

## **Audit and Governance Committee**

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<b>Date of Meeting:</b>	26 May 2022
<b>Report Title:</b>	Revised Councillors Code of Conduct
<b>Report of:</b>	David Brown Monitoring Officer & Director of Governance and Compliance
<b>Report Reference No:</b>	AG/14/21-22
<b>Ward(s) Affected:</b>	ALL

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### **1. Purpose of Report**

- 1.1. The introduction to the paper 'Local Government Ethical Standards' A Review by the Committee on Standards in Public Life' published January 2019 (The Ethics Report) begins with '*The 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. All public office-holders are both servants of the public and stewards of public resources.*' These Principles must be embodied within the Code of Conduct adopted by each local authority.
- 1.2. The purpose of this report is to agree a revised Code of Conduct which reflects the Local Government Association model Code of Conduct for elected members, and incorporates best practice recommendations from The Ethics Report which can be recommended to full Council for adoption.
- 1.3. A revised procedure for investigation of complaints is also attached for agreement and subsequent recommendation to full Council for adoption.

### **2. Executive Summary**

- 2.1 The Member Code of Conduct Working Group has, in conjunction with the Monitoring Officer, produced a new Councillor Code of Conduct for consideration by the Committee. This report requests Committee endorsement for the draft Code to be referred to full Council for adoption,

subject to any amendments the Committee may wish to make. The report identifies areas where any significant deviation from the model code of conduct has been recommended by the members of the working group.

- 2.2 The Code is designed as a behaviour-based code which looks at how a Councillor has behaved, and measures a Councillor's behaviour against the Standards in Public life principles that statute requires all councils to include in their codes of conduct. A behaviour code is not a prescriptive 'list' of behaviours to be worked around, or for culpability to be avoided by technical disputes. It provides Councillors with a mechanism for setting out the behaviours they expect from their peers and to be responsible for ensuring and maintaining that standard.
- 2.3 This report (at sections 6 and 7) identifies where best practice recommended by the Ethics Report has not been adopted. Councillors must be clear that this sets the standards, behaviours and expectations of the Councillors of Cheshire East Council as well as the Town and Parish Councils who adopt the Code. All councils at all tiers must adopt a Code, and it is both recommended and commonplace for parish and town councils to adopt the Code of the upper tier authority in the area.
- 2.4 For example the Ethics Report has Best Practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors. However, the working group concluded that if you could not legally compel cooperation, there should be no expectation in the Code of Conduct that a member will behave cooperatively and are advising it be deleted from the proposed Cheshire East Code of Conduct.
- 2.6 Further, a detailed procedure has been developed to accompany the new Code, setting out how to make a complaint about Councillor conduct and how those complaints will be dealt with. The Committee is asked to approve the document, subject to any amendments the Committee may wish to make. The process is required by Section 28(6) of the Localism Act 2011.
- 2.7 It is a legal requirement for any new Councillor Code of Conduct to be formally adopted by full Council. In light of this, it was considered essential that political group leaders were consulted on the Working Group's proposals, given the final adopted code and procedure would ultimately apply to all councillors. Group leaders were provided copies of the draft documents and briefed on the key points raised within this report. The discussion included consideration of the key disparities between the Model Code and that proposed for adoption. The recommendations of the Group Leaders on each of these matters is included within the Comparator Table at **Appendix C**.

### **3. Recommendations**

- 3.1. That the Committee –
- a) Endorse the draft Councillor Code of Conduct appended to this report (subject to any amendments the Committee may wish to make), for adoption by full Council; and
  - b) Approve the draft Code of Conduct Complaints Procedure appended to this report (subject to any amendments the Committee may wish to make), to take effect following adoption of the Code of Conduct by full Council.

### **4. Reasons for Recommendations**

- 4.1. The Audit and Governance Committee has a key role in overseeing the Council's arrangements for ethical governance. This role includes the Council's standards arrangements, and in particular a duty to develop, maintain and update Codes of Conduct and associated protocols.
- 4.2. Although Members are tasked with holding each other to account, the independence, impartiality and necessary distance from political influence is maintained by the statutory role and responsibilities of the Monitoring Officer. In this instance, the Monitoring Officer is tasked with applying the procedure adopted by the Council that deals with the handling of Member complaints. The Monitoring Officer will also try to ensure there is a balance between the legitimate desire of members to influence the code and process at a local level, and the obligation to maintain a process free from undue influence.
- 4.3. The Council's current Councillor Code of Conduct ('the Code') has been in place since 2018, as has the accompanying procedure for dealing with allegations of breach ('the Procedure'). It is considered good practice to review the Code and Procedure periodically, to ensure it remains fit for purpose and relevant to the circumstances of the Council and those councils within the Cheshire East border. The trigger for the review is the publication of the Local Government Association model Code of Conduct for elected members, which incorporates best practice recommendations from The Ethics Report.
- 4.4. The Councillor Code of Conduct
- 4.5. The Local Government Association ('LGA') has produced a model code of conduct for councillors, which provides a robust base upon which a revised Code can be developed. This model code has been developed nationally on the basis of a significant level of legal expertise and national stakeholder

