1.0 PURPOSE OF REPORT

1.1 To advise the Committee on the fundamental changes to the system of regulation of Standards of Conduct for elected and co-opted Councillors arising from the passing of the Localism Act 2011.

1.2 To seek the views of the Committee on outstanding issues (insofar as they are known and understood at the time of writing this report) in order to inform the Council’s response.

1.3 To grant delegated powers to the Monitoring Officer to progress arrangements for dealing with standard allegations in order to achieve a scheme for implementation by the effective date. At the time of writing this could be either 1 April 2012 or the Annual Meeting of the Council scheduled for 21 May 2012.

2.0 RECOMMENDATIONS TO STANDARDS COMMITTEE

2.1 That the Council be recommended to continue to operate a Standards Committee from the operative date for the new arrangements for standards issues under the Localism Act 2011.

2.2 That the future Standards Committee be politically proportionate although the Council should be asked to permit any Hearing Panels to be excepted from
this requirement as are other such Quasi-judicial panels operated by the authority.

2.3 That Parish Council representatives be appointed (the number to be determined when further detail on the regulatory framework is available) to be co-opted, non-voting Members of the Committee.

2.4 That the Monitoring Officer be instructed to:-


ii) Devise model arrangements for dealing with standards allegations under the Localism Act 2011.

iii) Make recommendations on the decision making process for handling dispensations.

2.5 That the Monitoring Officer arrange to inform and train Parish Clerks on the new register of Members’ interests as soon as full details are available.

2.6 That the Monitoring Officer advise and train all Harrogate Borough Councillors on their changed obligations as soon as full details are available.

2.7 That as soon as practicable, the Monitoring Officer begin the process of recruiting an independent person (or possibly two) as required under the Localism Act.

TO GENERAL PURPOSES COMMITTEE

2.8 The Monitoring Officer be authorised to draft a Standing Order requiring withdrawal from the meeting of any Member with a declarable pecuniary interest for further consideration.

2.9 That the Monitoring Officer be authorised to make such changes to the Constitution within the principles outlined in this report as may be required to meet the operative date to be announced subject to any significant areas of discretion or choice that may arise being submitted to this Committee and General Purposes Committee for retrospective approval or amendment.

3.0 RECOMMENDED REASONS FOR DECISIONS

3.1 The Localism Act 2011 introduces a new system for the regulation of standards of conduct for elected and co-opted members. The effective date will be either 1 April 2012 or the Annual Meeting of Council in May 2012.

3.2 Whilst the Act and this report set out the main features of the required new approach the detail is contingent upon the making of regulations which, at the time of writing this report (early January 2012) have not yet been published.

3.3 It is anticipated that much of the regulation will focus on the future
arrangements for dealing with Standards allegations under the Localism Act 2011. These matters are presently set out in the Council’s constitution which will require a significant re-write to meet the new requirements.

3.4 Subject to the views of the Committee on the matters set out in this report increased delegation to myself as Monitoring Officer will clearly be required to meet the implementation date especially if it is as soon as 1 April 2012.

4.0 ALTERNATIVE OPTIONS CONSIDERED AND RECOMMENDED FOR REJECTION

4.1 The basic framework for these arrangements is statutory and where flexibility is understood to exist the relevant options before the Council are discussed in this report.

4.2 Throughout the report the declared aim underlying the legislative change of reducing the bureaucracy associated with standards work has been carefully considered.

5.0 THE REPORT

5.1 Harrogate Borough Council will continue to be under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted members.

5.2 The Localism Act Bill 2011 repeals Section 55 of the Local Government Act 2011 which provides for the current Standards Committee. Consequently, there is no legal requirements for a Standards Committee, however, there will be continuing standards issues and casework and so it is likely to remain convenient to have a Standards Committee.

5.3 If this view is supported, the Standards Committee will be a ‘normal’ Committee of the Council without the unique features conferred upon it by previous legislation. In particular this will mean:-

(i) the composition of the Committee will be governed by proportionality, unless Council votes otherwise with no member voting against. The present restriction to allow only one member of the Executive on the Standards Committee will cease to apply;

(ii) the current co-opted independent members will cease to hold office. The Act establishes for a new category of Independent Persons (see below) who must be consulted at various stages, but provides that the existing co-opted independent members cannot serve as Independent Persons for 5 years. The new Independent Person may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee.

(iii) the District Council will continue to have responsibility for dealing with standards complaints against elected and appointed members of
Parish Councils, but the current Parish Council representatives cease to hold office. The District Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants? The choice is between establishing a Standards Committee as a Committee of the District Council, with co-opted but non-voting Parish Council representatives (which could only make recommendations in respect of Parish Council members) or establishing a Standards Committee as a joint committee with the Parish Councils within the District (which could then take operative decisions in respect of members of Parish Councils, where the Parish Council had delegated such powers to such a Joint Standards Committee).

Officer Comments:

(1) As will be seen later in this report, the District Council will be unable to enforce decisions made in respect of Standards Complaints. It is also considered unlikely that all Parish Councils within the District will take the same view and agree to the establishment of a joint committee. This would lead to some Parish Councils agreeing to be bound by such an arrangement and others not. This would hardly reduce bureaucracy! I believe that the option of co-opting non voting Parish Council representatives would be more likely to meet the statutory duty set out in paragraph 5.1 above.

(2) Whilst the ‘Rule’ about no more than one Executive Member has now disappeared the Executive/Non-Executive membership of Standards Committee has never been an issue at Harrogate. Consequently I see no reason to propose any particular provision in relation to Executive Members at this time.

(3) The Committee will need to take a view on whether it wishes to recommend the continuation of a Standards Committee and on the number and nature of any Parish Council representatives?

5.4 The current ten General Principles and Model Code of Conduct will be repealed, and members will no longer have to give an undertaking to comply with the Code of Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted member’s conduct when acting in that capacity. The Council’s new Code of Conduct must, viewed as a whole, be consistent with the following seven principles –

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership
5.5 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of “Disclosable Pecuniary Interests” (DPIs), broadly equating to the current prejudicial interests. The provision of the Act also require an authority’s code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests. The result is that it is not possible yet to draft Code provisions which reflect the definition of DPIs which will appear in regulations, but it is possible to give an indicative view of what the Council might consider that it might be appropriate to include in the Code in respect of the totality of all interests, including DPIs, other pecuniary interests and non-pecuniary interests. Accordingly, it might be sensible at this stage to instruct the Monitoring Officer to prepare a draft Code which requires registration and disclosure for those interests which would today amount to personal and/or prejudicial interests, but only require withdrawal as required by the Act for DPIs.

5.6 The Act prohibits members with a DPI from participating in authority business and the Council can adopt a Standing Order requiring members to withdraw from the meeting room.

5.7 The Council’s new Code of Conduct will have to deal with the following matters:

- General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct. In practice, the easiest course of action would be simply to re-adopt Paragraphs 3 to 7 of the existing Code of Conduct. The Council can amend its Code of Conduct subsequently if the need arises; and

- Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests provisions. The Act requires that the Code contains “appropriate” provisions for this purpose, but, until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosures would be appropriate.

5.8 The Council will need to decide what it will include in its Code of Conduct (see Recommendation 2.4 above).

5.9 **In dealing with Misconduct Complaints** the Act requires that the Council adopt ‘arrangements’ for dealing with complaints of breach of Code of Conduct both by District Council members and by Parish Council members, and such complaints can only be dealt with in accordance with such “arrangements”. So the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a member who is found to have failed to comply with the relevant Code of Conduct.

The advantage is that the Act repeals the requirements for separate Referrals, Review and Hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on
complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

5.10 Decision whether to investigate a complaint

In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. It is sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee, where he feels that it would be inappropriate for him to take a decision on it, for example, where he has previously advised the member on the matter or where the complaint is particularly sensitive. These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. If this function is delegated to the Monitoring Officer, it is right that he should be accountable for its discharge. For this purpose, it would be appropriate that he make a periodic report to Standards Committee, which would enable him to report on the number and nature of complaints received and draw to the Committee’s attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

5.11 “No Breach of Code” finding on investigation

Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to Referrals Sub-Committee and the Sub-Committee take the decision to take no further action. In practice, it would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to Standards Committee if he feels appropriate. It would be sensible if copies of all investigation reports were provided to the Independent person to enable him/her to get an overview of current issues and pressures and that the Monitoring Officer provide a summary report of each such investigation to Standards Committee for information.

5.12 “Breach of Code” finding on investigation

Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity of a local hearing. Sometimes the investigation report can cause a member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action. However, it is suggested that at this stage, it would only be appropriate for the Monitoring Officer to agree a local resolution after consultation with the Independent Person and where the complainant is
satisfied with the outcome, and subject to summary report for information to the Standards Committee.

In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards Committee (in practice a Hearings panel constituted as a Sub-Committee of Standards Committee) to hold a hearing at which the member against whom the complaint has been made can respond to the investigation report, and the Hearing panel can determine whether the member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

5.13 The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology. Consequently the range of actions which the authority can take in respect of the member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than “punishing” the member concerned. In practice, this might include the following –

5.13.1 reporting its findings to Council [or to the Parish Council] for information;

5.13.2 recommending to the member’s Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

5.13.3 recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

5.13.4 instructing the Monitoring Officer to [or recommend that the parish Council] arrange training for the member;

5.13.5 removing [or recommend to the Parish Council that the member be removed] from all outside appointments to which he/she has been appointed or nominated by the authority [or by the Parish Council];

5.13.6 withdrawing [or recommend to the Parish Council that it withdraws] facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or

5.13.7 excluding [or recommend that the parish Council exclude] the member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

There is a particular difficulty in respect of Parish Councils, as the Localism Act gives the Standards Committee no power to do any more in respect of a member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the member. Parish Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the Standards Committee and Hearings Panels as a Joint Committee and Joint Sub-Committees with the Parish
Councils, and seek the delegation of powers from Parish Council to the Hearings Panels, so that the Hearings Panel can effectively take decisions on action on behalf of the particular Parish Council. As discussed in “Officer Comments” following paragraph 5.3(iii) above, I do not favour this approach since it is unlikely that all Parish Councils will agree to this and a “Twin Track” approach is, in my view, likely to cause more harm than good.

Hopefully the fact that any independent hearing has considered the issues and made recommendations would be respected by the great majority of Panel Councils on most occasions.

5.14 The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

5.14.1 “Independence”

The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all members of the District Council (not just of those present and voting).

A person is considered not to be “independent” if:-

5.14.1.1 he is, or has been within the last 5 years, an elected or co-opted member or an officer of the District Council or of any of the Parish Councils within its area.

5.14.1.2 he is, or has been within the last 5 years, an elected or co-opted member of any Committee or Sub-Committee of the District Council or of any of the Parish Councils within its area (which would preclude any of the current co-opted independent members of Standards Committee from being appointed as an Independent Person); or

5.14.1.3 he is a relative or close friend of a current elected or co-opted member or officer of the District Council or any Parish Council within its area, or of any elected or co-opted members of any Committee or Sub-Committee of such Council.

For this purpose, “relative” comprises:-

(a) the candidate’s spouse or civil partner;

(b) any person with whom the candidate is living as if they are spouses or civil partners;

(c) the candidate’s grandparent;

(d) any person who is a lineal descendent of the candidate’s grandparent;

(e) a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
(f) the spouse or civil partner of anyone within Paragraphs (c), (d) or (e); or

(g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

5.14.2 Functions of the Independent Person

The functions of the Independent Person(s) are:-

- They **must** be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);

- They **may** be consulted by the authority in respect of a standards complaint at any other stage; and

- They **may** be consulted by a member or co-opted member of the District Council or of a Parish Council against whom a complaint has been made.

This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

15.4.3 The Act gives discretion to appoint one or more Independent Persons, but provides that **each** Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a couple of reserve candidates are retained and can be activated at short notice, without the need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

15.4.4 Remuneration

As the Independent Person is not a member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the scheme of members’ allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

In comparison to the current Chair of Standards Committee, the role of Independent Person is likely to be less onerous. He/she is likely to be invited
to attend all meetings of the Standards Committee and Hearings Panels, but not to be a formal member of the Committee or Panel (he/she could be co-opted as a non-voting member but cannot chair as the Chair must exercise a second or casting vote). He/she will need to be available to be consulted by members against whom a complaint has been made, although it is unclear what assistance he/she could offer. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint. This report suggests that the Independent Person also be involved in the local resolution of complaints and in the grant of dispensations. However, it would be appropriate to undertake a proper review of the function before setting the remuneration.

5.15 The register of members' interests

The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define “Disclosable Pecuniary Interests” (DPIs). The Monitoring Officer is required to maintain a register of interests, which must be available for inspection and available on the Council’s website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which also have to be open for inspection at the District Council Offices and on the District Council’s website.

At present we do not know what Disclosable Pecuniary Interests will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention was to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the member’s own interests, but also those of the member’s spouse or civil partner, or someone living with the member in a similar capacity.

The provisions of the Act in respect of the Code of Conduct requires an authority’s code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish Council, available for inspection at the District Council offices and on the District Council’s website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.

5.16 Registration on election or co-option.

Each elected or co-opted member must register all DPIs within 28 days of becoming a member. Failure to register is made a criminal offence, but would not prevent the member from acting as a member.

