health Select Committee within 6 months.

10. On 25 July 2018 I wrote as required in my role as Monitoring Officer to the Ombudsman to report on the action taken by the Council. A copy of my letter is attached at **Appendix 3**. Further updates on progress will be provided to the

Ombudsman as appropriate.

11. The latest position regarding the review of cases will be reported at the meeting.

Recommendation

12. The Standards Committee is asked to note the report and the actions taken by the Council in response to this complaint.

Ian Gibbons
Monitoring Officer

Report Author: Sukdave Ghuman, Team Leader, Public Law and Compliance,
sukdave.ghuman@wiltshire.gov.uk

Appendices 1. Local Government and Social Care Ombudsman Report 12 April 2018

2. Cabinet Paper dated 3 July 2018 and Minute

3. Letter to the Ombudsman dated 25 July 2018

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**Report by the Local Government and Social
Care Ombudsman**

**Investigation into a complaint against
Wiltshire County Council
(reference number: 16 015 946)**

12 April 2018

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Investigation into complaint number 16 015 946 against Wiltshire Council

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mrs N – The complainant acting on behalf of her son

Mr N – Her husband

Mr P – Their son, an adult in need of specialist care

Report summary

Adult Care Services

Mrs N cares for Mr P, her son. She complains the Council has wrongly cut the respite care provided for her son and has wrongly asked her to pay towards the cost of her son's transport between home and day care.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council has accepted our recommendations. The Council will consider the report at its full Council or Cabinet or other appropriately delegated committee of elected members and confirm within three months the action it has taken or proposes to take. We will require evidence of this.

In addition to the requirements set out above the Council has agreed to take the following action to remedy the injustice identified in this report. The Council will:

- Apologise to Mrs N;
- Restore the previous level of respite care pending a re-assessment compliant with the Care Act 2014;
- Confirm it will offer her 24 days respite care to be taken at a time of her choosing in recognition of the respite care wrongly withdrawn;
- Pay Mrs N £747.50 in recognition of money she paid the Council for transport;
- Pay Mrs N £500 in recognition of distress and time and trouble;
- Review its policy and procedure on respite care to reflect the requirements of the Care Act 2014;
- Review other files for evidence of use of the Matrix Assessment Tool (MAT). It should write promptly to anyone similarly affected and review their cases;
- Review the files of anyone whose transport was cut to ensure these cuts were compliant with the Care Act;
- Inform the Ombudsman of the numbers of people involved and undertake to review all cases within a further three months;
- Ensure all staff receive training in the requirements of the Care Act and the relevant guidance; and
- Review all relevant documents to ensure they reflect the current law.

The Complaint

1. Mrs N and her husband care for their disabled adult son, Mr P. Mrs N complains the Council has wrongly cut Mr P's respite care and she was wrongly asked to pay towards the cost of his transport to and from his day care centre.

Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. The Ombudsman may investigate matters coming to our attention during an investigation, if we consider a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E*)
4. When investigating complaints, if there is a conflict of evidence, the Ombudsman may make findings based on the balance of probabilities. This means that during an investigation, we will weigh up the available evidence and base our findings on what we think was more likely to have happened.

Social care

5. The Care Act 2014 introduced a requirement that local authorities should promote 'wellbeing' and '*signifies a shift from existing duties on local authorities to provide particular services, to the concept of 'meeting needs'.... The concept of meeting needs recognises that everyone's needs are different and personal to them. Local authorities must consider how to meet each person's specific needs rather than simply considering what service they will fit into.*' (*Care and Support Statutory Guidance, Ch 1*)
6. Councils must also consider the importance of preventing or delaying the development of needs for care and support among carers. Statutory guidance recommends 'tertiary prevention' methods such as respite care. (*Care and Support Statutory Guidance 2.10*)

Needs assessment

6. A council must carry out an assessment of any adult who seems to need care and support. It must also involve the individual and where appropriate their carer or any other person they might want involved. (*Care Act 2014, section 9*)
7. Having identified eligible needs through a needs assessment, the Council has a duty to meet those needs. (*Care Act 2014, section 18*)
8. The Care Act sets out examples of different ways a council can meet eligible needs. Examples include accommodation in a care home, care and support at home, counselling and social work, and information, advice and advocacy. (*Care Act 2014, s 8*)

9. If a council decides a person is eligible for care, it must prepare a care and support plan. This must set out the needs identified in the assessment. It must say whether, and to what extent, the needs meet the eligibility criteria. It must specify the needs the council intends to meet and how it intends to meet them. (*Care Act 2014, ss 24 and 25*)
10. A council should revise a care and support plan where circumstances have changed in a way that affects the care and support plan needs. Where there is a proposal to change how to meet eligible needs, a council should take all reasonable steps to reach agreement with the adult concerned about how to meet those needs. (*Care Act 2014, s27(4) and (5)*)
11. The care and support plan must set out a personal budget which specifies the cost to the local authority of meeting eligible needs, the amount a person must contribute and the amount the council must contribute. (*Care Act 2014, s 26*)
12. The High Court has confirmed an individual's wishes are not the same as their needs and their wishes are not the paramount consideration. A council must have 'due regard' to an adult's wishes as a starting point, but social workers are entitled to exercise their professional skills and judgement in deciding how to meet eligible needs. (*R (Davey) v Oxfordshire County Council [2017] EWHC 354 (Admin)*)
13. A person with eligible care needs can have a council arrange their care. Or, if they wish, they can arrange their own care using a direct payment. (*Care Act 2014, s 31*)

Carers

14. A council must consider whether to carry out a carer's assessment if it appears the carer has need for support. It must assess the carer's ability and willingness to continue in the caring role. It must also consider the results the carer wishes to achieve in daily life and whether support could contribute to achieving those results (*Care Act 2014, s10*)
15. The Act says the local authority can meet the carer's needs by providing a service directly. In these cases, the carer must still receive a support plan which covers their needs, and how they will be met. (*Care Act 2014, s 25*)
16. The Council can also provide a carer's personal budget, which must be sufficient to enable the carer to continue to fulfil their caring role. The Council should consider the carer's wishes for their day-to-day life. The Council should try to agree the personal budget and its use during the planning process. (*Care and Support Statutory Guidance 2014*)

Allocation of resources

17. The Care and Support Statutory Guidance states:
 - a. *"It is important to have a consistent method for calculating personal budgets that provides an early indication of the appropriate amount to meet the identified needs to be used at the beginning of the planning process. Local authorities should ensure that the method used for calculating the personal budget produces equitable outcomes to ensure fairness in care and support packages*

regardless of the environment in which care and support takes place, for example, in a care home or someone's own home. Local authorities should not have arbitrary ceilings to personal budgets that result in people being forced to accept to move into care homes against their will." (Ombudsman's emphasis added. *Care and Support Statutory Guidance 2014, 11.22*)

- b. "There are many variations of systems used to arrive at personal budget amounts, ranging from complex algorithmic-based resource allocation systems (RAS), to more 'ready-reckoner' approaches. Complex RAS models of allocation may not work for all client groups, especially where people have multiple complex needs, or where needs are comparatively costly to meet, such as in the case of deaf-blind people. It is important that these factors are taken into account, and that a 'one size fits all' approach to resource allocation is not taken. If a RAS model is being used, local authorities should consider alternative approaches where the process may be more suitable to particular client groups to ensure that the personal budget is an appropriate amount to meet needs" (Ombudsman's emphasis added. *Care and Support Statutory Guidance 2014, 11.23*)

Complaints procedure

18. Councils should ensure complaints are dealt with efficiently. (*Local Authority Social Services and National Health Service Complaints (England) Regulations (2009) reg 3*)

How we considered this complaint

19. We produced this report after speaking to Mrs N. We asked the Council for its relevant files and documents. We gave the complainant and the Council two confidential drafts and invited comments. We took their comments into account before finalising the report.

Investigation

Background

20. Mr and Mrs N have an adult son, Mr P, who has complex needs. He has severe learning difficulties and epilepsy. He has always lived at home with his parents.
21. Mr P needs constant care. He is doubly incontinent, incapable of speech and has severe cognitive impairment. Mrs N says she sleeps lightly because of concerns about his epilepsy. He is often awake through the night. Mrs N describes herself as 'close to breaking point'.
22. Recently, Mr N has also become disabled. He can only walk short distances and had to take early retirement. Mrs N acts as carer to both Mr N and Mr P. At her request, the Council pays her via direct payments to be Mr N's carer.
23. Since leaving school, Mr P has attended a day care facility within the Council's area on week days. He has attended the same respite centre for many years. The Council has provided transport for him to day care. It also provides residential respite care. The family lived, until 2016, in a house about 10 miles from the day care centre.

Council's transport duty

24. The Council must provide transport to adults in need of social care where this is necessary for them to receive care. It assesses eligibility for such transport according to the *Eligibility Criteria for Community Care Transport* document (2005). This states:
- *'The test of eligibility is 'Would the failure of the Council to provide transport result in an eligible need for services going unmet'*
 - *The Council would not normally provide transport for individuals in receipt of a Motability payment.*
25. For many years, the family has had a Motability vehicle to help with Mr P's transport. Nonetheless, the Council did not expect Mrs N to drive Mr P to and from day care.

The Matrix Assessment Tool

26. The Council adopted its 'Matrix Assessment Tool' ('MAT') in 2007. Its stated purpose was to *'ensure limited resources could be fairly allocated to families based on need'*.
27. The Council's document *'The Matrix Assessment – How it Works'* (*'How it works'*) explains the process. There are four stages:
- a. **Stage one:** assess applicant's need for respite care. The MAT allocates a score in various categories to reflect the applicant's level of disability or need.
 - b. **Stage two:** assess the 'current provision of service'. This provides a second score which must be subtracted from the 'need' score.
 - c. **Stage three:** assess 'the carer's situation'. The 'carer's score' is then added to the previous total.
 - d. **Stage four:** The Council assesses those requiring respite care and lists applicants according to their scores. The Council then calculates the number of respite beds available. It then divides the number of beds available by the number of beds required. This calculation creates the 'coefficient'. The Council then multiplies the score of each service user by the coefficient. This produces a number which will be the number of nights' respite he will receive that year.
28. *How it Works* contains a specimen calculation; the Council has 1400 bed nights available and the demand is for 2750 bed nights. The Council has half the number of beds it needs which produces a coefficient of 0.5. With this coefficient in place, an applicant with a score of 160 would receive 80 nights respite care (160 multiplied by 0.5).

Introducing reductions gradually

29. *How it Works* contains the following guidance; *'Some people will have allocated levels below their current level of service. To avoid causing sudden drops in service levels, it is intended that any gap will not be greater than 80% of the current level.'*

For example

Current level = 75 nights

Assessed level = 59 nights

gap = (75 – 59) 16 nights

80% of 16 = 13

actual level = 59 + 13 (72) nights’.

30. *‘Each year the level will be reduced by a further 20% until the assessed level is reached, or if individual needs change, a re-assessment indicates a new assessment level’.*
31. The wording used in *How It Works* is somewhat ambiguous. However, by following the calculations, it is clear that only 20% of any proposed reduction should be made each year.
32. Until 2016, the Council funded four consecutive nights of respite care every other week. (104 days respite care per year).
33. In 2013, the Council carried out a comprehensive assessment of Mr P’s needs. His eligibility level under the prevailing criteria were recorded as:
 - Managing behaviour and actions – critical
 - Managing personal care – critical
 - Access, mobility and transfers – critical
 - Nutritional needs – critical
 - Running and maintaining your home – critical
 - Keeping safe – critical
 - Making decisions and organising your life – critical
 - Community life, work and learning – critical
 - Family relationships – critical
34. The Council accepts Mr P’s needs have not changed since 2013.

Review 2015

35. In April 2015, the Care Act came into force. The Council reviewed Mr P’s needs. The review took some time because Mr P was ill. The review document stated his needs could be met by an indicative budget of ‘£1000 to £2000 a week’. The Council has told me the indicative budget figure in the April 2015 review document was a misprint and should have read ‘£700 to £1000 a week’.

House move

36. In late 2015, Mr and Mrs N decided to move. Mrs N was very keen that Mr P should keep his existing care package at their new home.

37. The Council's records show Mrs N emailed the Council in December 2015 saying; *'Good morning, my son uses adult care services in the [local town] area, receiving transport to and from [Mr P's] day care centre. Could someone make contact with me please as we have now sold our house and need to know if the house we are about to offer on is still [in] the catchment area.'*
38. A few days later, the Council wrote back saying the house was *'in our catchment area'*.
39. Mrs N wrote again saying *'we have tried to get some guide lines as to where we can move to whilst keeping [Mr P's] all-important care package and understood, as long as we didn't move to [local village] which we understood was the boundary, we should be fine'*. There is no record of the Council's response.
40. Mr and Mrs N bought the property. In January 2016, she contacted the Council to give the new address. The Council asked her to tell them when they moved. Mrs N then emailed back asking if he could keep the same escort *'to give [Mr P] some continuity when he most needs it'*.
41. Mrs N says she saw these conversations as assurances she would retain the same services at the new house.
42. The Council says Mrs N was not justified in this belief. It says; *'It is quite a different thing for the Council to say that Mr P would continue to receive support to whether Mr P would continue to receive support at a particular service'*.
43. *'None of the contemporaneous recordings support Mrs N's version of what was said. In the Council's view, what Mrs N asserts was said would be contrary to section 27 Care Act as a change of address would be a change of circumstances that would require a review of the care and support plan'*.

Review of transport/respice care

44. In June 2016, Mrs N spoke to another parent at the day care centre who told her the Council had withdrawn or limited the transport provision of many of the centre's users. Mrs N contacted the Council to ask if it intended to cut Mr P's transport funding.
45. Not long afterwards, the Council told Mrs N it had decided to cut Mr P's transport funding and to ask Mrs N to provide two journeys a week between home and day care. She could either pay the Council £30 a trip or provide the transport herself.
46. The Council said it had also decided to cut respice care from 104 nights per year to 68 nights per year. The Council said it had calculated the new level using the MAT.
47. Mrs N complained about these decisions. With regards to the transport, she said she had to care for her husband. The round trip to and from the day care centre could take her three hours, including getting Mr P in and out of the car. This would leave Mr N at home, uncared for. The Council says Mr N does not require constant care.

Council's explanation for transport cut

48. The Council said, *'the eligibility for transport explains we do not offer transport for anyone who has access to their own mobility vehicle. However, there is no expectation that a carer should have to drive more than 100 miles per week.... The cost of transport is approx £60 a day from your current home address. If your son was to return his mobility car it is likely the money he receives instead ... will only cover the cost of one day and the Council would have to provide transport for the additional 4 days. Therefore, as an alternative ... you could either provide one day of transport or purchase one day of transport instead. I understand the mornings can be a difficult time for you and as a solution I would suggest transport is provided two afternoons instead'*.
49. The Council now says the cost of transporting Mr P from the new house to the respite centre is £90 per day.

Assessment September 2016

50. In September 2016, the Council conducted a review of Mr P's needs. In the summary, it said, *'all support needs are being met – no change required...., 'Mrs N is happy to continue as Mr P's main carer and for him to reside in the family home (respite, day care and transport arrangements need to remain unchanged to continue to support)'*.
51. Mr P's eligibility for services remained unchanged. His wellbeing outcomes remained unchanged. Mr P's indicative budget was, however, recorded as *'£700 to £1000 per week'*, a reduction from the level set at the previous assessment.

Respite care

52. Mrs N said she needed the respite care to remain at its current level. She said she wanted to care for Mr P but could not do so without respite.
53. The Council said it had carried out a fresh calculation of the family's respite care entitlement. It said it had applied the provisions set out in the MAT. It had assessed Mr P's and Mrs N's needs against the MAT framework and awarded a score of 167.
54. It had then, it said, multiplied this figure by a coefficient of 0.5 to produce 68.47 thereby making the family eligible for 68 days respite care per year. (It had, in fact, used a coefficient of 0.41. It has done so ever since it introduced the MAT).
55. It said Mrs N had been receiving a level of respite care above that which it gave in similar cases. It said the change would be introduced 'gradually' and would be fully in place by April 2017
56. After a lengthy email exchange, and several meetings, during which a range of options, including options for Mr P's respite, were discussed, the Council informed her it would impose the changes to transport and respite.
57. The transport changes were introduced immediately. The Council said it would introduce the reduction in respite 'gradually' between December 2016 and April 2017.

58. In response to our enquiries, the Council wrote *'The support being offered to the family is in line with the individual's needs as assessed by Adult Care Services; is in line with the Council's policies and procedures; and in line with the Care Act 2014, the legislation that the Council is required to consider when assessing and meeting the unmet eligible needs of each person. The level of support being offered is in line with others who have similar assessed needs.'*
59. *'Mrs N has stated that she and [Mr N] have recently made decisions regarding where within [the council area] they live, ensuring they stay within the county boundary. However, they are residing in an area much further away from the services that her previous assessment noted, contributing to some of the increases in costs of the services Mr P receives. The Council believes it has tried to explore and offer a range of options to assist Mrs N and her family maximise the personal budget they are eligible to receive, but Mrs N has consistently refused to explore these options insisting that she and Mr P only receive the services in the way they have previously.'*
60. We asked the Council to restore respite care during our investigations into the case. It responded *'...The allocation of support being provided is at the top level...therefore I am not able to agree funding a person above the amount the council deems appropriate.'*

Current situation

61. Mrs N says she wants to remain as Mr P's main carer. However, she believes she will not be able to do so unless her previous level of respite is restored.
62. The Council says it wants Mrs N to allow Mr P to attend day care in a facility closer to the new house. It says this will be cheaper. Mrs N refuses to allow this. She says the Council assured her she could move to the new house and continue to use the same day care centre. She says this is 'non-negotiable'.
63. Mrs N cares for her husband and says this has increased her need for respite at a time when the Council has cut it. She says she is exhausted as Mr P often keeps her up for hours. She says she sleeps poorly anyway as she is worried about the possibility of Mr P's sudden death from epilepsy. For this reason, she will not take sleeping pills.
64. Mrs N says she is being treated by her doctor for chest pains. She says she is frequently distressed, *'tearful and unsettled'*. She has been offered antidepressant medication by her GP but has refused it.
65. Mrs N was unhappy with the Council's responses to her complaint, so she complained to the Ombudsman

Conclusions

66. The Council was at fault for the way in which it reduced both the level of respite care and the transport provision. The reasons why are set out below.

Funding limits

67. The Council says the family is receiving care '*at the top level*'. This approach does not accord with the Care Act which requires councils to assess and meet eligible needs. The Council cannot set maximum budget levels. The Act says eligible needs must be met, no matter what the cost.
68. The Council says the indicative weekly budget set at the April 2015 review was wrongly recorded as £1000 - £2000 a week. It says it should have been £700 - £1000. This is immaterial. The only question is whether the Council is meeting eligible needs.
69. The Council has provided me with its bandings. It says Mr P's disability falls into a certain band and therefore his funding cannot exceed a certain level.
70. Again, this approach does not accord with the Care Act. The Council may use bandings as a guide but, as the Care and Support Statutory Guidance states, such systems are unlikely to work in complex cases like Mr P's.
71. The Council has provided evidence that the cost of transport from the new family home is much higher than before. It says there is alternative provision closer to the new house and it wants Mr P to go there. Mrs N is adamant this should not happen.
72. Mrs N cannot, in the end, insist on the location of care. Nor can the Council cap care on the basis of cost. The Council must use its professional judgment to decide where care is provided. Mrs N may have a strong preference for a certain day centre but the Council does not have to provide care at that centre.
73. The Council may, however, have created an expectation that Mr P's care and respite would continue unchanged if the family moved. This may give Mrs N grounds to resist any such change. We make no finding on this though please see paragraphs 96 and 97 for our views on the evidence

Decision to ask Mrs N to fund/provide one day of transport

74. The Council's decision to ask the family to either fund or provide one day's transport per week appears to have been part of a general withdrawal of provision and a cost cutting exercise. It was not based on assessments of need and was therefore in breach of the requirements of the Care Act and was fault.
75. In Mrs N's case, asking Mrs N to provide the transport would have resulted in Mr N's needs going unmet. Mrs N is his carer too. Asking Mrs N to provide one day's transport per week for Mr P would result in Mr N being left alone for six hours.
76. The Council's guidance on transport says; 'The test of eligibility is 'Would the failure of the Council to provide transport result in an eligible need for services going unmet?'. Clearly, in this case, it would.

77. The Council also has a Care Act duty to consider the wishes of those involved; service users and carers. It cannot force an unwilling carer to provide care she reasonably states she cannot give.
78. The Council also relied on its rule, not contained in the policy, that no-one should have to drive more than 100 miles per week. The Council suggested Mrs N should drive 100 miles, not in a week, but in one day or two (two round trips of fifty miles).
79. There is no evidence the Council considered whether Mrs N, who complains of sleepless nights looking after Mr P, would be able to provide this transport. The Council was at fault, therefore, for failing to follow its own guidance, to comply with the Care Act and for applying an unwritten criterion with no basis in the assessment of eligible needs.
80. For the reasons given, the Council was at fault for the way in which it reduced the funding for transport. This fault has caused injustice. Mrs N has been required to pay £60 per week towards the cost of transport when she should not have been.
81. The Council has agreed to repay her for this but it argues this figure should be reduced by the Council's weekly transport contribution (payable by all users) multiplied by the number of weeks reduction.
82. The Council charges all transport users £3.70 a day (£18.50 a week). We accept this request as fair. The Council has agreed to repay Mrs N £747.50.

Use of the Matrix Assessment Tool (MAT)

83. The MAT predates the Care Act. Its purpose is to ration available resources. The Care Act requires councils to meet eligible needs. It does not allow rationing for any reason. If a council cannot meet an eligible need, it must pay someone else to meet it.
84. The MAT is, therefore, incompatible with the Care Act. The Council is at fault for continuing to use it. If the Council has used the MAT in other cases, this will also be fault. We shall return to this point in our recommendations.
85. The Council was at fault in reducing the family's care as it did and Mrs N has suffered injustice. She says she cannot cope without the respite care and the cut has caused her great distress. She says she has been treated by her doctor for this.
86. The Council accepts it did not use the MAT as prescribed in its own guidance. It accepts its failure to recalculate the coefficient has reduced the MAT's effectiveness as a tool.
87. It maintains the MAT was effective in informing care and support planning but accepts the approach does not accord with the guidance and has agreed to stop using it.

Failure to apply MAT guidance on reducing care gradually

88. The Council was also at fault for introducing the reduction in care as quickly as it did. The cut in care was calculated using the MAT and the MAT guidance is clear that only 20% of any respite reduction should be introduced each year. This should have meant a reduction of 6 nights in year one, from 104 nights per year to 98 nights per year.

89. In practice, the entirety of the reduction was made immediately. The Council cut the respite care by 36 days in year one and reduced her respite care from four days every two weeks to three days every two weeks with immediate effect. The family has had three days respite per week ever since.
90. Even if any reduction could be justified by the current law and guidance, it was not introduced in line with the Council's own guidance set out in *How It Works*. Nor was it introduced 'gradually' as the Council said.
91. The Council said, in response to the first draft of this report, '*the reduction had no connection to the possible uses of the MAT when it was introduced by the Council in 2006. The Council has never changed the coefficient that would lead to a deduction in support to all those using respite services*'.
92. This argument does not help the Council. The reduction was calculated using the MAT and, if the reduction was to be introduced, it should have been introduced at the rate set out in the MAT guidance. The failure to do so was fault.
93. Further, the Council never calculated the coefficient during the period it used the MAT. This too was fault. The coefficient was intended to represent the ratio of available beds to demand. Because the Council never calculated it, it did not do so. It should have been calculated at least once a year.
94. In any event, the MAT is incompatible with the Care Act. The Act states that the Council must assess eligible needs and meet them. It cannot ration care on the basis that it does not have sufficient capacity.
95. This fault caused Mrs N and her family additional injustice. Mrs N says she has not been able to cope and has suffered a great deal of distress because of the reduction in the respite care which was calculated erroneously and introduced immediately.

Assurances about moving to new house

96. I find, on a fair reading of the Council's records, Mrs N was asking about retaining Mr P's current provision and not continuing to be eligible for support from the Council. She speaks of a desire for '*continuity*' and the '*need to retain the all-important care package*'.
97. Mrs N believes the Council assured her she would retain the existing care package if she moved. I find the notes support her claim. Whether knowingly or not, the Council created an expectation that Mr P would retain his existing service after moving.

Two stage complaints process

98. *In December 2016, the Council responded to Mrs N's "stage two complaint". Since April 2009 The Local Authority Social Services and National Health Service Complaints (England) Regulations (2009) and the Department of Health Listening, Responding, Improving (2009) guidance require a "proportionate, achievable and cost-effective" investigation. This has been interpreted to mean a one stage, rather than a multi stage, procedure for all adult social care complaints.*

99. The Council's website says it uses a one stage process. The Council seems to have put Mrs N's complaint through two stages. The Council is at fault for failing to follow its own procedures, and for not complying with the intention of the regulations and guidance. The Council has accepted it was at fault.

Decision

100. The Council was at fault both for reducing the respite care and for asking Mrs N to contribute towards the transport. This fault caused injustice. In particular it caused her stress and affected her wellbeing. We have suggested a remedy to reflect this.

Recommended actions

101. We welcome the Council's agreement to our recommendations.
102. The Council will consider the report at its full Council or Cabinet or other appropriately delegated committee of elected members and confirm within three months the action it has taken or proposes to take. We will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
103. In addition to the requirements set out above the Council has agreed to take the following action to remedy the injustice identified in this report. The Council will:
- Apologise to Mrs N;
 - Restore the previous level of respite care pending a re-assessment compliant with the Care Act 2014;
 - Confirm it will offer her 24 days respite care to be taken at a time of her choosing in recognition of the respite care wrongly withdrawn;
 - Pay Mrs N £747.50 in recognition of money she paid the Council for transport;
 - Pay Mrs N £500 in recognition of distress and time and trouble;
 - Review its policy and procedure on respite care to reflect the requirements of the Care Act 2014;
 - Review other files for evidence of use of the MAT. It should write promptly to anyone similarly affected and review their cases;
 - Review the files of anyone whose transport was cut to ensure these cuts were compliant with the Care Act;
 - Inform the Ombudsman of the numbers of people involved and undertake to review all cases within a further three months;
 - Ensure all staff receive training in the requirements of the Care Act and the relevant guidance; and
 - Review all relevant documents to ensure they reflect the current law.

The Council has already ceased using the MAT. It has also accepted that its complaints procedure was faulty in this instance.

Wiltshire Council

Cabinet

3 July 2018

**Subject: Local Government and Social Care Ombudsman
Complaint**

**Cabinet Members: Councillor Jerry Wickham - Adult Social Care, Public
Health and Public Protection**

Key Decision: No

Executive Summary

The Local Government and Social Care Ombudsman considers complaints from members of the public that they have suffered injustice as a result of maladministration and/or service failure by local authorities and other bodies within its jurisdiction. The Ombudsman has extensive investigation powers and can make findings based upon a balance of probabilities test, similar to the civil courts.

The Ombudsman published a report on 27 April 2018 finding maladministration against the Council that caused injustice to the complainant, Mrs. N, regarding the provision of respite care and travel support for her son Mr. P.

Where the Ombudsman reports that injustice has been caused to a person in consequence of maladministration, the relevant body, in this case the Cabinet, must, within three months of the publication of the report, consider the report and notify the Ombudsman of the action which the Council has taken or proposes to take.

The Council must also make arrangements for the publication and inspection of the report as set out in the relevant legislation.

Following consideration by Cabinet, the report will also be referred to the Overview & Scrutiny Management Committee and the Standards Committee.

Proposals

Cabinet is recommended to:

- a) **Note the findings and recommendations in the Ombudsman's report published on 27 April 2018;**
- b) **Confirms the Council's acceptance of the Ombudsman's findings and recommendations and the actions to remedy the injustice as set out in the report.**
- c) **Authorise the Director of Adult Care Services in consultation with the Cabinet Member for Adult Social Care, Public Health and Public Protection to take the necessary steps to address the issues raised in the Ombudsman's report.**
- d) **Require that a progress report is made to the Standards Committee and to the Health Select Committee within 6 months.**

Reason for Proposals

To enable the Council to consider the Ombudsman's report and formally confirm its response to the Ombudsman as required by law.

Ian Gibbons, Director of Legal & Democratic Service and Monitoring Officer

Tracy Daszkiewicz, Director of Adult Services

Wiltshire Council

Cabinet

3 July 2018

**Subject: Local Government and Social Care Ombudsman
Complaint**

**Cabinet Members: Councillor Jerry Wickham - Adult Social Care, Public
Health and Public Protection**

Key Decision: No

Purpose of Report

1. The purpose of the report is to inform Cabinet of the findings and recommendations in the report of the Local Government and Social Care Ombudsman ("the Ombudsman") published on 27 April 2018 and to confirm the Council's response to the report.

Relevance to the Council's Business Plan

2. The issues raised within the Ombudsman's report are integral to the Wiltshire Council Business Plan 2017 – 2027. They highlight the need to ensure protection of the most vulnerable in our community. This is achieved through a balanced and collaborative approach to empowering and safeguarding families and individuals, whilst ensuring there is a joined-up approach to health and care integration.