consultation, and represents the predominant view across all local authorities in England as put forward by the Local Government Association. The task of reviewing the LGA model code to establish its suitability for Cheshire East has been undertaken by the Code of Conduct Working Group in conjunction with the Monitoring Officer. The Working Group has evaluated the LGA code, and considers it should be adopted, subject to amendments set out below.

- 4.6. Cheshire East Council also has responsibility for dealing with councillor conduct issues arising in parish and town councils across the whole Borough. Currently all these councils have adopted the Cheshire East Code, so it is hoped the revised Code will also be adopted so any changes will cascade borough wide. The draft Code has been circulated to these councils, and their feedback sought. Feedback was invited in writing and during virtual meetings set up via Cheshire Association of Local Councils (ChALC) for this purpose.
- 4.7. A summary of key feedback received from parish and town councils is outlined below:
- a) The majority of respondent councils indicated they were happy with the draft Code and intended to adopt it in due course.
  - b) There was some confusion surrounding the issue of whether an individual was acting in their personal or official capacity in certain circumstances, therefore uncertainty as to when the provisions of the Code applied. This could be a particular issue on social media.
  - c) The Code should not prevent Councillors from being involved with and commenting on issues of local concern, provided appropriate precautions were taken.
  - d) One respondent considered the Code would benefit from greater clarity on the issue of protecting Councillors from intimidation, abuse and bullying when carrying out their duties.
  - e) Several respondents expressed a desire for the Member/Officer Protocol, and Officer Code of Conduct, to be reviewed and harmonised with the proposed Councillor Code wherever possible and appropriate.
  - f) There was a divergence of views as to whether gifts and hospitality should be accepted, and if so, what an appropriate value might be.
  - g) Frustration was expressed at the lack of sanctions available within current legislation to deal with breaches of the Code.
  - h) An explanation of predetermination should be included for completeness.
  - i) Formatting and presentation issues were identified by one respondent, whose suggestions included improved section titles, clause numbering and version control, ensuring hyperlinks were operative, documents related to the Code being available for reference in order to form a complete picture, ensuring consistency of terminology, and further

consideration to be given to phraseology including whether the Code should compel or recommend particular behaviour.

- j) Some respondents expressed a wish for training to support the proposed new Code, perhaps delivered in conjunction with ChALC.

4.8. All feedback received has been collated and presented to the Working Group for consideration. The draft Code and Procedure have been finalised with the feedback in mind, and in the interests of achieving a balance that is workable, widely applicable, and within our statutory confines. The draft Code is appended to this report for consideration by the Committee **(Appendix A)**. The Committee is asked to adopt the draft Code, subject to any amendments the Committee may wish to make.

4.9. Code of Conduct Procedure

4.10. As well as adopting a Code, the Council is obliged to also adopt suitable procedures for dealing with allegations of breaches of that Code. The current procedure has been in operation for approximately 3 years, and it details the various stages a complaint passes through en route to determination.

4.11. The practical application of the existing Procedure has however highlighted areas it could be made more efficient and less bureaucratic. It has been a number of years since a complaint has been subject to a Sub-Committee hearing under the adopted Procedure, and recent experience with this part of the process has also assisted in identifying potential improvements.

4.12. The Code of Conduct Working Group in conjunction with the Monitoring Officer, have devised the draft Procedure appended to this report. The draft seeks to retain the parts of the existing process that work well, and incorporate a number of improvements, most notably:

- a) Further clarification on the applicability of the Code and the types of allegations that are likely to be taken forward, including a clearer process for sifting complaints out that do not fall within the confines of the Code;
- b) How multiple complaints about the same issue will be dealt with;
- c) Refining the process for anonymous complaints;
- d) A less cumbersome process for consultation with the Independent Person, in particular allowing the method of consultation to suit the circumstances;
- e) Streamlining the process associated with Sub-Committee hearings;
- f) Adding greater transparency through the routine publication of decision notices [on completion of assessment or determination of a complaint].

