

STANDARDS HEARING

(Members are asked to arrive by 1.45pm)

at 2pm on Thursday 12th July 2018
in the Alexandra Room at the Belle Vue Square Offices, Skipton

AGENDA

Membership : Councillors: Ireton, Mercer and Whitaker.

Exclusion of the Public: In accordance with the Council's Access to Information Procedure Rules, Members are recommended to exclude the public from the meeting during consideration of Appendix 2 of **Item \$5** on the grounds that it is likely that if Members of the public were present there would be disclosure to them of exempt information as defined in Paragraph 1 (relates to an individual) and Paragraph 2 (likely to reveal the identity of an individual) of those Rules and Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

1. **Apologies for absence.**
2. **Appointment of Chairman for the Hearing.**
3. **Declarations of Interest** – Members are invited to declare any interests (including the nature of those interests) they have in the item appearing on this agenda.

(Note: If any of the Panel's Members believe they may have an interest they are asked to inform the agenda contact officer before the date of the Hearing as the attendance of a replacement Member may need to be arranged.)

4. **Public Participation (if any).**
- \$5. **Code of Conduct Complaint** – Report of the Solicitor to the Council (Monitoring Officer). Attached.

Purpose of Report – To consider the finding of the Investigating Officer into an allegation that a District Councillor breached the Council's Code of Conduct for Members.

6. Any other items which the Chairman decides are urgent in accordance with Section 100B(4) of the Local Government Act, 1972.

Agenda Contact Officer : Vicky Davies
Email: committees@cravenc.gov.uk
Tel. 01756 706486
26th June 2018

If you would like this agenda or any of the reports listed in a way which is better for you, please telephone 01756 706494.

Recording at Council Meetings

Recording is allowed at Council, committee and sub-committee meetings which are open to the public, subject to

- (i) the recording being conducted with the full knowledge of the Chairman of the meeting; and
- (ii) compliance with the Council's protocol on audio/visual recording and photography at meetings, a copy of which is available on request. Anyone wishing to record must contact the Agenda Contact Officer (details above) prior to the start of the meeting. Any recording must be conducted openly and not disrupt proceedings.

Standards Hearing – 12th July 2018



Report of the Solicitor to the Council (Monitoring Officer)

1. **Purpose of Report** – To enable the Panel to consider the findings of the Investigating Officer into an allegation that a District Councillor breached the Council's Code of Conduct for Members.
2. **Recommendations** – Members are recommended to:
 - 2.1 Consider whether it is appropriate and in the public interest for the hearing to take place in public, with all or part of the Investigating Officer's report being made available to the public; and
 - 2.2 Consider the Investigating Officer's report in accordance with the Hearings Procedure, and determine whether or not there has been a breach of the Code of Conduct, and if so, the appropriate sanction or recommendation.
3. **Report**
 - 3.1 The Panel is asked to consider, in accordance with the Hearings Procedure (adopted by Standards Committee) (**appendix 1**), the Investigating Officer's report (**appendix 2**) and to determine whether there has been a breach of the Council's Code of Conduct for Members (**appendix 3**), and if so, the appropriate sanction.
 - 3.2 The Panel will first need to consider whether or not the press and public should be admitted to the hearing. The Investigating Officer's report has been marked as exempt because it contains information about named individuals. For this reason, the Monitoring Officer has concluded that it is inappropriate for the Investigating Officer's report to be made public in advance of consideration by the Panel. However, in considering whether or not to hold the hearing in public, the Panel will wish to consider whether the public interest in transparency and openness outweighs the public interest in withholding the information. The Panel will consider any representations from the District Councillor and also the Investigating Officer on this point.
 - 3.3 If the Panel is minded to hold the hearing in public, then it would be appropriate to make the Investigating Officer's report available to the public. However, in view of the personal data included in the report, the Panel may conclude that it is appropriate for that personal data to remain exempt from publication, with the press and public excluded from any part of the hearing (if any), where it is necessary to discuss that information in such detail that personal data would be disclosed.

- 3.4 In the event that the Panel is minded to exclude the press and public from the hearing, it will be necessary for the Panel to resolve that, in accordance with section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting on the grounds that it could involve the possible disclosure of exempt information as defined in paragraph 1 of Schedule 12A of that Act.
- 3.5 The Independent Person, Mr John Boumphrey, will be present at the hearing in an advisory, non-voting capacity.
- 3.6 The Panel should make a determination as to whether or not there has been any breach of the Council's Code of Conduct. If the decision is that there has been a breach, the Panel will proceed to consider the appropriate sanction. The sanctions available to the Panel are set out at paragraph 8 of the agreed arrangements for dealing with standards allegations under the Localism Act 2011 (**appendix 4**).

