

# AGENDA

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**Meeting:** Standards Committee

**Place:** The Kennet Room, County Hall, Bythesea Road, Trowbridge, BA14 8JN

**Date:** Wednesday 23 January 2019

**Time:** 2.00 pm

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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](mailto:kieran.elliott@wiltshire.gov.uk)

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## 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	

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## 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 I

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

1 **Apologies for Absence**

To note any apologies or substitutions for the meeting.

2 **Minutes (Pages 5 - 10)**

To confirm the minutes of the meeting held on 26 September 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 **16 January 2019** 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 **18 January 2019**. 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 **Local Government and Social Care Ombudsman (LGSCO) Complaint - Update on action taken by the Council (Pages 11 - 14)**

To receive a further update on the council's response to the findings of the Local Government and Social Care Ombudsman.

7 **Status Report on Code of Conduct Complaints (Pages 15 - 20)**

To receive an update from the Monitoring Officer.

8 **Code of Conduct Complaints Comparison Case Study (Pages 21 - 28)**

To receive a report from the Monitoring Officer.

9 **Recommendations of the Constitution Focus Group (Pages 29 - 46)**

To consider proposed changes to the Constitution.

10 **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*

## **STANDARDS COMMITTEE**

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### **MINUTES OF THE STANDARDS COMMITTEE MEETING HELD ON 26 SEPTEMBER 2018 AT KENNET ROOM - WILTSHIRE COUNCIL OFFICES, COUNTY HALL, TROWBRIDGE.**

#### **Present:**

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

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#### **31 Apologies**

There were no apologies.

#### **32 Minutes**

The minutes of the meeting held on 20 June 2018 were presented for consideration and it was,

#### **Resolved:**

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

#### **33 Declarations of Interest**

There were no declarations.

#### **34 Chairman's Announcements**

With the agreement of the Committee the agenda item on the Local Government and Social Care Ombudsman Complaint was brought forward to immediately after the public participation item.

#### **35 Public Participation**

There were no questions submitted.

Mr Francis Morland made statements in relation to the proposed changes to Part 4 of the Constitution, requesting that it be formally noted by the Committee that additional revisions to the section on substitutions would follow at a future date, and in relation to the R (Harvey) v Ledbury Town Council case, noting it

was a very important case and that the town council in the case had in his view been incorrectly advised by the National Association of Local Councils.

36 **Local Government and Social Care Ombudsman Complaint**

Debbie Medlock, Interim director of Learning Disabilities and Mental Health, provided an update in relation to the report on the findings of the Local Government and Social Care Ombudsman which had found Wiltshire Council at fault in a case regarding the provision of respite and transport to a particular family, and how it had been assessing cases generally.

It was reported that Cabinet had been updated on 3 July 2018 on the actions taken in respect of the conclusions raised by the Ombudsman, and that all relevant cases, over 100, were being reviewed to ensure the needs were all being appropriately met.

The Committee discussed the report and update, seeking details of how the legislative obligations of the council were made clear to staff and the public. Assurances were sought that Wiltshire Council had accepted its failings in this case and that appropriate lessons had been learned to prevent a reoccurrence.

At the conclusion of discussion, it was,

**Resolved:**

**To note the report and the actions taken by the Council in response to the complaint and to request a further update in 6 months.**

37 **Local Government Ombudsman's Annual Review Letter 2017 - 2018**

A report was received regarding the Annual Review letter for 2017/18 from the Local Government and Social Care Ombudsman (LGSCO) regarding the number of service complaints referred from Wiltshire Council and their outcomes. It was noted that the number of complaints referred and those complaints which had been upheld had fallen since the previous year.

The Committee discussed the letter, noting that the most critical issue was that the council had open and transparent processed rather than the volume of complaints, though the number being upheld falling to 40% was welcomed as a positive outcome. It was stated that work was undertaken with services to address where necessary issues giving rise to complaints received.

At the conclusion of discussion, it was,

**Resolved:**

**To note the outcome of the LGSCO's Annual Review Letter 2017-18.**

### 38 **Status Report on Code of Conduct Complaints**

A report was received from the Monitoring Officer on the figures to date and the status of Code of Conduct Complaints.

In discussing the report, it was requested that a review of other comparable local authorities be undertaken to analyse the level and type of complaints received more closely, including the proportions of complaints against parish councils versus councillors on the principal authority. Details were also sought on pro-active action taken by the Monitoring Officer where multiple complaints were made in relation to a single council, including the offering of training where appropriate.

At the conclusion of discussion, it was,

#### **Resolved:**

**To note the status of Code of Conduct complaints and to undertake a review of other councils' Code of Conduct complaints.**

### 39 **Code of Conduct Training Update**

A report was received from the Monitoring Officer detailing action taken regarding developing additional training and support for town and parish councils. It was stated that the council's HR service had been contacted regarding how to develop a program of work, and discussions had been held with the Society of Local Government Clerks regarding bespoke training on particular issues. It was also noted the National Association of Local Councils had requested of government a budget of £2million to produce a national training programme.

The Committee discussed the report, noting that in a survey 40% of local councils had not received any training, and reiterating its view that while it was not a responsibility of the Council to train parishes, it was an overall benefit if local councillors were aware of their responsibilities and roles to a greater degree. It was raised that the hiring and training of qualified clerks was highly important to the effectiveness of local councils, and that Chairmanship skills were also highly influential. It was raised whether Wiltshire Council could possibly try to assist in both of these areas.

At the conclusion of discussion, it was,

#### **Resolved:**

**To note the progress of developments to date and request the Monitoring Officer in consultation with the Chairman take such action as necessary to progress a possible training and development programme.**

40 **Recommendations from the Constitution Focus Group**

A report was received from the Monitoring Officer on proposed changes to the Constitution as recommended by the Constitution Focus Group. The changes were in relation to Part 4 - Council rules of procedure, Protocol 1 - Member/Officer relations, and Part 11A - Corporate Parenting Panel.

