

Public Document Pack

Standards Committee

Monday, 14th January, 2019

6.00 pm

Conference Room 1 - Old Town Hall, Blackburn

AGENDA

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2. **Minutes of the last meeting**
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Date Published: 4th January 2019
Harry Catherall, Chief Executive

PRESENT – Councillors, Afzal (Chair), Gunn, Liddle, McGurk and Surve, and Paul Fletcher, Independent Member.

OFFICERS - David Fairclough, Monitoring Officer, Asad Laher, Head of Governance, and Phil Llewellyn, Governance and Democratic Manager.

RESOLUTIONS

9 Welcome and Apologies

The Chair welcomed everyone to the meeting. Apologies were received from Councillors Neil and Julie Slater, Councillor Jamie Groves, and Tasleem Fazal, Stewart Wright Independent Person, and Daniel Wilde, Parish Councillor.

10 Declarations of Interest

No Declarations of Interest were submitted.

11 Minutes of the Meeting held on 16th July 2018

RESOLVED - The Minutes of the meeting on held on 16th July 2018 were agreed as a correct record, subject to the correct spelling of Stewart Wright's name.

Under Matters Arising, the Chair referred to discussions at the last meeting on Ethical Standards Consultation and the meeting further discussed eligibility to stand in terms of sexual offences and Anti-Social Behaviour for prospective Councillors. Members requested clarification on which Councillors roles would be appropriate for DBS checks. David Fairclough and Phil Llewellyn updated the Committee on the present position and it was agreed that this matter would be further discussed at the next meeting, and that an HR advisor would also be present.

12 Complaints Update Report

Members received an update on complaints received regarding Members conduct under the Arrangements for dealing with complaints about the Code of Conduct for Members. The report covered the period up to 5th October 2018. The Committee would be updated at its next meeting of any complaints received and registered after this date.

Following discussion on Members involvements in complaints and e-mail escalation, it was noted that this topic would be covered at the training session scheduled for 12th November, and was also on the Committee's Work Programme for the year.

RESOLVED – That the update report be noted.

13 **Protocol-Member to Member Relations**

Further to discussions at the July meeting, a draft protocol for Member/Member relations was submitted for consideration. The draft protocol would complement the Member/Officer protocol in the Council's Constitution.

The draft document had been produced to initiate discussion by the Committee, who were asked to review it and update it with their comments, subject to which the Monitoring Officer would finalise the document for consideration by the Policy Council in December 2018.

The Committee discussed the draft protocol and were reminded that equality and diversity training would be available for all Members in December 2018 and January 2019.

RESOLVED – That the Protocol as submitted be approved and that Policy Council on 6th December 2018 be requested to adopt the protocol for inclusion in the Council's Constitution.

Signed:

Date:

Chair of the meeting
at which the minutes were confirmed

DECLARATIONS OF INTEREST IN ITEMS ON THIS AGENDA

Members attending a Council, Committee, Board or other meeting with a personal interest in a matter on the Agenda must disclose the existence and nature of the interest and, if it is a Disclosable Pecuniary Interest or an Other Interest under paragraph 16.1 of the Code of Conduct, should leave the meeting during discussion and voting on the item.

Members declaring an interest(s) should complete this form and hand it to the Democratic Services Officer at the commencement of the meeting and declare such an interest at the appropriate point on the agenda.

MEETING: **Standards Committee**

DATE: **14th January 2019**

AGENDA ITEM NO.:

DESCRIPTION (BRIEF):

NATURE OF INTEREST:

DISCLOSABLE PECUNIARY/OTHER (delete as appropriate)

SIGNED :

PRINT NAME:

(Paragraphs 8 to 17 of the Code of Conduct for Members of the Council refer)



REPORT OF: DIRECTOR OF HR, LEGAL & GOVERNANCE

TO: STANDARDS COMMITTEE

ON: 14 JANUARY 2019

SUBJECT: Review of DBS Procedures - Councillors

1. PURPOSE OF THE REPORT

A review of the current arrangements for undertaking police record checks for Councillors.

2. RECOMMENDATIONS

The Standards Committee is asked:

To review the current guidance on Disclosure and Barring Service (DBS) eligibility for Councillors and make any recommendations for change to the full Council.

3. BACKGROUND

At their meeting in October 2018, the Committee re-considered the work programme following the publication of the outcome of national government consultation on 'Updating the Disqualification Criteria for Councillors and Mayors' and added to the programme a review of the Council's policy on the application of the Disclosure and Barring Service provisions for Councillors.

The government had consulted as reported in October on their proposals to update the disqualification criteria for councillors. Following the consultation the government announced that it is to strengthen rules preventing people found guilty of serious crimes from serving on local councils.

The arrangements for the undertaking of police checks are facilitated by the Disclosure and Barring Service (DBS).

The Council's current DBS Policy is attached as Appendix A to this report.

The ability for an employer, to ask an individual to apply for a DBS check, at either Standard or Enhanced level, is set out in legislation. There is a legislation that supports and prevents access to the DBS service depending on the role of an individual and the frequency and contact a person has with vulnerable people.

There are 3 levels of checks that can be undertaken:

- Basic disclosures are available to anyone for any purpose and are not job specific. They detail only unspent convictions in line with the Rehabilitation of Offenders Act.

- Standard level disclosures are exempt of the Rehabilitation of Offenders Act and are often used for regulated roles such as Financial Services or individual working within hospitals.
- Enhanced level disclosures are also exempt from the Rehabilitation of Offenders Act and are commonly used for individuals who care for children or vulnerable adults. An additional check to check with barred lists for children and/or adults

Organisations can undertake checks in accordance with certain eligibility criteria.

In summary these are set out below.

The DBS applicant must be deemed to be employed in 'regulated activity' to enable an employer to request an enhanced disclosure with an additional check of children and/or adults for an individual.

