

# Ethical Standards and Member Development Committee Agenda

**Thursday 13 August 2020 at 4.00pm  
Online Virtual Meeting**

**This agenda gives notice of items to be considered in private as required by Regulations 5 (4) and (5) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.**

- 1. Apologies**  
To receive any apologies for absence.
- 2. Minutes**  
To confirm the minutes of the meeting held on 29 June 2020 as a correct record.
- 3. Declarations of Interest**  
To receive any declarations of interest from members relating to any item on the agenda, in accordance with the provisions of the Code of Conduct and/or S106 of the Local Government Finance Act 1992.
- 4. Additional Items of Business**  
To determine whether there are any additional items of business arising which should be considered at the meeting as a matter of urgency.

## **Public Items**

- 5. LGA Model Code of Conduct and Best Practice Recommendations from the Committee on Standards in Public Life**  
To consider the Council's response to the consultation on the LGA Model Code of Conduct and the action plan in relation to the best practice recommended by the Committee on Standards in Public Life.

- 6. Standards Working Group - Update**  
To provide an update on matters considered by the Standards Working Group and to consider the scope/methodology of the review.
- 7. Update on phase two of the Member Development Programme including implementation of the My Councillor Member Portal**  
To note the continued progress relating to phase two of the Member Development Programme
- 8. Gifts and Hospitality**  
Standing item to consider the gifts and hospitality register.
- 9. National Cases**  
Standing item to consider national cases in relation to Member Code of Conduct.
- 10. Work Programme 2020/21**  
To consider the work programme of the Committee for the 2020/21 municipal year.
- 11. Allegations Update**  
Standing item to consider the update on allegations.

**David Stevens**  
**Chief Executive**

Sandwell Council House  
Freeth Street  
Oldbury  
West Midlands

**Distribution:**

Councillors Ahmed (Vice Chair), Akhter, Dhallu, Hevican, P Hughes, Horton and Simms.

Mr John Tew and Mr Richard Phillips [Independent Persons].

Contact: [democratic\\_services@sandwell.gov.uk](mailto:democratic_services@sandwell.gov.uk)

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# Minutes of the Ethical Standards and Member Development Committee

**29<sup>th</sup> June 2020 at 3.00pm**

- Present:** Councillor Ahmed (Vice Chair);  
Councillors Dhallu, Hevican, P Hughes and Simms.
- Observers:** Mr John Tew and Mr Richard Phillips (Independent Persons).
- Officers:** Surjit Tour – Director of Law and Governance and Monitoring Officer; Elaine Newsome – Service Manager – Democracy; Trisha Newton – Senior Democratic Services Officer.

16/20 **Minute Silence**

The Committee observed a minute silence to mark the passing of the Chair, Councillor Geoff Lewis.

Geoff Lewis had been on the Council for 29 years and had been the Chair of Standards Committee since 2013.

17/20 **Apologies for Absence**

Apologies for absence were received from Councillor Akhter.

18/20 **Minutes**

The minutes of the meeting held on 6<sup>th</sup> March 2020 were agreed as a correct record and signed by the Chair.

19/20      **Declarations of Interest**

No interests were declared at the meeting.

20/20      **Matter of Urgency**

There were no additional items of business to consider.

21/20      **Independent Person**

The Vice Chair welcomed Mr Richard Phillips, Independent Person, to his first meeting of the Committee.

22/20      **LGA Member Code of Conduct Review**

Further to Minute No. 11/20 (6<sup>th</sup> March 2020), the Local Government Association (LGA) had commenced work on revising the model code in September 2019 with an anticipated introduction of the new code at the LGA conference on 30<sup>th</sup> June 2020. This consultation was halted due to the developing Covid-19 situation and has now recommenced with the consultation running from 9<sup>th</sup> June to 17<sup>th</sup> August 2020.

The draft code of conduct forms part of a broader programme of work around civility in public life that aims to address concerns about intimidation of those holding public office and the standards of public and political debate.

Elected Members and Officers had been involved in initial discussions on the content of the code. The Council's Monitoring Officer had been invited by the LGA to participate in progressing this element of the LGA's programme and this was approved by the Committee at its meeting on 6<sup>th</sup> March.

Consultation on the draft Code had now recommenced with a number of avenues offered to local authorities to aid in forming a view. The LGA has developed an online questionnaire and had also offered a series of webinars during July and August and a dedicated email address for any enquiries on the code or consultation process.

The outcome of the national review will influence the Council's own review of its governance arrangements.

It was proposed to launch an internal consultation with Elected Members and they could also provide feedback direct to the LGA.

Arrangements would be made for a meeting of the Standards Working Group to consider the draft Code and to submit recommendations to the Committee prior to the response date of 17 August.

Once the consultation had concluded, the LGA would publish the final Code in September. It was therefore proposed to complete the review of the Council's Code of Conduct and Arrangements for Dealing with Standards Allegations once the model Code was available and arrangements would be made for meetings of the Standards Working Group to take place in the Autumn to undertake the review.

The membership of the Standards Working Group was confirmed and the Vice Chair would liaise with the Director of Law and Governance and Monitoring Officer with regard to the addition of a further meeting to the Group, in the absence of the Chair.

**Agreed that:-**


- (1) the Director of Law and Governance and Monitoring Officer, in consultation with the Vice-Chair of the Committee, be authorised to undertake a consultation exercise with Elected Members and develop the Council's response to the consultation on the LGA Model Code of Conduct;

- (2) a further report, outlining the recommendations of the Standards Working Group, be submitted to the Committee prior to the close of the LGA consultation.

Meeting ended at 3.52pm.

**ETHICAL STANDARDS AND MEMBER DEVELOPMENT COMMITTEE**

**13 August 2020**

<b>Subject:</b>	LGA Model Code of Conduct and Best Practice Recommendations from the Committee on Standards in Public Life
<b>Director:</b>	Director of Law and Governance & Monitoring Officer - Surjit Tour
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Elaine Newsome – Service Manager Democracy

**DECISION RECOMMENDATIONS**

**That :**

1. The Committee reviews the Best Practice recommendations made by the Committee on Standards in Public Life.
2. The Committee reviews the Council’s draft response to the LGA Model Code of Conduct, prior to submission.
3. The Director of Law and Governance and Monitoring Officer, be authorised to submit the final response to the LGA concerning the Model Code of Conduct.

**1 PURPOSE OF THE REPORT**

- 1.1 Further to Minute No. 22/20 (29 June 2020), to seek the Committee’s views on the Council’s draft submission on the LGA Model Code of Conduct prior to the response deadline of 17 August.

**2 IMPLICATIONS FOR VISION 2030**



- 2.1 This matter falls within the Council's Governance agenda which sits at the heart of delivering Vision 2030.

### 3 **BACKGROUND AND MAIN CONSIDERATIONS**

- 3.1 In 2018 the Committee on Standards in Public Life announced a review of ethical standards in local government. The report into Local Government Ethical Standards was published on 19 January 2019, which included a number of recommendations. The report was submitted to Government and a formal response is awaited in relation to how those recommendations will be addressed.

The first recommendation of the report into Local Government Ethical Standards was that the Local Government Association should draft a model code of conduct. In response to this recommendation, the LGA in late 2019 held an event on 'Civility in Public Life' with a range of stakeholders and, at the start of 2020, held three consultation workshops. This led to the draft Model Code of Conduct that is currently out for consultation.

All stakeholders, which includes Elected Members, Independent Persons, Councils, Monitoring Officers, etc. have been invited to respond to the consultation draft.

The main changes are summarised below:-

- a. the application of the draft Code applies a presumption that Elected Members are acting in their capacity as a councillor and are expected to uphold and show leadership at all times;
- b. the application of the draft Code is explicitly extended to cover all forms of Elected Member communication and interaction, including social media;
- c. the term 'civility' replaces 'respect' in obligations 1 and 2;
- d. the definition of 'bullying and harassment' is set out in the accompanying guidance to obligation 3;
- e. the requirement to disclose interests as set out at obligation 10 and in the appendices is extended to include the financial interest or well-being of a friend relative or close associate;
- f. the requirement to register other interests is extended as set out in table 2 of appendix B;
- g. sanctions have been extended to include bars on chairing advisory committees and special committees or attending committees for up to two months.

The deadline for consultation responses is 17 August 2020.

## **4 THE CURRENT POSITION**

- 4.1 At its meeting on 29<sup>th</sup> June 2020, the Committee received the draft LGA Code of Conduct (as set out at Appendix 3) and recommended that the matter be considered by the Standards Working Group in order to make recommendations to this Committee in relation to the Council's response.
- 4.2 In addition, the draft Code of Conduct has been circulated to all Members of the Council asking for feedback, along with details of how they can make individual submissions and also advising of the webinars available to elected members in relation to the Code. The Director of Law and Governance and Monitoring Officer has not received any direct feedback from members, however, provisions are in place for Members to respond directly to the LGA with their input.
- 4.3 The Committee on Standards in Public Life has also provided some best practice recommendations to be taken into consideration (as attached at Appendix 1).
- 4.4 Following a meeting of the Standards Working Group meeting, held on 27 July 2020, the draft submission has been prepared, as attached at Appendix 2. Where it was considered there was an overlap between the best practice recommendations and the draft Code, this has been incorporated into the draft submission.
- 4.5 The Committee is now requested to consider the submission, making any suggested amendments in order that the Director of Law and Governance and Monitoring Officer can submit the response on behalf of the Council.

## **5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)**

- 5.1 Local authorities and stakeholders are invited to contribute to the consultation process. The outcome of the consultation and any associated revisions to the draft code are anticipated to be considered by the LGA general assembly in the autumn.

## **6 ALTERNATIVE OPTIONS**

- 6.1 The Council could opt not to be involved in the LGA consultation. This would be a missed opportunity to affect a key national initiative.

## **7 STRATEGIC RESOURCE IMPLICATIONS**

7.1 None directly associated with this report.

## **8 LEGAL AND GOVERNANCE CONSIDERATIONS**

8.1 The Council has a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by its elected members. The Code of Conduct sets out the expectations placed on members.

## **9 EQUALITY IMPACT ASSESSMENT**

9.1 None associated with this report.

## **10 DATA PROTECTION IMPACT ASSESSMENT**

10.1 None associated with this report.

## **11 CRIME AND DISORDER AND RISK ASSESSMENT**

11.1 The proposed revised code of conduct forms part of a wider piece of work by the LGA to explore civility in public life.

## **12 SUSTAINABILITY OF PROPOSALS**

12.1 The Council has a responsibility to ensure that the Monitoring Officer is appropriately resourced in order to that they are able to carry out their statutory functions.

## **13 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)**

13.1 None associated with this report.

## **14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND**

14.1 None associated with this report.

**15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

15.1 The LGA review of the model code will influence the direction of the Council's review of its governance arrangements. It is appropriate and timely for the Committee and the Council's Director of Law and Governance & Monitoring Officer to contribute to the development of the revised model.

**16 BACKGROUND PAPERS**

16.1 None associated with this report.

**17 APPENDICES:**

**Appendix 1 – Committee on Standards in Public Life – Best Practice recommendations**

**Appendix 2 – Draft Feedback on the LGA Consultation Questions**

**Appendix 3 – LGA Draft Model Code of Conduct and Appendices**

**Surjit Tour**

**Director of Law and Governance and Monitoring Officer**

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Sent by email  
to Local Authorities in England  
For the attention of the Chief Executive

**Committee on  
Standards in  
Public Life**

July 2020

## **LOCAL GOVERNMENT ETHICAL STANDARDS**

I am writing from the Committee on Standards in Public Life to follow up recommendations made in our January 2019 [report](#) on local government ethical standards.

In that report, we identified some best practice recommendations which represent a benchmark for ethical practice and which we expect any local authority should implement.

We said in our report that we would review the implementation of those best practice recommendations in 2020. We completely understand the unexpected and unprecedented pressures that local authorities are facing this year with COVID-19, so we are not of course asking for an immediate response. The purpose of this email is to let you know that we will be writing again in the autumn to ask you for your progress against these recommendations. I have attached a list of the best recommendations for ease of reference, but they are of course also set out in the report.

If you have any questions, please do just let us know. Otherwise, we wish you well and look forward to being in touch again later this year.

Secretariat  
Committee on Standards in Public Life

## List of Best Practice Recommendations

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

**Best practice 1:** Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

**Best practice 2:** Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

**Best practice 3:** Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

**Best practice 4:** An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

**Best practice 5:** Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

**Best practice 6:** Councils should publish a clear and straightforward public interest test against which allegations are filtered.

**Best practice 7:** Local authorities should have access to at least two Independent Persons.

**Best practice 8:** An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial. 19 List of best practice

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

**Best practice 10:** A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

**Best practice 11:** Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

**Best practice 12:** Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

**Best practice 13:** A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

**Best practice 14:** Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

**Best practice 15:** Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.



# List of best practice

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**Best practice 15:** Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

### LGA – Consultation on Model Code of Conduct

#### Draft response of the Ethical Standards & Member Development Committee

Q1. To what extent do you support the proposal that councillors demonstrate the behaviours set out in the Code when they are publicly acting as, identifying as, and/or giving the impression that they are acting as a councillor, including when representing their council on official business and when using social media?

**o To a great extent**

o To a moderate extent

o To a small extent

o Not at all

o Don't know/prefer not to say

Q1a. If you would like to elaborate on your answer please do so here:

Greater clarity is required as to when the Code applies. As drafted there is no distinction between a councillor's private and public life.

More specific guidance and examples would be helpful for members of the public and Elected Members.

Does "or if there are potential implications for the council's reputation" mean the same as bringing the Council into disrepute? If not, the difference needs to be explained

If there is a presumption that councillors are acting in this capacity, this is presumably a rebuttable presumption that would place the onus on the councillor to prove that they were not acting in that capacity? If it is a rebuttable presumption, then that should be made clear.

The code refers to the use of social media but more specific guidance is required in relation to social media, its use and how members should conduct themselves, particularly when dealing with aggressive and/or abusive persons.

Q2. Is it sufficiently clear which parts of the Model Code are legal requirements, which are obligations, and which are guidance?

Yes

**No**

Don't know

Q3. Do you prefer the use of the personal tense, as used in the Code, or would you prefer the passive tense?

Personal tense (“I will”)

**Passive tense (“Councillors should”)**

No preference

Specific obligations The Code lists 12 specific obligations – these set out a minimum standard councillors are asked to adhere to. Each obligation or group of obligations is put into a wider context to explain why that particular obligation is important.

Q4. To what extent do you support the 12 specific obligations?

a. Treating other councillors and members of the public with civility.

- To a great extent**
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

b. Treating council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respecting the role that they play.

- To a great extent**
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

c. Not bullying or harassing any person.

- **To a great extent**

- To a moderate extent
- To a small extent
- Not at all  Don't know/prefer not to say

d. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.

- **To a great extent**

- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

e. Not disclosing information given to me in confidence or disclosing information acquired by me which I believe is of a confidential nature, unless I have received the consent of a person authorised to give it or I am required by law to do so.

- **To a great extent**

- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

f. Not preventing anyone getting information that they are entitled to by law.

- **To a great extent**

- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

g. Not bringing my role or council into disrepute.

- **To a great extent**

- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

h. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.

- **To a great extent**
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

Q6. Would you prefer to see the obligations as a long list followed by the guidance, or as it is set out in the current draft, with the guidance after each obligation?

- As a list
- Each specific obligation followed by its relevant guidance**
- No preference

Q7. To what extent do you think the concept of 'acting with civility' is sufficiently clear?

- To a great extent
- To a moderate extent
- To a small extent**
- Not at all
- Don't know/prefer not to say

Q7a. If you would like to suggest an alternative phrase that captures the same meaning, or would like to provide a comment on this concept, please do so here:

The use of the word 'respect' is better understood by Elected members and the public than the word 'civility'.

Civility is a vague concept and attracts wider interpretation which is unlikely to be helpful in ensuring the standards expected of those in public office are clear and easily understood.

It is possible to be both civil and disrespectful which undermines the whole purpose of this obligation.

Q8. To what extent do you think the concept of 'bringing the council into disrepute' is sufficiently clear?

**To a great extent**

To a moderate extent

To a small extent

Not at all

Don't know/prefer not to say

Q8a. If you would like to suggest an alternative phrase that captures the same meaning, or would like to provide a comment on this concept, please do so here:

No. As with the use of the word 'respect', this obligation is clear and understood.

Q9. To what extent do you support the definition of bullying and harassment used in the code in a local government context?

**To a great extent**

To a moderate extent

To a small extent

Not at all

Don't know/prefer not to say

Q9a. If there are other definitions you would like to recommend, please provide them here.

None.

Q10. Is there sufficient reference to the use of social media?

Yes

**No**

Don't know/prefer not to say

Q10a. Should social media be covered in a separate code or integrated into the overall code of conduct?

o Separate code

o **Integrated into the code**

o Don't know/prefer not to say

Q10b. If you would like to make any comments or suggestions in relation to how the use of social media is covered in the code please do so here:

The code needs to explicitly address social media use and engagement.

Social media has many advantages and is a key engagement tool that bring with it many benefits to the public and Elected Members. Social media needs to be embraced and utilised with confidence.

However, the use of social media needs to meet the same standards as communication in other platforms. Consideration should be given to aligning the code and guidance with the guidance given to MPs on using social media (i.e. Twitter).

The code or guidance should explicitly deal with how Elected Members should deal with aggressive and abusive persons and how unfair, inaccurate and offensive commentary by others about the Elected Member should be addressed.

