

CHANGES TO THE CONSTITUTION (LDS/089)

<u>Function</u>	<u>Proposed amendment</u>	<u>Reason for amendment</u>
	<p>Where appropriate:</p> <ul style="list-style-type: none"> • Deleted wording is shown as crossed through • Additional wording is shown in bold 	
<p>Article 12 – Decision Making – Page 39 (Ann-Maria Brown)</p>	<p>Amend Paragraph 12.3 as detailed in Appendix 1 to this report (LDS/089) to include the definition of a Significant Operational Decision.</p>	<p>The Access to Information Procedure Rules will refer to different types of decisions (see below), the inclusion of this definition will clarify the different decision types.</p>
<p>Access to Information Procedure Rules– Page 184 (Ann-Maria Brown)</p>	<p>Amend Paragraphs 7 and 8 as detailed in Appendix 2 to this report (LDS/089)</p>	<p>To accord with the requirements of The Openness of Local Government Bodies Regulations 2014.</p>
<p>Access to Information Procedure Rules– Page 192 (Ann-Maria Brown)</p>	<p>Amend Paragraph 21.3 to read as follows:</p> <p>“21.3 Record of Individual Decision</p> <p>As soon as reasonably practicable after a Cabinet key decision or Significant Operational (non key) Decision (see Article 12 – Decision Making, for definitions) decision has been taken by an individual member of the Cabinet or an executive decision taken</p>	<p>To accord with the requirements of The Openness of Local Government Bodies Regulations 2014.</p>



<u>Function</u>	<u>Proposed amendment</u>	<u>Reason for amendment</u>
<p>Access to Information Procedure Rules– Page 192 (continued...)</p> <p>(Ann-Maria Brown)</p>	<p>Where appropriate:</p> <ul style="list-style-type: none"> • Deleted wording is shown as crossed through • Additional wording is shown in bold <p>by an officer which was delegated to them either:</p> <p>(a) Under a specific express authorisation; or</p> <p>(b) Under a general authorisation to officers to take such decisions and, the effect of the decision is to:</p> <p style="padding-left: 40px;">(i) Grant a permission or licence;</p> <p style="padding-left: 40px;">(ii) Affect the rights of an individual; or</p> <p style="padding-left: 40px;">(iii) Award a contract or incur expenditure which, in either case, materially affects the Council’s financial position.</p> <p>he/she will prepare, or instruct the Head of Legal and Democratic Services to prepare, a record of the decision, a statement including:</p> <p>(a) A record of the decision including the date it was made;</p> <p>(b) A record of the reasons for the decision;</p> <p>(c) Details of any alternative options considered and rejected by the Member/officer when making the decision;</p> <p>(d) A record of any conflicts of interest declared by any Cabinet Member who is consulted by the</p>	

<u>Function</u>	<u>Proposed amendment</u>	<u>Reason for amendment</u>
<p>Access to Information Procedure Rules– Page 192 (continued...)</p> <p>(Ann-Maria Brown)</p>	<p>Where appropriate:</p> <ul style="list-style-type: none"> • Deleted wording is shown as crossed through • Additional wording is shown in bold <p>Member/officer which relates to the decision; and</p> <p>(e) In respect of any declared conflict of interest, a note of any dispensation granted.</p> <p>The provisions of Rules 7 and 8 (inspection of documents after meetings) and Scrutiny Procedure Rule 14 will also apply to the making of decisions by individual members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a Political Adviser.</p>	
<p>Access to Information Procedure Rules– Page 194</p> <p>(Ann-Maria Brown)</p> <p>Access to Information Procedure Rules– Page 194 (continued...)</p>	<p>Insert the following new paragraph after Paragraph 23.6:</p> <p>“24. REPORTING PROCEDURES OF A MEETING</p> <p>24.1 Any person attending a meeting of the Council which is open to the public is permitted to report the proceedings. The Protocol on Use of Social Media, Photography, Filming and Recording at Meetings set out in Part 5 of this Constitution relates.</p> <p>24.2 Reporting on proceedings at a meeting means:</p> <p>(a) Filming, photographing or making an audio recording of the proceedings at the meeting;</p> <p>(b) Using any other means for enabling people not</p>	<p>To accord with the requirements of The Openness of Local Government Bodies Regulations 2014.</p>