- For children – the person must have frequent and unsupervised access to children. The frequency is determined by unsupervised contact more than 4 times a month or one overnight stay.
- For vulnerable adults – the person must provide one of six activities to a vulnerable adult. There are no frequency rules. Please note deeming an individual as a vulnerable adult is also dictated by law, as this cannot be assumed by age or disability (ref The Safeguarding of Vulnerable Groups Act 2006, Chapter 47, section 59)

Standard level disclosures are exempt of the Rehabilitation of Offenders Act and are often used for regulated roles such as Financial Services or individual working within hospitals.

A great deal of media coverage exists whereby the public feel further checks should be undertaken. The legislation tries to create a fair process by striking a balance between transparency and unnecessary invasions of privacy, while protecting the most vulnerable in our society. Regardless, of any opinion on whether a check should or should not be undertaken, or whether the rules are a common sense approach to this issue, the law remains in place. Therefore, to undertake an enhanced level DBS check against an individual who does not meet the eligibility criteria is against the law and therefore cannot be actioned.

The Council's current practice involves risk-assessing specific Councillor roles where they may have access or personal data relating to children, or vulnerable adults, such as the Executive Member for Children, Young People & Education.

4. RATIONALE

The recent developments nationally have suggested that the Council's approach be reviewed.

The council must at all times ensure that any proposals it develops fit with the legislative guidance for the conducting of checks and provide for the Council an assurance that it is permitted to ask exempted questions.

5. POLICY IMPLICATIONS

The Government said: "Elected members play a crucial role in town halls across the country, and are the foundations of local democracy. They are community champions, and have a

leading role to play in building a better society for everyone. With such an important role comes great responsibility, and these changes will protect residents while upholding the values and high standards of behaviour we all expect.”

It is therefore appropriate (and in order to reflect the pending legislative changes) to review and update the Council’s processes and requirements for certain councillor roles to be subject to DBS checks.

Roles within the Council for employees that are eligible for a DBS are renewed every 3 years or the employee takes part in the update service which is paid yearly and the employee provides consent for Blackburn with Darwen BC to ‘check’ their record with the update service at the time the renewal is due.

6. FINANCIAL IMPLICATIONS

None

7. LEGAL IMPLICATIONS

Currently, the disqualification rules for councillors and mayors is contained in section 80, Local Government Act 1972, which includes a provision that anyone convicted of an offence carrying a prison sentence of more than three months (without the option of fine) is banned from serving as a local councillor.

The new measures will see the disqualification rules changed to include the alternatives to a prison sentence as a barrier to becoming a councillor. This would mean any person who is subject to an Anti-Social Behaviour Injunction, a Criminal Behaviour Order, a Sexual Risk Order or who is on the Sex Offenders’ Register, would no longer be able to stand or serve as a councillor. This will require changes to primary legislation, in particular the Local Government Act 1972, the Local Democracy, Economic Development and Construction Act 2009, and the Greater London Authority Act 2009.

Although the current disqualification rules do not provide for carrying out DBS checks, any changes to the Council’s requirements for carrying out DBS checks must be in accordance with the legislative framework and statutory guidance issued in respect of councillors.

8. RESOURCE IMPLICATIONS

None

9. EQUALITY IMPLICATIONS

Any proposals for change will be assessed to establish any potential equality implications. Any final proposals are subject to agreement of the full Council for which an equality impact assessment report will be prepared, as required.

10. CONSULTATIONS

The DBS will be consulted on final proposals to be presented as recommendations from this Committee to the full council

Contact Officer: Asad Laher/Corinne McMillan
Date: December 2018
Background Papers: DBS Regulations.



DISCLOSURE AND BARRING SERVICE (DBS) POLICY

1. Aim of this Policy and Procedure

This policy and procedure is to ensure that Blackburn with Darwen Borough Council ("the Council") complies with the requirements of the Rehabilitation of Offenders Act 1974 (and associated legislation), the Police Act 1997 and the Protection of Freedoms Act 2012 in connection with the use of information provided to registered persons ("Disclosure Information") and subsequent guidance issued by the Disclosure and Barring Service. This policy satisfies the requirement for Blackburn with Darwen Borough Council to obtain criminal record information and checking of the barred list on individuals seeking to work with children and adults deemed to be vulnerable, and other occupations involving positions of trust.

2. Scope of Policy and Procedure

This policy will apply to:-

- all posts which are included in Rehabilitation of Offenders Act (Exceptions) Order 1975
- all posts which are covered by the Police Act 1997
- all posts which involve regulated activity as defined by Safeguarding Vulnerable Groups Act 2006 / Safeguarding Vulnerable Groups Order 2007
- the procurement of services from contractors and commissioned services falling into the above categories.
- Multi agency activity which the Council is involved
- Student placements, work experience, casuals.

A disclosure is not a substitute for other pre-recruitment responsibilities. The Council should scrutinise previous employment history and references. If an applicant has worked with vulnerable groups previously, the most recent such employer (or employers, if there are several in a short time) should be contacted and asked whether they have made a referral of any misconduct to the Disclosure and Barring Service, for possible barring.

3. Matters dealt with under this policy and procedure

- Disclosure and Barring vetting for employees working with Children or Adults deemed to be vulnerable
- Advertising, recruitment and offers of posts within the Council relating to positions of trust, work with vulnerable people and regulated activity.

4. Principles

This policy will confirm the Council's approach to:

- Good practice in relation to the recruitment and retention of employees and potential employees.
- Ensure the protection of both children and adults.
- Ensure it meets the requirements of the Rehabilitation of Offenders Act 1974 and the ROA 1974 (Exceptions) Order 1975 (Amendment (England and Wales) Order 2013 (including filtering of 'Protected' offences)
- Protection of Freedoms Act 2012
- Update its processes following changes to 'Regulated Activity' with effect from 10 September 2012

The Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Act 2012 set out the activities and work that are 'regulated activity', which a person who has been barred must not do. The Government has amended the definition/scope of regulated activity to focus on work which involves close and unsupervised contact with vulnerable groups including children. The activities and work which are no longer included in/defined as 'regulated activity' post September 2012 will still be eligible for enhanced DBS checks (but they will no longer be eligible for barred list checks).