Clarification should also be provided as to whether as to the presumption that an Elected Member is acting in their councillor capacity applies when engaging in social media, given the wide ranging discussions/commentaries that take place on social media.

**Registration and declarations of interests** - The law at present requires, as a minimum, registration and declaration of 'Disclosable Pecuniary Interests' - that is matters which directly relate to the councillor and their partner if applicable. The LGA is proposing that all councillors are required to declare interests where matters also relate to or affect other family members or associates. The LGA has broadened the requirement to declare interests beyond this current statutory minimum in line with a recommendation from the Committee on Standards in Public Life. These specific provisions are set out in Appendix B of the Code.

Q11. To what extent do you support the code going beyond the current requirement to declare interests of the councillor and their partner?

**To a great extent**

To a moderate extent

To a small extent

Not at all  Don't know/prefer not to say

Q11a. If you would like to elaborate on your answer please do so here:

The Code should include 'relatives' and 'close associates' and 'financial and interest and well-being', however clear definitions should be provided in respect of each.

The public would expect such persons to be included in the Code in the interests of greater openness and transparency.

Q12. Should the requirement to declare interests be in the main body of the code or in the appendix where the draft model code currently references it?

**In the main body of the code**

In the appendix  Other (please specify below)

Don't know/prefer not to say

Q12a. If you would like to make any comments or suggestions in relation to how the requirement to declare interests is covered in the code please do so here:

A wider definition of outside interests/bodies in respect of which an Elected Member is a member of or appointed to should be included in the Code.

The public would expect greater disclosure in the interests of openness and transparency.



Q13. To what extent do you support the inclusion of these additional categories for registration?

a. Any organisation, association, society or party of which you are a member or in a position of general control or management and to which you are appointed or nominated by the council

- **To a great extent**
- To a moderate extent
- To a small extent
- Not at all o Don't know/prefer not to say

b. Any organisation, association, society or party that exercises functions of a public nature of which you are a member or in a position of general control or management

- **To a great extent**
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

c. Any organisation, association, society or party directed to charitable purposes

- **To a great extent**
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

d. Any organisation, association, society or party of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

- **To a great extent**
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

Q13a. If you would like to propose additional or alternative categories for registration, please provide them here:

Further clarity around declarations of interest for council owned companies would be welcomed.

Q14. To what extent do you support the proposed requirement that councillors do not accept significant gifts as set out in Obligation 11?

- **To a great extent**
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

Q14a. If you would like to elaborate on your answer please do so here:

Promotes and maintains public trust and confidence in Elected Members and their decision making.

Q15. The draft code proposes £25 as the threshold for registering gifts and hospitality. Is this an appropriate threshold?

- Yes
- Yes, but the amount should be reviewed annually with the code's review
- No, it should be lower (please specify amount) \_\_\_\_\_
- No, it should be higher (please specify amount) - £100**
- Don't know/prefer not to say

Q16. The LGA will be producing accompanying guidance to the code. Which of the following types of guidance would you find most useful? Please rank 1-5, with 1 being the most useful.

Rank	Guidance
1	Regularly updated examples of case law
1	Explanatory guidance on the code
1	Case studies and examples of good practice
1	Supplementary guidance that focuses on specific areas, e.g., social media
1	Improvement support materials, such as training and e-learning packages

Q16a. If you would like to suggest any other accompanying guidance please do so here:

Additional guidance around council owned companies.

Q17. If you would like to make any further comments about the code please so here:

The sanctions remain insufficient for serious conduct breaches and need to be more robust otherwise the public's confidence democracy overall will potentially be undermined.

The bar on chairing advisory or special committees for up to two could be ineffective as not all Councils have such committees; or if they did, have little impact if they did not meet frequently enough. Unfortunately, this sanction highlights the 'toothless' nature of the sanctions available and demonstrates the need for a change in primary legislation to address this issue.

The LGA should lead on the development of the 'public interest test' which should form part of the guidance accompanying the Code.

It should be made clear that Elected Members must to cooperate with any standards investigation in a timely manner and comply with any sanctions imposed; and a failure to do so amounts to a breach of obligation 7 (Disrepute).

The Code and/or guidance needs to expressly require standards complaints to be dealt within a reasonable period of time.

It is unclear what is meant by 'to appeal allegations and decisions and allow for an escalating scale of intervention'. The unintended consequences of this need to be considered as it will inevitably lead to a matter being prolonged, potentially greater uncertainty and a conclusion taking longer to achieve.

# Local Government Association Model Member Code of Conduct

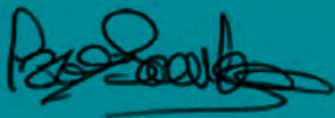
# Introduction

The Local Government Association (LGA) is providing this Model Member Code of Conduct as part of its work on supporting the sector to continue to aspire to high standards of leadership and performance.

The role of councillor in all tiers of local government is a vital part of our country's system of democracy. In voting for a local councillor, the public is imbuing that person and position with their trust. As such, it is important that as councillors we can be held accountable and all adopt the behaviours and responsibilities associated with the role. The conduct of an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to and want to participate with. We want to continue to attract individuals from a range of backgrounds and circumstances who understand the responsibility they take on and are motivated to make a positive difference to their local communities.

All councils are required to have a local Member Code of Conduct. This Model Member Code of Conduct has been developed in consultation with the sector and is offered as a template for councils to adopt in whole and/or with local amendments. The LGA will undertake an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code, whilst the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.


As a councillor we all represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent everyone (in our ward/town/parish), taking decisions fairly, openly, transparently and with civility. Councillors should also be treated with civility by members of the public, other councillors and council employees. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations. This Code, therefore, has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.



**Councillor Izzi Seccombe OBE**  
Leader, LGA Conservative Group



**Councillor Nick Forbes CBE**  
Leader, LGA Labour Group



**Councillor Howard Sykes MBE**  
Leader, LGA Liberal Democrats Group



**Councillor Marianne Overton MBE**  
Leader, LGA independent Group

## Purpose

The purpose of this Code of Conduct is to assist councillors in modelling the behaviour that is expected of them, to provide a personal check and balance, and to set out the type of conduct against which appropriate action may be taken. It is also to protect yourself, the public, fellow councillors, council officers and the reputation of local government. It sets out the conduct expected of all members and a minimum set of obligations relating to conduct. The overarching aim is to create and maintain public confidence in the role of member and local government.

## Application of the Code

The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting]<sup>1</sup> in [public or in]<sup>2</sup> your capacity as a member or representative of your council, although you are expected to uphold high standards of conduct and show leadership at all times. The Code applies to all forms of member communication and interaction, including written, verbal, non-verbal, electronic and via social media, [including where you could be deemed to be representing your council or if there are potential implications for the council's reputation.] Model conduct and expectations is for guidance only, whereas the specific obligations set out instances where action will be taken.

## The seven principles of public life

Everyone in public office at all levels – ministers, civil servants, members, council officers – all who serve the public or deliver public services should uphold the seven principles of public life. This Code has been developed in line with these seven principles of public life, which are set out in appendix A.

## Model member conduct

In accordance with the public trust placed in me, on all occasions I will:

- act with integrity and honesty
- act lawfully
- treat all persons with civility; and
- lead by example and act in a way that secures public confidence in the office of councillor

In undertaking my role, I will:

- impartially exercise my responsibilities in the interests of the local community
- not improperly seek to confer an advantage, or disadvantage, on any person
- avoid conflicts of interest
- exercise reasonable care and diligence; and
- ensure that public resources are used prudently and in the public interest

## Specific obligations of general conduct

This section sets out the minimum requirements of member conduct. Guidance is included to help explain the reasons for the obligations and how they should be followed. These obligations must be observed in all situations where you act [or claim or give the impression that you are acting] as a councillor [or in public], including representing your council on official business and when using social media.

**As a councillor I commit to:**

## Civility

- 1. Treating other councillors and members of the public with civility.**
- 2. Treating council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respecting the role that they play.**

Civility means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a civil manner. You should not subject individuals, groups of people or organisations to unreasonable or excessive personal attack.

In your contact with the public you should treat them courteously. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In return you have a right to expect courtesy from the public. If members of the public are being abusive, threatening or intimidatory you are entitled to close down any conversation in person or online, refer them to the council, any social media provider or if necessary, the police. This also applies to members, where action could then be taken under the Member Code of Conduct.

## Bullying and harassment

- 3. Not bullying or harassing any person.**

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. The bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.

The Equality Act 2010 defines harassment as 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'. The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

## Impartiality of officers of the council

- 4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.**

Officers work for the council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. Although you can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

## Confidentiality and access to information

- 5. Not disclosing information given to me acquired by me which I believe is of received the consent of a person authorised to give it or I am required by law to do so.**
- 6. Not preventing anyone getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and



printed materials are open to the public except in certain circumstances. You should work on this basis but there will be times when it is required by law that discussions, documents and other information relating to or held by the council are treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

## Disrepute

### **7. Not bringing my role or council into disrepute.**

Behaviour that is considered dishonest and/or deceitful can bring your council into disrepute. As a member you have been entrusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on other councillors and/or your council.

## Your position

### **8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

Your position as a member of the council provides you with certain opportunities, responsibilities and privileges. However, you should not take advantage of these opportunities to further private interests.

## Use of council resources and facilities

### **9. Not misusing council resources.**

You may be provided with resources and facilities by the council to assist you in carrying out your duties as a councillor. Examples include office support, stationery and equipment such as phones, and computers and transport. These are given

to you to help you carry out your role as a councillor more effectively and not to benefit you personally.

## Interests

### **10. Registering and declaring my interests.**

You need to register your interests so that the public, council employees and fellow members know which of your interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest. The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise.

It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained. Discuss the registering and declaration of interests with your Monitoring Officer/Town or Parish Clerk and more detail is set out in appendix B.

## Gifts and hospitality

### **11.**

**hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission,**

### **12.**

**any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.**

You should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you

because you are a member. However, you do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you may wish to notify your monitoring officer of any significant gifts you are offered but refuse which you think may have been offered to influence you.

Note – items in square brackets [x] refer to recommendations made by the Committee on Standards in Public Life and may be part of a future Government consultation. This includes possible future sanctions and appeals processes.

## Breaches of the Code of Conduct

Most councillors conduct themselves appropriately and in accordance with these standards. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

Section 27 of the Localism Act 2011 requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person', and sanctions to be imposed on any councillors who breach the Code.

The 2011 Act also requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the Code of Conduct, and arrangements under which decisions on allegation may be made.

Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence. Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence.

Political parties may have its own internal standards and resolution procedures in addition to the Member Code of Conduct that members should be aware of.

# Example

## LGA guidance and recommendations

### Internal resolution procedure

Councils must have in place an internal resolution procedure to address conduct that is in breach of the Member Code of Conduct. The internal resolution process should make it clear how allegations of breaches of the Code of Conduct are to be handled, including the role of an Independent Person, the appeals process and can also include a local standards committee. The internal resolution procedure should be proportionate, allow for members to appeal allegations and decisions, and allow for an escalating scale of intervention. The procedure should be voted on by the council as a whole.

In the case of a non-criminal breach of the Code, the following escalating approach can be undertaken.

If the breach is confirmed and of a serious nature, action can be automatically escalated.

1. an informal discussion with the monitoring officer or appropriate senior officer
2. an informal opportunity to speak with the affected party/ies
3. a written apology
4. mediation
5. peer support
6. requirement to attend relevant training
7. where of a serious nature, a bar on chairing advisory or special committees for up to two months
8. where of a serious nature, a bar on attending committees for up to two months.

Where serious misconduct affects an employee, a member may be barred from contact with that individual; or if it relates to a specific responsibility of the council, barred from participating in decisions or information relating to that responsibility.

## Endnotes

1. CSPL recommend that “Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority”.
2. CSPL recommend that “councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.”
3. Subject to footnotes 1 and 2 above
4. See CSPL website for further details [www.gov.uk/government/news/the-principles-of-public-life-25-years](http://www.gov.uk/government/news/the-principles-of-public-life-25-years)
5. ACAS’s definition of bullying

# Appendices

## Code Appendix A

The principles are :

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

### **Integrity**

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

### **Objectivity**

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

### **Accountability**

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

### **Openness**

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

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

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

## Code Appendix B

### **Registering interests**

1. Within 28 days of this Code of Conduct being adopted by the council or your election or appointment to office (where that is later) you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) and Table 2 (Other Registerable Interests).
2. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest in Table 1 or 2, or of any change to a registered interest, notify the Monitoring Officer.

### **Declaring interests**

3. Where a matter arises at a meeting which directly relates to an interest in Table 1, you must declare the interest, not participate in any discussion or vote on the matter and must not remain in the room unless granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
4. Where a matter arises at a meeting which directly relates to an interest in Table 2, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

5. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest) or a financial interest or well-being of a relative or close associate, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
6. Where a matter arises at a meeting which affects –
  - a. your own financial interest or well-being;
  - b. a financial interest or well-being of a friend, relative, close associate; or
  - c. a body covered by table 1 below

you must disclose the interest.

7. Where the matter affects the financial interest or well-being to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

**Table 1: Disclosable Pecuniary Interests**

Subject	Description
<b>trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain. [Any unpaid directorship.]
<b>Sponsorship</b>	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the <b>Trade Union and Labour Relations (Consolidation) Act 1992</b> .
<b>Contracts</b>	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council — (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
<b>Land and Property</b>	Any beneficial interest in land which is within the area of the council. ‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.
<b>Licences</b>	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.
<b>Corporate tenancies</b>	Any tenancy where (to the councillor’s knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
<b>Securities</b>	Any beneficial interest in securities* of a body where— (a) that body (to the councillor’s knowledge) has a place of business or land in the area of the council; 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 councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

\*'director' includes a member of the committee of management of an industrial and provident society.

\*'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

**Table 2: Other Registerable Interests**

Any Body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the council;	
Any Body—	(a) exercising functions of a public nature;
	(b) directed to charitable purposes; or
	(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
of which you are a member or in a position of general control or management.	







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please contact us on 020 7664 3000.  
We consider requests on an individual basis.

REF 11.197

## **The Local Government Association Model Member Code of Conduct Consultation Draft**

### **LGA introduction**

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### **Breaches of the Code of Conduct**

Most councillors conduct themselves appropriately and in accordance with these standards. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

Section 27 of the Localism Act 2011 requires relevant authorities to promote and maintain high standards of conduct by Members and co-opted Members of the authority. Each local



authority must publish a code of conduct, and it must cover the registration of pecuniary

interests, the role of an 'Independent Person' to advise on and investigate alleged breaches, and sanctions to be imposed on any councillors who breach the Code.

The 2011 Act also requires local authorities to have mechanisms in place to investigate allegations that a Member has not complied with the Code of Conduct, and arrangements under which decisions on allegation may be made.

Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence. Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence.

Political parties may have its own internal standards and resolution procedures in addition to the Member code of conduct that Members should be aware of.

Note – items in square brackets [x] refer to recommendations made by the Committee on Standards in Public Life and may be part of a future Government consultation. This includes possible future sanctions and appeals processes.

## **LGA Guidance and recommendations**

### **Internal resolution procedure**

Councils should have in place an internal resolution procedure to address conduct that is in breach of the Member Code of Conduct. The internal resolution process should make it clear how allegations of breaches of the Code of Conduct are to be handled, including the role of an Independent Person, the appeals process and can also include a local Standards Committee. The internal resolution procedure should be proportionate, allow for Members to appeal allegations and decisions, and allow for an escalating scale of intervention. The procedure should be voted on by the Council as a whole.

In the case of a non-criminal breach of the Code, the following escalating approach can be undertaken. If the breach is confirmed and of a serious nature, action can be automatically escalated.

1. An informal discussion with the Monitoring Officer or appropriate senior officer
2. An informal opportunity to speak with the affected party/ies
3. A written apology
4. Mediation
5. Peer support
6. Requirement to attend relevant training
7. Where of a serious nature, a bar on chairing advisory or special committees for up to two months
8. Where of a serious nature, a bar on attending committees for up to two months

Where serious misconduct affects an employee, a Member may be barred from contact with that individual; or if it relates to a specific responsibility of the council, barred from participating in decisions or information relating to that responsibility.

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<sup>i</sup> CSPL recommend that "Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a Member when they claim to act, or give the impression they are acting, in their capacity as a Member or as a representative of the local authority".

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<sup>ii</sup> CSPL recommend that “councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.”

<sup>iii</sup> Subject to footnotes 1 and 2 above

<sup>iv</sup> See CSPL website for further details <https://www.gov.uk/government/news/the-principles-of-public-life-25-years>

<sup>v</sup> acas’s definition of bullying.

DRAFT

The principles are<sup>1</sup>:

### **Selflessness**

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

### **Integrity**

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

### **Objectivity**

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

### **Accountability**

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

### **Openness**

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

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

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

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<sup>1</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life>

## Registering interests

1. Within 28 days of this Code of Conduct being adopted by the council or your election or appointment to office (where that is later) you must register with the Monitoring Officer the interests which fall within the categories set out in Table A (Disclosable Pecuniary Interests) and Table B (Other Registerable Interests).
2. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest in Table A or B, or of any change to a registered interest, notify the Monitoring Officer.

## Declaring interests

3. Where a matter arises at a meeting which directly relates to an interest in Table A, you must declare the interest, not participate in any discussion or vote on the matter and must not remain in the room unless granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
4. Where a matter arises at a meeting which directly relates to an interest in Table B, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
5. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest) or a financial interest or well-being of a relative or close associate, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
6. Where a matter arises at a meeting which affects –
  - a. your own financial interest or well-being;
  - b. a financial interest or well-being of a friend, relative, close associate; or
  - c. a body covered by table 1 below

you must disclose the interest.