Background

3. Mr. and Mrs. N have an adult son, Mr. P, who has complex needs that are eligible for support. He has always lived at home with his parents. Mr. N is disabled and Mrs. N is the carer for both Mr. N and Mr. P. At her request, the Council pays her via direct payments to be Mr. N's carer.
4. Mr. P has attended a day care facility on weekdays and the same respite centre for many years. The Council has provided transport for him to day care and residential respite care. The family lived in a house about 10 miles from the day care centre. In late 2015, Mr. and Mrs. N relocated within the County being keen that the existing care package should remain.
5. In June 2016, Mr. P's transport funding was reduced, with a request that Mrs. N undertake two journeys per week between the home and the day centre or alternatively, fund the trips at a cost of £30.00 per trip. A decision was also taken to reduce respite care from 104 nights per year to 68 nights per year.
6. Mrs. N complained, initially under the Council's Complaints Procedure, both in relation to the transport, as she was also required to care for her husband and to undertake the journeys would result in her husband being left

unaccompanied for up to 6 hours. Mrs. N also complained in relation to the reduction of respite care provision. Mrs. N subsequently complained to the Ombudsman.

Ombudsman's conclusions

7. A copy of the Ombudsman's report is attached at Appendix 1. The Ombudsman's conclusions are set out at paragraphs 66-99 of the report.
8. The Ombudsman concluded that the Council was at fault in the way in which it reduced the level of respite and transport provision. The request that transport be provided or funded by the family, was not based upon an assessment of need and therefore, in breach of the requirements of the Care Act.
9. The Ombudsman further concluded that the Council was at fault in the use and application of the Matrix Assessment Tool and for introducing the reduction in respite care, as quickly as it did. The Matrix Assessment Tool involved a four-stage assessment process, that assisted in the assessing of needs and allocation of available resources.
10. The Ombudsman also concluded the Council was at fault for having processed the complaint, by way of a two-stage complaint process, as opposed to a one stage complaints process, in accordance with the statutory scheme for adult care complaints under the 2009 Regulations.

Ombudsman recommendations

11. The Ombudsman's recommendations are set out in paragraphs 101-103 of the report. These include a requirement for the Council to consider the report and confirm, within three months, the action it has taken or proposes to take. The recommendations are as follows:
 - Apologise to Mrs N.
 - Restore the previous level of respite care pending a reassessment compliant with the Care Act 2014.
 - Confirm it will offer her 24 days' respite care, to be taken at a time of her choosing, in recognition of the respite care wrongly withdrawn.
 - Pay Mrs N £747.50 in recognition of the money she paid the Council for transport.
 - Pay Mrs N £500 in recognition of distress and time and trouble.
 - Review its policy and procedure on respite care, to reflect the requirements of the Care Act 2014.
 - Review other files for evidence of use of the Matrix Assessment Tool. It should write promptly to anyone similarly affected and review their cases.
 - Review the files of anyone whose transport was cut, to ensure these cuts were compliant with the Care Act.
 - Inform the Ombudsman of the numbers of people involved and undertake to review all cases, within a further three months.
 - Ensure all staff receive training in the requirements of the Care Act and the relevant guidance.
 - Review all relevant documents to ensure they reflect the current law.

Main Considerations for the Council

12. The Council has considered and accepted the conclusions and recommendations of the Local Government and Social Care Ombudsman.
13. To address the recommendations, an action plan has been developed (Appendix 2) which is supported by a tracking tool to ensure all actions are completed, within the suggested time frame, by the end of July 2018.
14. Additional resources have been provided from colleagues, in other Adult Social Care teams, to ensure actions are prioritized and delivered. A total of 142 customers have been identified as needing a review and all have been allocated a worker. Approximately 30% of these reviews have now been completed and all are scheduled to be carried out before the end of July. Of those completed, there have been no significant financial implications for the Council, as a result of this activity.
15. As part of the adult care transformation programme, all policies and procedures relating to assessment and support planning have been reviewed and are in line with Care Act guidance. In addition, Care Act training for all social care staff, from induction through to regular updates, has been provided, with additional training sessions being implemented with the Learning Disability Teams. This specifically includes training, with regard to support planning and the use of respite care to meet eligible need.

Overview and Scrutiny Engagement

16. It is proposed that progress in implementing the agreed actions on this matter is reviewed by the Council's Overview and Scrutiny Management Committee after 6 months.

Safeguarding Implications

17. The actions that are to be taken in response to the Ombudsman's Report will strengthen the approach of Wiltshire Council to safeguarding the interests of services users.

Public Health Implications

18. The public health implications of this report, relate to services users, their carers and wider families. The adoption of the conclusions and recommendations of the Local Government and Social Care Ombudsman will further ensure a positive impact upon individual health and wellbeing.

Procurement Implications

19. The report does not contain or result in procurement implications.

Equalities Impact of the Proposal

20. The equalities impact of the adoption of conclusion and recommendations of the Local Government and Social Care Ombudsman further enhance the provision of services delivered by Adult Social Care.

Environmental and Climate Change Considerations

21. There are no environment and climate change implications associated with this report.

Risks that may arise if the proposed decision and related work is not taken

22. The Council has accepted the conclusions and recommendations of the Ombudsman's report. Failure to implement the recommendations would result in customers and families potentially not receiving the appropriate amount of care to meet their needs. There would also be legal and reputational risks to the Council.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

23. None identified.

Financial Implications

24. It is not anticipated that this process will incur significant increased costs to the Council,

Legal Implications

25. The Local Government and Social Care Ombudsman considers complaints from members of the public that they have suffered injustice, as a result of maladministration and/or service failure by local authorities and other bodies within its jurisdiction. The Ombudsman has extensive investigation powers and can make findings, based upon a balance of probabilities test, similar to the civil courts.

Where the Ombudsman reports that injustice has been caused to a person, in consequence of maladministration, the relevant body, in this case the Cabinet, must, within three months of the publication of the report, consider the report and notify the Ombudsman of the action which the Council has taken or proposes to take.

The Council must also make arrangements for the publication and inspection of the report as set out in the relevant legislation.

**Directors : Ian Gibbons, Solicitor to the Council and Monitoring Officer,
Tracy Daszkiewicz, Director of Adult Services**

Date of report 6th June 2018

Appendices

1. Local Government and Social Care Ombudsman Report 12th April 2018:
16015946
2. Recommendation Action tracker

Cabinet Minutes Extract 3 July 2018 – Minute 258 - Local Government and Social Care Ombudsman

Councillor Jerry Wickham presented the report which informed Cabinet of the findings and recommendations in the report of the Local Government and Social Care Ombudsman (“the Ombudsman”) published on 27 April 2018 and to confirm the Council’s response to the report. In presenting the report, Councillor Wickham highlighted the actions proposed in response to the eleven points and reemphasised the apology that had already been made.

There being no further questions, the meeting;

Resolved

- a) To note the findings and recommendations in the Ombudsman’s report published on 27 April 2018;**
- b) To confirm the Council’s acceptance of the Ombudsman’s findings and recommendations and the actions to remedy the injustice as set out in the report.**
- c) To authorise the Director of Adult Care Services in consultation with the Cabinet Member for Adult Social Care, Public Health and Public Protection to take the necessary steps to address the issues raised in the Ombudsman's report.**
- d) To require that a progress report is made to the Standards Committee and to the Health Select Committee within 6 months.**

Reason for Decision:

To enable the Council to consider the Ombudsman’s report and formally confirm its response to the Ombudsman as required by law.

25 July 2018

Mr. Michael King
Local Government and Social Care
Ombudsman for England
PO Box 4771
Coventry
CV4 0EH

Law and Governance
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Your ref: 16015946/IT7
Our ref: ENQ03936

By Email and By Post

Dear Mr King

Complaint by [REDACTED]

I am writing as Monitoring Officer on behalf of Wiltshire Council in accordance with Section 31(2) Local Government Act 1974 to report the action that the Council has taken in response to your report on the above complaint, which was published on 27 April 2018.

This matter was considered by the Council's Cabinet on 3 July 2018. Cabinet resolved to:

- a) *Note the findings and recommendations in the Ombudsman's report published on 27 April 2018;*
- b) *Confirm the Council's acceptance of the Ombudsman's findings and recommendations and the actions to remedy the injustice as set out in the report.*
- c) *Authorise the Director of Adult Care Services in consultation with the Cabinet Member for Adult Social Care, Public Health and Public Protection to take the necessary steps to address the issues raised in the Ombudsman's report.*
- d) *Require that a progress report is made to the Standards Committee and to the Health Select Committee within 6 months.*

A copy of the Cabinet report, appendices, draft minutes, and web cast for this part of the meeting may be found on the following link to the Council's web site (at Item 258):

<https://cms.wiltshire.gov.uk/ieListDocuments.aspx?CId=141&MId=11668&Ver=4>

Copies of the relevant documents are also attached for ease of reference.

The Council's Overview and Scrutiny Health Select Committee also considered the matter at its meeting on 11 July 2018 and resolved:

To note the report, the findings from the LGO, the response provided by Cabinet and the proposed action plan and to welcome an update in 6 months on outstanding actions.

A progress report will be made to the Council's Standards Committee and to the Health Select Committee within 6 months as directed by Cabinet.

The Action Tracker in Appendix 2 of the Cabinet Report summarises the action taken and being taken in response to the recommendations in the complaint report.

I should make you aware that since the meeting of Cabinet [REDACTED] has queried the accuracy of the second entry of the Action Tracker, which stated in relation to the provision of respite care that 'the level of care had never actually been reduced'. It is accepted that this was an error which unfortunately had not been spotted in time for the Cabinet meeting. The next (third) entry does, however, make it clear that it was confirmed by letter to [REDACTED] dated 1 May 2018 that the Council would offer her 24 days respite care to be taken at a time of her choosing in recognition of the respite care wrongly withdrawn.

Debbie Medlock, Interim Director, Adult Care Learning Disabilities and Mental Health has arranged to meet [REDACTED] on 2 August 2018 to discuss any outstanding issues and will apologise to her for this error in person.

The Council is making good progress with the review of cases as recommended by the Ombudsman. 89 reviews have been completed to date out of a total of 153 cases as set out in the table below.

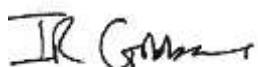
Service	Total for review	Not required	Review completed	Review booked to be completed by 31 July 2018	To book
Bradbury Manor	45	12	24	2	7
Bradbury House	31	1	17	4	9
Chippenham Respite Centre	40	3	30	5	2
Direct Payments	37	5	18	8	6
Totals	153	21	89	19	24*

*These are yet to be arranged due to the personal circumstances of the person concerned e.g. hospitalisation; holidays and will be completed as soon as it is convenient for them.

We will continue to update you on progress and inform you of the outcome of the reviews when completed.

I trust this is sufficient for your purposes at this stage, but if you need any further information please let us know.

Yours sincerely



Ian Gibbons
Director legal and Democratic Services and Monitoring Officer
Direct line: 01225 713052
Email: ian.gibbons@wiltshire.gov.uk

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Wiltshire Council

Standards Committee

26 September 2018

Local Government and Social Ombudsman's Annual Review Letter 2017 – 2018

Purpose of Report

1. To inform the Standards Committee of the Annual Review Letter for 2017-18 published by the Local Government and Social Care Ombudsman (LGSCO) in respect of Wiltshire Council.

Background

2. Under the Council's Constitution the Standards Committee has responsibility for the oversight of complaints handling, including complaints to the LGSCO.
3. The LGSCO is required to provide an annual overview of complaints received. The LGSCO issues its findings in the form of an Annual Review Letter which goes out to all authorities at the same time, providing a breakdown of the number of complaints received against each authority.

Main considerations

4. A copy of the LGSCO's report for Wiltshire Council for 2017-18 is attached at Appendix1.
5. The number of complaints referred to the LGSCO fell from 73 in 2017 to 64 in 2018. The number of complaints upheld during detailed investigation by the LGSCO fell from 12 in 2017 to 8 in 2018. This equates to a fall in the uphold rate from 50% in 2017 to 40% in 2018.
6. Whilst there is no ability to control whether customers of the Council decide to pursue their complaint further with the LGSCO, the fact that the numbers continue to fall may in part be attributed to the approach taken by the Council's complaints team, in collaboration with services, and the efforts which are undertaken within the Council's own complaints procedure to engage with the customer and ensure that a full response and explanation are provided, together with a clear plan of action. Rigorous monitoring of LGSCO investigations ensures that the Council engages constructively with the LGSCO and contributes to providing the customer with a detailed and reasoned outcome.
7. In terms of the number of complaints upheld by the LGSCO these remain relatively low. The Council continues to work in collaboration with the LGSCO in addressing any recommendations made.

8. The complaints handling function is currently under review. A new case management system has been introduced with greater use of workflows to deliver increased efficiency and enhanced working practices.
9. The Complaints Team is working collaboratively with services teams with the development of a complaints dashboard being integral to their interrogation of developing trends in the complaints process. The complaints dashboard is a monthly overview of complaints received and those being progressed by each service team. It assists client teams to identify developing trends and manage the progression of complaints through their service

Safeguarding Implications

10. There are no safeguarding issues arising from this report.

Equalities Impact of the Proposal

11. There are no equalities impacts arising from this report.

Risk assessment

12. There are no significant risks arising from this report.

Financial Implications

13. There are no direct financial implications arising from this report.

Legal Implications

14. There are no legal implications arising from this report.

Public Health Impact of the Proposals

15. There are no public health impacts arising from this report.

Environmental Impact of the Proposals

16. There are no environmental implications arising from this report.

Recommendation

17. The Standards Committee is asked to note the outcome of the LGO's Annual Review Letter 2017-18.

Ian Gibbons
Director, Legal and Democratic Services, and Monitoring Officer

Report Author: Sukdave Ghuman, Complaints Manager, Public Law and Compliance Team

Background Papers

The following unpublished documents have been relied on in the preparation of this Report: NONE

Appendices

Appendix 1 Local Government Ombudsman Review Letter for 2017-18

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18 July 2018

By email

Carlton Brand
Corporate Director
Wiltshire Council

Dear Carlton Brand,

Annual Review letter 2018

I write to you with our annual summary of statistics on the complaints made to the Local Government and Social Care Ombudsman (LGSCO) about your authority for the year ended 31 March 2018. The enclosed tables present the number of complaints and enquiries received about your authority and the decisions we made during the period. I hope this information will prove helpful in assessing your authority's performance in handling complaints.

Complaint statistics

In providing these statistics, I would stress that the volume of complaints does not, in itself, indicate the quality of the council's performance. High volumes of complaints can be a sign of an open, learning organisation, as well as sometimes being an early warning of wider problems. Low complaint volumes can be a worrying sign that an organisation is not alive to user feedback, rather than always being an indicator that all is well. So, I would encourage you to use these figures as the start of a conversation, rather than an absolute measure of corporate health. One of the most significant statistics attached is the number of upheld complaints. This shows how frequently we find fault with the council when we investigate. Equally importantly, we also give a figure for the number of cases where we decided your authority had offered a satisfactory remedy during the local complaints process. Both figures provide important insights.

I want to emphasise the statistics in this letter reflect the data we hold, and may not necessarily align with the data your authority holds. For example, our numbers include enquiries from people we signpost back to the authority, some of whom may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website, alongside an annual review of local government complaints. The aim of this is to be transparent and provide information that aids the scrutiny of local services.

Future development of annual review letters

Last year, we highlighted our plans to move away from a simplistic focus on complaint volumes and instead turn focus onto the lessons that can be learned and the wider improvements we can achieve through our recommendations to improve services for the many. We have produced a new corporate strategy for 2018-21 which commits us to more comprehensively publish information about the outcomes of our investigations and the occasions our recommendations result in improvements to local services.

We will be providing this broader range of data for the first time in next year's letters, as well as creating an interactive map of local authority performance on our website. We believe this will lead to improved transparency of our work, as well as providing increased recognition to the improvements councils have agreed to make following our interventions. We will therefore be seeking views from councils on the future format of our annual letters early next year.

Supporting local scrutiny

One of the purposes of our annual letters to councils is to help ensure learning from complaints informs scrutiny at the local level. Sharing the learning from our investigations and supporting the democratic scrutiny of public services continues to be one of our key priorities. We have created a dedicated section of our website which contains a host of information to help scrutiny committees and councillors to hold their authority to account – complaints data, decision statements, public interest reports, focus reports and scrutiny questions. This can be found at www.lgo.org.uk/scrutiny I would be grateful if you could encourage your elected members and scrutiny committees to make use of these resources.

Learning from complaints to improve services

We share the issues we see in our investigations to help councils learn from the issues others have experienced and avoid making the same mistakes. We do this through the reports and other resources we publish. Over the last year, we have seen examples of councils adopting a positive attitude towards complaints and working constructively with us to remedy injustices and take on board the learning from our cases. In one great example, a county council has seized the opportunity to entirely redesign how its occupational therapists work with all of its districts, to improve partnership working and increase transparency for the public. This originated from a single complaint. This is the sort of culture we all benefit from – one that takes the learning from complaints and uses it to improve services.

Complaint handling training

We have a well-established and successful training programme supporting local authorities and independent care providers to help improve local complaint handling. In 2017-18 we delivered 58 courses, training more than 800 people. We also set up a network of council link officers to promote and share best practice in complaint handling, and hosted a series of seminars for that group. To find out more visit www.lgo.org.uk/training.

Yours sincerely,



Michael King
Local Government and Social Care Ombudsman
Chair, Commission for Local Administration in England

Local Authority Report: Wiltshire Council
For the Period Ending: 31/03/2018

For further information on how to interpret our statistics, please visit our website:
<http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

Complaints and enquiries received

Adult Care Services	Benefits and Tax	Corporate and Other Services	Education and Children's Services	Environment Services	Highways and Transport	Housing	Planning and Development	Other	Total
15	2	4	15	5	4	4	15	0	64

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Decisions made

				Detailed Investigations			
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate	Total
5	0	24	19	12	8	40%	68

Notes

Our uphold rate is calculated in relation to the total number of detailed investigations.
 The number of remedied complaints may not equal the number of upheld complaints. This is because, while we may uphold a complaint because we find fault, we may not always find grounds to say that fault caused injustice that ought to be remedied.

Complaints Remedied

by LGO	Satisfactorily by Authority before LGO Involvement
8	0

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Wiltshire Council

Standards Committee

26 September 2018

Code of Conduct Training Update

Purpose

1. To update the Committee in relation to the provision of E-Learning Code of Conduct Training and to consider any further action that the Committee deem appropriate to move forward.

Progress to date

2. At previous meetings on the 18 April 2018 and the 20 June 2018, the Standards Committee considered the provision of an E-learning platform that would allow Councillors to undertake training in their own time. The Monitoring Officer was asked through the Council's Public Law and Compliance Team, to make further enquiries with organisations that may be able to assist in the development of a cost-effective training platform.
3. The Monitoring Officer had through the Public Law and Compliance Team concluded in their initial review presented to the standards Committee on the 20 June, that there is a lack of co-ordinated training available to Councillors on this subject.
4. The Human Resources Team of Wiltshire Council are able to offer a platform on the Council's Grow system. This is a training platform for Council employees which could be developed to provide a modular training programme for Councillors. The training platform could include training videos, resource material and a series of concluding questions. This will ensure that the learner has attain the appropriate level of understanding and insight. Significant work on the development of training material will be required to take this forward.
5. Discussions are currently underway with Linda Roberts, Head of Conferences, Training & Education at the Society of Local Council Clerks, "SLCC" centred around the possibility of developing a training platform. The SLCC is a national body that has previously collaborated with other authorities in the provision of training. Linda Roberts is currently making enquiries with her technical team to ensure that material can be shared, and will be making further enquiries with partner authorities that may be able to contribute towards the development of training material and expertise.

6. In our discussions with SLCC we considered the breadth of training material that would be required to provide a comprehensive training programme and potential opportunities to market training to other local authorities.
7. The National Association of Local Councils “NALC”, do not appear to have a comprehensive training programme in place. Their training tends to be face to face, and centred around specific training needs with member organisations. Please see attached at Appendix 1, a recent NALC newsletter which identified a training need, with an estimated investment requirement of £2 million, to provide training on ethical governance and standards.
8. The Public law and Compliance Team is currently making enquiries with Cornwall Council as to their Councillor training resources. Cornwall Council has, in principle, indicated a willingness to share their training material and we will report further to the Committee with details when these are made available to us.

Recommendations

9. The Committee is asked to note the progress of developments to date and to advise on any further action it considers appropriate at this stage.

Ian Gibbons, Director of Legal and Democratic Services, and Monitoring Officer

Report Author: Sukdave Ghuman, Team Leader, Public Law and Compliance,
sukdave.ghuman@wiltshire.gov.uk

Appendix 1 – NALC Newsletter



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1130

News

Local councils in favour of single, mandatory code of conduct

Friday, 03 August 2018



Local (parish and town) councils would support a single code of conduct that could be used by all local authorities, according to research conducted by the National Association of Local Councils (NALC).

Currently, different codes of conduct are in use across local government, but 90% of those local councils questioned would fully support a code of conduct that is the same and mandatory for all local authorities.

The survey of England's local councils – undertaken by NALC to inform its submission to a parliamentary review on standards – also found that nearly 70% of local councils would like new powers to impose additional sanctions. At the moment sanctions used by local councils include apologies and training. However, around 60% of local councils believe these are neither sufficient to punish breaches of the code of conduct or deter future breaches.

Additionally, when it came to training on codes of conduct, the survey uncovered gaps with almost 40% of local councils stating that their members hadn't received any training and 20% reported that most members did not understand the rules around declaring interests.

Cllr Sue Baxter, chairman of NALC, said: "NALC does not believe the current ethical standards arrangements are working as well as they could and a review of the regime is something we have long called for. We would like to see stronger sanctions available to local councils, including the power of suspension and disqualification.

"In light of our research, we are also asking the government to invest £2m towards a national training programme that would see all new councillors undertake training on ethical standards and the code of conduct as part of their induction."

The Committee on Standards in Public Life is currently undertaking a review into local government ethical standards which is expected to report to the prime minister by the end of the year.

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Wiltshire Council

Standards Committee

26 September 2018

Recommendations of the Constitution Focus Group

Purpose of Report

1. This report asks the Standards Committee to consider recommendations of the Constitution Focus Group on the following matters:
 - a) Part 4: Council Rules of Procedure
 - b) Protocol 1: Councillor-Officer Relations
 - c) Part11A: Corporate Parenting Panel

Background

2. The Standards Committee has responsibility for oversight of the Council's constitution. It has established a cross party working group, known as the Constitution Focus Group, to advise and assist the committee in carrying out this function.
3. The Focus Group met on 5 June, 17 July and 5 September 2018 to review sections of the constitution as detailed in paragraph 1 and made a series of recommendations.

Main Considerations

4. The relevant minutes and resolutions of the Focus Group meetings listed in paragraph 4 can be found at **Appendix 1**.

Summary of proposed changes

(a) Part 4: Council Rules of Procedure

5. Part 4 of the Constitution sets out detailed rules of procedure for the council, with sections applying to Full Council, Cabinet or other committees as appropriate. These include rules on submission of questions, consideration of motions and amendments, recording of minutes and more.
6. The Focus Group across the three meetings listed considered all aspects of the procedure rules in detail, and proposed a series of changes, which have been summarised below:
 - Consistent reference to 'Members' rather than 'Councillors', to be reflected in the remainder of the Constitution and defined in a new definitions index – To avoid any possibility of confusion with non - unitary councillors.

- Deadline for questions relating to Dorset and Wiltshire Fire Authority to be Four clear working days – To be in line with other questions.
 - Insertion of clauses to give movers of amendments a right of reply prior to final comment from the mover of an original motion – To formalise existing practice and clarify order of the speakers.
 - Insertion of clause requiring the noting in minutes of when a Member leaves and does not return to a meeting – To provide openness and transparency of which Members are present for any particular item.
 - Separation of clauses on standing to speak and addressing a meeting through the chairman – To provide additional clarity.
 - Removal of a closure motion ‘to proceed to the next item of business’ – To remove uncertainty, as it was unclear if this could curtail determination of amendments, and ‘the question be now put’ was a sufficient closure motion if required
 - Clarifying that Area Board chairs have discretion over rules of public participation – in the interests of openness and transparency
 - and various other minor clarifications, duplication removals and correction of typographic and notational errors
 - Amendments to clarify further the procedure for substitution arrangements were requested by the Focus Group. These will be finalised following consultation with Group Leaders and will be proposed at a later meeting.
7. Proposed amendments are therefore attached at **Appendix 2**. The document has also been renumbered and formatted in accordance with overall revisions to the constitution, wherein each section will be similarly updated to ensure consistent presentation and referencing. The renumbering has not been shown in tracked changes.

Recommendation

8. **To recommend that Council approve the revised Part 4 of the Constitution, as shown in the attached document at Appendix 2.**

(b) Protocol 1: Councillor-Officer Relations

9. Protocol 1 sets out expectations on Councillor and Officer relations. In its current form, the appendices to the protocol detail the support and facilities provided to councillors. The current documents are available [here](#).
10. Protocol 1 was last reviewed in July 2015. The purpose of the current review is to update the document in light of operational and legislative changes, and to re-order the content into a more logical and consistent layout, providing clarifications regarding the support and facilities provided to councillors and access to information.
11. The Focus Group has reviewed this document in a two-stage process. Step one was to agree revised content. Step two was to condense the updated content across the Protocol and its appendices into one document, also removing duplicated points.

12. The Focus Group met on 5 June 2018 to consider proposed changes to the content of Protocol 1 and its appendices; a schedule of revisions were made. In particular, the Focus Group considered wording in relation to councillors' access to confidential and exempt information, and it was recommended this issue be given further consideration.
13. The Focus Group met again on 17 July 2018 to consider revisions requested at the previous meeting and the specific wording of sections relating to councillors' access to confidential and exempt information. It was recommended a practical guidance note from the Monitoring Officer be included, in addition to the summary paragraphs listed in Protocol 1, to ensure all councillors are aware of the legal requirements in respect of confidential and exempt information through practical examples. Upon agreeing revised content, the Focus Group then moved to step two to re-format the document and condense content.
14. The Focus Group met for a final time on 5 September 2018, further minor changes were recommended and the document was updated to the version presented to the Standards Committee.
15. Throughout the Protocol and Appendices, where similar points were made in both the Protocol and appendices, and elsewhere in the Constitution, the duplications have been deleted and the points have been consolidated into one document. As this has necessitated a significant amount of minor changes and re-ordering, it is not helpful to present this as track changes. A summary of the key changes in content is therefore provided below.

Key content changes

16. Paragraph 9.6 of the current Protocol and section D of the Appendix - This section is in respect of stationery for councillors and political groups which is now provided only as an exception, in line with the Council's [Digital Strategy](#) approved by Cabinet in July 2017. The objective of the strategy is to serve customers 'using digital tools that are convenient, easy and safe to use, efficient and reliable'; with a requirement is that paper is eliminated where possible. References to stationery throughout the Protocol and appendices have been amended to reflect this.
17. Paragraph 10.2 of the current Protocol - This section advises members on access to confidential committee papers, sections 11.8 & 11.9 of the new protocol expand on this to be clear it includes other confidential or exempt information provided the councillor can demonstrate this is reasonably necessary to properly perform their duties as a councillor. A councillor is required by law to demonstrate a 'need to know' confidential/exempt information before it is released. On the matter of what is reasonable, in *City of Birmingham v O* 1983, the case demonstrates it is straightforward for a councillor to demonstrate that they meet the legal test, provided they can show that they have a 'bona fide and reasonably based concern' about the issue.
18. Paragraph 10.3 of the current Protocol - This section advises members of the need to consult with the Monitoring Officer if they wish to inspect a document in which they have an interest, or if this may breach data protection legislation. Members' rights to request information they have an interest in under their

responsibilities as a councillor is now captured under Paragraph 11.8 in the new Protocol. The reference to data protection legislation has been removed since all requests would only be permitted in accordance with the General Data Protection Regulation 2018.

19. Paragraphs 11.8 and 11.9 of the new Protocol are to be supplemented by a guidance note from the Monitoring Officer to be finalised after consultation with Group Leaders.
20. Paragraph 13.2 of the current Protocol- This section is in respect of representation on external organisations and has been removed from the new Protocol since guidance in how to operate as a representative in an external organisation is covered in Protocol 3 of the Constitution.
21. Paragraph 15.4 of the current Protocol– This section is about the council’s arrangements for dealing with complaints under the code of conduct and has been deleted since the arrangements for Code of Conduct complaints are outlined elsewhere in the Constitution;
22. Appendix 1 section D of the current Protocol – This section states Democratic Services will provide ‘councillor websites’. Councillor websites are not provided by the Council as it does not take responsibility for the content of individual councillor websites. The protocol has been amended accordingly.
23. Appendix 2 to the current Protocol ‘Matters related to electoral divisions’ – References to councillors being informed as standard about school admissions and Local Government Ombudsman cases have been removed, as this is not appropriate for data protection reasons. The revised Protocol also indicates the examples of matters about which local members should be informed is not intended to be an exhaustive list.
24. The existing protocol is included at **Appendix 3**. The revised protocol is attached at **Appendix 4**.