5. Standard Council Procedure

5.1 Advertising

Prior to advertising a post, the Recruiting Manager must define the level of DBS Disclosure by reference to the departmental list and / or the DBS Panel.

The level of disclosure to be undertaken should take account of both primary and secondary posts and should be carried out at the highest level (Refer to DBS Guidance Document)

When a post designated as exempt under the Rehabilitation of Offenders Act 1974, either internally or externally in the press, the advertisement must contain the following statement:

This post is exempt from the Rehabilitation of Offenders Act 1974. Any offer of employment will be subject to a

satisfactory check supplied by the Disclosure and Barring Service. The check will include any convictions, cautions, reprimands or final warnings which are not “protected” as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) Order 2013

Application forms will contain reference to the Council’s ability to request information relating to an individual’s convictions and should also confirm the position regarding the new filtering rules (i.e. “Convictions, cautions, reprimands and final warnings which are “protected” as defined by the Exceptions Order (as amended) will not be disclosed to the Council by the DBS. Full information about this is available at www.gov.uk/dbs”).

Because applicants are not always clear about whether they need to disclose convictions, where a post warrants a DBS check, applicants should be advised that all convictions, cautions, reprimands and final warnings, whether spent or unspent need to be disclosed, other than those which are “protected” under the 2013 Amendment to the ROA 1974 (Exceptions) Order 1975.

Application forms must carry a statement to the effect that a conviction will not necessarily be a bar to employment and that disclosure information will not be used unfairly. Applicants should receive a copy of the Council’s policy on the recruitment of ex-offenders (where a post will involve a DBS disclosure) and be advised that copies of the DBS Code of Practice are available on request.

5.2 Shortlisting

Full consideration will be given to candidates who declare previous convictions, against their suitability for the post, measured against the person specification.

Where a post is exempt for the Rehabilitation of Offenders Act 1974, applicants will be required to declare both spent and unspent convictions, cautions, reprimands and final warnings unless the offence falls within the ROA (Exceptions) Order 1975 (Amendment) Order 2013. Under this Amendment Order, from 29 May 2013, the DBS will filter certain specified old and minor offences from criminal record certificates issued from that date onwards. The filtering rules, together with the list of offences that will never be filtered, are available from www.gov.uk/dbs .

Not all applicants may be aware of these changes and some may have valid portable CRB certificates issued before 29 May 2013 which still contain information which would have been filtered/removed from the certificate if it had been issued after 29 May 2013. Should an applicant disclose any information which would now be filtered under the new rules, verbally, or in the application form, or on a DBS certificate issued prior to the 29 May 2013, this information **must** be disregarded and **must not** be included/ considered in any part of the recruitment process.

If the Panel consider the offence(s) disclosed on an application form (other than a “protected” offence as mentioned above) to be serious, but the applicant meets all other shortlisting criteria, then the Chairperson must discuss the situation with the named departmental Chief Officer or nominated officer. The named departmental Chief Officer or nominated officer will then make the decision as to whether or not the offence is compatible with employment to the post in question in discussion / liaison with the Director of HR, Legal & Corporate Services.

Factors taken into account should include:-

- The seriousness of the offence;
- Length of time since the conviction;
- Age of applicant at time of offence.
- The individual’s suitability for the post, against the person specification.
- Whether the offence carries an automatic ban from work in a regulated position
- N.B. - Should any applicant disclose any information about a “protected” conviction, caution, reprimand or final warning verbally, or in the application form, or on a DBS certificate issued prior to the 29 May 2013, this **must** be disregarded and **must not** included/considered in any part of the recruitment process.

5.3 Interview

It is the responsibility of the successful applicant to complete an on-line application through e-Bulk. Details will be provided to the successful candidate by the HR Service.

At interview, or in a separate discussion, an open and honest discussion must take place on the subject of any offences or other matter that might be relevant to the position. The applicant must be informed if the post is exempt from the protection of the Rehabilitation of Offenders Act 1974 and reminded that in such cases, all convictions etc should be disclosed other than those which are “protected” under the 2013 Amendment Order.

The Recruiting Panel must take into account:-

- The seriousness of the offence;
- Length of time since the conviction;
- Age of applicant at time of offence.
- The individual’s suitability for the post, against the person specification.
- Whether the offence carries an automatic ban from work in a regulated position

- N.B. - Should any applicant disclose any information about a “protected” conviction, caution, reprimand or final warning verbally, or in the application form, or on a DBS certificate issued prior to the 29 May 2013, this **must** be disregarded and **must not** included/considered in any part of the recruitment process.

Where posts entail working with vulnerable groups, a second interview should be prepared to explore with applicants their attitudes towards the care of children or adults and their perceptions about boundaries of acceptable behaviour towards them.

Failure to reveal disclosable information may lead to the withdrawal of an offer of employment or to an individual being subject to the Formal Disciplinary Procedure. The seriousness of the offence and any reason given by the applicant for their failure to reveal it should also be taken into account.

5.4 Making an Offer

Where the post is eligible for/requires a DBS check, offers of employment should be made subject to a satisfactory DBS check. Individuals should **not** commence in post until a satisfactory DBS clearance is received, unless both of the following criteria are satisfied:

- the individual is moving directly from a school or Council department within the Local Authority; and
- the individual has had a DBS check in the last three years (which is shared with the Council and is satisfactory).

In exceptional circumstances, an individual may take up their post prior to receipt of their satisfactory DBS Disclosure. However, this can only be authorised by the Director. Before this occurs, it must be stressed to the successful applicant that the offer is conditional, subject to receipt of a satisfactory DBS disclosure and that the offer may be withdrawn if the DBS disclosure is not satisfactory. This **must** also be confirmed in the written offer of appointment letter which will outline the conditions to which the offer of appointment is subject.