7. Where the matter affects the financial interest or well-being to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

Table 1: Interests described in the table below.

<b>Subject</b>	<b>Description</b>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.  [Any unpaid directorship.]
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made to the Councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a Councillor, or towards his/her election expenses.
	This includes any payment or financial benefit from a trade union within the meaning of the <a href="#">Trade Union and Labour Relations (Consolidation) Act 1992</a> .
Contracts	Any contract made between the Councillor or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the Council —
	(a) under which goods or services are to be provided or works are to be executed; and
	(b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the Council.  'Land' excludes an easement, servitude, interest or right in or over land which does not give the Councillor or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.
Corporate tenancies	Any tenancy where (to the Councillor's knowledge)—

	(a) the landlord is the Council; and
	(b) the tenant is a body that the Councillor, or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where—
	(a) that body (to the Councillor's knowledge) has a place of business or land in the area of the Council; 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 Councillor, or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

\*'director' includes a member of the committee of management of an industrial and provident society.

\*'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

**Table B**

- (i) Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the council;
- (ii) Any body—
  - (a) exercising functions of a public nature;
  - (b) directed to charitable purposes; or
  - (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

of which you are a member or in a position of general control or management.

**ETHICAL STANDARDS AND MEMBER DEVELOPMENT COMMITTEE**

**13 August 2020**

<b>Subject:</b>	Standards Working Group Update
<b>Director:</b>	Director of Law and Governance & Monitoring Officer - Surjit Tour
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Elaine Newsome – Service Manager Democracy

**DECISION RECOMMENDATIONS**

**That the Committee:**

1. Notes the updates from Standards Working Group in relation to the review of the Code of Conduct/Arrangements for Dealing with Standards Allegations.
2. Approves the scope and methodology for the review of the Code of Conduct/Arrangements for Dealing with Standards Allegations by the Standards Working Group.

**1 PURPOSE OF THE REPORT**

The Standards Working Group was convened by the Committee with a remit to review the Council’s Ethical Framework. The Group has met on three occasions and an update is provided to the Committee on outstanding issues and consideration of the scope/methodology of the forthcoming review of the Code of Conduct/Arrangements for Dealing with Standards Allegations.



## 2 **IMPLICATIONS FOR VISION 2030**

- 2.1 This matter falls within the Council's Governance agenda which sits at the heart of delivering Vision 2030.

## 3 **BACKGROUND AND MAIN CONSIDERATIONS**

- 3.1 The Standards Working Group has met on three occasions and the following matters have been considered with updates provided:-

- **Review of the Code of Conduct and Arrangements for Dealing with Standards Allegations**

It is proposed that the review will take place in the Autumn once the LGA have published the Code. The proposed scope of the review and methodology is attached as an appendix for consideration.

- **DBS Checks**

The working group have undertaken to explore corporate policy options in relation to DBS checks for elected members. The latest eligibility guidance is attached for information and will be considered at the next meeting of the working group.

- **Registers** – officers are looking at a self-service option on CMIS or a facility within the new member portal to enable members to make revisions to their register of interest. An update will be provided to a future meeting.
- **Retention Policy for Registers** – a report will be submitted to the next meeting of the Standards Working Group with recommendations.
- **Casework** – concerns were expressed by members that there was no clear guidance with regard to information gathered in relation to casework. A template will be circulated to all elected members to assist with casework/surgeries in relation to GDPR;
- **Remuneration for Independent Persons** – further to Minute No. 32/19 (4 October 2019) research is currently being undertaken with regard to remuneration for Independent Persons and this will be included as part of the review of the Code/Arrangements in the Autumn.

## **4 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)**

4.1 Not applicable.

## **5 ALTERNATIVE OPTIONS**

5.1 Where necessary, reports will be submitted to a future meeting of the Committee outlining all options.

## **6 STRATEGIC RESOURCE IMPLICATIONS**

6.1 There are no direct resource implications arising from this report. However, should there be a future policy decision on the introduction of DBS checks, then appropriate resources would need to be identified.

## **7 LEGAL AND GOVERNANCE CONSIDERATIONS**

8.1 The Council has a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by its elected members.

## **8 EQUALITY IMPACT ASSESSMENT**

8.1 None associated with this report.

## **9 DATA PROTECTION IMPACT ASSESSMENT**

9.1 None associated with this report.

## **10 CRIME AND DISORDER AND RISK ASSESSMENT**

10.1 The proposed revised code of conduct forms part of a wider piece of work by the LGA to explore civility in public life.

## **11 SUSTAINABILITY OF PROPOSALS**

11.1 The Council has a responsibility to ensure that the Monitoring Officer is appropriately resourced in order to that they are able to carry out their statutory functions.

## **12 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)**

12.1 None associated with this report.

**13 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND**

13.1 None associated with this report.

**14 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

The Committee is asked to notes the updates from Standards Working Group in relation to the review of the Code of Conduct/Arrangements for Dealing with Standards Allegations and to approve the scope/ methodology for the forthcoming review.

**15 BACKGROUND PAPERS**

15.1 None associated with this report.

**16 APPENDICES:**

**Appendix 1 – Proposed scope/methodology for review of Code of Conduct and Arrangements for Dealing with Standards Allegations**  
**Appendix 2 – Disclosure and Barring Service Eligibility**

**Surjit Tour**

**Director of Law and Governance and Monitoring Officer**

## **Standards Working Group**

### **Review of Code of Conduct and Arrangements for Dealing with Standards Allegations**

#### **1. Approach**

- 1.1 The Council has addressed a number of high profile and significant standards cases recently. The Local Government Association (LGA) has published a revised draft code of conduct for consultation which all Councils are invited to participate in. The revised draft code aims to address a number of recommendations and best practice proposals from the Committee for Standards in Public Life.
- 1.2 This review is timely in that it allows the working group to consider recent and existing conduct related cases and identify important learning points that can inform additional activity, code scope and content, a refresh of the arrangements for dealing with complaints and guidance with a view toward a revised corporate culture, highest standards of Elected Member conduct and avoidance of a recurrence of previous poor behaviours amongst (a small number of) Elected Members.
- 1.3 The working group is also required to consider what other steps the Council should take in discharging its statutory duty under section 27, Localism Act 2011 that impose a duty upon all councils to promote and maintain high standards of conduct amongst its Elected and Co-opted Members.

- 1.4 This note proposes a methodology to assist the working group undertake a review of:

### **Member Code of Conduct**

Areas of Focus:-

- Part I
  - o Purpose of Code
  - o Definition
  - o Application of the Code
- Part II
  - o Rules of Conduct
  - o Behaviour
  - o Registration of interests
  - o Declaration of interests at meetings

### **Arrangements for dealing with standards allegations**

Areas of Focus:-

- How to make a complaint
- Complaint process
- Criteria for assessment/progression of complaints
- Guidance on the role and responsibilities of the Independent Person(s)
- Conduct of Investigation
- Evidence of Failure to Comply
- Local Resolution
- Local Hearing
- Action that can be taken by Ethical Standards Committee
- Publication of Investigations
- Access to information during an investigation
- Appeals
- Complaints Form

## Duty to Promote and Maintain High Standards of Conduct

Areas of Focus:-

- Scope and understanding
- Defining the standard
- Culture and behaviour change management
- Measuring success in discharging the duty

### Proposed Methodology

Phase	Task	Method	Timeline
Insight	Compare and contrast existing code and arrangements with revised LGA code (post consultation) and best practice recommendations from the Committee for Standards in Public Life	Desktop/workshop	End October 2020 (dependent upon LGA timescale)
	Analysis of recommendations and best practice mechanisms from Committee on Standards in Public Life	Desktop	End August 2020
	Collate summary of cases	Desktop	End September 2020
	Analysis of case summaries  To include: - what worked well, what did not work/requires improvement - strengths and weaknesses - emerging themes	Desktop/Workshop	October 2020

Phase	Task	Method	Timeline
	Analysis of the effectiveness of the existing code and arrangements for dealing with complaints.		
	<p>Workshop to look at analysis of cases and existing arrangements for dealing with complaints - to pull out the issues and areas for development.</p> <p>Propose session identifying:-</p> <ul style="list-style-type: none"> <li>- current strengths/compliance with best practice</li> <li>- areas for improvement</li> <li>- room to introduce new things – where are the gaps</li> <li>- associated risks of no change/change</li> <li>- what are the outcomes we are looking to achieve</li> </ul>	Workshop	October 2020
	Consultation with all elected members	Workshop, survey	Dependent upon LGA final draft code publication
	Collate data for other authorities – comparison exercise	Desktop	End September 2020

<b>Phase</b>	<b>Task</b>	<b>Method</b>	<b>Timeline</b>
	<p>Visioning Exercise</p> <p>Create a scenario – key questions:</p> <p>What does it look like/how does it feel?</p> <p>What were the key milestones that created the success?</p> <p>What were the key barriers to overcome?</p> <p>Key input to make the review a success?</p>	Workshop	November 2020
Review/ Issues	<ul style="list-style-type: none"> <li>- Understanding the issues.</li> <li>- Evaluation of the issues.</li> <li>- Defining the Outcome.</li> <li>- Where are we – where do we want to be?</li> <li>- Any room for creativity?</li> <li>- Associated costs – is there a less costly approach, e.g. prevention of lengthy delays in process.</li> <li>- Cultural issues – gaps in training/gaps in policies – are policies adequate and cover all current-day issues?</li> </ul>	Workshop	November 2020
Proposals	<ul style="list-style-type: none"> <li>- Informed proposals to address the issues identified.</li> <li>- Look at cultural/behavioural change programme.</li> </ul>		December 2020/January 2021



<b>Phase</b>	<b>Task</b>	<b>Method</b>	<b>Timeline</b>
	- What are the training requirements.		
	Report to Ethical Standards Committee and Member Development Committee – recommendations to full Council		February for March Council

**Recommendation:**

The Committee is asked to:

1. agree the scope for the review as outlined above;
2. approval the proposed methodology; and
3. authorise the Monitoring Officer to timetable and progress the activities detailed in the agreed methodology as soon as practicably possible.

**Surjit Tour**

**Director of Law and Governance and Monitoring Officer**

**August 2020**



# Disclosure & Barring Service

## A GUIDE TO ELIGIBILITY FOR STANDARD CERTIFICATES FOR REGISTERED BODIES AND EMPLOYERS

This will help you work out whether you can legally request a standard DBS check for potential or existing staff.

It is important to make sure that the law allows a DBS application to be submitted. As an employer or regulator, and as a registered body, you have a legal responsibility to make sure you can submit applications. You also have a duty to know what parts of legislation support each application in case we need you to explain why eligibility exists. An individual cannot request a standard or enhanced DBS check for themselves and so as a registered body you must not submit applications from individuals where there is no employer to make the suitability decision.

**Disclaimer: This is not legal advice. If you need help with making sure you are complying with the law, you should speak to a legal advisor.**

Decisions on when and if to request a DBS check are for the employer or regulator to make based on what the law allows. This means considering the activities being carried out by the post-holder and if they are eligible for DBS checks. DBS provides an electronic [eligibility tool](#) which can help you with this.

It's important that you understand your legal responsibilities before you ask anyone to apply for or provide you with a standard or an enhanced DBS certificate.

The tables below list positions, professions, employments, activities and licences that are eligible to be submitted for standard DBS checks. These have been taken from the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, as amended.

You can use the tables to find the entry that relates to the position or role you are recruiting or carrying out a recheck for. The hyperlinks under each entry will take you to the legislative wording.

If your position or role is not included here you can use the [DBS workforce guides](#) to find out if eligibility exists for an enhanced DBS certificate, including whether barred list checks are available. Some roles and types of work that are included in these tables may also be eligible for a higher check. We have indicated in the relevant sections if this is the case.

If your position or role is not covered by this guidance or the DBS workforce guides, you can still ask that a [basic DBS check](#) is provided by anyone wanting to be considered to work in the role.

Remember: Paper applications for standard DBS checks must also contain the relevant workforce on the application form.

## STANDARD DBS certificate

Paper applications for standard DBS certificates **must** contain a workforce

**Positions in the financial sector that are regulated by the Financial Conduct Authority, the Prudential Regulatory Authority or the Bank of England, or organisations acting on their behalf. These are commonly referred to as being an approved person, a senior manager or carrying out a controlled function.**

- [Legislative Wording 1](#)

**Director-level individuals of organisations bidding for public contracts, when requested by the contracting organisation**

- [Legislative Wording 2](#)

**Football stewards**

- [Legislative Wording 3](#)

**Applying for membership of the Master Locksmiths Association**

- [Legislative Wording 4](#)

**Holding a restricted interest in a licensed body under Schedule 13 of the Legal Services Act 2007**

- [Legislative Wording 5](#)

**On entry to the profession of barrister in England and Wales only, or solicitor**

- [Legislative Wording 6](#)

**On entry to the profession of chartered accountant or certified accountant**

- [Legislative Wording 7](#)

**On entry to the profession of veterinary surgeon**

- [Legislative Wording 8](#)

**On entry to the profession of actuary**

- [Legislative Wording 9](#)

**On entry to the profession of registered foreign lawyer**

- [Legislative Wording 10](#)

**On entry to the profession of Chartered Institute of Legal Executive (CILEx) legal executive or other CILEx authorised person**

- [Legislative Wording 11](#)

**Justices' clerks, assistants to justices' clerks and certain specific officers for magistrates' courts, justices of the peace and local justice areas**

- [Legislative Wording 12](#)

**Individuals in any role to do with the running of, or working on the premises of a prison, a remand centre, a removal centre, a short term holding facility, a detention centre, a Borstal institution or a young offenders institution and members of boards of visitors**

Some roles in these places can be eligible for an enhanced DBS check. Please check our [online eligibility tool](#) and [workforce guides](#) for more information.

- [Legislative Wording 13](#)

**Any work that relates to providing health services where that work means there is also contact with the patients**

Some roles in this category can be eligible for an enhanced DBS check. Please check our online eligibility tool and workforce guides for more information.

- [Legislative Wording 14](#)

**National Health Service (NHS) Counter Fraud Authority roles involving the investigation of fraud, corruption or any other illegal activity and security management**

- [Legislative Wording 15](#)

**Any work for an adoption service, an adoption support agency, a voluntary adoption agency, a fostering service or a fostering agency where that work means that there is also contact with the children or access to sensitive or personal information about them**

This doesn't include prospective foster or adoptive parents or their household members. Please check our online eligibility tool and children's workforce guide for more information.

- [Legislative Wording 16](#)

**Independent Police Complaints Commission (IPCC) chair and staff who have contact with vulnerable adults or access to personal or sensitive information about children or vulnerable adults**

- [Legislative Wording 17](#)

**Royal Society for the Prevention of Cruelty to Animals (RSPCA) staff who carry out humane killing of animals**

- [Legislative Wording 18](#)

**Traffic officers appointed under section 2 of the Traffic Management Act 2004**

- [Legislative Wording 19](#)

**Judges' clerks, secretaries and legal secretaries**

- [Legislative Wording 20](#)

**Court officers and court contractors who have face to face contact with judges of the Supreme Court, or access to Supreme Court judges' lodgings as part of their work**

- [Legislative Wording 21](#)

**Individuals who have regular access to personal information about an identified or identifiable member of the judiciary as part of their work**

- [Legislative Wording 22](#)

**Court officers and court contractors who go to either the Royal Courts of Justice or the Central Criminal Court as part of their work**

- [Legislative Wording 23](#)

**Court security officers and tribunal security officers**

- [Legislative Wording 24](#)

**Court contractors who have unsupervised access to court-houses, offices and other buildings used in relation to the courts as part of their work**

- [Legislative Wording 25](#)

**Contractors, sub-contractors, and anyone working with them, who have unsupervised access to tribunal buildings, offices and other buildings used in relation to tribunals as part of their work**

- [Legislative Wording 26](#)

**Individuals who are:**

- court officers who carry out county court warrants
- High Court enforcement officers
- Sheriffs, under-sheriffs and tipstiffs
- under the authority of court officers who carry out county court warrants, High Court enforcement officers, sheriffs and under-sheriffs or tipstiffs to carry out High Court writs or warrants
- authorised to carry out writs of sequestration
- civilian enforcement officers as defined in section 125A of the Magistrates' Courts Act 1980

- authorised to carry out warrants under section 125B(1) of the Magistrates' Courts Act 1980 and section 125(2) of the 1980 Act
- authorised to carry out clamping orders, as defined in paragraph 38(2) of Schedule 5 of the Courts Act 2003(d)
- [Legislative Wording 27](#)

**Court officers and court contractors who carry out the administration and management of funds in court or receive payment following a conviction or order of a magistrates' court**

- [Legislative Wording 28](#)

**Office of the Public Guardian staff who have access to data relating to children and vulnerable adults**

- [Legislative Wording 29](#)

**Authorised search officers appointed by the Home Secretary**

- [Legislative Wording 30](#)

**Approved legal services body manager**

- [Legislative Wording 31](#)

**Head of legal practice of a licensed body**

- [Legislative Wording 32](#)

**Chartered Institute of Legal Executive (CILEx) approved manager**

- [Legislative Wording 33](#)

**Applying for a Security Industry Authority (SIA) licence**

- [Legislative Wording 34](#)

## Appendix

See below wording from legislation as per guidance above

### ARTICLE 3 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

#### Legislative Wording 1

Positions for which the Financial Conduct Authority, the Prudential Regulatory Authority or the Bank of England, or organisations nominated to act on their behalf, are entitled to ask exempted questions to fulfil their obligations under the Financial Services and Markets Act 2000

#### Legislative Wording 2

Any question asked by or on behalf of a contracting authority or utility in relation to a conviction for an offence listed in regulation 57(1) of the Public Contracts Regulations 2015 or regulation 38(8) of the Concession Contracts Regulations 2016 which is a spent conviction (or any circumstances ancillary to such a conviction) for the purpose of determining whether or not a person is excluded:

- i. for the purposes of regulation 57 of the Public Contracts Regulations 2015,
- ii. from participation in a design contest for the purposes of regulation 80 of the Public Contracts Regulations 2015,
- iii. for the purposes of regulation 80 of the Utilities Contracts Regulations 2016,
- iv. from participation in a design contest for the purposes of regulation 96 of the Utilities Contracts Regulations 2016, or
- v. for the purposes of regulation 38 of the Concession Contracts Regulations 2016

#### Legislative Wording 3

Any question asked, by or on behalf of the Football Association, Football League or Football Association Premier League in order to assess the suitability of the person to whom the question relates or of any other person to be approved as able to undertake, in the course of acting as a steward at a sports ground at which football matches are played or as a supervisor or manager of such a person, licensable conduct within the meaning of the Private Security Industry Act 2001 without a licence issued under that Act, in accordance with section 4 of that Act

#### Legislative Wording 4

Any question asked by or on behalf of the Master Locksmiths Association for the purposes of assessing the suitability of any person who has applied to be granted membership of that Association

#### Legislative Wording 5

Any question asked by or on behalf of any body which is a licensing authority within the meaning of section 73(1) of the Legal Services Act 2007 (licensing authorities and relevant licensing authorities) where:

- i. it is asked in order to assess whether, for the purposes of Schedule 13 to that Act (ownership of licensed bodies), the approval requirements are met in relation to a person's holding of a restricted interest in a licensed body; and

- ii. the person to whom the question relates is informed at the time that the question is asked that, by virtue of this Order, spent convictions are to be disclosed.

