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To: All Members of the **AUDIT AND STANDARDS COMMITTEE**

The following papers have been added to the agenda for the above meeting.

They were not available for publication with the rest of the agenda.

Yours sincerely

Damian Roberts

Chief Executive

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#### **SUPPLEMENTARY PAPERS**

	<b>Pages</b>
<b>4 Statement of Accounts</b>	<b>3 - 6</b>
To receive an update on the Statement of Accounts.	
<b>5 Monitoring Officer's Annual Report</b>	<b>7 - 26</b>
To receive the Monitoring Officer's Annual Report (Updated).	

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**Surrey Heath Borough Council  
Audit and Standards Committee  
21 November 2022**

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**Update on the audit of the  
Financial Statements  
for the 2019/20 Financial Year**

<b>Portfolio Holder:</b>	Councillor Robin Perry- Finance
<b>Strategic Director/Head of Service</b>	Bob Watson
<b>Report Author:</b>	Tony McGuinness
<b>Key Decision:</b>	no
<b>Date Portfolio Holder signed off the report</b>	14 November 2022
<b>Wards Affected:</b>	All

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**Summary and purpose**

To provide the Committee with an update on the work to complete the audit of the Council's financial statements for the 2019/20 financial year.

**Recommendation**

The Committee is advised to NOTE the

- (i) the report on the work to finalise the financial statements for 2019/20 financial year

**1. Background and Supporting Information**

- 1.1 This report provides an update on the work that has been undertaken to finalise the financial statements for the 2019/20 financial year so that they can be presented to this committee.
- 1.2 The last update that the Committee received was the verbal update that was given to the Committee at the meeting on the 25 July 2022. The Committee has also been receiving written updates on the audit every month as requested.

**2. Supporting Information**

- 2.1 Since the last update given to the Committee, the external auditors, BDO, have assigned an additional auditor to work with the Council's finance team to resolve the outstanding queries on the financial statements.

- 2.2 The team meet with the auditor on a regular basis at least twice a week to discuss the queries as well as updating the external auditors' portal (Inflo) where the queries are stored.
- 2.3 At the time of writing there are 19 unresolved queries stored on the Inflo system in the areas described in the table below

Area	Accounting adjustments	Cashflow Statement	Collection fund	Creditors Note	Debtors note	Financial statements	Payroll	Property, Plant and Equipment	total
Number of queries	1	1	3	2	6	3	2	1	19

- 2.4 In terms of the 19 queries none of them are material issues that could result in an audit qualification to the accounts. The vast majority are either presentational in terms of how the figures are shown or queries which require working papers to be explained or figures to be reconciled. The difficulty with explaining working papers is that most of the finance staff have left the Council since the working papers were prepared and so these staff are not available to explain the working papers to the auditors; this adds more time to the audit process as the current staff review and re-affirm the working papers.
- 2.5 Another issue with the queries is that when a query is answered the external auditors often ask another query which is often only loosely related to the original query so whilst the questions are answered the overall number of queries does not reduce.

### **3. Reasons for Recommendation**

- 3.1 To provide the Audit Committee with an update on the latest position

### **4. Proposal and Alternative Options**

- 4.1 The Committee is asked to note the report on the audit of the financial statements for 2019/20 financial year

### **5. Contribution to the Council's Five Year Strategy**

- 5.1 The information contained within the financial statements for each financial year assist in the setting of budgets and supports the approved five year strategy.

### **6. Resource Implications**

- 6.1 The resource implications are detailed in this report

### **7. Section 151 Officer Comments:**

7.1 It is not uncommon that as an audit reaches its conclusion a number of relative minor questions occur and generate a further spate of questions. The team is directing itself to clear these as quickly as possible once they arise and hopefully the path to a completed set of accounts with an audit opinion is becoming clearer.

**8. Legal and Governance Issues**

8.1 Nothing to add to the report.

**9. Monitoring Officer Comments:**

9.1 Nothing to add to the report.

**10. Other Considerations and Impacts**

**Environment and Climate Change**

10.1 No impact

**Equalities and Human Rights**

10.2 No impact

**Risk Management**

10.3 No impact

**Community Engagement**

10.4 Where necessary engagement will be undertaken

**Background Papers**

Background Papers None

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**Surrey Heath Borough Council**  
**Audit and Standards Committee**  
**21<sup>st</sup> November 2022**

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**Annual Standards Report from the Monitoring Officer**

<b>Portfolio Holder:</b>	N/A
<b>Report Author:</b>	<b>Monitoring Officer</b>
<b>Wards Affected:</b>	N/A

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**Summary and purpose**

To update the Audit and Standards Committee on any standards issues. The Monitoring Officer has an obligation to report to the Committee annually to provide details of complaints made against Cllrs and standards issues. The Monitoring Officer also has an obligation to report on waivers authorised by the Council.