Recommendation:

25. **To recommend that Council approve the revised Protocol 1 of the Constitution, as shown in the attached document at Appendix 4.**

(c) Part 11A: Corporate Parenting Panel

26. The Focus Group considered Part 11A at its meetings on 17 July and 5 September 2018. The section was last considered by the Standards Committee on 27 April 2016, when it had been Part 12A.
27. At that meeting the terms of reference were revised with recommendations from the Panel following an Ofsted inspection. It was also decided to include within the Constitution the entire Corporate Parenting Strategy, which would include the terms of reference of the Panel, in order to raise the profile and importance of corporate parenting responsibilities within the document. The changes were recommended and subsequently approved by Council on 10 May 2016.

28. On reviewing the proposed strategy document, the Focus Group felt that much of the proposed new language was inappropriate for inclusion as part of the Constitution, and resolved that only those sections concerned with the membership, terms of reference and procedural aspects of the Corporate Parenting Panel should be included., as was the case with the Safeguarding Children and Young People Panel.
29. No changes were therefore suggested, other than to excise the non-procedural provisions from the strategy for the purpose of clarity and consistency in the Constitution.
30. A revised version of Part 11A is therefore attached at Appendix 5.

Recommendation:

31. **To recommend that Council approve the revised Part 11A of the Constitution, as shown in the attached document at Appendix 5.**

Safeguarding Implications

32. There are no safeguarding issues arising from this report.

Equalities Impact of the Proposal

33. There are no equalities impacts arising from this report.

Risk assessment

34. There are no significant risks arising from this report

Financial Implications

35. There are no financial implications arising from this report.

Legal Implications

36. The recommendations in this report are consistent with the relevant legislation, and there are no legal implications arising from this report

Public Health Impact of the Proposals

37. There are no public health impacts arising from this report.

Environmental Impact of the Proposals

38. There are no environmental impacts arising from this report.

Proposal

39. **To recommend that Council approve the changes to the Constitution as set out in paragraphs 8, 25 and 31 of this report.**

Ian Gibbons, Director, Legal and Democratic (and Monitoring Officer)

Report Authors: Libby Johnstone, Democratic Services Team Lead, 01225 718214, libby.johnstone@wiltshire.gov.uk and Kieran Elliott, Senior Democratic Services Officer, 01225 718504, kieran.elliott@wiltshire.gov.uk

Unpublished reports relied upon in the preparation of this report: None

Appendices

Appendix 1 - Minutes of the Constitution Focus Group (5 June, 17 July and 5 September 2018)

Appendix 2 - Revised Part 4

Appendix 3 - Existing Protocol 1

Appendix 4 - Revised Protocol 1

Appendix 5 - Revised Part 11A

CONSTITUTION FOCUS GROUP

MINUTES OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 5 JUNE 2018 AT AVEBURY ROOM - COUNTY HALL, TROWBRIDGE.

Present:

Cllr Richard Clewer (Chairman), Cllr Richard Britton and Cllr Jon Hubbard

17 Apologies

Apologies were received from Councillor Ian Thorn

18 Minutes of the Previous Meeting

Resolved:

To approve and sign as a correct record the minutes of the meeting held on 29 March 2018.

19 Protocol 1: Councillor-Officer Relations

The Focus Group considered a series of proposed changes to Protocol 1 of the Constitution. These included updating the protocol in light of operational changes, reordering the sections to a more logical and consistent layout and clarifications regarding support and facilities provided to councillors and access to information.

The Focus Group discussed the proposal requesting amendments to various sections, in particular for further assessment and changes to the wording on councillors' access to information. It was agreed that further updates would be provided at future meetings of the Focus Group.

Resolved:

For officers to take note of the comments made at the meeting and further revisions to be considered at a future meeting.

20 Part 4: Council Rules of Procedure

Revisions to Part 4 of the Constitution were considered, with the intention that the revised layout and linking within the document be considered a template for further updates to the rest of the constitution in order to make the document as

a whole more consistent and easier to navigate. A number of updates and clarifications were also proposed within the revised document.

The Focus Group accepted the principle of the changes for more consistent and simpler layout, and requested additional changes be considered at its next meeting.

Resolved:

To consider a further revised Part 4 at the next meeting.

21 **Part 11A : Corporate Parenting Strategy**

This item was deferred until the next meeting.

22 **Part 3: Schemes of Delegation**

The Focus Group considered a proposal to include wording in Part 3C of the Constitution – Scheme of Delegation of Executive Functions – in respect of the Cabinet Portfolio Holder position. The position was in receipt of a Special Responsibility Allowance and involved high profile work with Cabinet Members, but was not presently defined in the Constitution.

After discussion, it was,

Resolved:

For the Focus Group to be circulated by email proposed wording, to be agreed by Standards on 20 June 2018.

23 **Urgent Items**

(Duration of meeting: 2.30 - 4.00 pm)

The Officer who has produced these minutes is Kieran Elliott, of Democratic & Members' Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

CONSTITUTION FOCUS GROUP

MINUTES OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 17 JULY 2018 AT THE NORTH WILTSHIRE ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Richard Clewer (Chairman), Cllr Richard Britton and Cllr Jon Hubbard

24 **Apologies**

Apologies were received from Cllr Nick Murry.

25 **Minutes of the Previous Meeting**

The minutes of the meeting held on 5 June 2018 were presented and it was,

Resolved:

To approve and sign as a true and correct record.

26 **Protocol 1: Councillor-Officer Relations**

The Focus Group considered further changes to the Protocol following their last meeting. In particular the Focus Group considered wording in relation to councillors' access to confidential or exempt information, and recommended that a practical guidance note be included within the constitution in addition to the summary paragraphs listed in Protocol 1, to ensure all councillors were aware of the legal requirements through practical examples.

Other changes were suggested, and it was agreed a final version of the Protocol, including reorganisation of the content, should be circulated to the Focus Group for approval ahead of the next meeting.

Resolved:

To circulate a final draft of proposed changes to the Focus Group by email, for agreement and recommendation to Standards Committee.

27 **Part 11A: Corporate Parenting Strategy**

The Focus Group considered updates to Part 11A which had been proposed by the relevant officer team.

In discussion the Focus Group noted the unusual situation where by the terms of reference of the Corporate Parenting Panel were contained within the wider Corporate Parenting Strategy, which had been appended to the Constitution in its entirety. The Focus Group considered that after several years of this being the case, and the need to make multiple changes, as well as the specific content of the strategy, it was not appropriate for this one policy to be included within the constitution in such a fashion.

Therefore, it was considered that the sections relating solely to the terms of reference should be extracted and included within the constitution, but that the strategy itself be removed.

Resolved:

To recommend a revised Part 11A to contain only the procedural elements relating to the terms of reference of the Corporate Parenting Panel.

28 **Part 4: Council Rules of Procedure**

The Focus Group considered further changes to Part 4, noting it would serve as a format template for all other sections of the constitution in future to ensure a consistent presentation.

The Focus Group went through the proposed part 4, confirming that arrangements for secret ballot in council meetings were still necessary despite the use of electronic votes, and considered various rules relating to rights of reply and debates. It was felt that the mover of an amendment should be entitled to a right of reply just as the mover of the original motion was. Additionally, that minutes of a meeting should record when a councillor left the meeting.

After discussion, it was,

Resolved:

For a final version of part 4 for recommendation to the Standards Committee to be circulated by email to the Focus Group for agreement.

29 **Urgent Items**

The Focus Group were informed that following the acceptance by the Cabinet Member and endorsement by the Overview and Scrutiny Management Committee of recommendations by the Planning Committee System Task

Group on 5 June 2018, changes were proposed to Protocol 4 of the Constitution to harmonise the arrangements for planning site visits. The changes would be presented to the Cabinet Member and the Chairman of the Task Group for comment before circulation to the Focus Group by email in advance of the next meeting.

(Duration of meeting: 1330 - 1540)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

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CONSTITUTION FOCUS GROUP

MINUTES OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 5 SEPTEMBER 2018 AT THE RUDMAN ROOM - COUNTY HALL, TROWBRIDGE, BA14 8JN.

Present:

Cllr Richard Clewer (Chairman), Cllr Richard Britton and Cllr Jon Hubbard

Also Present:

Cllr Christopher Newbury

30 Apologies

Apologies were received from Councillor Paul Oatway QPM

31 Minutes of the Previous Meeting

The minutes of the meeting held on 17 July 2018 were presented for consideration and it was,

Resolved:

To approve and sign the minutes as a true and correct record.

32 Part 4: Council Rules of Procedure

The Focus Group received the revised Part 4 following their comments and consideration at their meetings on 5 June and 17 July 2018. The section relating to substitution arrangements were discussed, and it was agreed additional guidance was required on the requirements when a member was to be absent and wished to arrange substitution. Wording changes were requested to clarify that the committee member should be the one to indicate their own absence, or a designated group representative where this was not possible or in a case of urgency.

The Focus Group also discussed Closure Motions and how they applied to amendments, in particular a motion to proceed to the next item of business. After discussion it was agreed that all references to such a Closure Motion should be removed as they were unnecessary given a motion that the question be now put was available, and it could prevent a decision being reached on an amendment.

Subject to final checks to ensure number references were correct and incorporation of changes noted above, it was,

Resolved:

To request Standards recommend Council adopt the revised Part 4.

33 **Protocol 4: Planning Code of Good Practice**

The Focus Group considered a report detailing proposed changes to Protocol 4 in relation to Site Visits, following a recommendation endorsed at Overview and Scrutiny Management Committee, accepted by the Cabinet Member. The Cabinet Member and the Chairman of the Planning Committee Systems Task Group, who had proposed the change in procedure to allow site visits to be arranged prior to a committee meeting, had both approved the proposed wording.

The Focus Group considered the proposal, and after discussion were happy with the proposed wording subject to removing references to site visits being made 'very exceptionally'. However, it was also felt that sections of the wider protocol were in contradiction with each other, and therefore any proposed changes to the section on site visits should await a wider review of the whole protocol to ensure all parts were consistent.

Resolved:

To request that a review of the entirety of Protocol 4 take place before any changes to the Site Visit arrangements be recommended.

34 **Protocol 1: Councillor-Officer Relations**

The Focus Group received the revised Protocol 1 following consideration at their meetings on 5 June and 17 July 2018. It was explained that the guidance appendix on Part II papers access had not yet been drafted, and would be circulated as soon as could be arranged. The Focus Group also emphasised that ensuring Protocol 1 was followed would need to be monitored.

Resolved:

Subject to approval of the Part II guidance, and consideration by Group Leaders, to request that Standards recommend Council adopt the revised Protocol 1.

35 **Part 11A: Corporate Parenting Panel**

The Focus Group received the revised Part 11A, to comprise only the procedural terms of reference for the Corporate Parenting Panel.

Resolved:

To request Standards recommend to Council to adopt the revised Part 11A.

36 **Forward Work Plan Updates**

The Focus Group agreed the proposed future items, also to include the wider review of Protocol 4.

37 **Urgent Items**

There were no urgent items.

(Duration of meeting: 1.00 - 2.40 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

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Part 4

Rules of Procedure: Council

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Part 4 - Rules of Procedure: Council

1. Application to Committees and Sub-Committees

- 1.1 All of the Council rules of procedure apply to meetings of Full Council. Only paragraphs ~~49-16.27~~ and ~~141-23.10~~ apply to meetings of the Cabinet. Only paragraphs ~~14-477.4-16.21~~; ~~51-7417.1-17.24~~; ~~98-13219.1-22.8~~; ~~134-13723.2-23.6~~; ~~14023.9~~; ~~147-14824.1-24.2~~ apply to meetings of Committees and Sub-Committees.

2. Annual meeting of the Council

- 2.1 In a year when there is an ordinary election of Members, the annual meeting will take place within 21 days of the retirement of the outgoing Members. In any other year, the annual meeting will take place in March, April or May (Local Government Act 1972, Schedule 12, paragraph 2).
- 2.2 The annual meeting will:
- 2.2.1 elect a person to preside if the Chairman of Council is not present;
 - 2.2.2 elect the Chairman of Council (Local Government Act 1972, s.4);
 - 2.2.3 ~~elect-appoint~~ the Vice-Chairman of Council (Local Government Act 1972, s.5);
 - 2.2.4 approve the minutes of the last meeting;
 - 2.2.5 receive any announcements from the Chairman and/or Head of the Paid Service;
~~in an election year, elect the Leader;~~
 - 2.2.6 appoint at least one Overview and Scrutiny Committee, a Standards Committee and such other Committees as the Council considers appropriate to deal with matters which are neither reserved to ~~the Full~~ Council nor are Cabinet functions (as set out in Part 3 of this Constitution) (Local Government and Housing Act 1989, s.15);
 - 2.2.7 agree the scheme of delegation or such part of it as the constitution determines it is for the Council to agree (as set out in Part 3 of this constitution);
 - 2.2.8 approve a programme of ordinary meetings of the Council for the year; and
 - 2.2.9 consider any business set out in the notice convening the meeting.
2.2.10 in an election year:
2.2.10.1 elect the Leader;

3. Election of Chairman, Vice-Chairman and Leader of the Council

- 3.1 The election of the Chairman and the ~~election-appointment~~ of the Vice-Chairman shall be the first and second items of business respectively transacted at the annual meeting of the Council (Local Government Act 1972 s.4 and s.5).
- 3.2 The election of the Chairman, Vice-Chairman and Leader shall be determined by a show of hands unless at least 10 Members request a secret ballot, ~~which-Where a~~ secret ballot is requested it shall be conducted by the person presiding in accordance with the following procedure:
- 3.2.1 the person presiding at the meeting shall invite nominations for Chairman, Vice-Chairman and Leader (as appropriate) from those present at the meeting;
 - 3.2.2 a Member's name must be proposed and seconded to be eligible;
 - 3.2.3 a Member shall not be nominated in ~~his or her~~their absence for the position of Chairman, Vice-Chairman or Leader without ~~his or her~~their written consent;

- 3.2.4 the Chairman, Vice-Chairman or Leader shall be elected from among the Members of the Council duly nominated unless any Member nominated withdraws his or her/their name, in which case the election shall be from among the remaining nominees;
- 3.2.5 the Chairman, Vice-Chairman or Leader shall be elected by the vote of a majority of those Members present and voting (Local Government Act 1972 Schedule 12, paragraph 39s4(3));
- 3.2.6 each Member shall vote by writing the name of one of the Members nominated upon a ballot paper which shall then be placed in the ballot box;
- 3.2.7 when, in the opinion of the person presiding at the election, each Member present has had a reasonable time in which to vote, the ballot box should be delivered to the person presiding whereupon the voting shall be deemed to have been completed except that this shall not preclude the person presiding from exercising his or her/their casting vote in accordance with the final bullet of this section 3.2.11;
- 3.2.8 the ballot papers shall then be counted by the person presiding at the election;
- 3.2.9 if only one Member is nominated, the person presiding shall declare that Member elected as Chairman, Vice-Chairman or Leader as the case may be; and if two Members are nominated the Member receiving the vote of the majority of those Members present and voting shall be declared elected (Local Government Act 1972, Schedule 12, paragraph 39(2));
- 3.2.10 if more than two Members are nominated, the person presiding shall announce the name of the Member with the smallest lowest number of votes and that name-Member shall be eliminated. A further ballot or ballots shall then be taken and after each ballot the name-of-the Member receiving the smallest lowest number of votes shall be eliminated, in accordance with the foregoing procedure, until only two names-Members remain which shall be submitted to the final vote;
- 3.2.11 in the event of an equality of votes in any of the ballots, the person presiding shall give a second or casting vote and where there are three or more Members with an equal number of votes the person presiding shall give a second casting vote to each of such Members except one (Local Government Act 1972, Schedule 12, paragraph 39(2)).

4. Selection of Members to serve on Committees and outside bodies

- 4.1 At the annual meeting, the Council will:
 - 4.1.1 decide which Committees to establish for the municipal year;
 - 4.1.2 decide the size and terms of reference for those Committees;
 - 4.1.3 decide the allocation of seats and substitutes to political groups in accordance with the political balance rules (Local Government and Housing Act 1989 s.15(1));
 - 4.1.4 receive nominations of Members to serve on each committee and appoint to those Committees
 - 4.1.5 Appointments to outside bodies will be made by the Leader of Council, Cabinet, Area Boards or a meeting of group leaders as appropriate.

5. Ordinary meetings

- 5.1 Ordinary meetings of the Council will take place in accordance with a programme decided by Council. Ordinary meetings will:
 - 5.1.1 elect a person to preside if the Chairman and Vice-Chairman are not present;

- 5.1.2 elect a Leader if there is a vacancy;
- 5.1.3 approve the minutes of the last meeting;
- 5.1.4 receive any declarations of interest from Members;
- 5.1.5 receive any announcements from the Chairman, Leader, Members of the Cabinet, committee chairmen or the head of paid service;
- 5.1.6 receive questions from and provide answers to Members of the Council and the public in relation to matters which in the opinion of the person presiding at the meeting are relevant to the business of the meeting;
- 5.1.7 deal with any business from the last Council meeting;
- 5.1.8 receive reports from the Cabinet and the Council's Committees and receive questions and answers on any of those reports;
- 5.1.9 receive reports about and receive questions and answers on the business of joint arrangements and external organisations;
- 5.1.10 consider motions; and
- 5.1.11 consider any other business specified in the summons to the meeting, including consideration of proposals from the Cabinet in relation to the Council's budget and policy framework and reports of the overview and scrutiny Committees for debate.

5.2 Members wishing to ask a question in relation to the reports of the Dorset and Wiltshire Fire Authority are required to give written notice (including details of the question) to the Proper Officer no later than ~~five~~Four clear working days before the Council meeting.

6. Extraordinary meetings

Calling ~~an~~ extraordinary meetings

- 6.1 Those listed below may request the Proper Officer to call Council meetings in addition to the scheduled ordinary meetings:
- 6.1.1 the Council by resolution;
 - 6.1.2 the Chairman of the Council (Local Government Act 1972, Schedule 12, paragraph 3(1));
 - 6.1.3 the ~~monitoring~~Monitoring officer~~Officer~~ or the ~~head~~Head of ~~the paid~~Paid service~~Service~~ (Local Government and Housing Act 1989 s.4 and s.5); ~~and/or~~
 - 6.1.4 any five Members ~~of the Council~~ if they have signed a requisition and presented it to the Chairman of the Council and ~~he/she~~the Chairman has refused to call a meeting, or has failed to call a meeting within seven days of the presentation of the requisition (Local Government Act 1972, Schedule 12, paragraph 3(2)).

6.2 The notice for any extraordinary meeting must specify the business proposed to be transacted at the meeting with no consideration of previous minutes or reports from Committees.

7. Appointment of substitute Members of Committees and Sub-Committees

Allocation

7.1 As well as allocating seats on Committees, the Council will allocate seats in the same manner for substitute Members.

Number

- 7.2 For each committee, the Council will appoint ~~up to~~ a maximum of four substitutes for each political group which holds seats on that committee.

Powers and duties

- 7.3 Substitute Members will have all the powers and duties of any ordinary Member of the committee but will not be able to exercise any special powers or duties exercisable by the person they are substituting.

Substitution

- 7.4 Substitute Members may attend meetings in that capacity only:
- 7.4.1 to take the place of the ordinary Member for whom they are the designated substitute;
 - 7.4.2 where the ordinary Member will be absent for the whole of the meeting; and
 - 7.4.3 after notifying the Proper Officer before the start of the meeting of the intended substitution.

8. Declaration of disclosable pecuniary interests

- 8.1 Where a Member has declared a pecuniary interest in an item on an agenda, they must withdraw from the meeting in their capacity as a Member for the duration of that item, and not speak or vote on the item with the exception of exercising their right to speak as a member of the public.

9. Time and place of meetings

- 9.1 The time and place of meetings will be determined by the Proper Officer and notified in the summons (Local Government Act 1972, Schedule 12, paragraphs 1(4) annual meeting) and 2(2) (all other meetings of the Council).
- 9.2 With the exception of an extraordinary meeting requisitioned by Members in accordance with paragraph 96, the Proper Officer may cancel a meeting in the event of the below circumstances under mentioned circumstances following consultation with the Chairman and giving reasonable notice of its cancellation:
- 9.2.1 Inclement weather;
 - 9.2.2 Where there is reason to believe the meeting would not be quorate;
 - 9.2.3 Insufficient business for the meeting to be viable;
 - 9.2.4 Other reasonable unforeseen circumstances.

10. Notice of and summons to meetings

- 10.1 The Proper Officer will give notice to the public of the time and place of any meeting in accordance with the Part 5 of this Constitution (Access to Information Procedure Rules). At least five clear days before a meeting, the Proper Officer will send a summons signed by him or her by post to every Member of the Council, or leave it at their usual place of residence or if the Member has consented via email. The summons will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available (Local

Government Act 1972, Schedule 12, paragraph 4 as amended by The Local Government (Electronic Communications) (England) Order 2015).

11. Chair of meeting

11.1 The person presiding at the meeting may exercise any power or duty of the Chairman. Where these rules apply to committee and sub-committee meetings, references to the Chairman also include the Chairman of Committees and Sub-Committees.

12. Quorum

12.1 The quorum of any meeting will be one quarter of its total voting Membership, subject to a minimum number of three voting Members. If ~~D~~during any meeting, ~~if~~ upon request, the Chairman counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairman. ~~he/she does~~they do not fix a date, the remaining business will be considered at the next ordinary meeting (Local Government Act 1972, Schedule 12, paragraph 6).

13. Public participation at meetings

13.1 The Council welcomes public participation from anyone who lives, works or studies in Wiltshire, or who has a direct connection to a service provided by the Council. Public participation can take the form of presenting petitions, making statements or asking questions.

13.2 This rule applies to Council and committee meetings other than planning Committees. Paragraphs ~~48—50~~16.25-16.27 refer to the application of this rule at Cabinet, planning Committees and area boards.

14. Petitions

14.1 The Council has adopted a Petitions Scheme which is set out in Part 4A of this Constitution. This sets out the purpose of a petition, the eligibility criteria and relevant thresholds for making petitions, the procedure and review mechanisms.

15. Statements

15.1 Up to three speakers are permitted to speak for up to ~~3~~three minutes each on any agenda item although this may be extended at the Chairman's discretion.

15.2 Those wishing to make a statement must register to do so at least ~~10~~ten minutes prior to the meeting by contacting Democratic Services.

15.3 Statements must be relevant to the powers and duties of the Council and be clear and concise. A statement must not:

- 15.3.1 be defamatory, frivolous, offensive, vexatious, unlawful or otherwise improper;
- 15.3.2 relate to any non-determined planning or licensing application;
- 15.3.3 name or identify individual service users, Members of staff or Members of staff of partner agencies.

16. Public Questions

16.1 At ordinary meetings of Full Council, questions can be asked of the Chairman of Council, Members of Cabinet and Chairmen of Committees, ~~. At meetings of Committees questions can be asked of the or chairmen~~Chairman of Committees (at committee meetings). The total time set aside for such questions and answers will be limited to 15 minutes which can be extended at the Chairman's discretion.

Notice of questions

16.2 No person or organisation may submit more than two questions at any one meeting. No question may be sub-divided into more than two related parts.

16.3 In order to be guaranteed ~~of receiving receipt of~~ a written response prior to the meeting questions must be delivered in writing or by ~~electronic mail~~email to the Proper Officer no later than 5pm four clear working days before the meeting. The period of notice is to allow sufficient time for a response to be formulated.

16.4 Any questions received between ~~5pm four clear working days before the meeting and 5pm two clear working days~~ the deadline in paragraph 29 and no later than 5pm two clear working days before the meeting, may only receive ~~a verbal~~an oral response at the meeting. Any questions received after ~~this date~~5pm two clear working days before the meeting will be received at the next meeting

16.5 In exceptional circumstances and in cases of urgency the Chairman may allow questions without the full period of notice having been given where ~~he or she is~~they are satisfied there is sufficient justification. In these circumstances, there is no guarantee that a full reply will be given at the meeting.

16.6 Notice of each question must include the name and address of the questioner, (in respect of an organisation, the name of the organisation and the questioner's position within the organisation) and to whom the question is to be put.

Scope of questions

16.7 The question must be relevant to the powers and duties of the Council and be clear and concise. A question will be rejected where it:

16.7.1 does not relate to a matter for which the ~~local authority~~Council has a responsibility or which affects the Council's administrative area;

16.7.2 is defamatory, frivolous, offensive, vexatious, unlawful or otherwise improper;

16.7.3 relates to any non-determined planning or licensing application;

16.7.4 requires the disclosure of confidential or exempt information;

16.7.5 names or identifies individual service users, Members of staff or Members of staff of partner agencies;

16.7.6 is considered by the Chairman to be inappropriate for the particular meeting.

16.8 The Chairman's ruling on rejection of a question will be final following consultation with the Monitoring Officer.

16.9 Where a question is rejected on the above grounds, the questioner shall be advised of the reasons for rejection. Time permitting the questioner will be given an opportunity to submit an amended question that will be considered afresh against the criteria in

paragraph ~~33~~16.7. For the avoidance of doubt, questions amended in this way, must be delivered within the timescale referred to at paragraphs ~~29-30~~16.3-16.4.

At the meeting

- 16.10 Questions will be dealt with in order of receipt subject to the Chairman's discretion to group together questions on the same or similar subject.
- 16.11 The Chairman may choose to take questions as read. However, if a questioner wishes to ask ~~his or her~~their question at the meeting, he or she will be given up to three minutes to ask each question. If the questioner prefers, the question may be asked on ~~his or her~~their behalf by ~~his or her~~their local division Member if ~~the local division Member~~they consents to this.
- 16.12 If the questioner is not able to be present at the meeting and has not made arrangements for someone else to ask the question, the Chairman may ask the question on the questioner's behalf or indicate that a written reply will be given.
- 16.13 Subject to time constraints, questions which are submitted by the deadline will be answered at the meeting. However, the Chairman in consultation with the Monitoring Officer may refer a question to officers for a direct written response if they consider the question can be most appropriately handled in that way. Where a question is dealt with in this way, the questioner will be advised of this and provided with a response where possible within five working days of the meeting copied to all Members of the Council.
- 16.14 The relevant Member of the Council or another Member on their behalf will aim to provide a response in advance of, or at, the meeting and this will be followed up by a written copy of the response being sent to the questioner where possible within five working days of the meeting. Where it is not possible to provide a response at the meeting, a written response will be sent to the questioner where possible within five working days of the meeting. A copy of the response will be provided to all Members.
- 16.15 Any questions which cannot be dealt with during the time allocated for questions will be dealt with by a written response sent to the questioner where possible within five working days of the meeting. A copy of the response will be provided to all Members. ~~and copied to all Members of the Council.~~

Supplementary questions

- 16.16 For each question submitted, the questioner will be permitted to ask one supplementary question without notice which must be relevant to the original question or arise from the response given.
- 16.17 The Chairman may reject the supplementary question on the grounds listed in paragraph ~~33~~16.7 above (reasons for rejection).
- 16.18 The person to whom the question has been put or another Member on their behalf, shall answer the supplementary question if he or she is able to do so at the time. If this is not possible, a written response will be provided to the questioner where possible within five working days of the meeting.

Form of response

- 16.19 A response may take the following forms:
- 16.19.1 a direct oral answer;
 - 16.19.2 where the answer is contained within a publication of the Council or in any report or minutes by reference to those documents;
 - 16.19.3 a written reply.

No debate on questions

- 16.20 Ordinarily, no debate shall be allowed on questions presented or responses given. In exceptional circumstances only, the Chairman may allow discussion. No decision can be made arising from a question other than to refer it to Full Council, Cabinet or a ~~committee~~ Committee by way of a motion which shall be moved, seconded and voted on without discussion.

Circulation of questions and responses

- 16.21 Upon receipt, copies of questions will be circulated to the Chairman and Vice-Chairman, Leader of the Council and to the Member of Council to whom the question is to be put and any other relevant Members.
- 16.22 Copies of questions received in accordance with these rules will be provided to all Members or Members of the committee as appropriate prior to the meeting.
- 16.23 Copies of responses where available, will be circulated to Members two days before the meeting unless this is not possible due to exceptional circumstances.

Record of questions

- 16.24 The minutes of the meeting shall record the name of the questioner (in respect of an organisation, the name of the organisation and the questioner's position within the organisation), the subject matter, and the name of the person replying.

Application at Planning Committees, Cabinet and Area Boards

- 16.25 In respect of public participation at the Strategic Planning Committee and Area Planning Committees, ~~please refer to the~~ provisions set out in the Planning Code of Good Practice for Members of Wiltshire Council Protocol. (Protocol 4 to this constitution) will apply.
- 16.26 In respect of public participation at Cabinet meetings, ~~please refer to~~ the provisions set out in Part 7- Cabinet Procedure Rules will apply.
- 16.27 In respect of Area Boards, where public engagement is welcomed and encouraged throughout the meeting, ~~please refer to any the~~ procedure, rules and guidance are at the discretion of the Chairman subject to any guidance as issued from time to time by the Leader.