**PROFESSIONS – SCHEDULE 1 PART 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

**Applications for these roles can ONLY be submitted by or on behalf of the appropriate professional regulator and can ONLY be submitted at the point of applying to join the profession.**

**Legislative Wording 6**

Barrister (in England and Wales), solicitor

**Legislative Wording 7**

Chartered accountant, certified accountant

**Legislative Wording 8**

Veterinary surgeon

**Legislative Wording 9**

Actuary

**Legislative Wording 10**

Registered foreign lawyer

**Legislative Wording 11**

Chartered Legal Executive or other Chartered Institute of Legal Executive (CILEx) authorised person

**OFFICES, EMPLOYMENTS AND WORKS – SCHEDULE 1 PART 2 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

**Legislative Wording 12**

Designated officers for magistrates' courts, for justices of the peace or for local justice areas, justices' clerks and assistants to justices' clerks

**Legislative Wording 13**



Any employment which is concerned with the administration of, or is otherwise normally carried out wholly or partly within the precincts of a prison, a remand centre, a removal centre, a short term holding facility, a detention centre, a Borstal institution or a young offenders institution and members of boards of visitors (England & Wales)

**Legislative Wording 14**

Any employment or other work which is concerned with the provision of health services and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have access to persons in receipt of such services in the course of his normal duties

**Legislative Wording 15**

Any employment or other work in England or Wales concerned with:

- a) the investigation of fraud, corruption or other unlawful activity affecting the national health service, or
- b) security management in the national health service,

where “the national health service” means, in respect of England, the health service continued under section 1(1) of the National Health Service Act 2006 and, in respect of Wales, that continued under section 1(1) of the National Health Service (Wales) Act 2006:

**Legislative Wording 16**

Any employment or other work which is carried out for the purposes of an adoption service, an adoption support agency, a voluntary adoption agency, a fostering service or a fostering agency and which is of such a kind as to enable a person, in the course of his normal duties, to have contact with children or access to sensitive or personal information about children

**Legislative Wording 17**

Any chairman, member or member of staff of the Independent Police Complaints Commission who, in the course of his normal duties:

- a) has contact with vulnerable adults; or
- b) has access to sensitive or personal information about children or vulnerable adults

**Legislative Wording 18**

Any employment in the Royal Society for the Prevention of Cruelty to Animals where the person employed or working, as part of his duties, may carry out humane killing of animals

**Legislative Wording 19**

An individual designated under section 2 of the Traffic Management Act 2004

**Legislative Wording 20**

Judges’ clerks, secretaries and legal secretaries within the meaning of section 98 of the Supreme Court Act 1981(c)

**Legislative Wording 21**

Court officers and court contractors who, in the course of their work, have face to face contact with judges of the Supreme Court, or access to such judges' lodgings

**Legislative Wording 22**

Persons who in the course of their work have regular access to personal information relating to an identified or identifiable member of the judiciary

**Legislative Wording 23**

Court officers and court contractors who, in the course of their work, attend either the Royal Courts of Justice or the Central Criminal Court

**Legislative Wording 24**

Court security officers and tribunal security officers

**Legislative Wording 25**

Court contractors who, in the course of their work, have unsupervised access to court-houses, offices and other accommodation used in relation to the courts

**Legislative Wording 26**

Contractors, sub-contractors, and any person acting under the authority of such a contractor or sub-contractor, who, in the course of their work, have unsupervised access to tribunal buildings, offices and other accommodation used in relation to tribunals

**Legislative Wording 27**

The following persons:

- a) Court officers who execute county court warrants
- b) High Court enforcement officers
- c) Sheriffs and under-sheriffs
- d) Tipstaffs
- e) Any other persons who execute High Court writs or warrants who act under the authority of court officers who execute county court warrants, High Court enforcement officers, sheriffs and under-sheriffs or tipstaffs
- f) Persons who execute writs of sequestration
- g) Civilian enforcement officers as defined in section 125A of the Magistrates' Courts Act 1980

h) Persons who are authorised to execute warrants under section 125B (1) of the Magistrates' Courts Act 1980, and any other person (other than a constable) who is authorised to execute a warrant under section 125 (2) of the 1980 Act

i) Persons who execute clamping orders, as defined in paragraph 38(2) of Schedule 5 of the Courts Act 2003(d)

**Legislative Wording 28**

Court officers and court contractors who exercise functions in connection with the administration and management of funds in court, including the deposit, payment, delivery and transfer in, into and out of any court of funds in court, and regulating the evidence of such deposit, payment, delivery or transfer, and court officers and court contractors who receive payment in pursuance of a conviction or order of a magistrates' court

**Legislative Wording 29**

Staff working within the Public Guardianship Office, (to be known as the Office of the Public Guardian from October 2007), with access to data relating to children and vulnerable adults

**Legislative Wording 30**

Individuals seeking authorisation from the Secretary of State for the Home Department to become authorised search officers

**REGULATED OCCUPATIONS – SCHEDULE 1 PART 3 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

**Legislative Wording 31**

Approved legal services body manager

**Legislative Wording 32**

Head of legal practice of a licensed body

**Legislative Wording 33**

Chartered Institute of Legal Executive (CILEx) approved manager

**LICENCES, CERTIFICATES AND PERMITS – SCHEDULE 2 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

**Legislative Wording 34**

Licences granted under section 8 of the Private Security Industry Act 2001



# Disclosure & Barring Service

## A GUIDE TO ADULT WORKFORCE ROLES FOR REGISTERED BODIES AND EMPLOYERS

This will help you identify whether the position you are recruiting for falls into the adult workforce and where you can legally request access to a check of the adults' barred list. These are roles which relate specifically to working with adults.

It is important to make sure that the law allows a DBS application to be submitted. As an employer or regulator, but also as a registered body, you have a legal responsibility for making sure you can submit applications and must know the legislation that supports each application in case we need further clarification. An individual cannot request a standard or enhanced level DBS check for themselves and so as a registered body you must not submit applications from individuals where there is no employer to make the suitability decision.

**Disclaimer: This is not legal advice. If you need help with making sure you are complying with the law, you should speak to a legal advisor.**

Standard and enhanced DBS checks can only be undertaken if the specific role, or the specific activities carried out within the role, are included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (access to standard DBS certificates), and are also covered by the Police Act 1997 or Police Act 1997 (Criminal Records) regulations (access to enhanced DBS certificates). These laws only provide eligibility for DBS checks, they do not make them a requirement.

Decisions on when and whether to undertake a DBS check are for the relevant employer or regulator to make based on what the law allows. It is not discretionary as such, but a matter of considering the nature of the activities undertaken and if they are eligible for DBS checks. DBS provides an electronic [eligibility tool](#) which can help you with this. The [Police Act 1997 \(Criminal Records\) \(Amendment\) Regulations 2013/1194](#) (the legislative definition of work with adults) and the [Department of Health \(DH\) factual note](#) on the definition of regulated activity with adults will also help.

When you request a DBS certificate to assess someone to carry out regulated activity with adults this means that you are a regulated activity provider (RAP). This brings obligations under the Safeguarding Vulnerable Groups Act 2006.

As a RAP, you have a legal duty to refer an individual to DBS when you believe a person has caused harm or poses a future risk of harm to vulnerable groups, including children. You must also provide information to DBS when we ask you to and may be fined unless you have a reasonable excuse for not providing the information. The conditions you must consider before making a referral or providing information to us can be found on the [DBS website](#).

An employer or volunteer manager is breaking the law if they knowingly employ someone in a regulated activity with a group from which they are barred from working.

A barred person is breaking the law if they seek, offer or engage in regulated activity with a group from which they are barred from working.

### **STANDARD level DBS certificate**

Paper applications for standard DBS certificates **must** contain a workforce

**Individuals whose role involves work relating to adults which is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

Please see the Standards Eligibility Guide for more information on this.

### **ENHANCED level DBS certificate ONLY**

Paper applications for enhanced DBS certificates **must** contain a workforce

**Individuals who work in a high security psychiatric hospital**

- [Legislative Wording 1](#)

**Individuals who carry out activities with adults that are specifically defined as work with adults**

- [Legislative Wording 2](#)

**Individuals who manage, on a day to day basis, anyone who carries out activities with adults that are specifically defined as work with adults**

- [Legislative Wording 3](#)

**Individuals whose role relates to a Care Quality Commission inspection function where the inspector has the opportunity for contact with adults in circumstances that are specifically defined as work with adults**

- [Legislative Wording 4](#)

**Applications to assess –**

- certain individuals who work for a local authority where their roles relate to carrying out social services functions for adults in circumstances that are specifically defined as work with adults
- chief executives of any local authority that has social services functions
- directors of adult social services in England and Wales
- any charity trustee where the charity workers regularly carry out activities with adults that are specifically defined as work with adults
- any person who needs to be registered under the Health and Social Care Act 2008

- [Legislative Wording 5](#)

### **ENHANCED level DBS certificate with access to the DBS ADULTS' BARRED LIST**

Applications for enhanced DBS certificates in the adult workforce **including a check of the adults' barred list** are always in regulated activity with adults. Use the [DH factual note](#) if you need help identifying whether a role falls into the definition of regulated activity with adults.

Paper applications for enhanced DBS certificates with an adults' barred list check **must** contain a workforce.

#### **Individuals who carry out regulated activity with adults**

- [Legislative Wording 6](#)

Regulated activity is work that a barred person must not do.

Regulated activity with adults does not include any activity carried out in the course of family relationships or personal, non-commercial relationships.

The activities below only need to be carried out once to be in regulated activity with adults:

**1. Individuals who provide health care to adults, either as a health care professional or under the direction or supervision of a health care professional. This includes providing psychotherapy and counselling and also covers first aiders where they provide this through an organisation set up specifically for the purposes of providing first aid, e.g. St John's Ambulance and community first responders.**

- [Legislative Wording 7](#)

**2. Individuals who provide personal care to adults. This includes physically assisting adults, prompting and then supervising adults, or training, instructing or providing advice or guidance to adults on eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails and this is done because of the adult's age, illness or disability**

- [Legislative Wording 8](#)

**3. Individuals who are regulated social workers providing social work to adults who are clients or potential clients. This includes assessing or reviewing the need for health or social care services, and providing ongoing support to clients.**

- [Legislative Wording 9](#)

**4. Individuals who provide day to day help to adults with running their homes because their age, illness or disability means they need this help, and where it includes at least one of the following:**

- managing their cash,
- paying their bills, or
- doing their shopping

- [Legislative Wording 10](#)
5. Individuals who provide assistance to adults in conducting their own affairs under any of the following arrangements:
- Lasting power of attorney under the Mental Capacity Act 2005
  - Enduring power of attorney within the meaning of the Mental Capacity Act 2005
  - Being appointed as the adult’s deputy under the Mental Capacity Act 2005
  - Being an Independent Mental Health Advocate
  - Being an Independent Mental Capacity Advocate
  - Providing independent advocacy services under the National Health Service Act 2006 or National Health Service (Wales) Act 2006
  - Receiving payments on behalf of that person under the Social Security Administration Act 1992
- [Legislative Wording 11](#)
6. Individuals who convey adults to or from anywhere they would be receiving health care, personal care or social work. This includes drivers and assistants (except taxi drivers and private hire drivers), hospital porters, patient transport service drivers and assistants, ambulance technicians and emergency care assistants
- [Legislative Wording 12](#)
7. Individuals who provide activities prescribed in other pieces of legislation that are connected to providing health care or personal care to adults but not covered by points 1 or 2 on page 3
- [Legislative Wording 13](#)
8. Individuals who manage or supervise anyone on a day to day basis who carries out regulated activity with adults
- [Legislative Wording 14](#)
9. Individuals carrying out inspection functions in Wales. This is where there is the opportunity for contact with adults receiving the services and the inspections relate to social services, care, treatment or therapy provided by the following:
- Welsh agencies required to be registered under section 11 of the Care Standards Act 2000, i.e. independent medical agencies, domiciliary care agencies, fostering agencies, nurses agencies and voluntary adoption agencies
  - Individuals in Wales required to register under Part 2 of the Care Standards Act 2000, i.e. running or managing children's homes, independent hospitals, independent clinics, care homes and residential family centres,
  - Welsh NHS bodies
  - Anyone, other than a local authority, providing Welsh local authority social services
- [Legislative Wording 15](#)

## 10. The Commissioner for older people in Wales or the deputy Commissioner for older people in Wales

- [Legislative Wording 16](#)

### Appendix

See below wording from legislation as per guidance above

#### Legislative Wording 1:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013/1194

- Any employment or other work which is normally carried out in a hospital used only for the provision of high security psychiatric services within the meaning of section 4(2) of the National Health Service Act 2006

#### Legislative Wording 2:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013/1194

- The provision of any activity mentioned in paragraph 6 to an adult who receives a health or social care service within the meaning of paragraph 9 or a specified activity within the meaning of paragraph 10 provided that the person carrying out the activity does so –
  - (i) at any time on more than three days in any period of 30 days; or
  - (ii) at any time between 2am and 6am and the activity gives the person the opportunity to have face-to-face contact with the adult; or
  - (iii) at least once a week on an ongoing basis

The Annex at the end of this guidance provides the legislative descriptions of paragraphs 6, 9 and 10

#### Legislative Wording 3:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013/1194

- The regular day-to-day management or supervision of a person providing any activity mentioned in paragraph 6, to an adult who receives a health or social care service within the meaning of paragraph 9 or a specified activity within the meaning of paragraph 10

The Annex at the end of this guidance provides the legislative descriptions of paragraphs 6, 9 and 10.



#### **Legislative Wording 4:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013/1194

- The exercise of a function of the Care Quality Commission in so far as the function –
  - (i) relates to the inspection of anything which is listed in section 60(1) of the Health and Social Care Act 2008 and involves the provision of social services, care, treatment or therapy for adults who receive a health or social care service within the meaning of paragraph 9 or a specified activity within the meaning of paragraph 10; and
  - (ii) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in exercise of that function, to have contact with an adult who receives a health or social care service within the meaning of paragraph 9 or a specified activity within the meaning of paragraph 10

The Annex at the end of this guidance provides the legislative descriptions of paragraphs 9 and 10

#### **Legislative Wording 5:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013/1194

- The exercise of a function of a person who is –
  - (i) a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to adults who receive a health or social care service within the meaning of paragraph 9 or a specified activity within the meaning of paragraph 10
  - (ii) a member of an executive of a local authority which discharges any such functions;
  - (iii) a member of a committee of an executive of a local authority which discharges any such functions;
  - (iv) a member of an area committee, or any other committee, of a local authority which discharges any such functions;
  - (v) a person who is a chief executive of a local authority that has any social services functions;
  - (vi) a person who is a director of adult social services of a local authority in England;
  - (vii) a person who is a director of social services of a local authority in Wales;
  - (viii) a Commissioner for older people in Wales or deputy Commissioner for older people in Wales;
  - (ix) a person who is a charity trustee of a charity whose workers normally engage in any activity which is work with adults;
  - (x) a person who is required to register to carry out a regulated activity within the meaning of the Health and Social Care Act 2008 where that activity will be carried out in relation to an adult who receives a health or social care service within the meaning of paragraph 9

The Annex at the end of this guidance provides the legislative descriptions of paragraphs 9 and 10

**Legislative Wording 6:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/1194

- The provision to an adult of a regulated activity within the meaning of Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, as amended by sections 65 and 66 of the Protection of Freedoms Act 2012

**Legislative Wording 7:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 2 paragraph 7

- (1)(a) the provision to an adult of health care by, or under the direction or supervision of, a health care professional
- (2) Health care includes all forms of health care provided for individuals, whether relating to physical or mental health and also includes palliative care and procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.
- (3) A health care professional is a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.
- (3A) Any reference in this Part of this Schedule to health care provided by, or under the direction or supervision of, a health care professional includes a reference to first aid provided to an adult by any person acting on behalf of an organisation established for the purpose of providing first aid.