**Recommendation**

The Committee is advised to RESOLVE to note the contents of this Annual Standards Report.

**1. Reasons for Recommendation**

- 1.1 The Monitoring Officer is required to report to the Committee annually to update on standards matters and issues and waivers.

**2. Key Issues and matters**

- 2.1 In March this year the Monitoring Officer provided Code of Conduct training to Members of the Planning Committee. The training was part of a package of training provided to Members on the Committee. The purpose of the training was to explore in more detail the limits of freedom of speech and namely the point at which speech is likely to breach the Code of Conduct. The training focussed on this aspect because most confusion and concerns relate to uncertainty on when speech may breach the Code of Conduct. The training was well-received and the feedback suggests the training provided a greater understanding of the legal framework for political speech and expression.
- 2.2 A team of officers is currently developing a new Members' induction programme to welcome newly elected Members in May 2023. The programme will include presentations on core Council themes, training on key topics and an

opportunity for members to meet officers from service departments. The team is very much focussed on ensuring that the induction programme helps prepare members for office.

- 2.3 The 2021/2022 Annual Governance Statement was reworked to include high level information regarding governance issues for each service department. The intension of this change was to shine a spotlight on the governance weaknesses for each service department and explain how those weaknesses are being addressed or have been addressed. The process followed was for service departments to send completed management assurance statements directly to Internal Audit. Internal Audit then used the information to populate the Annual Governance Statement.
- 2.4 In July of this year, the Monitoring Officer reported to the Governance Working Group the Government's response to the Committee for Standards in Public Life's 2019 report which listed 26 recommendations to update and improve standards in Local Government. The full response is contained in Annex A of this report. The summary below confirms the Government's intended actions, however no timescales have been provided.

**Recommendation 2** – The Government will engage with interested parties on the best means to ensure that Candidates and Councillors are not required to publicly disclose their home address.

**Recommendations - 10, 12, 13, 14 and 16** The Government will engage with sector representative bodies of Councillors and Officers of all tiers of Local Government to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour.

**Recommendation 22** - The Government will engage with sector representative bodies of all tiers of Local Government to seek views on amending the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 to provide disciplinary protections for statutory officers.

### 3. Waivers

- 3.1 Since November 2021 a total of 16 applications to waive contract standing orders have been approved. The approval process requires the agreement of the Monitoring Officer and Section 151 Officer. Approved waivers grant permission to proceed to appoint a contractor without a procurement process. In summary, the reasons for applications are typically urgency and/or that it is in the best interests of the Council to appoint a particular contractor. It must be noted that it is not currently possible to waive contract standing orders for contracts with values over the applicable EU thresholds. The Council's contract standing orders will be reviewed once the Procurement Bill becomes law and



criteria for approving waivers may change. The table below lists the expenditure under waivers per service department.

IT	£82,446
Planning	£197,256
Community services	£39,460
Finance	£25,000
JWS	£30,000
Investment and Development	£194,500
Housing	£15,008
<b>TOTAL</b>	<b>£583,670</b>

- 3.2 Of the total expenditure, £232,000 was attributable to legal services which is clearly a significant sum. However, it must be noted that £150,000 of this total relates to progressing the local plan and, as such, much lower spend would be expected going forwards.

#### **4. Monitoring Officer's reports and investigations**

- 4.1 Compared to the year November 2020 to November 2021, a lower number of complaints have been received both at Borough and Parish level. The Monitoring Officer considered that one complaint against two Parish Cllrs warranted formal investigation and subsequently referred the complaint to an Investigation Panel. A copy of the Panel's report is provided in Annex B. The Independent Person was consulted as required under the process. The Panel's recommendations were accepted by Jane Clark (formerly Cllr Jane Clark). Given the apologies provided, and with the agreement of the complainant, it was determined that a hearing was unnecessary. Regarding Malcolm Vaughan, (formerly Cllr Malcolm Vaughan) at the present time a resolution is outstanding. It is important for Members to note that the Investigation Panel's findings are based on, and limited to, the information and evidence the Panel was able to obtain during the investigation. Jane Clark and Malcolm Vaughan were invited to attend interviews with the Panel but both were unable to attend. Timescales were extended to assist with further dates for interviews without success.
- 4.2 Regarding all other complaints that did amount to minor breaches of the Code of Conduct, the Monitoring Officer was satisfied that these could be resolved without investigation. A total of 16 complaints were made from November last year; 8 complaints were against Surrey Heath Borough Cllrs and 8 complaints were against Parish Cllrs. 9 Complaints were dismissed as without merit.
- 4.3 Last year's Annual Standards Report highlighted the particular difficulties at Bisley Parish Council and the Monitoring Officer is pleased to report that the Parish Council appears more stable at the present time.