4. **Implications**

- 4.1 **Financial Implications** – None arising directly from the report.
- 4.2 **Legal Implications** – These are set out in the body of the report.
- 4.3 **Contribution to Council Priorities** – Improving how the Council governs its business.
- 4.4 **Risk Management** – Not applicable.
- 4.5 **Equality Analysis** – Not applicable.
5. **Consultations with Others** – Not applicable.
6. **Access to Information: Background Documents** – Not applicable.
7. **Author of the Report** – Annette Moppett, Solicitor to the Council (Monitoring Officer); telephone 01756 706325; e-mail: amoppett@cravenc.gov.uk.

Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

8. **Appendices** –
Appendix 1 – Hearings Procedure;
Appendix 2 – Investigating Officer's report;
Appendix 3 – Code of Conduct for Members; and
Appendix 4 – Arrangements for dealing with standards allegations.

HEARINGS PROCEDURE

Interpretation

1 'Member' means the member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.

2 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the investigator mean the Monitoring Officer or other investigating officer, and his or her nominated representative.

3 'Committee' also refers to 'a standards sub-committee'.

4 'Legal advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

5 The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

Legal advice

6 The committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee should be shared with the member and the investigator if they are present.

Setting the scene

7 After all the members and everyone involved have been formally introduced, the Chair should explain how the committee is going to run the hearing.

Preliminary procedural issues

8 The committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making findings of fact

9 After dealing with any preliminary issues, the committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

10 If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.

11 If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.

12 The member should then have the opportunity to make representations to support his or her version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.

13 At any time, the committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.

14 If the member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

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

- a** continue with the hearing, relying on the information in the investigator's report;
- b** allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
- c** postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.

16 The committee will usually move to another room to consider the representations and evidence in private.

17 On their return, the Chair will announce the committee's findings of fact.

Did the member fail to follow the Code?

18 The committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.

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

20 The committee should then consider any verbal or written representations from the investigator.

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

22 The member should be invited to make any final relevant points.

23 The committee will then move to another room to consider the representations.

24 On their return, the Chair will announce the committee's decision as to whether or not the member has failed to follow the Code of Conduct.

If the member has not failed to follow the Code of Conduct

25 If the committee decides that the member has not failed to follow the Code of Conduct, the committee can move on to consider whether it should make any recommendations to the authority.

If the member has failed to follow the Code

26 If the committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:

- a** whether or not the committee should set a penalty; and
- b** what form any penalty should take.

27 The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

28 The committee will then move to another room to consider whether or not to impose a penalty on the member and, if so, what the penalty should be.

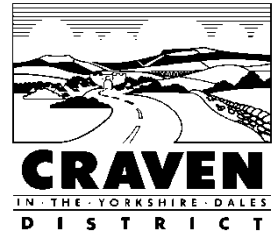
29 On their return, the Chair will announce the committee's decision.

Recommendations to the authority

30 After considering any verbal or written representations from the investigator, the committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

31 The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.



CRAVEN DISTRICT COUNCIL

CODE OF CONDUCT

Introduction

Pursuant to Section 27 of the Localism Act 2011, Craven District Council as relevant authority (“the Council”) has adopted this Code of Conduct to promote and maintain high standards of behaviour by its members and co-opted members whenever they conduct the business of the Council, including the business of the office to which they were elected or appointed, or when they claim to act or give the impression of acting as a representative of the Council.

This Code of Conduct is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. **These principles are described in detail in Appendix C to this code.**

Definitions

For the purposes of this Code, a ‘co-opted member’ is a person who is not a member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council, and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

For the purposes of this Code, a ‘meeting’ is a meeting of the Council, any of its committees, sub-committees, joint committees or joint sub-committees.

For the purposes of this Code, and unless otherwise expressed, a reference to a member of the Council includes a co-opted member of the Council.

Member obligations

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations:

1. He/she shall behave in such a way that a reasonable person would regard as respectful.
2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.