The Committee discussed at length the proposed changes, noting in particular that additional guidance on both substitution arrangements and the access of confidential papers would be discussed with Group Leaders before further consideration.

The Committee thanked the Focus Group for their ongoing review of the Constitution, and supported the proposed changes.

It was also agreed that Councillor Stuart Wheeler would be appointed to the Focus Group as a substitute for the Chairman of the Committee.

At the conclusion of discussion, it was,

**Resolved:**

**To recommend that Council approve the changes to the Constitution as proposed by the Constitution Focus Group.**

**To appoint Councillor Stuart Wheeler to the Constitution Focus Group as a substitute for the Chairman of the Committee.**

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

A report to the Licensing Committee was received as a minor constitutional change to the Scheme of Delegation was included as a result of adoption of procedures and fees in relation to new Animal Welfare regulations. It was reported that the Licensing Committee had met earlier in the day and approved the report, and therefore it was.

**Resolved:**

**That the proposed change to Part 3D4 of the Constitution be recommended for adoption at Council.**

42 **Briefing: R (Harvey) v Ledbury Town Council**

An update was received on a recent legal case relevant to Standards matters, R (Harvey) v Ledbury Town Council. It was stated that the key issue was that there was a specific need to follow separate arrangements in relation to grievance procedures and Code of Conduct matters, and particularly that if a grievance procedure in relation to staff issues were utilised at a council, these



could not impose sanctions that could only be imposed following a Code of Conduct procedure under the Localism Act 2011.

In discussion it was requested that the decision be circulated and emphasised to all parishes.

**Resolved:**

**To note the briefing update.**

43 **Urgent Items**

There were no urgent items.

(Duration of meeting: 2.00 - 3.25 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](mailto:kieran.elliott@wiltshire.gov.uk)

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## Wiltshire Council

### Standards Committee

23 January 2019

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#### Local Government and Social Care Ombudsman (LGSCO) Complaint – Update on action taken by the Council

##### Purpose of Report

1. This report updates the Standards Committee on the actions undertaken by the Council in response to the LGSCO's report since it was last considered by the Committee on 26 September 2018.

##### Background

2. At its meeting on 26 September 2018 Debbie Medlock, Interim Director of Learning Disabilities and Mental Health, advised the Committee on the action being taken in response to the findings and recommendations of the LGSCO which had found Wiltshire Council at fault in a complaint regarding the provision of respite care and transport to a particular family in 2017.
3. Details of the complaint and action taken by the Council are set out in the previous report which may be found at [this link](#).
4. The Committee requested assurances that Wiltshire Council had accepted its failings in this case and that appropriate lessons had been learned to prevent a reoccurrence. The Committee noted the report and actions taken and requested a further update in six months.

##### Main Considerations

5. At its meeting on 3 July 2018 Cabinet confirmed the Council's acceptance of the Ombudsman's findings and recommendations and the actions to remedy the injustice set out in the report.
6. In accordance with the LGSCO's recommendations the Community Learning Disability Services teams have undertaken a review of the care and support needs of all service users potentially affected using the correct respite eligibility criteria. A total of 113 reviews were carried out. Of these reviewed 6 received an increase in their allocation of respite, one received a decrease (due to their change in need identified through the review process) and the rest remained the same.
7. The responsibilities of the Council under the relevant legislation and guidance are now made clear to staff and the public on Wiltshire Council's website. All of the Council's policies relating to adult social care have been reviewed and where needed have been updated to ensure they reflect the learning from the report.
8. 'Your Care Your Support' on the Council's website has specific information for the public as to how to access support in Wiltshire.

9. New employees to Adult Social Care receive a full 4 day induction course which covers this information and there are regular updates on changes to practice and guidance in social care team meetings.
10. In 2019 Advanced Practitioner's will lead on 'Stop the Clock' sessions in their teams to ensure practice is continually improved upon. There is a 'Stop the Clock' briefing note attached as Appendix 1 for further information.

### **Safeguarding Implications**

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

### **Equalities Impact of the Proposal**

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

### **Risk assessment**

13. There are no significant risks arising from this report

### **Financial Implications**

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

### **Legal Implications**

15. 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**

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

### **Environmental Impact of the Proposals**

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

### **Recommendation:**

18. **To ask the Committee to note the further work undertaken by the Adult Social Care team in response to this matter.**

**Claire Edgar, Director, Adult Social Care, Mental Health and Learning Disabilities**

Appendix 1 – Stop the Clock – Practice development sessions for Adult Social Care Teams

## **Appendix 1**

### **‘Stop the Clock’ practice development sessions for teams**

Stop the Clock sessions have been designed to support practitioners to fulfil the requirements of their role. The purpose of the sessions is to:

- develop practitioners’ confidence, skills and knowledge
- make clear expectations placed on staff
- help to ensure compliance with legal and policy requirements
- improve consistency across and between teams
- improve use of tools provided, including practice guidance and recording templates

These will take place regularly, focussing each time on a topic relevant to social care practice. Stop the Clock sessions will take place in teams, facilitated by Advanced Practitioners and attended by the team members (identified roles rather than individuals) for whom the particular topic is a priority. Sessions will be 90 minutes in length and take place bi-monthly, i.e. six sessions per year.

Several topics have been identified<sup>1</sup> which will form the initial programme, and other topics will be added over time:

1. Direct payments and role of WCIL
2. Presumption of capacity and when to do a capacity assessment
3. Defining the decision – capacity assessments
4. Involving the person and family in capacity assessments & best interests decision making
5. Care Act assessments – professional curiosity and being proportionate, respite
6. Value for money
7. Building estimated personal budgets
8. Risk assessments
9. Dispute resolution

The Principal Social Worker and Principal Occupational Therapist working with the Head of Service for Ongoing Support will provide a briefing for each session in advance. This will include:

- Brief introduction, including why this topic for a Stop the Clock session
- reference to relevant parts of the practice guidance;
- Questions to promote exploration of minimum requirements, good practice and new ideas.