#### **5. Resource Implications**

- 5.1 None

## **6. Section 151 Officer Comments**

6.1 None

## **7. Legal and Governance Issues**

7.1 As set out in this report

## **8. Monitoring Officer Comments:**

8.1 The Monitoring Officer is required to report to the Committee annually to update on standards matters and issues and waivers.

## **9. Other Considerations and Impacts**

### **Environment and Climate Change**

9.1 N/A

### **Equalities and Human Rights**

9.2 N/A

### **Risk Management**

9.3 N/A

### **Community Engagement**

9.4 N/A

## **Annexes**

Annex A – Government’s response to 2019 report from the Committee on Standards in Public Life.

Annex B – Investigation Panel’s report on allegations of misconduct.

## **Background Papers**

None



Department for Levelling Up,  
Housing & Communities

**Kemi Badenoch MP**

*Minister of State for Equalities and Levelling Up  
Communities*

**Department for Levelling up, Housing and  
Communities**

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Dear Lord Evans,

On behalf of the Government, I would like to thank the Committee on Standards in Public Life for its report and the recommendations arising from its review of Local Government Ethical Standards, and to all those who engaged with the Committee's work. Attached is the Government response to the Committee's individual recommendations that were directed at Government.

Vibrant local democracies flourish where the reputation of the local authority is held in high regard, where councillors' decision-making is transparent, valued and trusted by the communities they serve, and where people are willing and confident to put themselves forward as potential candidates. The standards and conduct framework within which local authorities operate must drive out corruption and promote commitment to the principles on standards in public life, and tolerance to the differing views of others. In responding to the review, the Government has taken into account the importance of protecting free speech and freedom of association within the law.

The Government is committed to working with local authorities and their representative organisations to ensure that local government is supported in reinforcing its reputation for ethical local standards.

The fact that this review had been conducted in such a collaborative way with the sector has been apparent from the outset and is borne out in the final report. I am keen that Government builds on the sector-wide enthusiasm for improvement.

The Government agrees with the Committee's conclusion that there have been benefits from local authorities being responsible for ethical standards, including the flexibility and

discretion to resolve standards issues informally. However, we also recognise the role of Government in ensuring that the system is robust.

The number of requests for legislation in the Committee's recommendations to strengthen the standards and conduct framework and its safeguards is considerable. As indicated in this response, the Government believes that some of these suggestions do not need a legislative response but can be more appropriately, effectively, and swiftly taken forward by local authorities as best practice. The Committee will recognise that the Government and Parliament has taken a different view on these matters when it legislated for the Localism Act 2011.

I thank the Committee for their work on the review and for their patience whilst Government carefully considered their recommendations, and I personally look forward to continuing to work with you as Government progresses the commitments made in this response with the sector.

Yours sincerely,

A handwritten signature in black ink that reads "Kemi Badenoch". The signature is written in a cursive, flowing style.

**KEMI BADENOCH MP**

**Minister of State for Equalities  
and Levelling Up Communities**

# Government response to the Committee on Standards in Public Life review of local government ethical standards

This Government response confines itself to the Committee's recommendations directed at Government, other than with regards to the first recommendation. The response to recommendations 10, 12, 13, 14 and 16 have been grouped together and therefore appear out of numerical order below.

## **Recommendation 1**

**The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.**

The Localism Act 2011 states that relevant authorities must promote and maintain high standards of conduct by members and co-opted members. It requires these authorities to adopt a code of conduct for their councillors.<sup>1</sup> Authorities can determine the content of their own code of conduct. However, codes must conform to the seven 'Nolan' principles of standards in public life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. Relevant authorities for the purposes of these requirements include local authorities in England, namely county councils, district councils, London borough councils and parish and town councils.