17. Members' Questions

- 17.1 A Member of the Council may ask the Leader ~~of the Council~~, or any other Member of the Cabinet ~~or, the~~ Chairman of a ~~committee~~ Committee or ~~subSub-committee~~ Committee any question without notice on a report of the Cabinet, Cabinet Member or a ~~committee~~ Committee or ~~subSub-committee~~ Committee when that report is being received or under consideration by ~~the~~ Full Council.

Questions on notice

- 17.2 ~~In respect of~~ At ordinary meetings of Full Council meetings, a Member of the Council may ask a question of:
- 17.2.1 ~~the Chairman of Council;~~
 - 17.2.2 the ~~Leader of the Council;~~
 - 17.2.3 a ~~Cabinet Member; or~~
 - 17.2.4 Chairman of a ~~committee~~ Committee or Sub-Committee;
- ~~as appropriate, a question~~ on any matters in relation to which the Council has powers or duties or which affects the Council's administrative area ~~at all ordinary meetings on matters~~ which are not included in a report to the Council.
- 17.3 In respect of an ordinary committee ~~Committee or Sub-Committee~~ meetings, a Member of the Council may ask a question of the Chairman ~~of the committee a question~~ on any matter in relation to the powers and duties of that ~~committee~~ Committee at all ordinary meetings on matters which are not included in a report to that ~~committee~~ Committee or Sub-Committee.
- 17.4 In the case of extraordinary meetings ~~of Council and Committees~~, questions must relate to the subject(s) under consideration at ~~the extraordinary~~ that meeting.

Notice of questions by Members

- 17.5 In order to be guaranteed of receiving a receipt of written response prior to the meeting, questions must be delivered in writing or by ~~electronic mail~~ email to the Proper Officer or their designated representative no later than 5pm nine clear working days before the meeting. The period of notice is to allow sufficient time for a written response to be formulated.
- 17.6 Any question received between 5pm nine clear working days before the meeting and the deadline in paragraph 55 and no later than 5pm four clear working days before the meeting, may only receive a verbal an oral response at the meeting. ~~This means for a meeting held on a Tuesday, questions must be received by 5pm Tuesday of the preceding week (less any intervening bank holiday).~~ Any questions received after this date deadline will be received at the next meeting.
- 17.7 In exceptional circumstances the Chairman may allow questions without the full period of notice having been given where ~~he or she is~~ they are satisfied there is sufficient justification. In these circumstances, there is no guarantee that a full or written reply will be given at the meeting.
- 17.8 Notice of each question must include the name of the Member asking the question and to whom the question is to be put and be listed in priority order

Scope of questions

- 17.9 The question must be relevant to the powers and duties of the Full Council/committee and be clear and concise. A question will be rejected where it:
- 17.9.1 does not relate to a matter for which the Council/~~committee~~ Committee has a responsibility or which does not affects the Council's administrative area;
 - 17.9.2 is defamatory, frivolous, offensive, vexatious, unlawful or otherwise improper;
 - 17.9.3 relates to any non-determined planning or licensing application;
 - 17.9.4 requires the disclosure of confidential or exempt information;
 - 17.9.5 names or identifies individual service users, Members of staff or Members of staff of partner agencies;
 - 17.9.6 ~~Where a question submitted~~ relates solely to operational issues unless the Member does not receive a response from the relevant head or service or; director, or has not received a response they consider satisfactory.
 - 17.9.7 is considered by the Chairman to be inappropriate for the particular meeting.
- 17.10 The Chairman's ruling on rejection of a question will be final following consultation with the Monitoring Officer.
- 17.11 Where a question is rejected on the above grounds, the Member shall be advised of the reasons for rejection. Time permitting, the Member will be given an opportunity to submit an amended question that will be considered afresh against the criteria in paragraph ~~59~~ 17.9 (reasons for rejection). For the avoidance of doubt, questions amended in this way, must be delivered within the timescale referred to at paragraph ~~55-56~~ 17.5-17.6 above.

At the meeting

- 17.12 No more than 20 supplementary questions will be answered at the meeting. Any question which receives a verbal an oral response will also receive a written response from the appropriate Member no later than five clear working days after the meeting and copied to all Members or Members of the committee as appropriate and also attached to the minutes.
- 17.13 Questions will be received in the order of receipt per Member, but a Member may not ask a second question until all other first questions from other Members have been dealt with. The same principle applies to third and subsequent questions subject to the Chairman's discretion.
- 17.14 Questions will be taken as read. If a Member is not present to receive an answer to their question in the event they were to receive a verbal response, the Chairman may ask the question on the Member's behalf or indicate that a reply will be given in writing within five working days of the meeting.

Supplementary question

- 17.15 For each question submitted, a Member will be permitted to ask one supplementary question without notice which must be relevant to the original question or arise from the response given, subject to the limit of 20 questions presented at the meeting in paragraph ~~62~~ 17.12. The Chairman may reject the supplementary question on the grounds listed in paragraph ~~59~~ 17.9 above (reasons for rejection).

17.16 Subject to paragraph ~~63~~17.13, Members should indicate prior to a meeting if they do not wish to ask a supplementary question to ensure that submitted question does not count toward the limit of 20 to be received at the meeting.

17.17 The person to whom the question has been put or another Member on their behalf, shall answer the supplementary question if he or she is able to do so at the time. If this is not possible, a written response will be provided to the Member where possible within five working days of the meeting.

Form of response

17.18 A response may take the following forms:

17.18.1 a direct oral answer, unless the question has been submitted nine clear working days prior to the meeting;

17.18.2 where the answer is contained within a publication of the Council or in any report or minutes by reference to those documents;

17.18.3 a written reply.

No debate on Member questions

17.19 Ordinarily, no debate shall be allowed on questions presented or responses given. In exceptional circumstances only the Chairman may allow discussion. No decision can be made arising from a question other than to refer it to Council, Cabinet or a committee by way of a motion which shall be moved, seconded and voted on without discussion.

Circulation of Member questions and responses

17.20 Upon receipt, copies of questions will be circulated to the Chairman and Vice-Chairman of Council or committee as appropriate, the Leader ~~of the Council~~ and the Member of Council to whom the question is to be put and any other relevant Members.

17.21 Copies of questions received in accordance with these rules will be provided to all Members or Members of the committee as appropriate prior to the meeting.

17.22 Copies of responses where available, will be circulated to Members two days before the meeting unless this is not possible due to exceptional circumstances.

17.23 Copies of all questions and responses will be attached to the minutes of the meeting.

Record of Member questions

17.24 The minutes of the meeting shall record the name of the Member asking the question, the subject matter, and the name of the Member replying.

18. Motions on notice

Notice

18.1 Except for motions which can be moved without notice under paragraph 95~~19~~, written notice of every motion signed by at least two Members of Council must be delivered to the Proper Officer no later than ten clear working days before the date of the meeting.

This is to ensure that where appropriate a report is prepared to assist Council in its consideration of the motion.

- 18.2 In exceptional circumstances and in cases of urgency, the Chairman may accept motions without the full period of notice having been given.
- 18.3 Delivery can be by electronic means provided that the Proper Officer is satisfied that it has been sent by the Members concerned.
- 18.4 Notices of motion may be moved at the Annual Meeting or any ordinary meeting of ~~the~~ Full Council.
- 18.5 Notices of motion may be moved at extraordinary meetings of the Council but only if the notice of motion relates to the subject matter of that extra-ordinary meeting.
- 18.6 There is no limit on the number of notices of motion that may be submitted to each meeting. However, the Chairman will apply this rule in the context of the length of the agenda to ensure proper conduct of the business to be transacted.

Scope

- 18.7 Motions must be clear and concise and be about matters for which the Council has a responsibility or which affect the Council's administrative area. Motions will be rejected where they:
 - 18.7.1 do not relate to a matter for which the Council has a responsibility or which do not affect the Council's administrative area or those living in that area;
 - 18.7.2 are defamatory, frivolous, offensive, vexatious, unlawful or otherwise improper;
 - 18.7.3 relate to any non-determined planning or licensing application;
 - 18.7.4 name or identify individual service users, Members of staff or Members of staff of partner agencies; or
 - 18.7.5 are considered by the Chairman to be inappropriate for the particular meeting or undermines the purposes of the constitution.
- 18.8 The Chairman's ruling on rejection of a motion will be final following consultation with the Monitoring Officer.
- 18.9 Where a motion is rejected, the Members concerned will be advised as soon as possible giving reasons for rejection. Where time permits, the Members concerned may submit an amended motion which will be considered afresh against the criteria in paragraph ~~7~~18.7. For the avoidance of doubt, motions amended in this way must be delivered within the timescale referred to at paragraph ~~7~~218.1.

Recording of motions

- 18.10 On receipt of notices of motion received in accordance with these rules, the Proper Officer will enter-record the details of the motion and the time and date of ~~receipt in a book~~. This book-record shall be open for inspection by Members of the public during normal office hours.
- 18.11 Motions received in accordance with these rules will be listed on the agenda in the order in which notice was received subject to the Proper Officer's s discretion to group

together motions on the same or similar subject, unless the Members giving notice state in writing that they propose to move it ~~to~~at a later meeting or withdraw it.

At the meeting

18.12 The Chairman will invite the proposer, or one of the Members, who has given notice of the motion to move the motion. Where these Members are not available at the meeting, the motion can be moved and seconded by any other Members. The Cabinet Member will also have the opportunity to respond to points raised during the debate, before the mover of the motion exercises their right of reply.

18.13 A notice of motion must be moved at the meeting, it must then be seconded. If the motion is not moved and seconded, it will, unless postponed by consent of the Council, be treated as abandoned and may not be moved without fresh notice.

18.14 Once moved and seconded at the meeting, the Member proposing the motion will be given up to five minutes in which to present ~~his or her~~their motion.

18.15 The Chairman will give the relevant Cabinet Member an opportunity to respond to the motion giving ~~him or her~~them up to five minutes in which to do so.

18.16 On considering a notice of motion and subject to paragraphs ~~92-97~~18.18-18.23 below, the following options shall then be open to the Council:

18.16.1 debate the motion and vote on it;

18.16.2 refer it to an appropriate Member body with or without debate;

18.16.3 refer it to the Leader ~~of Council~~ with or without debate.

18.17 The Chairman will move that the motion either be debated on the day or referred to the appropriate Member body. This will be seconded by the Vice-Chairman ~~of Council~~ or in ~~his or her~~their absence, another Member of the Council, and put to the vote without discussion. On the question of referring the motion to an appropriate Member body, the only amendment the Chairman will accept is to which Member body the motion should be referred.

18.18 If the motion relates to a function exercisable only by the Full Council then the Full Council will debate the motion and on consideration of a report, determine the motion or refer it to a future meeting of the Full Council.

18.19 If the motion relates to a function that has been delegated to another Member body then the Council will vote without debate on whether to refer the motion to that Member body.

18.20 If referred to another Member body that Member body must consider the motion at its next available meeting. The mover and seconder of the motion will be invited to attend that meeting if they are not already Members of that body in order to present their motion but will not be able to vote unless they have voting rights. The Member body must report back to the Council as soon as practicable by way of the minutes of that meeting.

18.21 If the notice of motion is referred to another Member body following debate at Council, a summary of the debate at Council together with any recommendation will be taken into account by the Member body when considering the motion.

18.22 If the notice of motion relates to an executive function, the motion will be referred to the Leader ~~of the Council~~. The Leader will write to the proposers of the motion with a copy to all Members of the Council, advising them what steps ~~he or she~~they proposes to take.

18.23 Any decision of Council arising from a motion must comply with the principles of decision making as set out in Part 2, paragraph 13.2 of this Constitution.

19. Motions without notice

19.1 The following motions may be moved without notice:

19.1.1 to ~~appoint~~elect a Chairman of the meeting at which the motion is moved;

19.1.2 in relation to the accuracy of the minutes;

19.1.3 to change the order of business in the agenda;

19.1.4 to refer something to an appropriate body or individual;

19.1.5 to appoint a committee or Member arising from an item on the summons for the meeting;

19.1.6 to receive reports or adoption of recommendations of Committees or officers and any resolutions following from them;

19.1.7 to withdraw a motion;

19.1.8 to amend a motion;

~~19.1.9 to proceed to the next business;~~

~~19.1.10~~19.1.9 that the question be now put;

~~19.1.11~~19.1.10 to adjourn a debate;

~~19.1.12~~19.1.11 to adjourn a meeting;

~~19.1.13~~19.1.12 to suspend a particular Council procedure rule capable of being suspended

~~19.1.14~~19.1.13 to exclude the public and press in accordance with the access to information procedure rules;

~~19.1.15~~19.1.14 not to hear further a Member named under paragraph ~~4454~~23.15 or to exclude them from the meeting under paragraph ~~446~~23.16;

~~19.1.16~~19.1.15 to give the consent of the Council where its consent is required by this constitution.

20. Rules of debate

No speeches until motion seconded

20.1 Once the mover has moved a proposal and explained its purpose, the motion must be seconded before any speeches may be made.

Right to require motion in writing

20.2 Unless notice of the motion has already been given, the Chairman may require it to be written down and handed to ~~him/her~~them before it is discussed.

Secunder's speech

20.3 When seconding a motion or amendment, a Member may reserve their speech until later in the debate.

Content and length of speeches

- 20.4 Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech may exceed five minutes without the consent of the Chairman.

When a Member may speak again

- 20.5 A Member who has spoken on a motion may not speak again whilst it is the subject of debate, except:
- 20.5.1 to speak once on an amendment moved by another Member;
 - 20.5.2 to move a further amendment if the motion has been amended since he/shethey last spoke;
 - 20.5.3 if his/hertheir first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which he/shethey spoke was carried);
 - 20.5.4 in exercise of a right of reply;
 - 20.5.5 on a point of order;
 - 20.5.6 by way of personal explanation.

Amendments to motions

- 20.6 An amendment to a motion must be relevant to the motion and will be one of the following:
- 20.6.1 to refer the matter to an appropriate body or individual for consideration or reconsideration;
 - 20.6.2 to leave out words;
 - 20.6.3 to leave out words and insert or add others or;
 - 20.6.4 to insert or add words

as-so long as the effect of the amendments is not to negate the motion.

- 20.7 Only one amendment may be moved and discussed at any one time. No further amendment may be moved until the amendment under discussion has been disposed of.
- 20.8 If an amendment is not carried, other amendments to the original motion may be moved.
- 20.9 If an amendment is carried, the motion as amended takes the place of the original motion. This becomes the substantive motion to which any further amendments are moved.
- 20.10 After an amendment has been carried, the Chairman will read out the amended motion before accepting any further amendments, or if there are none, put it to the vote.

Alteration of motions or amendments

- 20.11 A Member may alter a motion or amendments of which he/shethey ~~has~~ have given notice with the consent of the meeting. The meeting's consent will be signified without discussion.

20.12 A Member may alter a motion or amendments which ~~he/she~~they ~~has~~have moved without notice with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion.

20.13 Only alterations which could be made as an amendment may be made.

Withdrawal of motion

20.14 A Member may withdraw a motion which ~~he/she~~they ~~has~~have moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No Member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused.

Right of reply

20.15 The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote.

20.16 If an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it.

20.17 The mover of the amendment has ~~the~~no right of reply as the penultimate speaker, prior to the mover of the original motion, at the end of~~the~~ the debate on ~~his or her~~their amendment.

Motions which may be moved during debate

20.18 When a motion is under debate, no other motion may be moved except the following procedural motions:

20.18.1 to withdraw ~~a~~the motion;

20.18.2 to amend ~~a~~the motion;

~~20.18.3 to proceed to the next business;~~

~~20.18.4~~20.18.3 that the question be now put;

~~20.18.5~~20.18.4 to adjourn a debate;

~~20.18.6~~20.18.5 to adjourn a meeting;

~~20.18.7~~20.18.6 to exclude the public and press in accordance with the Access to Information Procedure Rules ~~and; or~~

~~20.18.8~~20.18.7 not to hear further a Member named under paragraph ~~44~~23.15, or to exclude them from the meeting under paragraph ~~44~~23.16.

Closure motions

20.19 A Member may move, without comment, the following motions at the end of a speech of another Member:

~~to proceed to the next business;~~

20.19.1 that the question be now put;

20.19.2 to adjourn ~~a~~the debate or;

20.19.3 to adjourn a meeting.

~~20.20~~ If a motion to proceed to next business is seconded and the Chairman thinks the item has been sufficiently discussed, he or she will give the mover of the original motion a right of reply and then put the procedural motion to the vote.

~~20.21~~ 20.20 If a motion that the question be now put is seconded and the Chairman thinks considers the item has been sufficiently discussed, he/she/they will put the procedural motion to the vote. If it is passed he/she/they will give the mover of the original motion a right of reply before putting his/her/their motion to the vote.

~~20.22~~ 20.21 If a motion to adjourn the debate or to adjourn the meeting is seconded and the Chairman thinks the item has not been sufficiently discussed and cannot reasonably be so discussed on that occasion, he/she/they will put the procedural motion to the vote without giving the mover of the original motion the right of reply.
Point of order

~~20.23~~ 20.22 A Member may raise a point of order at any time. The Chairman will hear them immediately. A point of order may only relate to an alleged breach of these Council rules of procedure or the law. The Member must indicate the rule or law and the way in which he/she/they considers it has been broken. The ruling of the Chairman on the matter will be final.

Personal explanation

~~20.24~~ 20.23 A Member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech by the Member which may appear to have been misunderstood in the present debate. The ruling of the Chairman on the admissibility of a personal explanation will be final.

21. Previous decisions and motions

Motion to rescind a previous decision

21.1 A motion or amendment to rescind a decision made at a meeting of Council within the past six months cannot be moved unless the notice of motion is signed by at least ~~40~~ ten Members (or a quarter of the Members of a committee).

Motion similar to one previously rejected

21.2 A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the previous six months cannot be moved unless the notice of motion or amendment is signed by at least ~~40~~ ten Members (or a quarter of the Members of a committee). Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

22. Voting

Majority

22.1 Unless this constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put (Local Government Act 1972, Schedule 12, paragraph 39(1)).

Chairman's casting vote

- 22.2 If there are equal numbers of votes for and against, the Chairman will have a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote (Local Government Act 1972, Schedule 12, paragraph 39(2)).

Affirmation

- 22.3 Unless a ballot or recorded vote is taken under paragraphs ~~128 and 129~~22.4-22.7, the Chairman will take the vote by the affirmation of the meeting.

Ballots

- 22.4 The vote will take place by ballot if ~~40~~ten Members (or a quarter of the Members of a committee) present at the meeting demand it or at the Chairman's discretion. The Chairman will announce the numerical result of the ballot immediately the result is known.

Recorded vote

- 22.5 With the exception of the paragraph ~~130~~22.6, if ~~40~~ten Members (or a quarter of the Members of a committee) present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be recorded in the minutes. A demand for a recorded vote will override a demand for a ballot.
- 22.6 Recorded votes shall be taken on all decisions of Full Council in respect of:
- 22.6.1 Setting the authority's budget and determining the level of Council tax to be levied;
 - 22.6.2 Policy Framework Items;
 - 22.6.3 Member Motions; and
 - 22.6.4 other substantive issues.
- 22.7 The names for and against the motion or amendment or abstaining from voting on these matters will be recorded and attached to the minutes.

Right to require individual vote to be recorded

- 22.8 Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting (Local Authorities (Standing Orders) Regulations 1993, Schedule 2, paragraph 1(1)).

Voting on appointments

- 22.9 If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

23. Minutes

Signing the minutes

- 23.1 The Chairman will sign the minutes of the proceedings at the next suitable meeting (Local Government Act 1972, Schedule 12, paragraph 41(1)). The Chairman will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

No requirement to sign minutes of previous meeting at extraordinary meeting

- 23.2 Where in relation to any meeting, the next meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of schedule 12 to the Local Government Act 1972 (an extraordinary meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) will be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of schedule 12 relating to signing of minutes.

Form of minutes

- 23.3 Minutes will contain all motions and amendments in the exact form and order the Chairman put them.

Record of Attendance

- ~~23.4~~ All Members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting to assist with the record of attendance (Local Government Act 1972, Schedule 12, paragraph 40).

- ~~23.4~~~~23.5~~ A record will be kept of when a Member of the Council leaves the meeting at any time before the meeting is closed or adjourned.

Exclusion of the Public

- ~~23.5~~~~23.6~~ Members of the public and press may only be excluded only either in accordance with the Access to Information Rules in Part 5 of this constitution (Local Government Act 1972 s.100A and Local Authorities (Executive Arrangements) (Meetings and Access to Information (England) Regulations 2012 reg 4) (2)) or paragraph 147 (disturbance by public).

Members' attendance

- ~~23.6~~~~23.7~~ Subject to paragraph ~~14~~~~23.9~~, if a Member of the Council fails throughout a period of six consecutive months from the date of ~~his or her~~their last attendance to attend any meeting of the Council, he or she shall, unless the failure was due to some reason approved by the Council before the expiry of that period, cease to be a Member of the Council (Local Government Act 1972 s.85(1)).

~~23.7~~23.8 Attendance as a Member at a meeting of any committee, sub-committee, area board, panel or working party of the Council, or at a meeting or any joint committee, joint board or other body by whom for the time being any functions of the Council are being discharged, or which was appointed to advise the Council on any matter relating to the discharge of its functions and attendance as the Council's representative on an outside body shall be deemed to be attendance (Local Government Act 1972 s.85(2)).

~~23.8~~23.9 Any person (not being a Member of the Council) appointed by the Council or a committee to serve on a committee, sub-committee or panel who is absent from all meetings of such committee, sub-committee or panel for a continuous period of six months except for some reason approved by the committee, sub-committee or panel before the expiry of that period shall at the end of that period cease to be a Member of that committee, sub-committee or panel. (Local Government Act 1972 s102 (2-4))

~~23.9~~23.10 If a Member of the Cabinet fails throughout a period of six consecutive months from the date of ~~his or her~~their last attendance, to attend any meeting of the Cabinet, ~~he or she~~they shall, unless the failure was due to some reason approved by the Council before the expiry of that period, cease to be a Member of the Council (Local Government Act 1972 s.85(2A) and s.85(2B)).

Standing to speak

~~23.11~~ When a Member speaks at Full Council ~~he/she/they~~ must stand unless exempted by the Chairman~~and address the meeting through the Chairman.~~

~~23.10~~23.12 If more than one Member stands, the Chairman will ask one to speak and the others must sit. Other Members must remain seated whilst a Member is speaking unless they wish to make a point of order or a point of personal explanation.

Chairman standing

~~23.11~~23.13 When the Chairman stands during a debate, any Member speaking at the time must stop and sit down. The meeting must be silent.

Addressing the Chair

~~23.14~~ When a Member of the Council speaks they must address the Council through the Chairman.

Member not to be heard further

~~23.12~~23.15 If a Member persistently disregards the ruling of the Chairman by behaving improperly, or offensively, or deliberately obstructs business, the Chairman may move that the Member not be heard further. If seconded, the motion will be voted on without discussion.

Member to leave the meeting

~~23.13~~23.16 If the Member continues to behave improperly after ~~such~~ a motion under paragraph 23.15 is carried, the Chairman may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

General disturbance

~~23.14~~23.17 If there is a general disturbance making orderly business impossible, the Chairman may adjourn the meeting for as long as ~~he/she~~they think~~s~~consider necessary (Public Bodies (Admission to Meetings) Act 1960 s.1(8)).

24. Disturbance by the public

Removal of Member of the public

24.1 If a Member of the public interrupts proceedings, or their behaviour or attire is deemed by the Chairman to cause offence, the Chairman will warn the person concerned. If they continue to interrupt or continue to cause offence, the Chairman may order their removal from the meeting room (Local Government Act 1972 s.100A(8)) following consultation with the Monitoring Officer or their designated representative.

Clearance of part of meeting room

24.2 If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared (Local Government Act 1972 s.100A(8)).

25. Suspension and amendment of Council procedure rules

Suspension

25.1 All of these Council rules of procedure except paragraphs ~~131-22.8~~ and ~~133-23.1~~ may be suspended by motion on notice, or without notice, if at least one half of the whole number of Members of the Council are present. Suspension can be only for the duration of the meeting (Local Government Act 1972, Schedule 12, paragraph 42).

Amendment

25.2 Any motion to add to, vary or revoke these Council rules of procedure will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of ~~the~~Full Council.

Schedule 1 – Part 4 A Wiltshire Council Petitions Scheme

1. Petitions

- 1.1 The council recognises that petitions are one way in which the people can let it know their concerns. All petitions sent or presented to the council will receive an acknowledgement from the council **within 10 working days of receipt.**
- 1.2 Anyone who signs a petition must meet the following **eligibility requirements:**
- 1.2.1 For a Petition to be presented to **Full Council**, signatories must be **aged 13 or above, live work or study in Wiltshire**, or have a **direct connection to the service which is the subject of the petition.** For the petition to be noted at Full Council it requires a **minimum of 25 signatures.**
 - 1.2.2 For a Petition to be presented to an **Area Board**, signatories must be **aged 13 or above, live, work or study within the relevant community are.** For the petition to be noted at a meeting of an Area Board, it requires a **minimum of 10 signatures.**
- 1.3 Any acknowledgement will set out what the council plan to do with the petition. The council will treat something as a petition if it is identified as such, or it seems that it is intended to be a petition.
- 1.4 Paper petitions can be sent to: **Democratic Services, Wiltshire Council, County Hall, Bythesea road, Trowbridge, BA14 8JN**
- 1.5 Wiltshire Council welcomes petitions submitted electronically. To aid this process an e-Petitions facility is available at <https://cms.wiltshire.gov.uk/mgEPetitionListDisplay.aspx> or by following a link from the [Petitions Homepage](#).
- 1.6 This facility allows e-Petitions to be created, signed and submitted only by registering with the council, using a valid email address. Electronic petitions hosted via other websites can be sent to committee@wiltshire.gov.uk for consideration by Democratic Services.
- 1.7 **If your petition has been signed by a number equivalent to at least 1% (approximately 4,700 people) of the total population of Wiltshire it will also be scheduled for a Council debate** (more information is contained in the section below on **How will the council respond to petitions?**).
- 1.8 If this is the case the council will let you know the date of the meeting when it will be heard. These meetings take place at least four times a year, dates and times can be found [here](#).
- 1.9 If you would like to present your petition to the council, or would like your Councillor or someone else to present it on your behalf, please contact Democratic Services on 01225 718214/ 01722 434560, or committee@wiltshire.gov.uk., at least ten working days before the meeting and an officer will talk you through the process.
- 1.10 Alternatively, if your petition does not have sufficient signatures to trigger a debate at Full Council you may wish to discuss what other options are available or referring the petition

to a select committee. Please contact Democratic Services and they will talk you through your options.

- 1.11 Or if your issue is a local one and falls within the remit and powers of the Area Boards you may wish to present your petition at an [Area Board](#). See Part 3 – Section 4.17 of Wiltshire Council's Constitution, for more information on the remit and powers of Area Boards. **The council has set a nominal threshold of 1% of the total population of the area covered by the area board to trigger a formal debate at an Area Board.** However, any petition received for an Area Board will be discussed with the appropriate Chairman and the appropriate action taken.
- 1.12 A map showing Area Boards Petition Thresholds is available at Part 4B of the Constitution.
- 1.13 So no matter the nature of or number of signatories to your petition, you will be kept informed of how the council proposes to deal with it and the action to be taken. The council remains convinced of the need for local discretion and flexibility in the way petitions are managed. Petitions that trigger the thresholds will of course be referred to Full Council or to an Area Board as appropriate.
- 1.14 There will however be local discretion and flexibility in dealing with any other petitions. Discussions will take place with the relevant Cabinet member or appropriate Area Board Chairman to determine the most appropriate way of dealing with the petition. The options may include referring the matter to the Cabinet or the appropriate Area Board, or any of those options listed in the section below on **How will the council respond to Petitions?**

2. What are the Guidelines for Submitting a Petition?

- 2.1 Petitions submitted to the council must include:
 - 2.1.1 a clear and concise statement covering the subject of the Petition. It should state what action the petitioners wish the council to take; and
 - 2.1.2 the name, address and signature of any person supporting the petition.
- 2.2 Petitions should be accompanied by contact details, including an address of the Petition organiser. This is the person the council will contact to explain how they will respond to the petition.
- 2.3 The contact details of the petition organiser will not be placed on the council's website. If the petition does not identify a petition organiser, the council will contact the first named signatory to the petition to agree who should act as the petition organiser.
- 2.4 For further information see the [What information should my Petition contain?](#) And [What is not suitable for a Petition?](#) Information pages on Wiltshire Council's website.
- 2.5 Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted. In the period immediately before an election or referendum the council may need to deal with your petition differently – if this is the case the council will explain the reasons and discuss the revised timescale which will apply. If a petition does not follow the guidelines set out above, the council may decide not to do anything further with it. In that case, they will write to you to explain the reasons.