In these circumstances, the recruiting manager must also ensure that a full risk assessment is conducted (See DBS Managers Guidance) and that all appropriate safeguards are put in place to ensure that services users are not exposed to any potential risk. Managers **must** ensure that the DBS clearance is duly received for these employees.

Employees who have not received their DBS clearance should not be allowed to carry out unsupervised work with vulnerable people.

Directors of employees awaiting DBS clearance must review the situation on a weekly basis.

All DBS certificates will be sent to the applicant and not the employer. The offer will remain conditional, and normally the applicant should not be permitted to commence employment until the applicant produces their DBS certificate to the HR Service for verification.

6. Satisfactory DBS Disclosures

The HR Service will provide the DBS number and valid date via email to the hiring manager.

6.1 Adverse DBS Disclosures (New Applicants)

Where a DBS disclosure reveals adverse information (other than in relation to a relevant Barred List) the HR Service will pass this information to the named departmental Chief Officer or nominated officer. The departmental Chief Officer or nominated officer must make arrangements to discuss the details of the DBS certificate with the individual fully, prior to any employment decision being made. During this meeting the named departmental Chief Officer or nominated officer must complete the risk assessment form.

Based on the outcome of this discussion, the decision on whether to confirm the appointment or to withdraw the offer should be made by a named departmental Chief Officer or nominated officer. This decision should be based upon the details of the discussion with particular emphasis on the nature of the criminal record, taking into account whether or not the individual had previously disclosed convictions, cautions, reprimands and final warnings (save those which are 'protected').

Once a decision has been made by the named departmental Chief Officer or nominated officer they will inform the chair of the recruitment panel whether or not they can appoint the individual. The applicant must be informed of the outcome in writing within 5 working days. No other information will be provided to the panel. If the candidate requests additional feedback as to the reason then they should be directed to the named departmental Chief Officer or nominated officer.

Some offences carry an automatic ban from working in a regulated position and these are detailed in (see DBS guidance document). Where a candidate who is barred from working with children or adults applies for such a post, the nominated Chief Officer must relay that information to the appropriate authorities.

The Council must not discriminate unfairly against an applicant on the basis of a conviction or other information revealed in a DBS disclosure.

If the police use their common law powers to disclose additional information to the Council which is deemed to give rise to concerns about an employee's suitability for a post then a full investigation will take place and a Risk Assessment Form will be completed by the Nominated Officer. Depending on the severity of the allegations, this could lead to disciplinary action up to and including dismissal.

The Risk Assessment form shall be kept on file for 6 months.

6.2 Decision to Appoint

If a decision to appoint is made, confirmation should be forwarded to the HR Service. A record of the meeting held with the applicant regarding the disclosure should be made and maintained on the individual's personnel file. The named departmental Chief Officer or nominated officer must return the completed Risk Assessment form to the HR Service. Risk assessment information will be retained for a limited period of time (this is normally for a period of six months to allow for any queries or complaints to be resolved) in accordance with DBS protocols. This should be confirmed in writing to the individual within 5 working days.

6.3 Decision not to Appoint

If a decision is made not to appoint, confirmation should be forwarded to the HR Service for placement on the recruitment interview file (or personnel file if the applicant is a current employee), a record of the meeting held with the applicant regarding the disclosure should be made and maintained with the post recruitment documents and be stored securely. The named departmental Chief Officer or nominated officer must return the completed Risk Assessment form to the HR Service. Risk assessment information will be retained for a limited period of time, (this is normally for a period of six months to allow for any queries or complaints to be resolved) in accordance with DBS protocols.

Decisions will be made on the basis of an assessment of any possible risk to children or adults, rather than the simple fact of a conviction or other information disclosed. Where there is a significant doubt, however, the decision will always ensure the safety and welfare of children and adults. This should be confirmed in writing to the individual within 5 working days.

7. Adverse DBS Disclosure (Existing Employees)

Where an employee fails to disclose any convictions, cautions, reprimands and final warnings (save those which are "protected" under the (Amendment) Order 2013), or where an additional DBS disclosure reveals a conviction, caution, reprimand or final warning, the named departmental Chief Officer or nominated officer should meet with the individual to discuss the disclosure and complete a Risk Assessment Form. The Council must not discriminate unfairly against the individual. During the meeting, consideration should be given to the nature of the offence and the potential implications this has on an employee's suitability to perform in the role in which they are employed. In some instances, this could lead to disciplinary action being taken up to and including dismissal.

The named departmental Chief Officer or nominated officer must return the completed Risk Assessment form to the HR Service. Risk assessment information will be retained for a limited period of time, in accordance with DBS protocols

8. Regular DBS Disclosures

In order to ensure the continued suitability of employees, the Council will carry out regular DBS disclosures every three years, as agreed at LJNCC on 1st September 2004. Where an employee obtains an additional role that also requires a DBS, no further check will be required provided that:

- There has been no break in service
- The check has been carried out within the last three years
- The check is at an appropriate level or higher

If the check carried out on the existing role is at a lower level, a new check will be required at the appropriate level.

Any re-checks will be carried out 3 years following this disclosure issue date.

It is a condition of an employee's contract of employment that they submit to a DBS request when required to do so. Any unreasonable refusal to do so will be viewed as a breach of their contract which could potentially result in disciplinary action up to and including dismissal. Employees are also required to notify their line manager of any matters that could reasonably be perceived as affecting the performance of their duties including any conviction, caution, reprimand or final warning which would be disclosed on a DBS certificate.

9. The Update Service

As at 17th June 2013, individuals are able to apply to have their criminal record check kept up to date easing the administration of the regular re-checks as employers are able to go online to see if the information is still current and valid. This service requires an annual subscription fee of £13.00 per applicant which will be reimbursed by the Council for the duration the employee remains in a post with the Council subject to regular re-checks. This service is available to Council employees from 1st October 2013. Employees can submit their proof of payment for the update service for reimbursement. Once paid any requests from the organisation to re-check an employee's DBS status may not be declined.