It is for individual councils to set their own local code, in line with the Act. The Government has previously published a light-touch illustrative code of conduct.

The Local Government Association has worked with sector representative bodies to update its own suggested code of conduct, with the intention that this new suggested code could establish a consistent benchmark that local authorities can amend or add to as they see fit to reflect local circumstances and priorities. The Local Government Association published the updated code of conduct in January 2021. However, it remains a local decision on whether this model code is adopted.

## **Recommendation 2**

**The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.**

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<sup>1</sup> References to councillors in this document also should be deemed to include elected mayors.

This issue was brought up in the Committee's work on intimidation in public life, and the Government has already taken forward several steps in this regard. The Government is open and receptive to further steps to help prevent intimidation.

The Government agrees with the principle behind this recommendation – which safeguards elected representatives - and considers amending the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 would be an option to achieve it.

The Government will engage with interested parties on the best means to ensure that candidates and councillors are not required publicly to disclose their home address.

Notwithstanding, it is important that home addresses are internally registered with monitoring officers, to help avoid conflicts of interest.

### **Recommendation 3**

**Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.**

The Government's view is that it is for individual local authorities to consider if their code of conduct is adequate in addressing the issue of inappropriate use of social media.

As the Government outlined to Parliament in March 2021 on tackling intimidation in public life: 'It is important to distinguish between strongly felt political debate on the one hand, and unacceptable acts of abuse, intimidation and violence on the other. British democracy has always been robust and oppositional. Free speech within the law can sometimes involve the expression of political views that some may find offensive': a point that the Government has recognised in a Department for Education policy paper<sup>2</sup>. But a line is crossed when disagreement mutates into intimidation, which refuses to tolerate other opinions and seeks to deprive others from exercising their free speech and freedom of association.'

It is important to recognise that there is a boundary between an elected representative's public life and their private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity risks conflating the two.

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<sup>2</sup> Higher education: free speech and academic freedom Feb 2021  
<https://www.gov.uk/government/publications/higher-education-free-speech-and-academic-freedom>

#### **Recommendation 4**

**Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.**

The Government agrees that local authority elected representatives should act in good faith in the public interest and not seek to influence decisions for personal gain, for malicious intent or to further the interests of any business or any other organisations which they may be affiliated with.

The Local Government Association have updated their [own suggested code of conduct](#) to state that the code applies when “[a member’s] actions could give the impression to a reasonable member of the public with knowledge of all the facts that [they] are acting as a [member]”.

It is for individual local authorities to ensure that their codes of conducts are regularly updated, comprehensive and fit for purpose. Elected members receive the necessary training to make them aware of their personal responsibilities in upholding the code.

The Government will keep this matter under review but has no immediate plans to amend the regulations.

#### **Recommendation 5**

**The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.**

The electorate must have confidence that the decisions of their elected representatives are being made in the best interests of the community they have been elected to serve. Unpaid roles may need to be declared if it is relevant to council business, and councillors should recuse themselves if necessary if discussions relate to private bodies, they are involved in.

The Government is mindful that councillors have a right to a private life, and rights of freedom of association outside their role as a councillor. It is frequently the case that people in public life have a complex pattern of interests and play a variety of roles with different types of organisations, including community interest groups and charities.

The Government will keep this matter under review but has no immediate plans to amend the regulations.

## **Recommendation 6**

**Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record gifts and hospitality received over a value of £50 or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.**

The Local Government Association's suggested code of conduct published in January 2021 includes a requirement for members to "register... any gift or hospitality with an estimated value of at least £50". However, it did not contain any requirements relating to the total value of gifts or hospitality received from the same source over a sustained period.

Local authorities have the autonomy to set gifts and hospitality requirements in their own codes of conduct. The Government accepts that there is merit in best practice guidance on the thresholds for gifts and hospitality and agrees that a register of gifts and hospitality should be publicly available.

## **Recommendation 7**

**Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to the matter".**

Section 31 of the Localism Act 2011 requires that a councillor must not participate in a discussion or vote on a matter where they have a disclosable pecuniary interest in any matter to be considered at the meeting. Section 30(3) of the Localism Act 2011 further provides that any relevant pecuniary interests of a councillor's spouse or partner are considered as a disclosable pecuniary interest of the councillor.

The Committee's report reflects concerns that the disclosable pecuniary interest arrangements infringe on the privacy of a councillor's spouse or partner. Where there would be a potential conflict of interest, the principle of integrity requires that any such interests should nevertheless be declared and resolved.