The facilitator will be asked to feedback three points to PSW and POT. These can be ideas, suggestions, questions or requests that will contribute to improvements in practice.

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<sup>1</sup> From Safeguarding Adults Reviews, complaints, Local Government Ombudsman reports and other sources

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## Wiltshire Council

## Standards Committee

23 January 2019

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### 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.
3. 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

4. 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.
5. 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.
6. 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 14 December 2018

- Between 1 January 2018 and 14 December 2018, the Monitoring Officer received 47 complaints under the Code of Conduct. Of these complaints, 12 concerned members of Wiltshire Council, while the remainder of 35 were against members of town and parish councils within the authority's area.
- Of the cases received, the current position is as follows:

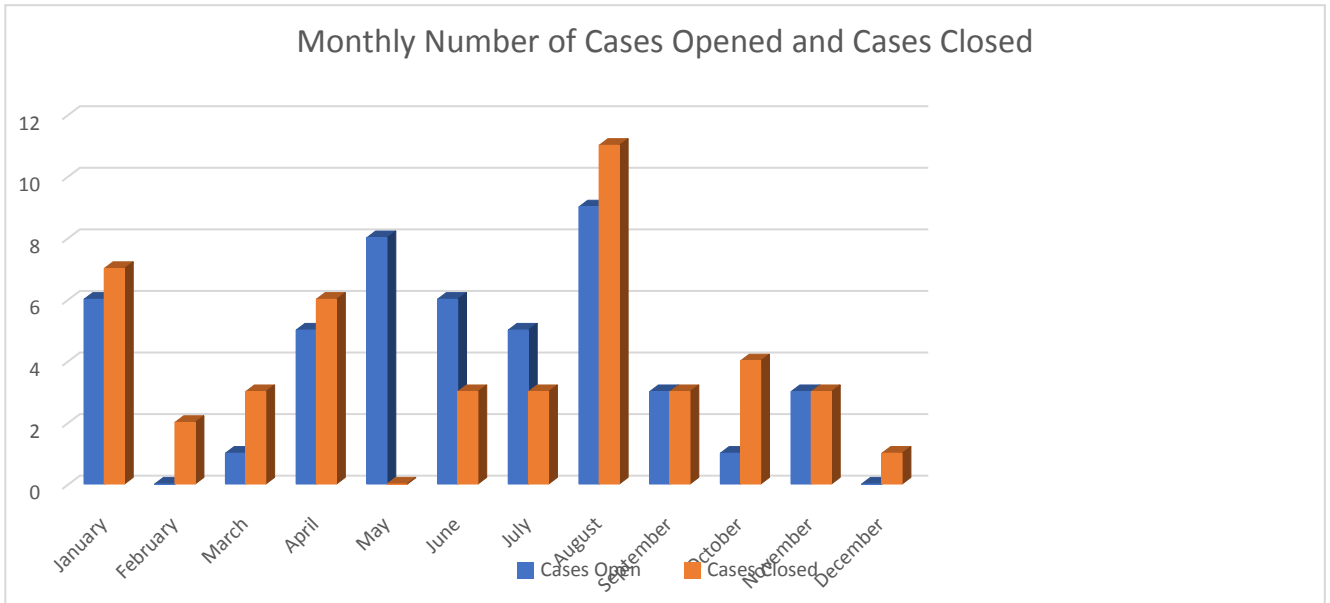
Complaints currently awaiting assessment	4
No further action to be taken	26
Referred to Monitoring Officer for alternative local resolution	1
Referred for investigation	8
Incomplete information provided (complaint not taken forward)	5
Subject members no longer serving councillors (complaints not taken forward)	1
Complaint out of time (no further action)	1
Complaint withdrawn	

This is shown in the table below.



- A monthly breakdown of complaints received is attached as **Appendix 1** with an extrapolation of cases opened and closed throughout 2018.