**Legislative Wording 8:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 2 paragraph 7

- (1)(b) the provision to an adult of relevant personal care
- (3B) Relevant personal care means –
  - a) physical assistance, given to a person who is in need of it by reason of age, illness or disability, in connection with—
    - (i) eating or drinking (including the administration of parenteral nutrition),
    - (ii) toileting (including in relation to the process of menstruation),
    - (iii) washing or bathing,
    - (iv) dressing,
    - (v) oral care, or
    - (vi) the care of skin, hair or nails,
  - b) the prompting, together with supervision, of a person who is in need of it by reason of age, illness or disability in relation to the performance of any of the activities listed in paragraph (a) where the person is unable to make a decision in relation to performing such

an activity without such prompting and supervision, or

- c) any form of training, instruction, advice or guidance which –
  - (i) relates to the performance of any of the activities listed in paragraph (a),
  - (ii) is given to a person who is in need of it by reason of age, illness or disability, and
  - (iii) does not fall within paragraph (b).

#### **Legislative Wording 9:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 2 paragraph 7

- (1)(c) the provision by a social care worker of relevant social work to an adult who is a client or potential client
- (3C) In relation to a vulnerable adult in England, relevant social work has the meaning given by section 55(4) of the Care Standards Act 2000 and social care worker means a person who is a social care worker by virtue of section 55(2)(a) of that Act.
- (3CA) In relation to a vulnerable adult in Wales, relevant social work has the meaning given by section 79(4) of the Regulation and Inspection of Social Care (Wales) Act 2016, and social care worker means a person who is a social care worker by virtue of section 79(1)(a) of that Act.

#### **Legislative Wording 10:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 2 paragraph 7

- (1)(d) the provision of assistance in relation to general household matters to an adult who is in need of it by reason of age, illness or disability
- (3D) Assistance in relation to general household matters is day to day assistance in relation to the running of the household of the person concerned where the assistance is the carrying out of one or more of the following activities on behalf of that person –
  - a) managing the person's cash,
  - b) paying the person's bills,
  - c) shopping

#### **Legislative Wording 11:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 2 paragraph 7

- (1)(e) any relevant assistance in the conduct of an adult's own affairs
- (3E) Relevant assistance in the conduct of a person's own affairs is anything done on behalf of the person by virtue of –
  - a) a lasting power of attorney created in respect of the person in accordance with section 9 of the Mental Capacity Act 2005,
  - b) an enduring power of attorney (within the meaning of Schedule 4 to that Act) in respect of the person which is –
    - (i) registered in accordance with that Schedule, or

- (ii) the subject of an application to be so registered,
- c) an order made under section 16 of that Act by the Court of Protection in relation to the making of decisions on the person's behalf,
- d) the appointment of an independent mental health advocate or (as the case may be) an independent mental capacity advocate in respect of the person in pursuance of arrangements under section 130A of the Mental Health Act 1983 or section 35 of the Mental Capacity Act 2005,
- e) the provision of independent advocacy services (within the meaning of section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006) in respect of the person, or
- f) the appointment of a representative to receive payments on behalf of the person in pursuance of regulations made under the Social Security Administration Act 1992

**Legislative Wording 12:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 2 paragraph 7

- (1)(f) the conveying by persons of a prescribed description in such circumstances as may be prescribed of adults who need to be conveyed by reason of age, illness or disability

**Legislative Wording 13:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 2 paragraph 7

- (1)(g) such activities—
  - (i) involving, or connected with, the provision of health care or relevant personal care to adults, and
  - (ii) not falling within any of the above paragraphs,
 as are of a prescribed description.

**Legislative Wording 14:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 2 paragraph 7

- (5) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in sub-paragraph (1) is a regulated activity relating to vulnerable adults

**Legislative Wording 15:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 2 paragraph 7

- (6) The exercise of an inspection function of the Welsh Ministers so far as the function gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with vulnerable adults, is a regulated activity relating to vulnerable adults.

- (7) An inspection function is a function relating to the inspection of–
  - c) an agency in relation to which such a requirement arises,
  - d) a person to whom Part 2 of that Act applies in pursuance of regulations under section 42 of that Act,
  - e) an NHS body within the meaning of section 148 of the Health and Social Care (Community Health and Standards) Act 2003, or
  - f) any person, other than a local authority, providing Welsh local authority social services within the meaning of that section,in so far as the inspection relates to social services, care, treatment or therapy provided for vulnerable adults by the establishment, agency, person or body.
- (8) In sub-paragraph (7)(e) the reference to an NHS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided).

**Legislative Wording 16:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 2 paragraph 7

- (9) The exercise of a function of the Commissioner for older people in Wales or the deputy Commissioner for older people in Wales, is a regulated activity relating to vulnerable adults.

# ANNEX 1

## GUIDANCE

There are three steps to follow to identify whether the position you are recruiting for is carrying out activities which are in the definition of work with adults.

1. Look at paragraphs 9 and 10 to identify whether the job holder will be working with adults who are receiving any of the services listed.
2. Look at paragraph 6 to identify what activity the job holder will be providing to those adults;
3. Establish whether the job holder will be providing the activity to the adults often enough.

Once this is identified, you have the legal justification for your enhanced DBS application.

### Paragraph 9 – the adults

- a) residential accommodation provided for an adult in connection with any care or nursing he requires
- b) accommodation provided for an adult who is or has been a pupil attending a residential special school, where that school is –
  - (i) a special school within the meaning of section 337 of the Education Act 1996
  - (ii) an independent school within the meaning of section 463 of that Act which is in England and is specially organised to make special educational provision for pupils with special educational needs (within the meaning of section 312 of that Act) or is in Wales and is approved by the Welsh Ministers under section 347 of that Act
  - (iii) an independent school within the meaning of section 463 of that Act not falling within sub-paragraph (b)(ii) which, with the consent of the Welsh Ministers, given under section 347(5)(b) of that Act, provides places for children with special educational needs (within the meaning of section 312 of that Act)
  - (iv) an institution within the further education section (within the meaning of section 91 of the Further and Higher Education Act 1992) which provides accommodation for children
  - (v) a 16 to 19 Academy, within the meaning of section 1B of the Academies Act 2010, which provides accommodation for children
- c) sheltered housing
- d) care of any description or assistance provided to an adult by reason of his age, health or any disability he has, which is provided to the adult in the place where he is, for the time being, living, whether provided continuously or not
- e) any form of health care, including treatment, therapy or palliative care of any description
- f) support, assistance or advice for the purpose of developing an adult's capacity to live independently in accommodation, or sustaining their capacity to do so
- g) any service provided specifically for adults because of their age, any disability, physical or mental illness, excluding a service provided specifically for an adult, with one or more of the following disabilities (unless that person has another disability) –
  - (i) dyslexia
  - (ii) dyscalculia

- (iii) dyspraxia
- (iv) Irlen syndrome
- (v) Alexia
- (vi) auditory processing disorder
- (vii) dysgraphia

h) any service provided specifically to an expectant or nursing mother in receipt of residential accommodation pursuant to arrangements made under section 21(1)(aa) of the National Assistance Act 1948 or care pursuant to paragraph 1 of Schedule 20 to the National Health Service Act 2006

### Paragraph 10 – the adults

- a) the detention of an adult in lawful custody in a prison (within the meaning of the Prison Act 1952), a remand centre, young offender institution or a secure training centre (as mentioned in section 43 of that Act) or an attendance centre (within the meaning of section 53(1) of that Act)
- b) the detention of a detained person (within the meaning of Part 8 of the Immigration and Asylum Act 1999) who is detained in a removal centre or short-term holding facility (within the meaning of that Part) or in pursuance of escort arrangements made under section 156 of that Act
- c) the supervision of an adult by virtue of an order of a court by a person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000
- d) the supervision of an adult by a person acting for the purposes mentioned in section 1(1) of the Offender Management Act 2007
- e) the provision to an adult of assistance with the conduct of their affairs in situations where –
  - (i) a lasting power of attorney is created in respect of the adult in accordance with section 9 of the Mental Capacity Act 2005 or an application is made under paragraph 4 of Schedule 1 to that Act for the registration of an instrument intended to create a lasting power of attorney in respect of the adult
  - (ii) an enduring power of attorney (within the meaning of Schedule 4 to that Act) in respect of the adult is registered in accordance with that Schedule or an application is made under that Schedule for the registration of an enduring power of attorney in respect of the adult
  - (iii) an order under section 16 of that Act has been made by the Court of Protection in relation to the making of decisions on the adult's behalf, or such an order has been applied for
  - (iv) an independent mental capacity advocate is or is to be appointed in respect of the adult in pursuance of arrangements under section 35 of that Act
  - (v) independent advocacy services (within the meaning of section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006) are or are to be provided in respect of the adult
  - (vi) a representative is or is to be appointed to receive payments on the adult's behalf in pursuance of regulations made under the Social Security Administration Act 1992
- f) payments are made to the adult or to another person on the adult's behalf under arrangements made under section 57 of the Health and Social Care Act 2001
- g) payments are made to the adult or to another person on the adult's behalf under section 12A(1) or under regulations made under section

### Paragraph 6 – the activities provided by the job holder for the adults

For the purposes of this regulation “activity” means –

- a) any form of care or supervision;
- b) any form of treatment or therapy;
- c) any form of training, teaching, instruction, assistance, advice or guidance provided wholly or mainly for adults who receive a health or social care service within the meaning of paragraph 9 or a specified activity within the meaning of paragraph 10;
- d) moderating a public electronic interactive communication service which is likely to be used wholly or mainly by adults who receive a health or social care service within the meaning of paragraph 9 or a specified activity within the meaning of paragraph 10;

A person moderates a public electronic interactive communication service if, for the purposes of protecting the adults mentioned in that sub-paragraph, he has any function relating to –

- (i) monitoring the content of matter which forms any part of the service;
- (ii) removing matter from, or preventing the addition of matter to, the service; or
- (iii) controlling access to, or use of, the service.

But a person does not moderate a public electronic interactive communication service unless he has –

- (i) access to the content of the matter;
  - (ii) contact with users of the service.
- e) any form of work carried out in a care home (for the purposes of the Care Standards Act 2000) which is exclusively or mainly for adults, whether or not for gain, that gives the person carrying out the work the opportunity to have contact with the adults resident at that care home
  - f) representation of, or advocacy services for, adults who receive a health or social care service within the meaning of paragraph 9 or a specified activity within the meaning of paragraph 10, by a service which has been approved by the Secretary of State or created by any enactment, and which is of such a kind as to enable the person to have access to such adults in the course of his normal duties in providing such services
  - g) the conveying of an adult who receives a health or social care service within the meaning of paragraph 9 or a specified activity within the meaning of paragraph 10 whether or not the adult is accompanied by a person caring for them.





# Disclosure & Barring Service

## A GUIDE TO CHILD WORKFORCE ROLES FOR REGISTERED BODIES AND EMPLOYERS

This will help you identify whether the position you are recruiting for falls into the child workforce and where you can legally request access to a check of the children's barred list. These are roles which relate specifically to working with children.

It is important to make sure that the law allows a DBS application to be submitted. As an employer or regulator, but also as a registered body, you have a legal responsibility for making sure you can submit applications and must know the legislation that supports each application in case we need further clarification. An individual cannot request a standard or enhanced level DBS check for themselves and so as a registered body you must not submit applications from individuals where there is no employer to make the suitability decision.

**Disclaimer: This is not legal advice. If you need help with making sure you are complying with the law, you should speak to a legal advisor.**

Standard and enhanced DBS checks can only be undertaken if the specific role, or the specific activities carried out within the role, are included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (access to standard DBS certificates), and are also covered by the Police Act 1997 or Police Act 1997 (Criminal Records) regulations (access to enhanced DBS certificates). These laws only provide eligibility for DBS checks, they do not make them a requirement.

Decisions on when and whether to undertake a DBS check are for the relevant employer or regulator to make based on what the law allows. It is not discretionary as such, but a matter of considering the nature of the activities undertaken and if they are eligible for DBS checks. DBS provides an electronic [eligibility tool](#) which can help you with this. [The Police Act 1997 \(Criminal Records\) \(Amendment No.2\) Regulations 2013/2669](#) (the legislative definition of work with children) and the [Department for Education \(DfE\) factual note](#) on regulated activity with children will also help.

When you request a DBS certificate to assess someone to carry out regulated activity with children this means that you are a regulated activity provider (RAP). This brings obligations under the Safeguarding Vulnerable Groups Act 2006.

As a RAP, you have a legal duty to refer an individual to DBS when you believe a person has caused harm or poses a future risk of harm to vulnerable groups, including children. You must also provide information to DBS when we ask you to and may be fined unless you have a reasonable excuse for not providing the information. The conditions you must consider before making a referral or providing information to us can be found on the [DBS website](#).

An employer or volunteer manager is breaking the law if they knowingly employ someone in a regulated activity with a group from which they are barred from working.

A barred person is breaking the law if they seek, offer or engage in regulated activity with a group from which they are barred from working.

### STANDARD level DBS certificate

Paper applications for standard DBS certificates **must** contain a workforce.

#### **Individuals whose role involves work relating to children which is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

Please see the Standards Eligibility Guide for more information on this.

### ENHANCED level DBS certificate ONLY

Paper applications for enhanced DBS certificates **must** contain a workforce.

#### **Individuals who carry out work which would have been regulated activity with children before changes were made to the definition in September 2012**

- [Legislative Wording 1](#)

#### **Individuals who carry out regulated activity with children where the work is done infrequently (but more than once). This also applies to roles that involve work which would have been regulated activity with children before changes were made to the definition in September 2012**

- [Legislative Wording 2](#)

#### **Individuals applying as part of registration as a childminder agency, managing a childminder agency or working for a childminder agency in a quality assurance role visiting day care or childminding premises.**

- [Legislative Wording 3](#)

#### **Individuals applying to register as a social care worker – this is a registration requirement only and does not relate to activities covered by the definition of regulated activity with children**

- [Legislative Wording 4](#)

#### **Individuals applying to work in a Further Education college or 16-19 Academy where the work they do brings them into regular\* contact with students aged under 18**

\* regular should be applied by each organisation in line with the dictionary definition

- [Legislative Wording 5](#)

#### **Individuals who are aged over 16 and living in a household where another person in the household has been or is being assessed to:**

- carry out work which would have been regulated activity with children before changes were made to the definition in September 2012; or
- work in a Further Education college or 16-19 Academy

and they both live on the premises where that work will take place

- [Legislative Wording 6](#)

Individuals applying as part of registration to manage any type of agency or accommodation relating to the welfare of children

- [Legislative Wording 7](#)

### ENHANCED level DBS certificate with access to the DBS CHILDREN'S BARRED LIST – REGULATED ACTIVITY

Applications for enhanced DBS certificates in the child workforce **including a check of the children's barred list** can be in regulated activity with children. The [Department for Education \(DfE\) factual note](#) will provide help in identifying whether a role falls into the definition of regulated activity with children.

Paper applications for enhanced DBS certificates with a children's barred list check **must** contain a workforce.

Individuals who carry out regulated activity with children as defined below

- [Legislative Wording 8](#)

1. Individuals who provide teaching, training or instruction to children on more than 3 days in a 30 day period or overnight between 2am and 6am with the opportunity for face-to-face contact with the children, except where:

- the recruiting organisation decides the individual is sufficiently supervised in line with DfE statutory guidance and they are not a paid member of staff in a specified establishment; or
- this is provided and designed for adults so the presence of a child is unexpected, i.e. an adult attends a night class and brings their child with them; or
- these activities are being provided to 16 and 17 year olds in work (including voluntary work)

- [Legislative Wording 9](#)

2. Individuals who provide care for or supervision of children on more than 3 days in a 30 day period or overnight between 2am and 6am with the opportunity for face-to-face contact with the children, except where:

- the recruiting organisation decides the individual is sufficiently supervised in line with DfE statutory guidance and they are not a paid member of staff in a specified establishment; or
- this is provided and designed for adults so the presence of a child is unexpected; or
- these activities are being provided to 16 and 17 year olds in work (including voluntary work)

- [Legislative Wording 10](#)
3. Individuals who provide advice or guidance wholly or mainly to children and this specifically relates to their emotional, educational or physical well-being on more than 3 days in a 30 day period or overnight between 2am and 6am with the opportunity for face-to-face contact with the children, except where:
- these activities are being provided to 16 and 17 year olds in work (including voluntary work)
- [Legislative Wording 11](#)
4. Individuals who monitor the content of internet-based services aimed wholly or mainly for use by children on more than 3 days in a 30 day period. They must also:
- be able to access and remove content or prevent it from being published
  - control who uses the service
  - have contact with the children using the service
- [Legislative Wording 12](#)
5. Individuals who are provided by a third party to drive children and any adult supervising or caring for them on more than 3 days in a 30 day period.
- [Legislative Wording 13](#)
6. Individuals who provide health care to children, either as a health care professional or under the direction or supervision of a health care professional. This includes providing psychotherapy and counselling and also covers first aiders where they provide this through an organisation set up specifically for the purposes of providing first aid, e.g. St John's Ambulance and community first responders. This only has to be done once.
- [Legislative Wording 14](#)
7. Individuals who provide personal care to children which involves:
- physically assisting a child, prompting and then supervising a child or training, instructing or providing advice or guidance to a child on eating or drinking and this is done because of their illness or disability
  - physically assisting a child, prompting and then supervising a child or training, instructing or providing advice or guidance to a child with going to the toilet, washing, bathing or dressing and this is done because of their age, illness or disability
- This only needs to be done once
- [Legislative Wording 15](#)
8. Individuals working in any of the places listed in the Safeguarding Vulnerable Groups Act 2006 as specified establishments who:
- work there on more than 3 days in a 30 day period or overnight between 2am and 6am with the opportunity for face-to-face contact with the children; and
  - have the opportunity, because of their job, to have contact with the children in the establishment; and

- work there for the purpose of the establishment; and
- are not temporary or occasional workers; and
- are not a supervised volunteer

These are individuals who are not providing teaching, training, instruction, care, supervision or advice and will mainly be carrying out ancillary functions, e.g. cleaners, catering, admin staff etc.