- 4.13. The draft Procedure is appended to this report for consideration by the Committee (**Appendix B**). The Committee is asked to adopt the draft Procedure, subject to any amendments the Committee may wish to make. It is suggested that the adopted Procedure should take effect once full Council has adopted the revised Code. Should full Council seek to amend the Code prior to adoption, the Procedure is likely to remain relevant and applicable as its focus is the processing of complaints under the Code, whatever that Code may include.

## 5. Other Options Considered

Option	Impact	Risk
<b>Do nothing</b>	The Code will remain in the pre Committee report format and will not cover all the best practice recommendations	The Code will not capture all aspects of Councillor behaviour in a way that supports public confidence
<b>Adoption of the Model Code with minor adaptations that are area specific</b>	This will provide regional and national consistency, allow for efficiency in external investigations and would support adoption by all town and parish councils. This approach was recommended by officers.	The Model Code reflects national debate and national understanding of the wording limitations and prescriptions. It would give legal consistency and robustness to challenge.
<b>Adoption of the Model Code with major adaptations to reflect specific areas of concern</b>	This is recommended by the Audit and Governance working group. Key areas will deviate from the national standard and may give rise to issue of interpretation and understanding	Significant deviations from an accepted and well understood norm adds risk through the necessity to interpret language, and cause additional increases in time and cost.

## 6. Outline of notable changes – Code of Conduct

- 6.1. The areas of major deviation from the model Code of Conduct together with a summary of the working group's reasons are provided below.
- 6.2 **Disrepute Section 5.** The model code of conduct wording requires Councillors not to bring the Council into disrepute. The Ethics Report (page 42) cites Plymouth City Council Code as an exemplar. This wording does not limit any political discourse or ability to hold the council to account. As this is a

councillor Code of Conduct the wording relates solely to the behaviour of the Councillor. The working group indicated some concern that this may limit political debate and considered that the explanatory wording contained within the draft did not sufficiently address these concerns.

The working group are recommending this is limited to 'I do not bring my role of Councillor into disrepute'. This limitation means that the draft Code does not include guidance to specifically address behaviour that may bring the Council itself into disrepute.

- 6.3 **Complying with the Code section 8.** Best Practice recommendation 2 from the Ethics Report was the requirement to cooperate with any Code of Conduct investigation. The detailed reasons for this recommendation can be found in the ethics report at page 41. The Working Group has asked that this is deleted from the Cheshire East Councillor Code of Conduct on the basis that if a councillor cannot be legally compelled to cooperate, a Councillor should not be expected to cooperate.

- 6.4 **Gifts and Hospitality Section 10.** The model code provided for a balance between reporting, transparency and unnecessary burdens (Ethics Report page 47.) Recommendation 6: Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source.

Significant debate including parish council contributions took place on this issue. The working group concluded that the requirement for maintaining a running total from a single source was not practicable. The working group considered that the Councillor code and the Officer code should be the same, as the obligation on each for transparency and public confidence are identical.

The revised wording will require Councillors to record any gift or hospitality received that is more than nominal. Nominal being small item pens, key rings etc handed out at conferences or nominal gifts of confectionary. All other gifts and hospitality will require registering and in due course publishing. The best practice recommendation is to publish the register each quarter (Ethics Report page 48).

- 6.5 Further changes to the gifts and hospitality provisions have been made to assist Councillors who may receive a gift or hospitality in ceremonial or official duties. The working group felt additional clarity with examples would help the public understand how gifts may be treated and allow holders of ceremonial office a transparent record.