In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.
There is no continuing requirement for a member to keep the register up to date, except on re-election or re-appointment, but it is likely that members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.

The preparation and operation of the register, not just for this authority but also for each Parish Council, is likely to be a considerable administrative task, especially where different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the District Council to recover any costs from Parish Councils.

5.17 As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences. So:-

5.17.1 The duty to disclose and withdraw arises whenever a member attends any meeting of Council, a Committee or Sub-Committee, or of Cabinet or a Cabinet Committee, and is aware that he/she had a DPI in any matter being considered at the meeting. So it applies even if the member would be absent from that part of the meeting where the matter in question is under consideration.

5.17.2 Where these conditions are met, the member must disclose the interest to the meeting (ie declare the existence and nature of the interest). However, in a change from the current requirements, the member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a “pending notification”). So, members of the public attending the meeting will in future need to read the register of members’ interests, as registered interests will no longer be disclosed at the meeting.

5.17.3 Where the member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the register of interests.

5.17.4 If a member has a DPI in any matter, he/she must not:-

5.17.4.1 Participate in any discussion of the matter at the meeting. The Act does not define “discussion”, but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or

5.17.4.2 Participate in any vote on the matter.

unless he/she has obtained a dispensation allowing him/her to speak and/or vote.

5.17.5 Failure to comply with the requirements (paragraphs 5.17.2, 5.17.3 and 5.17.4) becomes a criminal offence, rather than leading to sanctions.
5.17.6 The Council’s Code of Conduct must make “appropriate” provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of Code of Conduct but not a criminal offence.

15.17.7 The requirement to withdraw from the meeting room can be covered by Standing Orders, which would apply not just to Council, Committees and Sub-Committees, but can apply also to Cabinet and Cabinet Committee meetings, so that failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the member.

5.18.1 Matters can be decided by a single member acting alone where the member is a Cabinet Member acting under Portfolio powers, or where the member is a Ward Councillor and the Council chose to delegate powers to Ward Councillors.

5.18.2 The Act provides that, when a member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter:-

15.18.2.1 Unless the DPI is already entered in the register of members’ interests or is subject to a “pending notification”, he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and

15.18.2.2 He/she must take no action in respect of that matter other than to refer it another person or body to take the decision.

5.18.3 Standing Orders can then provide for the exclusion of the member from any meeting while any discussion or vote takes place on the matter.

5.18.4 The Act effectively removes the right of a member with a prejudicial interest to make representations as a member of the public under Paragraph 12(2) of the current Code of Conduct.

5.19 The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.

Where a member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the register of members’ interests would lead to the member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a “sensitive interest”.

If the Monitoring Officer agrees, the member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members’ interests.
5.20 The provisions on dispensations are significantly changed by the Localism Act.

5.20.1 At present, a member who has a prejudicial interest may apply to Standards Committee for a dispensation on two grounds:-

5.20.1.1 That at least half of the members of a decision-making body have prejudicial interest (this ground is of little use as it is normally only at the meeting that it is realised how many members have prejudicial interests in the matter, by which time it is too late to convene a meeting of Standards Committee); and

5.20.1.2 That so many members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter (this ground would require that the members concerned were entirely predetermined, in which case the grant of a dispensation to allow them to vote would be inappropriate).

5.20.2 In future, a dispensation will be able to be granted in the following circumstances:-

5.20.2.1 That so many members of the decision-making body have DPIs in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate as a result.

5.20.2.2 That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;

5.20.2.3 That the authority considers that the dispensation is in the interests of persons living in the authority’s area;

5.20.2.4 That, without a dispensation, no member of the Cabinet would be able to participate on this matter (so, the assumption is that, where the Cabinet would be inquorate as a result, the matter can then be dealt with by an individual Cabinet Member. It will be necessary to make provision in the scheme of delegations from the Leader to cover this, admittedly unlikely, eventuality); or

5.20.2.5 That the authority considers that it is otherwise appropriate to grant a dispensation.

5.20.3 Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.

5.20.4 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by Standards Committee, the
Localism Act gives discretion for this power to be delegated to Standards Committee or a Sub-Committee, or to the Monitoring Officer. Grounds 5.20.2.1 and 5.20.2.4 are pretty objective, so it may be appropriate to delegate dispensations on these grounds to the Monitoring Officer, with an appeal to the Standards Committee, thus enabling dispensations to be granted “at the door of the meeting”. Grounds 5.20.2.2, 5.20.2.3 and 5.20.2.5 are rather more subjective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee, after consultation with the Independent Person.

5.21 Regulations under the Localism Act will provide for:-

5.21.1 Transfer of Standards Board for England cases to local authorities following the abolition of Standards Board for England.

5.21.2 A transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow 2 months for such determination, but it is to be hoped that the final Regulations allow a little longer;

5.21.3 Removal of the power of suspension from the start of the transitional period; and

5.21.4 Removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

6.0 FINANCIAL IMPLICATIONS

6.1 Consultation with members of the Finance Section was not necessary during the preparation of this report.

7.0 HUMAN RESOURCES IMPLICATIONS

7.1 Consultation with members of the Human Resources Section was not necessary during the preparation of this report.

8.0 LEGAL IMPLICATIONS

8.1 The report addresses the new standards requirements under the Localism Act 2011.

9.0 ICT IMPLICATIONS

9.1 Consultation with the Technical Advisory Board was not necessary during the preparation of this report.

10.0 RISK ASSESSMENTS

10.1 The only significant risk is the potential failure to meet the new legal obligations imposed. This report and recommendations seek to address this issue.
11.0 EQUALITY AND DIVERSITY

11.1 It isn’t believed that there are any equality and diversity issues arising from this report.

12.0 CONCLUSIONS

12.1 A considerable amount of work has been required to produce this report and further work will be required on receipt of the detailed regulations under the Act.

12.2 There will be a need to extend delegation to the Monitoring officer to meet the implementation date and achieve the constitutional and procedural changes that this will entail.

OFFICER CONTACT: Please contact Peter Jordan, Head of Legal and Democratic Services/Monitoring Officer if you require any further information on the contents of this report. The Officer can be contacted at Council Offices, Crescent Gardens, Harrogate by telephone on 01423 556029 or by e-mail at peter.jordan@harrogate.gov.uk

SUSTAINABILITY ASSESSMENT / POLICY & COMMUNICATIONS CONSIDERATIONS

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If all comments lie within the shaded areas, the proposal is sustainable.
PART 5 - CODES AND PROTOCOLS

CONDUCT OF MEMBERS

Preamble

When a person has been elected as a Councillor they are never a member of the general public in relation to any matter before the Council. Although this means they lose certain privileges available to the general public that is the consequence of holding public office. This situation continues until the Councillor ceases to be a member of Council at all times.

The General Principles of Public Life

At all times regard shall be had to the principles governing the conduct of Members and coopted Members of Council as set out under Section 28 of the Localism Act 2011, namely:-

(a) Selflessness:
By which we mean that Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person or in order to gain any personal financial or other material benefits.

(b) Integrity:
By which we mean that Members should not place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour. Members may take into account the views of others, including their political groups, but must reach their own conclusion on the issues and act in accordance with those conclusions.

(c) Objectivity:
By which we mean that Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

(d) Accountability:
By which we mean that Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

(e) Openness:
By which we mean that Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those
actions. They should restrict information only when the wider public interest demands.

(f)  **Honesty:**

By which we mean that Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(g)  **Leadership**

By which we mean that Members should promote and support these principles by leadership, and by example.

### 1.0 Scope of Rules

1.1 These Rules apply to all decision making processes of the Council in which Members of Council are involved and whenever they are acting as a Councillor.

1.2 These Rules apply to coopted members of Committees in their position as such members and a copy of the Members’ Code of Conduct including these Rules will be given to all coopted Members on cooption to a Committee or Board.

1.3 A record shall be kept by the Head of Legal and Governance of all declarations of interest, wherever in the decision making processes of the Council the declaration is made, together with the record of the decision in relation to which the declaration is made.

1.4 The Member Code of Conduct as adopted by this Council forms Appendix 1 to these Rules.

1.5 Where a Member has a disclosable pecuniary interest as defined in the Code in Appendix 1, in any matter which is the subject of discussion at a meeting of the political grouping of which that Member is a part then the interest shall be declared at the group meeting as if it were a formal meeting of the Council and the Member shall leave the meeting during discussion of the matter.

1.6 Guidance on the acceptance of gifts and/or hospitality is set out at Appendix 2 to these Rules.

### 2.0 Inspection of Land, Premises, Etc

2.1 Unless specifically authorised to do so by the Council or the Executive, a member of the Council shall not issue any order respecting any works which are being carried out by or on behalf of the Council or claim by virtue of his membership of the Council or the executive any right to inspect or to enter
upon any lands or premises which the Council or the executive have the power or duty to inspect or enter.

3.0 **Special Interest Declarations by Cabinet Members**

3.1 A Cabinet Member is deemed to have a prejudicial interest in relation to any matter within their portfolio where the decision of the individual Cabinet Member is required and

i. the matter arises in their wards;

ii. the matter arises in an adjoining ward and will significantly affect the Cabinet Member's ward whether the effect is beneficial or adverse,

and the Member shall so notify the Leader of the Council in accordance with these and the Executive Procedure Rules so that a substitute or deputy can be appointed to make or be involved in making any decision affecting the Member's Ward.

3.2 Any Cabinet Member with a disclosable pecuniary interest arising under the law these Rules or the Code at Appendix 1 must declare that interest in the normal way and ensure it is recorded in accordance with these Rules.

3.3 In relation to matters falling within Rule 3.1 the Cabinet Member shall not make nor be involved in making any decision in relation to their Ward unless the decision is being made by Cabinet, when they shall be entitled to take part in the meeting and vote.

3.4 Where a Cabinet Member is precluded from making or being involved in making a decision because of an interest arising under Rule 3.1 they shall still be entitled to exercise their rights as the Ward Member.

3.5 Any interest declared under this rule must be notified, in writing, by the Cabinet Member with that interest to the Proper Officer who shall record the interest in accordance with these Rules.

4.0 **Cabinet Member Attendances at Overview and Scrutiny**

4.1 The failure of a Cabinet Member, without good reason, to attend an overview and scrutiny committee after a formal request in accordance with the Overview and Scrutiny Procedure Rules, is a disciplinary matter referable to the Standards Committee at the behest of the overview and scrutiny committee.
5.0 **Legal Advice on Interests Issues**

5.1 Where a Member has sought advice from a legal officer of the Council relating to whether to declare an interest and the officer has advised that an interest does exist under these rules the Member will be expected to act on that advice.

5.2 If a Member fails to act on such advice then the legal officer shall inform the Monitoring Officer who shall consider whether a prima facie case exists for further investigation under the procedures set out in this part of the Constitution.

5.3 Where such advice is sought from the Monitoring Officer and the Member is advised that an interest exists but the Member does not follow that advice, then the Monitoring Officer shall consider whether a prima facie case exists for further investigation under the procedures set out in this part of the Constitution.

5.4 Where a Member does not take advice from any legal officer of the Council but seeks independent legal advice relating to whether to declare an interest, the view of the Monitoring Officer on the interpretation of the law, the Code of Conduct and these Rules shall prevail, if a complaint against the Member is made to the Monitoring Officer.

6.0 **Complaints on Conduct of Members**

6.1 Where a complaint has been made against a Member then the Member shall:-

   a. cooperate with the Monitoring Officer in consideration of the complaint at the initial stage;

   b. cooperate with the Monitoring Officer during preparation of the report to a Standards Panel of the General Purposes Committee;

   c. attend the meeting of the Standards Panel of the General Purposes Committee at which the report of the Monitoring Officer is to be considered.

6.2 At the Committee meeting the Member, against whom a complaint has been made which is the subject of a report to the Committee will be expected to:-

   a. answer questions put by the Panel;

   b. generally cooperate in resolving the complaint

6.3 (i) Any Member who has made a complaint against another Member shall:-
a. cooperate fully with the Monitoring Officer to bring forward the complaint expeditiously;

b. not give or make any statement concerning the existence of the complaint, the subject matter of the complaint, or details of the complaint either to the press or other media, or to the general public or their own political group or party except as set out below.

(ii) Disclosure to a political group or party on the Council may be made confidentially if, and only if, the complaint involves a member of the same political group or party as the Member Complainant provided that that Member reasonably believes the complaint is so serious that it reflects on their political group or party on the Council and provided the provisions of Rules 6.4 and 6.5 are observed.

6.4 Every Member has an obligation to report lapses in the high standards expected of Members to their Group Leader and the Monitoring Officer.

All Group Leaders have an obligation to speak to the Monitoring Officer as soon as they hear of any lapse in the standard of a Member's conduct.

6.5 The political group on the Council of which a Member, against whom a complaint has been made to the Monitoring Officer, is part, may consider and take disciplinary action against that Member in advance of any decision of the Standards Panel IF:-

a. they are instructed so to do by their party organisation nationally; or

b. they are instructed so to do by the Ward organisation of the Member concerned or by the Ward organisation of any other Member of the same political group; or

c. the political group on the Council consider it necessary or expedient to uphold the good name or discipline of their political group or party or the Council.

