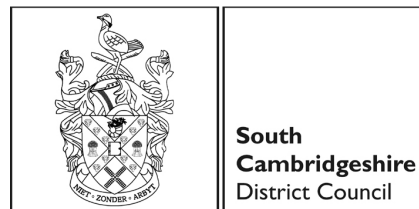


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12 September 2013

To: Chairman – Councillor David Bard  
Vice-Chairman – Councillor Tony Orgee  
Members of the Civic Affairs Committee – Councillors Neil Davies,  
Simon Edwards, Alison Elcox, Sebastian Kindersley, Douglas de Lacey,  
Janet Lockwood, Ray Manning, Raymond Matthews, Jim Stewart, Robert Turner  
and Bunty Waters

Quorum: 4

Dear Councillor

You are invited to attend the next meeting of **CIVIC AFFAIRS COMMITTEE**, which will be held in **MONKFIELD ROOM, FIRST FLOOR** at South Cambridgeshire Hall on **FRIDAY, 20 SEPTEMBER 2013 at 10.00 a.m.**

Members are respectfully reminded that when substituting on committees, subcommittees, and outside or joint bodies, Democratic Services must be advised of the substitution *in advance of* the meeting. It is not possible to accept a substitute once the meeting has started. Council Standing Order 4.3 refers.

Yours faithfully  
**JEAN HUNTER**  
Chief Executive

**The Council is committed to improving, for all members of the community, access to its agendas and minutes. We try to take all circumstances into account but, if you have any specific needs, please let us know, and we will do what we can to help you.**

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<b>AGENDA</b>		<b>PAGES</b>
<b>1.</b>	<b>Apologies</b>	
<b>2.</b>	<b>Minutes of the previous meeting</b>	<b>1 - 6</b>
<b>3.</b>	<b>Declaration of Interests</b>	
	<b>RECOMMENDATION TO COUNCIL</b>	
<b>4.</b>	<b>Filming of Public Meetings</b>	<b>7 - 42</b>
	<b>DECISION ITEMS</b>	
<b>5.</b>	<b>Review of Whistleblowing Policy</b>	<b>43 - 60</b>

## **INFORMATION ITEMS**

- |            |  |                  |
|------------|--|------------------|
| <b>6.</b>  | <b>Individual Electoral Registration</b>   | <b>61 - 64</b>   |
| <b>7.</b>  | <b>Northstowe Community Governance Review</b><br>Tracy Mann, Development Officer, will provide a verbal update on this item.           |                  |
| <b>8.</b>  | <b>Trumpington Meadows: Community Governance Review</b><br>Tracy Mann, Development Officer, will provide a verbal update on this item. |                  |
| <b>9.</b>  | <b>Update on Code of Conduct Complaints</b>  | <b>65 - 66</b>   |
| <b>10.</b> | <b>Training of Members on the Code of Conduct/Pre-Determination and Bias</b>   | <b>67 - 68</b>   |
| <b>11.</b> | <b>Committee on Standards in Public Life Annual Report 2012-13</b>   | <b>69 - 102</b>  |
| <b>12.</b> | <b>Government response to consultation on setting up of new town and parish councils</b>   | <b>103 - 116</b> |
| <b>13.</b> | <b>Date of next meeting</b><br>Thursday 5 December 2013 at 10am.   |                  |

## **GUIDANCE NOTES FOR VISITORS TO SOUTH CAMBRIDGESHIRE HALL**

While the District Council endeavours to ensure that visitors come to no harm when visiting South Cambridgeshire Hall, those visitors also have a responsibility to make sure that they do not risk their own or others' safety.

### **Security**

Members of the public attending meetings in non-public areas of the Council offices must report to Reception, sign in, and at all times wear the Visitor badges issued. Before leaving the building, such visitors must sign out and return their Visitor badges to Reception.

### **Emergency and Evacuation**

In the event of a fire, a continuous alarm will sound. Evacuate the building using the nearest escape route; from the Council Chamber or Mezzanine viewing gallery this would be via the staircase just outside the door. Go to the assembly point at the far side of the staff car park.

- **Do not** use the lifts to exit the building. If you are unable to negotiate stairs by yourself, the emergency staircase landings are provided with fire refuge areas, which afford protection for a minimum of 1.5 hours. Press the alarm button and wait for assistance from the Council fire wardens or the fire brigade.
- **Do not** re-enter the building until the officer in charge or the fire brigade confirms that it is safe to do so.

### **First Aid**

If someone feels unwell or needs first aid, please alert a member of staff.

### **Access for People with Disabilities**

The Council is committed to improving, for all members of the community, access to its agendas and minutes. We try to take all circumstances into account but, if you have any specific needs, please let us know, and we will do what we can to help you. All meeting rooms are accessible to wheelchair users. There are disabled toilet facilities on each floor of the building. Infra-red hearing assistance systems are available in the Council Chamber and viewing gallery. To use these, you must sit in sight of the infra-red transmitter and wear a 'neck loop', which can be used with a hearing aid switched to the 'T' position. If your hearing aid does not have the 'T' position facility then earphones are also available and can be used independently. You can obtain both neck loops and earphones from Reception.

### **Toilets**

Public toilets are available on each floor of the building next to the lifts.

### **Recording of Business and Use of Mobile Phones**

The Council is committed to openness and transparency. The Council and all its committees, sub-committees or any other sub-group of the Council or the Executive have the ability to formally suspend Standing Order 21.4 (prohibition of recording of business) upon request to enable the recording of business, including any audio / visual or photographic recording in any format.

Use of social media during meetings is permitted to bring Council issues to a wider audience. To minimise disturbance to others attending the meeting, all attendees and visitors are asked to make sure that their phones and other mobile devices are set on silent / vibrate mode during meetings.

### **Banners, Placards and similar items**

No member of the public shall be allowed to bring into or display at any Council meeting any banner, placard, poster or other similar item. The Chairman may require any such item to be removed.

### **Disturbance by Public**

If a member of the public interrupts proceedings, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room. 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.

### **Smoking**

Since 1 July 2008, the Council has operated a Smoke Free Policy. Visitors are not allowed to smoke at any time within the Council offices, or in the car park or other grounds forming part of those offices.

### **Food and Drink**

Vending machines and a water dispenser are available on the ground floor near the lifts at the front of the building. Visitors are not allowed to bring food or drink into the meeting room.

### **Vision and Values**

## **OUR LONG-TERM VISION**

South Cambridgeshire will continue to be the best place to live, work and study in the country. Our district will demonstrate impressive and sustainable economic growth. Our residents will have a superb quality of life in an exceptionally beautiful, rural and green environment.

The Council will be recognised as consistently innovative and a high performer with a track record of delivering value for money by focusing on the priorities, needs and aspirations of our residents, parishes and businesses.

## **OUR VALUES**

We will demonstrate our corporate values in all our actions. These are:

- Trust
- Mutual respect
- A commitment to improving services
- Customer service

# Agenda Item 2

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

Minutes of a meeting of the Civic Affairs Committee held on  
Thursday, 20 June 2013 at 10.00 a.m.

PRESENT: Councillor David Bard – Chairman  
Councillor Tony Orgee – Vice-Chairman

Councillors: Sebastian Kindersley Janet Lockwood  
Ray Manning Raymond Matthews  
Jim Stewart Robert Turner  
Bunty Waters

Officers: Graham Aisthorpe-Watts Democratic Services Team Leader  
David Lord Senior Lawyer  
Fiona McMillan Legal & Democratic Services Manager and  
Monitoring Officer  
Tracy Mann Development Officer  
John Pym New Village Senior Planning Officer

Parish Councillor Bob Branch (Chairman of Haslingfield Parish Council), District Councillor Lynda Harford, Grant Osbourn (Lead Independent Person with effect from 1 July 2013) and John Wheelhouse (former Chairman of Haslingfield Parish Council) were in attendance, by invitation.

### 1. APOLOGIES

Apologies for absence were received from Councillors Neil Davies, Simon Edwards, Alison Elcox and Douglas de Lacey.

### 2. DECLARATIONS OF INTEREST

Councillor Sebastian Kindersley declared a non-pecuniary interest in minute number 7 as a County Councillor for the Gamlingay electoral division, which included Haslingfield.

### 3. MINUTES OF PREVIOUS MEETING

The minutes of the meeting held on 14 March 2013 were **AGREED** and signed by the Chairman as a correct record.

### 4. APPOINTMENT OF LEAD AND DEPUTY INDEPENDENT PERSONS

Councillor David Bard, Chairman of the Civic Affairs Committee, introduced this item and commenced by reporting that Kathy English and Eric Revell would shortly be standing down as the Council's Lead and Deputy Independent Persons. They had supported the Council's standards processes for the last six to seven years and Councillor Bard extended his thanks to them for their helpful input over that period. It was noted that the transitional arrangements following the introduction of the Localism Act 2011 and the abolition of the former standards regime meant that both Kathy English and Eric Revell could only be appointed as Independent Persons until 30 June 2013 and would not be able to put themselves forward for subsequent terms of office due to being former members of the Standards Committee.

**Page 2**

Councillor Bard agreed to write to Kathy English and Eric Revell to thank them on behalf of the committee for their service. In addition, Councillor Sebastian Kindersley proposed a formal motion of thanks to Kathy English and Eric Revell, which was seconded and unanimously **SUPPORTED** by the committee.

Councillor Bard reported that, following a robust recruitment process, the Council made the following appointments at its meeting on 23 May 2013 for the period 1 July 2013 to 30 June 2016: -

- Grant Osborn as lead Independent Person;
- Gillian Holmes as deputy Independent Person.

**5. INDEPENDENT PERSON PROTOCOL**

Consideration was given to a report setting out an Independent Person Protocol, which sought to clarify the relationship between the lead and deputy Independent Person and South Cambridgeshire District Council in the process of handling standards complaints and the wider promotion of standards. A copy of the proposed Protocol was appended to the report.

The Civic Affairs Committee: -

- a) **ADOPTED** the Independent Person Protocol as detailed in Appendix A of the report.
- b) **AGREED** to review the Protocol in 12 months' time, in consultation with the Independent Person and the Monitoring Officer, to ensure it is still fit for purpose.

**6. AMENDMENTS TO THE COUNCIL'S CONSTITUTION**

The Civic Affairs Committee considered a report, which suggested a number of amendments to the Council's Constitution further to the decision by Council at its Annual General Meeting on 23 May 2013 to abolish the Sustainable Energy Committee and introduce a second scrutiny and overview committee called the Partnerships Review Committee.

The Civic Affairs Committee **RECOMMENDED** that the Council: -

- a) Approves the revised version of Article 6 of the Constitution, as set out in Appendix A of the report.
- b) Approves the revised version of the Scrutiny and Overview Procedure Rules, as set out in Appendix B of the report.
- c) Approves the amendment of those sections of the Constitution referred to in paragraph 10.1 of the report to reflect the establishment of the Partnerships Review Committee as a second scrutiny and overview committee.
- d) Amends the Member role descriptions under Part 5 of the Constitution relating to the Scrutiny and Overview Committee so that they apply to both the Partnerships Review Committee and the Scrutiny and Overview Committee.
- e) Allocates the Partnerships Review Committee as the authority's Crime and Disorder Committee.

## 7. TRUMPINGTON MEADOWS COMMUNITY GOVERNANCE REVIEW

The Civic Affairs Committee considered a report which set out Haslingfield Parish Council's request for a Community Governance Review to be undertaken in respect of Trumpington Meadows, pursuant to the provisions of the Local Government and Public Involvement in Health Act 2007.

David Lord, Senior Lawyer, presented the report and informed Members that he had undertaken informal discussion with representatives of the Parish Council on the content of his report prior to the meeting. Copies of the original letter from the Parish Council dated 13 February 2013 were circulated at the meeting, together with the Parish Council's comments on the report. Further to these informal discussions, David Lord removed reference to the occupation level of properties from the first recommendation in the report and replaced this with reference to the application for reserved matters, so that the recommendation read: -

"That the committee agrees that a Community Governance Review should be undertaken to consider the future governance arrangements for the new community at Trumpington Meadows, but that it should not commence until the application for reserved matters has been approved, subject to on-going review by the Civic Affairs Committee".

*(Councillor Ray Manning attended the meeting at this stage of proceedings).*

David Lord set out some of the legal issues associated with Community Governance Reviews and Parish Councils, highlighting that a Parish Council could only be established with a minimum of 150 electors within its area. The only other governance models that could be put in place were a Parish Meeting or a Shadow Parish Council, but it was agreed that none of these would be appropriate for Trumpington Meadows. The second recommendation in the report, if supported, would enable officers to commence informal discussions with all interest parties and undertake a lot of the background work that would normally take place as part of a Community Governance Review. This would help to ensure that the formal Community Governance Review, whenever it commenced, could be undertaken in a shorter timescale than usual.

Parish Councillor Bob Branch, Chairman of Haslingfield Parish Council, and John Wheelhouse, former Chairman of Haslingfield Parish Council, addressed the meeting and emphasised that parishioners were very keen to see this issue progress. They were therefore keen for the second recommendation to reflect that officers should undertake informal discussions with all interested parties immediately. It was also noted that the Parish Council had to set aside £3,000, which equated to 5% of its precept, for Trumpington Meadows and this amount would increase until a governance arrangement for Trumpington Meadows was resolved.

Discussion ensued on the first recommendation, as amended, and it was suggested that the Community Governance Review should commence when the application for reserved matters was registered, rather than approved, and that this should be subject to on-going review by the Civic Affairs Committee.

Following the proposal and seconding of a motion that was supported unanimously, the Civic Affairs Committee **AGREED** that: -

- a) A Community Governance Review should be undertaken to consider the future governance arrangements for the new community at Trumpington Meadows, but that it should not commence until the application for reserved matters has been registered, subject to on-going review by the Civic Affairs Committee.

- b) Officers should commence informal discussions with all interested parties immediately, with a view to taking 'soundings' on process, boundary treatment and governance structure.

## 8. NORTHSTOWE COMMUNITY GOVERNANCE REVIEW

Tracy Mann, Development Officer, provided the Civic Affairs Committee with a verbal update on the Northstowe Community Governance Review.

Members were reminded of the informal consultation exercise carried out in 2008 which enabled officers at the time to identify and resolve any potential issues that Parish Councils or local residents had with regard to establishing a new boundary for Northstowe. Officers intended to share the outcomes of this consultation exercise with affected Parish Councils, neighbouring Parish Councils and local residents as part of a new informal consultation process to ensure that current members of the respective Parish Councils and current residents had an opportunity to review the information collated and put forward any new views with regard to the governance arrangements for Northstowe.

It was therefore proposed that liaison initially ensued with affected Parish Councils, taking into account the draft boundary for Northstowe as agreed following the informal 2008 consultation exercise. Informal consultation would then take place with neighbouring Parish Councils and local residents in the form of drop-in sessions, following which it was anticipated that by the end of the year a consensus could be achieved on a proposed boundary for Northstowe in readiness for the commencement of a formal Community Governance Review early in 2014.

The Civic Affairs Committee **NOTED** the update.

## 9. UPDATE ON CODE OF CONDUCT COMPLAINTS

The Civic Affairs Committee **NOTED** a report which provided an update on complaints cases regarding alleged breaches of the Code of Conduct.

## 10. TRAINING ON CODE OF CONDUCT

Fiona McMillan, Legal and Democratic Services Manager and Monitoring Officer, informed the Civic Affairs Committee that a training session on the Code of Conduct, predetermination and bias would be held on 3 October 2013 in conjunction with Huntingdonshire District Council.

Councillor David Bard, Chairman of the Civic Affairs Committee, asked the Council's political group leaders to ensure that as many Members as possible attended the training session.

## 11. PROTOCOL BETWEEN CAMBRIDGESHIRE/PETERBOROUGH MONITORING OFFICERS AND CAMBRIDGESHIRE POLICE

The Civic Affairs Committee **NOTED** that the Council's Monitoring Officer signed a joint protocol on 10 May 2013 with Cambridgeshire Police, Huntingdonshire District Council and East Cambridgeshire District Council to set out liaison procedures between Monitoring Officers and the Police on handling Councillor complaints where there was a potential criminal sanction. A copy of the joint protocol was attached to the agenda for this meeting.



**12. DATES OF NEXT MEETING** Page 5

It was **AGREED** that future meetings of the Civic Affairs Committee would be held on 5 December 2013 and 20 March 2014, each commencing at 10.00 a.m.

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**The Meeting ended at 10.40 a.m.**

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# Agenda Item 4

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**REPORT TO:** Civic Affairs Committee 20 September 2013  
**LEAD OFFICER:** Fiona McMillian, Legal and Democratic Services Manager

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## FILMING AT PUBLIC MEETINGS

### Purpose

1. The Civic Affairs Committee is invited to consider any recommendations it may wish to submit to Full Council on the filming of the authority's public meetings following the publication of guidance by the Department for Communities and Local Government in June 2013 entitled 'Your council's cabinet – going to its meetings, seeing how it works'.
2. The subject of this report is not a key decision but has been submitted to the Civic Affairs Committee for consideration as any changes to the Council's policy on the filming of public meetings will require amendments to the Constitution, which is within the Committee's remit.

### Recommendations

3. That Full Council be recommended to allow members of the public to film its public meetings in accordance with newly published guidance by the Department for Communities and Local Government entitled 'Your council's cabinet – going to its meetings, seeing how it works'.
4. That Standing Order 21.4 of the Council's Constitution (Recording of Business) be amended to read: -  
  
"The recording in any format of any meeting of the Council, the Executive, or any committee or sub-committee of the Council or the Executive, is permitted, except: -
  - (a) where the Chairman, or person presiding the meeting, rules that any filming is being undertaken in such a way that it is disruptive or distracting to the good order and conduct of the meeting.
  - (b) where a member of the public speaking at the meeting actively objects to being filmed.
  - (c) where the public have been excluded from the meeting in accordance with the Council's Access to Information Procedure Rules (Rule 10) during the consideration of exempt or confidential information.

### Reasons for Recommendations

5. To ensure that the Council follows the latest guidance issued by the Department for Communities and Local Government.

6. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 came into force on 10 September 2012 and provided greater access to information considered at meetings of the Council's Executive. A copy of the Regulations is attached to this report at **Appendix A**.
7. In June 2013 the Department for Communities and Local Government published a guidance document entitled 'Your council's cabinet – going to its meetings, seeing how it works', which acts as a guide for local people in explaining how they can attend and report their local council meetings. A copy of this guidance is attached at **Appendix B**, which includes a section on the filming of a Council's public meetings.

### Considerations

8. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 do not make any reference to the filming of a Council's public meetings.
9. Under paragraph 4(6) of Part 2 (admission of public to meetings of local authority executives and their committees) the Regulations state that "while the meeting is open to the public, any person attending the meeting for the purpose of reporting the proceedings is, so far as practicable, to be afforded reasonable facilities for taking their report". The Council currently provides a desk at public meetings for anyone in attendance wishing to report the meeting's proceedings, together with a copy of the agenda, reports and any other paperwork or information circulated at the meeting as required by the Regulations. Free Wi-Fi is also available for those people viewing documents online using laptops, tablets or other mobile devices.
10. The 'Your council's cabinet – going to its meetings, seeing how it works' guidance document includes a section on page 6 headed 'can I film the meeting?' This refers to all public meetings, not solely meetings of a Council's Executive, and states that: -  
  
"Council meetings are public meetings. Elected representatives and council officers acting in the public sphere should expect to be held to account for their comments and votes in such meetings. The rules require councils to provide reasonable facilities for any member of the public to report on meetings. Councils should thus allow the filming of councillors and officers at meetings that are open to the public".
11. The footer on page 4 of the guidance makes it clear that the guidance itself should not be taken as providing any definitive interpretation of the statutory requirements on councils, members, officers, or the public's rights.
12. The issuing of this guidance has resulted in local authorities across the country reviewing their processes with regard to the filming of their public meetings, due to anticipated increases in the number of people wishing to film or record public meetings as a consequence.
13. A number of Councils in the United Kingdom film and stream their meetings live on the internet, known as webcasting, and have done so for a number of years, whereas other Councils prohibit the use of any recording equipment without authorisation. South Cambridgeshire District Council's Standing Orders within its Constitution (Standing Order 21.4 – Recording of Business) currently states that: -

“Unless specifically authorised by resolution, no audio and / or visual or photographic recording in any format is allowed at any meeting of the Council, the Executive, or any committee or sub-committee of the Council or the Executive.” The District Council has usually granted permission to film or record proceedings whenever such a request has been made.