10. Links to other Policies/Documents

- [DBS Guidance](#)
- [Recruitment and Selection Policy](#)
- [Rehabilitation of Offenders Act 1974 and other legislation.](#)
- [DBS Chief / Nominated Officer Guidance](#)

11. Further Guidance

If you require further advice regarding the application of this policy and guidance please contact the HR Service via the contact details for your Programme Area – [Click Here](#)

12. Policy Review

This policy will be reviewed in accordance with any changes to statutory legislation and in consultation with the recognised trade unions.

13. Approving Body & Date

LJNCC: 17 July 2013



REPORT OF: DIRECTOR OF HR, LEGAL & GOVERNANCE

TO: STANDARDS COMMITTEE

ON: 14 JANUARY 2019

SUBJECT: Protocol on Member/Officer Relations

1. PURPOSE OF THE REPORT

A review of the Protocol on Member/Officer Relations.

2. RECOMMENDATIONS

The Standards Committee is asked:

To review the current Protocol on member/Officer relations and make any recommendations for change to the Full Council.

3. BACKGROUND

At their meeting in January 2015 the Committee agreed a revised Protocol on Member/Officer relations. At their meeting in July 2018 the Committee resolved to review the protocol as part of the work programme for 2018/19. The current Protocol is approved by Council and is contained in the Constitution of the Council. The Constitution is a key document setting out the governance framework of the Council. From time to time the Constitution is reviewed and must be regularly updated.

4. RATIONALE

The current arrangements subject to some amendments made following recommendations from the Standards Committee in January 2015 have been in place since the enactment of the Localism Act 2011 and reflect the current legislative framework.

The Protocol is contained on pages 251 - 261 of the Council's Constitution (Appendix A refers).

Although to date there has been relatively low activity in relation to matters arising relating to the Member/Officer Protocol it is suggested to nevertheless be appropriate to review the current Protocol.

From time to time for example the Monitoring Officer and Council Solicitor have both had to advise members as regards handling 'social care matters' and 'other litigation matters' which members may be approached about in their community role about. It is suggested therefore this advice could be updated in a revised protocol.

5. POLICY IMPLICATIONS

Constitutions set out the governance framework for local authorities, which provide the foundations for any local authority that aspires to be effective, progressive and successful.

It is appropriate to review and update, where appropriate, various elements of Constitutions.

6. FINANCIAL IMPLICATIONS

None

7. LEGAL IMPLICATIONS

The current arrangements have been in place since the enactment of the Localism Act 2011 and reflect the current legislation.

They are contained on pages 251-261 of the Council's Constitution (Appendix A refers).

Any changes recommended will need to remain in accordance with this legislative framework and will be subject to approval by full council

8. RESOURCE IMPLICATIONS

None

9. EQUALITY IMPLICATIONS

Any proposals for change will be assessed to establish any potential equality implications. Any final proposals are subject to agreement of the full Council for which an equality impact assessment report will be prepared, as required.

10. CONSULTATIONS

Senior Officers of the Council have been consulted on potential changes to the Protocol and the Full Council (all members) will consider and approve any changes.

Contact Officer: David Fairclough
Date: October 2018
Background Papers: Council Constitution as published.

Section 3 Protocol on Member/Officer Relations

A. INTRODUCTION

1. Purpose of the Protocol

- 1.1 An effective working relationship between members and officers is critical to the successful operation of the Council's business and to maintaining confidence in the machinery of local government in Blackburn with Darwen.
- 1.2 The purpose of this protocol is to guide members and officers of the Council in their relationships with one another. It is not intended to be prescriptive or comprehensive and seeks simply to offer guidance on some of the issues, which most commonly arise.

2. Status of the Protocol

- 2.1 This Protocol has been endorsed by the Council's Standards Committee and approved by Council.

3. Roles and Responsibilities – Elected Members

- 3.1 Members are elected democratically. It is their policies, ideas and decisions which people vote for. Members set the core values of the organisation, agree a policy framework, set the corporate goals and promote the Council in all its work. Members are also the key channels of democratic accountability and scrutiny ensuring that Officers uphold the values of the organisation and deliver those policies that have been determined by the organisation. Members are the advocates for their constituents and deal with individual casework. Members are responsible for making the most senior appointments in the Council through the Chief Executive and Chief Officer Employment Committee.
- 3.2 Members are responsible to the electorate and serve only so long as their term of office lasts.

4. Roles and Responsibilities - Officers

- 4.1 The role of officers is to deliver services according to the policies and requirements set by Members, to draft policy proposals which accord with the overall framework set by members, to give professional advice in the course of policy development and to manage the organisation.
- 4.2 Directors are responsible for appointments of staff below Chief Officer level. Officers are accountable to their Director. They work to the instructions of their Director and not to individual members - whatever office a Member might hold.

B. LEGITIMATE EXPECTATIONS

1. What members can expect of officers

Members can expect officers:

- To do their job effectively and efficiently
- To strive to provide services which offer best value
- To behave in a manner which accords with the standards set by the Council
- To be helpful, respectful and courteous
- To assist members in carrying out their role as elected members (but not in any party political or campaigning activity, or with private business)
- To deal with members' enquiries fairly and efficiently
- To be open and honest with members.
- To work with all members equally and fairly
- To act lawfully
- To give advice or recommendations based on reasoned options
- To ensure that members have all the information necessary to make informed judgments
- To maintain confidentiality where it is proper for them to do so
- Not to canvass members or otherwise seek to gain favour from them for personal or career advantage
- To have regard to social hours and generally to be sensible about contacting members at potentially inconvenient times, unless in an emergency or otherwise agreed.
- To remember that they are employed by Blackburn with Darwen Council as a whole and not by any part of the Council or individual member

2. What officers can expect of members

Officers can expect members:

- To accept that officers are accountable to their Manager
- To be helpful, respectful and courteous to officers
- Not to become involved in the day to day management of the Council
- To accept that officers act independently of political bias
- To fully consider advice and recommendations for the purpose of making informed judgments
- Not to ask officers to breach Council policy or procedures, or to act unlawfully, or outside the terms of their job
- Not to exert influence or pressure, or request special treatment,
- Not to request unauthorised access to resources or information held by the Council
- To treat officers in a reasonable manner
- To be open and honest with officers
- To act lawfully and to maintain confidentiality when appropriate to do so
- To remember that Officers have a duty to support all parts of the organisation
- To respect that officers have private lives and not to contact them outside normal working hours, or at home, unless in an emergency, or if the officer is officially working from home, or otherwise agreed.