6.6 If a political group of the Council gives notice to its members that it intends to consider whether to take disciplinary action or intends to take disciplinary action against one of its members pursuant to Rule 6.3 and/or 6.4 then no Councillor who is a member of the Standards Panel shall take part in any discussion or decision of their political group on the issue and shall absent themselves from any meeting during such discussion or decision making as if they had a disclosable pecuniary interest in the matter and the political groups of the Council shall make every effort to assist their members on the Standards Panel in this.
APPENDIX 1

HARROGATE BOROUGH COUNCIL

MEMBERS’ CODE OF CONDUCT

INTRODUCTION

This Code sets out the standards of behaviour required of Councillors whenever they are acting, claim or give the impression that they are acting as a Member or Co-opted Member of Harrogate Borough Council.

The Code has been adopted by the Borough Council and requires compliance with the general principles of public life set out in the preamble to this part of the Constitution.

In any case where a Borough Council Member has an interest in a matter which is not a disclosable pecuniary or registerable interest under the Localism Act 2011 or regulations but participating or voting (or further participating or voting) on the matter would conflict with the general principles of public life they must declare that interest and take no further action with regard to that matter as if it were a disclosable pecuniary interest.
PART 1

General Provisions

1. You must not treat others with disrespect.

2. You must not do anything which may cause the Borough Council to breach any equality enactment.

3. You must not bully or intimidate any person, or attempt to bully or intimidate them.

4. You must not do anything which compromises the impartiality of anyone who works for or on behalf of the Authority, or do anything that is likely to compromise their impartiality.

5. You must not disclose information which is given to you in confidence or which you believe is of a confidential nature, or ought reasonably to be aware is of a confidential nature, unless:
   - You have the permission of a person authorised to give it; or
   - You are required by law to disclose the information; or
   - You disclose it to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
   - The disclosure is reasonable; and is in the public interest; and is made in good faith; and is only made after having complied with any reasonable requirements of the Council to delay disclosure or to maintain confidentiality.

Before disclosing any information under this paragraph, you must consult the Monitoring Officer or his deputy and/or the Chief Executive or a relevant Officer as set out under the supplementary protocol at the end of this Code.

6. You must not prevent another person gaining access to information which that person is entitled to by law.

7. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Borough Councillor into disrepute.

8. You must not use your position as Borough Councillor improperly to obtain any advantage or disadvantage for yourself or any other person, or attempt to do so.

9. You must not take part in the scrutiny of any decision you have been involved in making – except that you may provide evidence or opinion to those undertaking any scrutiny process.
10. You must not accept any gift or hospitality which could reasonably be perceived as creating an obligation upon the Council, or upon yourself as a Councillor, if you do accept any gift or hospitality which might be attributable to your membership of the Council (other than the refreshments which might usually be expected at Council meeting or civic function) you must disclose this, or any offer of such gift or hospitality, to the Monitoring Officer.

11. You must act in accordance with the Council’s guidance or requirements when using the resources of the Council (such as officer time, IT and copying equipment, or physical materials), or when authorising others to use them, and must ensure that those resources are not used improperly for political or other purposes.

12. You must have regard to relevant advice given by the Council’s Chief Financial Officer or Monitoring Officer when making decisions and must give reasons for those decisions, in accordance with any requirements imposed by statute or the Council.

13. You must comply with the following section of this Code, which relates to registering interests and declaring in meetings any disclosable pecuniary interests you may have. You are also required to leave the room during any meeting at which a matter in which they have a disclosable pecuniary interest is being discussed.
PART 2

Disclosable Pecuniary Interests

14. 1. A Member of Co-opted Member before the end of 28 days beginning with the day on which the person becomes a Member or Co-opted Member of the authority, notify the authority’s Monitoring Officer of any disclosable pecuniary interests which the person has at the time when the notification is given.

2. A pecuniary interest is a disclosable pecuniary interest if it is of a description specified in regulations by the Secretary of State and it is either:

   (a) an interest of the Members; or

   (b) It is an interest of –

       (i) the Members spouse or civil partner;
       (ii) a person with whom the member is living as husband or wife; or
       (iii) a person with whom the Member is living as if they were civil partners.

15. Disclosable Pecuniary Interests have been defined by the Secretary of State in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 1464) as follows:

   (1) Employment, office, trade, profession or vocation
       Any employment, office, trade, profession or vocation carried on for profit or gain.

   (2) Sponsorship
       Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a Member, or towards the election expenses of the Member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(a).
(3) Contracts

Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:

(a) under which goods or services are to be provided or works are to be executed; and
(b) which has not been fully discharged.

(4) Land

Any beneficial interest in land which is within the area of the relevant authority.

(5) Licences

Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

(6) Corporate tenancies

Any tenancy where (to the Members’ knowledge) –

(a) the landlord is the relevant authority; and
(b) the tenant is a body in which the relevant person has a beneficial interest.

(7) Securities

Any beneficial interest in securities of a body where –

(a) that body (to the Members’ knowledge) has a place of business or land in the area of the relevant authority; and
(b) either –

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a
beneficial interest exceeds one hundredth of the total issued share capital of that class.

16. **Effect of Interests on Participation**

1. When you have a disclosable pecuniary interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that meeting or when the interest becomes apparent.

2. Where you have a disclosable pecuniary interest and have not obtained a dispensation you must leave the room during discussion of the relevant business.

3. Unless you have obtain a dispensation from the Monitoring Officer or the General Purposes Committee. You must not exercise executive functions in relation to any business where you have a disclosable pecuniary interest or one which conflicts with the general principles of public life set out in the preamble to this Code of Conduct.

4. Where you have an interest where your participation or voting on a matter might be seen as conflicting with the general principles set out in the preamble to this Code of Conduct you must declare it and cease to participate or vote and leave the meeting as if it were a disclosable pecuniary interest.

5. Where you have an 'other interest' which is registered in accordance with the Code of Conduct you need not disclose that interest at the meeting.

17. For the purposes of this Code of Conduct ‘other interests’ which must be included in the Members’ Register of Interests include your membership of our position of general control or management in any:-

   (a) body to which you have been appointed or nominated by the authority as its representative.

   (b) public authority or body exercising functions of a public nature;

   (c) body directed to charitable purposes;

   (d) body whose principal purposes include the influence of public opinion or policy; *(membership of a political party should be declared under this heading)*

   (e) trade union or professional association.
the name and address of any person or body from whom you have received a gift or hospitality with an estimated value of at least £25 in the course of your work as a Councillor – private gifts or hospitality do not need to be recorded.

18. (1) You must also regard yourself as having an interest which must be disclosed and treated as if it were a disclosable pecuniary interest in any business before an Overview and Scrutiny Committee of your authority (or of a Sub-Committee of such a Committee) where:-

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority’s executive; and

(b) at the time the decision was made or action was taken, you were a member of the executive.

(2) Where you have an interest under paragraph (1) above you may attend a meeting of the Overview and Scrutiny Committee (or of a Sub-Committee of such a Committee) but only for the purposes of answering questions or giving evidence relating to that business. Thereafter, you should withdraw from the meeting and not seek to improperly influence any recommendations about that business.

19. **Sensitive Interests**

(1) Where a Member or Co-opted Member has an interest (whether or not a disclosable pecuniary interest) and the nature of that interest is that the Member or Co-opted Member and the Monitoring Officer, consider that disclosure of the details of the interest could lead to the Member or Co-opted person or a person connected with the Member of Co-opted Member being subject to violence or intimidation any published version of the register must not include the details of the interest. The register may state that the Member or Co-opted Member has an interest but the details are withheld under Section 32 (2) of the Localism Act.

(2) In the event that a matter relating to a sensitive interest as set out in sub-paragraph (1) above is being considered at a meeting the Member or Co-opted Member is required to disclose the fact that they have a disclosable pecuniary interest (when it is such an interest) but not the nature of it.

(3) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority’s monitoring officer asking that the information be included in your authority’s register of members’ interests.
SUPPLEMENTARY PROTOCOL - DISCLOSURE OF CONFIDENTIAL INFORMATION UNDER PARAGRAPH 5 OF THE CODE

1. Councillors have access to confidential information, both from members of the public and from the Council’s Officers and records. It is vital that the confidentiality of this information is respected. Disclosure of confidential information may be a breach of the Members Code, or the Data Protection Act, or a tort actionable in damages at law.

2. However a situation may arise where a Member believes that disclosure of confidential information is necessary in the public interest; for example to prevent a crime, danger to health or safety or a corrupt practice within the Council.

3. The Members Code provides an exception to the usual rule that confidential information must not be disclosed. Disclosure will not be a breach of the Code if:
   - It is reasonable in the circumstances;
   - It is made in good faith;
   - It is in the public interest;
   - It is in compliance with the reasonable requirements of the authority.

4. It is a requirement of the authority that before disclosing confidential information, a member who wishes to make use of this exception should contact one of the following Officers and discuss the circumstances with him or her.

   The Officers are:-
   - The Chief Executive
   - The Chief Financial Officer
   - The Monitoring Officer
   - The Head of Legal and Governance
   - The Audit Manager

5. Whether or not disclosure is a breach of the Code will depend on the circumstances and ultimately on the view taken under the procedures for the investigation of Code of Conduct complaints. But Officers will be able to give their view, and may be able to suggest ways of preventing any abuse which do not risk breaking the Code.

   Disclosure of confidential information without a full prior discussion with one of these Officers will not be in accordance with the Authority’s reasonable requirements as stated in paragraph 5 of this Code.
APPENDIX 2

GUIDANCE FOR MEMBERS ON THE ACCEPTANCE OF GIFTS AND/OR HOSPITALITY

1.0 INTRODUCTION

1.1 The following guidelines supplement the law and the Council’s Constitution in relation to the filling of any vacancies for an appointment under the Council whether an Officer or otherwise, or any contract with the Council or in any other circumstances.

1.2 It is essential to remember that dealings with Members of local authorities and other public bodies are subject to the provisions of special legislation with sanctions under the criminal law, designed to protect the public interest and public confidence. In consequence, any offer of hospitality or gifts to a Member even on a modest scale, needs to be approached with great caution.

The legislation is contained in:-

- the Public Bodies Corrupt Practices Act 1889;
- the Prevention of Corruption Act 1906;
- the Bribery Act 2010

Although these Acts are specifically addressed to corrupt practices, it is possible to commit an offence even if you innocently receive something which is given to you corruptly. In other words, you may not recognise what you are given as intended to be an inducement to do something or you may not recognise the corrupt intention of the person behind the gift. There is, of course, other legislation covering deliberate frauds of various sorts, but the ones listed above are specifically directed towards local government.

1.3 The legislation provides that anyone who corruptly gives, promises or offers, any gift, loan, fee, reward or advantage as an inducement to or a reward for any Member of a public body for doing or forbearing to do anything in respect of any matter or transaction, is guilty of a criminal offence. Similarly a criminal offence is committed by anyone who corruptly solicits, receives or agrees to receive for themselves or any other person such an inducement or reward. It does not matter that the corrupt intention is not achieved.
1.4 It is particularly to be noted that in any case where legal proceedings are brought, the giving or acceptance of any money, gift or other consideration, is deemed to have been given or received corruptly as such an inducement or reward, unless the contrary is proved. This represents a departure from the general principle that a person is innocent until proved guilty.

2.0 GIFTS

2.1 There can be little doubt that the acceptance of gifts by Members, from persons who have or may seek to have dealings with the Authority, would be viewed by the public with suspicion and would make the Member concerned and the Council vulnerable to criticism. Members should, therefore, tactfully refuse any personal gift offered to them or to a member of their family directly or indirectly by any person or body involved, either actually or potentially, in any way with the Authority. Members should be particularly vigilant where the person or body involved has applied for planning permission or some similar sort of decision or any be intending to do so.

2.2 Small gifts of token value for example a calendar or diary which may be by way of an advertisement of a business or charity may be accepted as long as there is not a series of such gifts where the total value in any 12 month period would exceed £25.00. These may be received by Members at Christmas or New Year or, for example, if there has been a need for a visit to an organisations’ premises for a particular reason.

2.3 Any gift offered or accepted above the value of £25.00 should be notified to the Head of Finance as Proper Officer on the pro forma provided to all Members. If a Member wishes to return a gift and would prefer it dealt with formally then they should bring the gift to the office and request the assistance of the Proper Officer.

2.4 Members may have concerns in two other types of circumstances:-

a. Where a gift is offered by a ward constituent in gratitude to a Member for resolving an issue which had been of concern to the constituent.

   In such circumstances, the Member may choose:-

   i. to refuse the gift tactfully explaining that it would be improper to accept it but expressing gratitude for the thoughtfulness;

   ii. accept the gift but advise the constituent that it will be donated to the Mayor’s charity or another charity.

   In any event, if the offered gift is valued at £25.00 or more the Member must notify the Proper Officer on the pro forma provided.

b. Gifts from personal friends
Provided the Member is able to be clear whether the gift is a personal gift, say for a birthday or Christmas present, it can be accepted without reference to the Proper Officer. If the gift relates to some actual or perceived assistance from the Member in relation to a matter connected with the Authority, the Member should deal with the gift in exactly the same way as a gift from any other ward constituent and should declare the offer on the pro forma provided.