14. East Cambridgeshire District Council, Cambridge City Council and Cambridgeshire County Council currently allow members of the public to film their respective public meetings.
15. The Civic Affairs Committee may wish to take into consideration the following paragraphs also stated in the guidance under the heading ‘can I film the meeting?’: -

“The Data Protection Act does not prohibit such overt filming of public meetings. Councils may reasonably ask for the filming to be undertaken in such a way that it is not disruptive or distracting to the good order and conduct of the meeting. As a courtesy, attendees should be informed at the start of the meeting that it is being filmed; we recommend that those wanting to film liaise with council staff before the start of the meeting.

The council should consider adopting a policy on the filming of members of the public speaking at a meeting, such as allowing those who actively object to being filmed not to be filmed, without undermining the broader transparency of the meeting.”

16. In terms of accommodating members of the public wishing to attend the Council’s meetings, fire safety regulations and the size of the public meeting rooms at South Cambridgeshire Hall place limitations on the total number of people allowed in these rooms at any one time. There have been a couple of occasions in the last twelve months where it has been difficult to accommodate high volumes of people arriving at South Cambridgeshire Hall to attend meetings involving items of business that have generated significant public interest. Whilst such instances are not commonplace, the Civic Affairs Committee may wish to consider any appropriate measures to ensure that anyone arriving at the Council’s offices to attend a public meeting is able to see or hear proceedings should the meeting room be full to capacity.
17. The Civic Affairs Committee is asked to review the Council’s current process for the filming of its public meetings and determine whether any changes should be recommended to Full Council in light of the guidance document issued in June 2013.

### **Options**

18. The following options have been identified for the Civic Affairs Committee to consider: -
19. *Option 1*  
Recommend that the current wording in the Council’s Standing Orders be maintained, whereby a request to use visual/audio and photographic recording equipment at any public meeting requires specific authorisation by resolution of the body concerned.
20. *Option 2*  
Recommend that filming be permitted for all/some public meetings and the Council’s Standing Orders be amended accordingly, including an appropriate form of words to: -

- a) ensure that filming is undertaken in such a way that it is not disruptive or distracting to the good order and conduct of the meeting;
  - b) ensure that those members of the public speaking at a meeting who actively object to being filmed are not filmed.
21. *Option 3*  
Recommend that webcasting be introduced for all/some public meetings, so that the Council can film and stream its proceedings live on its website.
22. *Option 4*  
Recommend that the Council internally films or records all/some public meetings, so that the video and audio feed can be relayed to other parts of the building as an overflow arrangement in circumstances whereby the public gallery cannot accommodate the number of people wishing to attend.
23. *Option 5*  
Recommend that the Council internally films all/some public meetings and provides a link to the footage on its website after the meeting has been held, so that the footage is not live but can still be viewed online.

### **Implications**

24. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, the following implications have been considered: -

#### ***Financial***

25. Option 3 will require the procurement, installation and maintenance of specialist webcasting equipment. The cost of procuring and installing equipment at this stage has not been identified, but on-going hosting and maintenance costs would also need to be taken into consideration.
26. Options 4 and 5 would require the procurement of a basic video/audio extender to other parts of South Cambridgeshire Hall, which would cost in the region of £4,000 including installation and configuration works.

#### ***Legal***

27. Legal implications are outlined in the main body of this report.

### **Consultation responses (including from the Youth Council)**

28. The South Cambridgeshire Youth Council considered this issue at its meeting on 18 August 2013 and some Youth Councillors expressed concerns regarding the potential for people to film a meeting, edit the footage and upload it to platforms such as YouTube. However, in view of the fact that central government committees were filmed, the Youth Council did not object to the filming of District Council meetings.

### **Effect on Strategic Aims**

**Aim 1 – We will listen to and engage with residents, parishes and businesses to ensure we deliver first class services and value for money.**

29. The recommendations in this report follow the latest guidance issued by the Department for Communities and Local Government, which seeks to provide greater levels of transparency and public access to the Council's meetings, thereby encouraging more engagement with residents, parishes and businesses.

**Background Papers**

No background documents, other than those appended to the report, were referred to in the writing of this report.

**Report Author:** Graham Aisthorpe-Watts – Democratic Services Team Leader  
Telephone: (01954) 713030

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**2012 No. 2089**

**LOCAL GOVERNMENT, ENGLAND**

**The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012**

*Made* - - - - *10th August 2012*  
*Laid before Parliament* *15th August 2012*  
*Coming into force* - - *10th September 2012*

The Secretary of State for Communities and Local Government, in exercise of the powers conferred by sections 9G, 9GA and 105 of the Local Government Act 2000(a), makes the following Regulations.

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and come into force on 10th September 2012.

**Interpretation**

2. In these Regulations—

“the 1972 Act” means the Local Government Act 1972(b);

“the 2000 Act” means the Local Government Act 2000;

“background papers” in relation to a report or part of a report, means those documents other than published works, that—

(a) relate to the subject matter of the report or, as the case may be, the part of the report; and

(b) in the opinion of the proper officer—

(i) disclose any facts or matters on which the report or an important part of the report is based; and

(ii) were relied on to a material extent in preparing the report;

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(a) 2000 c.22. Sections 9G and 9GA were inserted into the Local Government Act 2000 by section 21 of, and Schedule 2 to, the Localism Act 2011 (c.20). Schedule 2 to the Localism Act 2011 inserted Part 1A, applying to England only, into the 2000 Act. Section 105 is amended by section 100(3) of, and Schedule 3 to, the Local Government Act 2003 (c.26), by section 191(5) of the Local Government and Public Involvement in Health Act 2007 (c.28), and by paragraph 70 of Schedule 3 to the Localism Act 2011.

(b) 1972 c.70.

“confidential information” means—

- (a) information provided to the local authority by a government department on terms (however expressed) which forbid the disclosure of the information to the public; or
- (b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court,

and in either case, a reference to the obligation of confidence is to be construed accordingly;

“copy” in relation to any document includes a copy made from a copy;

“decision maker” means the decision-making body by which, or the individual by whom, an executive decision is made;

“the decision-making body” means—

- (a) the executive of a local authority;
- (b) a committee of a local authority executive;
- (c) a joint committee, where all the members of the joint committee are members of a local authority executive, which is authorised to discharge the function to which the executive decision relates in accordance with the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012(a);
- (d) a sub-committee of a joint committee where all the members of the joint committee are members of a local authority executive, which is authorised to discharge the function to which the executive decision relates in accordance with the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012; or
- (e) an area committee of a local authority executive, within the meaning of section 9E of the 2000 Act;

“document” means any report or background papers, other than that only in a draft form, taken into consideration in relation to an executive decision;

“executive decision” means a decision made or to be made by a decision maker in connection with the discharge of a function which is the responsibility of the executive of a local authority;

“exempt information” has the meaning given by section 100I of the 1972 Act (exempt information and power to vary Schedule 12A);

“head of paid service” means a person designated as a head of paid service under section 4 of the Local Government and Housing Act 1989 (designation and reports of head of paid service)(b);

“information” includes an expression of opinion, any recommendations and any decision made;

“joint committee” means a committee appointed under section 102(1) of the 1972 Act (appointment of committees) in accordance with regulations made under section 9EB of the 2000 Act (joint exercise of functions)(c);

“key decision” has the meaning given in regulation 8;

“local authority” means a county council in England, a district council or a London borough council which is operating executive arrangements in accordance with Part 1A of the 2000 Act;

“newspaper” includes—

- (a) a news agency which systematically carries on the business of selling and supplying reports or information to the newspapers; and
- (b) any organisation which is systematically engaged in collecting news—

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(a) S.I. 2012/1019.

(b) 1989 c.42; There are amendments to section 4 which are not relevant to these Regulations.

(c) Section 9EB was inserted into the 2000 Act by section 21 of, and Schedule 2 to, the Localism Act 2011 (c.20).

- (i) for sound or television broadcasts;
- (ii) for inclusion in programmes to be included in any programme service within the meaning of the Broadcasting Act 1990<sup>(a)</sup> other than a sound or television broadcasting service within the meaning of Part 3 or Part 1 of that Act respectively; or
- (iii) for use in electronic or any other format to provide news to the public by means of the internet;

“political adviser or assistant” means a person appointed pursuant to section 9 of the Local Government and Housing Act 1989<sup>(b)</sup> (assistants for political groups) or regulations made under paragraph 5 of Schedule A1 to the 2000 Act (regulations for mayor’s assistant);

“private meeting” means a meeting, or part of a meeting, of the decision-making body during which the public are excluded in accordance with regulation 4(2);

“proper officer” has the same meaning as in section 270(3) of the 1972 Act (general provisions as to interpretation);

“public meeting” means a meeting of the decision-making body which is open to the public in accordance with regulation 4(1);

“relevant local authority” means the local authority whose executive is responsible for the discharge of the function to which the executive decision relates;

“relevant overview and scrutiny committee” means an overview and scrutiny committee of the relevant local authority which has terms of reference including the power to review or scrutinise decisions made, or other actions taken, in connection with the discharge of the function to which the decision relates;

“report” in relation to an executive decision does not include a report in draft form.

## PART 2

### Admission of public to meetings of local authority executives and their committees

#### **Meetings of local authority executives and their committees to be held in public**

3. Subject to regulation 4, a meeting of a decision-making body must be held in public.

#### **Admission of the public to meetings of local authority executives and their committees**

4.—(1) A meeting of a decision-making body must be open to the public except to the extent that the public are excluded under paragraph (2).

(2) The public must be excluded from a meeting during an item of business whenever—

- (a) it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item, confidential information would be disclosed to them in breach of the obligation of confidence;
- (b) the decision-making body concerned passes a resolution to exclude the public during that item where it is likely, in view of the nature of the item of business, that if members of the public were present during that item, exempt information would be disclosed to them; or
- (c) a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at a meeting.

(3) A resolution under paragraph (2)(b) must—

- (a) identify the proceedings, or the part of the proceedings to which it applies, and

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(a) 1990 c.42.

(b) 1989 c.42.

- (b) state, by reference to the descriptions in Schedule 12A to the 1972 Act (access to information: exempt information), the description of exempt information giving rise to the exclusion of the public.

(4) The public may only be excluded under sub-paragraph (a) or (b) of paragraph (2) for the part or parts of the meeting during which it is likely that confidential information or exempt information would be disclosed.

(5) Without prejudice to any power of exclusion to suppress or prevent disorderly conduct or other misbehaviour at a meeting, the decision-making body is not to have the power to exclude members of the public from a meeting while it is open to the public.

(6) While the meeting is open to the public, any person attending the meeting for the purpose of reporting the proceedings is, so far as practicable, to be afforded reasonable facilities for taking their report.

### **Procedures prior to private meetings**

**5.—**(1) A decision made by a decision-making body to hold a meeting in private is a prescribed decision for the purpose of section 9GA(5) of the 2000 Act (regulations requiring prescribed information about prescribed decisions).

(2) At least 28 clear days before a private meeting, the decision-making body must—

- (a) make available at the offices of the relevant local authority a notice of its intention to hold the meeting in private; and
- (b) publish that notice on the relevant local authority's website, if it has one.

(3) A notice under paragraph (2) must include a statement of the reasons for the meeting to be held in private.

(4) At least five clear days before a private meeting, the decision-making body must—

- (a) make available at the offices of the relevant local authority a further notice of its intention to hold the meeting in private; and
- (b) publish that notice on the relevant local authority's website, if it has one.

(5) A notice under paragraph (4) must include—

- (a) a statement of the reasons for the meeting to be held in private;
- (b) details of any representations received by the decision-making body about why the meeting should be open to the public; and
- (c) a statement of its response to any such representations.

(6) Where the date by which a meeting must be held makes compliance with this regulation impracticable, the meeting may only be held in private where the decision-making body has obtained agreement from—

- (a) the chairman of the relevant overview and scrutiny committee; or
- (b) if there is no such person, or if the chairman of the relevant overview and scrutiny committee is unable to act, the chairman of the relevant local authority; or
- (c) where there is no chairman of either the relevant overview and scrutiny committee or of the relevant local authority, the vice-chairman of the relevant local authority,

that the meeting is urgent and cannot reasonably be deferred.

(7) As soon as reasonably practicable after the decision-making body has obtained agreement under paragraph (6) to hold a private meeting, it must—

- (a) make available at the offices of the relevant local authority a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred; and
- (b) publish that notice on the relevant local authority's website, if it has one.

6.—(1) The decision-making body must give notice of the time and place of a public meeting by displaying it at the offices of the relevant local authority and publishing it on that authority's website, if it has one—

- (a) at least five clear days before the meeting; or
- (b) where the meeting is convened at shorter notice, at the time that the meeting is convened.

(2) An item of business may only be considered at a public meeting—

- (a) where a copy of the agenda or part of the agenda including the item has been available for inspection by the public as required by regulation 7 for at least five clear days before the meeting; or
- (b) where the meeting is convened at shorter notice, a copy of the agenda including the item has been available for inspection by the public from the time that the meeting was convened.

### **Access to agenda and connected reports for public meetings**

7.—(1) Subject to paragraph (2), a copy of the agenda and every report for a meeting must be made available for inspection by the public—

- (a) at the offices of the relevant local authority; and
- (b) on the relevant local authority's website, if it has one.

(2) If the proper officer thinks fit, there may be excluded from the copy of any report provided pursuant to paragraph (1) the whole, or any part, of the report which relates only to matters during which, in the proper officer's opinion, the meeting is likely to be a private meeting.

(3) Any document which is required by paragraph (1) to be available for inspection by the public must be available for such inspection for at least five clear days before the meeting except that—

- (a) where the meeting is convened at shorter notice, a copy of the agenda and associated reports must be available for inspection when the meeting is convened; and
- (b) where an item which would be available for inspection by the public is added to the agenda, copies of the revised agenda and any report relating to the item for consideration at the meeting, must be available for inspection by the public when the item is added to the agenda.

(4) Nothing in paragraph (3) requires a copy of the agenda, item or report to be available for inspection by the public until a copy is available to members of the decision-making body concerned.

(5) Where by virtue of paragraph (2) the whole or any part of a report for a public meeting is not available for inspection by the public—

- (a) every copy of the whole report or of the part of the report, as the case may be, must be marked "not for publication"; and
- (b) there must be stated on every copy of the whole or the part of the report—
  - (i) that it contains confidential information; or
  - (ii) by reference to the descriptions in Schedule 12A to the 1972 Act, the description of exempt information by virtue of which the decision-making body discharging the executive function are likely to exclude the public during the item to which the report relates.

(6) Except during any part of a meeting during which the public are excluded, the relevant local authority must make available for the use of members of the public present at the meeting a reasonable number of copies of the agenda and of the reports for the meeting.

(7) Subject to regulation 20, following a request made by a member of the public or on behalf of a newspaper and on payment being made of postage, copying or other necessary charge for transmission, a relevant local authority must supply to that person or newspaper—

- (a) a copy of the agenda for a public meeting and a copy of each of the reports for consideration at the meeting;
- (b) such further statements or particulars, as are necessary to indicate the nature of the items contained in the agenda; and
- (c) if the proper officer thinks fit in the case of any item, a copy of any other document supplied to members of the executive in connection with the item.

(8) Paragraph (2) applies in relation to copies of reports provided pursuant to paragraph (6) or (7) as it applies in relation to copies of reports made available for inspection pursuant to paragraph (1).

## PART 3

### Key decisions

#### Key decisions

8.—(1) In these Regulations a “key decision” means an executive decision, which is likely—

- (a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority’s budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.

(2) In determining the meaning of “significant” for the purposes of paragraph (1) the local authority must have regard to any guidance for the time being issued by the Secretary of State in accordance with section 9Q of the 2000 Act (guidance).

#### Publicity in connection with key decisions

9.—(1) Where a decision maker intends to make a key decision, that decision must not be made until a document has been published in accordance with paragraph (2), which states—

- (a) that a key decision is to be made on behalf of the relevant local authority;
- (b) the matter in respect of which the decision is to be made;
- (c) where the decision maker is an individual, that individual’s name, and title if any and, where the decision maker is a decision-making body, its name and a list of its members;
- (d) the date on which, or the period within which, the decision is to be made;
- (e) a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
- (g) that other documents relevant to those matters may be submitted to the decision maker; and
- (h) the procedure for requesting details of those documents (if any) as they become available.

(2) At least 28 clear days before a key decision is made, the document referred to in paragraph (1) must be made available for inspection by the public—

- (a) at the offices of the relevant local authority; and
- (b) on the relevant local authority’s website, if it has one.

- (3) Where, in relation to any matter—
- (a) the public may be excluded under regulation 4(2) from the meeting at which the matter is to be discussed; or
  - (b) documents relating to the decision need not, because of regulation 20(3), be disclosed to the public,

the document referred to in paragraph (1) must contain particulars of the matter but may not contain any confidential, exempt information or particulars of the advice of a political adviser or assistant.

### **General exception**

**10.**—(1) Subject to regulation 11, where the publication of the intention to make a key decision under regulation 9 is impracticable, that decision may only be made—

- (a) where the proper officer has informed the chairman of the relevant overview and scrutiny committee or, if there is no such person, each member of the relevant overview and scrutiny committee by notice in writing, of the matter about which the decision is to be made;
- (b) where the proper officer has made available at the offices of the relevant local authority for inspection by the public and published on the relevant local authority's website, if it has one, a copy of the notice given pursuant to sub-paragraph (a); and
- (c) after five clear days have elapsed following the day on which the proper officer made available the notice referred to in sub-paragraph (b).

(2) Where paragraph (1) applies to any matter, regulation 9 need not be complied with in relation to that matter.

(3) As soon as reasonably practicable after the proper officer has complied with paragraph (1), he or she must—

- (a) make available at the offices of the relevant local authority a notice setting out the reasons why compliance with regulation 9 is impracticable; and
- (b) publish that notice on the relevant local authority's website, if it has one.

### **Cases of special urgency**

**11.**—(1) Where the date by which a key decision must be made, makes compliance with regulation 10 impracticable, the decision may only be made where the decision maker has obtained agreement from—

- (a) the chairman of the relevant overview and scrutiny committee; or
- (b) if there is no such person, or if the chairman of the relevant overview and scrutiny committee is unable to act, the chairman of the relevant local authority; or
- (c) where there is no chairman of either the relevant overview and scrutiny committee or of the relevant local authority, the vice-chairman of the relevant local authority,

that the making of the decision is urgent and cannot reasonably be deferred.

(2) As soon as reasonably practicable after the decision maker has obtained agreement under paragraph (1) that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must—

- (a) make available at the offices of the relevant local authority a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred; and
- (b) publish that notice on the relevant local authority's website, if it has one.

## Recording of executive decisions and inspection of related papers or documents

### Recording of executive decisions made at meetings

12.—(1) As soon as reasonably practicable after any meeting of a decision-making body at which an executive decision was made, the proper officer, or if the proper officer was not present at the meeting, the person presiding, must ensure that a written statement is produced for every executive decision made which includes the information specified in paragraph (2).

(2) The statement referred to in paragraph (1) must include—

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made;
- (d) a record of any conflict of interest relating to the matter decided which is declared by any member of the decision-making body which made the decision; and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

(3) For the purposes of paragraph (1) "person presiding" means the person actually presiding or the person nominated to preside at that meeting.

(4) Executive decisions made by decision-making bodies are prescribed decisions for the purposes of section 9G(3) of the 2000 Act (duty to keep written records of private meetings).

### Recording of executive decisions made by individuals

13.—(1) As soon as reasonably practicable after an individual member has made an executive decision, that member must produce or instruct the proper officer to produce a written statement of that executive decision which includes the information specified in paragraph (2).

(2) The statement referred to in paragraph (1) must include—

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the member when making the decision;
- (d) a record of any conflict of interest declared by any executive member who is consulted by the member which relates to the decision; and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

(3) Executive decisions made by individual members of local authority executives are prescribed decisions for the purposes of section 9G(4) of the 2000 Act (duty to keep a written record of decisions made by individual members of local authority executives).

(4) As soon as reasonably practicable after an officer has made a decision which is an executive decision, the officer must produce a written statement which must include—

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the officer when making the decision;
- (d) a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision; and



- (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

**Inspection of documents following executive decisions**

14.—(1) Subject to regulation 20, after a meeting of a decision-making body at which an executive decision has been made, or after an individual member or an officer has made an executive decision the proper officer must ensure that a copy of—

- (a) any records prepared in accordance with regulations 12 or 13; and
- (b) any report considered at the meeting or, as the case may be, considered by the individual member or officer and relevant to a decision recorded in accordance with regulations 12 or 13 or, where only part of the report is relevant to such a decision, that part,

must be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of the relevant local authority, and on that authority's website, if it has one.

(2) Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection under paragraph (1), those documents must be supplied for the benefit of the newspaper by the relevant local authority on payment by the newspaper to the local authority of postage, copying or other necessary charge for transmission.