- [Legislative Wording 16](#)

**9. Individuals listed in the Safeguarding Vulnerable Groups Act 2006 as specified positions in Wales carrying out the functions of:**

- the Children’s Commissioner for Wales
- the Deputy Children’s Commissioner for Wales

- [Legislative Wording 17](#)

**10. Individuals listed in the Safeguarding Vulnerable Groups Act 2006 as specified positions in Wales where they also have the opportunity for contact with the children because of what they’re doing and are carrying out:**

- functions of the Welsh Ministers to inspect registered establishments or agencies, an NHS body or anyone providing healthcare for the body
- functions relating to the inspection of childminding, or fostering agency, residential family centre, voluntary adoption agency, adoption support agency
- functions relating to the welfare of children in boarding schools
- functions relating to inspections of teacher training, local education authorities, registered independent school, boarding schools and colleges
- functions relating to a review or investigation of the functions of children’s services authorities
- functions relating to the inspection of careers services
- functions relating to the inspection of religious education
- functions relating to the inspection of the discharge of social services functions by local authorities

- [Legislative Wording 18](#)

**Individuals applying to register as prospective childminders or childcare providers**

- [Legislative Wording 19](#)

**Individuals who undertake the regular day to day management or supervision of individuals carrying out regulated activity with children or who would have been carrying out regulated activity with children except that they are supervised in line with the Dept for Education (DfE) statutory supervision guidance.**

- [Legislative Wording 20](#)

**Individuals applying to be:**

- a foster carer
- a private foster carer
- [Legislative Wording 21](#)

**ENHANCED level DBS certificate with access to the DBS CHILDREN'S BARRED LIST – NOT REGULATED ACTIVITY**

Applications for enhanced DBS certificates in the child workforce **including a check of the children's barred list** which are not in regulated activity with children.

Paper applications for enhanced DBS certificates with a children's barred list check **must** contain a workforce.

**Individuals who are aged over 16 and living in a household where another person in the household has been or is being assessed to carry out regulated activity with children and they both live on the premises where that work will take place**

- [Legislative Wording 22](#)

**Individuals aged 16 and over who live or work in the premises where the childminding or childcare takes place and has the opportunity for regular contact with the children**

- [Legislative Wording 23](#)

**Individuals aged 18 and over (according to Dept for Education regulations) who live in a fostering household or anyone aged 16 and over who lives in a private fostering household**

- [Legislative Wording 24](#)

**Individuals applying to be adoptive parents or special guardians and anyone aged 18 and over who lives in the adoptive or special guardian household**

- [Legislative Wording 25](#)

## Appendix

See below wording from legislation as per guidance above

### Legislative Wording 1:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- Any activity which is a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012

### Legislative Wording 2:

Wording below taken from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- Work done infrequently which, if done frequently, would be regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 or as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012

### Legislative Wording 3:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2014/2122

- Registration as a childminder agency under Chapter 2A or 3A of Part 3 of the Childcare Act 2006
- Considering the applicant's suitability to manage a childminder agency
- Considering the applicant's suitability to work for a childminder agency in any capacity which requires the applicant to enter childcare premises and enables that person, in the normal course of duties, to have contact with children for whom childcare is provided or access to sensitive or personal information about children for whom childcare is provided.

### Legislative Wording 4:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- Registration under Part IV of the Care Standards Act 2000 (social care workers)

### Legislative Wording 5:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- Considering the applicant's suitability for work in a further education institution (within the meaning of section 140 of the Education Act 2002) or a 16 to 19 Academy (within the meaning of section 1B of the Academies Act 2010) where the normal duties of that work involve regular contact with persons aged under 18

**Legislative Wording 6:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- Obtaining information in respect of any person who is aged 16 or over and who lives in the same household as an individual who is having or who has had their suitability assessed for the purposes of –
  - (i) engaging in any activity which is regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012
  - (ii) working in a further education institution (within the meaning of section 140 of the Education Act 2002) where the normal duties of that work involve regular contact with children
  - (iii) working in a 16 to 19 Academy (within the meaning of section 1B of the Academies Act 2010) where the normal duties of that work involve regular contact with children

where that individual, and the person who lives in the same household, live on the premises where that activity or work would normally take place

**Legislative Wording 7:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- Registration under Part II of the Care Standards Act 2000 (establishments and agencies)

**Legislative Wording 8:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- Considering the applicant's suitability to engage in any activity which is a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as amended by section 64 of the Protection of Freedoms Act 2012.

Regulated activity is work that a barred person must not do.

Regulated activity with children does not include any activity carried out in the course of family relationships, or personal, non-commercial relationships.



**Legislative Wording 9:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1

- (2)(1)(a) any form of teaching, training or instruction of children, unless the teaching, training or instruction is merely incidental to teaching, training or instruction of persons who are not children
- (2)(2) sub-paragraph (1)(a) does not include teaching, training or instruction provided to a child in the course of his employment
- (2)(3) subparagraph (2) does not apply if –
  - a) the child has not attained the age of 16, and
  - b) the activity is carried out by a person in respect of whom arrangements exist principally for that purpose.
- (2)(3A) sub-paragraph (1) does not include any form of teaching, training or instruction of children which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children
- (2)(3C) the reference in sub-section (3A) to day to day supervision references such day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned
- (2)(6) in sub-paragraph (2) employment includes any form of work which is carried out under the supervision or control of another, whether or not the person carrying it out is paid for doing so

**Legislative Wording 10:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1

- (2)(1)(b) any form of care for or supervision of children, unless the care or supervision is merely incidental to care for or supervision of persons who are not children
- (2)(2) sub-paragraph (1)(b) does not include care for or supervision of a child in the course of his employment
- (2)(3) subparagraph (2) does not apply if –
  - a) the child has not attained the age of 16, and
  - b) the activity is carried out by a person in respect of whom arrangements exist principally for that purpose
- (2)(3B) sub-paragraph (1)(b) –
  - a) does not include any health care provided otherwise than by (or under the direction or supervision of) a health care professional
  - b) does not, except in the case of relevant personal care or of health care provided by (or under the direction or supervision of) a health care professional, include any form of care for or supervision of children which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity
- (2)(3C) the reference in sub-section (3B)(b) to day to day supervision references such day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned

- (2)(6) in sub-paragraph (2) employment includes any form of work which is carried out under the supervision or control of another, whether or not the person carrying it out is paid for doing so

### **Legislative Wording 11:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1

- (2)(1)(c) any form of advice or guidance provided wholly or mainly for children, if the advice or guidance relates to the physical, emotional or educational well-being
- (2)(2) sub-paragraph (1)(c) does not include advice or guidance provided for a child in the course of his employment
- (2)(3) sub-paragraph (2) does not apply if–
  - c) the child has not attained the age of 16, and
  - d) the activity is carried out by a person in respect of whom arrangements exist principally for that purpose.
- (2)(3D) sub-paragraph (1)(c) does not include any legal advice

(2)(6) in sub-paragraph (2) employment includes any form of work which is carried out under the supervision or control of another, whether or not the person carrying it out is paid for doing so

### **Legislative Wording 12:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1 paragraph 2

- (1)(e) moderating a public electronic interactive communication service which is likely to be used wholly or mainly by children;
- (4) for the purposes of sub-paragraph (1)(e) a person moderates a public electronic interactive communication service if, for the purpose of protecting children, he has any function relating to –
  - a) monitoring the content of matter which forms any part of the service,
  - b) removing matter from, or preventing the addition of matter to, the service, or
  - c) controlling access to, or use of, the service.
- (5) but a person does not moderate a public electronic interactive communications service as mentioned in sub-paragraph (4)(b) or (c) unless he has –
  - a) access to the content of the matter
  - b) contact with users of the service

**Legislative Wording 13:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1 paragraph 2

- (1)(f) driving a vehicle which is being used only for the purpose of conveying children and any person supervising or caring for the children pursuant to arrangements made in prescribed circumstances.

**Legislative Wording 14:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1 paragraph 1

- (1A)(b) health care provided by, or under the direction or supervision of, a health care professional.
- (1C) “health care” includes all forms of health care provided for children, whether relating to physical or mental health and also includes palliative care for children and procedures that are similar to forms of medical or surgical care but are not provided for children in connection with a medical condition,  
  
“health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.
- (1D) any reference in this Part of this Schedule to health care provided by, or under the direction or supervision of, a health care professional includes a reference to first aid provided to a child by any person acting on behalf of an organisation established for the purpose of providing first aid.

**Legislative Wording 15:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1 paragraph 1

- (1)(a) relevant personal care
- 1B) “relevant personal care” means –
  - a) physical assistance which is given to a child who is in need of it by reason of illness or disability and is given in connection with eating or drinking (including the administration of parental nutrition)
  - b) physical assistance which is given to a child who is in need of it by reason of age, illness or disability and is given in connection with –
    - (i) toileting (including in relation to menstruation), or
    - (ii) washing or bathing, or
    - (iii) dressing
  - c) the prompting (together with the supervision) of a child, who is in need of it by reason of illness or disability, in relation to the performance of the activity of eating or drinking where the child is unable to make a decision in relation to performing such an activity without such prompting and supervision,
  - d) the prompting (together with the supervision) of a child, who is in need of it by reason of age, illness or disability, in relation to the

performance of any of the activities listed in paragraph (b)(i) to (iii) where the child is unable to make a decision in relation to performing such an activity without such prompting and supervision,

- e) any form of training, instruction, advice or guidance which –
  - (i) relates to the performance of the activity of eating or drinking,
  - (ii) is given to a child who is in need of it by reason of illness or disability, and
  - (iii) does not fall within paragraph (c), or
- f) any form of training, instruction, advice or guidance which –
  - (i) of any of the activities listed in paragraph (b)(i) to (iii),
  - (ii) is given to a child, who is in need of it by reason of age, illness or disability, and
  - (iii) does not fall within paragraph (d)

### **Legislative Wording 16:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1

- (3)(1) the establishments referred to are –
  - a) an educational institution which is exclusively or mainly for the provision of full-time education to children;
  - aa) a school falling within section 19(2) or (2B) of the Education Act 1996 (pupil referral units etc) which does not fall within sub-paragraph (1)(a);
  - ab) an alternative provision Academy which does not fall within paragraph (a);
  - b) an establishment which is exclusively or mainly for the provision of nursery education (within the meaning of section 117 of the School Standards and Framework Act 1998
  - c) A hospital which is exclusively or mainly for the reception and treatment of children **in Wales only**
  - d) an institution which is exclusively or mainly for the detention of children;
  - e) a children's home (within the meaning of section 1 of the Care Standards Act 2000 (c.14));
  - f) a home provided in pursuance of arrangements under section 82(5) of the Children Act 1989 (c. 41);
  - fa) a children's centre (within the meaning of section 5A(4) of the Childcare Act 2006);
  - g) relevant childcare premises.
- (3)(2) relevant childcare premises are any part of premises on which a person carries on–
  - a) any form of childcare (within the meaning of section 18 of the Childcare Act 2006 (c. 21) in respect of which he must be registered under that Act;

- b) any form of such childcare in respect of which he may be registered under that Act whether or not he is so registered;
  - c) any form of child minding or day care (within the meaning of section 79A of the Children Act 1989 (c. 41) or section 19 of the Children and Families (Wales) Measure 2010) in respect of which he must be registered under that Act.
- (3)(3) but premises on which a person carries on childcare or child minding are not relevant childcare premises if the premises are the home of a parent of at least one child to whom the childcare or child minding is provided.
  - (3)(4) for the purpose of paragraph (3) “parent” includes any person who has parental responsibility for a child or who has care of a child.
  - (3)(5) “parental responsibility” has the same meaning as in the Children Act 1989.

**Legislative Wording 17:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1

- (1)(9) the exercise of a function of the Children's Commissioner for Wales or the deputy Children's Commissioner for Wales is a regulated activity relating to children.

**Legislative Wording 18:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1

- (1)(9A) the exercise of a function so far as the function –
  - a) relates to any of the matters mentioned in sub-paragraph (9B),
  - b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with children, and
  - c) is not a function which falls within sub-paragraph (9C)
 is a regulated activity relating to children
- (1)(9B) the matters in this sub-paragraph are –
  - b) the exercise of a power under section 41 or 42 of the Children and Families (Wales) Measure 2010 (powers of inspection etc on entry onto childminding or day care premises in Wales or premises on which childminding or day care is suspected to be taking place);
  - c) any step taken in relation to Wales for the purposes of section 87(3) of the Children Act 1989 (welfare of children in boarding schools and colleges);
  - d) an inspection in Wales under section 87(6) of that Act (inspection of boarding school or college);
  - e) any step taken in relation to Wales by a person appointed under section 87A(1) of that Act (appointment as an inspector of boarding schools and colleges) –
    - (i) for the purposes of an agreement made in accordance with section 87A(2) of that Act, or
    - (ii) in order to comply with any requirement imposed on the person under section 87B of that Act ;

- f) an inspection under section 18C of the Education Act 1994 (inspection of teacher training);
  - g) an inspection under section 38 of the Education Act 1997 (inspection of local education authorities in Wales);
  - h) an inspection in Wales under section 31 of the Care Standards Act 2000 (inspections of establishments and agencies or the inspection of premises suspected as being used as an establishment or agency) of a residential family centre, a fostering agency, a voluntary adoption agency or an adoption support agency (each of which has the meaning given in section 4 of that Act);
  - i) an inspection under Part 4 of the Learning and Skills Act 2000 (inspection of education and training within the remit of Her Majesty's Chief Inspector of Education and Training in Wales);
  - j) a review or investigation under section 94 of the Health and Social Care (Community Health and Standards) Act 2003 (review or investigation of the discharge of social services functions by local authorities in Wales);
  - k) a review or investigation under section 94 of that Act as applied by section 30 of the Children Act 2004 (review or investigation of the functions of children's services authorities in Wales);
  - l) an inspection under section 28 of the Education Act 2005 (duty of Her Majesty's Chief Inspector of Education and Training in Wales to arrange regular inspections of certain schools);
  - m) an inspection under section 50 of that Act (inspection of religious education);
  - n) an inspection in Wales under section 51 of that Act (power of local education authorities to inspect maintained school for specific purpose);
  - o) an inspection under section 55 of that Act (inspection of careers services in Wales)
- (1)(9C) the exercise of a function to which sub-paragraph (10) applies so far as the function –
    - a) relates to the inspection of an establishment mentioned in paragraph 3(1) , and
    - b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with children,
 is a regulated activity relating to children.
  - (1)(10) this sub-paragraph applies to a function of –
    - b) HM Chief Inspector of Education and Training in Wales;
    - c) (a body approved in pursuance of section 163(1)(b) of the Education Act 2002 (c.32) to inspect a registered independent school in Wales
    - g) the Welsh Ministers.
  - (1)(11) the exercise of a function of the Welsh Ministers so far as the function -
    - a) relates to the inspection of an establishment, agency or body falling within sub-paragraph (12), and
    - b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the

exercise of that function, to have contact with children,  
is a regulated activity relating to children.

- (1)(12) an establishment, agency or body falls within this sub-paragraph if it is –
  - a) an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000 (c. 14),
  - b) an agency in relation to which such a requirement arises, or
  - c) an NHS body within the meaning of section 148 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43),and it provides any form of treatment or therapy for children.
- (1)(13) in sub-paragraph (12)(c) the reference to an NHS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided).