The Government will keep this matter under review but has no immediate plans to repeal Section 31 of the Localism Act 2011.



## **Recommendation 8**

**The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.**

The Government does not accept this recommendation as appropriate for legislation on the basis that it would be likely to be unworkable. The Government's view is that it would be more appropriately implemented as a best practice recommendation for local authorities.

In principle, it may be attractive to limit the terms Independent Persons serve to keep their role and contribution "fresh" and avoid them becoming too closely affiliated with the overriding organisational culture. However, discussions with Monitoring Officers indicate that in practice most local authorities would likely find servicing this rate of turnover unachievable. There is frequently a small pool of people capable and willing to undertake the role, who also fit the stringent specifications of being amongst the electorate, having no political affiliation, no current or previous association with the council, and no friends or family members associated with the council.

When local authorities have found effective Independent Persons who demonstrate the capability, judgement and integrity required for this quite demanding yet unpaid role, it is understandable that they may be reluctant to place limitations on the appointment.

## **Recommendation 9**

**The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.**

The Government does not agree with this. The Local Government Transparency Code is a statutory requirement to publish information; it does not regulate the content of councils' minutes or decision notices.

The substantive policy suggestion has merit but will depend on circumstances. In cases where there is no case to answer from an unfounded complaint, it should not necessarily be a legal requirement to publish details of that unfounded complaint.

## **Recommendation 10**

**A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding or a breach and that suspending the councillor would be a proportionate sanction.**

## **Recommendation 12**

**Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.**

## **Recommendation 13**

**Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.**

## **Recommendation 14**

**The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, an appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.**

## **Recommendation 16**

**Local authorities should be given the power to suspend councillors, without allowances, for up to six months.**

There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and this was a deliberate policy decision by the Coalition Government at the time of the Localism Act 2011 to differentiate from the previous, failed Standards Board regime. The Standards Board regime allowed politically motivated and vexatious complaints and had a chilling effect on free speech within local government. These proposals would effectively reinstate that flawed regime.

It would be undesirable to have a government quango to police the free speech of councillors; it would be equally undesirable to have a council body (appointed by councillors, and/or made up of councillors) sitting in judgment on the political comments of fellow councillors.

On the rare occasions where notable breaches of the code of conduct have occurred, local authorities are not without sanctions under the current regime. Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline, including being removed from that group or their party. Political parties are unlikely to reselect councillors who have brought their group or party into disrepute. All councillors are ultimately held to account via the ballot box.

As part of the Government's response to the Committee's report on intimidation in public life, the Government recommended that every political party establish their own code of conduct for party members, including elected representatives.

The Government will engage with sector representative bodies of councillors and officers of all tiers of local government to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour.

### **Recommendation 11**

**Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.**

The Government agrees in principle.

Initial soundings with the sector indicate that some local authorities already provide legal indemnity for Independent Persons.

The Government endorses providing legal indemnity for Independent Person as local authority best practice but does not currently see the need to require this through secondary legislation.

### **Recommendation 15**

**The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g., bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.**

The Government believes that this is better addressed through the sector adopting as best practice a regular pattern of annual reporting by Standard Committees of the cases and complaints handled and would encourage this as best practice by the sector.

The Government does not believe that there is a requirement to prescribe to local authorities the form and content of such Standard Committee annual reports.

### **Recommendation 17**

**The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.**

The criminal law, overseen by the police and courts, provides for more appropriate and effective action against breaches of public order, for anti-social behaviour, and against harassment.

The occasion where councils would seek to bar councillors from council premises are thought to be extremely rare. We will consider this further.

### **Recommendation 18**

#### **The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.**

It is a criminal offence to fail to declare pecuniary interests, which acts as a strong deterrent against corruption.

The Government does not agree with this recommendation, but rather believes the criminal offence of a non-disclosure of pecuniary interest to be a necessary and proportionate safeguard and deterrent against corruption.

The high bar of police involvement has served to discourage politically motivated and unfounded complaints.

### **Recommendation 20**

#### **Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.**

The Government does not agree that this is necessary and has no plans to repeal Section 27(3) of the Localism Act 2011.

The Government considers that the adoption of the principal authority's code or the new model code is a matter for local determination.

There are merits in achieving consistency within principal authority areas to eliminate potential confusion amongst constituents and elected members but there may be instances where a parish council may want to add to the code of their principal authority to reflect local circumstances.