**Inspection of background papers**

15. Subject to regulation 20, when a copy of the whole or part of a report for a meeting is made available for inspection by members of the public in accordance with regulation 7 or 14, at the same time—

- (a) a copy of a list compiled by the proper officer of the background paper to the report or part of the report, must be included in the report or, as the case may be, part of the report; and
- (b) at least one copy of each of the documents included in that list,

must be available for inspection by the public at the offices of the relevant local authority and on that authority's website, if it has one.

**PART 5**

**Additional rights of members of the local authority and of members of overview and scrutiny committees**

**Additional rights of access to documents for members of local authorities**

16.—(1) Subject to paragraphs (5) to (6), any document which—

- (a) is in the possession or under the control of the executive of a local authority; and
- (b) contains material relating to any business to be transacted at a public meeting,

must be available for inspection by any member of the relevant local authority.

(2) Any document which is required by paragraph (1) to be available for inspection by any member of the relevant local authority must be available for such inspection for at least five clear days before the meeting except that—

- (a) where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and
- (b) where an item is added to the agenda at shorter notice, a document that would be required to be available under paragraph (1) in relation to that item, must be available for inspection when the item is added to the agenda.

(3) Subject to paragraphs (5) to (6), any document which—

- (a) is in the possession or under the control of the executive of the local authority; and
- (b) contains material relating to—
  - (i) any business transacted at a private meeting;
  - (ii) any decision made by an individual member in accordance with executive arrangements; or
  - (iii) any decision made by an officer in accordance with executive arrangements,

must be available for inspection by any member of the relevant local authority when the meeting concludes or where an executive decision is made by an individual member or an officer immediately after the decision has been made.

(4) Any document which is required by paragraph (3) to be available for inspection by any member of the relevant local authority must be available for such inspection, in any event, within 24 hours of the conclusion of the meeting or the decision being made, as the case may be.

(5) Paragraphs (1) and (3) do not require a document to be available for inspection if it appears to the proper officer that it discloses exempt information of a description falling within Part 1 of Schedule 12A to the 1972 Act (descriptions of exempt information: England).

(6) Notwithstanding paragraph (5), paragraphs (1) and (3) do require the document to be available for inspection if the information is information of a description for the time being falling within—

- (a) paragraph 3 of Schedule 12A to the 1972 Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract); or
- (b) paragraph 6 of Schedule 12A to the 1972 Act.

(7) Where it appears to the proper officer that compliance with paragraph (1) or (3) in relation to a document or part of a document would involve the disclosure of advice provided by a political adviser or assistant that paragraph will not apply to that document or part.

(8) The rights conferred by paragraphs (1) and (3) are in addition to any other rights that a member of a local authority may have.

#### **Additional rights of access to documents for members of overview and scrutiny committees**

**17.—**(1) Subject to paragraph (3) a member of an overview and scrutiny committee of a relevant local authority is entitled to a copy of any document which—

- (a) is in the possession or under the control of the executive of that authority; and
- (b) contains material relating to—
  - (i) any business that has been transacted at a meeting of a decision-making body of that authority;
  - (ii) any decision that has been made by an individual member of that executive in accordance with executive arrangements; or
  - (iii) any decision that has been made by an officer of the authority in accordance with executive arrangements.

(2) Subject to paragraph (3), where a member of an overview and scrutiny committee requests a document which falls within paragraph (1), the executive must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the executive receives the request.

(3) No member of an overview and scrutiny committee is entitled to a copy—

- (a) of any such document or part of a document as contains exempt or confidential information unless that information is relevant to—
  - (i) an action or decision that that member is reviewing or scrutinising; or
  - (ii) any review contained in any programme of work of such a committee or sub-committee of such a committee; or

- (b) of a document or part of a document containing advice provided by a political adviser or assistant.

(4) Where the executive determines that a member of an overview and scrutiny committee is not entitled to a copy of a document or part of any such document for a reason set out in paragraph (1) or (3), it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.

#### **Reports to the local authority where the key decision procedure is not followed**

**18.**—(1) Where an executive decision has been made and—

- (a) was not treated as being a key decision; and
- (b) a relevant overview and scrutiny committee are of the opinion that the decision should have been treated as a key decision,

that overview and scrutiny committee may require the executive which is responsible for the decision to submit a report to the relevant local authority within such reasonable period as the committee may specify.

(2) A report under paragraph (1) must include details of—

- (a) the decision and the reasons for the decision;
- (b) the decision maker by which the decision was made; and
- (c) if the executive of the relevant local authority are of the opinion that the decision was not a key decision, the reasons for that opinion.

#### **Executive reports to the local authority**

**19.**—(1) The executive leader or elected mayor must submit to the relevant local authority at such intervals as may be determined by the relevant local authority a report containing details of each executive decision taken during the period since the last report was submitted to the authority where the making of the decision was agreed as urgent in accordance with regulation 11.

(2) A report submitted for the purposes of paragraph (1) must include—

- (a) particulars of each decision made; and
- (b) a summary of the matters in respect of which each decision was made.

(3) The executive leader or elected mayor must submit at least one report under paragraph (1) annually to the relevant local authority.

## **PART 6**

### **General provisions relating to information**

#### **Confidential information, exempt information and advice of a political adviser or assistant**

**20.**—(1) Nothing in these Regulations is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.

(2) Nothing in these Regulations—

- (a) authorises or requires a local authority to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the proper officer, that document or part of a document contains or may contain confidential information; or
- (b) requires a local authority to disclose to the public or make available for public inspection any document or part of document if, in the opinion of the proper officer, that document or part of a document contains or is likely to contain exempt information or the advice of a political adviser or assistant.

(3) Where a member of a local authority executive or an officer makes an executive decision in accordance with executive arrangements, nothing in these Regulations—

- (a) authorises or requires documents relating to that decision to be disclosed to the public, or made available for public inspection where, the documents contain confidential information; or
- (b) requires documents relating to that decision to be disclosed to the public, or made available for public inspection where the disclosure of the documents would, in the opinion of the member or officer making the decision, give rise to the disclosure of exempt information or the advice of a political adviser or assistant.

(4) Nothing in these Regulations requires a decision-making body to permit the taking of any photographs of any proceedings or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place.

### **Inspection and supply of documents**

**21.**—(1) Any document required by any provision of these Regulations to be open to inspection by members of the public must be available for inspection—

- (a) at all reasonable hours at the offices of the relevant local authority;
- (b) on the relevant local authority's website, if it has one; and
- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the relevant local authority by the person seeking to inspect the documents at the offices of the relevant local authority.

(2) Subject to paragraph (4), where a document is to be available for inspection by a person under any provision in these Regulations, the person may—

- (a) make a copy of the whole or part of the document; or
- (b) require the person having custody of the document to supply the person requiring inspection a copy of the whole or part of the document,

on payment by the person requiring the copy to the relevant local authority of postage, copying or other necessary charge for transmission.

(3) Subject to paragraph (4), any member of the public may, in any publicly available medium, reproduce, or provide commentary in relation to, any document supplied to that person or made available for inspection by members of the public under these Regulations.

(4) Paragraphs (2) and (3) do not require or authorise the doing of any act which infringes the copyright in any work except that, where the owner of the copyright is the relevant local authority, nothing done pursuant to that paragraph constitutes an infringement of the copyright.

(5) Where any document required by these Regulations to be open to inspection by the public—

- (a) is supplied to or available for inspection by members of the public; or
- (b) is supplied for the benefit of any newspaper in pursuance of regulation 7(7) or 14(2),

the publication thereby of any defamatory matter contained in the document is privileged unless the publication is proved to be with malice.

(6) Any written record of an executive decision or any report required by regulation 14 to be available for inspection by members of the public, must be retained by the relevant local authority and made available for inspection by the public for a period of at least six years beginning on the date on which the decision, to which the report or record relates, was made.

(7) Any background papers required by regulation 15 to be available for inspection by members of the public must be retained by the relevant local authority and be available for inspection by the public for a period of at least four years beginning on the date on which the decision, to which the background papers relate, was made.

(8) The rights conferred on any person by these Regulations to inspect, copy or be supplied with documents are in addition to any such rights that person may have apart from those under these Regulations.

### Offences

22.—(1) A person who has custody of a document which is required by regulation 7, 14 or 15 to be available for inspection by members of the public commits an offence if, without reasonable excuse, that person—

- (a) intentionally obstructs any person exercising a right conferred under these Regulations to inspect, or to make a copy of the whole or part of the document; or
- (b) refuses to supply a copy of the whole or part of the document in accordance with regulation 7(7), 14(2) or 21(2).

(2) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

### Revocations

23. The following Regulations are revoked—

- (a) the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000(a);
- (b) the Local Authorities (Executive Arrangements) (Access to Information) (England) Amendment Regulations 2002(b); and
- (c) the Local Authorities (Executive Arrangements) (Access to Information) (Amendment) (England) Regulations 2006(c).

Signed by the authority of the Secretary of State for Communities and Local Government

*Bob Neill*

Parliamentary Under Secretary of State

Department for Communities and Local Government

10th August 2012

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations apply to county councils in England, district councils and London borough councils which are operating executive arrangements under Part 1A of the Local Government Act 2000. The Regulations make provision for public access to meetings and to information relating to decisions of local authority executives, and their committees. In addition, they provide for access to information relating to decisions made by joint committees of local authorities where these are solely comprised of executive members and are discharging executive functions. The Regulations also make provision for public access to documents where executive decisions are made by individual members or officers.

The general principle of the Regulations is for the public to have access to meetings and documents where a local authority executive, committee or individual is taking an executive decision, as defined by regulation 2.

Part 1 sets out preliminary matters and defines terms used in the Regulations.

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(a) S.I. 2000/3272.

(b) S.I. 2002/716.

(c) S.I. 2006/69.

The purpose of Part 2 is to establish the presumption that meetings of local authority executives and their committees are to be held in public. Regulation 4 sets out the circumstances during which the public must be excluded from meetings. Regulation 5 sets out the formalities to be complied with before a private meeting is held. Regulation 6 sets out formalities to be complied with before a public meeting takes place. Rules relating to access to the agenda and reports for executive meetings are contained in regulation 7.

Part 3 provides for specific requirements relating to executive decisions which are key decisions. Regulation 8 sets out the meaning of key decision and regulation 9 sets out the publicity requirements in relation to key decisions. Regulations 10 and 11 allow exceptions to these requirements.

Part 4 deals with the recording of all executive decisions. In particular, regulations 12 and 13 require decisions to be recorded in a written statement. Regulations 14 and 15 set out the documents which must be made available for inspection by the public.

Members of the local authority and of overview and scrutiny committees are given additional rights to access documents in Part 5. Regulation 17 sets out additional rights of members of overview and scrutiny committees in relation to decisions that committee is scrutinising and in certain circumstances the committee can access exempt or confidential information.

An overview and scrutiny committee can require the executive to make a report to the local authority on matters which have not been dealt with as a key decision and which an overview and scrutiny committee consider should have been treated as such under regulation 18. Regulation 19 is a reporting requirement that the executive provides reports to the local authority on all matters which have been treated as urgent under regulation 11.

Part 6 makes general provision relating to information. In particular, regulation 20 sets out general principles applicable to the whole instrument relating to the non-disclosure of confidential, exempt information or the advice of a political adviser or assistant. Regulation 21 establishes the manner in which documents required to be available for inspection by the Regulations are to be held at the offices of the local authority. Regulation 22 sets out offences where documents have not been made available for inspection as required under these Regulations.

No impact assessment has been produced in relation to these Regulations because no impact on the private or voluntary sector is foreseen.



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## Your council's cabinet – going to its meetings, seeing how it works

A guide for local people

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# Your council's cabinet – going to its meetings, seeing how it works

## About this guide

This Guide<sup>1</sup> gives practical information about the public attending meetings of a council's executive (i.e. the council's cabinet – its main decision making body – consisting of an elected mayor or leader and a number of councillors) and obtaining council documents. This Guide is designed to help the public know when they can attend such meetings and what documents and information are available to them, now that there are new national rules<sup>2</sup> to make councils more transparent and accountable to their local communities. It should also help councillors and officers to comply with these rules which are based on a presumption in favour of openness.

## The national rules

### Why are there new national rules?

The Government believes that the earlier rules<sup>3</sup> made by the last government did not provide maximum transparency because an executive was only required to hold meetings in public in certain limited circumstances. A cabinet could largely choose which of its meetings should be held in public thus hindering effective local accountability and scrutiny. The new rules have been produced to address this by introducing greater transparency and openness into meetings of the executive (i.e. the council's cabinet), its committees and sub-committees. The new rules have also strengthened the rights of local authority councillors to access information about items to be discussed at a public or private meeting.

### Who do these rules help?

These rules help any members of the public who want to know about the work of a council's executive. The national rules also help members of any council with an executive governance arrangement<sup>4</sup> to know what their executive is doing.

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<sup>1</sup> The Guide should not be taken as providing any definitive interpretation of the statutory requirements on councils, members, officers, or of the public's rights: those wishing to address such issues should seek their own legal advice.

<sup>2</sup> [The new rules are in The Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012 \(S.I. 2012/2089\) \("the Regulations"\)](#).

<sup>3</sup> Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (S.I.2000/3272).

<sup>4</sup> This means a district, unitary, county or London local authority that has a leader and cabinet or mayor, and cabinet governance arrangement.

## Who can make an executive decision in my council?

The rules<sup>5</sup> of your council define who can make a decision. The decision maker can be the executive, its committees and sub-committees, joint committees, joint sub-committees, individual councillors, and officers who have delegated responsibility from the executive to make executive decisions.

## Going to meetings of your council's executive

### Can a council executive choose to meet in private?

No. All meetings of an executive including meetings of its committees or sub-committees must be open to the public, except in limited defined circumstances where the national rules require or allow the meeting to be closed to the public.

### When do the national rules say that a meeting must be closed to the public?

The rules require a meeting to be closed to the public in two circumstances:

- If the presence of the public is likely to result in the council breaching a legal obligation to third parties about the keeping of confidential information; or
- a lawful power is used to exclude the public in order to maintain orderly conduct or prevent misbehaviour at a meeting.

### What is confidential information?

Confidential information<sup>6</sup> means:

- information provided to the council by a Government department on terms which forbid the disclosure of the information to the public; and
- information which is prohibited from being disclosed by any enactment or by a court order.

### Do the national rules allow a meeting to be closed in any other circumstances?

Yes. A meeting can also be closed to the public where the executive so decides (by passing a resolution) because exempt information would otherwise be likely to be disclosed. It is open to the executive, if it chooses, to consider in public matters involving exempt information.

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<sup>5</sup> Each council has its own rules for doing business - its constitution and standing orders- which must be in line with any national rules

<sup>6</sup> Regulation 2 of the Regulations.

The descriptions of exempt information are set out in the Schedule 12A to the Local Government Act 1972. The descriptions are listed at **Annex A** of this Guide.

**Can I film the meeting?**

Council meetings are public meetings. Elected representatives and council officers acting in the public sphere should expect to be held to account for their comments and votes in such meetings. The rules require councils to provide reasonable facilities for any member of the public to report on meetings. Councils should thus allow the filming of councillors and officers at meetings that are open to the public.

The Data Protection Act does not prohibit such overt filming of public meetings. Councils may reasonably ask for the filming to be undertaken in such a way that it is not disruptive or distracting to the good order and conduct of the meeting. As a courtesy, attendees should be informed at the start of the meeting that it is being filmed; we recommend that those wanting to film liaise with council staff before the start of the meeting.

The council should consider adopting a policy on the filming of members of the public speaking at a meeting, such as allowing those who actively object to being filmed not to be filmed, without undermining the broader transparency of the meeting.

**Will I be able to tweet or blog council meetings?**

Similarly under the new rules there can be social media reporting of meetings. Thus bloggers, tweeters, facebook and YouTube users, and individuals with their own website, should be able to report meetings. You should ask your council for details of the facilities they are providing for citizen journalists.

**How will I know about a public meeting?**

Your council must give the public a notice of the meeting at least five clear calendar days before it takes place. The details of the meeting must be published on your local authority's website and at its offices. Any background papers must also be published with the agenda. No item can be considered if the item is not available for inspection by the public with five clear calendar days notice.

Where an item is added to the agenda within five calendar days before the meeting is scheduled to take place, a revised agenda, public report and background papers must be published as soon as the item is added to the agenda. In some circumstances, the whole or part of a report may not be available for public inspection because it contains either confidential or exempt information. In this case, the report should bear the phrase 'not for publication' and state that it contains confidential information or set out the description of the exempt information.

In addition, councils must provide a copy of the agenda, public reports and other relevant papers to a member of the public or a person representing a newspaper upon payment of postage or copying charge.

## **Can I be asked to leave the meeting?**

Yes. As a member of the public you can be asked to leave the meeting so that the executive, its committees or sub-committees can discuss matters in private, but only in the limited circumstances where the national rules allow this.

## **Will I know if it is proposed to hold a meeting in private?**

Prior to holding a private meeting, your council must have published on its website and at its offices at least 28 calendar days notice of its intention to consider a matter in private and the reasons for the private meeting. This is to ensure that members of the public have reasonable opportunity to make representations as to why the proposed private meeting should not be held in private.

At least five calendar days before the meeting, your council must confirm its intention to go ahead with the private meeting through another notice on its website and at its offices. This second notice has to include details of any representations received and the council's response to them.

## **Can a private meeting be held if 28 days notice is not given to the public?**

A private meeting can only be held without 28 days notice after the agreement of the Chairman of the Overview and Scrutiny Committee has been obtained that the meeting is urgent and cannot reasonably be delayed. In the absence of the Overview and Scrutiny Committee Chairman, the permission of the Council Chairman (or, in their absence, the Vice Chairman) must be obtained. If this agreement is granted the council must publish a notice about why the meeting is urgent and cannot be deferred. This notice must be available at its offices and on their website. If agreement is not given then the meeting must either be held in public, or the council must comply with the 28 day notice requirements.

## **Can I attend an executive's pre-briefing meeting with local authority officers?**

No. The rules apply only to when councillors meet as a decision making body to exercise their statutory executive responsibilities. The rules do not apply to political groups' meetings or to informal briefing meetings for councillors.

## **Available information about executive decisions**

### **What happens if I am not at the meeting, how will I know of any decisions made?**

The fact that you are unable to attend a public meeting of your council executive, its committees or sub-committees does not mean you cannot find out about the executive decisions<sup>7</sup> made. The national rules require such decisions to be recorded. A written

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<sup>7</sup> [An "executive decision" means a decision made or to be made by a decision maker in connection with the discharge of a function which is the responsibility of the executive of a local authority.](#)

statement must be produced, which reflects the decision along with the following information:

- details of the decision and the date it was made;
- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest of an executive member of the decision-making body; and
- a note of dispensation granted by the Head of Paid Service in respect of any declared conflict of interest.

You can then inspect these records and any reports considered at the meeting at your council's offices and on the council's website.

### **Apart from information about meetings, are there other means of knowing about decisions likely to be made by a decision maker?**

Yes. The new national rules require a council to publish its intention to make a key decision<sup>8</sup> in a document at least 28 calendar days prior to when the decision is intended to be made. The notice has to include details of the individual or executive body who will make the decision, the matter that is subject to a decision, other documents to be considered, and where these other documents are available. This notice document must be available at the council's offices and on the website before the decision is made.

This allows you to have sufficient knowledge in advance of those decisions that will be of genuine concern to you and your local communities.

### **Can a key decision be made without giving the 28 days notice?**

Yes, provided the following requirements are met:-

- the relevant Overview and Scrutiny Committee Chairman is informed in advance and in writing (or all the members of the Overview and Scrutiny Committee) about what the decision is concerning;
- a notice about the key decision to be made is made available for inspection at the council's offices and published on the website; and
- 5 calendar days elapse following the day a notice is published about the key decision to be made.

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<sup>8</sup> "key decision" means an executive decision which, is likely—

- to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or
- to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.



If there is a case of special urgency, for example an urgent decision on a negotiation, expenditure or contract, the decision must only be made if the agreement of the Overview and Scrutiny Committee Chairman is received. In the absence of the Overview and Scrutiny Committee Chairman, the permission of the Council Chairman (or in their absence the Vice Chairman) must be obtained. If agreement is given, a notice explaining why the decision is urgent and cannot reasonably be deferred, must be published and should be available at the council's offices and on its website as soon as reasonably practicable.

### **Can 28 days notice of a key decision also provide 28 days notice required for a private meeting?**

It is up to your council to decide whether the 28 day key decision document should contain the details required for a private meeting notice. Where there is an intention to make a key decision at a private meeting, your council must comply fully with all the national rules.

### **Can my council make key decisions and not follow the national rules?**

No. Councils must comply with all the national rules. Should a decision be made without applying the key decision rules because the council thinks that the decision is not a key decision, but subsequently the Overview and Scrutiny Committee decides the decision is a key decision, the executive may be asked to submit a report<sup>9</sup> to the full council.