<u>Function</u>	<u>Proposed amendment</u>	<u>Reason for amendment</u>
<p>(Ann-Maria Brown)</p> <p>Access to Information Procedure Rules– Page 194 (continued...)</p>	<p>Where appropriate:</p> <ul style="list-style-type: none"> • Deleted wording is shown as crossed through • Additional wording is shown in bold <p>present at the meeting to see or hear proceedings at the meeting as it takes place r later; or</p> <p>(c) Reporting or providing commentary on proceedings at the meeting, orally or in writing, so that the report or commentary is available to people not present, as the meeting takes place or later.</p> <p>24.3 Any person who attends a meeting of the Council to report the proceedings may use any communication methods, including the internet, to publish, post or otherwise share the results of their reporting activities.</p> <p>24.4 When the meeting is not open to the public, the Council may also prevent any person from reporting proceedings using methods:</p> <ul style="list-style-type: none"> (a) Which can be used without that person’s presence at the meeting; and (b) Which enable people not present at the meeting to see or hear the proceedings at the meeting as it takes place or later.” 	

<u>Function</u>	<u>Proposed amendment</u>	<u>Reason for amendment</u>
(Ann-Maria Brown)	Where appropriate: <ul style="list-style-type: none"> Deleted wording is shown as crossed through Additional wording is shown in bold 	
Arrangements for Dealing with Code of Conduct Complaints Under the Localism Act 2011 Page 411 (Ann-Maria Brown)	Amend Paragraph (a) of the Arrangements for Dealing with Code of Conduct Complaints Under the Localism Act 2011 to read as follows: “(a) Complaints in writing are to be made to the Monitoring Officer who will be responsible for the management of complaints, liaising with the Complainant, Members, those requiring to be informed and consulted and providing support services to the Independent Person. The Monitoring Officer should report periodically to the Council’s Audit and Governance Committee or any other Committee that has the responsibility for the discharge of standards functions on the complaints, the outcomes and lessons learned.”	To ensure that the issues are dealt with by the correct Committee.
Arrangements for Dealing with Code of Conduct Complaints Under the Localism Act 2011 Page 413 (Ann-Maria Brown)	Amend Appendix A (Role of Monitoring Officer) and Appendix B (Role of the Independent Person) of the Arrangements as detailed in Appendix 3 to this report (LDS/089)	To describe how frivolous and vexatious complaints are dealt with under the Code of Conduct for Members.

EXCERPT FROM ARTICLE 12 – DECISION MAKING**12.3. Types of Decision****(a) Decisions reserved to Full Council**

Decisions relating to the functions listed in Article 4.02 will be made by the Full Council and not delegated.

(b) Key Executive decisions**(1) A key decision is likely**

(i) To result in the Council incurring expenditure which is, or in the making of savings which are deemed significant in financial terms:

- (a) By not being in the Annual Budget and Capital Programme approved by the Full Council;
- (b) In the case of revenue expenditure, any projects and new commitments likely to exceed £100,000 per annum;
- (c) In the case of capital expenditure, any projects if they involve entering into new commitments in excess of £500,000;
- (d) Any contract awards exceeding £500,000

NOTE: Expenditure in excess of the above levels will not constitute a key decision if such expenditure is made as part of the implementation of, and in accordance with, a decision which itself was a key decision

OR

(ii) To be significant in terms of its effects (impacts) on communities (eg. A significant number of people) living or working in an area comprising two or more wards or electoral divisions in the area of the Council.

(2) A decision taker may only make a key decision in accordance with the requirements of the Leader and Cabinet Procedure Rules set out in Part 4 of this Constitution.

(3) Generally, a key decision will only be made by the Leader/Cabinet/Cabinet Members, a Committee of the Cabinet, a Joint Committee (or Sub Committee thereof) or an area Committee (if any).