## **Recommendation 21**

**Section 28 (11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.**

The Government has no current plans to repeal Section 28 (11) of the Localism Act 2011 but will give this matter further consideration.

## **Recommendation 22**

**The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.**

The three statutory officers in local government are the Monitoring Officer, the Head of Paid Service (Chief Executive) and the Chief Finance Officer (often referred to as the Section 151 Officer).

Under the current disciplinary arrangements for statutory officers, any decision to dismiss a statutory officer must be taken by full council, following a hearing by a panel that must include at least two Independent Persons. The Committee consider that the disciplinary protections for statutory officers should be enhanced, by extending disciplinary protections to all disciplinary actions (such as suspension or formal warnings), not just dismissal.

The Government agrees in principle with this recommendation and recognises this will be pertinent to Monitoring Officers who may not necessarily be afforded the same seniority in the organisational hierarchy of a local authority as the two other statutory officers (Head of Paid Service and the Section 151 Officer), and who may be subject to personal pressures when conducting high profile breach of conduct investigations.

The Government will engage with sector representative bodies of all tiers of local government to seek views on amending the Local Authorities (Standing Orders) (England)(Amendment) Regulations to provide disciplinary protections for statutory officers.

## **Recommendation 23**

**The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.**

The Government agrees with the principle that openness is essential.

Most local authorities already publish their whistleblowing policy, procedures and a named contact on their websites, and Government is recommending that this is adopted as a best practice recommendation.

The Government published the UK National Action Plan for Open Government 2021 – 2023 in January 2022. This includes a commitment on local transparency.<sup>3</sup> The Department for Levelling Up Housing and Communities (DLUHC) will work with the local government community to develop a set of specific actions to advance transparency in the sector. DLUHC will support local government to solidify their transparency policies and processes and encourage proactive publication of open data across councils.

## **Recommendation 24**

### **Councillors should be listed as ‘prescribed persons’ for the purposes of the Public Interest Disclosure Act 1998.**

Prescribed persons are individuals or organisations that a worker may approach outside their workplace to report suspected or known wrongdoing and still be protected by the rights afforded to them under whistleblowing legislation. They are prescribed by an order made by the Secretary of State (for Business, Energy and Industrial Strategy) for this purpose. A complete list of prescribed persons is available here: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>.

Local councillors would not meet the criteria of being external to an individual’s workplace in relation to matters affecting the council and could therefore not be considered as a ‘prescribed person’ for the purposes of the Public Interest Disclosure Act 1998. Disclosures relating to local authorities can be made to the external auditor of the relevant authority, the Comptroller and Auditor General (National Audit Office), or a Member of Parliament.

However, the Government recognises that this may provide a further check and balance against council corruption or wrongdoing and is open to further representations on the matter on how local accountability can be strengthened in this regard.

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<sup>3</sup> <https://www.gov.uk/government/publications/uk-national-action-plan-for-open-government-2021-2023/uk-national-action-plan-for-open-government-2021-2023#local-transparency>

## **Investigation report following referral by Surrey Heath Borough Council's Deputy Monitoring Officer into Conduct of Councillors Clark and Vaughan Bisley Parish Council.**

### **Introduction and Background**

A formal complaint was made on 10 June 2021 against Cllr Vaughan and Cllr Clark in respect of bullying the former clerk to Bisley Parish Council, Jill Biden, and failing to support her in her role as clerk. The complaint asserts that the behaviour of Cllr Vaughan and Cllr Clark was contrary to the code of conduct for Councillors at Bisley Parish Council.

Under the Council's complaints process, the Deputy Monitoring Officer has determined that the complaint merits further investigation to determine relevant facts and circumstances before any final decisions or recommendations can be made.

Whilst Standing Orders appear to have been followed, the issue of the lack of effective policy and procedure in place for Bisley Parish Council is an omission that has enabled undesirable behaviour to persist within the Council. The investigation panel will be making a series of recommendations in this report which it hopes will assist in resolving differences and prevent difficulties for the Council going forwards.

### **The Investigation Process**

This Investigation into allegations of Councillor misconduct has followed the requirements of S28 Localism Act 2011 as well as the guidance and supporting documentation at Part D, p.351 of Surrey Heath Borough Council's Constitution.

An Investigations Panel was convened to review the allegations, comprising the Council's Principal Lawyer Rebecca Batten, the Senior HR officer Bobbie Ludlow, and the Senior Internal Auditor Alex Middleton.