3. What will the Council do when it receives my Petition?

- 3.1 An acknowledgement will be sent to the petition organiser within 10 working days of receiving the petition. It will let them know what the council plan to do with the petition and when they can expect to hear from them again. It will also be published on the council's website.
- 3.2 If the council can do what your petition asks for, the acknowledgement may confirm that the council has taken the action requested and the petition will be closed.
- 3.3 If the petition has enough signatures to trigger a debate, then it will be referred to a meeting of Full Council or an Area Board and the acknowledgement will confirm this and tell you when and where the meeting will take place.
- 3.4 If the petition is dealt with in a different way of it the petition needs more investigation, the council will tell you the steps they plant to take.
- 3.5 If the petition applies to a [planning](#) or [licensing](#) application, is a statutory petition (for example requesting a referendum on having an elected mayor), or on a matter where there is already an existing right of appeal, such as [Council Tax Banding](#) and [Non-Domestic Rates](#), other procedures apply.
- 3.6 Further information on all these procedures and how you can express your views is available through the links above and [Wiltshire Council's Website](#).
- 3.7 To ensure that people know what the council is doing in response to petitions received, the details of all petitions submitted will be published on the council's website, except in cases where this would be inappropriate. Whenever possible the council will also publish all correspondence relating to the petition (all personal details will be removed)
- 3.8 When you sign an e-petition you can elect to receive this information by email. The council will not send you anything that is not relevant to the e-petition you have signed, unless you choose to receive other emails from us. You can change what information you receive and keep in touch with the progress of a petition at any time by contacting Democratic Services on 01225 718214/ 01722 434560, or committee@wiltshire.gov.uk.

4. How will the Council respond to Petitions?

- 4.1 The council's response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:
 - 4.1.1 taking the action requested in the petition;
 - 4.1.2 considering the petition at a Full Council meeting;
 - 4.1.3 holding an inquiry into the matter;
 - 4.1.4 undertaking research into the matter;
 - 4.1.5 holding a public meeting;
 - 4.1.6 holding a consultation;
 - 4.1.7 holding a meeting with the petitioners;
 - 4.1.8 referring the petition for consideration by one of the council's select committees*
 - 4.1.9 calling a referendum

4.1.10 writing to the petition organiser setting out the council's views about the request in the petition

(*The Council's [Select Committees](#) perform the overview and scrutiny function with the council where Councillors are responsible for scrutinising the work of the council – in other words, the select committee has the power to hold council's decision makers to account.)

- 4.2 In addition to these steps, the council will consider all the specific actions it can potentially take on the issues highlighted in the petition.
- 4.3 If your petition is about something over which the council has no direct control (for example the local railway or hospital) the council will consider making representations on behalf of the community to the relevant body. The council works with a large number of local partners and where possible will work with these partners to respond to your petition. See the [Wiltshire Family of Partnerships](#) page for more details on our partnership working arrangements.
- 4.4 If the council is not able to do this for any reason (for example if what the petition calls for conflicts with council policy), then they will set out the reasons for this in writing. If the petition is of a sufficient size to trigger a debate at a Full Council meeting then a representative of the partner organisation will be invited to attend the meeting to assist with the debate.
- 4.5 You can find more information on the services for which the council is responsible for on the [Council's Website](#). If your petition is about something that a different council is responsible for the council will consider what the best method for responding is. This might consist of simply forwarding the petition on to the relevant council, but could involve other steps. In any event the council will always notify you of the action they have taken.

5. Full Council Debates

- 5.1 If the petition is of sufficient size to trigger a debate at Full Council the issue raised in the petition will be discussed at a meeting which all Councillors can attend. The council will endeavour to consider the petition at its next schedule meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting.
- 5.2 The petition organiser will be given five minutes to present the petition at the meeting and the petition will then be discussed by the councillors for a maximum of 15 minutes. In addition to your petition the council may also consider the view of Cabinet or Cabinet Member. If you would like you also have the opportunity to answer questions or clarify issues for the Councillors.
- 5.3 The council will decide how to respond to the petition at this meeting. The council may decide to take the action the petition requests, not to take the action requested for reason put forward in the debate or to commission further investigations into the matter, for example by a relevant committee.

- 5.4 Where the issue is one on which the Council's Cabinet are required to make the final decision, the council will decide whether to make recommendations to inform that decision.
- 5.5 The petition organiser will receive written confirmation of the decision. This confirmation will also be published on the council's website.
- 5.6 Alternatively, and if timing permits, the petition may be referred to the Cabinet for its views so that at the Full Council meeting those views can be considered alongside the petition and a final decision made.

6. e-Petitions

- 6.1 Wiltshire Council welcomes petitions submitted electronically. To aid this process we have developed an e-Petitions facility which is available at <https://cms.wiltshire.gov.uk/mgEPetitionListDisplay.aspx> or by following a link from the [Petitions Homepage](#).
- 6.2 This facility allows e-Petitions to be created, signed and submitted only by registering with the council, using a valid email address.
- 6.3 Electronic petitions hosted via other websites can be sent to committee@wiltshire.gov.uk for consideration by Democratic Services.
- 6.4 e-Petitions are subject to the same guidelines as paper petitions. The petition organiser will need to provide the council with their name, postal address and email address. You will also need to decide how long you would like your petition to be open for signatures. Most petitions run for six months, but you can choose a shorter or longer timeframe, up to a maximum of twelve months.
- 6.5 When you create an e-petition, it may take up to five working days before it is published online. This is because the council must check that the content of your petition is suitable before it is made available for signature.
- 6.6 If the council feels they cannot publish your petition for some reason, they will contact you within this time to explain. You will be able to change and resubmit your petition if you wish. If you do not do this within ten working days, a summary of the petition and the reason why it has not been accepted will be published under the 'rejected petitions' section of the website.
- 6.7 When an e-petition has closed for signature, it will automatically be submitted to Democratic Services. In the same way as a paper submission, you will receive an acknowledgement within ten working days.
- 6.8 If you would like to represent your e-petition to a meeting of Full Council, please contact Democratic Services on 01225 718214/ 01722 434560, or committee@wiltshire.gov.uk within ten working days of receipt of the acknowledgement.
- 6.9 A petition acknowledgment and responses will be emailed to everyone who has signed the e-petition and elected to receive this information. The acknowledgment and response will also be published on this website.

6.10 Petitions submitted electronically but not through the e-petition facility will be dealt with in accordance with the provisions for paper petitions.

7. How do I 'sign' an e-Petition?

7.1 You will see all the e-petitions currently available for signature at the e-Petitions page.

7.2 When you sign an e-petition you will be asked to provide your name, postcode and a valid email address. When you have submitted this information, you will be sent an email to the address provided.

7.3 This email will include a link which you must click to confirm the email address is valid.

7.4 Once this step has been completed you 'signature' will be added to the petition.

7.5 People visiting the e-petition will be able to see your name in the list of those who have signed it but your contact details will not be visible.

8. What can I do if I feel that my petition has not been dealt with properly?

8.1 If you feel that we have not dealt with your petition properly, the petition organiser has the right to request that one of the council's [Select Committees](#) review the steps the council has taken in response to your petition.

8.2 It is helpful to everyone, and can improve the prospects for a review if the petition organiser gives a short explanation of the reasons why the council's response is not considered to be adequate.

8.3 It is important to emphasise here that the review process is concerned with whether the steps taken by the council in its response to the petition were adequate – that is, did the council follow the correct procedure to reach its decision, not if it is not the response wanted.

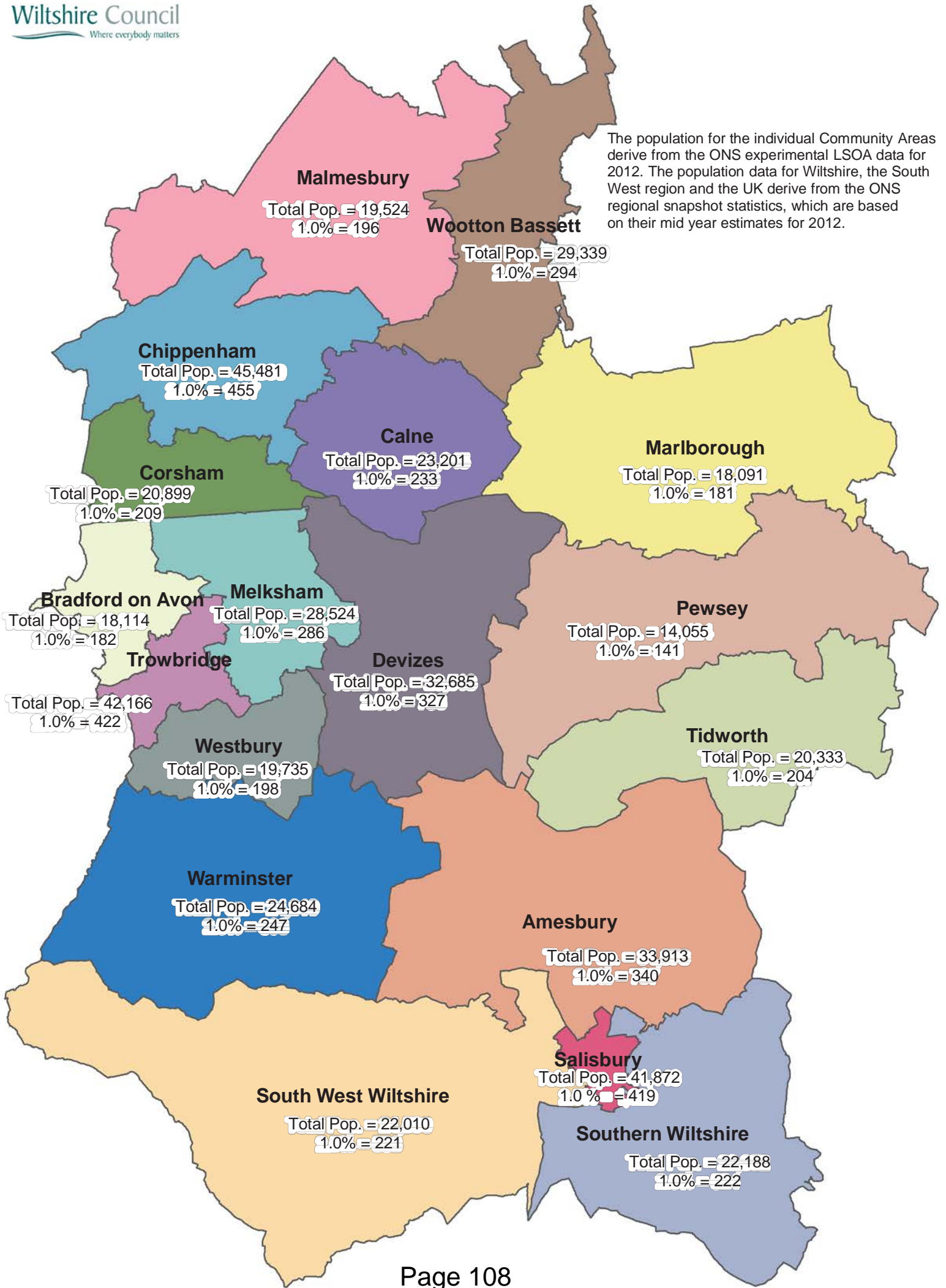
8.4 The committee will endeavour to consider your request at its next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting.

8.5 Should the committee determine that the council has not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include an investigation, making recommendations to Cabinet and arranging for the matter to be considered at a Full Council meeting.

8.6 If the select committee feels that it may have a conflict of interest by virtue of any previous involvement in the petition in question, the council can arrange for a different committee to deal with your request.

8.7 Once the appeal has been considered the petition organiser will be informed of the results within five working days. The results will also be published on the council's website.

The population for the individual Community Areas derive from the ONS experimental LSOA data for 2012. The population data for Wiltshire, the South West region and the UK derive from the ONS regional snapshot statistics, which are based on their mid year estimates for 2012.



Part 4C: Guidance on Amendments to Motions

1. The requirements concerning amendments to motions are contained in the Council's Rules of Procedure in Part 4 of the Constitution. Paragraph 20.6 provides:

20.6 An amendment to a motion must be relevant to the motion and will be one of the following:

 - 20.6.1 to refer the matter to an appropriate body or individual for consideration or reconsideration;*
 - 20.6.2 to leave out words;*
 - 20.6.3 to leave out words and insert or add others or;*
 - 20.6.4 to insert or add words*

so long as the effect of the amendment is not to negate the motion.
2. The Chairman will determine the validity of any proposed amendment under this paragraph, after taking advice from the Monitoring Officer. The Chairman's decision on any proposed amendment is final.
3. In exercising judgment on the validity or otherwise of any proposed amendment, the Chairman will have regard to the following principles:
 - 3.1 the overriding principle of fairness in the conduct of the Council's business;
 - 3.2 the amendment is relevant to the motion;
 - 3.3 the proposed amendment does not negate the motion; this can be secured more appropriately by voting against the original motion.
 - 3.4 The content of the proposed amendment is proportionate to the original motion in nature and extent;
 - 3.5 The proposed amendment does not amount to a device to frustrate the purpose of the original motion or to raise a late motion.
4. Councillors are encouraged, where practicable, to seek advice from the Monitoring Officer in connection with any proposed amendment in advance of the meeting at which it is to be moved.

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Councillor-Officer Relations

1. Introduction

Context

1.1 Mutual trust and respect between councillors and officers is at the heart of the council's governance arrangements. An effective partnership between councillors, and officers is a key element of a successful and high performing council.

Purpose of Protocol

1.2 The purpose of this protocol is to:

- outline the essential elements of the relationship between councillors and officers;
- promote the highest standards of conduct;
- clarify roles and responsibilities;
- ensure consistency with the law, codes of conduct and the council's values and practices; and
- identify ways of dealing with concerns by councillors or officers.

1.3 This protocol is for the guidance and assistance of councillors and officers. Any queries about its content or application should be referred to the monitoring officer.

2. Principles

2.1 Councillors (including co-opted members) and officers shall observe this protocol at all times.

2.2 There shall be mutual courtesy and respect between councillors and officers with regard to their respective roles as set out below.

2.3 Councillors and officers shall each carry out their respective responsibilities in the best interests of the council.

2.4 The roles and responsibilities of councillors and officers are distinct yet complementary. Councillors are accountable to the electorate for the performance of the council's statutory functions. Officers are accountable to the council as a whole. Their job is to give advice to councillors (individually and collectively) and to carry out the council's work under the direction of the council.

2.5 This protocol supports the council's codes of conduct for councillors and officers. The council's Code of Conduct for Members of Wiltshire Council is set out in Part 13 of the constitution. The Human Resources Code of Conduct for Officers is set out in Part 16 of the constitution and forms part of an officer's contract of employment.

2.6 Breach of this protocol may result:

- in the case of a councillor / co-opted member, in a complaint under the Code of Conduct for Members;
- in disciplinary action in the case of an officer.

3. The role of councillors

- 3.1 Councillors have a number of specific roles, which are set out in detail in Part 12 of the constitution - Roles and Responsibilities of Councillors
- 3.2 Collectively, councillors are the ultimate policy-makers, determining the core values of the council and approving the council's policy framework, strategic plans and budget.
- 3.3 Councillors represent the community and its constituents, act as community leaders and as the link between them and the council. This includes performing a key role as a member of their local area board.
- 3.4 Some councillors will have additional roles specific to their position as members of the cabinet, or overview and scrutiny or other committees of the council.
- 3.5 Some councillors may be appointed to represent the council on local, regional or national bodies- see further at section 13 below.
- 3.6 Councillors must respect the impartiality of officers.
- 3.7 Councillors must promote the highest standards of conduct and will have regard to the council's Behaviours Framework in carrying out their role.
- 3.8 Councillors act collectively as the employer of officers.
- 3.9 Councillors must seek the advice of the monitoring officer and the chief finance officer if they have any concerns about whether the council is acting outside its statutory powers, maladministration, financial impropriety and probity, or whether any decision is or is likely to be contrary to the budget and policy framework.

4. The role of officers

- 4.1 Officers are employed by the council. They are therefore accountable to the council as a whole - not to individual councillors. There will, however, need to be special relationships between individual councillors and individual officers and these are dealt with specifically under section 6 of this protocol.
- 4.2 Officers are responsible for giving professional advice to members and for implementing lawful decisions of the council.
- 4.3 Officers must act impartially at all times and must not allow their professional judgement and advice to be influenced by their own personal views.
- 4.4 Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for councillors, the media or other sections of the public.
- 4.5 Officers must act in accordance with the Human Resources Code of Conduct and the Council's Behaviours Framework.

5. Relationship between councillors and officers - general

- 5.1 The relationship between councillors and officers should be characterised by mutual trust and respect.
- 5.2 Close personal familiarity between individual members and officers can harm professional relationships and prove embarrassing to other councillors and officers. Situations should be avoided that could give rise to suspicion and any appearance of improper conduct, or the perception that a councillor and officer treat each other differently from others due to the nature of the personal relationship between them.

5.3 Councillors should not raise matters relating to the conduct or capability of officers either individually or collectively at meetings held in public or in the press. Officers have no means of responding to criticism like this in public. If councillors feel that they have not been treated with proper respect, courtesy or have any concern about the conduct or capability of an officer they should raise the matter with the relevant director concerned if they are unable to resolve it through direct discussion with the officer – see further at section 15 below.

5.4 Councillors will not publish any material which is derogatory of officers generally, or specific individuals, whether directly or through their agents or political groups.

5.5 What can councillors expect from officers?

- a commitment to the council as a whole and not to individual political groups;
- a working partnership;
- a timely response to enquiries and complaints – see Appendix 1
- objective, professional advice not influenced by political views or preference;
- integrity, support and confidentiality appropriate to the situation;
- being kept up to date on local issues;
- compliance with the Human Resources Code of Conduct.

5.6 What can officers expect from councillors?

- political leadership and direction;
- a working partnership;
- compliance with the Code of Conduct for Members;
- distance from day to day management of the council;
- no improper influence or pressure to gain special treatment for themselves or others;
- recognition of the duty to promote the health, safety and well-being of officers.

6. Relationship between councillors and officers - specific

6.1 Special relationships will exist between certain councillors and officers because of their specific roles. These relationships nevertheless remain subject to the obligations set down in this protocol.

6.2 Members of the cabinet and the corporate leadership team will have a distinct and special relationship. In particular the relationship between the leader and the corporate directors will be key to the success and culture of the council.

6.3 Officers and councillors must ensure that appropriate consultations are undertaken before reports are prepared for decision, either by cabinet or by individual cabinet members under delegated powers.

6.4 Within overview and scrutiny there are two aspects of relationship between councillors and officers:

- the relationship between councillors and officers who support the overview and scrutiny function. Councillors lead the scrutiny function. Officers brief scrutiny members, but the decision to pursue any particular issue rests with councillors.
- officers who are asked to attend scrutiny committees or task groups as a witness or special adviser should be treated with respect. They may be expected to answer questions on the professional advice given to the full council or cabinet in relation to

policies and decisions but must not be expected to give a political view. The arrangements for attendance of cabinet members and senior officers at overview and scrutiny meetings to give account are contained in the overview and scrutiny procedure rules in Part 8 of the constitution.

6.5 Officers may also be asked to speak at a meeting of an area board. Partner organisations such as the police, health and , fire, are also likely to be asked about the provision of local services. In the spirit of partnership working it is important that both officers and the representatives o partner organisations are treated with respect, and from a community perspective it is important that the relationship between councillors, officers and partners is seen to be constructive, with everybody working together and in the same direction.

7. General support to councillors

7.1

Appendix 1 summarises the support and facilities provided for councillors at Wiltshire Council and in their constituencies.

8. Support to specific councillors

8.1 To recognise the full-time nature of the role of leader and cabinet members, PA support will be provided, to include diary management and research support in connection with cabinet business.

8.2 PA support will also be provided to the chairman and vice-chairman of the council in recognition of their civic responsibilities.

9. Support to political groups

9.1 Political groups may request private and confidential briefings on matters of policy and factual evidence which are or may become the subject of discussions by the full council or cabinet or any committee.

9.2 The request should be submitted to the corporate director designated as the liaison officer for the political groups, who will discuss it with the appropriate officer. Attendance must be authorised by a corporate director.

9.3 The briefing should not extend beyond providing information and advice.

9.4 For the avoidance of doubt group meetings cannot make decisions on behalf of the council and it is essential that they are not acted upon as such. Nor does such a briefing negate the need to ensure that all necessary advice and information is provided to the decision-making body when the matter is formally considered.

9.5 Requests for briefings may be declined where these are to take place in premises which are not owned or controlled by the council or where persons who are not members of the council will be present.

9.6 Accommodation for use by political groups will be provided together with reasonable photocopying, postage and ICT facilities. Such use must be in connection with council business.

10. Members' access to information

10.1 This part of the protocol should be read in conjunction with the access to information procedure rules in Part 5 of the constitution and any guidance issued by the monitoring officer.

10.2 Councillors are entitled to see copies of any agenda for meetings of the cabinet, and of committees of which they are not appointed members. Councillors' rights to information are subject to legal rules and, if members have a legitimate interest in a matter in their role as a member of the council, officers should provide the relevant information (including confidential information) to them.

10.3 Councillors should seek advice from the monitoring officer in circumstances where they wish to inspect any document or have access to information about a matter:

- in which they may have an interest; or
- where to do so would be in breach of the Data Protection Act 1998;

10.4 If councillors are not receiving, or are having difficulty in obtaining, information which they feel they need or to which they are entitled to carry out their duties as councillors they should contact the monitoring officer for advice.

10.5 Information given to a councillor must only be used for the purpose for which it was requested. Councillors and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so. A councillor must seek the advice of the monitoring officer before disclosing information given in confidence.,

When councillors are kept informed on local issues, they are far better equipped to be proactive in handling local issues and in responding to individuals or interest groups on a particular matter. It is the responsibility of each head of service to ensure that all relevant staff are aware of the requirement to keep local councillors informed and that the timing of such information allows members to respond appropriately and contribute to relevant decisions. Local members must also be kept informed about matters affecting their division during the formative stages of policy development, about matters considered by committees of the Council and about any significant operational matters within local Divisions as soon as realistically practical.

10.7 All officers will have regard to the area boards and delegated decisions checklist to ensure local councillors and area boards are involved in decisions on local services. The cabinet paper checklist also includes consultation with local councillors. In ensuring councillors are kept appropriately informed officers should also be mindful of Part 3 of the constitution which covers the scheme of delegation; Part 5 which covers the access to information procedure rules and the Media Relations Protocol. Awareness of this requirement will be supported through relevant training and guidance for officers

Appendix 2 provides a guide on the information that should be provided to councilors and how this information will be communicated.

11. Media relations

11.1 Councillors are referred to the Wiltshire Council Media Relations Protocol at Protocol 7 of the constitution.

12. Use of council resources

- 12.1 Councillors and officers must comply with the council's policies and requirements concerning the use of its resources, including in particular its E-mail, Internet and Computer Use Policy.
- 12.2 Councillors must not use the council's resources improperly for political purposes (including party political purposes) and shall have regard to the local authority code of recommended practice on publicity annexed to the Media Relations Protocol . Councillors should seek advice from the monitoring officer where clarification is necessary.

13. Representation on external organisations

- 13.1 Councillors are referred to Protocol 3 – Guidance to Councillors on Outside Bodies.
- 13.2 A councillor appointed to represent the council on an external organisation shall take care to establish the legal status of the appointment and the potential liabilities that may be involved before confirming acceptance. Councillors should seek the advice of the monitoring officer if they have any concerns or are unclear about the nature of such appointments.
- 13.2 Councillors appointed to represent the council on external organisations shall establish relevant council policy on issues arising in those bodies and shall act in accordance with that policy when engaged in discussions and decision-making.
- 13.3 Where a councillor acts as a representative of the council on another body, the councillor must comply with the council's Code of Conduct for Members.,

14. Access to premises

- 14.1 If councillors wish to visit council establishments, other than the main area hub offices, they should contact the relevant director or head of the establishment in advance to make the necessary arrangements.

15. How to resolve issues

- 15.1 Councillors and officers are encouraged to work together and seek to resolve any differences informally, by discussing any concerns at the earliest opportunity.
- 15.2 If a councillor feels that they have not been treated with proper respect, courtesy or they have any concern about the conduct or capability of an officer, or that an officer has acted in breach of this protocol, they may raise the matter with the individual's relevant director. If the matter cannot be resolved informally, any such referral will be processed in accordance with the council's employment procedures and policies. The councillor and the officer will be kept informed of progress with the complaint and the action to be taken. An individual councillor does not have the power to discipline any officer.
- 15.3 If an officer feels that a councillor has acted in breach of this protocol, they should raise the matter with their relevant director. The relevant director should discuss the matter informally with the councillor. If the matter is not resolved the officer may refer the issue to the monitoring officer and the

corporate director designated as the liaison officer for political groups for consideration and discussion with the appropriate group leader. The officer and councillor will be kept informed throughout.

- 15.4 In relation to the process in paragraph 15.3 above regard should be had to paragraph 3.1 of the council's arrangements for dealing with complaints under the code of conduct, which requires any complaint to be made within 20 working days of the date on which the complainant became aware of the matter giving rise to the complaint.
- 15.4 The use of mediation may be considered at any stage as a means of resolving the matter informally.
- 15.5 If the matter cannot be resolved informally the officer may bring a complaint against the councillor under the Members' Code of Conduct.

Appendix 1 to Protocol 1

Support and Facilities Provided for Councillors

Principles

The support to be provided to councillors must be subject to the following caveats:

- Officers are employed by the council and are responsible to the council as a whole
- Officers cannot be required and must not undertake work of a political nature
- Officers must respect the confidentiality of some information that they may be exposed to

Supporting councillors centrally

The Democratic Services team can offer/facilitate support in the following areas:

A. ICT

ICT training will be given as part of the induction programme and following on from that equipment will be issued. This equipment will include a lap top and docking station, the option of a printer and other essentials. A broadband connection, or a monthly allowance to provide the same, will be provided together with the means to gain secure remote access to the Council's Network.

B. Councillor development

Following the councillor induction programme a detailed councillor development programme will be implemented. Councillors will be offered a personal development discussion which will enable them to discuss their training needs and find out about what training and development is available.

C. Allowances

All councillors are entitled to a basic allowance to cover the costs of being a councillor. Expenses can also be claimed for travel and subsistence. Details of allowances and expenses are set out in the Members Allowances scheme within Part 14 of the Constitution.

D. Secretariat and information

- Keeping councillors up-to-date with diary changes
- Booking onto any sessions from the Councillor Development Programme
- All councillors' conference arrangements including booking of places, hotel reservations, train tickets and arrangements for other transport.
- Providing 'Councillor Websites'
- Monitoring and maintaining individual Councillors' registered interests on the council's web-site.
- Councillors' briefings with key information and details of delegated decisions, links to minutes and agenda for forthcoming meetings
- A councillor's intranet page with links to committee dates, planning applications, highways works or training opportunities.

Councillors will also be provided with:

- an identity badge
- a pass card to gain entry to the main offices
- a general retiring lounge known as 'the members' room'
- reasonable stationery requirements, including letterheads, business cards, envelopes, and pre-paid reply envelopes for correspondence with council departments
- car parking whilst attending official meetings.

E. Accommodation

Each political group will have a group room and access to a docking station for a laptop, printer, telephone and photocopying facilities for use in connection with council business.

There will also be specific accommodation provided for the leader, the cabinet and the chairman of the council.

F. Political group support

No dedicated support is provided to group leaders but photocopying can be provided in connection with group business at an agreed cost and correspondence/communications can be sent with official council communications.

G. Briefings/seminars

A detailed list of forthcoming seminars will be maintained.

H. Response to Councillor

enquiries e-mails and telephone calls

- will be acknowledged within two working days of receipt, giving details of an alternative contact if the officer concerned is absent from the office
- a substantive response will be provided within ten working days of receipt. If that is not possible an explanation will be given as to the reason for the delay, what action is being taken, and when a response will be sent.

Supporting Councillors locally

The democratic services staff based in Trowbridge will, subject to resources being available, support councillors in their community leadership roles. This could include:-

- Assisting councillors in providing a two-way link between the council and the community
- Supporting the representational role of councillors
- Arranging for office facilities to be made available

Councillors will arrange any surgeries they wish to hold for their constituents, using libraries and area hub offices where appropriate

APPENDIX 2 TO PROTOCOL 1

1. Guide to Information Provision for Councillors

All councillors fulfill many roles:

- championing their area by representing their constituents;
- enabling public involvement and providing community leadership;
- contributing to decision making processes;
- creating effective partnerships and working with them to build strong and cohesive communities;
- fulfilling responsibilities as a “corporate parent” for children and young people in the care of the local authority; and
- representing the council externally.

It is widely recognised that when councillors are kept informed on local issues, they are far better equipped to be proactive in handling local issues and in responding to individuals or interest groups on a particular matter.

2. Information available to all councillors

A wide range of information is readily available to all councillors through the following sources, including:

- Members Elected wire – regular email
- Councillor briefing notes sent out on specific issues
- Email notification of agenda and delegated decisions
- Electronic subscription services for all council papers
- Electronic subscription services for all council press releases
- Parish council newsletter
- Community Area Joint Strategic Assessments providing facts and figures on the local area

The Access to Information Protocol covers other information provision that can be made available on request so that councillors have the information they need to know to fulfil their roles. Where councillors seek additional statistics on their local area they should have a discussion with the council’s research team.