3.0 GIVING AND RECEIVING HOSPITALITY

3.1 Any hospitality given by Members should be justified as in the public interest. The hospitality given should be on a scale appropriate to the occasion and parsimoniousness and extravagance alike are to be avoided.

3.2 Concerning offers of hospitality, there should be no cause for concern if the offer is made by another public body but, in all cases, offers of hospitality must be treated with caution.

3.3 Members must refuse offers of hospitality where any suggestion of improper influence is possible. Special caution is necessary where hospitality is offered by a person or body having or seeking business with or a decision from the authority, particularly where the offer is to an individual Member.

3.4 Hospitality should only be accepted where it is on a scale appropriate to the circumstances, reasonably incidental to the occasion and not extravagant and where it is apparent that no cause could reasonably arise for adverse criticism about the acceptance of the hospitality.

3.5 The following are examples of hospitality which is acceptable and that which is not:-

Acceptable

a. An offer of a drink following a site inspection; or

b. Invitations to attend functions where the Member represents the Council (eg dinners where they are invited to speak, opening ceremonies, trade shows, etc) or to functions which they attend by virtue of their position within the Council; or

c. Hospitality offered by other public bodies; or

d. A working lunch of a modest standard provided to enable the parties to continue to discuss business.
Unacceptable

a. Night Club visits or holidays;

b. Personal invitations to have dinners with representatives from a company or firm which has dealings with the Council; or

c. Offer of hotel and tickets for theatre in London or the use of a company flat; or

d. Invitations to hospitality and attendance at a race meeting or other sporting event except where these are part of the life of the local community or where the authority should be seen to be represented.

3.6 Hospitality provided by another local authority or being paid for by Harrogate Borough Council need not be declared.

4.0 CHECKLIST AND REGISTER

4.1 The following checklist of questions should help Members to decide whether a gift or an offer of hospitality should be accepted or tactfully rejected:

1. Is the donor, or event, significant in the community or in the Council’s area?

2. Are you expected to attend because of your position in the community?

3. Will the event be attended by others of a similar standing in the community?

4. What is the motivation behind the invitation?

5. Would acceptance of the invitation be, in any way, inappropriate or place you under pressure in relation to any current or future issue involving the Council?

6. Could you justify the decision to the Council, press and public?

7. Is the extent of the hospitality or the nature of the gift reasonable and appropriate?

8. How will you respond to the hospitality?

9. Are you comfortable with the decision?

4.2 A register of hospitality offered to Members is maintained by the Director of Corporate Affairs and Members should give notice on the appropriate form as soon as possible after receiving hospitality, of:

a. the name of the person or organisation offering hospitality;
b. the nature of the offer of hospitality, its estimated value and location; and

c. the name or names of Members receiving such hospitality.
APPENDIX 3

ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT

1 Introduction and Context

Harrogate Borough Council and the Parish Councils within the District have a shared legal responsibility to promote and maintain high standards of conduct by members and co-opted members of their authority.

Harrogate Borough Council's approach to investigating complaints will be proportionate to the seriousness of the complaint and Harrogate Borough Council will, in particular, seek to ensure informal resolution of such complaints wherever possible.

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority [or of a parish council within its area] has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority [or of a parish council within the authority’s area], or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member [or a member or co-opted member of a parish council] against whom an allegation has been made.

2 The Code of Conduct

The Council had adopted a Code of Conduct for members, which can be found in Part 5 of the Council’s constitution and is available for inspection on the authority’s website and on request from Reception at the Civic Offices. [Each Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the Parish Council or request the Parish Clerk to allow you to inspect the Parish Council’s Code of Conduct].

Members’ Code of Conduct
3 Making a complaint

If you wish to make a complaint, please write to:

“The Monitoring Officer
Legal & Governance
PO Box 787
Harrogate HG1 9RW

Or email: jennifer.norton@harrogate.gov.uk

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members’ interests and who is responsible for administering the system in respect of complaints of member misconduct. In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority’s website, next to the Code of Conduct, and is available on request from Reception at the Civic Offices.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will endeavour to acknowledge receipt of your complaint within five working days of receiving it, and will keep you informed of the progress of your complaint.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and may, after consultation with the Independent Person, decide whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. [Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council or your complaint and seek the views of]
the Parish Council before deciding whether the complaint merits formal investigation].

The Monitoring Officer may decide not to investigate your complaint if he/she decides it is inappropriate to do so; among the reasons for taking this decision are:

(i) the potential seriousness of the alleged breach (if true)

(ii) the likely cost of an investigation in time and other resources

(iii) that there is insufficient evidence of a Breach of the relevant Code of Conduct

(iv) the matters detailed in the complaint fall outside the terms of the Localism Act 2011 and/or the relevant Code of Conduct

(v) other actions either to remedy the complaint or prevent its re-occurrence (such as reference to the relevant Parish Clerk) or an informal resolution is seen as more appropriate

(vi) the Member is no longer a serving member of the relevant Council (other than referring a potentially criminal matter to the Police)

(vii) whether the complaint is anonymous - the Council will not normally investigate anonymous complaints unless there is a clear public interest in doing so

(viii) the passage of time - if the complaint happened so long ago that there would be little benefit in taking action now

(ix) the complaint is one that the Monitoring Officer believes has been (or largely has been) determined before

(x) any other circumstances bearing upon the public interest including the Council's stated wish to keep the bureaucracy associated with its standards responsibilities to a minimum.

The Monitoring Officer may consult the Independent Person at this stage and in those circumstances must take their opinion into account before deciding whether or not to nominate an investigating officer.

An investigating officer will normally be a Harrogate Borough Council member of staff but in certain circumstances where the Monitoring Officer believes it expedient and appropriate to do so he may request an external investigation.

If at this stage or at any point during an investigation it appears likely to him that a criminal offence has been committed the Monitoring Officer may refer the matter to the Police or such other regulatory agencies as the Monitoring
Officer considers appropriate and, if necessary, halt the investigation pending their consideration and/or criminal proceeding.

5 How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At any time during the investigation, the Monitoring Officer may conclude that it should be discontinued for any of the reasons set out in paragraph 4 above.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer’s report and, if he is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the member concerned [and to the Parish Council, where your complaint relates to a Parish Councillor], notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer’s final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or feels that there
7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer’s report in the same way as in paragraph 6 above and will then either send the matter for local hearing before the Hearing Panel or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action the authority. If the member complies with the suggested resolution, the Monitoring Officer may report the matter to the General Purposes Committee in respect of a breach of the Borough Council Code [and the Parish Council in respect of a breach of a Parish Council Code] for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will give further consideration to referring the matter for a local hearing and may take the Independent Person’s view into account in making that decision. However, the decision as to whether the matter should proceed to a hearing is for the Monitoring Officer, who will exercise his discretion reasonably.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer’s report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for local hearings, which is attached as Appendix 4 to these arrangements.
Essentially, the Monitoring Officer will conduct a “pre-hearing process” requiring the member to give his/her response to the Investigating Officer’s report. In order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. Both the complainant and a member has a right to be accompanied and/or represented at the hearing. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member’s failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8 Who are the Hearings Panel?

The Hearings Panel is a panel of the Council’s General Purposes Committee. The General Purposes Committee has decided that it will comprise a maximum of three members of the Committee.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member’s conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

9 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be “independent” if he/she:
9.1 Is, or has been within the past five years, a member, co-opted member or officer of the authority, with the exception that former Independent Members of Standards Committees can be appointed as Independent Persons;

9.2 Is or has been within the past five years, a member, co-opted member or officer of a parish council within the authority’s area), or

9.3 Is a relative, or close friend, of a person within paragraph 9.1 or 9.2 above. For this purpose, “relative” means:

9.3.1 Spouse or civil partner;

9.3.2 Living with the other person as husband and wife or as if they were civil partners;

9.3.3 Grandparent of the other person;

9.3.4 A lineal descendant of a grandparent of the other person;

9.3.5 A parent, sibling or child of a person within paragraphs 9.3.1 or 9.3.2;

9.3.6 A spouse or civil partner of a person within paragraphs 9.3.3, 9.3.4 or 9.3.5; or

9.3.7 Living with a person within paragraphs 9.3.3, 9.3.4 or 9.3.5 as husband and wife or as if they were civil partners.

10 Contact details for Independent Person

The Council has appointed the following Independent Person until 17 July 2016:-

Alan Mitcheson: (Telephone: 0770 2 722931)

The Independent Person’s role is as set out in the Localism Act and this Constitution. The Authority must consult the Independent Person in certain circumstances and may do in others and the subject of a complaint may do so. There is no statutory provision for contact between a complainant or potential complainant and the Independent Person and it is important that all concerned recognise and respect the independence of the person appointed to this role. In particular, whilst the Independent Person is a source of advice, they will not express an opinion on any particular complaint, unless and until it reaches a Hearings Panel.
11 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member (and to the Parish Council), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

12 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may:-

12.1 Censure or reprimand the member;

12.2 Publish its findings in respect of the member’s conduct;

12.3 Report its findings to Council (or to the Parish Council) for information;

12.4 Recommend to the member’s Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

12.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

12.6 Recommend to Council that the member be replaced as Executive Leader;

12.7 Instruct the Monitoring Officer to [or recommend that the Parish Council] arrange training for the member;

12.8 Remove (or recommend to the Parish Council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council);

12.9 Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
12.10 Exclude (or recommend that the Parish Council exclude) the member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The above list is not exhaustive, however, the Hearings Panel has no power to suspend or disqualify the member or to withdraw members’ or special responsibility allowances.

13 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

14 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.
APPENDIX 4

LOCALISM ACT 2011 - PROCEDURE AT PANEL HEARINGS OF THE
GENERAL PURPOSES COMMITTEE

At the Hearing the Panel will consider the matter in four stages:

- The findings of fact set out in the investigating officer report focussing especially on those issues still in dispute and the responses of the member to those findings.

- Whether there has been a breach of the Code of Conduct.

- If the member has not failed to follow the Code, any recommendations it would wish to make to the Council or Parish Council arising from the hearing.

- If the member has failed to follow the Code, whether a penalty would be appropriate.

A. Preliminary Matters and Participants

1. The Chair will make introductions and explain the procedure to be followed to those present. The panel will consider whether the public should be excluded from the hearing. Any declarations of interest from members present will be taken. Any preliminary issues not resolved through the pre-hearing process will be considered.

2. The panel may take advice from its legal adviser at any time during the hearing or when they are considering the outcome. The substance of any legal advice given to the panel should be shared with the member and the investigating officer if they are present.

3. The member may attend the hearing. The panel may proceed in his or her absence. The complainant need not attend. The investigating officer may attend and answer questions of the panel.

4. So far as possible, the hearing will consider only evidence submitted in writing before the hearing together with answers to any questions asked at the hearing. Any witness evidence called at the hearing must relate to relevant facts which are in dispute. A witness other than the member may not remain in the hearing until after they have given evidence.
B. Making Findings of Facts

1. After dealing with any preliminary issues, the panel will attend to any significant disagreements about the facts contained in the investigating officer’s report.

2. If there is no disagreement about the facts, the panel will move on to the next stage of the hearing.

3. If there is a disagreement, the investigating officer will be invited to make any necessary representations to support the findings of facts in the reports which are disputed. With the panel’s permission, the investigating officer may call any necessary supporting witnesses to give evidence. The panel will give the member an opportunity to challenge any evidence put forward by and any witness called by the investigating officer but not to cross examine the witness.

4. The member will then have the opportunity to make representations to support his or her version of the facts and, with the panel’s permission or call any necessary witnesses to give evidence.

5. At any time, the panel may question any of the people involved or any of the witnesses, and will allow the investigating officer to challenge any evidence put forward by witnesses called by the member but not to cross examine the witness.

6. If the member disagrees with most of the facts, the investigating officer may start by making presentations on all the relevant facts, instead of discussing each fact individually.

7. If the member disagrees with any relevant fact in the investigating officer report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigating officer is not present, the panel will consider whether it would be in the public interest to continue in his or her absence. After considering the member’s explanation for not raising the issue at an earlier stage, the panel may then:-

   (a) Continue with the hearing, relying on the information in the investigating officer’s report.

   (b) Allow the member to make representations about the issue, and invite the investigating officer to respond and call any witnesses, as necessary; or

   (c) Postpone the hearing to arrange for appropriate witnesses to be present, or for the investigating officer to be present if he or she is not already.

8. The panel will usually consider the representations and evidence in private and will ask those present to leave the room so that they may do so.
C. Did the Member fail to follow the Code?

1. The panel will next consider whether or not, based on the fact it has found, the member has failed to follow the Code of Conduct.

2. The member will be invited to give relevant reasons why the panel should not decide that he or she has failed to follow the Code.

3. The panel will consider any verbal or written representations from the investigating officer.

4. The panel may, at any time, question anyone involved on any point they raise in their representations.

5. The member will be invited to make any final relevant points.

6. The panel will then consider the representations in private and will ask those present to leave so that they may do so.

D If the Member has not failed to follow the Code of Conduct

If the panel decides that the member has not failed to follow the Code of Conduct, the panel may move on to consider whether it should make any recommendations to the Council or Parish Council on any issue, which has arisen.