C. SPECIFIC GUIDANCE

1. Officer/Member relationships

Personal relationships

- 1.1 It is clearly important that Senior Officers should have a close working relationship with Executive Members, opposition Group Spokesmen, Scrutiny Committee Chairmen and other senior officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the individual's ability to deal impartially with others.
- 1.2 Members must not sit on a Council body or assume an Executive role responsible for any officer with whom they have a close personal relationship.

Members' Constituency Role & Individual Officers

- 1.3 A member may be asked for advice and support by an officer who is one of their constituents. Officers are entitled to seek such assistance in the same way as any other member of the public. However, members should be careful not to prejudice the Council's position in relation to employment matters in respect of an officer.

Dealings with Junior Officers

- 1.4 Members, as citizens, will deal routinely with junior officers of the Council. However, when acting as Councillors, members should take care not to place junior officers in a difficult position for example by seeking information from them which is not in the public domain or by requesting special treatment for themselves or another person.

Giving Instructions to Officers

- 1.5 Members should not give instructions to staff unless they are authorised to do so under the Council's Constitution. Any such instructions should be addressed to the relevant Chief Officer.

Complaints about officers or services

- 1.6 Members have the right to criticise reports or the actions taken by officers, but they should always:
- avoid personal attacks on officers
 - ensure that criticism is constructive and well-founded.
- 1.7 Members should avoid undermining respect for officers at meetings, or in any public forum including through the press. This would be damaging, both to effective working relationships and to the public image of the Council. It would also undermine the mutual trust and courtesy that is an essential element of a well run authority. It is important to note that this requirement is not intended to prevent members from undertaking polite but robust and probing scrutiny of the work of Officers.
- 1.8 Complaints about officers or Council services should be made to the Director of the service where the member feels the fault lies.

Officers and Whole Council

- 1.9 Officers are required at all times to serve the whole Council and will need to exercise judgement in fulfilling this obligation. Members must recognise this obligation on officers.
- 1.10 Directors are responsible for the contents of all reports submitted in their name. The advice contained in such reports is independent and members must not seek to suppress or amend any aspect of such advice.

2. Support to Members and Party Groups

Equipment, accommodation and staff resources

- 2.1 Members are provided with ICT (information and communication technology) equipment and support services (e.g. diary management, correspondence handling, stationery provision, typing, printing, photocopying and research support) to enable them to better perform their policy and constituency role as elected members.
- 2.2 Members are also provided with accommodation sufficient for their needs and facilities for holding meetings with their constituents.
- 2.3 Members should not normally use – and officers should not provide - such equipment and support services in connection with party political or campaigning activity or for purposes not related to Council business.
- 2.4 Where it would otherwise cause undue inconvenience the Council may permit Members to use equipment for personal as well as Council business. This permission may extend to the use of Personal Computers, mobile phones etc. Members who use such equipment on personal business must abide by any specific conditions attached to such usage including conditions as to payment.
- 2.5 All requests for support which require staff resources will be subject to the request not being unreasonable, not placing undue demands on resources and there being sufficient resources available to meet the request.
- 2.6 Officer support which is made available is to be used to support Council business only and not for general party political activities.

Officers and Political Party Group Meetings

- 2.7 It is usual practice for officers to provide support for individual party groups and there is a common understanding that the Chief Executive and Directors will ensure that such support is provided. However, no individual Officer can be *required* to attend a political group meeting or to write a report for such a meeting.
- 2.8 Officer support to individual political groups must not extend beyond providing information in relation to matters of Council business. Officers must not be involved in advising on matters of party business. Officers should not be expected to be present when matters of party business are being discussed.

- 2.9 Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting which includes persons who are not members of the Council. Officers are more likely to feel unable to attend such meetings. Where they do attend they may not be able to provide the same level of information and advice as they would to a member only meeting and in certain circumstances may feel constrained to refuse to give advice.
- 2.10 When Officers attend such meetings the members present are responsible for the proper behaviour of non Councillors present.
- 2.11 Officers will respect confidentiality in respect of issues discussed at Group meetings.

Meetings with Individual Members

- 2.12 Group leaders, Executive Members, Committee Chairs and Vice Chairs and Opposition Spokespersons are entitled to private and confidential briefings from a Director on matters of policy which have already been or may be discussed by the Council or which are within its decision-making process. Normally such briefings will be organised on a Portfolio basis but separate meetings may be arranged with individual Directors where appropriate.
- 2.13 Officers will respect confidentiality in respect of issues discussed at such meetings.

3. Information Sharing

Local Information

- 3.1 It is essential that members should be fully informed about matters on which they may be required to make decisions or which affect their Wards.
- 3.2 Directors must ensure that all relevant staff are aware of the requirement to keep local members informed of issues affecting their ward and that the timing of such information allows members to contribute to any proposed decisions.
- 3.3 If a public meeting is organised by the Council to consider a local issue, all the members representing the Wards affected should be invited to attend the meeting.
- 3.4 Similarly, whenever the Council undertakes any form of consultative exercise affecting a particular Ward or Wards, the local Ward members should be notified at the outset of the exercise.

Information Sharing with Individual members or Political Groups

- 3.5 Individual members may request any Director to provide them with factual information. There is much information which will be freely shared with members. However, if a Director considers the cost of providing the information requested - or the nature of the request - to be unreasonable, he/she may decline to provide that information unless the Member establishes a legal right to that information. Any requests made for information shall be kept confidential.