### **Can an individual member of a council's executive, or an officer, take decisions on matters that are the executive's responsibility?**

Yes, where the council's rules allow this.

### **What record has to be made of such a decision by a member or officer?**

When a member or officer takes a decision on matters that are the responsibility of the council's executive, this must be recorded in writing. The form of the written record is for the council to decide, but the following should be included:

- details of the decision and the date it was made;
- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest declared by any executive member consulted in relation to the decision; and
- a note of dispensation granted in respect of any declared conflict of interest.

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<sup>9</sup> [The report must include details of:](#)

[\(1\) the decision and the reasons for the decision;](#)

[\(2\) the individual executive member or officer by whom the decision was made; and](#)

[\(3\) if the executive of the relevant local authority are of the opinion that the decision was not a key decision, the reasons for that opinion.](#)

## Are all decisions made by councils' officers to be so recorded?

No. The requirement to record decisions extends only to “executive decisions”. Executive decisions can sometimes be defined in your council’s rules. Decisions which are taken by officers under specific delegations from a meeting of their council's executive are clearly executive decisions. However, many administrative and operational decisions officers take on how they go about their day to day work will be delegated within the council’s rules and are not in this “executive decisions” category; as such they do not need to be recorded. Such decisions might include the following examples:

- decisions to allocate social carers to particular individuals, or for example, provide walking aids;
- decisions to allocate a social housing unit to an applicant or to send someone to carry out repairs;
- decisions to give business relief to individual traders;
- decisions to review the benefit claims of an individual applicant;
- decisions to allocate market stalls to individual traders;
- a decision to instruct certain staff within the council to appear in court in connection with proceedings relating environmental issues.

Where officers have been empowered to act on behalf of their council's executive, examples of decisions that should be recorded could include:

- decisions about awarding contracts above specified individual/total values;
- decisions to exercise powers of Compulsory Purchase;
- decisions on disposal of and/or provision of allotment land and green spaces;
- decision to purchase new ICT systems;
- the opening hours of local libraries;
- the holding of car boot sales/markets on council-owned land;
- the operating hours of off-street car parks;
- a decision to close a school;
- a decision to carry out major road works.

*This is not intended to be an exhaustive list, rather a series of examples to illustrate that, in the interests of maximum transparency, the new regulations require more than just key decisions to be recorded.*

*Ultimately it is for local decision makers to decide what information should be recorded on the basis of the national rules.*

## Can I see the records of executive decisions?

Yes. You can see records of any executive decision, made by the executive, its committee or sub-committee or individual councillors or officers along with any report considered and other background papers. They have to be available for inspection at your council’s offices and on its website as soon as is reasonably practicable after the decisions are made.

## **Can I ask for a copy of any records of executive decisions?**

Yes. You can ask for a copy of any documents relating executive decisions and your council should supply the information once you have paid for the postage, copying or any other necessary charge for transmission which will be determined by your council.

## **What are the rights of councillors to access meeting documents?**

As a councillor, you can inspect any document that contains material to be discussed at least 5 days before a public meeting is held. In case of a private meeting or decision made by an individual executive member or officer, you can inspect the document within 24 hours of the conclusion of the meeting or the decision being made.

In addition, if you are a member of an overview and scrutiny committee, you can ask for any document that contains business transacted at a meeting of the executive, its committees or sub-committees or officer of the authority. The executive must provide the document within 10 days after it (the executive) receives the request. In an instance where the executive cannot release the whole or part of the document, the executive must provide you with a written explanation.

## **What other rights do councillors have to inspect documents of their councils?**

In addition to the rights conferred on councillors by these Regulations in relation to executive decision making, councillors also have statutory rights to inspect documents of the council and its committees under Part 5A of the Local Government Act 1972. Councillors may also request information held by their council under the Freedom of Information Act 2000 (or the Environmental Information Regulations 2004 in relation to environmental information). Councillors may have rights under the common law to inspect such documents held by their council as are reasonably necessary for them to perform their duties.

## **What happens if documents relating to executive decisions are not made public?**

It is a criminal offence if, without a reasonable excuse, a person who has in his or her custody a document<sup>10</sup>, which the national rules require to be made available to the public, refuses to supply the whole or part of the document or intentionally obstructs any other person/s from disclosing such a document.

If a person is found guilty of such a criminal offence, he/she can be fined up to £200.

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<sup>10</sup> A document can be the agenda and connected reports for public meetings, documents relating to executive decisions made by an individual member or officer, or any other background papers.

## Your rights of access to meetings and information

### **Are there other rights I can exercise?**

Yes. You can inspect a council's detailed financial accounts, ledgers and records. The Accounts and Audit Regulations 2011 cover checking not just the accounts, but also "all books, deeds, contracts, bills, vouchers and receipts related to them". More information on this right is available at: <https://www.gov.uk/government/policies/making-local-councils-more-transparent-and-accountable-to-local-people/supporting-pages/peoples-rights-to-see-council-accounts>

You can see your council's spending transactions valued over £500, senior salaries, organisational charts, contracts and the location of public land and assets. This information is among the minimum datasets that your council should publish in accordance with the Code of Recommended Practice for Local Authorities on Data Transparency. You can obtain further information on this from: <https://www.gov.uk/government/publications/local-authority-data-transparency-code>

Also, you have the right to request information held by your council by submitting Freedom of Information Act requests to your council (a similar regime exists in relation to environmental information under the Environmental Information Regulations 2004). Information on Freedom of Information Act is available on the Information Commissioner's Office website at: <http://ico.org.uk/>

You have certain rights to re-use for your own purposes documents held by the council under the Re-use of Public Sector Information Regulations 2005. These Regulations provide that any request for re-use must be in writing, and where possible and appropriate the council must make the document concerned available for re-use by electronic means. More information is available at: <http://www.legislation.gov.uk/ukxi/2005/1515/introduction/made>

### **Where can I find the legislation relating to access to council's executive meetings and information?**

The relevant legislation relating to access to information regarding decisions made by council executives, and their committees/subcommittees and joint committees is Part 1A of the Local Government Act 2000 – see sections 9G and 9GA. It was inserted as a result of amendments made by the Localism Act 2011 and the relevant provisions are available at the following link:

<http://www.legislation.gov.uk/ukpga/2011/20/schedule/2/part/1>

The detailed provisions are contained in the secondary legislation made under the 2000 Act, that is the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which can be found at:

<http://www.legislation.gov.uk/ukxi/2012/2089/contents/made>

# Annex A – Descriptions of Exempt Information

The exempt information set out at Schedule 12A to the Local Government Act 1972 Act is as follows:

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
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.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes—
  - a. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - b. to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

The qualifications to the list of exempt information are as follows:

- A.** Information falling within number 3 above is not exempt information by virtue of that paragraph if it is required to be registered under--
  - the Companies Acts as defined in section 2 of the Companies Act 2006;
  - the Friendly Societies Act 1974;
  - the Friendly Societies Act 1992;
  - the Co-operative and Community Benefit Societies and Credit Unions Acts 1965 to 1978;
  - the Building Societies Act 1986; or
  - [(f) the Charities Act 2011.
- B.** Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
- C.** Information which—
  - falls within any of numbers 1 to 7 above; and
  - is not prevented from being exempt by virtue of number A or B above,

is exempt information 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.

# Agenda Item 5

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**REPORT TO:** Civic Affairs Committee

20 September 2013

**LEAD OFFICER:** Legal & Democratic Services Manager

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## REVIEW OF WHISTLEBLOWING POLICY

### Purpose

1. The Civic Affairs Committee took over the responsibility for the monitoring and review of the Council's Whistleblowing policy at its inception in September 2012. Following changes in national legislation the policy needs to be updated and relaunched to staff.
2. This is not a key decision.

### Recommendations

3. That the Committee:
  - a) Considers and APPROVES the amended policy document at Appendix A;
  - b) NOTES the quick guide to the policy for staff at Appendix B;
  - c) AGREES to include the Whistleblowing policy as a standing item on its agenda; and
  - d) AGREES to review the policy on a bi-annual basis to ensure it is fit for purpose.

### Reasons for recommendations

4. To ensure the council's Whistleblowing policy is updated following changes to legislation in the Enterprise and Regulatory Reform Act 2013 (ERRA) which came into force on 25 June 2013, which include a Public Interest test requirement for whistleblowers. The amended policy outlines how the legislative changes impact on employees who have concerns to raise and the Council needs to ensure that staff are aware of its existence and how to use it.

### Background

5. The whistleblowing legislation under the Public Interest Disclosure Act 1998 requires employers to refrain from dismissing workers and employees, or subjecting them to any other detriment because they have made a protected disclosure ("whistleblowing"). Whistleblowing occurs when an employee or worker draws attention to a concern or concerns of wrongdoing in their organisation. In the context of the Council the types of concerns a worker or an employee may wish to raise are set out in paragraphs 2.4 & 2.52 of the policy attached as Appendix A.
6. Whistleblowing policies are aimed at fostering a climate of openness and transparency in which individuals in the workplace do not feel that they will be victimised if they raise concerns about wrongdoing in their organisation to an appropriate officer within the organisation. As part of best practice, the government expects all public bodies to have written whistleblowing policies. It is therefore necessary that the Council's whistleblowing policy is up to date and fit for purpose.

7. Sections 17 - 20 of the ERRA have introduced a series of changes to the Public Interest Disclosure Act 1998, a number of which require the Council to redraft its Whistleblowing Policy.
8. There is now an express requirement that whistleblowing by employees or workers is made in the public interest (section 17 of ERRA). Although ERRA does not define the meaning of public interest however it is implicit that disclosure of any wrongdoing by an employee must exclude those which can be characterised as being purely of a personal nature. For example a grievance by an employee concerning their terms and conditions of employment will not be considered to be in the public interest.
9. Secondly, under section 19 of ERRA an employer can be held liable (vicarious liability) for any detriment inflicted on the whistleblowing employee or worker by his or her colleagues. The employer would have a defence if it can demonstrate that it took all reasonable steps such as compliance with its whistleblowing policy to prevent such detriment being inflicted on the whistleblower. Compensation for a successful whistleblowing claim against an employee is unlimited and could therefore in some instances be quite substantial
10. In summary the changes are as follows:
  - Section 17 narrows the definition of 'protected disclosure' to those that are made in the 'public interest';
  - Section 18 removes the requirement that a worker or employee must make a protected disclosure 'in good faith'. Instead, tribunals will have the power to reduce compensation by up to 25% for detriment or dismissal relating to a protected disclosure that was not made in good faith;
  - Section 19 introduces protection for whistleblowers from bullying or harassment by co-workers;
  - Section 20 enables the Secretary of State to extend the meaning of 'worker' for the purpose of defining who comes within the remit of the whistleblowing provisions.

**Options**

11. To leave the current whistleblowing policy as it is. The current policy will not be compatible with the legislation relating to whistleblowing following the coming into force of the relevant provisions of the ERRA.

**Implications*****Financial***

- 1) None.

***Legal***

- 2) Legal implications are set out in this report. The consequences of the failure of the Council to act should issues be reported can be very significant; the Council has a duty both to respond to matters that are in the public interest and to protect its employees

***Staffing***

- 3) None.



***Risk Management***

4) None.

***Equality and Diversity***

5) None.

***Climate Change***

6) None.

**Consultation**

The HR Manager and Head of Finance, Policy and Performance have been consulted and their comments and amendments included in the policy.

**Effect on Strategic Aims**

None

**Background Papers:**

The Public Interest Disclosure Act 1998

The Enterprise and Regulatory Reform Act 2013

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# Whistleblowing Policy

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- 1. Introduction**
- 2. Aims and scope of the policy**
- 3. Safeguards: Harassment or victimisation**
- 4. Confidentiality**
- 5. Anonymous allegations**
- 6. Unfounded or untrue allegations**
- 7. Support to staff and Members**
- 8. Independent advice**
- 9. How to raise a concern**
- 10. How the Council will respond**
- 11. How the matter can be taken further**
- 12. Monitoring and review**

## 1. Introduction

- 1.1 Council staff, contractors or Council Members are often the first to realise that something seriously wrong may be taking place or has occurred within South Cambridgeshire District Council or its activities. However, they may not express their concerns because:
- they may feel that speaking up would be disloyal to their colleagues or to the Council; or
  - they may fear that they or someone else might be harassed or victimised.
- 1.2 South Cambridgeshire District Council is committed to the highest possible standards of openness, honesty and accountability and therefore wishes to be alerted to any problems at the earliest opportunity. The Council therefore encourages staff, contractors and elected Members who have serious concerns about any aspect of the Council's work, to come forward and voice those concerns.
- 1.3 This policy makes it clear that they may do so, irrespective of seniority or status, and without fear of intimidation, victimisation, subsequent discrimination, disadvantage, or other reprisal. The Council recognises that most cases will have to proceed on a confidential basis.
- 1.4 The policy has been written to take account of the provisions of the Public Interest Disclosure Act 1998, which protects workers making disclosures about certain matters of concern. The Act is incorporated into the Employments Rights Act 1996, which also already protects employees who take action over, or raise concerns about health and safety at work.
- 1.5 The policy encourages and enables staff and others to raise concerns within the Council, rather than either overlooking a problem or reporting the matter externally. This will enable the Council to take action, as appropriate to:
- pre-empt crime or other wrongdoings, where possible;
  - where a crime or something suspicious has taken place, to instigate an appropriate investigation;
  - bring the perpetrators to account;
  - minimise and contain any adverse impact;
  - take corrective action to eliminate or significantly reduce the scope for repeat occurrences.
- 1.6 The word "whistleblowing" in this policy refers to the disclosure by staff and others, either internally or externally, of malpractice, as well as illegal acts or omissions at work. Malpractice includes any form of corruption (including fraud or bribery), favouritism or discrimination, gross negligence in performance of duty by officers or Members, etc. The policy outlines the procedures to be followed if and when such matters arise.
- 1.7 **The Bribery Act 2010 details both general offences in relation to bribing another person or being bribed and also introduces a specific corporate offence of failing to prevent bribery. The Council can now be held responsible for failing to prevent bribery committed on their behalf by employees, agents or subsidiaries. Officers must therefore ensure that they do not commit an offence under the act and also where they suspect an offence, report the activity to their Line Manager or the Chief Finance Officer.**

1.8 The word “whistleblower” in this policy refers to the person raising a concern, whether that person is a member of staff, a contractor, a Council Member, or someone else.

## 2. Aims and scope of the policy

2.1 This policy aims to:

- encourage staff and others to feel confident in raising serious concerns and to question and act upon those concerns;
- provide avenues for people to raise concerns and to receive feedback on any action taken;
- ensure that any matter reported is taken seriously and dealt with quickly and appropriately;
- ensure that any matters raised are treated as confidential as far as practicable;
- reassure people that they will be protected from possible disadvantage, reprisals or victimisation if they have a reasonable belief that they have raised their concerns in the public interest;
- ensure that people receive a response to their concerns and that they are aware of how to pursue them if they are not satisfied;
- allow people to take the matter further if they are dissatisfied with the Council’s response.

2.2 The Council has a range of policies and procedures which deal with employment policies, standards of behaviour at work and other issues or matters of concern, including:

- Anti-Theft, -Fraud and -Corruption Policy;
- Contract Regulations;
- Disciplinary Policy and Procedure;
- Financial Regulations;
- Grievance Policy and Procedure (e.g. to enable Council staff to lodge a grievance relating to their own employment);
- Harassment and Bullying at Work Policy and Procedure;
- Recruitment and Selection;
- Safeguarding Policy and Procedure;
- Members’ and Officers’ Codes of Conduct;
- **Anti-Bribery Policy.**

(This list is not exhaustive; a full list of the Council’s current policies and procedures can be found on In-Site, the Council’s intranet, at <http://insite/PoliciesStrategiesProcedures/default.htm>.)

2.3 There are provisions within these policies for concerns relating to them to be raised and dealt with. Where appropriate, therefore, issues of concern should be raised under the provisions of the relevant policy and procedure, in preference to the Whistleblowing Policy, which is not intended to cover these matters. If the Internal Audit Manager considers that a concern raised under the Whistleblowing Policy should more properly be dealt with under the provisions of another policy, the whistleblower would be referred to that policy.

2.4 There may be times, however, when the matter either does not relate to one of these policies or needs to be handled in a different way. The Whistleblowing Policy is intended to cover major concerns that fall outside the scope of other policies and procedures.

Those concerns may be about something that:

- is unlawful; or
- is contrary to the Council's Constitution and policies; or
- falls below established standards or practices; or
- amounts to improper conduct.

2.5 Examples may be:

- malpractice;
- ill treatment or abuse of a client/customer by a member of staff;
- repeated ill treatment of a client/customer, despite a complaint being made;
- a criminal offence has been, is being, or is likely to be committed;
- disregard of legislation, particularly in relation to health and safety at work;
- showing undue favour over a contractual matter or to a job applicant;
- a breach of any code of conduct or protocol **which is not covered by the Council's grievance policy;**
- miscarriage of justice;
- information on any of the above has been, is being, or is likely to be concealed.

(This list is not exhaustive.)

2.6 All staff and Members have responsibility to express concerns about unacceptable practice or behaviour. Although it can be difficult to raise such concerns, particularly about a colleague, they are encouraged to act to prevent an escalation of the problem, or even to avoid being potentially implicated themselves.

### 3. Safeguards: Harassment or victimisation

3.1 The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from the person(s) who are the subject of the issue raised. The Council will not tolerate any harassment or victimisation of a whistleblower (including informal pressures) **that results from their disclosure** and will treat this as a serious disciplinary offence, which will be dealt with under the Disciplinary Policy and Procedure (staff) or via the procedures under the Members' Code of Conduct, as appropriate. **In addition, any staff found to have harassed or victimized a whistleblower may be held personally liable in any ensuing legal proceedings.**

3.2 **The Council may be held vicariously liable if it is found to have not taken all reasonable steps to ensure that whistleblowers are not victimised or harassed.**

### 4. Confidentiality

4.1 All concerns raised will be treated in confidence and the Council will do its best to protect a whistleblower's identity when they do not want their name to be disclosed. It may be possible to establish the truth about allegations from an independent source and the Council will seek to do this where possible. However, it must be appreciated that the investigation process may reveal the source of the information and a statement by the whistleblower may be required as part of the evidence.

4.2 If the situation arises where the Council is unable to resolve the concern without revealing a whistleblower's identity, the matter will be discussed with the whistleblower to determine how the matter is to proceed.

## 5. Anonymous allegations

- 5.1 The Council encourages whistleblowers to put their name to their allegation. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the person to whom they are made.
- 5.2 In exercising this discretion, the factors to be taken into account would include:
- the seriousness of the issue(s) raised;
  - the credibility of the concern(s); and
  - the likelihood of confirming the allegation(s) from attributable sources.
- 5.3 Anonymous whistleblowers should also bear in mind that, if they do not make their name known, the Internal Audit Manager will not know whose identity to keep confidential. It will also not be possible to provide direct feedback to them on the progress and outcome of any investigations.

## 6. Unfounded or untrue allegations

- 6.1 Where it is established, after investigation, that the allegations are unfounded, then the whistleblower will be notified. The Council will deem the matter “closed” and will not expect the issue to be raised again unless new evidence becomes available.
- 6.2 If a whistleblower makes an allegation **with the reasonable belief that it is in the public interest, and that it is substantially true**, no action will be taken against them. **If there is clear evidence that a whistleblower has made a malicious or vexatious allegation, any eventual compensation may be reduced by up to 25% by the Employment Tribunal.**

## 7. Support to staff and Members

- 7.1 It is recognised that raising concerns can be difficult and stressful. Accordingly, where requested, advice and support is available to staff from the HR team, a trade union representative, the member of staff's line manager, or the Employee Assistance Programme on 0800 282 193, or look on In-Site, the Council's intranet, at <http://insite/StaffMatters/PPC/default.htm>).
- 7.2 Staff who are subject to investigation following concerns being raised will also be entitled to similar support, although ideally not from the same individuals.
- 7.3 Advice and support to Members is available, where requested, from the Monitoring Officer.

## 8. Independent advice

- 8.1 If you are unsure whether or how to raise a concern or you want confidential advice, you can contact the independent charity Public Concern at Work on 020 7404 6609 or at [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk). Their legal advisers can give you free confidential advice on raising a concern about serious malpractice at work.
- 8.2 You can also contact Unison or GMB for independent advice.



## 9. How to raise a concern

9.1 Before initiating the whistleblowing procedure, staff should normally discuss their concerns with their immediate manager or supervisor. However, this depends on the seriousness and sensitivity of the issues and who is thought to be involved.