E. If the member has failed to follow the Code

1. If the panel decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigating officer and the member as to:

   (a) whether or not the panel should set a penalty; and
   (b) what form any penalty should take.

2. The panel may question the investigating officer and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

3. The panel will then consider in private whether or not to impose a penalty on the member and if so, what the penalty should be.

4. Where the panel finds that the member did fail to comply and that a sanction should be imposed then the Independent Person (if present) should be consulted about the proposed action. In the event that the Independent Person is not present at the hearing, the Panel will consider what penalty it
should impose but make no announcement until the Independent Person has been consulted.

(a) If the member no longer belongs to a relevant authority, the panel will censure the subject Member.

(b) If any other case, the panel, will impose one or more of the sanctions in paragraph 12 to Appendix 3 – Arrangements for Dealing with Standards Allegations under the Localism Act 2011 or other such sanction that it is legally able to impose and believes to be proportionate and appropriate.

(c) Censure or reprimand the member;

(d) Publish its findings in respect of the member's conduct;

(e) Reports its findings to Council [or to the Parish Council for consideration] for information;

5. After considering any verbal or written representations from the investigating officer the panel will consider whether or not it should make any recommendations to the relevant Council, with a view to promoting high standards of conduct amongst members.

6. The panel will announce its decision on the day unless separate consultation with the Independent Person under paragraph E(4) is required and aim to issue a full written decision within 5 working days of the hearing.

7. The Chair will ensure that the panel’s decision is made public.
A Statutory Requirements for Disclosure

(i) Under s 117 of the Local Government Act 1972, as amended, if it comes to the knowledge of an Officer that a contract in which he has a pecuniary interest, whether direct or indirect, but to which (s)he is not a party, has been, or is proposed, to be entered into by the Authority, (s)he must as soon as practicable give notice in writing to the authority of the fact that (s)he has an interest in the contract.

(ii) An Officer has an indirect interest in a contract if:-

(a) (s)he or a nominee of her/his is a member of a company or other body with which the contract was, or is proposed to be made;

(b) (s)he is a partner or in the employment of a person with whom the contract was made or is proposed to be made (i.e employment other than with the Council).

(iii) An Officer does not have an indirect interest in such a contract if the membership or employment is with another public body as defined in the Act. (Refer to Legal Services for advice on the definition of public body). If the Officer does not have a beneficial interest in the securities of the company or other body then her/his membership does not amount to an indirect interest.

(iv) In the case of married persons living together the interest of their spouse, if known to the Officer is the interest of the Officer for these purposes.

(v) A book is kept by the Head of Legal and Governance to register pecuniary interests in accordance with s 117 of the Act.

(vi) It is a criminal offence to fail to register an interest under s 117 and will lead to disciplinary action whether or not a prosecution is brought.

(vii) An Officer must not under colour of her/his office or employment accept any fee or reward whatsoever other than his/her proper remuneration from the Council. It is a criminal offence to do so and will lead to disciplinary action whether or not a prosecution is brought.

The statutory requirements are explained further in the Council’s Code at Part B below.
1.0 INTRODUCTION

1.1 The code applies to all employees of the Council.

1.2 Inevitably some of the issues covered by the Code will affect senior, managerial and professional employees more than others, but the Code covers all employees under a contract of employment with the Council. Activities carried out by employees acting as members of companies or voluntary organisations are subject to the Code.

1.3 The public is entitled to expect the highest standard of conduct from the staff of Harrogate Borough Council. The purpose of this Code is to restate existing laws, regulations and conditions of service to assist the Council and its staff in their day-to-day work, in the light of challenges they face in the new and more commercially orientated environment. This includes competitive tendering, market testing, changes in the management of the education and housing services, care in the community, management buy-outs, etc.

1.4 Failure to observe the standards set out in this Code will be regarded as serious and any breach will render an employee liable to disciplinary action, which may include dismissal.

2.0 STANDARDS

2.1 Harrogate Borough Council employees are expected to give the highest possible standard of service to the public and, where it is part of their duties, to provide appropriate advice to other employees and Councillors with impartiality. Employees may, through agreed procedures and without fear of recrimination, bring to the attention of the appropriate level of management, any deficiency in the provision of service. Employees must report any impropriety or breach of procedure.

3.0 DISCLOSURE OF INFORMATION

3.1 Harrogate Borough Council believes in open government. Recourse to unpublished or exempt Minutes is the exception rather than the rule. Access to exempt/unpublished Minutes is, however, restricted and no information contained in those Minutes should be divulged to another party except on the express direction of your Chief Officer or the Council. The law requires that certain types of information must be available to Members, Auditors, Government Departments, Service Users and the Public. Employees need to be aware of the types of information which are open and which are not and act accordingly. If in doubt seek advice from your departmental head or chief officer.

3.2 Staff should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way. Any particular information received by an employee from a Councillor or a fellow employee which is personal to that person and does not belong to the Authority, should not be divulged by the
employee without the prior approval of that person.

4.0 POLITICAL NEUTRALITY

4.1 Employees must serve the Council as a whole. It follows they must serve all members not just members of any controlling group and must ensure that individual rights of all members are respected.

4.2 Employees should not usually be called upon to advise any political group of the Council either as to the work of the group or as to the work of the Authority. Neither should employees be required to attend any meeting of any political group, except that in certain circumstances, the Chief Executive and the Directors may give advice to political groups. Any other employee must receive clearance from the appropriate director if asked to give advice.

4.3 Employees do not answer letters from political parties or on political issues. (Except to acknowledge and confirm what is Council policy). Sometimes it may be appropriate to refer the request to the Council itself.

4.4 Employees do respond where political parties put complaints on behalf of individuals.

4.5 Employees do not share platforms with any single political party, although provided that the issue is not a party political one, employees would be permitted to appear with members of all parties where the objective is to give information.

4.6 Employees, whether or not politically restricted, must follow every express policy of the Council and must not allow their own personal or political opinions to interfere with their work.

5.0 RELATIONSHIPS

5.1 Councillors

Employers are responsible to the Council through its senior managers. For some, their job is to give advice to Councillors and the Council and all are there to carry out the Council's work. Mutual respect between employees and the Council is essential in good local government. Close personal familiarity between employees and individual Councillors can damage the relationship and prove embarrassing to other employees and councillors and should therefore be avoided.

5.2 The Local Community and Service Users

Employees should always remember their responsibilities to the community they serve and ensure they provide services courteously, efficiently and impartially to all groups and individuals in the community as defined by the Policies of the Council. The Council has recently adopted a Corporate Customer Care Policy and a Customer Care Management Handbook has
been issued to directors, business unit and cost-centre managers in every
department; employees are encouraged to read the handbook. Training on
customer care is to be given to all employees.

5.3 Contractors

All relationships with contractors or potential contractors should be made
known to the appropriate manager. To do otherwise contravenes the law.
Orders and contracts must be awarded on merit, by fair competition against
other tenders, and no favouritism should be shown to businesses run by, for
example, friends, partners or relatives. No part of the community should be
discriminated against

5.4 Employees involved in the awarding of contracts must comply with the
Council’s Financial Regulations and Standing Orders and Standing Orders
Relating to Contracts.

5.5 Employees who engage or supervise contracts or have an official relationship
with contractors and have previously had or currently have relationship in a
private or domestic capacity, should declare that relationship to the
appropriate manager.

6.0 APPOINTMENT AND OTHER EMPLOYMENT MATTERS

6.1 Employees involved in appointments should ensure that these are made on
the basis of merit. It would be unlawful for an employee to make an
appointment which was based upon anything other than the ability of the
candidate to undertake the work. In order to avoid any possible accusation of
bias, employees should not be involved in an appointment where they are
related to an applicant, or have a personal relationship outside work with him
or her.

6.2 Similarly, employees should not be involved in decisions relating to discipline,
promotion or pay adjustments for any other employee who is a relative,
partner or close friend.

7.0 OUTSIDE COMMITMENTS

7.1 All employees should be clear about their contractual obligations and should
not take outside employment which conflicts with the Council’s interests. All
employees on Grade SO1 and above require the consent of the Council to
take outside employment.

7.2 Employees are reminded that the Council, on the recommendation of the
External Auditor, now maintains a register of officer’s outside interests in each
department. Employees are required to notify their chief officer before
undertaking any other work so that a judgement can be made about possible
conflicts of interest.
7.3 Employees should follow the Council’s rules on the ownership of intellectual property or copyright created during their employment.

8.0 PERSONAL INTERESTS

8.1 The following outside interests should be notified and registered:-

- If you have another job with another employer;
- If you undertake work for an external organisation, regularly or occasionally, and you use any of the Council’s facilities or equipment/material;
- If you undertake work for an external organisation, either regularly or occasionally, and you receive the fees;
- If you undertake external work on a self-employed basis;
- If you are involved in any official capacity with an outside organisation which has dealings with the Council, e.g. grant requests or planning applications;
- If you make any significant use of Council equipment/materials for private purposes (NB. unauthorised removal of Council property is a disciplinary offence under financial regulation 19.5);
- If you have any involvement with an external organisation with which the Council places any orders for work, goods and services;
- If you have any involvement with an external organisation which is bidding for formal contracts with the Council.
- If you set up or accept employment with a private business which is engaged in work in direct competition with the Council; and
- If you undertake any external work during normal office hours.

8.2 Your involvement as a member of an outside organisation or as a shareholder of a company does not need to be notified and registered.

9.0 EQUALITY ISSUES

9.1 The Council is an equal opportunities employer and all employees are under an obligation to ensure that policies relating to equality issues as agreed by the Council are complied with, as well, of course, as the requirements of community, customers and other employees have a right to be treated with fairness and equality. The full policy is available on the Intranet or HR Support.
10.0 **SEPARATION OF ROLES DURING TENDERING**

10.1 Employees should be clear on the separation of client and contractor roles within the Council. Senior staff who have both a client and contractor responsibility must be aware of the need for accountability and openness.

10.2 Employees in contractor or provider units must exercise fairness and impartiality when dealing with all customers, suppliers, contractors and subcontractors.

10.3 Employees who are privy to confidential information on tenders or costs for either external or internal contractors should not disclose that information to any unauthorised party or organisation.

10.4 Employees should ensure that no special favour is shown to current or recent former staff or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

11.0 **CORRUPTION**

11.1 It is a serious criminal offence for employees corruptly to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity. If an allegation is made, it is for the employee to demonstrate that any such rewards have not been corruptly obtained. Section 2 of the Guidance on the acceptance of Gifts and Hospitality and Outside interests (“The Guidance notes”) deals specifically with gifts.

12.0 **USE OF FINANCIAL RESOURCES**

12.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner, ensuring value for money to the local community and avoiding legal challenge to the Authority.

13.0 **HOSPITALITY**

13.1 Employees should only accept offers of hospitality if there is a genuine need to impart information or represent the Council in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the authority should be seen to be represented. It should be properly authorised and recorded in the register maintained in each department for that purpose.

13.2 When hospitality has to be declined the offer or should be courteously but firmly informed of the procedures and standards operated within the Council.

13.3 Employees should not accept significant personal gifts from contractors and outside suppliers although they may keep insignificant tokens such as pens, diaries, etc,
13.4 In receiving authorised hospitality employees should be sensitive to the timing of decisions for letting contracts for which the provider is bidding.

13.5 Acceptance by employees of hospitality by other public bodies or whilst in attendance at relevant conferences and courses is acceptable.

13.6 Employees must refuse offers of hospitality where any suggestion of improper influence is possible. Special caution is necessary where hospitality is offered by a person or body having or seeking business with, or a decision from the Council, particularly where the offer is to an individual employee.

13.7 Hospitality should only be accepted where it is on a scale appropriate to the circumstances, reasonably incidental to the occasion and not extravagant and where it is apparent that no cause could reasonably arise for adverse criticism about the acceptance of the hospitality. Section 3 of the Guidance notes deal specifically with hospitality.

14.0 SMOKING POLICY

14.1 The Council has introduced a policy on smoking at work. Employees are reminded that smoking in a non-smoking area is regarded as a disciplinary offence.

15.0 SPONSORSHIP - GIVING AND RECEIVING

15.1 Where an outside organisation wishes to sponsor or is sought to sponsor a Council activity, whether by invitation, tender, negotiation or voluntary, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

15.2 Where the Council wishes to sponsor an event or service, neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager or to the Council of any such interest. Similarly, where the Council, through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

16.0 CONTACT WITH PRESS AND MEDIA

16.1 Unless specifically nominated and authorised by the Chief Executive or the Chief Officer of the Department concerned, employees are not permitted to give reports or speak to the press and media on matters relating to employment with the Council, Council business or decisions of the Council. In the main, the Chief Executive, Chief Officers, Executive Officers and the communications and Media Manager will be responsible for dealing with the press and media. Employees with this responsibility should guard themselves against declaring a view which is contrary to a position taken by the Council.
and which may be deemed to be critical of that decision.

16.2 In the event of an industrial dispute involving your Trade Union organisation, an elected representative of the Trade Union may be called upon by the press or media to comment on the dispute. Where a decision is taken by that Trade Union organisation to respond, that employee should exercise great care in presenting the facts of the case and should avoid personal opinions which may be damaging to the Council.