(c) **Significant Operational Executive (Non Key) Decisions**

A Significant Operational Decision:

- (i) **Results in revenue expenditure or making savings (including the receipt or loss of income) between £80,000 and £99,999 per year;**
- (ii) **Results in capital expenditure (i.e. if they involve entering into new commitments and/or making savings) and/or contract awards of between £250,000-£499,999;**
- (iii) **Takes place when, in the opinion of the Director or Head of Service or Monitoring Officer, a published record of the decision is required to provide openness and transparency. A significant decision should be recorded in order to comply with Regulation 13 (Recording of executive decisions made by individuals) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (No. 2089).**

EXCERPT FROM THE ACCESS TO INFORMATION PROCEDURE RULES

**7. RULE 7 - ACCESS TO MINUTES AND RECORDS OF DECISIONS ~~ETC~~
~~AFTER THE MEETING~~**

7.1. The Council will make available copies of the following for six years after a meeting:-

- (a) the records of decisions taken by the bodies to which these apply (together with reasons for Cabinet decisions) excluding any part of the record when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any part of the meeting not open to the public, where the record open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

7.2. **An officer will produce a written record of any non executive decision they have taken which was delegated to them either:**

- (c) **Under a specific express authorisation; or**
- (d) **Under a general authorisation to officers to take such decisions and, the effect of the decision is to:**
 - (iv) **Grant a permission or licence;**
 - (v) **Affect the rights of an individual; or**
 - (vi) **Award a contract or incur expenditure which, in either case, materially affects the Council's financial position.**

The written record will be produced as soon as reasonably practicable after the decision has been taken and will contain the following:

- (e) **The date the decision was taken;**
- (f) **A record of the decision taken along with the reasons for the decision;**
- (g) **Details of alternative options, if any, considered and rejected; and**
- (h) **The source of that delegation.**

Records of executive decisions are referred to in Paragraph 21.3 of these Procedure Rules.

8. RULE 8 - BACKGROUND PAPERS

8.1. List of Background Papers

The proper officer will set out in every report **and record of decision** a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report / **decision** or an important part of the report / **decision** is based; and
- (b) which have been relied on to a material extent in preparing the report / **decision**

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) (and in respect of Cabinet reports / **decisions**, the advice of a Political Advisor).

8.2. Public Inspection of Background Papers

The Council will make available **as soon as reasonably practicable** for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

In relation to ~~an Executive~~ a decision, the Council will make available on the Council's website and at the Town Hall, Crawley (at all reasonable hours) a copy of the background papers included within the list.

**EXCERPT FROM THE ARRANGEMENTS FOR DEALING WITH CODE OF
CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011****APPENDIX A****ROLE OF THE MONITORING OFFICER**

Upon receipt of a complaint the Monitoring Officer must consider:

1. whether the subject matter of the allegation is within the Code of Members' Conduct;
2. whether the allegation appears to disclose a failure to comply with the Code of Members' Conduct because it comprises
 - a. a failure to treat others with respect;
 - b. acting in a way that may cause the authority to breach an equality enactment;
 - c. bullying of any person;
 - d. an intimidation or attempt at intimidation of a person involved in an allegation against the Member;
 - e. a compromise the impartiality of those who work for, or on behalf of, the authority;
 - f. a disclosure of confidential information;
 - g. the bringing of an office or authority into disrepute;
 - h. the using or attempt at using of the Member's position as a Member improperly to confer or secure an advantage or disadvantage;
 - i. the using of the resources of the authority not in accordance with its requirements;
 - j. the disregarding of relevant advice when reaching decisions;
 - k. a failure to give reasons for decisions;
 - l. a failure to declare a disclosable pecuniary interest;
 - m. a failure to declare an other type of disclosable interest;
 - n. the having of an interest and the failure to act appropriately;
 - o. a failure to register interests.
3. If the allegation appears to disclose a failure to comply with the Code of Members' Conduct, the Monitoring Officer is to consider:
 - a. the extent to which the Member is alleged to have failed to treat others with respect;
 - b. the extent to which the Member is alleged to have acted in a way that may cause the authority to breach an equality enactment;