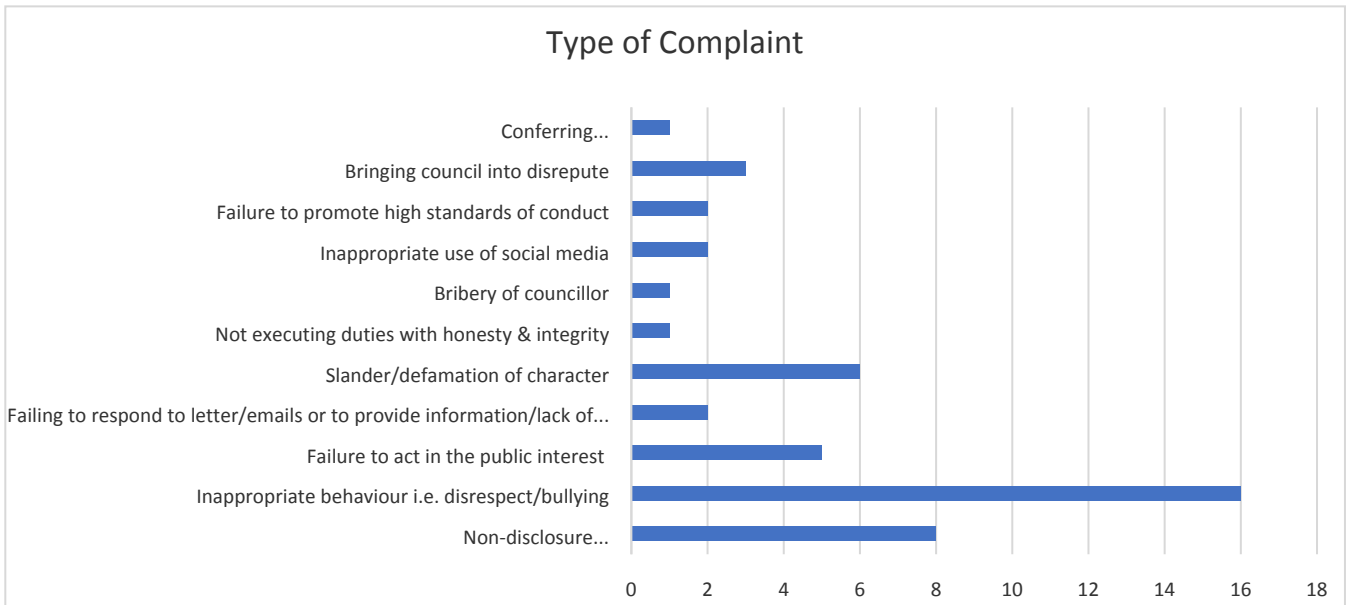
### Investigations

11. Since the beginning of 2018, eight complaints have been referred for investigation on assessment. Two of these investigations have been halted and a further two are in progress. The other four investigation referrals are awaiting the appointment of an investigating officer.
12. The increase in the number of cases referred for investigation has highlighted capacity issues within the team and in order to address this in the short term some of the cases will have to be put out externally for which there is no allocated budget. We are therefore looking at ways to address this situation and will update the Committee further on the position in due course.

### Types of Complaint

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

Type of complaint	Number
Non-disclosure of interests/participating and voting at meetings	8
Inappropriate behaviour i.e. disrespect/bullying	16
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	3
Conferring an advantage/disadvantage	1
<b>Total</b>	<b>47</b>



Proposal

**14. 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](mailto:Sukdave.ghuman@wiltshire.gov.uk)

Appendix 1 – Monthly breakdown of complaints

## Appendix 1

### Summary of Complaints Received 1 January 2017 to 20 December 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
<b>2018</b>									
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	2	2	0	0	1*	3	5 (upheld)
August	5 & 4*	20	2	7	0	0	0	11	1 (upheld)
September	2 & 1*	20	0	2	0	0	1*	3	1 (upheld)
October	1	17	0	0	0	1	0	4	2 (upheld)
November	2 & 1*	17	0	0	0	3	0	3	3 (upheld)
December	0	16	0	0	0	0	0	1	
	<b>47</b>	<b>N/A</b>	<b>8</b>	<b>27</b>	<b>1</b>	<b>4</b>	<b>7</b>	<b>45</b>	<b>19</b>

\* further information not provided – complaint not taken forward

\*\* subject member resigned – complaint not taken forward

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Wiltshire Council

Standards Committee

23 January 2019

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## Code of Conduct Complaints Comparison Case Study

### Purpose of Report

1. To consider comparative data on Code of Conduct complaints from other local authorities.

### Background

2. The Localism Act 2011 introduced a new Standards Regime for local authorities. Full Council adopted new arrangements for resolving standards complaints against elected members in accordance with the Act on 26 June 2012, which came into effect on 1 July 2012.
3. On 21 February 2017 Full Council following review and recommendation of the Standards Committee made revisions to the arrangements, which are set out in Protocol 12 of the Constitution.
4. At its meeting on 26 September 2018 the Standards Committee requested that a review of other councils' arrangements for resolving Code of Conduct complaints be undertaken to enable consideration of whether further assessment and potential amendment to the arrangements was appropriate.

### Comparison Data

5. As an initial case study officers have investigated the standards arrangements and Code of Conduct complaints data, where available, from a number of those Unitary Authorities which comprise Wiltshire Council's statistical neighbours<sup>1</sup> and from a number of other similar or neighbouring authorities.
6. It was recognised that direct comparison between these authorities and Wiltshire Council would not in most cases be possible owing to the significant variation in Code of Conduct arrangements across local authorities.
7. For example, councils are not required to establish a dedicated Standards Committee, although some committee must oversee the relevant functions, and councils have different procedures in relation to how and when investigations can be conducted, stages of review of decisions (many, for instance, do not provide for reviews at all) and whether or not any hearings take place. This results in disparity of how outcomes are arrived at, and what outcomes are arrived at.
8. Information referenced or reproduced in this report have been obtained from that which is publicly available for each authority.

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<sup>1</sup> As calculated at the end of 2017 by the Chartered Institute of Public Finance and Accounting (CIPFA)

9. The data table is contained at **Appendix 1** to this report. It must be noted that as with the variance in procedures as described at paragraph 7, local authorities do not all record or publish data relating to their Code of Conduct complaints in the same fashion, or necessarily with any regularity, or across similar time frames. As such this data should be regarded as indicative as more intensive research and active cooperation of other local authorities across a wider time frame would be necessary to establish more consistent facts. Nevertheless, the publicly accessible indicative data does provide enough of a picture to enable some analysis and conclusion.
10. In most cases it was clear that total complaints received did not include complaints which had been rejected as unsuitable due to not meeting criteria and so which did not receive any form of assessment. Annualised data on number of outcomes would not always match the number of complaints received annually due to many not being concluded at year's end.

## **Analysis**

11. In requesting a review, the Committee was particularly interested in the following questions:
  - Is the number of complaints received in Wiltshire anomalously high or low compared to other authorities?
  - Is the ratio of complaints against unitary councillors vs complaints against town and parish councillors in Wiltshire seen in other authorities?
  - Are there any trends in the reasons for complaints received across the authorities?
  - Is the number of complaints referred for investigation in Wiltshire anomalously high or low compared to other authorities?
  - How many complaints go to hearings?

## Number of Complaints

12. For the calendar year 2017-2018 47 complaints were received against councillors, both unitary and parish, within the Wiltshire Council area.
13. This does not appear to be out of keeping with other authorities. The only unitary authorities of larger population than Wiltshire are Durham and Cornwall. Each currently has more unitary councillors than Wiltshire, but fewer parish councils. As can be seen in the appendix, Durham received 41 complaints for the municipal year 2017-2018, while Cornwall received 143. However, this was largely due to receiving 110 complaints against town or parish councillors, far more than any other authority within the case study.
14. Statistical neighbours such as Cheshire East and Cheshire West and Chester received 24 complaints for 6 months of 2018 and 17 across the municipal year respectively. Others such as the East Riding of Yorkshire and Herefordshire received 43 and 50 respectively across their municipal years 2017-18.
15. Broadly, considering particularly those authorities containing both a large population and a large number of parishes and extrapolating for the entire year

where annual data was not available, a number of complaints in the 30s and 40s is not uncommon. Other authorities such as Bath and North-East Somerset and Central Bedfordshire had notably lower complaints, but contain far fewer councillors against which to receive complaints.