- 3.6 The legal rights of members to information are contained within statute, the Constitution and in common law. The law in relation to information sharing is complex. This section provides an overview of some key principles. It is not intended to be a detailed examination of the specific legal provisions.
- 3.7 In summary, as members of the public, members have the right to see agendas, reports and background papers relating to meetings of the Council and its Committees even where they are not members of the Committee in question. However, this right does not extend to seeing papers which contain confidential or exempt information such as information relating to individual service users or information which is commercially confidential.
- 3.8 Under the Council's Constitution these same rights apply to matters to be dealt with by the Executive Board. In addition members have the right to see other documents which relate to business to be transacted at Committee or the Board. Certain confidential and exempt information is excluded from this right.
- 3.9 Members also have a right to see information relating to any decision of an individual Executive member once the decision has been made. Once again certain confidential and exempt information is excluded from this right.
- 3.10 Members have a right to inspect any Council documents so far as access to the document in question is reasonably necessary to enable the member to perform his/her duties as a member of the Council. This is commonly known as "the need to know" principle. It is for the Director of the Department which holds the document in question, to determine whether an individual member has a need to know. The Director may consult the Director of HR, Legal & Corporate Services in particular cases of difficulty.
- 3.11 In many cases a need to know can be presumed. However, where members wish to see documents containing confidential information, that request will need to be specifically justified if the information is to be provided.
- 3.12 Where confidential information has been shared it must only be used by the Member for the purpose for which it was provided (i.e. in connection with the proper performance of the Member's duties as a Member of the Council). It should not be circulated without the approval of the relevant Director. Failure to comply with this rule may breach the Code and, in certain circumstances may be a criminal offence.
- 3.13 There are separate rules which give members the right to information about the Council's finances.

Information Sharing and Scrutiny

- 3.14 Scrutiny Committees have additional rights to information which are set out in the Access to Information and Decisions and Attendance at Public Meetings Rules within the Constitution. Briefly these rules enhance individual members' rights so as allow the Committee to have access to documents which contain information where that information is relevant to an action or decision which is being scrutinised or is within the Committee's work programme. This provision allows the Committee to have access to confidential or exempt information.

- 3.15 When a decision has been subject to call in, the relevant Director should produce a pack of the documents relevant to the decision which may be accessed by members of the Scrutiny Committee. Where that pack would be very large the Director should attempt to identify the most important documents and draw Members attention to these.

4. Correspondence

- 4.1 Correspondence, including e-mails, between an individual member and officer, should not normally be copied by the officer to any member, unless the member who initiated the correspondence copied it to other members in which case the officer should normally copy his correspondence to those other members.
- 4.2 Members can expect Officers to treat their correspondence with the utmost discretion. However, Officers and particularly more junior officers may need to seek advice on answering Members' queries and Directors need to be able to monitor the quality of information being supplied. For that reason correspondence may, where necessary be copied by an Officer to his /her Manager, Director, the Director of Finance and Customer Services, the Director of HR, Legal & Corporate Services, an Executive Director or the Chief Executive but should not normally be circulated more widely.

5. Members roles in representing individual citizens

- 5.1 Members should not normally appear before a quasi-judicial body administered by the Council to represent an individual citizen. Note separate arrangements are in place to facilitate representation for Planning & Highways Committees.
- 5.2 If a Member proposes to attend a meeting between an officer and a citizen, they should advise the appropriate Chief Officer in advance of this intention.

6. Members involvement in respect of Family members and social care matters

6.1 In the event that any Member's relative becomes the subject of any Policies/Procedures/Applications related to the conduct of the Council's social care responsibilities the following protocol is to be observed to allow the member to fulfil their family role aside other citizens of the Borough whilst ensuring they do not compromise their role as Councillor's.

- 1 The Member should notify the Monitoring Officer or relevant Chief Officer (DCS or DASS) and may ask for advice or clarity.
- 2 The Member must not seek to influence the Officers/Members who are conducting the proceedings on behalf of the Council – and approved processes will be followed in the same way as for any other citizen of the Borough. (See Code of Conduct references in Guidance – Appendix A).
- 3 At all times during and after the conclusion of the matter, the Member must behave in accordance with The Code of Conduct.
- 4 Dependent upon the particular circumstances of the matter and the legislative framework, the respective Chief Officer may or may not be able to share further information with the Member involved.
- 5 Dependent upon the nature of the matter, a member may request to be temporarily relieved of individual portfolio or committee/sub-committee responsibilities should they identify a potential conflict of interest.

Further information is available via a Guidance note for Members from the Monitoring Officer approved by the Standards Committee on 8th January 2015 and is attached as Appendix A to this Protocol.

7. Public statements and dealings with the media

- 7.1 Officers responding to requests from the media must do so in accordance with the corporate media protocol.
- 7.2 Officers will not assist in party political publicity and all publicity issued by the Council will abide by the provisions of the Local Government Act 1986 and the Code of Conduct issued under the Local Government Act 1988.
- 7.3 When making public statements on matters affecting the Council officers should follow the following principles:
- Statements should be made without political bias;
 - Statements should not be made where they could reasonably be regarded as bringing the Council into disrepute;

Officers should not normally express a view in public as to decisions which members ought to take. This principle does not, of course, prevent officers giving professional advice to decision making bodies. It is also not intended to prevent officers giving advice in respect of planning applications and similar matters.

APPENDIX A
ADVICE NOTE FOR MEMBERS/OFFICERS
INVOLVEMENT IN RESPECT OF FAMILY MEMBERS AND SOCIAL
CARE MATTERS

Introduction

In the event that any Member's relative becomes the subject of any Policies/Procedures/Applications related to the conduct of the Council's social care responsibilities the following protocol is suggested be observed to allow the member to fulfil their family role aside other citizens of the Borough whilst ensuring they do not compromise their role as Councillor's.