3. Matters relating to electoral division(s)

Officers should ensure councillors are informed as appropriate on matters relating to their local division. This includes representations on local issues, where it appears the councillor has not already been informed, such as speed restrictions; school admissions; petitions and Local Government Ombudsman cases.

Officers should refer to the area boards and delegated decisions checklist to ensure local councillors and area boards are involved in decisions on local services. Consultation of local councillors when relevant also forms part of the checklist for cabinet papers.

Where planning initiatives or informed of changes to service provision by partners, which relate to one or a small number of electoral divisions, officers should inform the local division councillor. This includes circumstances such as:

- Forthcoming local consultations to be carried out by the council;
- Localised issues that may be identified to be subject to scrutiny or review;
- Sale of land and/or property owned by the council;
- Planned demolition of property, extension or renovation;
- Enforcement action: such as action taken by trading standards;
- Schools being put into special measures;
- Awards gained by services or facilities that are specific to a local area;
- Research or statistics on the electoral division.

In most cases an email is an appropriate form of communication, however in other circumstances officers should give consideration to other forms of briefing - such as face to face, online or over the phone.

Officers should rapidly alert local councillors to urgent issues affecting local services or facilities, such as unplanned work to public buildings or roads that has not been previously programmed and notified (in such cases a phone call may be more appropriate than other forms of communication such as email). Similarly, the council may be notified at short notice by partner agencies on changes to services (such as a temporary reduction in police staffing) or on the work of statutory undertakers. It is important to inform local councillors of any changes affecting their electoral division in particular as soon as realistically possible.

Heads of service should ensure that all their members of staff are aware of the requirements within this guidance. Any particular cases of difficulty or uncertainty arising under this guidance should be raised with the Monitoring Officer who will advise how to proceed.

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Protocol 1

Member-Officer Relations

Protocol 1: Member-Officer Relations

1. Introduction

1.1 Mutual trust and respect between Members and officers is at the heart of the council's governance arrangements. An effective partnership between Members and officers is a key element of a successful and high performing council.

2. Purpose of Protocol

2.1 The purpose of this protocol is to:

- 2.1.1 outline the essential elements of the relationship between Members and officers;
- 2.1.2 promote the highest standards of conduct;
- 2.1.3 clarify roles and responsibilities;
- 2.1.4 ensure consistency with the law, codes of conduct and the council's values and practices; and
- 2.1.5 identify ways of dealing with concerns by Members or officers.

2.2 This protocol is for the guidance and assistance of Members and officers. Any queries about its content or application should be referred to the Monitoring Officer.

3. Principles

3.1 Members (including co-opted members) and officers shall observe this protocol at all times.

3.2 There shall be mutual courtesy and respect between Members and officers with regard to their respective roles as set out below.

3.3 Members and officers shall each carry out their respective responsibilities in the best interests of the council.

3.4 The roles and responsibilities of Members and officers are distinct yet complementary. Members are accountable to the electorate for the performance of the council's statutory functions. Officers are accountable to the council as a whole. Their job is to give advice to Members (individually and collectively) and to carry out the council's work under the direction of the council.

3.5 This protocol supports the council's codes of conduct for Members and officers. The council's Code of Conduct for Members of Wiltshire Council is set out in Part 12 of the constitution. The Human Resources Code of Conduct for Officers is set out in Part 15 of the constitution and forms part of an officer's contract of employment.

3.6 Breach of this protocol may:

- 3.6.1 in the case of a Member / co-opted member, result in a complaint under the Code of Conduct for Members;

3.6.2 result in disciplinary action in the case of an officer.

4. The role of Members

4.1 Members have a number of specific roles, which are set out in detail in Part 11 of the constitution - Roles and Responsibilities of Members.

4.2 Collectively, Members are the ultimate policy-makers, determining the core values of the council and approving the council's policy framework, strategic plans and budget.

4.3 Members are community leaders representing their division and its residents and forming the link between them and the council. This includes performing a key role as a member of their local Area Board.

4.4 Some Members will have additional roles specific to their position as members of the cabinet, or members of overview and scrutiny or other committees of the council.

4.5 Some Members may be appointed to represent the council on local, regional or national bodies- see further at section 14 below.

4.6 Members must promote the highest standards of conduct and will have regard to the council's Behaviours Framework in carrying out their role.

4.7 Members act collectively as the employer of officers.

4.8 Members must seek the advice of the Monitoring Officer and the Chief Finance Officer if they have concerns about any of the following:

4.8.1 whether the council is acting outside its statutory powers,

4.8.2 maladministration, financial impropriety and probity

4.8.3 whether any decision is or is likely to be contrary to the budget and policy framework.

5. The role of officers

5.1 Members must respect the impartiality of officers. Officers are employed by the council, they are therefore accountable to the council as a whole, not to individual Members. There will, however, need to be special relationships between individual Members and individual officers and these are dealt with specifically under section 7 of this protocol.

5.2 Officers are responsible for giving professional advice to members and for implementing lawful decisions of the council.

5.3 Officers must act impartially at all times and must not allow their professional judgement and advice to be influenced by their own personal views.

5.4 Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive. Officers must be aware of the implications for the council and its Members, and for the community as a whole.

5.5 Officers must act in accordance with the Human Resources Code of Conduct and the Council's Behaviours Framework.

5.6 Officers cannot be required to, and must not undertake, work of a political nature.

6. Relationship between Members and officers – general

6.1 The relationship between Members and officers should be one of mutual trust and respect.

6.2 Close personal familiarity between individual members and officers can harm professional relationships and prove embarrassing to other Members and officers. Situations should be avoided that could give rise to the suspicion or appearance of any improper conduct, or the perception that a Member and officer treat one another differently from others due to the nature of a personal relationship between them.

6.3 Members should not raise matters relating to the conduct or capability of officers either individually or collectively at meetings held in public or in the press. Officers have no means of responding to such criticism in public. If Members feel that they have not been treated with proper respect, and courtesy or have any concern about the conduct or capability of an officer and are unable to resolve it through direct discussion with the officer they should raise the matter with the relevant Director concerned – see further at section 16 below.

6.4 Members will not publish any material which is derogatory of officers generally, or specific individuals, whether directly or through their agents or political groups.

6.5 What can Members expect from officers?

6.5.1 a commitment to the council as a whole and not to individual political groups;

6.5.2 a working partnership;

6.5.3 objective, professional advice not influenced by political views or preference;

6.5.4 integrity, support and confidentiality appropriate to the situation;

6.5.5 being kept up to date on local issues;

6.5.6 compliance with the Human Resources Code of Conduct

6.5.7 a timely response to enquiries and complaints

6.5.8 Emails and telephone calls:

- will be acknowledged within two working days of receipt, giving details of an alternative contact if the officer concerned is absent from the office;

- a substantive response will be provided within ten working days of receipt. If that is not possible an explanation will be given as to the reason for the delay, what action is being taken, and when a response will be sent.

6.6 What can officers expect from Members?

- 6.6.1 political leadership and direction;
- 6.6.2 a working partnership;
- 6.6.3 compliance with the Code of Conduct for Members and observance of the roles and responsibilities of Members as set out at Part 11 of the Constitution;
- 6.6.4 distance from day to day management of the council;
- 6.6.5 no improper influence or pressure to gain special treatment for themselves or others;
- 6.6.6 recognition of the duty to promote the health, safety and well-being of officers;
- 6.6.7 respect for the impartiality of officers.

7. Relationship between Members and officers – specific

7.1 Special relationships will exist between certain Members and officers because of their specific roles. These relationships nevertheless remain subject to the obligations set down in this protocol.

7.2 Members of the cabinet and the corporate leadership team will have a distinct and special relationship. In particular, the relationship between the Leader and the Corporate Directors will be key to the success and culture of the council.

7.3 Officers and Members must ensure that appropriate consultations are undertaken before reports are prepared for decision, either by cabinet or by individual cabinet members under delegated powers.

7.4 Within overview and scrutiny there are two aspects of the relationship between Members and officers:

- 7.4.1 the relationship between Members and officers who support the overview and scrutiny function. Members lead the scrutiny function. Officers brief scrutiny members, but the decision to pursue any particular issue rests with Members;
- 7.4.2 officers who are asked to attend scrutiny committees or task groups as a witness or special adviser should be treated with respect. They may be expected to answer questions on the professional advice given to the full council or cabinet in relation to policies and decisions but must not be expected to give a political view. The arrangements for attendance of cabinet members and senior officers to give account at overview and scrutiny meetings are contained in the overview and scrutiny procedure rules in Part 8 of the constitution.

7.5 Officers may also be asked to speak at a meeting of an Area Board. Partner organisations such as the police, health and fire, are also likely to be asked about the provision of local services. In the spirit of partnership working, it is important that both officers and the representatives of partner organisations are treated with respect, and from a community perspective it is important that the relationship between Members, officers and partners is seen to be a constructive one, with all parties working together harmoniously.

8. Support and facilities for all Members

8.1 The Democratic Services team can offer or facilitate support in the following areas:

8.1.1 Following an election, an IT induction will be arranged and equipment will be issued. Through an authorised broadband connection, Members will have the means to gain secure remote access to the Council's Network.

8.1.2 Following the Member induction programme, Members will be offered a personal development discussion which will enable them to discuss their training needs and find out about what training and development is available.

8.1.3 All Members are entitled to a basic allowance to cover the costs of being a Member. Expenses can also be claimed for travel and subsistence and should be submitted in a timely manner in accordance with the Members' Allowance Scheme. Details of allowances and expenses are set out in the Members Allowances scheme within Part 13 of the Constitution.

8.1.4 Secretariat:

- Keeping Members up-to-date with diary changes;
- Booking onto any sessions from the Member Development Programme;
- All Members' conference arrangements including booking of places, hotel reservations, train tickets and arrangements for other transport;
- Monitoring and maintaining individual Members' registered interests on the council's web-site;
- Members' briefings with key information and details of delegated decisions, links to minutes and agenda for forthcoming meetings;
- A Member's intranet page with links to committee dates, planning applications, highways works and training opportunities;
- invites to relevant training sessions and events;
- Informing Members of post for their collection at Council hubs.

8.1.5 Members will also be provided with:

- An identity badge;
- A pass card to gain entry to the main officers;
- A general retiring lounge know as 'the members room';

- Resources in accordance with the Council's digital programme;
- Car parking whilst attending official meetings.

- 8.1.6 The Democratic Services staff will, subject to resources being available, support Members in their community leadership roles. This could include:
- Assisting Members in providing a two-way link between the council and the community;
 - Supporting the representational role of Members;
 - Arranging for office facilities to be made available.

8.2 Members will arrange any surgeries they wish to hold for their residents, using libraries and area hub offices where appropriate

9. Support to specific Members

9.1 In recognition of the full-time nature of the role of Leader and Cabinet Members, PA support will be provided, to include diary management and research support in connection with cabinet business.

9.2 PA support will also be provided to the Chairman and Vice-Chairman of the Council in recognition of their civic responsibilities.

9.3 There will also be specific accommodation provided for the Leader, the Cabinet and the Chairman of the Council.

10. Support to political groups

10.1 Political groups may request private and confidential briefings on matters of policy and factual evidence which are or may become the subject of discussions by the full council or cabinet or any committee.

10.2 The request should be submitted to the relevant Corporate Director designated as the liaison officer for the political groups, who will discuss it with the appropriate officer. Attendance must be authorised by a Corporate Director.

10.3 The briefing should not extend beyond providing information and advice.

10.4 For the avoidance of doubt, group meetings cannot make decisions on behalf of the council and decisions made at such meetings are political decisions of the group and are not to be acted upon by officers. Such a briefing does not negate the need to ensure that all necessary advice and information is provided to the decision-making body when the matter is formally considered.

10.5 Requests for briefings may be declined where these are to take place in premises which are not owned or controlled by the council or where persons who are not members of the council will be present.

- 10.6 Accommodation for use by political groups will be provided together ICT facilities and resources to support the Council's digital programme. Such use must be in connection with council business.
- 10.7 Each political group will have a group room and access to a docking station for a laptop, printer, telephone and photocopying facilities for use in connection with council business
- 10.8 No dedicated support is provided to group leaders but photocopying can be provided in connection with group business at an agreed cost and correspondence/communications can be sent with official council communications.

11. Members' access to information

- 11.1 As set out in Part 11, Members fulfil many roles and have a varied range of responsibilities. To assist them with these a wide range of information is readily available to all Members through the following sources, including:

- 11.1.1 Members Elected wire – regular email;
- 11.1.2 Member briefing notes sent out on specific issues;
- 11.1.3 Email notification of agenda and delegated decisions;
- 11.1.4 Electronic subscription services for all council papers;
- 11.1.5 Electronic subscription services for all council press releases;
- 11.1.6 Parish council newsletter;
- 11.1.7 Community Area Joint Strategic Assessments providing facts and figures on the local area.

- 11.2 Officers should ensure Members are informed as appropriate on matters relating to their local division. This includes representations on local issues, where it appears the Member has not already been informed.

- 11.3 Where there are planned initiatives or changes to service provision by partners, which relate to one or a small number of electoral divisions, officers should inform the local division Member. This includes, but is not limited to, the following circumstances:

- 11.3.1 Forthcoming local consultations to be carried out by the council;
- 11.3.2 Localised issues that may be identified to be subject to scrutiny or review;
- 11.3.3 Sale of land and/or property owned by the council;
- 11.3.4 Planned demolition of property, extension or renovation;
- 11.3.5 Enforcement action: such as action taken by trading standards;
- 11.3.6 Schools being put into special measures;
- 11.3.7 Awards gained by services or facilities that are specific to a local area;
- 11.3.8 Speed restrictions and highways works;
- 11.3.9 Research or statistics on the electoral division.

- 11.4 In most cases an email is an appropriate form of communication, however in other circumstances officers should give consideration to other forms of briefing - such as face to face, online or over the phone.
- 11.5 Officers should rapidly alert local Members to urgent issues affecting local services or facilities, such as unplanned work to public buildings or roads that has not been previously programmed and notified (in such cases a phone call may be more appropriate than other forms of communication such as email). Similarly, the council may be notified at short notice by partner agencies on changes to services (such as a temporary reduction in police staffing) or on the work of statutory undertakers. It is important to inform local Members of any changes affecting their electoral division in particular as soon as realistically possible.
- 11.6 When Members are kept informed on local issues, they are far better equipped to be proactive in handling local issues and in responding to individuals or interest groups on a particular matter. It is the responsibility of each Head of Service to ensure that all relevant staff are aware of the requirement to keep local Members informed and the timely provision of such information allows members to respond appropriately and to contribute to relevant decisions. Local members must also be kept informed about matters affecting their division during the formative stages of policy development, about matters considered by committees of the Council and about any significant operational matters within their local divisions as soon as realistically practical.
- 11.7 All officers will have regard to the Area Boards and delegated decisions checklist to ensure local Members and Area Boards are involved in decisions on local services. The cabinet paper checklist also includes consultation with local Members. In ensuring Members are kept appropriately informed officers should also be mindful of Part 3 of the constitution which covers the scheme of delegation; Part 5 which covers the access to information procedure rules and the Media Relations Protocol. Awareness of this requirement will be supported through relevant training and guidance for officers.
- 11.8 Members have a right to inspect any Council document which contains material relating to any business which is to be transacted by the Council; this right applies irrespective of whether the Member is a member of the relevant Committee or sub-committee.
- 11.9 Members will be entitled to see confidential or exempt information provided that they can demonstrate to the Monitoring Officer, or their representative, that this is reasonably necessary in order to properly perform their duties as a Member. Any such information provided to a Member must only be used in connection with the proper performance of their duties. A guidance note is included at Appendix 1.

- 11.10 If Members are not receiving, or are having difficulty in obtaining, information which they feel they need or to which they are entitled to carry out their duties as Members they should contact the Monitoring Officer for advice.
- 11.11 Information given to a Member must only be used for the purpose for which it was requested. Members and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so. A Member must seek the advice of the Monitoring Officer before disclosing information given in confidence
- 11.12 Heads of Service should ensure that all their members of staff are aware of the requirements within this guidance.
- 11.13 This part of the protocol should be read in conjunction with the access to information procedure rules in Part 5 of the constitution and any guidance issued by the Monitoring Officer.

12. Media relations

- 12.1 Members are referred to the Wiltshire Council Media Relations Protocol at Protocol 7 of the constitution.

13. Use of council resources

- 13.1 Members and officers must comply with the council's policies and requirements concerning the use of its resources, including in particular its E-mail, Internet and Computer Use Policy.
- 13.2 Members must not use the council's resources improperly for political purposes (including party political purposes) and shall have regard to the local authority code of recommended practice on publicity annexed to the Media Relations Protocol. Members should seek advice from the Monitoring Officer where clarification is necessary.

14. Representation on external organisations

- 14.1 Members are referred to Protocol 3 – Guidance to Members on Outside Bodies.
- 14.2 A Member appointed to represent the council on an external organisation shall take care to establish the legal status of the appointment and the potential liabilities that may be involved before confirming acceptance. Members should seek the advice of the Monitoring Officer if they have any concerns or are unclear about the nature of such appointments.
- 14.3 Where a Member acts as a representative of the council on another body, the Member must comply with the council's Code of Conduct for Members.

15. Access to premises

- 15.1 If Members wish to visit council establishments, other than the main area hub offices, they should contact the relevant Director or head of the establishment in advance to make the necessary arrangements.

16. How to resolve issues

- 16.1 Members and officers are encouraged to work together to resolve any differences informally, by discussing any concerns at the earliest opportunity.
- 16.2 If a Member feels that they have not been treated with proper respect, courtesy or they have any concern about the conduct or capability of an officer, or that an officer has acted in breach of this protocol, they may raise the matter with the individual's relevant Director. If the matter cannot be resolved informally, any such referral will be processed in accordance with the council's employment procedures and policies. The Member and the officer will be kept informed of progress with the complaint and the action to be taken. An individual Member does not have the power to discipline any officer.
- 16.3 If an officer feels that a Member has acted in breach of this protocol, they should raise the matter with their relevant Director. The relevant Director should discuss the matter informally with the Member. If the matter is not resolved the officer may refer the issue to the Monitoring Officer and the relevant corporate director for consideration and discussion with the appropriate group leader. The officer and Member will be kept informed throughout.
- 16.4 The use of mediation may be considered at any stage as a means of resolving the matter informally.
- 16.5 If the matter cannot be resolved informally the officer may bring a complaint against the Member under the Members' Code of Conduct. The guidance for this process is found under Protocol 12.

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Part 11A

Corporate Parenting Panel

Part 11A - Corporate Parenting Panel

1. Functions

1.1 The Corporate Parenting Panel is the primary vehicle for Councillors to meet with key officers and to challenge and scrutinise the performance, quality and efficacy of Wiltshire Council's services.

1.2 The Corporate Parenting Panel will comprise up to 8 Core Members drawn from elected Councillors politically balanced and nominated by group leaders. Group leaders will ensure that they appoint substitute members to cover absences. Associate Members will include officers from the council and key partner agencies and comprise of:

- Corporate Director
- Director – Children's Operational Services
- Head of Care, Placements and EDS
- Senior Commissioning Officer – Children's Social Care (Voice and Influence)
- A Representative from the Children in Care Council
- Cabinet Member for Children's Services
- Chair of Wiltshire Fostering Association
- Conference and Reviewing Service Manager
- Designed Doctor for Looked After Children
- Virtual School Headteacher

1.3 If any of the core members are unable to attend a meeting they will send a substitute representative.

1.4 On behalf of all Councillors acting as Corporate Parents, the Corporate Parenting Panel will ensure delivery of the following seven strategic priorities:

1.4.1 Strengthen the Corporate Parenting Role and Corporate Parenting function across Wiltshire Council as a whole.

1.4.2 Continue to improve timeliness of permanency for looked after children across the range of permanency options.

1.4.3 Ensure that there is sufficient accommodation for looked after children within Wiltshire which meets the needs of those children. Prioritise placement within Wiltshire.

1.4.4 Improve care leavers journey by ensuring an enhanced offer to care leavers across all areas: education, employment and training, independent living, housing options and health.

1.4.5 Improve the educational outcomes for looked after children; closing the gap between looked after children and other children in the county.

1.4.6 Ensure that looked after children are protected from the risk of child sexual exploitation and reduce the frequency with which some looked after children and care leavers currently go missing.

1.4.7 Ensure that looked after children and care leavers have timely and easy access to mental health services.

1.5 The Panel will appoint a Chairperson on an annual basis.

1.6 To ensure that strategic oversight and critical challenge is effective, each member of board will have a lead role in relation to delivery of one strategic priority.

2. Quorum

2.1 The quorum of the Corporate Parenting Panel will be 75% (6) Councillors, 70% (7) Associate Members in attendance. Where the meeting is not quorate, the Chairperson will adjourn the meeting.

3. Frequency of meetings

3.1 The Corporate Parenting Panel will meet bi-monthly with a minimum of 5 meetings a year.

4. Reporting

4.1 The Panel would report its work through the Wiltshire Council Children's Select Committee. Following each meeting the Chairperson will send a copy of the Panel minutes to the Chairman of Children's Select Committee.

4.2 On a six-monthly basis the Panel Chairperson will prepare a report for Chairman of the Children's Select Committee, addressing progress against each of the seven strategic priorities.

4.3 In addition to this the Chairperson of the Corporate Parenting Panel will present an annual report to Full Council which will be shared with the Children's Select Committee prior to submission.

5. Terms of Reference

Corporate Parenting Panel will:

- 5.1 Make a commitment to prioritising the needs of looked after children and young people and their carers and demand that all departments within the Council prioritise the needs of this group
- 5.2 Receive reports from the Children in Care Council and act on their views
- 5.3 Provide clear strategic and political direction in relation to corporate parenting
- 5.4 Show ambition and aspirations for all looked after children and care leavers
- 5.5 Ensure that all councillors and Wiltshire Council departments are fulfilling their roles and responsibilities as corporate parents proactively. This may involve, for example, the Corporate Parenting Panel organising specific education and training events for all members to ensure they are equipped with the knowledge and skills to be corporate parents
- 5.6 Investigate on behalf of all Councillors ways in which the role of Corporate Parenting can be improved, using examples of research and effective practice from other local authorities
- 5.7 Listen to the views of children, young people and their carers to involve them in the assessment and development of services
- 5.8 Engage with children and young people who are looked after, or have left care, by inviting them to act as advisers to the Panel

- 5.9 Monitor the performance, quality and outcomes of the Council's services in relation to children and young people in public care and identify any areas for improvement
- 5.10 Scrutinise key performance indicators in relation to children and young people in the care of Wiltshire Council
- 5.11 Meet with government inspectors, where appropriate, for their input into inspections
- 5.12 Participate as members of the adoption and fostering panels
- 5.13 Agree a work plan, review progress, membership of the panel and attainment of its role and terms of reference and report to the Cabinet and Children's Services Select Committee as appropriate, and in any case to the Full Council annually.

Wiltshire Council

Licensing Committee

26 September 2018

Adoption of procedures and fees in relation to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

Summary

To inform the Committee of forthcoming changes to the way in which animal boarding establishments, dog breeding establishments, pet shops and riding establishments are licensed, and the commencement of responsibility for the licensing of the keeping of animals for exhibition.

To recommend adoption of delegation arrangements and approval of fee levels required to administer the new arrangements.

Proposal(s)

It is recommended:

That Committee notes the new powers contained within the Animal Welfare Act 2006, and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, and delegate decisions in relation to the determination of licences and enforcement action to the relevant Head of Service and/ or Licensing Manager - Public Health and Protection from the 1st October 2018.

Having considered the proposed fees table, that the committee approves the fees payable in relation to animal licensing as of 1st October 2018, these fees and charges to be reviewed in line with all fees and charges for 2019/2020

Reason for Proposal

In April 2018 the Government passed the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. This legislation amalgamated, and replaced a number of pieces of legislation that governed the licensing of animals. These regulations come into effect on 1st October 2018.

The proposals are set out to ensure the Council meets its obligations under the new regulations.

Tracy Daszkiewicz
Director Public Health and Protection

Animal Licensing

Purpose of Report

1. This report seeks to make amendments to the list of fees and charges relating to the Public Protection Service which were approved by Council in February 2018.
2. The proposed decision relates to amending fees for some animal licenses as required by new regulations “The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations” coming into effect from 1 October 2018.
3. It is also proposed that the powers and obligations contained within the Animal Welfare Act 2006, and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 be noted, and that decisions in relation to the determination of licences and enforcement action be delegated to the relevant Head of Service and/ or Licensing Manager - Public Health and Protection from the 1 October 2018.

Relevance to the Council’s Business Plan

4. “People in Wiltshire work together to solve problems locally and participate in decisions that affect them”.
- “People are protected from harm and feel safe”.

Main Considerations for the Council

5. The revisions to the approved fees and charges ensure compliance with statutory fees and guidance, and only affect a small percentage of the service’s range of fees and charges. The new fees levels are required to carry out the new arrangements.

Background

6. The fees and charges for public protection services were originally approved by full council on the 20 February 2018 as part of the budget setting process. Changes are required to a small number of those fees and charges.
7. The Council is at present responsible for the regulation of a variety of animal-related businesses, as well as the keeping of specified dangerous animals by individuals. The licence types currently issued by the Council are:

- Animal boarding establishment licences (for businesses accommodating dogs or cats – e.g. kennels, catteries, home boarders, pet day care)
 - Dog breeding establishment licences (premises used for, or in connection with, the commercial breeding of dogs)
 - Pet shop licences (any business which keeps animals with a view to selling them as pets)
 - Riding establishment licences (premises which keep horses and ponies for hire for riding, or for riding tuition – excluding livery stables)
 - Zoo licences and Dangerous Wild Animal licences are also issued by Wiltshire Council, however, these will continue to be covered by their own specific legislation
 - Performing Animals.
8. The Animal Welfare Act 2006 introduced the possibility of additional legislation, which would supersede previous provisions. Included in the Act was a new licensing power which enabled nationally set regulations to be made for any animal-related activities which had been specified in secondary legislation.
9. As a result, The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 were published earlier this year, which will significantly change the way animal related businesses are inspected and licensed from 1 October 2018.
10. Guidance on procedures was released to Local Authorities early in August 2018 – see attached **Appendix 1**, Procedural Guidance.

Forthcoming Changes

11. The Animal Welfare (Licensing of Activities Involving Animals)(England) Regulations 2018 define the animal based activities that require licences as follows:
- Selling animals as pets (or with a view to their being later resold as pets) in the course of a business including keeping animals in the course of a business with a view to their being so sold or resold.
 - Providing or arranging for the provision of accommodation for other people's cats or dogs in the course of a business on any premises where the provision of that accommodation is a purpose of the business.
 - Hiring out horses in the course of a business for either riding, instruction in riding, or both.
 - Breeding three or more litters of puppies in any 12-month period; or breeding dogs and advertising a business of selling dogs.
 - Keeping or training animals for exhibition in the course of a business for educational or entertainment purposes, either to any audience attending in person, or by the recording of visual images of them by any form of technology, or both
12. The new regulations have amended the previous licensing regime in a number of ways but the key changes are:-

- A premise can have a single licence covering a number of

licensed activities (similar to premises licences under the Licensing Act 2003).

- That a licence can last for 1 – 3 years depending upon a risk assessment produced in line with Secretary of State Guidance.
- Inspections to be carried out by a suitably qualified person.
- The new provisions contain nationally set regulations for each animal based activity, which cannot be amended and form the basis for conditions on the new licences going forward.

13. Existing licences that are issued up to 30 September 2018, will continue on until their stated expiry dates, and will then be renewed under the new regulations.

Fees

14. The Council can charge a fee for the consideration of an application for the grant, renewal, or variation of a licence. Section 13 of the regulation states: “A local authority may charge such fees as it considers necessary for—

- the consideration of an application for the grant, renewal or variation of a licence including any inspection relating to that consideration, and for the grant, renewal or variation,
- the reasonable anticipated costs of consideration of a licence holder’s compliance with these Regulations and the licence conditions to which the licence holder is subject in circumstances other than those described in sub-paragraph (a) including any inspection relating to that consideration,
- the reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator, and
- the reasonable anticipated costs of compliance with regulation 29.
- the fee charged for the consideration of an application for the grant, renewal or variation of a licence and for any inspection relating to that consideration must not exceed the reasonable costs of that consideration and related inspection.”

15. The proposed fees set out in **Appendix 2** have been set based on the guidance set out above and a reasonable estimate of the costs in undertaking the new regulations.

16. It is not possible at this stage to determine the impact that the proposed fees will have on the budget due to the complexities of the new 1-3 year licensing regime.

Inspections & Ratings

17. Inspections of the premises have previously been carried out by several officers from the Licensing Team and Dog Wardens when available. The new regime requires a ‘qualified inspector’ to carry out the inspections. In the case of the grant of a dog breeding establishment and at grant and renewal of horse riding establishments they must be accompanied by a veterinary surgeon. To qualify to inspect these premises, a person must hold a Level 3 certificate granted by a body, recognised and regulated by the Office of Qualifications and Examinations Regulations which oversees training and assessment of persons inspecting and licensing certain animal activities businesses, and must have passed an independent exam.