16. As Wiltshire contains the greatest number of parishes complaints in the high 40s would appear unexceptional, although there are some which are lower. In previous years complaints in Wiltshire ranged from 24-79, though it has not been below 47 since 2013.

#### Ratio of Complaints

17. Of the 47 complaints received in Wiltshire for the calendar year 2018, 12 were against unitary councillors and 35 against town or parish councillors.
18. While there were exceptions such as in the City of York Council (which does include parishes), Bath and North-East Somerset and North-East Lincolnshire, most of the authorities analysed and for which there was available data received more complaints total against town and parish councillors than unitary councillors.
19. In Herefordshire, Cornwall and East Riding of Yorkshire, as well as estimated data in Shropshire, roughly three times as many complaints were submitted against town or parish councillors, a similar ration to that which occurs in Wiltshire.
20. Given the higher number of subjects who may be complained about, as well as situations where every member of a parish council may be complained about in reaction to a parish council decision rather than conduct of a member, this ratio would not seem to be a surprise and it would appear Wiltshire's levels of similar to that of other authorities.

#### Reasons for Complaints

21. Unfortunately, most of the authorities analysed did not appear to provide data on the types of reasons provided in the complaints that had been received.
22. Given the limited dataset and that with different Codes of Conduct to assess against and thus, to some degree, different types of reasons across the local authorities, it is not considered that the case study has identified any identifiable trend across authorities or sufficient data to suggest Wiltshire may be an outlier in terms of receiving a large number of complaints for specific reasons.
23. Such data as is available indicates high numbers of complaints against the Nolan principles of selflessness, openness, respect, and for failure to declare interests, which are not dissimilar to the highest reasons for complaints in Wiltshire ie inappropriate behaviour (including disrespect/bullying), non-disclosure of interests and slander/defamation of character.

## Investigations and Hearings

24. As in Wiltshire most local authorities looked at specified in their arrangements that full investigations would be reserved for serious complaints where alternative options for resolution are not considered appropriate, bearing in mind the public interest in efficient use of resources.
25. In Wiltshire, eight complaints have been referred for investigation across the calendar year 2017-18.
26. Most of the authorities analysed had investigations in the single digits, or even zero across a six-month period. This remained true even where the number of complaints was very high, as in Cornwall, or very low, such as Cheshire West.
27. The number of complaints referred to investigation in 2017/18 in Wiltshire was relatively high, however there are still some authorities such as East Riding of Yorkshire, Swindon and Cheshire East who have similar or higher numbers despite being smaller authorities. However, it would not appear that the number of investigations in Wiltshire is significantly at variance.
28. In respect of hearings very few were held across the authorities in question. Many had not held a hearing for many years (the last in Wiltshire was held 1 September 2016).
29. There were some authorities which did have six hearings within a municipal year, though it is unknown with further research if that was unusual for a single year. However, given the overall data, and the emphasis of many authorities on local/alternative resolution, and the known situation of some subject members resigning before conclusion of a matter, the very low number or lack of hearings within Wiltshire does not stand out among the data that has been obtained.

## **Conclusions**

30. Wiltshire does not receive an unusually high or low number of complaints, and the proportions of those received against unitary or town and parish councillors is likewise not unusual.
31. While the number of investigations undertaken in Wiltshire is high compared to many authorities, there are some which undertake even more.
32. Due to most authorities not having similar procedures in relation to reviews of decisions, it is not possible to assess whether the number of these is unusual.
33. The number of hearings across almost all authorities is low, although in part this may be due to a focus on alternative resolutions.

## **Safeguarding Implications**

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



### **Equalities Impact of the Proposal**

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

### **Risk Assessment**

36. There are no significant risks arising from this report

### **Financial Implications**

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

### **Legal Implications**

38. There are no legal implications arising from this report

### **Public Health Impact of the Proposals**

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

### **Environmental Impact of the Proposals**

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

### **Proposal**

41. To note the case study data and preliminary analysis set out in the report.

### **Ian Gibbons, Director, Legal and Democratic Services (and Monitoring Officer)**

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Report Author: Kieran Elliott, Senior Democratic Services Officer, 01225 718504,  
[kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