#### **Legislative Wording 19:**

- Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669 Registration for child minding or providing day care under Part 2 of the Children and Families (Wales) Measure 2010
- Registration under Chapters 2, 3 or 4 of Part 3 of the Childcare Act 2006 (regulation of provision of childcare in England)

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1

- (1)(3) each of the following, if carried out in England, is a regulated activity relating to children –
  - a) providing early years childminding in respect of which a requirement to register arises by section 33(1) of the Childcare Act 2006 (c. 21) (requirement to register);
  - b) providing later years childminding in respect of which a requirement to register arises by section 52(1) of that Act (requirement to register);
  - c) providing early years childminding or later years childminding, if it is provided by a person who is registered by virtue of section 62(1) of that Act (voluntary registration of childminders);
  - d) providing later years childminding for a child who has attained the age of eight, if a requirement to register would arise in respect of that provision by section 52(1) of that Act if the child had not attained that age.
- (1)(4) any expression used both in sub-paragraph (3) and in Part 3 of the Childcare Act 2006 has the meaning given by that Act.
- (1)(6) each of the following, if carried out in Wales, is a regulated activity relating to children – (a) acting as a child minder so as to give rise to a requirement to register under section 21 of the Children and Families (Wales) Measure 2010; (b) an activity which would give rise to such a requirement if the child in relation to whom the activity is carried out were under the age of eight (or such other age as may be substituted by order under section 19(4)(a) of the Children and Families (Wales) Measure 2010).
- (1)(7) for the purposes of sub-paragraph (6), “*acting as a child minder*” must be construed in accordance with section 19 of the Children

**Legislative Wording 20:**

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4 Part 1

- (1)(14) any activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in sub-paragraph (1), (2), (9A), (9C) or (11) is a regulated activity relating to children
- (1)(15) any activity which consists in or involves on a regular basis the day to day management or supervision of a person who would be carrying out an activity mentioned in sub-paragraph (1) or (2) but for the exclusion for supervised activity in paragraph 2(3A) or (3B)(b) or sub-paragraph(2B)(b) above is a regulated activity relating to children

**Legislation Wording 21:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- Placing children with foster parents in accordance with any provision of, or made by virtue of, the Children Act 1989 or the exercise of any duty under or by virtue of section 67 of that Act (welfare of privately fostered children)

Wording from the Safeguarding Vulnerable Groups Act 2006 Schedule 4

- (1)(5) It is a regulated activity relating to children to foster a child (as mentioned in section 53)

**Legislative Wording 22:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- Obtaining information in respect of any person who is aged 16 or over and who lives in the same household as an individual who is having or who has had their suitability assessed for the purposes of engaging in any activity which is regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 where that individual, and the person who lives in the same household, live on the premises where that activity or work would normally take place

**Legislative Wording 23:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- assessing the suitability of any person to have regular contact with a child who is –
  - (i) aged 16 or over and living on the premises at which the child minding or day care is being or is to be provided;
  - (ii) aged 16 or over and working, or who will be working, on the premises at which the child minding or day care is being or is to be provided at times when such child minding or day care is being or is to be provided



**Legislative Wording 24:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- obtaining information in respect of any person who is –
  - (i) aged 18 or over and living in the same household as a person who is, or who wishes to be approved as, a foster parent within the meaning of section 53(7)(a) or (b) of the Safeguarding Vulnerable Groups Act 2006;
  - (ii) aged 16 or over and living in the same household as a person who fosters, or intends to foster, a child privately within the meaning of section 66(1) of the Children Act 1989 or who is otherwise a private foster parent within the meaning of section 53(7) (c) and (8) of the Safeguarding Vulnerable Groups Act 2006

**Legislative Wording 25:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- A decision made by an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002 or the compiling of a report for the authority making a decision in respect of an application to be a special guardian within the meaning of section 14A of the Children Act 1989, as to a person's suitability to adopt a child or be a special guardian, including obtaining information in respect of any person aged 18 years or over living in the same household as the prospective adopter or special guardian



# Disclosure & Barring Service

## A GUIDE TO OTHER WORKFORCE ROLES FOR REGISTERED BODIES AND EMPLOYERS

This will help you identify whether the position you are recruiting for falls into the other workforce when completing the 'Position Applied For' field on a DBS application form and where access to a children's and adults' barred list check is available. These are roles which don't specifically relate to working with children and/or adults.

It is important to make sure that the law allows a DBS application to be submitted. As an employer or regulator, but also as a registered body, you have a legal responsibility for making sure you can submit applications and must know the legislation that supports each application in case we need further clarification. An individual cannot request a standard or enhanced level DBS check for themselves and so as a registered body you must not submit applications from individuals where there is no employer to make the suitability decision.

**Disclaimer: This is not legal advice. If you need help with making sure you are complying with the law, you should speak to a legal advisor.**

Standard and enhanced DBS checks can only be undertaken if the specific role, or the specific activities carried out within the role, are included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (access to standard DBS certificates), and are also covered by the Police Act 1997 or Police Act 1997 (Criminal Records) regulations (access to enhanced DBS certificates). These laws only provide eligibility for DBS checks, they do not make them a requirement.

Decisions on when and whether to undertake a DBS check are for the relevant employer or regulator to make based on what the law allows. It is not discretionary as such, but a matter of considering the nature of the activities undertaken and if they are eligible for DBS checks. DBS provides an electronic [eligibility tool](#) which can help you with this.

### STANDARD DBS certificate

Paper applications for standard DBS certificates **must** contain a workforce or they will be rejected.

**Individuals whose role does not relate to working with children or adults which is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

Please see the Standards Eligibility Guide for more information on this.

### ENHANCED DBS certificate ONLY

Paper applications for enhanced DBS certificates **must** contain a workforce or they will be rejected.

**Individuals applying for or renewing an operating licence to run premises where gambling can take place**

- [Legislative Wording 1](#)

**Individuals applying for or renewing a personal licence to perform the functions of a specified management office, or a specified operational function, in relation to facilities for gambling**

- [Legislative Wording 2](#)

**Individuals applying to work for the Gambling Commission**

- [Legislative Wording 3](#)

**Individuals applying for or renewing a licence to run the National Lottery or promote or sell tickets in relation to that lottery**

- [Legislative Wording 4](#)

**Individuals required to be registered by the Immigration Services Commissioner to provide immigration advice or services, not in connection with criminal proceedings**

- [Legislative Wording 5](#)

**Individuals applying for or renewing a licence to produce, supply, offer to supply or have in his possession any controlled drug**

- [Legislative Wording 6](#)

**Individuals applying to be a Maritime armed guard on UK ships where they can carry, acquire or transfer weapons and/or ammunition**

- [Legislative Wording 7](#)

**Individuals applying to be employed for the purpose of national security for the following:**

- in service of the Crown;
  - the United Kingdom Atomic Energy Authority
  - the Financial Conduct Authority (FCA);
  - the Prudential Regulation Authority (PRA)
- [Legislative Wording 8](#)

**Individuals applying for judicial appointments, such as Judges, Magistrates, Coroners or Justices of the Peace**

- [Legislative Wording 9](#)

**Individuals applying to be employed by the Crown.**

- [Legislative Wording 10](#)

**ENHANCED DBS certificate with access to the DBS CHILDREN'S AND ADULTS' BARRED LIST**

Paper applications for enhanced DBS certificates in the other workforce **including a check of the children's and adults' barred lists** are not in regulated activity with children or adults

**Individuals applying for or renewing a taxi or private hire vehicle licence – not taxi drivers who are entering into a contract to drive children or adults**

- [Legislative Wording 11](#)

## Appendix

See below wording from legislation as per guidance above

### Legislative Wording 1:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2007/1892

- Obtaining or holding an operating licence under Part 5 of the Gambling Act 2005 for the purposes of that Act.

### Legislative Wording 2:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2007/1892

- Obtaining or holding a personal licence under Part 6 of the Gambling Act 2005 for the purposes of that Act.

### Legislative Wording 3:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2007/1892

- Considering an individual's suitability for a position as Commissioner for the Gambling Commission and for any office or employment in the Commissioners' service.

### Legislative Wording 4:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2007/1892

- Obtaining or holding a licence under section 5 or 6 of the National Lottery Act 1993 (running or promoting lotteries).

### Legislative Wording 5:

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (No.2) Regulations 2009/1882

- Considering the applicant's suitability for work as a person who provides immigration advice or services as defined in section 82(1) of the Immigration and Asylum Act 1999 and is –
  - (i) a registered person under Part 5 of that Act, or
  - (ii) a person who acts on behalf of and under the supervision of such a registered person, or

a person who is exempt by section 84(4)(a) to (c) of that Act

**Legislative Wording 6:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (No.2) Regulations 2009/1882

- Considering the applicant's suitability to obtain or retain a licence under regulation 5 of the Misuse of Drugs Regulations 2001 or under Article 3(2) of Regulation 2004/273/EC or under Article 6(1) of Regulation 2005/111/EC where the question relates to any person who as a result of his role in the body concerned is required to be named in the application for such a licence (or would have been so required if that person had had that role at the time the application was made).

**Legislative Wording 7:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.4) Regulations 2012/3016

- Considering an individual's suitability to have in their possession, to acquire or to transfer, prohibited weapons or ammunition to which section 5 of the Firearms Act 1968 applies.

**Legislative Wording 8:**

Wording from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013/1198

- Any question asked by or on behalf of any person, in the course of his duties as a person employed in the service of the Crown, the United Kingdom Atomic Energy Authority or the FCA or the PRA in order to assess, for the purpose of safeguarding national security, the suitability of the person to whom the question relates or of any other person for any office or employment where the person questioned is informed at the time the question is asked that, by virtue of this Order, spent convictions are to be disclosed for the purpose of safeguarding national security.

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669

- Assessing the suitability of a person for any office or employment which relates to national security

**Legislative Wording 9:**

Wording from section 116 of the Police Act 1997

- An application under this section must be accompanied by a statement by a Minister of the Crown, or a person nominated by a Minister of the Crown, that the certificate is required for the purposes of an exempted question asked in the course of considering the applicant's suitability for a judicial appointment.

**Legislative Wording 10:**

Wording from section 116 of the Police Act 1997

- An application under this section must be accompanied by a statement by a Minister of the Crown, or a person nominated by a Minister of the Crown, that the certificate is required for the purposes of an exempted question asked in the course of considering the applicant's suitability for an appointment by or under the Crown to a position of such description as may be prescribed.


**Legislative Wording 11:**

Wording from the Police Act 1997 (Criminal Records) Regulations 2002, as amended by the Police Act 1997 (Criminal Records) (No.2) Regulations 2012/2114

- Considering the applicant's suitability to obtain or hold a licence under section 46 of the Town Police Clauses Act 1847; section 8 of the Metropolitan Public Carriage Act 1869; section 9 of the Plymouth City Council Act 1975; section 51 of the Local Government (Miscellaneous Provisions) Act 1976; or section 13 of the Private Hire Vehicles (London) Act 1998

## Ethical Standards and Member Development Committee

13 August 2020

<b>Subject:</b>	<b>Update on phase two of the Member Development Programme including implementation of the My Councillor Member Portal</b>
<b>Director:</b>	<b>Director of Law and Governance and Monitoring Officer – Surjit Tour</b>
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer:</b>	Phil Challoner phil_challoner@sandwell.gov.uk

### DECISION RECOMMENDATIONS

**That Ethical Standards and Member Development Committee:**

1. Notes the continued progress relating to phase two of the Member Development Programme which includes the latest on the design, pilot and future launch of the ‘My Councillor’ Member Portal.

#### 1 **PURPOSE OF THE REPORT**

- 1.1 For the Ethical Standards and Member Development Committee to note progress of phase two of the Member Development Programme and how Members have been supported by on-line learning and development interventions during the covid outbreak. In addition, the report outlines pilot and roll-out arrangements for the ‘My Councillor’ portal. Finally, to bring the Committee up to speed with how future content and scope of the member development programme will continue to be shaped by Members, ensuring it is fit for purpose to meet their ongoing needs.

#### 2 **IMPLICATIONS FOR SANDWELL’S VISION**



- 2.1 Elected Members with the requisite skills, knowledge and understanding of subject matters impacting upon their role will result in positive implications for each Vision 2030 ambition.

### 3 **BACKGROUND AND MAIN CONSIDERATIONS**

#### Member Development Programme Phase 1

- 3.1 The Elected Member Development Programme ('MDP') has been continually designed and led by Members.
- 3.2 Last year, the Local Government Association ('LGA') Peer Review team participated in a follow up visit to Sandwell and were briefed on the progress relating to the MDP. Feedback was outstanding describing progress as 'phenomenal' adding the programme was an 'exemplar' relating to the approach taken and delivery to date. This approach and momentum has continued, and a submission has been entered for an upcoming national HR Excellence Awards in the category 'Best Learning and Development Strategy'. The LGA have maintained close contact with the programme throughout phase one and have assisted with providing external courses, including Peer Councillors, at no charge.
- 3.3 Following the update to committee on 7 February 2020, phase one of the MDP concluded prematurely due to the COVID-19 pandemic . However, all scheduled essential and requested learning was delivered successfully. Additional learning interventions requested, were also delivered early this year which coincided with Elected Member Personal Development Plan ('PDP') meetings that reviewed phase one and considered future interventions and priorities for phase two.
- 3.4 In total 73% of 'Peer' Elected Member PDP meetings took place prior to the COVID-19 pandemic. This confidential process has helped to inform phase two of the programme and includes positive feedback and constructive comments to improve the learner experience. From analysis of PDP's undertaken, phase one of the MDP was deemed successful and examples of the most enjoyed interventions, where more detailed knowledge has been requested, include:
- Personal Safety
  - Understanding Social Media
  - Personal Resilience
  - Understanding Dementia
  - Corporate Parenting

For phase one interventions, the average attendance rate was approximately 50% which compares favourably with levels prior to phase one of the MDP that averaged only 22%. Interventions such as Corporate Parenting recorded over 60% attendance levels.

- 3.5 As reported in February, there has been some very positive feedback on the facilitated sessions and suggested future development proposals have been requested on the back of initial learning. Constructive comments received focused primarily around reducing the volume of training offered to prevent overload and ensuring key elements within existing training were afforded greater exposure.

### Member Development Programme Phase 2

- 3.6 Priority learning and development identified from PDP's included:

- ICT upskilling at a basic and intermediate level to include Word and Excel
- Chairing Meetings /Committees
- Public speaking
- Using Social Media effectively
- Additional Well-being training

The essential learning provided during Phase One was welcomed by all Councillors. Committee, Council Protocols and Procedures and Artemis on-line learning have been suggested to be included as essential training in Phase Two.

PDP feedback has identified essential core learning for all newly Elected Members, however, most current members would welcome refresher workshops on the content, suggested at 3 year intervals. This would be evolve in line with member identified need alongside any substantial changes to regulations or guidelines.

### Covid-19 related learning and development

- 3.7 Since phase one of the MDP concluded prematurely in February this year, Civic and Member Services have worked closely with the Artemis Team and external providers such as LGA, LGiU and WM Employers to offer members a range of on-line learning interventions linked to the COVID-19 pandemic. These have included:

- Thriving During Isolation
- Adverse Childhood Experiences (ACEs)
- Domestic Violence and Abuse (DVA)
- Social Media
- Chairing Skills

- Additional Artemis programmes e.g. Child Sexual Exploitation, Poverty
- LGA on-line forum for councillors
- Managing and Promoting Mental Health and Wellbeing (scheduled for September 2020)

Artemis reporting has indicated an encouraging rise in take up for the ACE's and DVA courses since the pandemic began.

- 3.8 Information, advice and guidance relating to learning and development opportunities have continuously been circulated via Member Bulletins including a recent lockdown special bulletin in July. Future bulletins will include reminders to access on-line learning as much as possible during this uncertain time when it is unlikely traditional leaning will be a viable option for some time.

#### Planned Member Development Activity

- 3.9 Whilst priority will be given to the pilot and launch of the 'My Councillor' portal, Civic and Member Services will be working with internal providers to explore ways in which existing courses can be delivered via platforms such as MS Teams.
- 3.10 In addition, research and contact will continue to be made with external providers to ensure suitable learning opportunities are made available to members where appropriate.
- 3.10 Work is also underway with colleagues across the Democracy function to develop new packages that will assist members in a variety of roles to assist from a role identification, procedural, signposting and networking perspective. Ahead of the next Municipal election, the newly elected member induction arrangements will also be refreshed.
- 3.11 One of the key priorities emerging from the PDP analysis for phase two will be to focus on the learning, understanding, confidence and support required for members to fully utilise the new 'My Councillor' portal when launched.
- 3.12 A series of portal demonstrations took place prior to the pandemic which has informed the design stage that is now nearing completion. Progress was temporarily delayed as officers were redeployed to assist with the Council's response to the pandemic. Recently, a pilot group of Elected Members was established, and it is anticipated this pilot will commence from September this year. Individuals with varying IT capability levels have been encouraged to participate in the pilot to make it as representative as possible. The design stage has involved extensive

system build, process and procedural arrangements with key services etc. that will be tested thoroughly during the 1-2 month pilot.

In addition, officers from the Council's Digital Transformation Team are working closely with Civic and Member Services on appropriate training guides and governance arrangements to ensure the portal is used correctly, efficiently and effectively with appropriate reporting available that can come back to this committee at regular intervals. Civic and Member Services will manage these governance arrangements following completion of the full launch.

Should the pilot be successful, with minimal amendments to the portal required, a phased introduction will commence preceded by extensive training that will be tailored to the skill set of individual members.

Officers have developed an indicative timeline to cover the period from pilot commencement to phased launch:

- Pre-pilot refresh and training August 2020
- Pilot starts September 2020
- Pilot concludes October 2020
- Lessons Learnt established and incorporated October 2020
- Phased pre-portal launch training starts November 2020
- Phased portal launch starts Jan 2021

The final two elements will also need to be caveated that they are subject to scoping any required changes post pilot. If the feedback requires any significant reworking of the platform or processes to incorporate, then this may take additional time to review/prioritise and develop.

## **4 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)**

- 4.1 Elected Members have been consulted at key stages of the process, feeding into the design and delivery of the Member Development Programme via workshops and PDP's. Elected Members are also represented on both the Digital Solution Working Group/Board and 'My Councillor' portal pilot group.

## **5 ALTERNATIVE OPTIONS**

- 5.1 Alternative options have not been considered as the MDP has been developed with Members and the purpose of the MDP is to deliver development, learning and support requirements designed and/or requested by Members themselves.

## **6 STRATEGIC RESOURCE IMPLICATIONS**

- 6.1 The MDP will involve a range of providers and support being utilised to ensure effective development and learning. The costs of such support will be met from existing approved budgets.