If an inspector is not available, then a qualified veterinary surgeon must carry out the inspection.

18. Grandfather rights for Officers with one years' experience of both Licensing and Animal inspections have been granted until Oct 2021. This means that only a number of Licensing Officers met this criteria and can carry out the inspections at 1 October and all will need to obtain the new qualification by 2021. The new regulations will have significant impact on the Licensing Service.
19. Under the new arrangements, the inspection process will be much more comprehensive, and built around providing the premises with a 'risk rating'. This process will establish whether the business is 'low risk' or 'higher risk' based on the level to which it meets the standards set out in regulations and guidance, and award between one and five stars, thus determining the length of the licence (with the exception of 'Keeping and Training Animals for Exhibition' for which all licences will be issued for 3 years as default).
20. Businesses established as higher risk will attain between one and four stars. If one or two stars are issued they will be issued a one year licence, and can expect a minimum of one unannounced visit during that period. If four stars are attained, the licence will be issued for two years, and the licence holder can expect one unannounced visit during the two year period.
21. Lower risk businesses can be issued a licence for any period between one and three years. Licence holders can expect a minimum of one unannounced visit at any time during the period specified on the licence.

Appeals

22. A person can appeal against a risk assessment score, and it is proposed that this appeal will be determined by the Licensing Manager – Public Health & Protection Service.
23. A licensee that has carried out improvements can request a re-rating visit at any time however the local authority can charge the reasonable costs that they incur in doing the revisit.
24. When considering the conditions that are placed on a licence the legislation states that the licensing authority may: suspend, vary or revoke a licence if they are satisfied that –
 - the licence conditions are not being complied with,
 - there has been a breach of the Regulations,
 - Information provided by the applicant was false or misleading,
 - it is necessary to protect the welfare of an animal.
25. Where the authority chooses to refuse to grant, varies or suspends a licence, the licence holder has 7 working days in which they can make written representations to the authority, which must be considered within 7 working days of receiving those representations

26. It is recommended these representations be heard/considered by the relevant Head of Service for Licensing due to time constraints and the Councils scheme delegation be amended accordingly.
27. **Appendix 3** contains a revised scheme of delegation for Licensing functions for approval by the Committee. This removes references to the various pieces of specific animal licensing legislation that are being repealed and replaces it with the new 2018 Regulations. These changes will need to be endorsed by Full Council in due course, when the Scheme of Delegation is next reviewed.

Advising of the Changes

28. All proprietors of establishments, whose licences expire on 31 December each year due to current legislative requirements, were previously advised of the impending changes when they were inspected at the end of 2017. At that time, the regulations had yet to be published and there was very little general information available; therefore, those licence holders were advised to access the Wiltshire Councils website where information would be posted during the coming months.
29. Once regulations were published they were placed on our website, on receipt of the guidance early August 2018, those expressing an interest have been contacted. Letters have been sent out to all existing licence holders advising them of the changes with a link to the Wiltshire Council's website and inviting them to one of the three licensing seminars we are holding early October 2018.

Safeguarding Implications

30. There are no safeguarding implications

Public Health Implications

31. There are minimal public health implications.

Environmental and Climate Change Considerations

32. There is minimal environmental impact of these proposals.

Equalities Impact of the Proposal

33. The impact of these proposals is assessed as 'low' against the Council statutory responsibilities. There are potential implications with respect to human rights.

Risk Assessment

34. Licensing is a statutory undertaking. Should the proposals in this report not be adopted it would leave Wiltshire Council in a position of being unable to effectively undertake its statutory responsibilities and functions under the Animal Welfare Act 2006.

35. Criticism of the Council and thus compromise the reputation of Wiltshire Council.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

36. There are no particular risks identified from any of the proposals.

Financial Implications

37. Failure to approve an appropriate fee for the licence that will mean that licences cannot be charged for or the fee may be challenged.

Legal Implications

38. Failure to act appropriately under the legislation will make the Council non-compliant with legislation and prevent appropriate regulatory action being taken to safeguard the welfare of animals in the Council area.
39. The Licensing Authority is a high profile regulatory service important for protecting the public and promoting animal welfare but also for ensuring the balance between development of businesses and the local communities of Wiltshire. The fair application of licensing functions is critical for the reputation of the Council and for building trust and confidence in its service provision.

Proposal

40. That Committee
 - a. notes the adoption of the powers and obligations contained within the Animal Welfare Act 2006, and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018,
 - b. delegate all decisions in relation to the determination of licences and enforcement action to relevant Head of Service and/ or Licensing Manager - Public Health and Protection from the 1st October 2018.
 - c. Recommends to Council that the Scheme of Delegation for Licensing be amended and updated to reflect these changes.
41. The Licensing Committee approves the fees payable in relation to animal licensing as of 1st October 2018, these fees and charges to be reviewed in line with all fees and charges for 2019/2020.

Reason for Proposal

42. In April 2018, the Government passed the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018. This legislation amalgamated, and replaced a number of pieces of legislation that governed the licensing of animals. These regulations come into effect on 1 October 2018.
43. The proposals are set out to ensure the Council meets its obligations under the new regulations

Tracy Daszkiewicz
Director Public Health and Protection

Report Author: Linda Holland

Licensing Manager – Public Health and Protection

linda.holland@wiltshire.gov.uk

01249 706410

26 September 2018

Background Papers

- Animal Welfare Act 2006
- The Animal Welfare (Licensing of Activities Involving Animals) England Regulations 2018
- Procedural Guidance notes for Local Authorities on the regulations
- Local Government Association: Open for business: LGA guidance on locally set licence fees

Appendix

1. Procedural Guidance notes for Local Authorities on the regulations
 2. Proposed Fees and Charges
 3. Revised scheme of delegation
-



Department
for Environment
Food & Rural Affairs

**The Animal Welfare (Licensing of Activities
Involving Animals) (England) Regulations 2018**
Procedural guidance notes for local authorities
July 2018

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Introduction and intended audience

1. This guidance is for local authorities who need to license activities involving animals and the relevant establishments. It can also be used by those who currently have a licence or wish to apply for one.
2. Local authorities, existing licence holders and anyone planning to apply for a licence should also read The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018⁽¹⁾ (the “Regulations”) to understand their obligations and duties under the new Regulations and the licences granted under these Regulations.

Definitions used in this Guidance

3. Terms used in this guidance have the same meaning as in the Regulations, unless stated otherwise.
4. For ease of reference some of the key definitions used in this guidance are set out below:

A “licensable activity” means one of five activities involving animals: selling animals as pets, providing for or arranging for the provision of boarding for cats or dogs (includes boarding in kennels or catteries, home boarding for dogs and day care for dogs), hiring out horses, dog breeding and keeping or training animals for exhibition.

An “operator” means an individual who—

- (a) carries on, attempts to carry on or knowingly allows to be carried on a licensable activity, or
- (b) where a licence has been granted or renewed, is the licence holder;

The “local authority” means—

- (a) a district council,
- (b) a London borough council,
- (c) the Common Council of the City of London (in their capacity as a local authority),
- (d) the Council of the Isles of Scilly, or
- (e) a combined authority in England established under section 103 of the Local Democracy, Economic Development and Construction Act 2009.

A “listed veterinarian” means a veterinarian who for the time being is listed as being authorised to carry out an inspection on the list of veterinarians drawn up by the Royal College of Veterinary Surgeons.

Who and what to license

5. The Regulations apply to an operator of a licensable activity in England.
6. Local authorities must make sure that the person who carries on, attempts to carry on or knowingly allows a licensable activity to be carried on, the “operator”, either does not

(1) [The Animal Welfare \(Licensing of Activities Involving Animals\) \(England\) Regulations 2018](#)

need a licence due to not meeting the requirements in the Regulations, holds a licence in accordance with the Regulations or that appropriate enforcement action is taken on unlicensed activity.

7. The licence holder must be a named person who is not disqualified from holding a licence in accordance with the requirements of regulation 11 (Persons who may not apply for a licence).
8. Responsibility for ensuring that the correct licence has been obtained and is kept up to date with the relevant local authority or authorities falls to the licence holder or prospective licence holder.
9. Where businesses operate a franchise model each establishment should have its own licence and star rating.

How long licences last

10. For the activity of “Keeping or Training Animals for Exhibition”, all licences are for three years on the basis that these activities have hitherto been subject to a simple registration system. There is no risk assessment applied to such activities.
11. For all other activities, if a **new applicant** (someone who has no compliance history with a local authority or UKAS) is successful, they will automatically be considered as high risk due to a lack of history.
12. Such operators will have the length of their licence determined by their risk rating (automatically high risk) and whether the operator is already meeting the specified higher standards of animal welfare rather than the minimum required by the licence conditions.
13. If an **existing operator** is applying for the renewal of a licence, then the length of time the licence is granted for will be determined by their risk rating and the licence length can be up to three years. Those with longer licences will receive fewer inspections because inspections tend to be on renewal, and therefore they will pay less for inspection fees as a result.
14. The risk model guidance set out in paragraph 61 onwards must be used in determining the length of licence to award.

Before you grant a new animal activity licence

15. Once a local authority receives an application for the grant or renewal of a licence it must do all of the following before granting or renewing a licence:
 - (a) You must consider whether the conduct displayed by the applicant indicates that they are a fit and proper person to carry out the licensable activity and meet their licence conditions.
 - (b) Inspect the site of the licensable activity and assess if it's likely to meet the licence conditions. You'll need to have a suitably qualified inspector present (as well as a veterinarian for the initial inspection of a dog breeding establishment, or a listed veterinarian for inspections of horse riding establishments). The inspector must prepare a report, in accordance with the requirements of regulation 10, to be submitted to the local authority following their inspection.

- (c) The inspector's report will contain information about the operator, any relevant premises, any relevant records, the condition of any animals and any other relevant matter and state whether or not the inspector considers that the licence conditions will be met.
- (d) Ensure that the appropriate fees have been paid, these can include fees for the consideration of the application, the reasonable anticipated costs of consideration of a licence holder's compliance with these Regulations, the reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator and any fees in relation to the provision of information to the secretary of state.

Suitably qualified inspectors

16. All inspectors must be suitably qualified. This is defined as:

- (a) Any person holding a Level 3 certificate granted by a body, recognised and regulated by the Office of Qualifications and Examinations Regulation which oversees the training and assessment of persons in inspecting and licensing animal activities businesses, confirming the passing of an independent examination. A person is only considered to be qualified to inspect a particular type of activity if their certificate applies to that activity. Or;
- (b) Any person holding a formal veterinary qualification, as recognised by the Royal College of Veterinary Surgeons ("RCVS"), together with a relevant RCVS continuing professional development record;
- (c) Until October 2021, any person that can show evidence of at least one year of experience in licensing and inspecting animal activities businesses.

Deciding on a licence application

17. You must consider the inspectors' report and any comments or conduct made by the applicant when deciding whether or not to approve a new licence application.

18. You must refuse to grant a licence if you:

- (a) Think the applicant is not capable of meeting their licence conditions.
- (b) Think that granting a licence might negatively affect the welfare, health or safety of the animals involved in the activity.
- (c) You can refuse to grant a licence if the accommodation, staffing or management are inadequate for the animals' well-being or for the activity or establishment to be run properly. The relevant guidance documents for the activity will explain in detail the requirements and conditions that must be met so you should have regard to these documents.
- (d) You can also refuse to grant a licence if the applicant has been disqualified from holding a licence as per Schedule 8 of the Regulations.

Granting a licence

19. The application form must be completed by the applicant for each of the licensable activities being applied for and sent to the relevant local authority along with payment

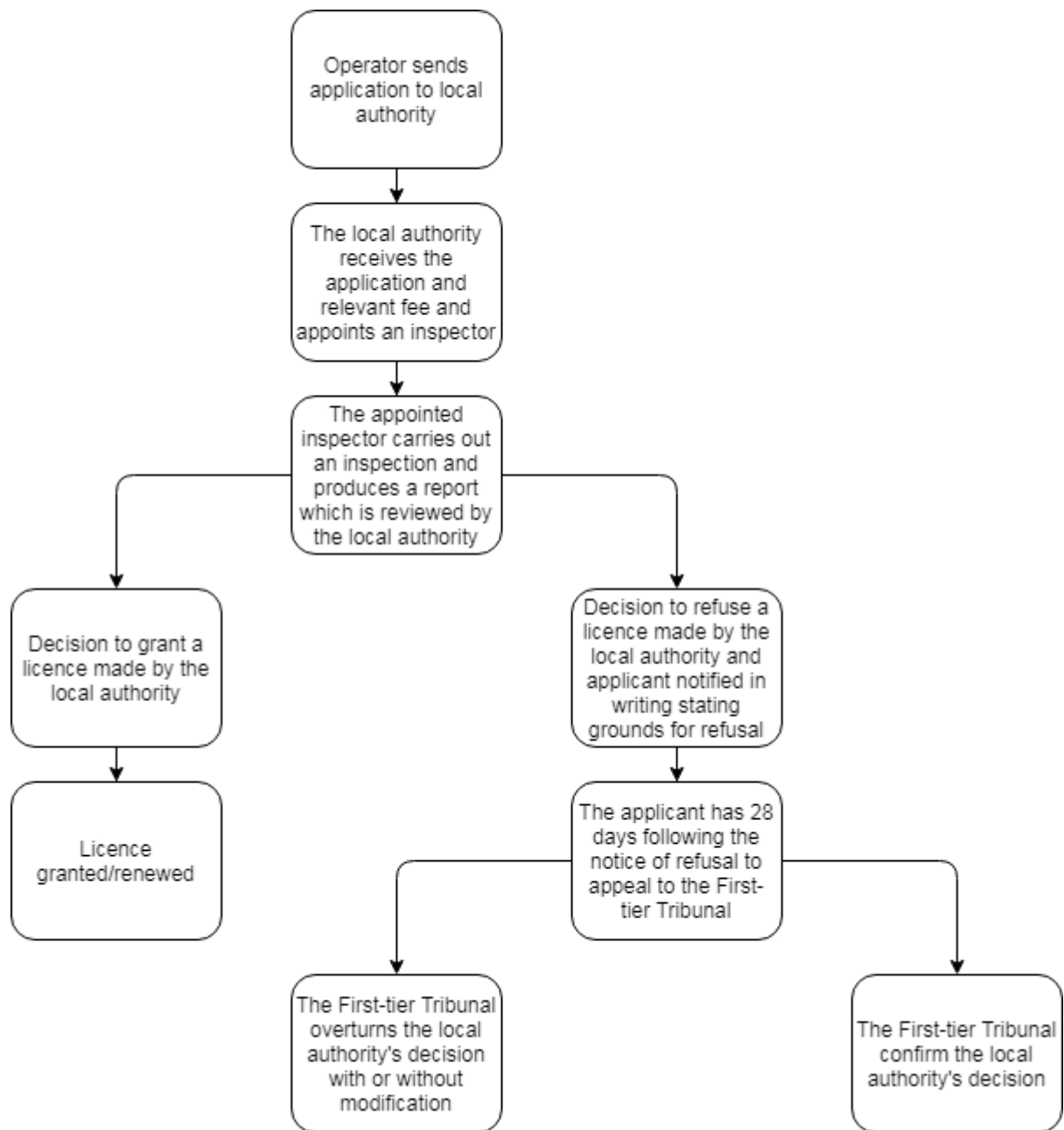
for the application fee. The relevant local authority will be the one in which the premises at which the majority of the licensable activities take place.

20. You should aim to issue a decision on an application within 10 weeks of receiving it. It is possible that the process may take longer, for example if further information is required from the applicant or if it proves difficult to make the arrangements for the inspection.

Renewing a licence

21. Local authorities should advise each licence holder in writing 3 months before their licence expires that they will need to renew it.
22. The licence holder must apply for a renewed licence at least 10 weeks before their current licence expires if they wish to continue to operate the licensable activity without a break.
23. Local authorities must carry out an inspection of the premises before renewing the licence. The form of the inspection will depend on the licensable activity in question.
24. Consider the inspection report (and any response from the applicant) when deciding whether to renew the licence or not.

Figure 1 Application flowchart



Suspension, variation or revocation of a licence

25. A local authority may at any time vary a licence:
- (a) On the application in writing of the licence holder, or
 - (b) On your own initiative, with the consent in writing of the licence holder.
 - (c) In addition to the above a local authority may suspend, vary or revoke a licence without the consent of the licence holder if:
 - i. The licence conditions are not being complied with,
 - ii. There has been a breach of the Regulations,
 - iii. Information supplied by the licence holder is false or misleading, or
 - iv. It is necessary to protect the welfare of an animal.
26. Such a suspension, variation or revocation of a licence will normally take effect 7 working days after the decision has been issued to the licence holder unless the reason is to protect the welfare of an animal in which case you may stipulate that the decision has immediate effect.
27. The decision to vary or suspend the licence must be notified to the licence holder in writing, explain the reasoning for the decision, and provide information regarding when the suspension, variation or revocation comes into effect and the rights of the licence holder, as well as any specific changes that you deem necessary in order to remedy the situation.
28. The decision to vary or suspend a licence should be dependent on the severity of the situation, if an operator fails to meet administrative conditions or provide information when requested then this could potentially lead to the suspension of a licence if it happens repeatedly. Revocation of a licence should occur in an instance where poor welfare conditions are discovered or it would otherwise benefit the welfare of the animals involved to be removed from the activity. Variations can occur if adjustments need to be made, whether that is to the licence itself or to the premises/animals referred to in the licence.
29. Under paragraph 16(2) of the Regulations if it is necessary to protect the welfare of an animal the local authority may specify in the notice of suspension, variation or revocation that it takes immediate effect.
30. A local authority notice must be delivered in one of three ways, in person; by leaving it at or sending it by post to the person's current or last known postal address; or by emailing it to the person's current or last known email address.
31. Following the issuing of the notice the licence holder will then have 7 working days to make written representation. Upon receipt of this you must decide whether to continue with the suspension, variation or revocation of the licence or cancel the decision to make changes to the licence. If the licence has been altered to protect the welfare of an animal then you must indicate that this is the reason and whether the change is still in effect.
32. The business will not be able to trade once the suspension of a licence has come into effect and cannot do so until the decision is overturned by either the local authority

upon being satisfied that licence conditions are being met or by the First-tier Tribunal who may decide the local authority's decision was incorrect.

33. If a licence is suspended for a significant period of time then the local authority should ensure that the animals are checked on regularly to ensure that the welfare of the animals is maintained.
34. As with applications the licence holder may appeal to a First-tier Tribunal if they do not agree with the decision made by the local authority. This must be done within 28 days of the decision.
35. Note that if representation is not responded to within 7 working days of receipt then the initial decision the local authority made is deemed to be overturned, this is also the case if a licence which is initially suspended has no further action taken on it within 28 days.

Figure 2: Suspension or variation of a licence

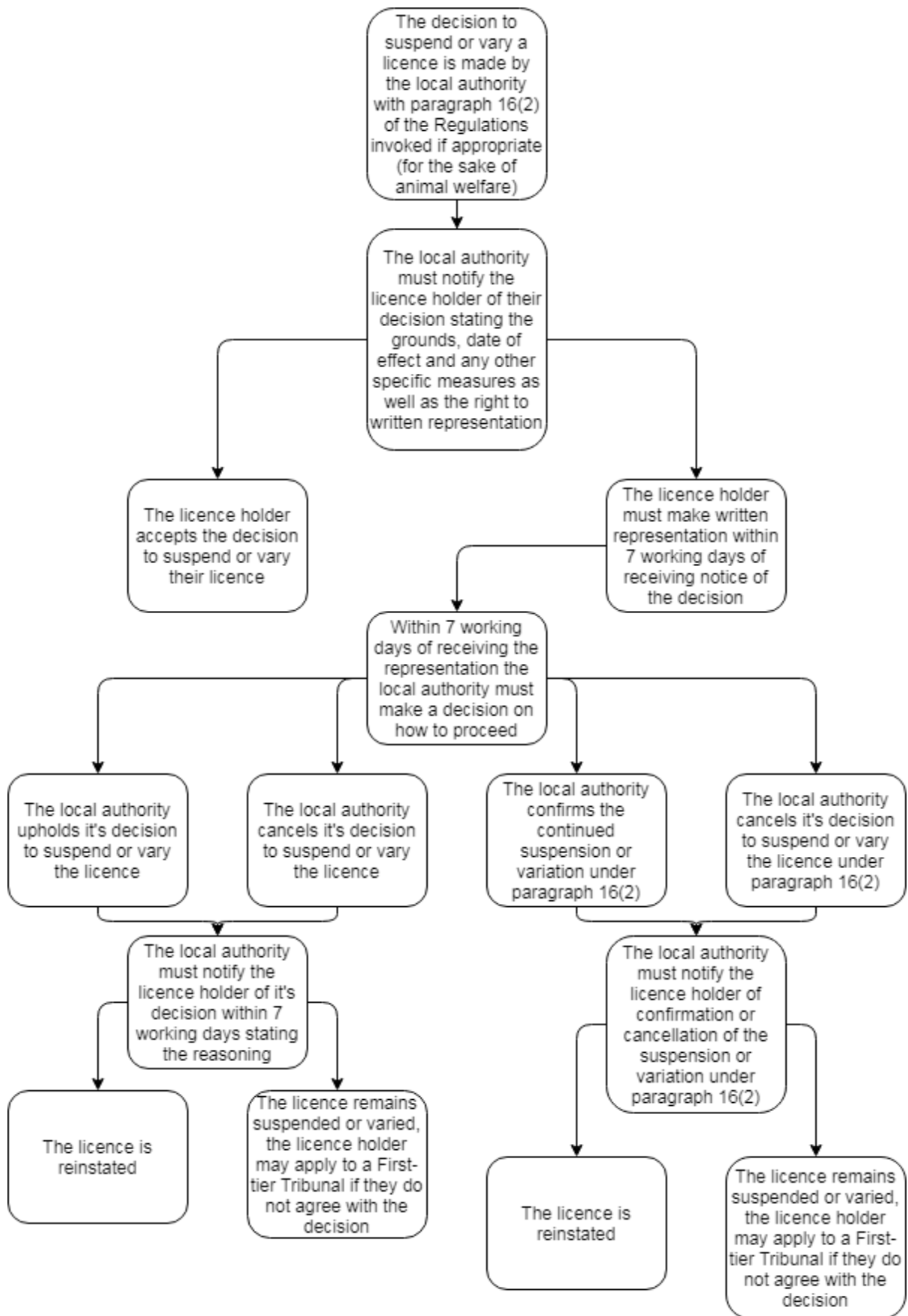
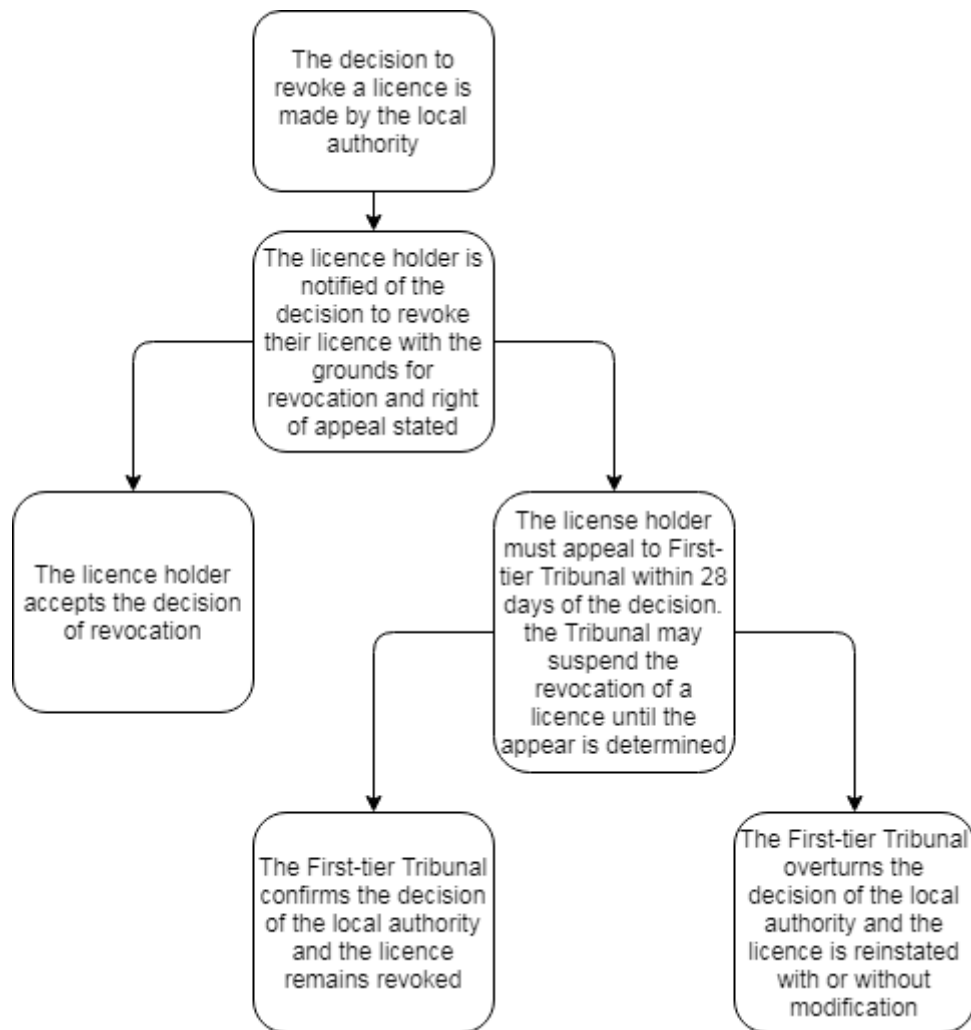


Figure 1 - Revocation of a licence



Provision of information to the Secretary of State

36. Each local authority must provide the following information to the Secretary of State in writing:
- (a) the number of licences in force for each licensable activity in its area on each reference date (1st April each year), and
 - (b) the average level of fees it has charged for licences it has granted or renewed for each licensable activity in each reference period.
37. These must be provided in an electronic form no later than 31st May each year from 2019 onwards.
38. The reference period means the period beginning with 1st October 2018 and ending with 31st March 2019, the year beginning with 1st April 2019 and each subsequent year beginning with an anniversary of 1st April 2019.
39. In addition to the information above which must be provided each year Defra may also contact you to request further information such as the average star rating given out for each establishment type or other pieces of information which could be useful for informing policy or the progress on implementation, it is not a requirement of the Regulations to provide this information however.

Inspections during the term of a licence

40. There will be cases where inspections must be carried out during the term of a licence.
41. For the activity of hiring out horses, there is a requirement for an annual inspection by a listed veterinarian, regardless of the total length of the licence. The local authority must appoint a listed veterinarian to inspect the premises on which the activity is being carried on before the end of the first year after the licence is granted and then each subsequent year.
42. Unannounced inspections can also be carried out and should be used in the case of complaints or other information that suggests licence conditions are not being complied with or that the welfare of the animals involved in a licensed activity is at risk.
43. During the course of an inspection the inspector may choose to take samples for laboratory testing from the animals on the premises occupied by an operator. The operator must comply with any reasonable request of an inspector to facilitate the identification, examination and sampling of an animal including ensuring that suitable restraints are provided if requested.

Death of a licence holder

44. If a licence holder dies, the procedure in regulation 12 of the Regulations applies. It allows the personal representative of the deceased to take on the licence provided that they inform the local authority within twenty-eight days of the death that they are now the operators of the licensable activity. The licence will then remain in place for three months from the death of the former holder or for the rest of the time it was due to

remain in force if that time period is shorter. The new licence holder should then apply for a new licence one month before the expiry of this new period.

45. Additionally a local authority can extend the three month period by up to another three months if requested by the representative and if they believe this time is needed to wind up the estate of the former licence holder.
46. If the personal representative does not notify the local authority within 28 days of the death of the licence holder the licence will cease to have effect after those 28 days.

Powers of entry

47. An inspector may not enter any part of premises which is used as a private dwelling unless 24 hours' notice of the intended entry is given to the occupier, parts of the premises which are not a private dwelling may be entered by an inspector if the premises is specified in a licence as premises on which the carrying on of an activity is authorised or is a premises on which he reasonably believes an activity to which a licence relates is being carried on.
48. A justice of the peace can issue a warrant authorising an inspector or a constable to enter a premises on the request of an inspector or constable using reasonable force if necessary in order to search for evidence of the commission of a relevant offence.
49. The justice will only issue a warrant if there are reasonable grounds for believing that a relevant offence has been committed on the premises, or that evidence of the commission of a relevant offence is to be found on the premises, and that section 52 of the Animal Welfare Act 2006 is satisfied in relation to the premises.
50. All other considerations from the Animal Welfare Act 2006 also apply.

Offences

51. It is an offence to breach any licence condition. It is also an offence not to comply with an inspector's request in the process of taking a sample from an animal. Samples should be as non-invasive as possible however inspectors may deem more invasive samples necessary if there are concerns over the welfare of the animals, the provision for sampling is primarily aimed at veterinarians carrying out inspections and it is not expected that samples be taken by those without the training to properly and safely do so.
52. It is also an offence to obstruct an inspector who has been appointed by a local authority to enforce the Regulations. Committing either of these offences could result in an unlimited fine.
53. Anyone who carries on any of the licensable activities without a licence is liable to imprisonment for a term of up to six months, a fine or both, section 30 of the Animal Welfare Act 2006 allows for local authorities to prosecute for any offences under that Act.