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

### **Appendices**

Appendix 1 – Comparison of Local Authority Code of Conduct Complaints

### **Background Papers**

Various information from public council websites

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Local Authority	Population (2017)	No. Councillors	No. Parishes	Committee resp. for Standards	Complaints			Outcomes				Procedure			
					Total (time period)	Unitary	Parish	Investigation	NFA	Withdrawn/Alternate	Hearings	Initial Assessment	Review of IA	Review of Inv.	
Bath and North East Somerset	188,700	65	51	Standards Committee	12 (Feb-Sep 18)	6	6		7 (but breaches in 5)	1		1	Yes	If the matter is not rejected and cannot be resolved by local resolution, a local hearing can be held to determine the matter without formal investigation	No
Central Bedfordshire	280,000	59	79	General Purposes Committee	7 (Mar-Aug 18)	3	4		5 (2 ongoing)	0		0	Yes	NA	NA
Cheshire East	378,800	82	115	Audit and Governance Committee	24 (Mar-Aug 18)	9	15	10 (including complaints received before Mar 18)	23	0		Last in 2015	Yes - prelim screening by MO, then assessment	NA	NA
Cheshire West and Chester	338,000	75	89	Audit and Governance Committee	17 (May 17-Apr 18)	5	12		5	7		Last one 2016	Yes	NA	NA
City of York	208,200	47	31	Joint Standards Committee	12 (2017-18)	9	3		3	9	1	Unknown	Yes	NA	NA
Cornwall	561,300	123	214	Standards Committee	143 (Apr 17 - Mar 18)	32	110		1	71	1 (rest ongoing?)	NA	Yes - and filtering by MO	Yes - by an officer	NA
Durham	523,700	126	126	Standards Committee	41 (2017-18)	13	28		3	30	8	1	Yes	No	NA
East Riding of Yorkshire	338,100	67	168	Standards Committee	43 (May 17-Apr 18)	11	32		21	16	6	6	Yes - assessment subs	Yes if rejected by MO	NA
Herefordshire Council	191,000	53	239	Audit and Governance Committee	50 (May 17-Apr 18)	12	38		6	46	8	6	Yes, to initial screening rejection	Not for initial assessment, but yes if following assessment there is a MO resolution	NA
North East Lincolnshire	159,800	42	14	Standards Adjudication Panel	7 (2017-2018)	5	2		2	Unknown	Unknown	Unknown	Referrals Panels	No	NA
Northumberland County Council	319,000	67	148	Standards Committee	14 (2017-18)	6	8		0	14	0	0	Assessment subs	No	NA
Shropshire	317,500	74	153	Standards Committee	40s (estimate)	10 (estimate only)	30 (estimate only)	Unknown	Unknown	Unknown	Unknown	Unknown	Yes	No, but occasionally sub-committee asked to rule on whether to investigate by MO	NA
Swindon	220,400	57	20	Standards Committee	36 (2017-18)	na	na		8	27	4	0	Yes - assessment subs	No	No
West Berkshire	158,500	52	62	Governance and Ethics Committee	16 (2017-18)	1	15		1	10	1	1	Yes	No	No
Wiltshire	496,000	98	252	Standards Committee	47	12	35		8	27	1	0	Yes	Yes	Yes

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## Wiltshire Council

### Standards Committee

23 January 2019

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## 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 – Substitution Arrangements
  - b) Protocol 1: Councillor-Officer Relations – Part II Information Access

### 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 9 January 2019 to review sections of the constitution as detailed in paragraph 1 and made a series of recommendations.

### Main Considerations

4. The minutes of the Focus Group meeting listed in paragraph 3 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 on 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. At its meeting on 16 October 2018 Full Council adopted a series of changes to Part 4 as recommended by the Standards Committee on 26 September 2018.
7. At that meeting it was noted that further revisions relating to the sections on the arrangement of and appointment of substitute members of committees would be forthcoming.
8. Proposed amendments to the relevant section are therefore attached at **Appendix 2**. Also attached at **Appendix 3** is a proposed guidance note for members which would not form part of the constitution, but would clarify the operation of the sections relating to substitution of members.

9. The changes clarify that a member of a committee is responsible for informing the proper officer for that committee of their absence and for arranging a substitute, that this must be done in writing, and provides for exceptions in cases of urgency.
10. The proposals have also been circulated to Group Leaders for any comments, which will be reported to the meeting.

#### **Recommendation**

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

#### **(b) Protocol 1: Member-Officer Relations**

12. Protocol 1 sets out expectations on Member and Officer relations. Following multiple meetings, the Focus Group recommended revisions to the protocol which were approved at Full Council on 16 October 2018, following recommendation by the Standards Committee on 26 September 2018.
13. Paragraphs 11.8 and 11.9 of the revised protocol relate to members' access to confidential and exempt information (Part II information). The Focus Group had requested that an appendix to the protocol be drafted to supplement these paragraphs, setting out practical, clear examples of which members would have access under which circumstances and how members should request information they believed they were entitled to access.
14. The draft proposed appendix to Protocol 1 is therefore attached at **Appendix 4**.

#### **Recommendation:**

15. **To recommend that Council approve the proposed Appendix 1 to Protocol 1 of the Constitution, as shown in the attached document at Appendix 4 of this report.**

#### **Safeguarding Implications**

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

#### **Equalities Impact of the Proposal**

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

#### **Risk assessment**

18. There are no significant risks arising from this report

#### **Financial Implications**

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

## **Legal Implications**

20. 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**

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

## **Environmental Impact of the Proposals**

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

## **Proposal**

23. **To recommend that Council approve the changes to the Constitution as set out in paragraphs 11 and 15 of this report.**

## **Ian Gibbons, Director, Legal and Democratic Services (and Monitoring Officer)**

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Report Author: Kieran Elliott, Senior Democratic Services Officer, 01225 718504, [kieran.elliott@wiltshire.gov.uk](mailto: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 - 9 January 2019
- Appendix 2 - Revised Part 4 (Substitution Arrangements)
- Appendix 3 - Guidance on substitution arrangements
- Appendix 4 - Revised Appendix 1 to Protocol 1

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## CONSTITUTION FOCUS GROUP

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### MINUTES OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 9 JANUARY 2019 AT KENNET ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

#### **Present:**

Cllr Richard Clewer (Chairman), Cllr Richard Britton and Cllr Stuart Wheeler

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#### 1 **Apologies**

Apologies were received from Councillors Ian Thorn, Jon Hubbard and Graham Wright.

It was also reported that at its meeting on 26 September 2018 the Standards Committee had resolved that Councillor Stuart Wheeler would as a standing matter attend the Focus Group on behalf of the Chairman of the Standards Committee, Councillor Paul Oatway QPM.

#### 2 **Notes of the Previous Meeting**

The notes of the meeting held on 5 September 2018 were presented for consideration and it was,

#### **Resolved:**

**To approve and sign as a true and correct record.**

#### 3 **Protocol 1: Member Officer Relations**

At previous meetings the Focus Group had proposed a revised version of Protocol 1: Member-Officer Relations to the Standards Committee. This had been recommended to Council which had approved the Protocol at its meeting on 16 October 2018.

At its meeting on 5 September 2018 the Focus Group had additionally requested an appendix be provided to the protocol setting out practical examples and explanations of the rights of members to access confidential and exempt information to supplement the technical information as set out in Part 5 of the Constitution.