The Panel has considered the member complaint against the witness evidence of other Councillors as well as the subject members and will outline the process below by listing the interviews that were conducted and the form of evidence that has been considered by the panel.

Due to the seriousness of the allegations of bullying, it was necessary to consider whether there was evidence of a failure to comply with several provisions of the Bisley Parish Council Members Code of Conduct, particularly where the Panel did not find evidence of the principal allegation of bullying.

The Panel sent an initial letter out to selected members of Bisley Parish Council on 24 January 2022 inviting them to attend an Interview in person. The two members who were subject of the complaints, Cllr Clark and Cllr Vaughan, were unable to attend due to ill health and personal reasons. However, following a list of questions being sent out to Cllr Clark and Cllr Vaughan by email on 22 February, responses were received in written form, by email. Accordingly, the panel were furnished with sufficient information to consider the member conduct complaints fully.

Personal Interviews were conducted in confidence at Surrey Heath Borough Council offices, as follows:

1. Cllr Steve Moore: The panel had the benefit of the original complaint dated 10 June 2021 as well as oral evidence at personal interview on 7<sup>th</sup> February 2022 at which time some additional documents were provided to the Panel in confidence.

2. Jill Biden – The panel had the benefit of a witness statement dated 20 October 2021 as well as oral evidence at personal interview on 9<sup>th</sup> February 2022 and furthermore, Jill Biden requested a second meeting on 16 February 2022 to provide additional evidence orally.
3. Cllr Erica Agombar – The panel had the benefit of a witness statement dated 3 December 2021 as well as oral evidence at personal interview on 9<sup>th</sup> February 2022.
4. Cllr Tina James- The panel had the benefit of the oral evidence provided during a personal interview on 17<sup>th</sup> February 2022.

In accordance with the arrangements for dealing with allegations of misconduct under s28 Localism Act both Councillor Vaughan and Councillor Clark were provided a copy of the draft investigation report and were afforded 10 days to make any comments about any factual errors that were found. A number of emails were received from Councillor Clark and these have been considered. A couple of emails were received from Councillor Vaughan although some of his additional information was provided out of time. In view of this, some clarifications and amendments have been made to the report as a result of the observations that were made to the panel.

### **The Investigation Panel's findings**

#### **1. General Obligations Code of Conduct 2.2(b) *Bully any person.***

It is the Panel's decision that the evidence has not demonstrated that either Councillor Clark nor Councillor Vaughan has subjected Jill Biden to bullying and in the absence of a bullying policy, instances of questioning the methods or practices of Jill Biden are not construed as meeting the threshold for either bullying or harassing behaviour.

#### **2. General Obligations Code of Conduct 2.2 (d) *Not do anything that compromises or is likely to compromise the impartiality of those who work for, or on behalf of the Council.***

The Panel found that following the receipt of CCTV footage from the Trustees of the Village Hall showing Councillor Clark attaching information to noticeboards, the forwarding of this data to all Councillors in a group email had become the subject of a complaint by Councillor Clark who stated that there had been a breach of GDPR. As Councillor Clark was the only Councillor who saw fit to complain in this way, it is the Panel's finding that on the balance of probabilities she was acting out of self interest in raising this complaint. The Panel consider it was wholly appropriate for the clerk to forward the data to Bisley Parish Council and that this complaint lacked foundation.

Having erroneously been accused of causing a breach of GDPR, the Panel found that Jill Biden's ability to determine whether it was indeed a breach and how it should be managed, were compromised. As a result of this complaint, the appropriate next steps were not followed, and Jill Biden resigned from her position.

#### **3. Code of Conduct 2.5 (a) *must not use or attempt to use your position as a Councillor or co-opted member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.***

The Panel found that the witness evidence showed that Councillor Clark was insistent on being part of the Human Resources ("HR") subcommittee despite not having been nominated and accepted to this position. This showed disrespect for the democratically elected members of that subcommittee and on the balance of probabilities showed that she wished to secure an advantage for herself in respect of improperly accessing to confidential HR information which



would not necessarily have been communicated to the Parish Council outside of the HR committee.