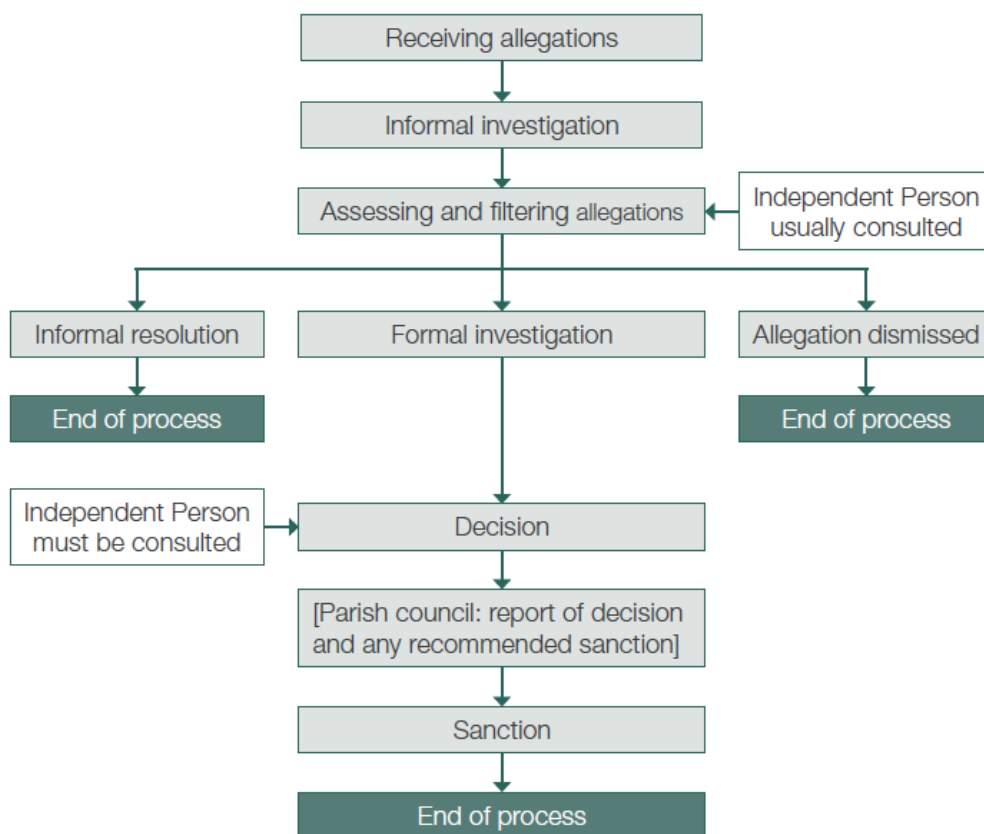
- 6.6 **Predetermination and predisposition and bias.** This does not appear in the model code. Parish Council members requested clarity on this issue and although many other publications deal with the definitions around this (for example the planning specific guidance: (<https://www.local.gov.uk/sites/default/files/documents/probity-planning-councill-d92.pdf>), and the separate planning code at Chapter 4 part 4 of the

Cheshire East Constitution, the working group considered it may be of benefit to reference the issue in the main Code. It is important to note that again this is not designed to limit political debate, discourse, or development of manifesto etc but as an aide memoir when considering what are usually regulatory functions of the council.

6.7 **Appeals.** The working group gave considerable voice to an appeal process. There is no statutory right of appeal as this was removed by the Localism Act. A balanced narrative is set out at page 61 of the Ethics Report. The report at page 62 also sets out a proposed process *if* the legislation is changed to enable this. It does not recommend an appeals procedure until the legislation has been updated to provide for such an appeal, and sanctions are increased to a proportionate level where an appeal has potential justification e.g. on suspension of a councillor from office. Councils that currently have a review process appear to do so by having another subcommittee which is tasked with effectively ‘rehearing’ a matter.

**7. Outline of notable changes – Process.**

7.1 Although there is no requirement for a hearing subcommittee and decisions may rest with the Monitoring Officer, Cheshire East with many other Councils has sought to engage Councillors fully in the adjudication process on standards issues. The ethical report at page 52 sets out a useful summary of the process.





- 7.2 At the decision stage after a formal investigation Cheshire East has chosen to make decisions via a sub-committee. A sub-committee is not a tribunal but a committee of the Council. The committee receives information via a report, in the same way as any other decision-making committee. The committee may ask technical questions on the report (usually addressed to the investigating officer) then questions on any evidence presented by the subject member and to debate and reach a conclusion with the assistance of an independent person.
- 7.3 The formal report considered by the sub-committee will include a record of the observations of any witness and the subject councillor (assuming they have chosen to cooperate). The requirement for any 'live' witness is therefore not mandatory and given the cost and time involved should only be considered in the most exceptional circumstances. The officer recommendation is that no witnesses should be involved in the sub-committee hearing itself, and that all witness evidence should be dealt with at the investigation stage of the process. Subject only to an exceptional circumstance provision. This officer recommendation was rejected by the working group, on the basis that this may prejudice the subject member's presentation of their case, and that the ability to call witnesses and the number of witnesses called should be at the discretion of the sub-committee.
- 7.4 The working group are recommending the removal of the Monitoring Officer's discretion and that no changes are made to the adopted process without the consent of the Audit and Governance Committee. The new process will be fixed and require clear compliance if any matter is to proceed to subcommittee. The working group considered that the process should have the oversight of the Committee, with any changes to it to be considered by Members.
- 7.5 It should be noted that primary legislation sets out the role and remit of the statutory Monitoring Officer, which is reflected in the Council's Constitution as a duty to support and advise the Council on matters relating to the conduct of Councillors. The traditional separation of powers and responsibility helps maintains the objectivity of the Code and associated process, and removes the possible perception of conflict of interest that may arise with political imperatives.
- 7.6 Although transparency is a core policy consideration historically complaints have been made of Cheshire East 'secrecy' of the Code of Conduct. The working group at para 5.13 felt it important not to allow the Monitoring Officer to inform the Group Leader or Whip of relevant member complaint matters. The working group considered that it was not best practice for the Group Leader or Administrator/ Whip to be routinely informed of conduct matters, and that it would in any event not be useful particularly if complaints had not been upheld. Best practice recommendation 15 however provides that 'senior officers should meet regularly with political group leaders or group whips to discuss standards issues. It should also be noted that at para 5.27 of the