A draft was received and the Focus Group discussed the level of detail that was included, and suggested minor amendments to improve clarity including in relation to what constituted a private meeting, being a formal meeting of the council held wholly or in part in private session, not merely informal gatherings

of groups or bodies within the council. This was reflected by definitions within relevant legislation.

Subject to minor clarifications, it was,

**Resolved:**

**That the proposed appendix to Protocol 1 be considered by Standards Committee with the recommendation it be approved by Full Council.**

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

At previous meetings the Focus Group had proposed a revised version of Part 4: Council Rules of Procedure to the Standards Committee. This had been recommended to Council which had approved the revisions at its meeting on 16 October 2018.

At its meeting on 5 September 2018 the Focus Group had additionally requested further changes in respect of substitution arrangements owing to a lack of clarity as to when and to whom a member needed to inform of a substitution, and the appropriate response in the absence of such notification. Also requested was preparation of a guidance note to clarify the operation of those arrangements. That guidance note would not form part of the constitution.

The Focus Group considered the sections relating to substitution, and considered that changes should be made clarifying further that it was the responsibility of the member of a committee who was to be absent to inform, in writing, the proper officer for that committee of that absence, and any substitution that had been arranged. They considered that it was acceptable that a group leader should also be listed as able to inform the proper officer of such an absence or substitution arrangements, but that it was not appropriate, necessary or administratively convenient to constitutionally authorise other persons to make such arrangements on behalf of the committee member. It was felt that the possibility of a member being unable to notify the proper officer of an desired substitution in time was more acceptable than accepting an unauthorised or improperly authorised substitute, which could lend weight to formal challenge of a committee's decisions.

It was agreed specific mention should be made that in cases of exceptional urgency notice of absence and substitution could be made verbally and subsequently confirmed in writing.

Subject to minor clarifications, it was,

**Resolved:**

**That the proposed revisions to Part 4 be considered by Standards Committee with the recommendation it be approved by Full Council.**

**That the proposed guidance note to members be updated accordingly.**

5 **Forward Plan and Dates of Next Meetings**

The dates of forthcoming meetings were noted.

In accordance with previous decisions of the Focus Group and Standards to request updated and consistent presentation of the Constitution, it was reported that formatting and numbering changes had been made to Parts 5, 6, 7 and 8 of the Constitution, and that these would be uploaded accordingly after approval under delegated authority by the Monitoring Officer.

6 **Urgent Items**

There were no urgent items.

(Duration of meeting: 1430-1530)

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

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

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## Appendix 2 - Proposed Changes to Part 4 Paragraph 7 of the Constitution

### 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 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~~ where notification of the intended substitution has been given in writing to the Proper Officer before the start of the meeting by the member who is to be substituted, or by their group leader of the intended substitution. Exceptionally, in cases of urgency, such notification may be made verbally in person or by telephone to the Proper Officer and confirmed subsequently in writing.*

7.4.4. *The Proper Officer for these purposes is the Democratic Services Officer supporting the meeting.*

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### **Appendix 3 - Guidance Note for Members – Substitution Arrangements**

*Note: This guidance document has been prepared in consultation with Group Leaders to assist members in operating the procedures in relation to the council's substitution arrangements. This document does not form part of the council's constitution.*

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1. The rules on substitution of members on committees are contained at paragraph 7 of Part 4 of the Constitution (Council Rules of Procedure) as detailed below.

#### **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 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. where notification of the intended substitution has been given in writing to the Proper Officer before the start of the meeting by the member who is to be substituted, or by their group leader. Exceptionally, in cases of urgency, such notification may be made verbally in person or by telephone to the Proper Officer and confirmed subsequently in writing.*

*7.4.4. The Proper Officer for these purposes is the Democratic Services Officer supporting the meeting*

2. Paragraph 7.1 provides that substitutes can only be allocated by Full Council, as is the case for the appointment of committee members in general. No group or committee chairman may under the council's arrangements appoint as substitute any member who has not been assigned as such by Full Council.
3. Paragraph 7.2 provides that each political group may nominate for appointment by Full Council up to four substitutes for any committee to which they have been allocated a committee place.
4. A Group Leader may nominate a member from another political group or an ungrouped member for appointment as a substitute. Full Council would, however, need to be satisfied that the appointment would meet the requirements of political proportionality.
5. Where a member appointed as a designated substitute for one political group leaves that group, they remain as a substitute for that group until the appointment is reviewed by Full Council at its next meeting.
6. Paragraph 7.3 provides that substitutes on committees have the same powers, and duties, including voting rights, of an ordinary member of the committee. The substitute member does not, however, take on any special powers or duties exercisable by the member they are replacing. For example, a member substituting for the chairman of a committee will not take on any of the powers or duties of the chairman.
7. Paragraph 7.4 sets out the requirements under which substitutes can be arranged for specific meetings, the duration of that substitution, and the procedure to be followed in order to give effect to the substitution.
8. Paragraph 7.4.1 provides that substitutes may only take up a place if they are a designated substitute for that committee appointed as such by Full Council.
9. Paragraph 7.4.2 provides that a substitution must operate for the whole of the meeting. A member cannot therefore arrange a substitute for a single item or multiple items, and then reclaim their position as an ordinary member of the committee.
10. However, a member may arrange a substitute and remain in the meeting in a different capacity, for example, where they have a disclosable interest and wish to participate as a member of the public, depending on the nature of the interest. They may wish to substitute themselves so that they may address the committee in another capacity, such as a political group leader, cabinet member, portfolio holder or local member. Members wishing to participate in these circumstances are advised to make it clear to



the meeting the capacity in which they are present and ask for this to be recorded in the minutes.