9.2 The Council's Internal Audit Manager has overall responsibility for the maintenance and operation of this policy and procedure and maintains a record of concerns raised and the outcomes (in a form which does not endanger confidentiality).

9.3 Staff should therefore raise concerns with the Internal Audit Manager, email address [internal.audit@scambsgov.uk](mailto:internal.audit@scambsgov.uk).

If staff feel that they would prefer to talk to another senior officer, they should approach the HR Manager, telephone number 01954 713285.

9.4 In some circumstances, it may be appropriate for staff to ask their trade union or professional association to raise a matter on their behalf.

9.5 Contractors or Members should raise their concerns with the Internal Audit Manager.

9.6 The earlier concerns are expressed, the easier it is to take action. Concerns are better raised in writing and whistleblowers are encouraged to do so, setting out, in as much detail as possible:

- the background and history of their concern (giving names, dates and places where possible); and
- the reason(s) why they are particularly concerned about the situation.

9.7 If a whistleblower does not feel able to put their concern in writing, they can report it verbally, either by telephone or by meeting the appropriate officer.

9.9 Whistleblowers may invite a trade union or professional association representative, friend or colleague who is not involved in the area of work to which the concern relates, to be present during any meetings or interviews in connection with the concerns they have raised. Such meetings can be held off-site if desired.

9.9 Although whistleblowers are not expected to prove the truth of their allegation to the person they have contacted, that person will need to be satisfied there is sufficient evidence in support of the allegation before proceeding.

9.10 Once the whistleblower has raised their concern, they must not:

- contact the suspected perpetrator in an effort to determine facts or demand restitution;
- discuss the case facts, suspicions, or allegations with anyone else within or outside the Council (including the press);
- attempt to personally conduct investigations or interviews or question anyone.

## 10. How the Council will respond

10.1 The Council will take whistleblowers' concerns seriously. Whistleblowers are asked to bear in mind that investigating concerns is not the same as either accepting or rejecting

the validity of the allegation.

- 10.2 In order to protect the whistleblower, the Council and those accused of misdeeds or possible malpractice, initial enquiries (usually involving a meeting with the whistleblower) will be made to decide whether an investigation is appropriate and, if so, what form it should take.
- 10.3 The overriding principles that the Council will follow are to establish the facts and to protect both the whistleblower and the public interest.
- 10.4 Concerns or allegations that raise issues which fall within the scope of other specific policies and procedures (for example, discrimination issues), will normally be referred for consideration under those policies and procedures.
- 10.5 Following this, the Internal Audit Manager will, within ten working days, write to the whistleblower:
- acknowledging that the concern has been received;
  - where initial enquiries have been undertaken and further investigation of the matter is considered unnecessary, advising them of the reasons for this decision; or
  - informing them that an investigation will be carried out;
  - indicating how he/she proposes to deal with the matter;
  - giving an estimate of how long it will take to provide a final response;
  - confirming that any investigation will be carried out in the strictest confidence.

The Internal Audit Manager can decide to take no further action if a complaint appears to be trivial, malicious or vexatious.

- 10.6 If an investigation is required, the Internal Audit Manager will consult as necessary and designate an appropriate person to investigate the concern. The action taken by the Council will depend on the nature of the concern and, where appropriate, the matters raised may:
- be investigated by management, internal audit, or through the disciplinary process;
  - be referred to the police;
  - be referred to the external auditor;
  - form the subject of an independent inquiry;
  - in certain circumstances, necessitate a report on the outcome of the investigation to be made to the Council;
  - be referred to the Monitoring Officer or to Standards for England if in respect of breaches of the Members' Code of Conduct;
  - be dealt with under the Council's Complaints Procedure.
- 10.7 Some concerns may be resolved through discussion or agreed action without the need for investigation. However, if urgent action is required, this may be taken before any investigation is conducted.
- 10.8 Where possible and subject to legal constraints, the Internal Audit Manager will also keep the whistleblower informed about how the matter is progressing. The amount of contact between the whistleblower and the officer(s) considering the issues will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Internal Audit Manager will seek further information from whistleblowers.

- 10.9 The Council will take steps to minimise any difficulties that staff or Members may experience as a result of raising a concern. For instance, if they are required to give evidence in criminal or disciplinary proceedings, the Internal Audit Manager will advise them about the procedure. The Council cannot provide legal representation for staff or Members, but, where appropriate, counselling may be provided by the Council.
- 10.10 The Council accepts that the whistleblower needs to be assured that the matter has been properly addressed. Thus, subject to legal constraints, they will be informed, in confidence, about the outcomes of any investigation, or any action taken to correct working practices that have been found to be at fault by the investigation.
- 10.11 In the event that the whistleblower is unhappy with the outcome and/or response received at the conclusion of the investigation, they will be provided with details of whom to contact should they wish to raise the matter externally.
- 10.12 All matters will be referred to the Internal Audit Manager for record keeping purposes.

## 11. How the matter can be taken further

- 11.1 This policy is intended to provide a whistleblower with a procedure to raise concerns within the Council. The Council hopes the whistleblower will be satisfied with any action taken. If they are not, and feel that it is right to take the matter outside the Council, the following are possible contact points:
- the local Council Member (if the staff member lives in the area of the Council) – if unsure who it is, [telephone the Contact Centre on 03450 450 500](#) or contact Democratic Services ( email: [Democratic.Services@scambs.gov.uk](mailto:Democratic.Services@scambs.gov.uk)), or look on In-Site, the Council's intranet at <http://moderngov/mgMemberIndex.aspx>, or website (web address: <http://scambs.moderngov.co.uk/mgMemberIndex.aspx?bcr=1>);
  - the Chairman or any member of the **Civic Affairs** Committee – for details of current membership please [telephone the Contact Centre on 03450 450 500](#) or contact Democratic Services (email: [Democratic.Services@scambs.gov.uk](mailto:Democratic.Services@scambs.gov.uk)), or look on In-Site, the Council's intranet at <http://moderngov/mgCommitteeDetails.aspx?ID=1029>, or website (web address: <http://scambs.moderngov.co.uk/mgCommitteeDetails.aspx?ID=1029>
  - The external auditor, Mark Hodgson, Director, Ernst and Young LLP, One Cambridge Business Park, Cambridge, CB4 0WZ (telephone 01223 394 400, email [MHodgson@uk.ey.com](mailto:MHodgson@uk.ey.com) )
  - relevant professional bodies or regulatory organisations;
  - a solicitor;
  - the police;
  - an independent person or organisation nominated for the purpose by the Council, if appropriate to the nature of the concern raised – the Internal Audit Manager would inform the whistleblower how to contact them;
  - Public Concern at Work (tel: 020 7404 6609; web address: [www.pcaaw.co.uk](http://www.pcaaw.co.uk));
  - a recognised trades union;
  - the Local Government Ombudsman, web address: <http://www.lgo.org.uk/contactus>.
- 11.2 If the whistleblower does take the matter outside the Council, they need to ensure that they do not disclose confidential or legally restricted information or that disclosure would be privileged. The whistleblower should check with the person they initially contacted about that.

**12. Monitoring and review**

- 12.1 The Internal Audit Manager will monitor the implementation and effectiveness of the policy and procedure and will submit an annual monitoring report to the Chief Executive and to the Chairman of the **Civic Affairs** Committee on any matters raised under the policy and the subsequent outcome in each case. The **Civic Affairs** Committee will monitor the implementation of the recommendation(s) of the investigation.
- 12.2 **The Executive** Management Team and the **Civic Affairs** Committee will each review the policy and procedure and evaluate their effectiveness in the light of issues raised or identified as part of the monitoring process. Revisions to the policy or procedure will be made, where necessary, following endorsement from **Executive** Management Team and the **Civic Affairs** Committee.

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**REPORT TO:** Civic Affairs Committee

20 September 2013

**LEAD OFFICER:** Legal & Democratic Services Manager

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## REVIEW OF WHISTLEBLOWING POLICY

### Purpose

1. The Civic Affairs Committee took over the responsibility for the monitoring and review of the Council's Whistleblowing policy at its inception in September 2012. Following changes in national legislation the policy needs to be updated and relaunched to staff.
2. This is not a key decision.

### Recommendations

3. That the Committee:
  - a) Considers and **APPROVES** the amended policy document at Appendix A;
  - b) **NOTES** the quick guide to the policy for staff at Appendix B;
  - c) **AGREES** to include the Whistleblowing policy as a standing item on its agenda; and
  - d) **AGREES** to review the policy on a bi-annual basis to ensure it is fit for purpose.

### Reasons for recommendations

4. To ensure the council's Whistleblowing policy is updated following changes to legislation in the Enterprise and Regulatory Reform Act 2013 (ERRA) which came into force on 25 June 2013, which include a Public Interest test requirement for whistleblowers. The amended policy outlines how the legislative changes impact on employees who have concerns to raise and the Council needs to ensure that staff are aware of its existence and how to use it.

### Background

5. The whistleblowing legislation under the Public Interest Disclosure Act 1998 requires employers to refrain from dismissing workers and employees, or subjecting them to any other detriment because they have made a protected disclosure ("whistleblowing"). Whistleblowing occurs when an employee or worker draws attention to a concern or concerns of wrongdoing in their organisation. In the context of the Council the types of concerns a worker or an employee may wish to raise are set out in paragraphs 2.4 & 2.52 of the policy attached as **Appendix A**.
6. Whistleblowing policies are aimed at fostering a climate of openness and transparency in which individuals in the workplace do not feel that they will be victimised if they raise concerns about wrongdoing in their organisation to an appropriate officer within the organisation. As part of best practice, the government expects all public bodies to have written whistleblowing policies. It is therefore necessary that the Council's whistleblowing policy is up to date and fit for purpose. A brief guide for staff has also been prepared and is attached as **Appendix B** which will be sent out to all staff with their payslips to ensure it reaches everyone.

7. Sections 17 - 20 of the ERRA have introduced a series of changes to the Public Interest Disclosure Act 1998, a number of which require the Council to redraft its Whistleblowing Policy.
8. There is now an express requirement that whistleblowing by employees or workers is made in the public interest (section 17 of ERRA). Although ERRA does not define the meaning of public interest however it is implicit that disclosure of any wrongdoing by an employee must exclude those which can be characterised as being purely of a personal nature. For example a grievance by an employee concerning their terms and conditions of employment will not be considered to be in the public interest.
9. Secondly, under section 19 of ERRA an employer can be held liable (vicarious liability) for any detriment inflicted on the whistleblowing employee or worker by his or her colleagues. The employer would have a defence if it can demonstrate that it took all reasonable steps such as compliance with its whistleblowing policy to prevent such detriment being inflicted on the whistleblower. Compensation for a successful whistleblowing claim against an employee is unlimited and could therefore in some instances be quite substantial
10. In summary the changes are as follows:
  - Section 17 narrows the definition of 'protected disclosure' to those that are made in the 'public interest';
  - Section 18 removes the requirement that a worker or employee must make a protected disclosure 'in good faith'. Instead, tribunals will have the power to reduce compensation by up to 25% for detriment or dismissal relating to a protected disclosure that was not made in good faith;
  - Section 19 introduces protection for whistleblowers from bullying or harassment by co-workers;
  - Section 20 enables the Secretary of State to extend the meaning of 'worker' for the purpose of defining who comes within the remit of the whistleblowing provisions.

**Options**

11. To leave the current whistleblowing policy as it is. The current policy will not be compatible with the legislation relating to whistleblowing following the coming into force of the relevant provisions of the ERRA.

**Implications*****Financial***

- 1) None.

***Legal***

- 2) Legal implications are set out in this report. The consequences of the failure of the Council to act should issues be reported can be very significant; the Council has a duty both to respond to matters that are in the public interest and to protect its employees

***Staffing***

- 3) None.

***Risk Management***

4) None.

***Equality and Diversity***

5) None.

***Climate Change***

6) None.

**Consultation**

The HR Manager and Head of Finance, Policy and Performance have been consulted and their comments and amendments included in the policy.

**Effect on Strategic Aims**

None

**Background Papers:**

The Public Interest Disclosure Act 1998

The Enterprise and Regulatory Reform Act 2013

**Report Author:** Fiona McMillan – Legal & Democratic Services Manager  
Telephone: (01954) 713027

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# Agenda Item 6

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Civic Affairs Committee September 2013  
**LEAD OFFICER:** Jean Hunter (Electoral Registration Officer) / Fiona McMillan

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### INDIVIDUAL ELECTORAL REGISTRATION

#### Purpose

1. This is a report to brief members on the transition to Individual Electoral Registration (IER) and the potential issues that might stem from this change.
2. There is no decision to be made as this report is for information only. Members should be aware that whilst no formal decision is required, the transition to IER will have a significant impact on members and electors across the whole of South Cambridgeshire.

#### Recommendations

3. It is recommended that the Civic Affairs Committee notes the content of this report.

#### Background

4. The current system of electoral registration sees an annual mailing of registration forms to each property in the district. A single member of each household is able to update the form by way of adding and deleting electors as appropriate.
5. From Summer 2014 this system of household registration will transition to a system based on registration by the individual.
6. The new system of registration will require electors to provide their national insurance number (NINO) and their date of birth. For the first time, electors will also be able to register online.
7. The move to IER will also introduce the need to verify applications against the database held by the Department for Work and Pensions (DWP).

#### IER Canvass Process (2014 Only)

8. In July 2014, the register of electors will be sent electronically by the Electoral Registration Officer (ERO) to the DWP for data matching. This "confirmation" process has been designed to transfer as many electors as possible directly from the current register to the new IER register.
9. The data will be returned to the ERO with a RAG (red/amber/green) status for each elector. Electors who are returned as green have passed the data matching process and will not be required to register individually.
10. The ERO will carry out a process of local data matching, whereby red and amber electors are matched against other council held records. If possible, they will be converted to a green match under this process.

11. All green electors will receive a letter to advise of their confirmation.
12. Any electors still amber or red when local data matching is finished will be sent an "Invitation to Register" (ITR) form. ITR forms will enable individuals to individually register on the new IER register. The ITR form will display a web address to encourage online registration.
13. Any properties recorded as void will be sent a "Household Enquiry Form" (HEF) form. HEF forms will look similar to the existing canvass form, and will invite a single member of the household to list the names of those people resident in the property that are entitled to be registered. Upon receipt of the HEF, the ERO will send ITR forms to those electors introduced on the HEF.
14. All forms (HEFs & ITRs) will need to be followed up with an initial reminder, and then with canvasser visit(s).
15. Non responders to the 2014 canvass will **not** be removed from the register when it is published on 1 December. This is because the government do not want to see a large fall in registration levels in advance of the Parliamentary General Election in 2015. Note that electors with absent votes in place must register individually in 2014 or their absent vote will be cancelled.

#### **IER Canvass Process 2015**

16. The canvass in 2015 will begin with HEFs being sent to every property in the district.
17. The information provided on the returned HEFs will be used to send out ITR forms to new electors. There will be no requirement to re-register individually on an annual basis. ie. If an elector has previously been transferred across having been matched at the DWP or if an elector has previously returned an ITR form or registered online, they will not have to register again. They will have to register again if they have moved house or changed their name.
18. Returned HEFs will be processed by the ERO and newly identified electors will be sent an ITR form.
19. As with the 2014 canvass, all HEFs and ITRs will be followed up with a reminder and doorstep canvassing.
20. Upon completion of the 2015 canvass, all electors who have failed to register individually will be removed from the register.

#### **Post 2015**

21. After the 2015 canvass, the government consider that the transition to IER will be complete, and registration will revert to "business as usual", with IER operating as the norm.

#### **Considerations**

22. A dry run of the DWP confirmation process took place in July 2013, and resulted in a match rate of just over 78% of the district's electors being returned as green.
23. In a measure designed to improve DWP match rates in 2014, the government have delayed the 2013 canvass. This will now commence in October, with publication of

the revised register due in February 2014. Members should be aware that edited register opt outs must now be indicated on an annual basis – this information cannot be carried forward. A flyer will be inserted with initial canvass forms to raise awareness, and an article appeared in the last issue of South Cambs Magazine.

24. The government have committed to funding the transition to IER through the distribution of non-ring fenced grant funding. This funding should be sufficient to enable the transition to IER. However, the government have made no funding commitments beyond the 2015 canvass. This means that the potential cost of administering “business as usual” electoral registration is likely to be considerably higher than it currently is.
25. Through the Electoral Services team, the SCDC ERO is reporting on progress to the Cabinet Office via a web portal. This includes numerous milestones throughout the transition process.
26. As an aside to point 15, there is a concern that levels of registration could be significantly negatively impacted upon introduction of IER. This is why electors will be safeguarded in 2014, and could see a 2014 register that is fairly inaccurate, as non-responding electors will not be deleted. This will change after the General Election when those who have not responded under IER will be deleted. It is impossible to forecast what level of impact this might have, but the Electoral Commission and Cabinet Office have voiced concerns that it will hit traditionally under-registered groups the hardest.
27. The Electoral Commission will be tasked with increasing awareness at a national level, but locally the Electoral Services team will work with the Communications Team and other EROs from across the county trying to engage with these groups of people. In South Cambs, these are likely to be young people, older people, non-english speakers and Travellers. In the Girton ward there may also be a potential issue regarding the registration of students.
28. Members should be aware that irrespective of how well the message is communicated, the transition to IER has the potential to be poorly received in some parts of the community. In particular, residents may not be happy to provide NINOs and dates of birth to canvassing staff.

### **Options**

29. The move to IER has been prescribed in legislation. Some elements of the transition are yet to be agreed by the government, but neither the Council nor the ERO have any discretion in making the change.

### **Implications**

30. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, the following implications have been considered: -

#### ***Financial***

31. As mentioned at point 24, the government have not yet committed to providing any funding after the 2015 canvass. The day to day cost of administering electoral registration will be higher, but it is currently difficult to forecast by how much.

#### ***Legal***

32. There are no legal implications. Page 64

***Staffing***

33. There are no staffing implications.

***Risk Management***

34. There are no risk implications other than the potential cost implications mentioned at point 31.

***Equality and Diversity***

35. The new process of registration is likely to be confusing for a large section of the electorate. It is clearly a big departure from the previous system of household registration. However, the transition to IER has been prescribed in legislation, and there is no local discretion to do things differently. The ERO will work closely with the Council's Communications Team to deliver ways to improve local registration rates over the 2013 canvass and into the new IER canvass.

***Climate Change***

36. There are no climate change implications.

***Consultation responses (including from the Youth Council)***

37. Since the transition process is prescribed in legislation the Youth Council have not yet been consulted with. It may be appropriate later in the process to work with the Youth Council to improve registration rates amongst young people.

**Effect on Strategic Aims**

**Aim A – We will listen to and engage with residents, parishes and businesses to ensure we deliver first class services and value for money**

38. The successful delivery of IER will require considerable close engagement with our residents.

**Background Papers**

No background papers used.

**Report Author:** Andrew Francis – Electoral Services Manager  
Telephone: (01954) 713014

# Agenda Item 9

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**REPORT TO:** Civic Affairs Committee

20th September 2013

**AUTHOR/S:** Monitoring Officer

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## UPDATE ON CODE OF CONDUCT COMPLAINTS

### Purpose

1. To update members on complaints cases regarding alleged breaches of the code of conduct.

2. **RECOMMENDATIONS:**

That the Civic Affairs Committee **note** the progress of outstanding complaints.

3. **New complaint cases/cases outstanding at 11<sup>th</sup> September 2013**

- (a) **CORCOM 659**

A complaint has been made by a business about a parish councillor in relation to the handling of a planning application. Responses are currently awaited before the evidence will be considered by the Monitoring Officer and Independent Person so that a decision on how to proceed can be taken

- (b) **CORCOM 346**

This complaint was made by a parish councillor about a district councillor. The complainant alleges a number of breaches of the code of conduct. Correspondence has been taking place between the parties via the Monitoring Officer in relation to this complaint. A connected complaint has been made to the Information Commissioner and the complainant wishes to await the outcome of this before proceeding with the conduct complaint. The council is currently still in correspondence with the Information Commissioner regarding the related complaint.

- (c) **CORCOM 574**

The complaint was made by a district councillor about two other district councillors in relation to the publication of a party political leaflet. Representations from both parties are currently being considered by the Monitoring Officer and Independent Person before a decision on how to proceed can be taken.

- (d) **CORCOM 575**

The complaint was made by a district councillor about two other district councillors in relation to a matter concerning assistance to a parish council. Further responses are still awaited before the evidence will be considered by the Monitoring Officer and Independent Person so that a decision on how to proceed can be taken.

4. **Other complaints**

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The Monitoring Officer is continuing to advise a number of parish councils in relation to on-going conduct-related issues.