16.3 In all circumstances, employees are under a general duty of care to avoid, wherever practicable, a conflict of interest situation arising and should not undertake to criticize damage or act in any way against the best interests of the Council. Should this occur, then the employee will be subject to disciplinary action in accordance with the agreed procedures.

January 1996/2012

Related policies and links:

Gifts, Hospitality and Outside Interests: Code of Practice for Acceptance of Gifts and/or hospitality and on Outside Interests
Disciplinary Procedure

Produced by Human Resources
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INTRODUCTION

1.1 It is recognised by the Council that discipline is necessary for the efficient operation of the Authority and for the health and safety at work of all employees. In order to provide a fair and effective procedure for dealing with disciplinary matters, the following procedure will be applied in all instances where disciplinary action is regarded by management as warranted. Managers who carry out investigations and hold disciplinary hearings will always adopt a reasonable approach, which is in accordance with employment law and practice.

1.2 The procedure does not apply to:

(a) Directors, they have a separate procedure;
(b) Employees under the probationary period.

1.3 Executive Officers and above are responsible for the management and discipline within their service area.

1.4 It is intended that the procedure outlined in this document will operate as speedily as possible.

1.5 At any stage of the formal procedure the employee can be accompanied by a companion (e.g. Trade Union, friend or other representative). There is a statutory right to be accompanied at formal hearings.

INVESTIGATION

3.1 Where a matter arises which is suspected or believed to contravene a disciplinary rule, or may otherwise be a disciplinary matter, management will investigate the matter. The Investigating Officer will not, under any circumstances, be a person who may be involved, implicated or be required to conduct a subsequent disciplinary hearing.

3.2 Where a matter arises which is suspected or believed to involve a financial irregularity, the investigating officer will inform the Audit Services Manager.

3.3 The Investigating Officer should inform the employee in writing:

(a) of the nature of complaint/allegation;
3.4 Infringement of disciplinary rules fall into two main categories:–

(i) Gross misconduct e.g.: stealing from the Council or from members of staff or members of the public; acceptance of bribes or other corrupt financial practice; other offences of dishonesty; sexual misconduct at work; fighting; physical assault; falsification of a qualification which is a stated requirement of the employment or which results in financial gain; gross negligence. This list of examples is neither exclusive nor exhaustive.

(ii) Misconduct e.g.: lateness, unauthorised absence.

4. POTENTIAL GROSS MISCONDUCT CASES

4.1 In potential gross misconduct cases the employee may be suspended from work on full (contractual) pay while the investigation proceeds. Any decision to suspend will be taken in conjunction with Human Resources and confirmed in writing as soon as possible. Suspension is a precautionary measure not a form of disciplinary action. Whilst suspended, the employee must not contact their colleagues or return to their place of work, without first obtaining permission to do so from their manager. This is not intended to prevent the employee from contacting their companion or trade union representative if they are a trade union member and feel that it is appropriate to do so. The need for suspension will be kept under review throughout the disciplinary process.

4.2 If on completion of the investigation, formal disciplinary action is warranted a disciplinary hearing will be arranged. The employee will be given a minimum of five working days’ advance notice of the hearing in writing. The employee will be informed of the nature of the allegation, the possible consequences (e.g. warnings, demotion, dismissal) and given the right to be accompanied by a companion. If, during the course of the investigation, statements have been obtained from witnesses who will not be attending the hearing, the employee or their companion will be given those statements not less than five working days in advance of the hearing. Witnesses not scheduled to attend the hearing should nevertheless be available, should they be required to attend the hearing. Any other documents that will be referred to at the hearing will also be given to the employee in advance of the hearing.
5. ATTENDANCE AT THE DISCIPLINARY HEARING

5.1 Where the chosen companion cannot attend on the date proposed by the Council, the employee must offer an alternative time and date so long as it is reasonable and falls before the end of the period of five working days beginning with the first working day after the day proposed by the Council.

5.2 Where an employee indicates that they are unable or unwilling to attend a hearing on a given date, they will be told that, on the next set date, it will go ahead in their absence and a decision will be made on the known facts and evidence available. The employee will be told that as an alternative to attending, they can ask their companion to represent their case or, provide a written submission.

6. THE DISCIPLINARY HEARING

6.1 The Hearing will normally be chaired by a Senior Manager who has not been involved in the investigation process. The Chairperson may be accompanied by a representative from the Human Resources. In cases of potential gross misconduct or where the outcome may be dismissal, a representative from Human Resources must be present. The Investigating Officer will be asked to present the facts of the case, and will have every opportunity to give an explanation to the allegation and produce evidence and call witnesses to support their case. The Chairperson may adjourn the hearing.

6.2 The employee or their companion will have every opportunity to respond to this, by introducing other facts, explanations, producing evidence and calling witnesses to support their case. The employee or their companion may request an adjournment.

6.3 After hearing all the evidence the Chairperson will adjourn to consider what disciplinary action is to be taken. If necessary, the Chairperson can choose to deliberate over a longer period, without undue delay and either write to the employee informing them of the decision or, reconvene the Hearing. The employee will also be given an explanation for the decision and their right of appeal under this procedure. The employee will be informed of the decision which will be confirmed in writing within five working days. The letter will inform the employee of the consequences of any further breaches of misconduct/gross misconduct and what potential action could be taken (e.g. higher level of warning or dismissal).

7. DISCIPLINARY ACTION

7.1 ORAL WARNING

(a) A formal oral warning confirmed in writing. The period of time after which the warning will no longer count for progression to the next stage of the disciplinary procedure will be six months from the date of the letter confirming/giving the warning.
7.2 FIRST WRITTEN WARNING

(b) A first written warning. The period of time after which the warning will no longer count for progression to the next stage of the disciplinary procedure will be one year from the date of the letter confirming/giving the warning.

7.3 FINAL WRITTEN WARNING

(c) A final written warning. The period of time after which the warning will no longer count for progression to the next stage of the disciplinary procedure will be two years from the date of the letter confirming/giving the warning.

7.4 DISMISSAL

(d) (i) In cases of gross misconduct the employee will normally be liable to summary dismissal (dismissed without notice).

(ii) In cases of cumulative misconduct the employee will be dismissed with notice or with pay in lieu of notice.

(iii) Only Executive Officers and above, (or designated officers as nominated by the Director) in consultation with the Head of Organisational Improvement and Development, can take the decision to dismiss.

7.5 The procedure in most cases will progress through the stages outlined above (a-d) it does not preclude a stage or stages of warning being omitted e.g.: a first offence could result in a written or final written warning if justified by the circumstances.

7.6 In limited circumstances, a disciplinary suspension, demotion, stoppage of pay, deductions of annual leave, or other penalty short of dismissal may be imposed in conjunction with a final written warning, or as an alternative to dismissal, subject to provision for doing so in accordance with the employee’s terms of employment, or by agreement with the employee. Where it is an alternative to dismissal, it will be accompanied by a final warning, or with confirmation of a previous final warning, as appropriate. The period of time after which the confirmation of the previous final warning will no longer count for progression to the next stage of the disciplinary procedure will be two years from the date of the letter confirming/giving the warning.

8. APPEAL

8.1 Employees have a right of appeal against formal warnings and dismissal and this should be made in writing to the Head of Organisational Development and Improvement within ten working days of the date of written confirmation of the decision of the disciplinary hearing stating the
grounds of the appeal. The appeal shall be heard as soon as possible thereafter.

8.2 An appeal against an oral warning, written warning or final written warning will be heard by a more senior officer than the person who made the original decision.

8.3 An appeal against a dismissal, relegation or suspension will be heard by the Special Human Resources Committee of the Council.

9. **WITNESSES**

9.1 At any stage of the disciplinary and appeals procedure the employee has the right to call witnesses. The responsibility for the attendance of witnesses for the employee lies with the employee. If the witness is an employee of the Authority reasonable facilities will be allowed for them to attend. Time off should be on a no loss of earnings basis during normal working hours. Attendance outside normal working hours is to be unpaid.

10. **STEWARDS/BRANCH OFFICERS**

10.1 No disciplinary action should be taken against a steward or a branch officer unless the case has been discussed with a senior trade union representative or a permanent union official of the union concerned. *The employee will be told that this contact is being made, before it is made.*

11. **CRIMINAL CHARGES RELATING TO INCIDENTS OUTSIDE EMPLOYMENT**

11.1 Where a criminal act conducted outside of work could impact on an employee’s employment, the Council will deal with the matter under this procedure. It may conduct an investigation separately from the Police investigation and reach its own conclusions without waiting for the outcome of the police investigations.

12. **ILLEGAL WORKING**

12.1 An employee will be in breach of their contract if they are not or no longer entitled to work in the UK. If an employee is found to be working illegally their contract will be terminated immediately.

12.2 The principal reason for an employee being dismissed is that their work will involve contravention of "a duty or restriction imposed by or under an enactment", the Immigration, Asylum and Nationality Act 2006.

12.3 Therefore neither of the dismissal and disciplinary procedures applies in relation to the dismissal of an employee where-the reason for the dismissal is that the employee could not continue to work in the position, which they held without contravention of the Immigration, Asylum and Nationality Act 2006.
13. RECORDS

13.1 Where warnings have been given, records will be kept for disciplinary record purposes and as an historical employment record. These will be kept confidential and retained in accordance with the principles of data protection.

14. GRIEVANCES

14.1 Where an employee raises a grievance during a disciplinary process, a decision will be taken as to whether to suspend the process temporarily whilst an investigation into the grievance takes place or, where the grievance and disciplinary cases are related, to deal with both issues at the same time. Where the issues are related, the disciplinary process will not be suspended.

15. ROLE OF THE COMPANION

15.1 The companion can address the hearing to put and sum up the employee’s case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The companion does not have the right to answer questions on the employee’s behalf, address the hearing if the employee does not wish it or prevent managers from explaining their case. The employee should tell management who their chosen companion will be.

16. MEDIATION

16.1 In appropriate cases and where both parties are willing, the Council will consider using the services of a mediator.

17. GENERAL

17.1 Nothing in this procedure is intended to remove the right of a manager to maintain an acceptable standard of conduct and work performance where the employee is believed to have committed a minor infringement of the established standards of conduct.

18. REVISION OR TERMINATION OF THIS PROCEDURE

18.1 The operation of this procedure will be periodically reviewed. The trade unions will be consulted on any changes as will any employees, who will be informed of the date when the amendment will come into effect.

First Approved: March 2002
Document revised as the result of the new ACAS Code of Practice effective April 2009. Revisions include extracts from the Code.

CMT: 26 March 2009
HR Committee: 2 April 2009
Last Reviewed: 5 August 2016
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.0</strong></td>
<td><strong>PURPOSE OF REPORT</strong></td>
</tr>
<tr>
<td>1.1</td>
<td>This report summarises the complaints made to the Monitoring Officer about alleged breaches of the member’s code of conduct. It covers complaints against Borough Council and Parish Council members made during the financial year 2017/18 and their outcome.</td>
</tr>
<tr>
<td><strong>2.0</strong></td>
<td><strong>RECOMMENDATIONS</strong></td>
</tr>
<tr>
<td>2.1</td>
<td>That Members note the complaints made and their outcome.</td>
</tr>
<tr>
<td><strong>3.0</strong></td>
<td><strong>RECOMMENDED REASONS FOR DECISIONS</strong></td>
</tr>
<tr>
<td>3.1</td>
<td>To keep members informed of the number and type of standards complaints received together with how they are being addressed.</td>
</tr>
<tr>
<td><strong>4.0</strong></td>
<td><strong>ALTERNATIVE OPTIONS CONSIDERED AND RECOMMENDED FOR REJECTION</strong></td>
</tr>
<tr>
<td>4.1</td>
<td>None.</td>
</tr>
<tr>
<td><strong>5.0</strong></td>
<td><strong>THE REPORT</strong></td>
</tr>
<tr>
<td>5.1</td>
<td>The Localism Act 2011 established an amended ethical standards regime for elected members. Under Section 28(6) and (7) of the Act, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority or of a parish council within the authority’s area, has failed to comply with that authority’s Code of Conduct</td>
</tr>
</tbody>
</table>
can be investigated and decisions made on such allegations.

5.2 The current “arrangements” for ensuring ethical standards and addressing complaints were adopted by Harrogate Borough Council on 7 March 2012 and can be accessed on the Council’s website.

Complaints Made From 1 April 2017

5.3 Appendix 1 lists the complaints received by the Monitoring Officer from 1 April 2017 to the date of writing this report.

5.4 Of the 17 complaints received 7 relate to Harrogate Borough Councillors with the other 10 being complaints against Parish Councillors.

5.5 By way of summary as at the date of writing this report for:

- 1 case a Hearing Panel has been requested to determine the matter following an investigation
- 2 cases the investigation process found no breach of the code & the Monitoring Officer agreed with the Independent Person that no further action was necessary
- 1 case where an investigation supported the allegation of breach of the code a local resolution was reached to the satisfaction of all parties including the Monitoring Officer & Independent Person. (This was reported separately to the Committee as part of the resolution process.)
- 3 cases a local resolution was reached without the need for a formal investigation
- 3 cases the Monitoring Officer and Independent Person considered they did not merit formal investigation;
- 7 cases are still in the process of being investigated or a decision being made.