11. Paragraph 7.4.3 details the procedure by which a member communicates their wish to be substituted.
12. A member of a committee is responsible for arranging a substitute if they are unable to attend a meeting. For the avoidance of doubt officers and chairmen of committees do not have power to organise a substitute where the committee member is unable to attend.
13. Notice must be received **in writing** from the member who is to be substituted, or from their group leader, **before the start of the meeting**. A member cannot therefore be substituted without their knowledge or consent.
14. Exceptionally in cases of urgency notification of an intended substitution may be communicated verbally by the member of the group leader either in person or by telephone to the Proper Officer and confirmed in writing as soon as reasonably practicable.
15. Notice must be received by the Proper Officer, who for these purposes is defined in paragraph 7.4.4 as the Democratic Services Officer supporting the meeting as a designated representative of the Director of Legal and Democratic Services.
16. Any queries on the arrangements for substitution should be directed in the first instance to the Democratic Services Officer for a particular meeting, or otherwise Paul Kelly, Head of Democracy [paul.kelly@wiltshire.gov.uk] or Frank Cain, Head of Legal Services and Deputy Monitoring Officer [frank.cain@wiltshire.gov.uk].

**Ian Gibbons**

**Director, Legal and Democratic Services (and Monitoring Officer)**

**January 2019**

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## **Appendix 4 to Standards Report 23 Jan 19**

### **Proposed Appendix 1 to Protocol 1**

#### **Supplementary Guidance Members' Access to Confidential and Exempt (Part II) Information**

1. This guidance is issued by the Monitoring Officer pursuant to paragraph 11.13 of Protocol 1 of the Council's Constitution (Member-Officer Relations) to assist members in relation to their access to confidential and exempt information, also referred to as Part II information.
2. This guidance should be read in conjunction with the [Access to Information Procedure Rules](#) in Part 5 of the Constitution and the procedural rules governing the publication of meetings of committees that are, in part, held in private.
3. Paragraph 4 of Part 5 of the Constitution defines confidential and exempt information ('Part II information') as follows:

#### **14. Exclusion of Access by the public to meetings**

##### Confidential information – requirement to exclude public

14.1. *The public shall be excluded from meetings during an item of business whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.*

14.2. *Confidential information means information given to the Council by a government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by court order or under any enactment.*

##### Exempt information – discretion to exclude public

14.3. *The public may be excluded from meetings during an item of business whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.*

14.4. *Exempt information means information falling within the following seven categories (subject to any condition):*

- 14.4.1 *information relating to any individual*
- 14.4.2 *information which is likely to reveal the identity of an individual*
- 14.4.3 *information relating to the financial or business affairs of any particular person (including the authority holding that information)*
- 14.4.4 *information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority*

*14.4.5 information in respect of which a claim to legal professional privilege could be maintained in legal proceedings*

*14.4.6 information which reveals that the authority proposes:*

- (a) to give under any enactment a notice by virtue of which requirements are imposed on a person, or*
- (b) to make an order or direction under any enactment.*

*14.4.7 information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.*

*14.5. Information which falls into paragraphs 14.4.1 to 14.4.7 above is only exempt if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

*14.6. Information is not exempt information if it relates to proposed development for which the local planning authority can grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992.*

*14.7. Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.*

4. In the interests of openness and transparency the council will seek to ensure that as much information as is appropriate is published in the open part of the agenda and that the requirements in paragraph 3 above are applied strictly in determining what information should be contained in Part II.
5. The agenda for a meeting should explain why information is to be considered wholly or partly in Part II of the agenda.

#### Access by a Wiltshire Council Member

6. If you are a member of the cabinet or a committee and an agenda for a forthcoming meeting contains Part II information you should automatically be able to access that information via the [intranet](#).
7. If you are accessing the agenda via the ModGov app on either a tablet or laptop, you will need to ensure that your device is registered to access Part II information. If you are uncertain if your device is so registered, please contact [committee@wiltshire.gov.uk](mailto:committee@wiltshire.gov.uk).
8. In relation to executive business members are entitled to any document in the possession or under the control of the Leader of the Council which contains material relating to:
  - 8.1 any business to be transacted at a public meeting;
  - 8.2 any business transacted at a private meeting;
  - 8.3 any decision made by an individual member; or

#### 8.4 an executive decision made by an officer

unless it contains exempt information falling within paragraphs 18.1, 18.2, 18.3 (but only to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract), 18.4, 18.5, and 18.7 of the categories of exempt information; or it contains the advice of a political adviser.

'Private Meeting' means a meeting, or part of a meeting, of the decision-making body during which the public are excluded in accordance with relevant statutory provisions ie formal meetings of Cabinet

9. This means that if a member is not a member of the cabinet or a committee whose agenda contains Part II information, they will not automatically be able to access that information.
10. A member is required by law to demonstrate a 'need to know' confidential and/or exempt information before it is released to that member. On the matter of what is reasonable, in *City of Birmingham v O 1983*, the Court allowed a member to see the adoption files of a particular child, as they had genuine concerns about the implications of this adoption and it would have been the responsibility of the council as a whole, if it had gone wrong. Therefore, although the member concerned was not on the adoption committee, they did have a legitimate reason for wanting to see the file. This shows that members will be able 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.
11. By convention Wiltshire Council deems that certain roles held by members do generally require access to Part II information to enable them to discharge their role properly, and in most instances members holding these roles will have access to any Part II information published with an agenda.

These roles are:

- 11.1 Chairman of the Overview and Scrutiny Management Committee;
- 11.2 Chairman of a relevant Overview and Scrutiny Select Committee;
- 11.3 Political Group Leaders.

12. If a member believes that they are entitled to have access to Part II documentation on an agenda, for example as a local member or some other position, or they are otherwise able to demonstrate a 'need to know' they should submit a request for access via the named officer on the front of the agenda giving reasons in support of their 'need to know'. The request should be submitted at the earliest opportunity in advance of the meeting and will be determined by the Monitoring Officer or his nominee.
13. Any information provided to a Member must only be used in connection with the proper performance of their duties.
14. Any queries relating to this subject or guidance should be directed to:

**Ian Gibbons (Monitoring officer) or Frank Cain (Deputy Monitoring officer)**  
([ian.gibbons@wiltshire.gov.uk](mailto:ian.gibbons@wiltshire.gov.uk) and [frank.cain@wiltshire.gov.uk](mailto:frank.cain@wiltshire.gov.uk))

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