- c. whether the allegation relates to bullying, intimidating, or attempting to intimidate a person involved in an allegation against the Member;
 - d. whether in disclosing confidential information, the Member failed to take or to heed advice;
 - e. the implications for public perception or the reputation of the Council;
 - f. the implications for staff relations;
 - g. the seniority or position of influence of the Member, and public trust and confidence;
 - h. the consequences or the likely consequences of the Member's alleged actions;
 - i. the extent to which the Member is alleged to have used his or her position as a Member improperly to confer or secure an advantage or disadvantage;
 - j. the extent to which the Member is alleged to have misused or abused the resources of the Council;
 - k. the detriment caused by acting against advice when reaching decisions;
 - l. the extent to which a failure to register or to declare interests resulted from a failure or refusal to seek or to follow advice;
 - m. whether the matter of complaint has already been the subject of a previous complaint, a previous investigation or of an investigation by another regulator, eg the Local Government Ombudsman or the council's auditor, or the subject of proceedings in court;
 - n. whether the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
 - o. whether the complaint is too trivial to warrant further action;
 - p. whether the complaint appears to be simply **frivolous**, malicious, vexatious, politically motivated or tit-for-tat *;
 - q. the public benefit in directing an investigation or other steps;
 - r. the costs and officer and Member time which could be incurred on an investigation or other steps.
4. The Monitoring Officer considers that a Code of Members' Conduct may have been committed they must decide whether:
- a. the complaint can be resolved by informal means e.g. a telephone call, a meeting between the complainant and the Member or a meeting between the complainant, the Member, the Independent Person or a third party e.g. Group Leader, the Leader of the Council or the Chief Executive, or an apology;
 - b. to recommend steps to the complainant and the Member other than investigation and, if so, what steps;
 - c. to investigate the complaint;
 - d. to refer the allegation to the Independent Person for action;
 - e. to refer the case to be dealt with as part of the Council's corporate complaints procedure; or

- f. to take no further action because:
 - i. the subject matter of the allegation is outside the Code of Members' Conduct;
 - ii. the allegation does not appear to disclose a failure to comply with the Code of Members' Conduct;
 - iii. the information submitted is insufficient to enable him or her to reach a decision;
 - iv. the matter of complaint has already been the subject of a previous investigation or of an investigation by another regulator, or the subject of proceedings in court;
 - v. the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
 - vi. the complaint is too trivial to warrant further action;
 - vii. the complaint appears to be simply **frivolous**, malicious, vexatious, politically motivated or tit-for-tat *; or
 - viii. It would not be expedient in the public interest for the matter to be pursued further.

5. The Monitoring Officer must consider the reasons for making this decision.

6. If the Monitoring Officer proposes to take steps 4b to 4f they shall inform the Chief Executive, the Group Leader and the Independent Person.

7. If the Monitoring Officer proposes to take steps 4c or 4d they shall consult the Independent Person.

8. *** A frivolous or vexatious complaint is described as:-**
 - **Repeated complaints making the same or similar complaints against the same member or about the same alleged incident.**
 - **Repeated complaints that disclose no potential breach of the Code.**
 - **Complaints that are designed to cause disruption or annoyance.**
 - **Demands for redress which lack any serious purpose or value.**
 - **Complaints that are pursuing unrealistic outcomes.**
 - **Insistence upon pursuing complaints which lack merit.**

9. **The Monitoring Officer will consult with the Independent Person if a complaint is received which falls within this category and where it is recommended no further action will be taken on the complaint.**

ROLE OF THE INDEPENDENT PERSON

1. To consider any reference from the Monitoring Officer and to give directions accordingly
2. To give directions regarding any Investigation
3. To give advice to the complainant, the Member, the Monitoring Officer or the Council or any of its Committees or Sub-Committees that have responsibility for Standards
4. To receive and consider any Investigation Report from the Monitoring Officer
5. To receive and consider any representations from the complainant and the Member
6. To hold a Hearing either orally or on the papers following an Investigation
7. Upon a reference by the Monitoring Officer and/or after a hearing to make recommendations to:
 - A Panel of Members drawn from the Appointments and Investigating Committee
8. In reaching any decision the Independent Person is to consider:
 - a) whether the subject matter of the allegation is within the Code of Members' Conduct;
 - b) whether the allegation appears to disclose a failure to comply with the Code of Members' Conduct because it comprises:
 - i) a failure to treat others with respect;
 - ii) acting in a way that may cause the authority to breach an equality enactment;
 - iii) bullying of any person;
 - iv) an intimidation or attempt at intimidation of a person involved in an allegation against the Member;
 - v) a compromise the impartiality of those who work for, or on behalf of, the authority;
 - vi) a disclosure of confidential information;
 - vii) the bringing of an office or authority into disrepute;
 - viii) the using or attempt at using of the Member's position as a Member improperly to confer or secure an advantage or disadvantage;
 - ix) the using of the resources of the authority not in accordance with its requirements;
 - x) the disregarding of relevant advice when reaching decisions;
 - xi) a failure to give reasons for decisions;
 - xii) a failure to declare a disclosable pecuniary interest;
 - xiii) A failure to declare an other type of disclosable interest;
 - xiv) the having of an interest and the failure to act appropriately;
 - xv) a failure to register interests.