**BACKGROUND PAPERS:** Localism Act 2011  
SCDC Code of Conduct Complaints procedures

**Contact Officer:** Fiona McMillan  
Monitoring Officer  
Telephone: (01954) 713027



## Declaration of Interests Training for SCDC & HDC members



**Presenter: Peter Keith-Lucas**  
**(Bevan Brittan Solicitors)**

**Venue: SCDC Council Chamber**

**Thursday 3rd October 2013      10am-1pm**

**The Localism Act introduced key changes to the ethical standards process including introducing criminal sanctions for failing to declare your interests in the correct way.**

This interactive training will provide information on the key changes to the Code of Conduct and give you practical advice on what to do in situations where interests should be declared. You will also discover how the laws on pre-determination and bias interact with the Code of Conduct.

Please let Graham Aisthorpe-Watts know if you would like to attend by 10<sup>th</sup> August 2013, as we are sharing this training with Huntingdonshire District Council members and the council chamber has a limited seating capacity. His contact details are telephone (01954) 713030 and email

[graham.aisthorpe-watts@scams.gov.uk](mailto:graham.aisthorpe-watts@scams.gov.uk)

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**Annual  
Report  
2012-13**

**Committee on Standards  
In Public Life**

**August 2013**

# THE SEVEN PRINCIPLES OF PUBLIC LIFE

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The Seven Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The Principles also have application to all those in other sectors delivering public services.

## SELFLESSNESS

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

## INTEGRITY

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

## OBJECTIVITY

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

## ACCOUNTABILITY

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

## OPENNESS

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

## HONESTY

Holders of public office should be truthful.

## LEADERSHIP

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

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## FOREWORD

As the incoming Chairman of the Committee on Standards in Public Life, it is a pleasure to thank the outgoing Chairman, Sir Christopher Kelly for his work. To take but one example, the Northern Ireland (Miscellaneous Provisions) Bill introduced in the Commons on the 9 May 2013 allows for transparency in donations and loans to political parties, as well as ending the practice of members of the Northern Ireland Assembly holding dual mandates to sit concurrently in the Northern Ireland Assembly and the House of Commons. This broad approach reflects the work over recent years of both Sir Christopher Kelly himself and the recommendations of the Committee.

This September the Committee will be holding an evidence gathering seminar on lobbying reflecting the concerns of the Committee about unequal access to decision makers and inadequate transparency. The Committee intend to make recommendations to inform and complement the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. I would like to thank David Prince, the interim Chairman, for taking this work forward, for holding the fort since the end of Sir Christopher's term of office and for giving me much helpful advice.

The current context of the Committee's work is very much set out in the recent Triennial Review carried out by Peter Riddell of the Institute of Government. The Government has, in substance, accepted the Review and in doing so recognised the valuable role played by the Committee and the evolving nature of the issues it tackles. As elsewhere in Whitehall, there will be a significant reduction in the budget and certain aspects of the Committee's work will not be carried on as in the past. The Triennial Review also asked the Committee to be more strategic in its practice and look ahead to emerging problems. This is a serious challenge but it is one that has to be accepted. It remains the case, however, that the best work of the Committee has involved the building up of consensus based on substantial research. This is likely to be the case in the future as in the past.

The truth is that we frequently read in the media stories in which, for example, conflicts of interests appear to be significant. The principles of the Committee - selflessness, integrity, objectivity, accountability, openness, honesty and leadership - remain as pertinent as ever. It is my view, as Chairman, that the Committee's work in the past has been most effective when it has stayed close to these principles. In the future I would hope to maintain the best of this tradition.

Paul Bew

## INTRODUCTION

1. The Committee on Standards in Public Life has wide terms of reference.

**“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life and to review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”<sup>1</sup>**

2. The Committee fulfils this role partly through its formal inquiries. In addition, we routinely monitor and consider issues and concerns relating to standards in public life, track public perception of standards of conduct of public office holders and seek to promote the Seven Principles of Public Life. We contribute to public policy development through meetings, seminars, research, speaking engagements, and by responding to consultation papers on relevant issues.
3. This report provides an overview of the Committee’s activities over the course of the financial year 2012/13. The Committee’s main project in this year has been to produce its Fourteenth Report, *Standards matter: A review of best practice in promoting good behaviour in public life*. This report aimed to analyse what has been shown to work best in promoting high standards and to take stock of current areas of risk. The project was launched in May 2012, and the final report was published in January 2013. The Committee also carried out its fifth biennial survey of attitudes to standards in public life, the results of which will be published in September 2013.
4. A triennial review of the Committee was carried out this year, the report of which was published by the Government in February 2013. As a result, on 5 February 2013, the terms of reference of the Committee were clarified in two respects: ‘...in future the Committee should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies’ and ‘...the Committee’s remit to examine “standards of conduct of all holders of public office” [encompasses] all those involved in the delivery of public services, not solely those

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<sup>1</sup> Hansard (HC) 25 October 1994, col. 758, Hansard (HC) 12 November 1997, col. 899 and Hansard (HC) 25 October 1994, col 758

*appointed or elected to public office.*<sup>2</sup> **Page 74**

5. Following an open competition, Lord Bew has been appointed the new Chair of the Committee effective from 1 September 2013. His term of office is for five years and is non-renewable. Following the end of Sir Christopher Kelly's term on 31 March 2013, David Prince served as interim Chair until 31 July 2013.
6. The appendices to this report provide detail about the structure and finances of the Committee.

## OVERVIEW OF ACTIVITIES

### General Overview

7. This year we reflected on what has been achieved since the Committee's first report in 1995. We asked ourselves whether the task was completed and, if not, what more still needs to be done. We found that while many of the original "Nolan Principles" - such as integrity, accountability and openness are widely understood and resonate closely with public expectations - the principles as a whole were still not being lived out everywhere in spirit as well as letter. There needed to be more active implementation and embedding within the day to day business of many organisations.
8. More disturbingly, the year's news was dominated by stories of governance failures and other inappropriate behaviour in institutions previously enjoying high levels of public trust and confidence, and by the failure of leadership in others, both private and public, to inculcate a culture of high standards in tune with public expectations. Many instances have involved deliberate attempts to get around codes of practice and conduct, and in some cases there are allegations involving covering up, concealment and even criminal activity. Moreover, when some individuals attempted to raise ethical issues or standards concerns they were prevented or inhibited from raising those concerns internally or speaking out on issues in the public interest.
9. So, while much of the infrastructure is now in place to support high standards – statements of principles, codes of conduct, independent scrutiny, and while standards of behaviour have improved in many areas of public life, high standards are still not yet understood everywhere as a matter of integrity and personal responsibility. Recent lapses have occurred not because individuals, often in key leadership roles, have been unaware of their responsibility and of what

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<sup>2</sup> Hansard (HC) 5 February 2013, col. 7WS

the public expects but because they did not find it expedient.

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10. We are in no doubt that standards of behaviour in many areas of public life have improved since this Committee first reported in 1995, but there is still much to do and the evidence gives no grounds for complacency. New situations continually arise which raise new standards issues. Responses to standards issues often come too late and only in response to public scandals which by then have damaged public trust and confidence.

## Review of best practice

11. It is 18 years since the Committee published its First Report in 1995. We thought it timely to look, in our Fourteenth Report, at what had been achieved over that period and what had worked best in practice to promote high standards of conduct within regulated public organisations and regulators. Alongside this we looked afresh at the Seven Principles of Public Life and the language used to describe them and at levels of public confidence in public sector institutions. The report was published as *Standards matter: A review of best practice in promoting good behaviour in public life* in January 2013, along with the report of the focus group research that supported it. We highlighted a number of outstanding areas of risk that still need to be addressed.
12. The review was carried out using four strands of research:
  - A review of a number of reports produced since 1995 by this Committee, the Public Administration Select Committee and other bodies looking at standards issues.
  - An invitation to the public to contribute their views, including through a blog on the Committee's website.
  - A number of focus groups examining public attitudes towards the ethical standards of public office-holders and factors affecting their trust in public organisations and office-holders.
  - A series of seminars with invited participants from across the UK exploring issues relating to ethical regulation in specific spheres of public life. The subjects of these seminars included the Westminster and devolved legislatures, central government and the civil service, local government, the wider public sector, private sector organisations delivering public services and the media. The Committee also visited Belfast, Edinburgh and Cardiff to hold discussions with those involved in standards issues in those legislatures.
13. We clearly saw that in many areas standards of behaviour in public life had improved. Nonetheless there continued to be grounds for concern. The report reached four main conclusions to address

these, supported by eight recommended best practice points, as follows:

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- We re-emphasised the point that the basic building blocks for promoting high standards remain much as identified in the Committee's First Report: a set of broadly expressed values which everyone understands, codes of practice elaborating on what the principles mean in the particular circumstances of an organisation, effective internal processes to embed a culture of high standards, leadership by example and proportionate, risk-based external scrutiny.
  - To put this into effect, all organisations need to actively review how well they measure up to best practice in ethical governance as a matter of routine. It is important to consider all those factors affecting individual behaviour, including recruitment processes, appraisal and reward structures, leadership and contemporaneous prompts to good behaviour alongside formal codes and sanctions for poor behaviour.
- The need now is not for more rules and stricter regulation so much as for standards to be addressed actively at organisational level. High standards should be seen as everyone's personal responsibility, but it should be recognised that personal behaviour is shaped by organisational culture. With this in mind high standards need to be positively driven by leadership and example.
  - Ethical issues should feature regularly on the agendas of the boards of public bodies and, where appropriate, on risk registers. All such boards should as a matter of course monitor standards of behaviour throughout their organisation, either directly or through their audit and risk committees.
  - Those in leadership positions of all organisations delivering public services should take personal responsibility for ethical standards in their organisations and certify annually in their annual report or equivalent document that they have satisfied themselves about the adequacy of their organisation's arrangements for safeguarding high standards.
- New ethical risks are being created by the development of new models of service delivery. There is a growing area of ambiguity occupied by people contracted to deliver public services who may not be public office-holders. We strongly believe that the ethical standards captured by the Seven Principles should also apply to such people.
  - In all cases where new methods of delivering public services are being created, commissioners and providers should give careful thought to the mechanisms necessary to maintain expected high standards of behaviour and promote the principles of public



life.

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- Public servants designing and commissioning services should, in a consistent and proportionate way, address ethical issues throughout the procurement process. Contractors and others should acknowledge the particular responsibilities they bear when delivering public services, paid for by public money, to individuals who may not have the choice of going elsewhere.
  - Where powers to regulate standards are devolved to promote local responsibility and leadership, care should always be taken to ensure that there is independent scrutiny, that the results of such scrutiny are made publicly available and that those who have responsibility for imposing sanctions have adequate legal or other powers to do so.
  - Low and declining levels of confidence in the integrity of public institutions remain a matter of concern. While trust is a complex phenomenon, there is scope for trying to increase the confidence of the public in public office-holders and public institutions by addressing the outstanding standards issues identified in this report and by being more attentive to, and active in, addressing emerging issues rather than waiting until the pressures for reform become irresistible.
    - Public office-holders and organisations should seek to improve their own trustworthiness by establishing and promulgating robust mechanisms for detecting and dealing with wrongdoing, increasing public understanding of their role, and creating a culture which harnesses the power of the media to promote high standards and deter or expose misconduct.
    - There is at present a need to address certain areas of ethical risk in public life identified in the report (see further detail in standards check and outstanding risks set out below), and this should be done before they undermine public confidence.
14. As well as these conclusions and best practice points, the report re-examined the Seven Principles of Public Life, first established in the Committee's First Report, from the point of view of their modern relevance and applicability. We concluded that the Seven Principles should be kept as they are, but the brief descriptors appended to each one should be clarified and an explanatory preamble added. The updated text appears on the inside front cover of this report.
15. The Committee is monitoring and promoting the continuing impact of the review.

16. During 2012–13 the Committee carried out its fifth biennial survey of public attitudes to conduct in public life. We have conducted these surveys since 2004, in order to analyse the standards of behaviour the British public feel public office holders should be kept to, the extent to which these standards are believed to be upheld, and the perception of how well the systems put in place to enforce them are operating.
17. The survey carried out in 2012 maintained many of the core questions from earlier surveys. This allowed us to observe several continuing trends. For example, over the lifetime of the survey, specifically there has been a continuous and substantial decline of the percentage of respondents rating standards as “quite high” or “very high”, while the percentage of respondents rating standards as “quite poor” or “very poor” has steadily increased. Over the five surveys, public perceptions of whether a range of professions in the public domain can be trusted to tell the truth demonstrate consistent relative ratings: High Court Judges and Senior Police Officers score highly, while tabloid journalists, government Ministers and MPs, in general score poorly. When these findings are compared with other British and European data, it seems levels of trust in these professions are not especially low, except in comparison with the Netherlands and Scandinavia. Moreover the evidence suggests that low levels of stated trust may be accompanied by much higher and rising levels of confidence in institutions, such as the legal system.
18. Overall the survey is able to show that there is a deeper and more complex pattern of public attitudes to standards in public life than is generally recognised by public opinion research. In broad terms, drawing on a number of distinct areas of evaluation, a majority of the population express positive attitudes towards standards in Britain. Nonetheless, the proportion of people who feel positively has changed dramatically over time. In particular, positive evaluations increased steadily from 2004 to 2008 (from 62% of the population to 82%), followed by a collapse in 2010 to 55%, and with only a relatively minor recovery in 2012 (59%).
19. The survey also introduced several new questions, with the aim of broadening the examination of public expectations and beginning to explore how far these increasingly negative expectations are connected to people’s expectations of others who are not public office-holders. Key findings to have emerged include:
- There is a widespread belief by the public that they will receive fair treatment from a range of public services.

- The public have more confidence in the probity of relatively junior front line staff – in terms of putting the public interest first, owning up to mistakes, and in being held accountable for mistakes – than in that of more senior managers.
  - The public believe that they personally are more likely than people in public office to act with probity in given situations.
  - There is support for the use of external scrutiny and audit mechanisms and the development of a strong internal culture fostering standards and openness as a means for improving professional integrity and increasing confidence in public institutions. However, the use of financial incentives is not favoured.
  - In the latest survey there has been some diminution of confidence in the authorities' commitment to upholding standards. Over the five surveys confidence that the media will uncover wrongdoing has also declined.
20. The evidence suggests that public responses to events and to their reporting can become more negative or positive. This demonstrates that confidence in public standards is not a fixed feature of British society that shows inevitable long term decline, but a feature of the British political scene that is influenced by events. This suggests that the public's perceptions of standards in public life can be repaired as well as damaged. It is therefore all the more important that high standards of behaviour are understood as a matter of personal responsibility, embedded in organisations and actively and consistently demonstrated, especially by those in leadership positions.
21. The results of the survey will be published in September 2013. Following a recommendation made in the Triennial Review of the Committee (see below), this will be the last time that we carry out the survey, but we believe it has been a useful longitudinal survey and hope that other organisations continue to use the data and to monitor developments. The Committee is considering with its Research Advisory Board how best to monitor the trends we have studied as they develop in future.

## Triennial Review

22. In September 2012 the Minister for the Cabinet Office announced the start of a Triennial Review of the Committee, now a requirement for all Non-Departmental Public Bodies. The review, carried out by the Rt Hon Peter Riddell CBE, was chiefly based on written evidence received in response to a call for submissions and personal consultations. It was carried out over approximately six months, and reported in February 2013.

23. The primary function of the review was to judge whether there was a continuing need for the Committee to exist. The review concluded that *“There is a continuing need for an ethics monitor/reviewer.”*
24. The review also included a number of recommendations relating to the Committee’s strategy and working practices, including the cessation of the Committee’s biennial survey of public attitudes to allow the resources to be diverted elsewhere, the reduction of the membership of the Committee from ten to seven, and the production of more frequent, briefer reports with less reliance on public hearings and more use of seminars.
25. The Government issued a Written Ministerial Statement on 5 February 2013 stating that it broadly accepted the recommendations made in the review. It also clarified two points in the Committee’s terms of reference, as detailed in paragraph 4, above. The Committee is grateful for the detailed work put into the review, and will bear its recommendations in mind when considering its future work.

Following the Triennial Review, the secretariat has been reduced to three and like most public bodies our budget continues to follow a downward trajectory from £504k in 2012-13 to £400k in 2013-14. Our reduced resources will necessarily affect the ways in which the Committee is able to fulfil its terms of reference. We will need to prioritise the ethical risks we identify carefully and focus our work accordingly.

## **Strategic Plan 2012–15**

26. In October 2012 the Committee published its strategic plan 2012–15. This set out our vision for our work over the next few years and we hope it will increase public knowledge and understanding of our work. As well explaining how we will set our priorities and monitor ethical standards across public services, the plan also identified the priority areas the Committee may choose to investigate in future such as:
- The maintenance of appropriate ethical standards within an increasingly mixed economy with greater involvement of the private and voluntary sectors in delivering public services.
  - Ethical standards in the police, including Police and Crime Commissioners.
  - Local Government standards, following up a previous inquiry to review how the new system introduced by the Localism Act 2011 is bedding down and whether it is delivering its objectives.

27. The plan is available on the Committee's website.

## Online engagement

28. As part of its public consultation of best practice, the Committee ran a blog from September to October 2012, with contributions from Committee members and guest bloggers and the facility for members of the public to respond. The Committee also launched a Twitter feed in September 2012. We intend to build on this work over the coming months within available resources, to develop a cost effective online engagement programme.

## STANDARDS CHECK

### Party funding

29. The Committee is disappointed not to have seen any significant progress made in dealing with the problems in party funding it identified in its Thirteenth Report<sup>3</sup>. On the 4 July 2013, the Deputy Prime Minister made a Written Ministerial Statement on the Funding of Political Parties confirming that discussions convened following publication of the Committee's Thirteenth Report had reached no agreement. This is despite all three of the main political parties making manifesto commitments to take the big money out of party funding, and funding reform being part of the Coalition Agreement. The Committee appreciates the political difficulty of aspects of the proposed reforms, but nonetheless we feel it is time to act. The current party funding arrangements foster suspicion and distrust among the public. It is essential that political parties obtain funding in ways free of suspicion that donors receive favours or improper influence in return.

30. The main recommendations of the Thirteenth Report were the introduction of a cap on donations from individuals or organisations of £10,000, a reduction in the party expenditure limits and a slight increase in public funding for political parties. We feel that these would be very valuable in reassuring the public that large donations are not a source of undue influence in UK politics.

31. Attention was focussed on this issue by the case of so-called 'cash for access' in March 2012, in which the then treasurer of the Conservative Party was alleged to have suggested to undercover journalists posing as potential donors that large donations would allow privileged access to the Prime Minister and Chancellor of the Exchequer. Despite the prominence that this gave the issue

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<sup>3</sup> Thirteenth Report, *Political party finance: Ending the big donor culture* Cm 8208 November 2011

of funding, the Committee has yet to see evidence of real progress being made, although the political debate has recently been reignited by the Leader of the Labour Party making proposals to reshape the party's relationship with the Trade Unions, including the possibility of "opting in" to affiliation fees.

32. For this reason we welcome the recent initiative<sup>4</sup> by several parliamentarians to commission a Draft Bill as a basis for the development of phased reform of political party funding, as an attempt to achieve an agreed legislative framework for reform. The Committee submitted a response to the consultation on the Bill which is published on the Committee's website.
33. The Committee notes that proposals in the Draft Bill for the phasing in of the donations cap and the identification of savings within the existing envelope of public spending to finance the proposals with a cap on the total public spend on political parties, are measures the consultation document indicates are a response to address two criticisms of the Committee's Report. The proposals set out in the Committee's Report were regarded by the Committee as a package. Whilst the Committee's expectation was that the financial impact of the complete package of proposals was likely to be even handed between the two largest political parties, the illustrations of the possible impacts were based on historical information only and with a number of important limitations and caveats. The Committee acknowledged in its Report that there was a need to introduce the arrangements so as to allow the parties to adjust to the new circumstances, and that the new arrangements should not be introduced until the start of the next Parliament in 2015. For these reasons, in particular, the Committee would want to be reassured that the measures proposed in the Draft Bill are sustainable over time.
34. The Committee remains concerned about the risk presented of third parties being used to avoid the cap on donations and as such it considers it might be appropriate to take proportionate action, guarding against unnecessary bureaucracy to address this issue. The Committee is also alert to the implications of reform for smaller parties, which may have low levels of membership, elected representation and little income.
35. Sustainable reform will, in our view, require a concerted effort from the main parties to put aside self interest and resist the inclination to cherry pick proposals that benefit only them, to arrive at a solution that is in the national interest, has cross party agreement, and will restore public confidence in the integrity of the funding system.