The Council’s Independent Person is consistently appraised in relation to all complaints and his views taken into account by the Monitoring Officer in deciding on the appropriate course of action.

Complaints Carried Forward from 2016/17

5.6 Since the date of last year’s annual report to the Committee (1 March 2017) the following outcomes have occurred:

- Case Reference SB 2016-6 – was investigated and no breach found. Accordingly the Monitoring Officer and Independent Person agreed that no further action was required in respect of the Councillor concerned.
- Case Reference SB 2016-9 was investigated and an informal resolution reached
- Case Reference SB 2016-12 was investigated and is awaiting a hearing to be scheduled

6.0 REQUIRED ASSESSMENTS AND IMPLICATIONS
6.1 The following were considered: Financial Implications; Human Resources Implications; Legal Implications; ICT Implications; Strategic Property/Asset Management Considerations; Risk Assessment; Equality and Diversity (the Public Sector Equality Duty and impact upon people with protected characteristics). If applicable, the outcomes of any consultations, assessments, considerations and implications considered necessary during preparation of this report are detailed below.

**Background Papers** – Report to General Purposes Committee 1 March 2017; Code of Conduct for Members and Procedure for making a complaint against elected members.

**OFFICER CONTACT:** Please contact Jennifer Norton, if you require any further information on the contents of this report. The officer can be contacted on 01423 556036 or by e-mail – [Jennifer.norton@harrogate.gov.uk](mailto:Jennifer.norton@harrogate.gov.uk)
<p>| SB2017-1 | Parish Councillor | Complaint that Parish Councillor declared an interest in relation to their membership of a campaign group but they did not leave the room during the vote on a related matter. Also a complaint regarding a request for access to information. | Review as to what standing orders provided for in relation to action required by councillors for such interests. The complainant did not want to pursue a complaint so no formal investigation. Access to information could be achieved using FOI regime. |
| SB2017-2 | Parish Councillor | Complaint by clerk against one of the Parish Councillors for allegedly speaking in an aggressive manner with a raised voice, which the clerk found to be intimidating and disrespectful behaviour. | Investigated and local resolution achieved by way of an apology by Councillor. |
| SB2017-3 | Parish Councillor | Complaint of verbal abuse by Chair of Parish Council when complainant out for a walk and challenged the Chair about the standard of grass cutting in the area. (The Parish Council having responsibility for the grass cutting.) | Parties reached an informal resolution before any intervention by Monitoring Officer. |
| SB2017-4 | Parish Councillor | Complaint of bullying and disrespect in relation to way in which Parish Councillor intervened in a planning application made by the complainant. | Parish Councillor alleged that complainant had also been disrespectful to them. After discussion with Independent Person it was decided that it was not sufficiently serious and it would be disproportionate to invest resource in investigating a factual dispute. |
| SB2017-5 | Borough Councillor | Disrespect and bullying of Council officers during member briefing on draft local plan. | Investigated and investigation reported found a breach of the Code of Conduct. Matter contested by the Councillor and it is therefore to proceed to Hearings Panel of General. |</p>
<table>
<thead>
<tr>
<th>SB2017-6</th>
<th>Admin error in file opening number</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB2017-7</td>
<td>Borough Councillor</td>
</tr>
<tr>
<td></td>
<td>Complaint that the Chair of a Committee was biased; bullied councillors into coming around to the Chair’s way of thinking; &amp; treated the public with disdain by threatening to remove from them from the meeting.</td>
</tr>
<tr>
<td>SB2017-8</td>
<td>Borough Councillor</td>
</tr>
<tr>
<td></td>
<td>Alleged that councillor improperly participated in a decision to approve a planning application. Complainant alleged that the applicant told her that the Councillor was his friend; that his application would be approved because the Councillor had promised him as much; and that if it was approved: “there would be something in this for the Councillor.”</td>
</tr>
<tr>
<td>SB2017-9</td>
<td>Borough Councillor</td>
</tr>
<tr>
<td></td>
<td>Complaint against Councillor’s conduct towards a member of the public attending planning committee and speaking under the opportunity to speak scheme.</td>
</tr>
<tr>
<td>SB2017-10</td>
<td>Borough Councillor</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>SB2017-11</td>
<td>Borough Councillor</td>
</tr>
<tr>
<td>SB2017-12</td>
<td>Parish Councillors</td>
</tr>
<tr>
<td>SB2017-13</td>
<td>Borough Councillor</td>
</tr>
<tr>
<td>SB 2017-14</td>
<td>Parish Councillors</td>
</tr>
<tr>
<td>SB 2017-15 (1)</td>
<td>Parish Councillor</td>
</tr>
<tr>
<td>SB 2017-15 (2)</td>
<td>Parish Councillor</td>
</tr>
<tr>
<td>SB 2018 (1) &amp; (2)</td>
<td>Parish Council</td>
</tr>
</tbody>
</table>
REPORT TO: General Purposes Committee

DATE: 22 March 2018

DEPARTMENT: Corporate Affairs

REPORTING OFFICER: Head of Legal & Governance (Jennifer Norton)

SUBJECT: OMBUDSMAN COMPLAINTS & INVESTIGATIONS 2017/18

WARD/S AFFECTED: All

FORWARD PLAN REF: N/A

1.0 PURPOSE OF REPORT

1.1 This report summarises the complaints made to the ombudsman for the financial year 2017/18 and the outcome of any investigation.

2.0 RECOMMENDATIONS

2.1 That Members note the complaints made and the outcome of any investigation.

3.0 RECOMMENDED REASONS FOR DECISIONS

3.1 To ensure transparency as to the complaints made and their outcome and to report on any lessons learned.

4.0 ALTERNATIVE OPTIONS CONSIDERED AND RECOMMENDED FOR REJECTION

4.1 None.

5.0 THE REPORT

5.1 The Local Government and Social Care Ombudsman (LG&SCO) is the independent body responsible for investigating complaints made against public bodies where it is alleged that there has been maladministration causing injustice. The LG&SCO was previously known as the Local Government Ombudsman. This report also covers complaints to the...
Housing Ombudsman. The two organisations work together and share information. In accordance with a protocol between the organisations, local authority tenants should complain to the LG&SCO and tenants of registered providers should complain to the Housing Ombudsman.

5.2 The remit of the LG&SCO is wide and can cover a number of complaints about different issues, such as:

- Housing and council tax benefit claims
- Housing allocation schemes
- Planning
- Anti-social behaviour
- Council tax

The LG&SCO has the power to investigate complaints where there has been:

- Maladministration causing injustice
- A failure to provide a service that it was the public body's function to provide
- There was a total failure to provide such a service.

There is no specific definition of “maladministration” but it can include cases where a public body has taken, or has failed to take, action (Section 26(1), Local Government Act 1974). Examples of maladministration include bias; incompetence; perversity; excessive and unreasonable delay; making misleading or inaccurate statements; failure to follow specified procedures or statutory procedures; failing to properly consult or liaise; failing to provide information when requested to do so; and failing to investigate or reply to a query from a member of the public.

5.3 The LG&SCO is only allowed to investigate the procedure behind the decision making. This means that the LG&SCO will not investigate cases where the complainant merely disagrees with a decision that has been made.

Once maladministration has been established, it must be confirmed that it has led to personal injustice for the complainant. Injustice can include:

- The time and trouble involved in pursuing a complaint against a public body
- The loss to a right or service, which the complainant is legitimately entitled to
- Costs associated with pursuing the complaint
- Inconvenience, worry, distress and hurt feelings

5.5 It must also be proved that the injustice was caused by the council and was not merely accidental.

There are a number of situations where the LG&SCO cannot investigate a complaint, including:

- Where a complainant has not exhausted a local authority’s internal
complaints procedure (i.e. ‘premature’) (although this may be dispensed with by the ombudsman in certain cases)

- Where the complainant has, or has had, a right of appeal, reference or review or before a statutory tribunal or a Minister of the Crown
- Where the complainant has, or has had, a remedy by way of court proceedings; for example, where a complainant has already submitted a judicial review application
- Where the complainant has failed to make a complaint to the LG&SCO within 12 months of the matter complained of (although, there is discretion to extend this time limit.)

5.6 Upon receipt of a complaint the ombudsman carries out preliminary enquiries to establish whether it merits formal investigation. If it merits investigation the ombudsman notifies the council and invites representatives on the complaint together with requests for information and documentation relevant to the complaint.

Local settlement can also be used as a method for resolving complaints. Local settlement is where the public body or the ombudsman makes suggestions about how a complaint can be resolved before a full investigation is undertaken. If the complainant agrees to local settlement, the ombudsman will stop its investigation before issuing a report. Typically, this type of settlement will happen fairly early on in the ombudsman’s investigation.

The ombudsman must issue a report if they have finished the investigation of a complaint. This report can also include recommendations for action. However, if the ombudsman is satisfied with the actions that the council has decided to take or has already taken to deal with the complaint, it may choose not to send a full report, instead sending a statement of reasons for the decision not to issue a full report.

Remedies recommended by the ombudsman include requiring local authorities to:

- Apologise to a complainant
- Offer financial compensation. This may be appropriate where there is no practical remedy or where the complainant has suffered financial loss as a result of the injustice
- Review the procedure that led to the injustice.
- Offer additional training for public body staff
- Reconsider a decision
- Pay money where the injustice is that money (such as housing benefit) has not been paid
- Consider alternative specific remedies where the injustice has been caused by the loss of a non-monetary benefit, such as enjoyment of a property where the public body has failed to deal with noise nuisance in the area
- Make payments to the complainant in recognition of the time and trouble involved in pursuing the complaint

Appendix 1 lists the complaints received by the ombudsman and notified to
the council from 1 April 2017 up to the date of writing this report.

6.0 REQUIRED ASSESSMENTS AND IMPLICATIONS

6.1 The following were considered: Financial Implications; Human Resources Implications; Legal Implications; ICT Implications; Strategic Property/Asset Management Considerations; Risk Assessment; Equality and Diversity (the Public Sector Equality Duty and impact upon people with protected characteristics). If applicable, the outcomes of any consultations, assessments, considerations and implications considered necessary during preparation of this report are detailed below.

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<table>
<thead>
<tr>
<th>No</th>
<th>Case Reference</th>
<th>Department &amp; Details of Complaint</th>
<th>Date of Initial Enquiry</th>
<th>Details of complaint</th>
<th>Complaint Upheld or Dismissed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>17 001 253</td>
<td>Planning, Environmental Protection</td>
<td>9 May 2017</td>
<td>Complaint related to the condition and storage of items in a back yard area and lack of enforcement action</td>
<td>Complaint closed as complainant had not progressed through Council’s complaints procedure</td>
</tr>
<tr>
<td>2</td>
<td>15 018 527</td>
<td>Planning, Environmental Protection</td>
<td>10 July 2017</td>
<td>Complaint regarding member conduct and alleged procedural flaws in granting planning application</td>
<td>Ombudsman declined to investigate as complaint premature and referenced back to Council to respond to</td>
</tr>
<tr>
<td>3</td>
<td>16 025 812</td>
<td>Planning</td>
<td>23 June 2017</td>
<td>Complaint about how the Council has dealt with noise problems from a neighbouring property.</td>
<td>Not to investigate the complaint. The Council did not ignore the complainant’s concerns and the Ombudsman concluded that it was unlikely to find evidence of fault in how the Council has dealt with them. Further, the Ombudsman held that the complainant could ask a magistrates’ court to decide if the noise from the neighbouring property is a statutory nuisance.</td>
</tr>
<tr>
<td>4</td>
<td>17 007 114/IT4/KB1</td>
<td>Planning</td>
<td>28 September 2017</td>
<td>Alleged that the Council (i) wrongly advised the complainant to apply for a certificate of lawfulness, (ii) failed to meet its target in responding to his complaints and (iii) gave an inaccurate response to his stage two complaint.</td>
<td>Informal resolution reached and refund of planning fees made</td>
</tr>
<tr>
<td>5</td>
<td>17 071 591</td>
<td>Environment Services &amp; Public Protection</td>
<td>9 February 2018</td>
<td>Alleged misinformation about burial place</td>
<td>Premature Complaint – to be progressed through Council’s complaints procedure</td>
</tr>
<tr>
<td>6</td>
<td>201610569</td>
<td>Housing &amp; Property Services</td>
<td>January 2017</td>
<td>The way in which the Council responded to a complaint</td>
<td>The Council’s position at the end of complaints procedure was reasonable, that the shower room was in an acceptable</td>
</tr>
<tr>
<td>7</td>
<td>201614878</td>
<td>Housing &amp; Property</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Case Reference</td>
<td>Department &amp; Details of Complaint</td>
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<tr>
<td></td>
<td></td>
<td>Services</td>
<td>9/1/18</td>
<td>Alleged that granted planning permission for fence which encroached on highways</td>
<td>Awaiting response from Ombudsman</td>
</tr>
<tr>
<td>8</td>
<td>17 013 930</td>
<td>Planning</td>
<td></td>
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</tr>
</tbody>
</table>

**Services**

about the condition of a shower room & alleged failure to meet complainant's social care needs

condition and no repairs were needed, as the evidence shows that it took reasonable steps to investigate the matter including by testing the shower, inspecting the floor and liaising with the complainant's Occupational Therapist.