- c) If the allegation appears to disclose a failure to comply with the Code of Members' Conduct, the Independent Person to consider
- i) the extent to which the Member is alleged to have failed to treat others with respect;
 - ii) the extent to which the Member is alleged to have acted in a way that may cause the authority to breach an equality enactment;
 - iii) whether the allegation relates to bullying, intimidating, or attempting to intimidate a person involved in an allegation against the Member;
 - iv) whether in disclosing confidential information, the Member failed to take or to heed advice;
 - v) the implications for public perception or the reputation of the Council;
 - vi) the implications for staff relations;
 - vii) the seniority or position of influence of the Member, and public trust and confidence;
 - viii) the consequences or the likely consequences of the Member's alleged actions;
 - ix) the extent to which the Member is alleged to have used his or her position as a Member improperly to confer or secure an advantage or disadvantage;
 - x) the extent to which the Member is alleged to have misused or abused the resources of the Council;
 - xi) the detriment caused by acting against advice when reaching decisions;
 - xii) the extent to which a failure to register or to declare interests resulted from a failure or refusal to seek or to follow advice;
 - xiii) whether the matter of complaint has already been the subject of a previous investigation or of an investigation by another regulator, eg the Local Government Ombudsman or the council's auditor, or the subject of proceedings in court;
 - xiv) whether the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
 - xv) whether the complaint is too trivial to warrant further action;
 - xvi) whether the complaint appears to be simply **frivolous**, malicious, vexatious, politically motivated or tit-for-tat *;
 - xvii) the public benefit in directing an investigation or other steps;
 - xviii) the costs and officer and Member time which could be incurred on an investigation or other steps.
- d) If the Independent Person considers that a breach of the Code of Members' Conduct may have been committed he or she must decide whether:
- i) the complaint can be resolved by informal means e.g. a telephone call, a meeting between the complainant and the Member or a meeting between the complainant, the Member, the Independent Person or a third party e.g. Group Leader, the Leader of the Council or the Chief Executive, or an apology;
 - ii) to recommend steps to the complainant and the Member other than Investigation and, if so, what steps;
 - iii) to recommend action to:
 - iv) A Panel of Members drawn from the Appointments and Investigating Committee

- v) to take no further action because
- (1) the subject matter of the allegation is outside the Code of Members' Conduct;
 - (2) the allegation does not appear to disclose a failure to comply with the Code of Members' Conduct;
 - (3) the information submitted is insufficient to enable him or her to reach a decision;
 - (4) the matter of complaint has already been the subject of a previous investigation or of an investigation by another regulator, or the subject of proceedings in court;
 - (5) the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
 - (6) the complaint is too trivial to warrant further action;
 - (7) the complaint appears to be simply **frivolous**, malicious, vexatious, politically motivated or tit-for-tat *; or
 - (8) It would not be expedient in the public interest for the matter to be pursued further.

9. The Independent Person must consider the reasons for making this decision.

10. If the Independent Person makes a decision he or she shall inform the Monitoring Officer, the Chief Executive, the Group Leader, the complainant and the Member.

11. The actions the Independent Person may recommend to:

- A Panel of Members drawn from the Appointments and Investigating Committee are set out at Appendix C.

12. * A frivolous or vexatious complaint is described as:-

- **Repeated complaints making the same or similar complaints against the same member or about the same alleged incident.**
- **Repeated complaints that disclose no potential breach of the Code.**
- **Complaints that are designed to cause disruption or annoyance.**
- **Demands for redress which lack any serious purpose or value.**
- **Complaints that are pursuing unrealistic outcomes.**
- **Insistence upon pursuing complaints which lack merit.**