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<sup>4</sup> Funding Democracy Breaking the deadlock A Draft Bill for consultation April 2013

36. The Committee continues to regard lobbying as an area in which there are genuine concerns involving suspicions that some lobbying may be taking place in secret and some individuals or organisations have more access to policy makers, so that it is not known who or what is influencing a particular decision. However, we remain doubtful that a statutory register of third party lobbyists, as proposed by the Government in a consultation paper in 2012, is the key to further reform. We believe it would be better to build on the steps already taken to increase transparency. Greater transparency might include, for example, enhancing the level of disclosure around meetings between ministers and those lobbying on behalf of a particular interest, as proposed in a report published in July 2012 by the Political and Constitutional Reform Committee. The Government renewed its commitment to introducing a statutory register of lobbyists and increasing transparency around lobbying in its mid-term review of the Coalition published in January and has recently restated that legislation will be introduced in July 2013.
37. As set out in our annual work plan, the Committee has been considering the transparency issues around lobbying, focusing particularly on those who are lobbied. To progress this work, the Committee issued a call for evidence in June and will be holding a meeting after the Parliamentary recess with interested parties, to look at what more can be done to bring greater integrity to existing arrangements. With the evidence gathered we aim to produce proportionate recommendations which will complement the proposed statutory provision and help restore the public's trust and confidence.

### **Local government standards**

38. Under the Localism Act 2011 the new local government standards regime came into effect on 1 July 2012. The Committee welcomed the introduction of a mandatory requirement for local authorities to adopt a local code of conduct based on the Seven Principles of Public Life and the intention to encourage a greater sense of local responsibility for standards and to reduce the number of vexatious complaints.
39. While we recognise that the new system needs time to properly bed in, we do, however, have certain concerns:
- Due to the emphasis on local ownership of standards we would expect the new regime, like the previous one, to function well in those areas where party leaders are prepared to provide the

necessary leadership and example. It is likely to do less well where such leadership is inadequate.<sup>5</sup> History suggests that problems are most likely in areas with monolithic political cultures and correspondingly little political challenge, where partisan rivalry is most bitter and tit-for-tat accusations most common, or in those predominantly rural areas with significant numbers of independent members without the benefit of party discipline.

- Under the previous arrangements local authorities and an independent tribunal had the power to suspend members for varying periods of time as a sanction against poor behaviour. The only sanctions now available, apart from through the use of a political party's internal discipline procedures are censure or criminal prosecution for deliberately withholding or misrepresenting a financial interest. We do not think these are sufficient. The last few years have seen a number of examples of inappropriate behaviour which would not pass the strict tests required to warrant a criminal prosecution, but which deserves a sanction stronger than simple censure. While censure may carry opprobrium in the political arena it is often considered unacceptably lenient by the public relative to other areas of their experience. Coercion of other members or officers is one category of offence with which it will be difficult to deal adequately under the new arrangements.
- Under the previous arrangements allegations about poor behaviour were determined by standards committees independently chaired by individuals who were not themselves members of the local authority. Under the new arrangements every local authority must appoint at least one independent person whose views it will seek, and take into account, before making its decision on an allegation that it has decided to investigate. We doubt that this will be sufficient to provide assurance that justice is being done and, equally important, that it is seen to be done.
- In the transition to the new system local authorities may have lacked proper time to prepare. In early June 2012 we wrote to all local authorities in England to ask about their preparations for implementing the new regime which came into force on 1 July 2012. The Committee was concerned that so late in the day, nearly half of those who responded had yet to adopt a new code and around four fifths had yet to appoint an independent person. The fact that the Regulations and Order which took effect from 1 July were laid only on 6 June cannot have helped their preparations.

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<sup>5</sup> Not forgetting that in several prominent recent cases it is the behaviour of leaders themselves that have been under question.



40. While inevitably there have been various teething problems with the new regime, the Committee will continue to monitor the implementation and its effectiveness, particularly in relation to public confidence that any wrongdoing is tackled promptly and transparently in the absence of any external investigation and scrutiny.

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## **Independent Adviser on Ministerial Interests**

41. In a report published in March 2012, the Public Administration Select Committee (PASC) raised the possibility that the Independent Adviser on Ministerial Interests was in practice insufficiently independent, as he or she is appointed personally by the Prime Minister, is supported from within the Cabinet Office, and cannot instigate his or her own investigations. Investigations can only be undertaken at the request of the Prime Minister. We agreed, and argued for the independence of the role to be increased and the power to instigate investigations to be granted.
42. The Independent Adviser on Ministerial Interests has carried out one investigation since then, finding in June 2012 that the then Conservative Co-Chairman had committed a minor breach of the Ministerial Code by not declaring a business relationship. However, there has also been controversy over the Prime Minister's decisions not to refer allegations made in 2012 about a possible breach of the code by the then Secretary of State for Culture, Media and Sport in relation to the bid by News Corporation for BSkyB to the Independent Adviser, on the basis that the issue would be looked at during evidence sessions for the Leveson Inquiry. It would in our view have taken much of the politics out of the issue, to everyone's advantage, if the decision on whether to investigate separately had been taken by the Independent Adviser – even if, as he might well have done, he had taken the same view. It is too easy for a Prime Ministerial decision not to refer, to be interpreted, however unfairly, as being motivated by a desire to avoid uncomfortable revelations.
43. In July 2012 our then Chair, Sir Christopher Kelly, issued a statement arguing for the Adviser to have the power to instigate investigations. The debate is still ongoing, and we continue to monitor it with interest.

## **The Leveson Inquiry**

44. Part 1 of the Leveson Inquiry into the culture, practice and ethics of the press was published in November 2012. The Committee submitted written evidence to the Inquiry in 2011, and welcomed the contribution it made to the debate on press regulation and public standards in the UK more

generally.

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45. We were struck by certain points of similarity between Lord Justice Leveson's conclusions concerning the promotion of high standards, and our own in our most recent report, *Standards matter*. His report, for example, stressed the importance of standards regulators being both demonstrably independent and armed with robust sanctions, and of the appropriate tone and culture being set at the level of the leadership of an organisation.
46. Part 2 of the Inquiry will examine specific cases of alleged wrongdoing, but cannot commence until the current police investigations and any subsequent criminal proceedings have been completed.

### MPs' pay and expenses

47. Controversy arose when it was reported in the press in October 2012 that certain MPs had been in the practice of renting out property they owned in London, sometimes to other MPs, and then renting separate London accommodation for themselves and claiming expenses for doing so. Such an arrangement is not against the current rules and a press notice issued by the Independent Parliamentary Standards Authority (IPSA) noted that 'this is an issue of their own private financial affairs over which we rightly have no authority'. In the case of a number of MPs, the problem arose mainly due to transitional arrangements from the previous system. Nonetheless, because of the way in which it was presented, this issue dealt another blow to public confidence in the financial propriety of MPs and were it to continue, with new MPs, the compliance of those involved with the spirit of the rules would be open to question even if their compliance with the letter is not. The financial propriety of MPs, therefore, continues to be an issue of public confidence.
48. The Committee also notes that IPSA has carried out a review of MPs' pay and pensions, which is out to public consultation until the autumn of 2013. When finalised, this will be effective from the next Parliament in 2015.

## OUTSTANDING RISKS

49. The Committee's Fourteenth Report *Standards matter: A review of best practice in promoting good behaviour in public life* identified 12 areas that pose a particular outstanding risk to standards in public life, and are set out in the register below. More detail on developments in some of these

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 areas in 2012–13 can be found in the standards check above. These outstanding risks should be actively addressed before they become even more problematic and further undermine confidence in our public institutions.

Issues which the **Committee** will investigate will include:

- *lobbying* (concerns about unequal access to decision-makers and inadequate transparency)

Issues which the **Committee** is likely to investigate in the near future include:

- *how best to maintain high standards as new models of delivering public services are developed; and*
- *interchange between the public and private sectors* (suspicions of impropriety in relation to people moving between the public and private sectors).

Issues over which the **Committee** intends to keep a watching brief, and investigate if necessary include:

- *local government standards* (concerns about the impact of the regime introduced by the Localism Act 2011);
- *behaviour and conduct of the police* (concerns arising from recent incidents and reports, some of which are currently the subject of further investigation elsewhere);
- *electoral arrangements* (concerns about electoral fraud, particularly in relation to the electoral register and postal voting);
- *the role of the media in the public sector's promotion and maintenance of standards* (including its effects on public confidence, in the light of the Leveson inquiry); and

Issues which need to be addressed by the **Government** include:

- *the Prime Minister's Independent Adviser on Ministers' Interests* (the lack of a power for the Adviser to initiate his own investigations);
- clarification of the some of the aspects relating to the arrangements for *Special Advisers*; and
- *the House of Lords* (by facilitating the efforts of the House itself to address its own powers to sanction the most severe breaches of the Lords' Code of Conduct).

An issue which urgently needs to be resolved by the **political parties** is:

- *political party funding* (suspicion about the motivation behind large donations and what is received in return).

## REPRESENTATIONS AND SPEECHES

50. Over the course of the year, the then Chair spoke at a number of events on standards issues:

- In July 2012 Sir Christopher Kelly gave a speech to the All-Party Parliamentary Group on the British Constitution, organised by the Constitution Society
- In September 2012 Sir Christopher gave a speech at a conference organised in London by Transparency International.
- In November 2012 Sir Christopher spoke to a group from the Public Administration International (PAI) Public Service Commission's study programme on the role of the Committee.
- In March 2013 Sir Christopher gave a speech at the inaugural conference of the Association of Chief Police Officers (ACPO) Professional Ethics Portfolio.

51. In January 2013 the Committee held a panel discussion to mark the publication of its Thirteenth Report, *Standards matter: A review of best practice in promoting good behaviour in public life*. Panellists were Sir Christopher, Dame Anne Owers (Chair of the Independent Police Complaints Commission), Gerard Elias QC (Public Services Ombudsman for Wales) and Philippa Foster Back OBE (Director of the Institute for Business Ethics). The event was open to the public.

52. Transcripts of key speeches and the panel discussion are available on our website: [www.public-standards.org.uk](http://www.public-standards.org.uk).

- Other Committee Members also spoke about the work of the Committee and standards issues, including at the Chartered Institute for Public Finance and Accountancy (CIPFA)'s Better Governance Forum in October 2012.

## APPENDIX 1: ABOUT THE COMMITTEE

### Terms of reference

53. The Committee on Standards in Public Life was established under the chairmanship of Lord Nolan by the then Prime Minister, the Rt Hon Sir John Major, in October 1994, with the following terms of reference:

**“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”<sup>6</sup>**

54. The following month Sir John said of the Committee:

**“It is to act as a running authority of reference – almost you might say, an ethical workshop called in to do running repairs.”<sup>7</sup>**

55. On 12 November 1997, the then Prime Minister, the Rt Hon Tony Blair, announced additional terms of reference:

**“To review issues in relation to the funding of political parties and to make recommendations as to any changes in present arrangements.”<sup>8</sup>**

56. On 5 February 2013, the Minister for the Cabinet Office, the Rt Hon Francis Maude MP, announced two clarifications to the Committee’s terms of reference in a written statement:

**“in future the Committee should not inquire into matters relating to the devolved legislatures and Governments except with the agreement of those bodies”**

and

**“The Committee’s remit to examine ‘standards of conduct of all holders of public office’ [should be understood] as encompassing all those involved in the delivery of public services, not solely those appointed or elected to public**

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<sup>6</sup> Hansard (HC) 25 October 1994, col. 758

<sup>7</sup> Speech at the Lord Mayor’s Banquet, 14 November 1994.

<sup>8</sup> Hansard (HC) 12 November 1997, col. 899

## Status

57. The Committee is an independent advisory Non-Departmental Public Body (NDPB). Its members are appointed by the Prime Minister. Seven of its members, including the Chair, are chosen through open competition under the rules of the Office of the Commissioner for Public Appointments (OCPA). The remaining three members are nominated by the three main political parties. The Committee is not founded in statute and has no legal powers to compel witnesses to provide evidence or to enforce its recommendations. Nor does it have any powers to investigate individual allegations of misconduct. It presents its recommendations to the Prime Minister and publishes them simultaneously.

## Funding and administration

58. The Committee receives its budget from the Cabinet Office. Day-to-day responsibility for financial controls and budgetary mechanisms are delegated to the Secretary of the Committee. The Secretary and the rest of the secretariat are permanent civil servants employed by the Cabinet Office or on secondment from other departments or elsewhere. The current Secretary is on loan from the Ministry of Justice.

## Policy on openness

59. In its first report the Committee defined the Seven Principles of Public Life. The Committee has always sought to implement these principles in its own work, including the principle of openness.

60. The Secretary of the Committee has responsibility for the operation and maintenance of the Committee’s publication scheme under the Freedom of Information Act 2000. Most of the information held by the Committee is readily available, and does not require a Freedom of Information Act request before it can be accessed. The Committee can be contacted in writing, by email, by telephone or by fax. The public can also access information via the Committee’s website. Requests for information under the Freedom of Information Act should be made to the Secretary to the Committee at the following address:

- **Committee on Standards in Public Life**  
Room G.05 1 Horse Guards Road  
London SW1A 2HQ

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<sup>9</sup> Hansard (HC) 5 February 2013, col. 7WS

- Phone: 020 771 0855/6948
- Email: [public@standards.gsi.gov.uk](mailto:public@standards.gsi.gov.uk)
- Website: [www.public-standards.org.uk](http://www.public-standards.org.uk)

## APPENDIX 2: MEMBERS OF THE COMMITTEE

Until the latest appointments, Committee members were appointed for a three year term, with the possibility of reappointment. The latest three members were recruited for a five year non-renewable term. The Chair is appointed for a single non-renewable five year term. Following a recommendation made in the 2013 triennial review the number of Committee members will be reduced to seven over the course of the next few years.

### Current Members

#### Lord Alderdice

**Appointed:** 1 September 2010

**Term ends:** 31 August 2013

John Alderdice is an Honorary Fellow of the Royal College of Psychiatrists. He led the Alliance Party of Northern Ireland and was a Vice President of the Federation of European Liberal, Democrat and Reform Parties and President of Liberal International. Raised to the peerage on October 1996, he took his seat on the Liberal Democrat benches in the House of Lords on 5 November that year. He was one of the negotiators of the Good Friday Agreement. In 1998 Lord Alderdice was elected Assembly Member for Belfast East and appointed Speaker of the Northern Ireland Assembly, a position he held until retiring in 2004. In 2004 he was appointed as a Commissioner for the newly established Independent Monitoring Commission and served until it was wound up in 2011. In June 2010 he was elected Convenor (Chair) of the Liberal Democrat Parliamentary Party in the House of Lords.

#### Dame Angela Watkinson MP

**Appointed:** 30 November 2012

**Term ends:** 30 November 2017

After an early career in banking and a family career break, Dame Angela Watkinson worked for several local authorities in special education and central services. She has served as a councillor for both the London Borough of Havering and an Essex County Council. Angela was elected as Conservative MP for Upminster in 2001 and continues to serve her enlarged constituency of Hornchurch and Upminster. She has spent most of her Parliamentary Career as a Whip, and Lord Commissioner to the Treasury. Angela is also a member of the Council of Europe.



## **Rt Hon Dame Margaret Beckett MP** Page 93

**Appointed:** 1 November 2010

**Term ends:** 31 October 2013

Margaret Beckett has been Labour MP for Derby South since 1983. She was Secretary of State for Trade and Industry 1997-1998, President of the Council and Leader of the House of Commons 1998-2001, Secretary of State for Environment, Food and Rural Affairs 2001-2006, Secretary of State for Foreign Affairs 2006-2007, Minister for Housing and Planning (attending Cabinet), Department for Communities and Local Government 2008-2009. She has also been Chair of the Intelligence and Security Committee.

## **Sheila Drew Smith OBE**

**Appointed:** 17 May 2012

**Term ends:** 16 May 2017

Sheila Drew Smith OBE is an economist by background and is an independent assessor for appointments in the public and private sectors, including OCPA to 2012. She is currently Chair of the National Approved Letting Scheme and was a non executive director of the London Thames Gateway Development Corporation till its conclusion in 2013. Prior to that she was a board member of the Housing Corporation between 2002 and 2008, the Audit Commission between 2004 and 2010, and the Infrastructure Planning Commission and the Office of the Regulator of Social Housing to March 2012. Prior to this she was a partner in the predecessor firms of PricewaterhouseCoopers working in the UK and internationally. Her earlier career was in the Government Economic Service.

## **Patricia Moberly**

**Appointed:** 17 May 2012

**Term ends:** 16 May 2017

Patricia Moberly was Chair of Guy's and St Thomas' NHS Foundation Trust from 1999 to 2011. During her previous career as a schoolteacher, she worked in secondary schools in London and Zambia, and was Head of the Sixth Form at Pimlico School from 1985 to 1998. She served on the National Executive of the Anti-Apartheid Movement, was a member of Area and District Health Authorities and of the General Medical Council, a local councillor and a magistrate. Currently she is a prison visitor and a member of the Ethics Committee of the Royal College of Obstetricians and Gynaecologists, and serves on an advisory committee to the Secretary of State for Transport. She is a panellist for the Judicial Appointments Commission.

## **Sir Derek James Morris MA DPhil**

**Appointed:** 1 March 2008

**Re-appointed:** 1 March 2011

**Term ends:** 28 February 2014

Sir Derek Morris has been Provost of Oriel College, Oxford since 2004. Previously he was Chairman of the Competition Commission (formerly the Monopolies and Mergers Commission). From 1970 to 1997 he

was an Economics Fellow at Oriel College and from 2004 to 2005 he chaired the Morris Review of the Actuarial Profession. He is Chairman of trustees of Oxford University Press Pension Fund, non-executive Chairman of Lucida plc and a senior consultant to Frontier Economics.

### **Dame Denise Platt**

**Appointed:** 1 July 2008

**Re-appointed:** 1 July 2011

**Term ends:** 30 June 2014

Dame Denise Platt has held a number of leadership positions in the public and third sectors at national and local levels. Past positions include Chair of the Commission for Social Care Inspection, Governor of the University of Bedfordshire, member of the Audit Commission, Chief Inspector of the Social Services Inspectorate. She holds voluntary positions as the Chair of the National AIDS Trust (NAT), Trustee of the National Society for the prevention of Cruelty to Children (NSPCC) and Trustee of the Lloyds TSB Foundation for England and Wales. She is a member of the General Medical Council. Dame Denise has also acted as the independent chair overseeing the recruitment of Commissioners for the Electoral Commission and most recently for the Independent Parliamentary Standards Authority.

### **David Prince CBE (interim Chair 01/04/13 to 31/7/13)**

**Appointed:** 1 June 2009

**Re-appointed:** 1 June 2012

**Term ends:** 31 May 2015

David Prince currently holds non-executive positions as a member of the General Pharmaceutical Council and on the audit and risk committees of the Care Quality Commission, Bar Standards Board and General Osteopathic Council. He is the former Chief Executive of the Standards Board for England. He held senior positions at the Audit Commission, as Managing Director, Strategy and Resources and District Audit. Previously his career was in local government, where posts included Chief Executive of Leicestershire County Council and Director of Finance and Administration of Cambridgeshire County Council.

### **Richard Thomas CBE**

**Appointed:** 17 May 2012

**Term ends:** 16 May 2017

Richard Thomas CBE LLD was the Information Commissioner from November from 2002 to 2009. He was Chairman of the Administrative Justice and Tribunals Council (AJTC) until August 2013 and Deputy Chairman of the Consumers Association until December 2012. He is currently a Trustee of the Whitehall and Industry Group, a Strategy Adviser to the Centre for Information Policy Leadership and a Board Member of the International Association of Privacy Professionals (IAPP). During his earlier career his roles included Director of Consumer Affairs at the Office of Fair Trading from 1986 to 1992 and Director of Public Policy at Clifford Chance, the international law firm from 1992 to 2002.

## Members active in 2012-13 who have recently stood down

### Oliver Heald MP

**Appointed:** 1 March 2008

**Re-appointed:** 1 March 2011

**Term ended:** 3 September 2012

Oliver Heald was called to the Bar in 1977 and has practised as a barrister on the South Eastern Circuit. He is a specialist in employment law. He was elected as Member of Parliament for North East Hertfordshire at the General Election of April 1992. He has served as a minister in the Department of Social Security and is a former Shadow Leader of the House of Commons. During the year to which this report relates he was a member of the Standards and Privileges Select Committee, Chairman of the Society of Conservative Lawyers Executive Committee and Chairman of the Parliamentary Resources Unit. He stood down from the Committee on his appointment as Solicitor General on 3 September 2012.