## **7 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 7.1 An effective Member Development Programme will help ensure the council make informed decisions and empower Members in undertaking their various roles.
- 7.2 Members in relation to regulatory matters/functions are required to undertake specific kinds of development activities, particularly relating to planning and licensing functions, ethical standards and the code of conduct and safeguarding.
- 7.3 Supporting Members in their development, training and support needs strengthens the council's governance arrangements.

## **8 EQUALITY IMPACT ASSESSMENT**

- 8.1 The Members Development Programme will address any Equality Act implications and issues arising. Support arrangements for Members identifying any specific needs will be developed accordingly.

## **9 DATA PROTECTION IMPACT ASSESSMENT**

- 9.1 Personal Development Plans remain confidential and any discussion concerning the same would be held in confidence.

## **10 CRIME AND DISORDER AND RISK ASSESSMENT**

- 10.1 There are no such implications arising.

## **11 SUSTAINABILITY OF PROPOSALS**

- 11.1 The Member Development Programme is a two-phase initiative designed to ensure Elected Members have the requisite skills, support and knowledge necessary to undertake their various roles. Following phase two, a fundamental review will be held to consider how the MDP is sustained from 2021.

## **12 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)**

12.1 There are no such implications arising.

## **13 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND**

13.1 There are no such implications arising.

## **14 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

14.1 Designed to inform Members of MDP progress, this report will act as an update in relation to the progress of the programme, including the design and implementation of the 'My Councillor' portal.

## **15 BACKGROUND PAPERS**

15.1 None.

## **16 APPENDICES:**

16.1 None

## Ethical Standards and Member Development Committee

**13 August 2020**

<b>Subject:</b>	Gifts and Hospitality Register
<b>Director:</b>	Director of Law and Governance and Monitoring Officer - Surjit Tour
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer:</b>	Trisha Newton Trisha_newton@sandwell.gov.uk

### DECISION RECOMMENDATIONS

**That the Ethical Standards and Member Development Committee:**

- 1.1 Considers the Gifts and Hospitality Register and declaration of interests made by Members.
- 1.2 Notes the contents of this report and makes any relevant recommendations to the Director of Law and Governance and Monitoring Officer after consideration of the Gifts and Hospitality Register.

## 1 PURPOSE OF THE REPORT

- 1.1 Guidance is available to all members on how to treat offers of gifts and hospitality and the process for declaring such offers. This guidance forms part of the Council's Constitution.
- 1.2 The Monitoring Officer maintains a public register of members' interests and also a record of any gift or hospitality received with an estimated value of at least £100.00. The Register of Members' Gifts and Hospitality is available for inspection by the public at all reasonable hours. Declarations of gifts and hospitality by individual members are also recorded on the Committee Management Information System [CMIS] on the Council's web site and can be accessed at any time from the internet.

- 1.3 The Registers are periodically reviewed by the Director of Law and Governance and Monitoring Officer.
- 1.4 This guidance was last reviewed by the Committee in March 2015 as part of the review of the Code of Conduct and will be reviewed as part of the forthcoming review.
- 1.5 Following the Best Practice recommendations made by the Committee on Standards in Public Life, it is suggested that the Gifts and Hospitality Register becomes a standing agenda item for future meetings of the Committee.
- 1.6 A copy of the recent entries to the register is available at Appendix 1.

## **2 IMPLICATIONS FOR SANDWELL'S VISION**

- 2.1 Maintenance of the Members' Register of Interests contributes to public confidence in local democracy and is an essential part of good corporate governance.
- 2.2 The Members' Register of Gifts and Hospitality is an important instrument of openness and good governance. It provides an accessible record of the gifts and hospitality received by members. Monitoring and review of the Register will help to contribute to better corporate governance which underpins the delivery of high quality services.

## **3 STRATEGIC RESOURCE IMPLICATIONS**

- 3.1 There are no strategic resource implications arising from this report.

## **4 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 4.1 The Authority has a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by Members. The Authority is also obliged to have in place a Code of Conduct.
- 4.2 The new standards arrangements are set out in chapter 7 of the Localism Act 2011, and in secondary legislation made under the Act, particularly in The Relevant Authorities (Disclosure of Pecuniary Interests) Regulations 2012.
- 4.3 The Localism Act 2011 strengthens requirements on members to register and disclose interests.



- 4.4 The Localism Act 2011 (and Regulations made under the Act) did not include any provisions requiring Members' or co-opted Members' to register Gifts and Hospitality, which was formerly the case. However, the Council does still have a duty to promote high standards of conduct by Members' and co-opted Members'.
- 4.5 The Members' Code of Conduct describes the interests of any person from whom a member has received a gift or hospitality with an estimated value of at least £100.00 as other registerable interest of the member.
- 4.6 The Protocol for Members' on Gifts and Hospitality sets out important guidance for Members' on the acceptance of Gifts and Hospitality.
- 4.7 Maintaining a Protocol on Gifts and Hospitality also assists the Council to comply with the requirements of the Bribery Act 2010. Under the Bribery Act 2010 all employees and Elected Members' are prohibited from soliciting, arranging or accepting bribes intended for the benefit of the Council, or for their personal benefit, or for the benefit of the employee's family, associates or acquaintances.

## **5 EQUALITY IMPACT ASSESSMENT**

- 5.1 There is no requirement for an equality impact assessment.

## **6 DATA PROTECTION IMPACT ASSESSMENT**

- 6.1 There is no requirement for a data protection impact assessment.

## **7 CRIME AND DISORDER AND RISK ASSESSMENT**

- 7.1 There is no requirement for a crime and disorder and risk assessment.

### **APPENDICES:**


#### **Extract from the Gifts and Hospitality Register**

**Surjit Tour**  
**Director of Law and Governance and Monitoring Officer**

<b>Name</b>	<b>Date Registered</b>	<b>Details of Gift/Hospitality</b>	<b>Estimated Value</b>	<b>Accepted/Refused</b>
Cllr Y Davies	03 March 2020	Meal - Thomas Dudley Ltd	£50	Accepted
Cllr Allcock	09 March 2020	Meal for 2 - British Kebab Awards	£80	Accepted

## Ethical Standards and Member Development Committee

13 August 2020

<b>Subject:</b>	National Cases
<b>Director:</b>	Director of Law and Governance and Monitoring Officer - Surjit Tour
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Trisha Newton Trisha_newton@sandwell.gov.uk

### **DECISION RECOMMENDATIONS**

**That the Ethical Standards and Member Development Committee:**

1. note the contents of the report and the case at Appendix 1 and consider any issues for the Council.

## 1 PURPOSE OF THE REPORT

- 1.1 Within its terms of reference, the Ethical Standards and Member Development Committee has a duty to promote high ethical standards amongst Members. As well as complying with legislation and guidance, the Committee will need to demonstrate learning from issues arising from local investigations and case law. Furthermore it is advisable for the Committee to be kept informed of any particularly notable cases which are publicised as they may also add to learning at the local level.

## 2 IMPLICATIONS FOR SANDWELL'S VISION

- 2.1 High standards of conduct are an essential part of good corporate governance and this in turn has a direct relationship with the delivery of high quality services.

### **3 STRATEGIC RESOURCE IMPLICATIONS**

3.1 There are no resource implications arising from this report.

### **4 LEGAL AND GOVERNANCE CONSIDERATIONS**

4.1 By considering national cases of significance the Ethical Standards and Member Development Committee will be better informed and placed to discharge its duty to promote high ethical standards.

**Surjit Tour**

**Director of Law and Governance and Monitoring Officer**

## **Racial slur councillor suspended**

### **A councillor who repeatedly used "incredibly offensive racial slurs" at a council meeting has been suspended from the local Liberal Democrat party**

Dennis Parsons said the offensive word - the name of his family's black cat in the 1950s - four times at a Cheltenham Borough council meeting.

He apologised for using the word but said he used the cat's name to show "how different the culture was then".

Local party members voted to suspend his group membership.

The Local Democracy Reporting Service said the comments were made during a debate to review the authority's policies in the wake of George Floyd's death last month.

During the meeting, Mr Parsons described his family's cat saying his mother would shout its name from the front gate.

He added that "now obviously you can't do that" because "the culture has changed".

Lib Dem councillor Karl Hobley said he was "staggered" Mr Parsons "chose to speak those words".

While Lib Dem councillor Max Wilkinson said he knew Mr Parsons "wouldn't have meant offence" but it was "truly offensive".

In response, Mr Parsons said he was "obviously sorry" if he had "offended people's sensitivities" but he had "quoted something that was perfectly acceptable in 1945".

Following the meeting, calls were made for him to resign from the local group while an online petition calling for his resignation from the council, has attracted more than 200 signatories.

Rebecca Mountford said on the petition: "I can't believe he hasn't gone yet. Zero tolerance on racism is the only way we're going to eradicate it altogether."

And Shola Efunshile, said: "Our elected representatives cannot be allowed to behave in this way, especially at a time when our collective society is working to do better."

In a statement Mr Parsons said he "very much" regrets and is "hugely embarrassed" by his action.

"My parents were not racist. I am not racist. I was using the name of the family cat to illustrate how different the culture was then," he said.

"Unfortunately, in doing so, I articulated the N-word - which was unacceptable."


Mr Wilkinson, chairman of the standards committee, said it would "treat this matter with the seriousness it deserves".

He also confirmed that all borough councillors would receive training on issues of race, equality and diversity.

*Taken from BBC News 18 June 2020*

## Ethical Standards and Member Development Committee

13 August 2020

<b>Subject:</b>	<b>Ethical Standards and Member Development Committee Work Programme 2020-21</b>
<b>Director:</b>	<b>Director of Law and Governance and Monitoring Officer - Surjit Tour</b>
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Trisha Newton <a href="mailto:Trisha_newton@sandwell.gov.uk">Trisha_newton@sandwell.gov.uk</a> 0121 569 3193

### **DECISION RECOMMENDATIONS**

That the Ethical Standards and Member Development Committee:

Approve the work programme for 2020-21 which will be kept under review during the year by the Monitoring Officer and the Ethical Standards and Member Development Committee.

#### **1 PURPOSE OF THE REPORT**

- 1.1 A draft work programme for 2020-21 is attached at Appendix 1 for the Committee's consideration. The programme covers the areas that are within the remit of the Ethical Standards and Member Development Committee under its current terms of reference.
- 1.2 In addition, Sub-Committees of the Standards Committee will deal with any case work.

## **2 IMPLICATIONS FOR SANDWELL'S VISION**

- 2.1 High standards of conduct are an essential part of good corporate governance and this in turn has a direct relationship with the delivery of high quality services. A planned work programme will help the Ethical Standards and Member Development Committee in promoting high ethical standards.

## **3 STRATEGIC RESOURCE IMPLICATIONS**

- 3.1 There are no resource implications arising from this report.

## **4 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 4.1 Whilst there is no longer a statutory requirement to establish a Standards Committee, there is a need to promote high ethical standards so the Council has agreed to continue with an Ethical Standards and Member Development Committee as part of its arrangements to deal with standards.

**Surjit Tour**

**Director of Law and Governance and Monitoring Officer**



### Ethical Standards and Member Development Committee Work Programme 2020-21

#### 13 August 2020

- LGA Draft Code of Conduct
- Committee on Standards in Public Life – Best Practice
- Allegations Update (Standing Item)
- Gifts and Hospitality (Standing Item)
- National Cases for information (Standing Item)
- Member Development Update
- Work Programme 2020/21

#### 25 September 2020

- Member Development Update
  - o Member ICT – remote meetings update
  - o Member Portal/enquiry workflow – update
  - o Member Development Programme update
- Review of Member Code of Conduct/Arrangements - Update
- Committee on Standards in Public Life – Annual Report
- Allegations Update
- Gifts and Hospitality
- National Cases for information

#### 4 December 2020


- Review - Appointment to Sub Committees/Standards Working Group
- Review – Personal Safety for Elected Members
- Review of Member Code of Conduct/Arrangements – Update
- Member Development - Update
- Register of Members’ Interests – Annual Review
- Allegations Update
- Gifts and Hospitality
- National cases for information

**5 March 2021**

- Annual Report of the Ethical Standards and Member Development Committee
- Review of Member Code of Conduct/Arrangements - Update
- Member Development Update
- Review of Casework/Allegations Update
- Gifts and Hospitality
- National cases for information

## Ethical Standards and Member Development Committee

13 August 2020

<b>Subject:</b>	Allegations Update
<b>Director:</b>	Director of Law and Governance and Monitoring Officer - Surjit Tour
<b>Contribution towards Vision 2030:</b>	
<b>Contact Officer(s):</b>	Surjit Tour Surjit_Tour@sandwell.gov.uk

### **DECISION RECOMMENDATIONS**

#### **That the Committee:**

Note details of complaints received in relation to member conduct and the progress and outcome of consideration of these complaints.

## **1 PURPOSE OF THE REPORT**

- 1.1 The Ethical Standards and Member Development Committee receives reports from time to time on complaints received in respect of member conduct and the progress and outcome of consideration of these complaints.
- 1.2 This report provides a brief summary of updated information on current complaints in accordance with the Council's arrangements for dealing with Code of Conduct matters.

## **2 IMPLICATIONS FOR SANDWELL'S VISION**

The increased awareness of the work of the Ethical Standards and Member Development Committee will help promote higher standards by enabling better decision-making.

### **3 STRATEGIC RESOURCE IMPLICATIONS**

3.1 There are no strategic resource implications arising from this report.

### **4 LEGAL AND GOVERNANCE CONSIDERATIONS**

4.1 The new standards arrangements are set out in chapter 7 of the Localism Act 2011, and in secondary legislation made under the Act, particularly in The Relevant Authorities (Disclosure of Pecuniary Interests) Regulations 2012.

### **5 APPENDICES:**

Allegations Update

**Surjit Tour**

**Director of Law and Governance and Monitoring Officer**

## **SCHEDULE OF COMPLAINTS**

### **Complaints subject to formal investigation in accordance with the Arrangements for Dealing with Standards Allegations under the Localism Act 2011**

#### **1. Case Reference: MC/020719**

This complaint arose following the review of an historic matter. The review highlighted concerns with the conduct of the investigation. This resulted in an allegation that the Councillor had not co-operated candidly and fully with the investigation. The matter was considered by the Independent person and the previous DMO and it was determined that a formal investigation was not appropriate.

The Ethical Standards and Member Development Committee was asked to review the previous DMO decision on 11 November 2019 and determined that the complaint for referred back for re-assessment. The re-assessment has been undertaken and the complaint has been referred for a formal investigation, which is ongoing.

#### **2. Case Reference: MC/010719**

This complaint arose following the review of a historic matter. The review highlighted concerns with the conduct of the investigation and the process that was followed. This resulted in an allegation that the Councillor had not co-operated candidly and fully with the investigation and had not questioned the conduct of others resulting in a potential breach of the Members' Code of Conduct and the Nolan principles. The matter was referred for investigation which is ongoing.

#### **3. Case reference: MC/120220**

A complaint was received that a number of subject members are alleged to have acted inappropriately in relation to council officers and/or failing to challenge inappropriate behaviour of elected members in breach of the Members' Code of Conduct. This matter

has been referred for formal investigation by the Monitoring Officer, which is ongoing.

**4. Case Reference MC/140520**

An allegation was received from a member of the public that a councillor failed to comply with Covid-19 guidance and caused reputational harm to another legal entity; and the subject member allegedly engaged in other inappropriate communications in social media in contravention of the Members' Code of Conduct. This matter has been referred for formal investigation and is ongoing.

**5. Case reference MC/280520**

This matter is linked to allegation MC/140520 above. The allegation was made by another complainant that the subject member failed to comply with COvid-19 guidance and then posted comments on social media which were inaccurate and in breach of the Members' Code of Conduct. This matter has been referred for formal investigation.

**6. Case reference: MC/010730**

An allegation was received that the subject member shared confidential staffing information with another councillor without justification, shared inaccurate information and interfered with an ongoing council process. This matter is linked to MC/O3/0720 below. The matter has been referred to formal investigation.

**7. Case reference MC/030720**

An allegation was received that a councillor shared confidential staffing information with another councillor. This matter is linked to MC/010720. The matter has been referred to formal investigation.

**Other Matters**

**Case reference: MC/011119** - A complaint was received that the subject member alleged that the complainant was involved in the inappropriate treatment of Council officers and made unwarranted and un-evidenced defamatory comments about the complainant. This complaint is linked to complaint MC/120220 above. The Monitoring Officer, after seeking the

views of the Independent Person, decided that this complaint could not be dealt with until the outcome of complaint MC/120220 is first known given the nexus of law and fact arising. The matter will therefore be considered upon complaint MC/120220 being concluded.

**Case reference MC/130520** – An allegation was received from the Complainant alleging that one of the Complainant’s Ward Councillors breached her confidentiality. The Complainant was unable to identify the Councillor in question and has refused to provide further information to ascertain the identity of the Councillor. Following discussion with the Independent Person, the Monitoring Officer has determined that no further action be taken in respect of this matter.

**Case reference MC/080720** - An allegation was received that the subject member lied and/or provided false information concerning his election and residential status. Following initial enquiries, the subject member provided evidence that satisfied the requirements of section 79 Local Government Act 1972 concerning eligibility to stand and remain as a councillor; and had ensured his Register of Interests confirmed his place of residence within the borough as required under the Members’ Code of Conduct. The review of the complaint, conducted in accordance with Arrangements, led to the determination that no further action needs to be taken in respect of the complaint. The matter has been closed accordingly.

Two new complaints have been received by the Monitoring Officer against a number of members alleging failure to observe Covid-19 guidance. This matter is currently under initial assessment in accordance with the Arrangements.