- 1 The Member should notify the Monitoring Officer or relevant Chief Officer (DCS or DASS) and may ask for advice or clarity.
- 2 The Member must not seek to influence the Officers/Members who are conducting the proceedings on behalf of the Council – and approved processes will be followed in the same way as for any other citizen of the Borough. (See Code of Conduct references below).
- 3 At all times during and after the conclusion of the matter, the Member must behave in accordance with The Code of Conduct.
- 4 Dependent upon the particular circumstances of the matter and the legislative framework, the respective Chief Officer may or may not be able to share further information with the Member involved.
- 5 Dependent upon the nature of the matter, a member may request to be temporarily relieved of individual portfolio or committee/sub-committee responsibilities should they identify a potential conflict of interest.

If these arrangements are followed, this protects both the Council and the Councillor from potential challenge.

More background information:

(i) The Council

For example, looking at social case matters - The Council has certain statutory duties it must fulfil which it must do so with no favour to one citizen over another and at all times **act in the best interests** of the 'vulnerable adult' or 'child' (depending on the type of case). Clearly it must also **be seen to act all times** be act in the best interests of the 'vulnerable adult' or 'child' (depending on the type of case).

(ii) The Member

Clearly the member has a family duty and expectation placed upon them and this can be a very emotional and personally distressing time on occasions. This family event however may come into conflict with their role as Councillor given the duties placed upon the Council only briefly outlined in example in (i) above.

It would be very easy for the member to find themselves in direct conflict with the Code of Conduct if they attempt to influence (or even give the impression of seeking to influence) any formal proceeding the Council is carrying out under its statutory obligations.

The Members Code of Conduct is quite explicit in parts in this respect Paragraph 2 (See Constitution) refers:-

"2 - Members and co-opted members must behave according to the highest standards of personal conduct in everything they do as a member. In particular they must observe the following principles of conduct, some of which are set out in law.

2.1 – Selflessness – Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person

2.2 – Honestly and Integrity – Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour

2.7 – Respect for others – Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

2.8 – Duty to uphold the law – Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

2.9 – Stewardship – Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

2.10 – Leadership – Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence."

The current Protocol on Member/Officer relations is also very explicit (see Constitution):

"Members can expect officers to:

To do their job effectively and efficiently

To act lawfully

To maintain confidentiality where it is proper for them to do so

Officers can expect of members:

Not to become involved in the day to day management of the Council

Not to ask officers to breach Council policy or procedures, or to act unlawfully, or outside of the terms of their job

Not to exert influence or pressure, or request special treatment

Not to request unauthorised access to resources or information held by the council

To act lawfully and to maintain confidentiality when appropriate to do so"

What else could we do to help the member and support the protocol being applied reasonably?

It would be advisable to protect the Member and Council further, to instruct another local authority to conduct the case matter in such situations like this example if they arise. This may also include should the matter require legal support, to instruct outside Council ensuring there can be no accusations of the Member not following the Code of Conduct by exerting influence on staff and also protect the social work employees from accusations that they only made case assessment decisions as they were aware of the member family relationship.



NORTH TURTON PARISH COUNCIL

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Asad Lahar
Head of Legal Services
Blackburn with Darwen Borough Council
Town Hall
BLACKBURN
BB1 7DY

5 December 2018

Dear Mr Lahar,

Previously, the Standards Committee has agreed to grant a four year dispensation to enable the three members of the Parish Council who are also Trustees of the Barlow charity to discuss and vote at Parish Council meetings on issues affecting the Barlow. Without such a dispensation, only four Parish Councillors would be able to participate.

The previous dispensation period has expired, and I am therefore writing to ask whether another dispensation could be granted for a further four year period?

Yours sincerely

Glenys Syddall
Clerk to the Parish Council



REPORT OF:	The Monitoring Officer
TO:	Standards Committee
DATE:	14th January 2018

SUBJECT: Complaints Update to the Standards Committee

1. PURPOSE OF THE REPORT

To update Members on complaints received regarding Members conduct under the Arrangements for dealing with complaints about the Code of Conduct for Members.

2. RECOMMENDATIONS

The Committee is asked to note the update report.

3. BACKGROUND

The Committee has a role in considering any complaints received relating to the conduct of Members of the Borough Council, co-opted Members and Parish Councils in its area. Members will be aware that not all complaints are proceeded with for various reasons (unsubstantiated complaints, vexatious complaints etc.) however it is important that members are aware of receipt of these and legitimate complaints that are being processed and progressed.

Members of the Committee are to be kept up to date on receipt of all complaints and progress at meetings of the Standards Committee where appropriate subject to any relevant provisions relating to confidentiality.

At the meeting in October 2018 the Monitoring Officer reported on cases up to 5th October 2018 all of which had been resolved.

This report is up Friday 21st December 2018.

In October 2018, a complaint was made about the conduct of a Councillor but the member of the public did not proceed to provide details and so the matter was closed.

In November 2018, a complaint was made about the conduct of another Councillor but the member of the public did not proceed to provide details and so the matter was closed.

4. RATIONALE

The Localism Act requires Councils to put in place mechanisms for reporting and investigation of complaints. This report provides information for the Standards

Committee in a clear and transparent way to ensure that all members of the committee are aware of complaints received, progress and outcomes.

5. LEGAL IMPLICATIONS

The statutory provisions for the Standards Framework are set out in the Localism Act 2011.

6. POLICY IMPLICATIONS

A governance framework in local authorities is necessary to promote and maintain high ethical standards, and to ensure public confidence.

7. FINANCIAL IMPLICATIONS

None contained in this report.

8. CONSULTATIONS

The Council's arrangements for promoting and maintaining high standards of conduct have been discussed by the Standards Committee and the arrangements for dealing with complaints about the Code of Conduct for Members are the subject of this report, to ensure openness and transparency to Members of the Committee on complaints received and progress.

Chief Officer/Member

Contact Officer: David Fairclough
Date: 21st December 2018

Background Papers: The Localism Act 2011