Post-conviction powers

54. The post-conviction power from section 34 of the Animal Welfare Act 2006 is in place whereby a person convicted of an offence under the Act is disqualified from owning, keeping, participating in the keeping of animals and from being party to an

arrangement under which they can control or influence the way an animal is kept, they are also may not transport or deal in animals. Breaching these disqualifications is an offence.

55. The post-conviction power from section 42 of the Animal Welfare Act is also in place whereby a court can cancel a currently existing licence and disqualify a person from owning a licence for any period it sees fit if that person is convicted of an offence under the Act.

Transitional provisions

56. Any unexpired licences granted under the Pet Animals Act 1951, Animal Boarding Establishments Act 1963, Riding Establishments Act 1964, Riding Establishments Act 1970 will continue in force for the rest of their terms under the relevant Act.

57. An unexpired licence granted under the Breeding of Dogs Act 1973 will continue in force for the rest of its term subject to the provisions of that Act, the Breeding of Dogs (Licensing Records) Regulations 1999, the Breeding and Sale of Dogs (Welfare) Act 1999 and the Breeding and Sale of Dogs (Welfare) Act 1999.

58. Any registration of a person under the Performing Animals (Regulation) Act 1925 will continue in force, for six months from the date on which these Regulations come into force. These Regulations come into force on 1 October 2018 so this registration will expire on 1 April 2019.

Fee setting

59. When setting fees, local authorities should have regard to Open for business: LGA guidance on locally set licence fees², which sets out the steps that must be taken to set fair and reasonable fees, and explains the EU Services Directive upon which the LGA guidance is based. Local authorities should also have regard to the BEIS Guidance for Business on the Provision of Services Regulations. As with other areas of licensing, regard should also be had to the principles in the Regulators' Code. "Reasonable anticipated costs" will be fact specific and dependent on the local authority in question. The "Open for business: LGA guidance on locally set licence fees" guidance includes information on what could be considered reasonable.

Activities covered by the licensing fees

60. Regulation 13 of the Regulations set out what a local authority may charge fees for:

- (a) The costs of consideration of an application, including any inspection relating to that consideration;
- (b) The reasonable anticipated costs of consideration of a licence holder's compliance with the Regulations and the licence conditions to which a licence holder is subject. This includes the costs of any further inspections related to compliance;
- (c) The reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator; and

² <https://www.local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>

(d) The reasonable anticipated costs of the local authority compiling and submitting the data required by regulation 29 to the Secretary of State.

Determining the length of a licence and the star rating of a business:

Assessing risk & standards

61. This guidance describes the risk-based system that must be used when issuing animal activities licences under the Regulations with the exception of “Keeping or Training Animals for Exhibition” where all licences are issued for 3 years. This system should be used to determine both the length of the licence and the star rating to award. Local authorities in England are expected to follow it in full.
62. The purpose is to ensure consistency in implementation and operation of the licensing system by local authorities, and to ensure that consumers can be confident that the star rating applied to businesses is an accurate reflection of both their risk level and the animal welfare standards that they adopt.

Animals activity star rating system

63. The scoring matrix for a premises is displayed in Table 1.

Table 1 – The Scoring Matrix

Scoring Matrix		Welfare Standards		
		Minor Failings (existing business that are failing to meet minimum standards)	Minimum Standards (as laid down in the schedules and guidance)	Higher Standards (as laid down in the guidance)
Risk	Low Risk	1 Star 1yr licence Min 1 unannounced visit within 12 month period	3 Star 2yr licence Min 1 unannounced visit within 24 month period	5 Star 3yr licence Min 1 unannounced visit within 36 month period
	Higher Risk	1 Star 1yr licence Min 1 unannounced visit within 12 month period	2 Star 1yr licence Min 1 unannounced visit within 12 month period	4 Star 2yr licence Min 1 unannounced visit within 24 month period

64. The model takes into account both the animal welfare standards adopted by a business as well as their level of risk (based on elements such as past compliance). This model should be used every time a licence is granted or renewed.
65. Businesses must be given a star rating, ranging from 1 star to 5 stars, based on this model, and the results of their inspection. This star rating must be listed on the licence by the issuing local authority officer. The system incorporates safeguards to ensure fairness to businesses. This includes an appeal procedure and a mechanism for requesting a re-inspection for the purposes of re-rating when improvements have been made.
66. In order to use this model to calculate the length of the licence and associated star rating, it is necessary to address the following questions, based on the inspection and on records of past compliance:
- (a) Does the business meet the minimum standards?
 - (b) Does the business meet the higher standards?
 - (c) Is the business low or higher risk?

Does the business meet the minimum standards?

67. To obtain a licence for a single activity i.e. dog breeding, the applicant must meet the minimum standards set out in the specific Schedules to the Regulations (i.e. for Dog Breeding, Schedule 6) in addition to those in the General Schedule (Schedule 2). All businesses should meet the minimum standards but see paragraph 69 below for minor failings.
68. Additional information on how to meet these standards for each activity are outlined in the relevant specific guidance documents. During an inspection, the inspector should assess whether or not the business is meeting each of these minimum standards. If this is the case, they will qualify for a minimum of a two star rating (but subject to paragraph 69 below for minor failings).

Minor failings

69. If an existing business has a number of minor failings with regards to the minimum standards laid down in the schedules and the guidance, they should receive a risk rating score of 1 star. These minor failings should be predominantly administrative or if they are in relation to standards, they must not compromise the welfare of the animals. If animal welfare is being compromised, a licence should not be granted/renewed or, if already in place, should be suspended or revoked.

Does the business meet the higher standards?

70. For each activity, a number of higher standards have been agreed. Meeting the higher standards is optional but is the only way to gain a higher star rating. The higher standards are classified in to two types: **required** and **optional** and are outlined in the relevant guidance documents for the activity in question. To distinguish required standards from optional ones they have each been given a specific colour which is used in each guidance document. **Higher standards that appear in blue text are required**, whereas **those that appear in red text are optional**. To qualify as meeting the higher standards, the business needs to achieve all of the required higher standards as well as a minimum of 50% of the optional higher standards. During an

inspection, the inspector should assess whether or not the business meets the required number of higher standards.

71. Where a scheme utilising UKAS accredited certification is operational, it will be operated against either the minimum or higher standards as set out in the certification scheme criteria and as agreed with UKAS as part of the accreditation process. If a business is certified by a UKAS-accredited certification body to the higher standards, they should automatically be considered as meeting these standards, unless there is significant evidence of poor animal welfare or non-compliance is identified during the inspection.

Is the business low or high risk?

72. Table 2 Risk Scoring Table below should be used to determine if a business that is not certified by a UKAS accredited body is low or higher risk.
73. The risk assessment is not meant to reconsider specific issues taken into account in assessment of compliance with the minimum or higher standards. It does, however, require an assessment on the likelihood of satisfactory compliance being maintained in the future.
74. In considering risk, “management” covers the system as a whole. For a multi-site business, the company wide management system and procedures are a key element of this but local site / premises management is also important as that will influence how these systems and procedures are applied
75. Assessments of the written procedures should be based on the principle of proportionality, i.e. commensurate with the nature and size of the business. For small businesses which present lower risks, it may be sufficient that the business has in place good welfare practices and understands and applies them, i.e. it meets its prerequisites.

Certification by a UKAS-accredited body

76. Any business that is certified by a UKAS-accredited body and has three or more years of compliance history with this body should be considered low risk and receive the higher star ratings (unless there is significant evidence of poor animal welfare or non-compliance) as the welfare and risk management systems have been reviewed by an accredited third party.
77. New businesses that do not have three years of compliance history with a local authority or a UKAS-accredited body should automatically be considered high risk as they have no operational history.
78. If concerns are raised at the inspection indicating that the certified business may not be operating to the high standards or controlling risks appropriately, the inspector will address these in line with the guidance on procedural issues and the risk rating score adjusted accordingly. In addition these concerns should be reported directly to the UKAS-accredited body so that they can also intervene and / or suspend or withdraw the business’s certification.
79. Where businesses are certified by a UKAS-accredited body, that body can inform the relevant local authority with a list of the certified businesses in their area. Where notified, and where covered by confidentiality waivers, the local authority may request the UKAS-accredited body’s inspection reports and can use that information to inform

its own inspection including using the UKAS-accredited body's assessment of compliance.

80. For existing licensed businesses that are not certified by a UKAS-accredited body that are applying for a licence renewal, the following risk management table (Table 2) should be used to generate a risk score for the business. Each element should be reviewed and a score given (1 for low risk and 2 for high risk). An overall score can then be arrived at.
81. Where there is any uncertainty, if a business cannot provide satisfactory evidence that it is low risk in a given category, it should be scored as high risk.
82. A score of 17 or less is required for the business to be classed as low risk and a score of 18 or more means that the business will be classed as higher risk.

Table 2 – Risk Scoring Table

	Low (Score 1)	High (Score 2)	Score
Compliance History - inspections	Documented evidence from formal inspections over the previous three years reveal consistent and high levels of compliance in terms of welfare standards and risk management.	Formal inspections over the previous three years reveal some degree of non-compliance that has required the intervention of the inspector for the business to ultimately recognise and address these. More serious breaches would attract other enforcement action: suspension, revocation, prosecution.	
Compliance History – follow up action	No evidence of follow-up action by local authority in the last year apart from providing the licence holder with a copy of the inspection report, or sending them a letter identifying some minor, administrative areas for improvement (e.g. minor record keeping issues).	Follow up action by the local authority, such as sending them letters, triggered by low level non-compliance that is not addressed, or the business does not recognise the significance of the need to address the non-compliance.	
Compliance History – re-inspection	No re-inspection necessary (apart from standard unannounced inspection) before next planned licence inspection / renewal	Re-inspection necessary to ensure compliance.	

	Low (Score1)	High (Score 2)	Score
Complaint History – complaints to the LA	No complaints received direct to the LA that are justified in relation to welfare standards or procedural issues during the previous three years.	Low level substantiated complaints identifying concerns over the business / licence holder have been received within the previous three years.	
Complaint History – complaints to the business	Licence holder records and documents any feedback received directly, in order to demonstrate compliance and willingness to address issues, and can provide evidence of this.	Licence holder does not record feedback received directly or show willingness to address any issues identified.	
Appreciation of welfare standards - enrichment	Sound understanding by the licence holder of relevant environmental enrichment applicable to the activity (guided by expert advice), with demonstrated implementation.	Little environmental enrichment present, inconsistently used and its importance not understood or really valued.	
Appreciation of hazards / risks	Licence holder clearly understands their role and responsibilities under the legislation. Hazards to both staff and animals clearly understood, properly controlled and reviewed with supporting evidence where applicable.	Licence holder not fully engaged with their role/responsibilities, lacks time to fulfil role, no system for review and reassessment of hazards to both animals and staff.	
Appreciation of hazards / risks - maintenance	A suitably planned maintenance, repair and replacement program for infrastructure and equipment is in place.	No planned maintenance program. Building, installations and equipment allowed to deteriorate before action is implemented.	
Appreciation of hazards / risks – knowledge and experience	Staff have specialist and appropriate knowledge of the taxa / species that are kept. There is sufficient staff, time and resource for daily, adequate routine monitoring, evidenced through records and staff rotas.	Key staff lack experience / knowledge of the species. Staff appear overburdened and / or unsupported by management, corners being cut.	

	Low (Score1)	High (Score 2)	Score
Appreciation of hazards / risks – dealing with issues	Clear defined roles / responsibilities of staff, with clear processes for reporting and addressing any identified issues.	Lack of any process, or ownership and responsibility within the business to identify and deal with issues.	
Welfare management procedures – written procedures	Written procedures / policies clearly documented, implemented and reviewed appropriately.	Limited written procedures / policies. No overall strategic control or direction.	
Welfare management procedures – supervision of staff	Appropriate supervision of staff evident where applicable.	Inadequate supervision of staff evident on inspection or from the training records.	
Welfare management procedures – record keeping	All required records maintained and made available.	Poor standard of record keeping, records out of date or appear to be being manufactured – relevance of records not appreciated.	
Welfare management procedures - training	Planned training programme for staff to review and assess competency, with documented training records.	Little or no evidence of relevant training or system for review and reassessment.	
Total Score of 17 or less = Low risk Score of 18 or more = Higher risk.			
Risk Rating			

Frequently asked questions

The process of providing a risk rating

Q1. When should businesses be rated?

83. Businesses should be rated following an inspection that takes place prior to grant/renewal of the licence or a requested re-inspection. Businesses may also be re-rated following an unannounced or additional inspection (e.g. following a complaint), if major issues are highlighted that require follow up action.

Q2. When should new businesses be rated?

84. New businesses should be rated following their initial inspection.

Q3. Where businesses have a licence for multiple activities within the scope of the regulations, should each activity be rated separately?

85. The licence holder should receive only one rating, which must cover all the activities. Where they are meeting different standards for different activities (e.g. meeting the higher standards for dog breeding, but the minimum standards for dog boarding), the overall score should reflect the lower of the two.

Q4. What information should the local authority provide with the star rating following the inspection at which a rating was determined?

86. The following information should be provided in writing:

- (a) The star rating itself.
- (b) Details of why the business was rated as it was. This should include a list of the higher standards that the business is currently failing to meet, or a list of the minimum standards that the business is failing to meet if it is considered to be in the minor failing category. This should also include a copy of the risk management table showing the scores under each point. Details recorded must be sufficient to support the score given for each element to facilitate internal monitoring or enable review where an appeal is made.
- (c) Details of the appeals process and the deadline by which an appeal must be made.

The appeals process

87. To ensure fairness to businesses, local authorities must have an appeal procedure in place for businesses to dispute the star rating given in respect of their business. The appeal procedure is relevant where the business wishes to dispute the star rating given as not reflecting the animal welfare standards and risk level of their business at the time of the inspection. This should not be used if the business has made improvements to their business and wishes to be reassessed – in this case, they should apply for re-inspection

Q5. How can a business appeal their star rating?

88. If a business wishes to appeal the star rating given by the 'inspecting officer' (i.e. the officer undertaking the inspection) on behalf of the local authority, the appeal should be made in writing (including by email) to the local authority.

89. A business disputing a rating should be encouraged to discuss this informally first with the 'inspecting officer' so that there is an opportunity to help explain to the business

how the rating was worked out, as this may help resolve the matter without the business having to lodge an appeal. Any such discussions do not form part of the formal appeal process and do not change the deadline within which an appeal must be lodged. This should be made clear to the business so that they may lodge an appeal, and may subsequently withdraw it, if they wish.

90. Businesses have 21 days (including weekends and bank holidays) following the issue of their licence in which to appeal the star rating.

Q6. How will a local authority determine the outcome of the appeal?

91. The appeal should be determined either by the head of the department that issued the licence within the local authority, or by a designated deputy, or by the equivalent in another authority. No officer involved in the production of the rating, or in the inspection on which the rating is based should consider the appeal.
92. The local authority then has 21 days (including weekends and bank holidays) from the date they receive the appeal to consider the appeal, within which time they must issue a decision to the business.
93. A local authority will determine the outcome of an appeal by considering the paperwork associated with the inspection and the past record of the business. In some circumstances, a further visit to the establishment may be required. The appeal process should be transparent. The costs of any additional inspections related to the appeal will be borne by the applicant unless it results in a higher rating being awarded. This will depend on the nature of the dispute and whether a decision can or cannot be made on the basis of the paperwork.

Q7. What if the business disagrees with the outcome of the appeal?

94. If the business disagrees with the outcome of the appeal, they can challenge the local authority's decision by means of judicial review. The business also has recourse to the local authority complaints procedure (including taking the matter to the Local Government Ombudsman where appropriate) if they consider that a council service has not been properly delivered

Requests for re-inspections for re-rating purposes

95. To ensure fairness to businesses, local authorities must have a procedure in place for undertaking re-inspections at the request of the business for re-assessing their star rating.
96. The re-inspection mechanism applies in cases where businesses with ratings of '1' to '4' have accepted their rating and have subsequently made the necessary improvements to address non-compliances identified during the local authority's previous inspection. Businesses should be aware that re-inspection for re-rating purposes could lead to a lower rating being awarded rather than an increase in rating.

Q7. Who pays for a re-inspection visit?

97. Re-inspection falls under full cost recovery, and so the business will be required to pay for the costs of the inspection.

Q8. When is the inspection carried out?

98. The re-inspection should be carried out within three months of receipt of the request. Where an inspection does not occur within the three months, the business can raise the issue with the head of the licensing department within the local authority. If the

matter cannot be resolved, the business has recourse to the local authority complaints procedure.

Q9. How many re-inspections can a business request?

99. There is no limit to the number of re-inspection visits a business can request, however, there will be a fee for each visit charged at full cost recovery.

Q10. How should a business request a re-inspection?

100. The request should be made in writing (including by email) and should outline the case for a re-inspection, i.e. it should indicate the actions that have been taken by the business to improve the level of compliance or welfare since the inspection and, where appropriate, should include supporting evidence. The supporting case should refer to those actions that the local authority informed the business would need to be made in order to achieve a higher rating.

Q11. Must the local authority accede to all requests for re-inspections?

101. No. If the case made by the business is not substantiated or insufficient evidence is provided, the local authority can refuse to undertake a re-inspection on that basis. In doing so, the local authority must explain why the request is being refused at this stage and should re-emphasise the priority actions that must be taken in order to improve the rating and indicate what evidence will be required for agreement to a re-inspection to be made on further request. If the business disagrees with the local authority's decision to refuse a request for a re-inspection, they can raise the issue with the head of the licensing department within the local authority. If the matter cannot be resolved, the business has recourse to the local authority complaints procedure.

Q12. Where there is a supporting case, must a re-inspection be made or can a new rating be given on the basis of documentary evidence?

102. A re-inspection must be made. A new rating must not be given on the basis of documentary evidence only.

Q13. Where a re-inspection is to be undertaken, should this be unannounced?

103. This will depend on the reason for the re-inspection. This can be by appointment, unless an unannounced visit is necessary to ensure that compliance is checked properly (e.g. if the non-compliance was related to cleanliness standards).

Q14. If standards have not improved or have deteriorated at the time of the re-inspection, should a lower rating be given?

104. At the time of the re-inspection, the local authority officer should not only check that the required improvements have been made, but should also assess the ongoing standards. This means that the rating could go up, down or remain the same, change in licence length should be handled using the varying process described in paragraphs 25-35.

Q15. Should the ratings be published?

105. The star rating must be added to the licence and the licence should be displayed by the business. In addition, we encourage local authorities to maintain a list of licensed businesses and their associated ratings on their websites.



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Any enquiries regarding this publication should be sent to us at:

animal.welfare@defra.gsi.gov.uk

Licensable Activity		Application fee/Renewals	Additional Costs	Grant Fee		
				1 yr	2yr	3yr
Animal Boarding: to include Home Boarding Day Care Catteries Kennels	Up to 10 animals	£125		£180	£230	£280
	11 to 30 animals	£155		£230	£305	£380
	31 to 60 animals	£185				
	61 to 99 animals	£210				
	100+ animals	£255				
Dog Breeding	1 – 5 Bitches	£125	Vets fees on inspections on application and throughout duration of licence			
	6 – 10 Bitches	£155				
	11 Plus Bitches	£175				
Hiring of Horses	1 – 20 Horses	£125	Vets fees on inspections on application and throughout duration of licence	£125	£175	£225
	20 + Horses	£155				
Selling Animals as Pets		£155		£230	£305	£380
Exhibiting Animals		£125				£225
Combination of licensable activity		Reduce by 50% of the lowest application fee	Vets fees where required	Reduce by 50% of the lowest Grant fee		
Variation of licence		£50	£75 for inspection if required or Vets fees where required			
Re-evaluation of rating		£50	£75 Inspection fee	£25		
Transfer due to death		£50				

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Appendix 3

Scheme of Delegation (Licensing Committee 26 September 2018)

Specific to Licensing

Licensing Act 2003

Table of delegations of licensing functions

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Application for personal licence with unspent convictions		If a police objection	If no objection made
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made or if representation made and all parties subsequently agree on a revised application.
Application for provisional statement		If a relevant representation made	If no relevant representation made or if representation made and all parties subsequently agree on a revised application
Application to vary premises licence/club registration certificate		If a relevant representation made	If no relevant representation made or if representation made and all parties subsequently agree on a revised application
Application to vary designated personal licence holder		If a police objection	All other cases
Request to be removed as designated personal licence holder			All cases
Application for transfer of a premises licence		If a police objection	All other cases
Application for interim authorities		If a police objection	All other cases

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Application to review premises licence / club premises registration		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc.			All cases
Decision to object when local authority is a consultee and not the lead authority		All cases	
Determination of a police representation to a temporary event notices		All cases	
Determination of an Environmental Health representation to a temporary event notice		All cases	
Determination of application to vary premises license at Community premises to include alternative license conditions		If police object	All other cases
Decision whether to consult other responsible authorities on minor variation applications.			All cases
Determination of minor variation application			All cases
Decision to suspend club premises certificate or premises licence for non-payment of annual fee.			All cases
Making a representation on behalf of the Licensing Authority			Licensing Manager and Senior Licensing officers
Initiating a review on behalf of the Licensing Authority			Licensing Manager and Senior Licensing Officers
Determination of Minor Variations			All cases

Gambling Act 2005

Table of Delegations of Licensing Functions

Matter to be dealt with	Full Council	Licensing Committee or Sub-Committee	Officers
Three year licensing policy	X		
Policy not to permit casinos	X		
Fee setting - when appropriate	X		
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Commission	Where no representations received from the commission
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Review of a premises licence		X	
Application for club gaming/club machine permits		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Cancellation of club gaming/club machine permits		X	
Applications for other permits			X

Matter to be dealt with	Full Council	Licensing Committee or Sub-Committee	Officers (Public Protection Licensing Manager)
Cancellation of licensed premises gaming machine permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	
Determination as to whether a person is an interested party			X
Determination as to whether representations are relevant			X
Determination as to whether a representation is frivolous, vexatious or repetitive			X

Table of Delegated Functions - Miscellaneous

Matter to be dealt with	Full Committee	Sub – Committee	Officers
Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 (as required by the sex establishments policy)	The Licensing Committee or Sub Committee will determine any new application or existing application where objections have been received	The Licensing Committee or Sub Committee will determine any application	To determine renewals where no objections have been
Schedule 4 Local Government (Miscellaneous Provisions) Act 1982 (Consent street trading)	The Licensing Committee or Sub Committee will determine applications where refusal has been recommended by officers, and subsequent representations have been received from the applicant	The Licensing Committee or Sub Committee will determine applications where refusal has been recommended by officers, and subsequent representations have been received from the applicant	In all other cases
<p>Powers to suspend/revoke or refuse to renew licenses under the following legislation: Town Police Clauses Act 1847 as amended Section 50</p> <p>Local Government (Miscellaneous Provisions) Act 1976 –Section 60,61 and 62</p> <p>Powers to determine applications for licences and permits under the following legislation: Town Police Clauses Act 1847 as amended Sections 40,46 Local Government (Miscellaneous Provisions) Act 1976 – Section 48,51,55</p> <p>Section 13 – 17 Local Government (Miscellaneous Provisions) Act 1982 (acupuncture, tattooing, ear piercing and electrolysis)</p> <p>Performing Animals (regulation) Act 1925</p> <p>Zoo Licensing Act 1981</p>	<p>For all these functions there is no role for the committee as there is a statutory right of appeal to the Magistrates’ Court</p> <p>The Licensing Committee will determine any application made by an officer or member of the Council.</p>	For all these functions there is no role for the sub - committee as there is a statutory right of appeal to the Magistrates Court	All other cases.

Matter to be dealt with	Full Committee	Sub – Committee	Officers
House to House Collections Act 1939 Pet Animals Act 1951 Animal Boarding Establishments Act 1963 Riding Establishments Act 1964 and 1970 Breeding of Dogs Act 1973 Breeding and Sale of Dogs (Welfare) Act 1999 Scrap Metal Dealers Act 1964 Dangerous Wild Animals Act 1976 Lotteries and Amusements Act 1976 Hypnotism Act 1952 (as amended) and Schedule 3 Local Government (Miscellaneous Provisions) Act 1982	For all these functions there is no role for the committee as there is a statutory right of appeal to the Magistrates' Court The Licensing Committee will determine any application made by an officer or member of the Council.	For all these functions there is no role for the sub - committee as there is a statutory right of appeal to the Magistrates Court	All other cases.
The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018			All other cases. Appeals to Head of Service or Licensing Manager

Criminal Justice and Police Act 2001 and Violent Crime Reduction Act 2006

Table of Delegations of Licensing Functions

Matter To Be Dealt With	Full Council	Licensing Committee or Sub-Committee	Officers (Service Director Public Protection)
Making Designated Public Places Orders (DPPOs)		x	

Wiltshire Council

Standards Committee

26 September 2018

Briefing Note: Use of grievance procedures to impose sanctions

R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin) 24/05/2018

1. The High Court has recently considered local authority staff grievance procedures and their relationship with the Code of Conduct regime under the Localism Act 2011. The court decided that a council cannot run a grievance procedure alongside, or as an alternative to, a standards regime procedure under the Localism Act 2011, and that complaints regarding a councillor's conduct have to be dealt with under the authority's standards arrangements.
2. The case of concerned the Town Council's decision to impose sanctions on a councillor under its grievance procedures, banning her from serving on any committees and from communicating with any staff, following complaints of bullying and harassment. The councillor contended that any such complaints had to be dealt with under the Localism Act procedures; the council said that the 2011 Act did not prohibit parish councils from instigating proceedings under their grievance procedure where the matters in issue involved internal relations between its employees and staff.

The facts

3. Following complaints that Cllr H had bullied, intimidated and harassed staff, the Town Council's Grievance Panel held a meeting to discuss the allegations. Cllr H did not attend, stating that she did not recognise the authority of the Panel, and she requested that the matter be properly investigated under the standards procedure. The Panel upheld the accusations and the Town Council then resolved to impose a number of prohibitions on Cllr H, including that she should not sit on any committees, sub-committees, panels or working groups nor represent the council on any outside body, and that all communications between her and its clerk and deputy clerk should go through the mayor.

4. Herefordshire Council (HC), a unitary council, which had responsibility for investigating complaints about parish councillors, advised the Town Council that Cllr H's complaint was sufficiently serious to require further investigation, and so it was making arrangements for the complaint to be investigated by an external investigator. The Monitoring Officer of HC wrote to the Town Council advising that although these allegations were made under the grievance procedure, they were concerned with a member's failure to comply with the authority's Code of Conduct and so had to be dealt with in accordance with the arrangements under s.28(6) of the Localism Act 2011.
5. A year later the Town Council reviewed the restrictions, in Cllr H's absence, and decided that the restrictions should not only continue but should also be expanded to prevent her from communicating with all staff. HC then advised that its external investigator had found no breach by Cllr H of the Town Council's Code of Conduct and so HC would be taking no further action on the standards complaint.
6. Cllr H applied for judicial review of the Town Council's decision to impose sanctions under its grievance procedures. She contended that the decision was:
 - ultra vires as a councillor's conduct must always and only be considered under the Code of Conduct procedures required by the Localism Act 2011;
 - substantively unfair and in breach of Article 10 of the European Convention on Human Rights (ECHR) or at common law; and
 - procedurally unfair in the absence of following proper procedures including the absence of an opportunity to respond or defend herself.
7. The Town Council claimed that it had powers to determine complaints about councillors through its grievance procedure and under s.111 of the Local Government Act 1972.

Effect of Localism Act 2011

8. The court granted the application, and ruled that the Town Council's decision to continue and enlarge the prohibitions must be quashed. That decision was in line with previous authorities.
9. The judge ruled that there was no general power to run a grievance procedure process in tandem with or as an alternative to the Code of Conduct process envisaged by the 2011 Act, as that would be contrary to the intention of Parliament. The judge emphasised that what s.28(11) of the 2011 Act contemplated was actually a four-stage process:

- i. the making of an allegation;
- ii. (optionally) a non-formal investigatory or mediation stage ("informal resolution") or a pause pending other relevant steps being taken (e.g. criminal proceedings);
- iii. a formal stage, involving an independent person, leading to a decision on breach;
- iv. (if breach is found) a formal stage, again involving the independent person, dealing with action.

10. She stressed that an independent person had to be involved and consulted not just at the sanction stage, but also at the decision-making (breach finding) stage, as this was essential to ensure the safeguard at the key stages of decision-making and action, while leaving the possibility of more flexible approaches in appropriate cases.

Comment

11. The judgment provides a reminder that any process must be fair and in accordance with the principles of natural justice, i.e. the right to a fair hearing by an unbiased and impartial body requires that individuals should have been given prior notice of the allegations made against them, a fair opportunity to answer them, and the opportunity to present their own side of the story.

Ian Gibbons
Director, Legal and Democratic Services, and Monitoring Officer

Briefing Note Author: Ian Gibbons, assisted by Paul Barnett, Public Law and Compliance Team.

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