process a clear indication is given that in the case of a formal investigation, the process will normally expect disclosure of the terms of reference of any investigation. Albeit these may be redacted to protect the complainant's identity.

- 7.7 Para 5.30 of the procedure stipulates that any investigation undertaken must be proportionate in resources and cost to the complaint made. However, this does not permit any equivalent part of the process to flex. In practical terms this allows the Monitoring Officer, having considered all the circumstances, to direct a complaint to the most appropriate investigator. A relatively straight forward fact-finding investigation could be conducted by an appropriate council officer but would need to follow the exact same process, as a complex high-profile investigation that could be referred to an external investigator.

## **8. Consultation and Engagement**

- 8.1 The original draft Code has been circulated to all parish and town councils within the Cheshire East area, and their feedback sought. Feedback was invited in writing and during virtual meetings set up for this purpose, and a summary appears at para 4.6 above. This is in addition to any input councils and individuals may have provided in response to the Model Code upon which this draft is based, and which was widely consulted upon. This version will be shared following any recommendations amendments by the Audit and Governance Committee.
- 8.2 Cheshire East Group Leaders have been briefed in relation to the final draft of the Code. The discussion included consideration of the key disparities between the Model Code and that proposed for adoption. The recommendations of the Group Leaders on each of these matters is included within the Comparator Table at **Appendix C**.

## **9. Implications**

### **9.1. Legal**

- 9.1.1. The Council is obliged to adopt a Code and suitable procedure for dealing with alleged breaches of that Code. Adoption of the Code falls to full Council as a Constitutional amendment, whereas the Procedure falls within the remit of the Committee. Section 27(2) of the Localism Act 2011 requires the adoption of a suitable Code, the content of which must be consistent with the principles set out at section 28 of the Act. The accompanying procedure is a requirement of section 28(6) of the Act.
- 9.1.2. The statutory role of the Monitoring Officer includes the promotion of high standards of conduct amongst elected Members, a fundamental part of which is ensuring a suitable Code of Conduct is in place, and alleged breaches of that Code are dealt with in accordance with the associated process.

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

9.3. **Finance**

9.3.1. Although there are no direct financial implications arising from this report, the Localism Act 2011 requires sufficient resources to be made available. The Code of Conduct does not in itself create cost to the Council, costs arise directly from the investigation of poor behaviour by Councillors.

9.3.2. The process adopted by the council has a direct impact on costs. The more complex and inflexible the process the greater the cost and the greater the ability for recalcitrant subject members to extend the time and cost envelope

9.4. **Policy**

9.4.1. The initial policy considerations were to ensure that all relevant best practice had been incorporated into the revised Code of Conduct and the code should reflect the model code provided by the LGA. The working group of Cheshire East Council at the commencement did not wish to consider a sub- regional approach.

9.5. **Equality**

9.5.1. The proposed Code and Procedure are based on recognised good practice which aims to ensure equality of treatment and a fair process for all who are involved.

9.6. **Human Resources**

9.7. There are no human resources issues arising directly from this report.

9.8. **Risk Management**

9.9. The procedure adopted should seek to minimise financial and reputational risk to the Council through the promotion of clear, proportionate and robust measures to efficiently and effectively deal with complaints.

9.10. **Rural Communities**

9.11. There are no issues arising directly from this report that may impact rural communities.

9.12. **Children and Young People/Cared for Children**

9.13. There are no issues arising directly from this report that may impact children and young people.

9.14. **Public Health**

9.15. There are no public health issues arising directly from this report.

9.16. **Climate Change**

There are no climate change issues arising directly from this report.

<b>Access to Information</b>	
Contact Officer:	Jamie Hollis, Head of Legal Services <a href="mailto:jamie.hollis@cheshireeast.gov.uk">jamie.hollis@cheshireeast.gov.uk</a>
Appendices:	Appendix A: Draft Councillors Code of Conduct Appendix B: Draft Procedure Appendix C: Comparator table
Background Papers:	'Local Government Ethical Standards' A Review by the Committee on Standards in Public Life' published January 2019; Local Government Association model Code of Conduct for elected members