Whilst the Council took a proactive approach to investigating the complaint the Housing Ombudsman considers that its management of the complaint could have been improved upon. This includes timeliness and quality of responses.

Orders
1. The Council should pay the complainant £50 compensation by 22 March 2018 for not responding to her complaint satisfactorily.

Recommendations
1. The Council should request that the complainant provide it with a copy of the independent advice the complainant obtained in respect of the condition of the shower room. The Council should review the advice to determine whether it would be appropriate to undertake one further inspection of the shower room to establish if there are any repair issues which require rectifying, and which it is responsible for.
<table>
<thead>
<tr>
<th>Step</th>
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<tbody>
<tr>
<td><strong>Initial assessment</strong></td>
<td>- The MO will assess the complaint and, if appropriate, refer it to the Investigating Officer (IO) for further investigation.</td>
</tr>
<tr>
<td><strong>Next steps</strong></td>
<td>- If the MO finds there is a prima facie case of a breach of the code, they will either: refer the matter to the IO or consider whether the matter can be resolved informally.</td>
</tr>
<tr>
<td><strong>Review</strong></td>
<td>- If there is no evidence of a breach of the code, the MO will refer the matter to the IO.</td>
</tr>
<tr>
<td><strong>Local resolution</strong></td>
<td>- If the MO concludes the matter can be resolved informally, they will arrange for an informal resolution.</td>
</tr>
<tr>
<td><strong>Hearing</strong></td>
<td>- If the matter is to be resolved by a formal hearing, the MO will arrange for the hearing to be held.</td>
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**CIPFA Nearest Neighbours**

<table>
<thead>
<tr>
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**Appendix G**

- If the MO concludes there is no prima facie case of a breach of the code, they will refer the matter to the IO for further investigation.
- If the MO decides that the matter is capable of being resolved informally, they will arrange for the matter to be resolved informally.
- If the MO decides that the matter is incapable of being resolved informally, they will refer the matter to the IO for further investigation.
- If the MO decides that the matter is incapable of being resolved informally, they will refer the matter back to the MO for further action.

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48/16 – PUBLIC ARRANGEMENTS – QUESTIONS: The Mayor advised that he had received notification of a public question under Standing Order 27 from Mr Peter Lilley who he invited to step forward and ask his question.

Question to the Cabinet Member for Culture and Sport, Councillor Stanley Lumley from Mr Peter Lilley

I want to follow-up on your response to the public question I posed at the Full Council meeting on September 14 as it appeared to me to contain a number of inaccuracies.

You claimed the review which reported to you in August came about because the Council decided sufficient time had elapsed since its decision to scrap men-only bathing sessions at Harrogate’s Turkish Baths; and there was now a belief that market conditions may have changed.

This is simply not the case. The review was ordered by the Council’s Chief Executive in direct response to my protracted correspondence with him. Mr Sampson assured me that the review would address all my concerns in respect of the original decision - but then it failed to do so.

You also claimed in your statement that lessons had been learned – but then, significantly, failed to spell out exactly what has been learned?

You also claimed that Harrogate Council does not operate a blame culture which implicitly suggests mistakes were made and that certain individuals are to blame but that the Council is unwilling to identify these people and hold them responsible for their actions.

Finally, you referred to a statement sent to me by Mr Nigel Avison which you seemed to believe satisfactorily addressed all my outstanding questions. It didn’t do that. And since Mr Avison was the Council officer who made the original decision, it seemed inappropriate that he should be the person responding on behalf of the Council.

Mr Avison also claimed it was not in the public interest for any more officer time to be spent corresponding with me on this issue. Surely it’s not up to Mr Avison to decide what is – or is not - in the public interest?

So my question today is: will you now seek approval from your Cabinet colleagues to instigate a full and entirely independent investigation into every aspect of this dispute including why a Council which is supposedly totally opposed to discrimination, ignored all dissenting voices and continued to operate a blatantly discriminatory admissions policy at the Council’s flagship leisure facility for nearly five years?

Response:

I thank Mr Lilley for his question but cannot accept the assumptions that underpin it.
I have previously acknowledged that the questions he and others have raised in relation to men only bathing have informed the scope and timing of the review but I do not agree that they were the only drivers of that review.

I am satisfied that officers have acted in good faith, followed advice available now and previously and have always taken decisions which were believed to be lawful and in the Council's best interests.

The Council has never intentionally operated a discriminatory admissions policy and I am satisfied that the current arrangements fully meet the requirements of equalities legislation.

It follows therefore that I will not be authorising yet another investigation or continuing to rake over events of 5 years ago.

The Council tax payers need to be reassured that our focus is on the here and now and I do not believe I would be thanked were I to allow scarce staff resources to continue to be diverted away from service delivery to prolong an exchange around past events that now serves little purpose.

I hope therefore that you will accept this statement as my final word on the matter.
21/16 – PUBLIC ARRANGEMENTS – QUESTIONS: In accordance with Standing Order 27, Mr Peter Lilley asked the following questions:

‘I want to ask a question about accountability. At the last two full council meetings, reference has been made to Harrogate Council operating a “no blame” culture.

I’ve been surprised, not to say dismayed, that no councillor of any party, has publicly raised questions about this arrangement.

Even when the Leader of the Council was specifically invited to clarify the situation via a letter from me in the Harrogate Advertiser, he chose not to.

I find this unacceptable from a publicly-funded organisation which claims its whole ethos is based on working for the good of its residents. Therefore, would you please clarify:

When was the decision taken for Harrogate Council to start operating a no-blame culture?

Did councillors have the opportunity to discuss the matter - or was it decided unilaterally by the Chief Executive?

What is the purpose of such a culture? How does it benefit the Council Tax-payers of the Borough of Harrogate?’

The Chair read out the following response to Mr Lilley:

‘Many thanks for your question Mr Lilley, it raises an interesting point and one that I am pleased to be able to put on public record.

It is my view that you are confusing accountability with blame and retribution. Accountability is not the same as blame and operating in a “no blame culture” is not the same as operating in an organisation that does not have strong and effective performance management arrangements in place.

What do I mean by this, well organisational culture is a system of shared assumptions, values, and beliefs, which governs how people behave in organisations.

If you operate in a ‘blame approach’, the focus is not on the problem, finding a way forward and learning for the future, no the focus is on avoiding blame and in many ways avoiding accountability, the very thing that you seek.

In a ‘no blame approach’ the focus is on learning for the future. Understanding the problem, allowing an open and frank discussion of what has happened so that all the issues can be taken into consideration and lessons learned without the need to keep any from disclosure for fear of condemnation from others. Our aspirations for our
Council's culture are set out in our Strategy for Success which was agreed by the full council.'

(5.31 pm to 5.35 pm)
The Mayor advised that he had received notification of a public question under Standing Order 27 from Mr Peter Lilley who he invited to step forward and ask his question.

**Question to the Leader, Councillor Richard Cooper, from Mr Peter Lilley**

I seek further clarification concerning the Council’s no blame culture which councillors (who I thought were here to represent residents) seem reluctant to ask questions about.

I did raise this matter myself at the General Purposes committee meeting on November 10, 2016 but sadly, Coun Butterfield skated round my questions concerning when the no blame culture was introduced - and whether councillors had any say in the matter?

It seems not. It would appear it was introduced by the Chief Executive when asked by the Leader of the Opposition what action would be taken against those officers who mishandled the whole matter concerning the imposition of a discriminatory admission policy (against men) at Harrogate’s Turkish Baths.

Since Mr Sampson is ultimately responsible for ensuring the Council adheres to the policies it claims to be committed to, surely the correct procedure would have been for him to refer himself for independent investigation?

Instead, he won’t even allow the legal advice to be published which presumably would reveal whether the Council had acted improperly or not. This is most concerning.

It would also seem to be a case of double standards. Last summer Coun Burnett faced a full investigation and a standards panel hearing in relation to a complaint that she had acted improperly and misled the public in relation to public feedback on the draft Town Centre Strategy and Masterplan.

So why is it that on this Council (which apparently operates a no blame culture) Coun Burnett was held to blame for her conduct yet, without any investigation or hearing, Mr Sampson is allowed to declare himself blameless?

**Response:**

I am not too sure I can add much to the response Mr Lilley was given at General Purposes Committee.

He asks about the Councillor Burnett standards hearing and whether the outcome demonstrates the presence of a blame culture after all. As I understand it, as the complainant in that case he is surely aware that council policy is to try to reach a local resolution of complaints. If that is not possible then it may be necessary to hold a formal hearing which is what happened in this case.
To the broader no-blame culture issue, no one here goes around looking for people to blame being bitter about what they see as the wrongs of others.

Mistakes can be made and the first step is to understand why the mistake was made and support the person or team who made that mistake in developing so that they do not make the mistake again.

This approach is a forward-looking one designed to bring the best out in people rather than constantly criticise, complain and hark back to the past.

I do not think it is constructive for any organisation or person to obsess with a single issue and use it to constantly bring others down. One mistake – perceived or real – should not be used forever to make an individual feel worthless and persecuted. We want to nurture and grow people.

And that is what a no blame culture looks like. It is a feature of well-run organisations and part of their culture. It isn’t introduced by one Chief Executive or Leader. It is embedded in the culture as part of the way our staff and managers deal with issues.

And it is a culture that we display in our dealings with the public by seeking to resolve matters informally without recourse to finger-pointing and bad tempered meetings. This organisation would rather not shout the odds and trample other people unwilling to accept that genuine mistakes happen with no malicious intent. We are not an organisation that wants to publicly humiliate others rather than support them to do a better job and understand how situations might arise and what the provocations might have been for their actions.

Harrogate Borough Council isn’t the kind of organisation that operates in that way no matter how tempting it might be to descend to a level of petty recriminations. This wastes taxpayers money and officer time and is not the way the Chief Executive and I seek to lead this organisation.
92/16 – PUBLIC ARRANGEMENTS – QUESTIONS: The Mayor advised that he had received notification of two public questions under Standing Order 27 and he invited each of the questioners to step forward and ask their question.

Question to the Leader of the Council, Councillor Richard Cooper, from Mr Peter Lilley

(Amendments made at the meeting to the question as submitted are indicated in italics.)

I want to follow up on the question I asked Councillor Cooper at last month’s meeting. Since then, we [he and I] have been in correspondence but I’m sorry to say we don’t seem to have made any progress in resolving the long-running dispute I have had with the Council concerning its mishandling of the Turkish Baths issue (which I have raised on several previous occasions.)

As I understand it, Councillor Cooper seems to think that by reinstating a weekly men-only bathing session last September, that is the end of the matter; and he essentially refuses to answer any further questions – and appears to have imposed the same policy on his officers.

My point is that the Council’s decision was completely unjustified [And indeed Councillor Marsh described it as a “very grave error” – and she’s quite right.] and-[It] denied men a benefit they were fully entitled to [and therefore I believe, at the very least, we are entitled to a full explanation and a full apology.] If [The decision] was made without proper consultation and without complying in full with the requirements of the Equality Act 2010 and indeed, was allegedly in clear breach of that Act – as well as breaching the Council’s own equalities policy. The Council steadfastly refuses to confirm this despite its claims to be totally committed to the principles of openness, transparency and full accountability. Not in this case it seems. Which, [This] to my mind, raises a [the] much broader question [of the rigour and impartiality of the Council’s scrutiny and governance procedures and whether they are fit for purpose], which is [at the core of] what I want to ask Councillor Cooper about today.

An increasing number of people are now saying quite openly that they don’t trust the Council; most recently in relation to the Council’s plans to change the Stray Act. Residents felt they couldn’t trust you to put sufficient safeguards in place.

So my question to Councillor Cooper is this: if the Council can’t even be straightforward [and fully accountable] on a fundamental issue such as whether it breached an Act of Parliament, why should the public trust the Council and take what it says at face value in relation to the new council offices development, the Town Centre Masterplan – or any other issue?

Response:

Members.

Trust. I think we could have a very interesting philosophical discussion about the nature of trust. Is it an objective matter or a subjective matter? Are there different
levels and degrees of trust and do people trust one aspect of an organisations work and perhaps not another.

Members, I would contend that trust is indeed a very subjective thing, something which is different from individual to individual depending on the interface they have with an organisation or, indeed, a person representing that organisation.

I would further put it to you that trust is not a constant and it can, indeed it does, vary over time often dependent on the outcomes of interactions an individual, and not to say a group of individuals, has or have with an organisation. Trust is also coincident with responsibilities and often trust can be based on rather abstract notions of those responsibilities.

Is it therefore appropriate for me, given the multitude of services and duties, that many organisations have and the vagaries of the human personality to try and ascribe a one-size-fits-all objective level of trust on all the public of the Harrogate district?

But let us assume, just for a moment that one could. If you agree with my hypothesis that trust is a subjective matter and that it is time-dependent then were one ever able to take a snapshot of ‘trust’ within the flash of the camera-bulb that snapshot would be out-of-date.

All my modest abilities allow me to do is express my hopes and aspirations that this council does its best to serve local people and that their thoughts and feelings about us as an organisation and us as councillors reciprocates those hopes and aspirations.

Ultimately trust in political institutions is vested in the ballot box and I am pleased to say that in this regard this administration has not been found wanting.