### Sir Christopher Kelly KCB (former Chair)

**Appointed:** 1 January 2008

**Term ended:** 31 March 2013 (extended from 31 December 2012)

Christopher Kelly is Chair of the Kings Fund. Until February 2012 he was also Chair of the Financial Ombudsman Service. He was previously a civil servant. Between 1970 and 1995 he worked in HM Treasury, latterly as Director of Monetary and Fiscal Policy and then Director of the Budget and Public Finances. Between 1995 and 1997 he was Head of Policy Group at the then Department of Social Security. From 1997 to 2000 he was Permanent Secretary of the Department of Health. Since leaving the Civil Service he has chaired, or been a member of, a number of advisory and other groups in the public, private and voluntary sectors. He was Chairman of the NSPCC between 2002 and 2010.

## Research Advisory Board

The Committee's work is supported by a Research Advisory Board. The current Board members are:

- **Dr Mark Philp** (Chairman), Fellow and Tutor in Politics, Oriel College, University of Oxford
- **Dr Jean Martin**, Senior Research Fellow, Social Inequality and Survey Methods, Department of Sociology, University of Oxford
- **Professor Cees van der Eijk**, Professor of Social Science Research Methods, Director of Social Sciences Methods and Data Institute, University of Nottingham
- **Dr Wendy Sykes**, Director of Independent Social Research Ltd (ISR) and Member of the SRA implementation group on commissioning social research.

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**Members' attendance (1 April 2011 - 31 March 2012)**

The table below shows the total number of meetings that each member of the Committee could have attended and the number they actually attended.

Name	Possible meetings	Actual meetings
Lord Alderdice	12	8
Dame Rt Hon Margaret Beckett MP	12	9
Sheila Drew Smith OBE	11	10
Oliver Heald MP	4	3
Sir Christopher Kelly	12	12
Patricia Moberly	11	11
Sir Derek Morris MA DPhil	12	11
Dame Denise Platt	12	10
David Prince CBE	12	12
Richard Thomas CBE	11	11
Dame Angela Watkinson MP	3	3

In addition to the monthly Committee meetings, all members attend a variety of other meetings and briefings in relation to the business of the Committee.

**Remuneration**

61. Committee members who do not already receive a salary from public funds for the days in question may claim £240 for each day they work on committee business. Sir Christopher Kelly was paid a flat rate of £50,000 a year, which had remained unchanged since his appointment. All members are reimbursed for expenses necessarily incurred. The new Chair is being paid on the basis of a non-pensionable salary of £500 per day, with the expectation that he should to commit an average of 2-3 days a month, although this can increase significantly during Committee

inquiries.

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62. For the period April 2012–March 2013 Committee members other than the Chair claimed a total of £26,738 in fees and expenses. The Chair claimed no expenses.
63. In accordance with the best practice recommended in its first report, members of the Committee formally adopted a code of practice in March 1999. The code is available on the website and has been reviewed periodically by the Committee, most recently in July 2011. Members provide details of any interests that might impinge on the work of the Committee through the Committee's register of interests, also available on the website at:

[www.public-standards.org.uk/About/Register\\_of\\_Interests.html](http://www.public-standards.org.uk/About/Register_of_Interests.html).

## APPENDIX 3: FINANCIAL INFORMATION

<b>Expenditure</b>	<b>2011-12</b>	<b>2012-13</b>
	<b>(£)</b>	<b>(£)</b>
<b>Staff costs and fees</b>	327,540	355,737
<b>Other running costs</b>	141,686	161,425
<b>Total net expenditure</b>	<b>469,226</b>	<b>517,162</b>

64. As an advisory Non-Departmental Public Body (NDPB), the Committee receives its delegated budget from the Cabinet Office. The Cabinet Office Accounting Officer has personal responsibility for the regularity and propriety of the Cabinet Office vote. Responsibility for certain levels of authorisation, methods of control and day to day mechanisms have been delegated to the Secretary to the Committee.
65. The Secretary to the Committee is responsible for setting out the outputs and outcomes which the Committee plans to deliver with the resources for which they have delegated authority, and for reporting regularly on resource usage and success in delivering those plans. She is also responsible for maintaining a sound system of internal control over the resources for which she has delegated authority, and for providing the accounting officer with assurances that those controls are effective.
66. The Committee's original budget allocation for 2012-2013 was £504,000. In August 2012 it was agreed that this allocation would be increased by £56,000 to £560,000 to help fund the Committee's review of best practice in promoting good behaviour in public life.
67. Total expenditure for the financial year of £517,162 represents savings of £42,838. This is almost entirely the result of the actual cost of a number of items of expenditure being less than anticipated at the beginning of the financial year. For example, two pieces of research carried out by an external contractor were completed at a significantly lower cost than predicted.

**APPENDIX 4: REPORTS AND PUBLICATIONS**

68. The Committee has published the following reports:

- Standards Matter: A review of best practice in promoting good behaviour in public life (Fourteenth Report (Cm8519)) (January 2013)
- Political Party Finance - Ending the big donor culture (Thirteenth Report (Cm 8208)) (November 2011)
- MPs' Expenses and Allowances: Supporting Parliament, Safeguarding the Taxpayer (Twelfth Report (Cm7724)) (November 2009)
- Review of the Electoral Commission (Eleventh Report (Cm7006)) (January 2007)
- Getting the Balance Right: Implementing Standards of Conduct in Public Life (Tenth Report (Cm6407)) (January 2005)
- Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service (Ninth Report (Cm 5775)) (April 2003)
- Standards of Conduct in the House of Commons (Eighth Report (Cm 5663)) (November 2002)
- The First Seven Reports - A Review of Progress - a stock-take of the action taken on each of the 308 recommendations made in the Committee's seven reports since 1994 (September 2001)
- Standards of Conduct in the House of Lords (Seventh Report (Cm 4903)) (November 2000)
- Reinforcing Standards (Sixth Report (Cm 4557)) (January 2000)
- The Funding of Political Parties in the United Kingdom (Fifth Report (Cm 4057)) (October 1998)
- Review of Standards of Conduct in Executive Non-Departmental Public Bodies (NDPBs), NHS Trusts and Local Public Spending Bodies (Fourth Report) (November 1997)<sup>10</sup>
- Standards of Conduct in Local Government in England, Scotland and Wales (Third Report (Cm 3702)) (July 1997)
- Local Public Spending Bodies (Second Report (Cm 3270)) (June 1996)
- Standards in Public Life (First Report (Cm 2850)) (May 1995)

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<sup>10</sup> This report was not published as a Command Paper.

69. Since 2004, the Committee has also undertaken five biennial surveys of public attitudes towards conduct in public life. Findings were published in 2004, 2006, 2008, 2011 and 2013.

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**August 2013**

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Department for  
Communities and  
Local Government

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## Government response to consultation on making it easier to set up new town and parish councils

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# Introduction

The Government's commitment to handing back power to local communities has led to radical change taking place in local communities. The Localism Act has been the catalyst for this change, with local councils at all levels being the focal point for this transformation within our local communities.

The Government has embarked on a programme of work which aims to support local democracy and the empowerment of local people. The range of tools which communities are already using include powers in the Localism Act for neighbourhood planning, the community rights to challenge and bid and the general power of competence. We want to continue to build upon the momentum generated by this raft of changes to give greater opportunity for local people to influence their local services.

We believe that localism is best achieved when it is led by the local communities themselves. We see town and parish councils as playing a vital role in helping local people to make this happen; it is for this reason we want to support those neighbourhoods who want to set up a parish council. Although there are over nine and a half thousand parish councils across England, the majority of people (63 per cent) still live in neighbourhoods that do not have a parish council.

We want to make the current process for setting up a new parish council much easier, quicker and most importantly democratic for local people who want their neighbourhood to have a parish council.

We have been listening to our partners in local government – councils at every tier, representative and sector bodies - and local people to explore how we can help improve the current process. We identified a range of proposals which we encapsulated in a discussion paper.

We invited views on the proposals outlined in the discussion paper in a formal consultation. The consultation ran from the 31 October 2012 until 9 January 2013. The three key options outlined in the discussion paper are set out below:

## **Option One - Amending existing guidance**

This option proposed that a number of changes to the existing system be made by amending the statutory guidance issued by the Secretary of State. Local authorities must have regard to this guidance in carrying out community governance reviews.

## **Option Two - Changing the law (including doing so after amending guidance)**

This option proposed:

- Changing the threshold of signatures required for a petition to trigger a community governance review;
- Limiting the scope for the local authority's consideration of the issues in a community governance review; and

- Shortening the timetable for the community governance review, and linking the timetable to the electoral cycle more clearly.

### **Option Three - Making it easier for neighbourhood forums to start the process for creating a new parish council**

This option proposed that a neighbourhood forum which had completed a neighbourhood plan could submit an application to trigger a community governance review, rather than having to submit a petition with the required number of signatures. For areas without a designated neighbourhood forum the existing process of a petition would remain.

# Summary of consultation responses

We received 76 responses to the consultation.

The participants in the consultation included county, district and borough councils, town and parish councils and bodies which largely represented the interests of councils at all levels. We also received a significant number of contributions from individual citizens and other interested parties, although they were mostly those people who were or had previously worked in the local government sector. Table one below provides a breakdown of responses by the type of respondent.

**Table one: Breakdown of responses by type of respondent**

Type of respondent	Number	Percentage
Borough/District/County Council	22	29
Town & Parish Council	15	20
Individual Citizen	17	22
Representative Bodies	13	17
Other	9	12
Total	76	100

The respondents provided comments about the current process for setting up a parish council, a range of opinions on each of the three key options, reasoning for their preferred options and suggestions given on possible alternative approaches

We analysed the responses and categorised them according to the level of support and/or objection for each of the three options.

An overview of the breakdown of responses can be seen below in table two.

**Table two: Breakdown of responses for three options**

Breakdown of Responses	Option 1 - Amending Existing Guidance	Option 2 - Changing the law (including doing so after amending the guidance)	Option 3 - Making it easier for neighbourhood forums to start the process for creating a new parish council
Strongly in favour	5	6	6
Somewhat in favour	31	32	28



Breakdown of Responses	Option 1 - Amending Existing Guidance	Option 2 - Changing the law (including doing so after amending the guidance)	Option 3 - Making it easier for neighbourhood forums to start the process for creating a new parish council
Neutral or no preference specified	21	15	19
Somewhat opposed	13	16	14
Strongly opposed	6	7	9
Total	76	76	76

The neutral or no preference specified category included those respondents who made no comment about a particular option.

The majority of respondents submitted comments that were consistent with the discussion papers’ assessment of the problems with the current process for setting up a new town and parish council.

The consensus of opinion was that Government’s overarching approach towards implementing some form of change to the current process was justified. However, it was apparent that respondents’ preferences were evenly distributed across the three key options presented in the discussion paper.

Thirty-six respondents were strongly or somewhat in favour of option one - Amending the existing guidance. A slightly higher number of respondents, thirty-eight, were strongly in favour or somewhat in favour of the key proposals set out in option two - Changing the law (including doing so after amending guidance). Finally, in respect to option three, thirty-four respondents gave comments that suggested they were strongly or somewhat in favour of making it easier for neighbourhood forums to start the process for creating a new parish council.

## Scope for applying additional elements from the three options

As explained in the consultation paper, each of the three options outlined in the discussion paper included a number of specific measures aimed at supporting improvements to the current process, such as changes to the timescale and petition thresholds for the process. The discussion paper grouped each measure under the three options. The paper was not intended to be prescriptive in terms of adopting one single option; the various measures within each option are interchangeable and are not in opposition to each other; individual measures from different options can be combined. We aim to adopt an approach that includes the right mix of measures which will best help the diverse types of neighbourhoods who want to more easily set up a parish council.

With this in mind it is worth noting that many of the respondents expressed equally supportive and/or disapproving comments for more than one of the three options e.g. some favoured and/or disapproved with option one whilst giving equally positive or disapproving comments about options two and three. In some cases where a respondent demonstrated a preference for one particular option, this was not necessarily qualified with any comment. Indeed, there was a tendency for respondents to express more comment about the options they did not favour.

# Overview of consultation questions

## Option One - Amending existing guidance

The breakdown of the responses to option one, which proposed to limit change to amendments of existing guidance, showed that seven per cent of respondents (5) were strongly in favour and 41 per cent (31) were somewhat in favour of the key principle of this option. In contrast, only 17 per cent of the respondents (13) somewhat opposed this approach with a further seven per cent (5) strongly opposing the suggestion to amend the existing guidance.

Over 28 per cent of the respondents (21) showed neutrality or specified no preference; this high level of non-response might be explained by respondents focusing their comments on those aspects of the discussion paper, where they held a particularly strong view.

The key supporting comments gave the consensus as being that the majority of respondents who submitted positive contributions about this approach felt that it would be sufficient for Government to make amendments to existing guidance and did not consider it necessary for Government to institute change through statutory legislation. Contrary to this, some respondents opposed to this approach indicated that the process for setting up a town and parish council could only be improved changes were enforced by legislation.

### **Shortening the timescale for completion of Community Governance Reviews**

There was significant comment relating to shortening the timescale for completion of the community governance review from twelve months to six months. Opinion was somewhat divided between those respondents whose comments favoured the reduction and those who disagreed with the proposal.

34 per cent (26) of the respondents gave opinions that could be construed as favouring shortening the timescale, whereas 22 per cent (17) indicated they opposed this element of the proposal. However, the majority of respondents, 43 per cent (33) either did not comment or show any preference in favour of retaining or changing the timescale for conducting a community governance review.

Some of those who agreed with the principle of reducing the timescale, or were less critical of the proposals to halve the process for conducting community governance reviews still had some concerns. Some held the view that the timescale should not be prescriptive because the length of time required to conduct a review might be influenced by a range of factors. Factors included the geographical size of the area proposed to be parished, the demographics of the area and any potential financial burden the principal authority is likely to incur.

It was apparent from the responses of town and parish councils that some were concerned about this element of the discussion paper. Among the comments put forward in favour of the view that existing timescales were already appropriate was that halving the timescale

might lead to poorer, ineffective consultation and resident disempowerment; particularly in those circumstances where the principal authority opposed a proposal.

Additional comments in opposition to the shortening of the timescale doubted whether the reduction to six months would give sufficient time to conduct a thorough comprehensive review. One respondent set out the key deliverables to illustrate the complex process involved in completing a community governance review – including the awareness raising exercise, conducting the consultation, assimilating the responses received and agreeing the resultant proposals.

Some respondents also suggested other variations outside the timescales set out in the discussion paper; this included reductions of eight and nine months respectively.

## Option Two – Changing the law (including doing so after amending the guidance)

The spread of support and opposition to option two which proposed a change to the law was comparable to the distribution for option one. From the 76 respondents eight per cent (6) were strongly in favour of the key aims of this proposal. A further 42 per cent (32) stated they were somewhat in favour.

21 per cent of respondents (16) indicated broad opposition to this proposal and nine per cent (6) strongly opposed the proposal. Additionally, 20 per cent (15) adopted a neutral position or specified no preference either way.

### **Changing the Threshold for a Petition for a Community Governance Review**

The section of the discussion paper relating to lowering the petition threshold to trigger a community governance review generated the most comments.

Analysis of the responses indicated that the position taken varied according to the respondent type. It was apparent that individual citizens, town and parish councils and those representing the interests at this level of local governance tended to support a reduction in the threshold, whereas the county, district and borough councils tended not to approve of lowering the trigger threshold to five per cent.

However, a significant proportion, approximately one third, of parish councils or those representing them also did not support a reduction in the threshold.

The comments made favouring the reduction included the view that the current process requires too high a number of electors to agree changes particularly in smaller communities.

The comments suggesting that the threshold should remain unchanged included the opinion that lowering the threshold may risk the process becoming undemocratic, unaccountable or lacking a mandate. Additional reasons given for retaining the 10 % threshold included the view that it would prevent frivolous requests.

More broadly, there was support by many respondents to proposals to link the threshold to the electoral turnout for the area and including former residents into the numbers considered for the threshold.

## **Right of Appeal**

The majority of respondents did not express a particular view in relation to the provision of a right of appeal – 76 per cent (58). Only 16 per cent of respondents (12) submitted any comment that favoured the introduction of some mechanism that allowed a right of appeal. The remaining eight per cent (6) gave specific comments that opposed the introduction of a right of appeal.

Some principal authorities were critical of this particular proposal. Key comments from principal councils included the suggestion that the Secretary of State should consider all appeals to avoid the vexatious submissions. One respondent did suggest that an independent body should be set up to consider submitted right of appeals. Some principal councils stated they were concerned about potential financial burdens that could be placed upon them by a right of appeal.

More broadly, there was support across the range of respondent types towards aligning the community governance review process with the principal authority election timetable. There was a consensus that this would help to make the process more cost effective.

## **Option Three – Making it easier for neighbourhood forums to start the process for creating a new parish council**

The breakdown of responses to the third option on measures to make it easier for neighbourhood forums to start the process for setting up new parish councils showed that 45 per cent (34) were strongly or somewhat in favour of this proposal.

A further 30 per cent (23) strongly or somewhat opposed the proposal. 25 per cent (19) showed neutrality or specified no preference to the option.

It was apparent that both individual citizens and town and parish councils particularly favoured the option of allowing a neighbourhood forum to submit an application to trigger a community governance review, rather than having to submit a petition with the required number of signatures.

Some respondents who agreed that neighbourhood forums should have more influence in this process felt they would have greater legitimacy if safeguards were introduced to limit their powers. Among the safeguards proposed included the requirement for forums to have a credible neighbourhood plan, a referendum to support a submission and the introduction of elections for those intending to be representatives, in line with the proposal outlined in the consultation paper. One respondent commented that evidence of a longer term interest in the sustainability of a parish council could be more easily identified where a forum already existed.

In contrast some respondents expressed concern about increasing the prominence of neighbourhood forums and the reliance on only twenty one members of the electorate to trigger a community governance review. Comments included that the figure of twenty one would not be sufficiently representative to justify triggering a referendum and that it would add a further level of bureaucracy into the process.

# Government response

The Government welcomes the contributions of those local councils, representative and sector bodies and individual citizens who took part in the consultation.

The comments and suggestions submitted have provided an invaluable insight into the views and perspectives of many of those who have an important role to play in the process for setting up a parish council. We have considered the range of views expressed during the consultation to the three options and the specific measures grouped under them.

It is evident from the responses that there is support for change to help improve the process for setting up a new town or parish council. This support is consistent across all respondent types - including councils at all tiers, local citizens and the wider sector bodies. As a result the Government intends to introduce a range of measures to improve the current process.

We will:

- change the law to limit the time for a community governance review to twelve months from the receipt of a valid petition in all cases. We recognise concerns from some respondents that a more drastic reduction would have a negative impact on principal authorities' ability to carry out more complex reviews thoroughly, and feel that this reduction achieves the right balance between pace and thoroughness.
- reduce the number of signatures needed on a petition for a community governance review. This proposition is consistent with the views expressed in the consultation; which broadly supported some level of reduction. We have given consideration to the concerns raised by some respondents – including the third of parish councils who opposed halving the threshold to 5%. As a result we will lower the threshold by a quarter to 7.5% of the local area population; this proportion will be set higher for local areas with smaller electorates, in line with the current arrangement. This approach will ensure that new parishes will only be created in those areas where there is clear and evident support from the electorate.
- introduce the changes proposed to make it easier for neighbourhood forums to start the process for setting up new parish councils; this resonates with the support given for this option in the consultation. While some respondents had concerns about this process, the Government feels that these are ones which can be addressed within the change proposed. For example, in respect of concerns that forums are not sufficiently representative of local communities, this proposal will require that the forum has produced a neighbourhood plan which has been passed by a referendum of the local electorate before it can trigger a community governance review; and (in advance of that happening) the forum can test support for having a parish council with the community. Also, while the forum would have the right to initiate a governance review, the review will itself test public support and the decision on the review remains with the local authority.

- Amend guidance to address the interpretation of the concepts of ‘effectiveness’ and ‘convenience’ in a community governance review and give weight to the perspective of the community in the interpretation of these concepts. Responses in the consultation were not sufficiently strong to justify a change of the law in this regard, but addressing the issue in guidance will enable a flexible approach.
- Amend guidance to recommend that the local authority sets out how the process can fit with the electoral cycle. Respondents were broadly in support of this approach; however, our objective can be achieved by amending guidance rather than making a legislative link.
- Amend guidance to recommend that local authorities have an appropriate internal review process on request, but not seek to establish a right of appeal for campaigners. This approach is in line with the Government’s previously expressed position that we did not propose to introduce a right of appeal, and the lack of strong support for a right of appeal expressed in the consultation responses.

**The steps outlined above will make the process quicker, easier to understand and easier to initiate. They take account of the views expressed in response to the consultation. They represent an incremental change on the current process. We will keep the process under review and consider further change if, in the light of experience, we find that these changes are not sufficiently helping communities to set up a parish council where they want one.**

## Next steps

We will shortly commence the Legislative Reform Order process with the intention of implementing changes to the current system for setting up new parish councils within the next twelve months.