#### **4. Code of Conduct clause 1.2 High Standards of Conduct**

*It is your responsibility to comply with the provisions of this Code which will assist the Council in meeting its statutory obligation to promote and maintain high standards of conduct by:*

*c) Objectivity. In carrying out public business.*

It is the Panel's finding that Councillor Clark has failed to meet the standards of conduct required under clause 1.2(c) when she failed to stay at 'arm's length' from a matter in which she had a personal conflict of interests; this being the content of a discussion at the Extraordinary General Meeting about 'noticeboards' on 24 May 2021. Despite correctly absenting herself from the meeting due to this conflict, Councillor Clerk retrospectively questioned Jill Biden about information and advice that was put before the Councillors at that meeting. The Panel finds that this questioning by Councillor Clark showed a lack of objectivity.

*d) Accountability. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.*

It is the Panel's finding that Councillor Clark has failed to meet the standards of conduct required under clause 1.2(d), As the witness evidence shows Cllr Clark withdrew her participation from the 'checkpoint scheme' that fellow Councillors discussed and agreed at the Extraordinary General Meeting on 24 May 2021 would be suitable and proportionate redress for Cllr Clark to follow after the 'noticeboards' incident. Cllr Clark should have expected this level of scrutiny after the event had taken place.

#### **5. Clause 1.2(g) General Provision – Leadership**

It is the Panel's finding that Councillor Vaughan failed to meet the high standard of conduct required by the Chairman of the Parish Council (at that time) in failing to consider or properly direct Jill Biden's concerns of bullying on or around 23 March 2020 and more specifically, in failing to respond to Jill Biden's letter dated 25 February 2021. This amounts to a failure to promote and support the principles enshrined in the Code of Conduct.

Councillor Vaughan, the Chair at the time, demonstrated on occasions a lack of personnel support towards the clerk, for example in not responding to a letter from the clerk in which she requested a meeting with him. This would reasonably be expected for such a position, including not having regular 1 to 1s, annual appraisals, as well as periodically reviewing the clerk's job description and general duties.

#### **Panel Recommendations**

In the absence of any material findings of bullying and/ or harassment by Councillors Vaughan and Clark, the Panel came to the conclusion that there are, none the less, minor breaches of the code of conduct for which both Councillors must apologise in writing to the clerk, Jill Biden.

Furthermore, the Panel has made a series of recommendations, below, for Bisley Parish Council to implement in order to minimise the risk of councillor complaints relating to misconduct going forward. These are all in furtherance of best practice guidance.

1. There is no grievance policy in place which covers bullying and harassment. The Council needs to implement a proper policy and mechanisms put in place so it can be monitored and complied with. All Cllrs and co-opted Members should be required to sign up to this to demonstrate solidarity and openness.
2. A full set of Policies and Procedures are available from the National Association of Local Councils ("NALC") which it is suggested would be beneficial to implement and put in place even if they are later required to be made more specific to Bisley Parish Council. It is suggested that Members sign up to these to demonstrate a willingness to work within a suitable framework for best practice.
3. Due to Information Technology issues, no common policy has been established for communicating between Cllrs. BPC needs to introduce a communications policy/procedure, and ensure business is only conducted using a secure business email. We also advise the setting up of a group email group to avoid exclusion of individuals from discussion.
4. BPC needs to implement a Data Protection Policy that covers individual rights under Data Protection as well as Freedom of Information requests and to specifically detail what procedure should be in place in the absence of the Data Protection Officer.
5. The HR Committee needs to be formalised, with dedicated Terms of Reference, and voted Member constitution. The powers of the HR committee also need to be agreed. In addition, the HR Committee is to continually review whether there are learning or development needs and to resource suitable training providers.
6. BPC employees would benefit from appraisals, Job Descriptions reviewed and updated, training and development needs recorded, and 1 to 1 meeting set up at regular intervals.
7. We would advise a full set of guidelines or working practices for use by Councillors in respect of social media and when it is inappropriate and/ or appropriate.
8. Cllr should try and stick to conducting Bisley Parish Council business within the remit of Council agendas and meetings. There appears to be too much use of off the record discussions, and not all Cllrs are invited to take part.
9. Any Cllr or staffing issues should be raised at the HR committee – including staff or Cllr performance, or issues such as lack of, or non-compliance with Code of Conduct or Standing Orders.
10. A remuneration report should be prepared regularly, as a minimum every 2 years or whenever there is a change to BPC's constitution or roles. All proposed changes to Cllr allowances should be an agenda item and Standing Orders followed.

#### **Investigating officers**

Rebecca Batten (Principal Solicitor for Litigation)

Bobbie Ludlow (Senior HR Officer)

Alex Middleton (Senior Auditor)

**Date: 18<sup>th</sup> July 2022**