3. He/she shall not seek to improperly confer an advantage or disadvantage on any person.
4. He/she shall use the resources of the Council in accordance with its requirements.
5. He/she shall not disclose information which is confidential or where disclosure is prohibited by law.
6. He/ she shall not compromise or attempt to compromise the impartiality of anyone who works or exercises powers for the Council.

Registration of interests

7. Within 28 days of this Code being adopted by the Council, or the member's election or the co-opted member's appointment (where that is later), he/she shall register with the Monitoring Officer the interests which fall within the categories set out in Appendices A and B.
8. Upon the re-election of a member or the re-appointment of a co-opted member, he/she shall within 28 days re-register with the Monitoring Officer any interests in Appendices A and B.
9. A member shall register with the Monitoring Officer any change to interests or new interests in Appendices A and B within 28 days of becoming aware of it.
10. A member need only declare the existence but not the details of any interest which the Monitoring Officer agrees is a 'sensitive interest'. A sensitive interest is one which, if disclosed on a public register, could lead the member or a person connected with the member to be subject to violence or intimidation.

Declaration of interests at meetings

11. Where a matter arises at a meeting which relates to an interest in Appendix A the member must leave the room and shall not participate in a discussion or vote on the matter. He/she only has to declare what his/her interest is if it is not already entered in the member's register of interests or if he/she has not notified the Monitoring Officer of it.
12. Where a matter arises at a meeting which relates to an interest in Appendix A which is a sensitive interest, the member must leave the room and shall not participate in a discussion or vote on the matter. If it is a sensitive interest which has not already been disclosed to the Monitoring Officer, the member shall disclose he/she has an interest but not the nature of it.

13. Where a matter arises at a meeting which relates to an interest in Appendix B, the member must move to the public gallery and shall not vote on the matter. He/she may speak on the matter only if members of the public are also allowed to speak at the meeting.
14. A member *shall disclose the nature of* his/her interest in Appendix B *even* if it is already entered in his/her register of interests or he/she has not notified the Monitoring Officer of it or if he/she speaks on the matter. If he/she holds an interest in Appendix B which is a sensitive interest not already disclosed to the Monitoring Officer, he/she shall declare the interest but not the nature of the interest.
15. Where a matter arises at a meeting which relates to a financial interest of the member, a friend, relative or close associate (other than an interest in Appendix A), the member shall disclose the nature of the interest. The member must move to the public gallery and shall not vote on the matter. He/she may speak on the matter only if members of the public are also allowed to speak at the meeting. If it is a 'sensitive interest' the member shall declare the interest but not the nature of the interest.

Dispensations

16. On a written request made to the Council's proper officer, the Council may grant a member a dispensation to participate in a discussion and vote on a matter at a meeting even if *the member* has an interest in Appendices A and B if the Council believes that the number of members otherwise prohibited from taking part in the meeting would impede the transaction of the business; or it is in the interests of the inhabitants in the Council's area to allow the member to take part or it is otherwise appropriate to grant a dispensation.
17. In deciding whether to grant a dispensation the Council's proper officer shall consider
 - a). appropriate political proportionality of the meeting concerned :
 - b) interests of the inhabitants in the council's area;
 - c) the interest of justice generally.
- 18 The Council has delegated authority to the Monitoring Officer to act as its proper officer. The Monitoring Officer may authorise an Officer to act in his/ her absence.

APPENDIX A : Disclosable Pecuniary Interests.

Interests defined by regulations made under Section 30(3) of the Localism Act 2011 and described in the table below.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made to the member during the 12 month period ending on the latest date referred to in paragraph 6 above for expenses incurred by him/her in carrying out his/her duties as a member, or towards his/her election expenses.
	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the member or between his/her spouse or civil partner or the person with whom the member is living as if they were spouses/civil partners (or a body in which such a person is a partner in a firm, a director of an incorporated body or holds the beneficial interest in securities*) 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	Any beneficial interest in land which is within the area of the Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to the member's knowledge) -
	(a) The landlord is the Council; and
	(b) The tenant is a body in which the member or his/her spouse or civil partner/the person with whom the member is living as if they were spouses/civil partners has a beneficial interest.
Securities	Any beneficial interest in securities of a body where -
	(a) That body (to the member'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 relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions of interest are subject to the following definitions

“relevant person” means

- *Your spouse or civil partner”*
- *A person with whom you are living as husband or wife*
- *A person with whom you are living as if they were your civil partner;;*

“body” in which you or the relevant person has a beneficial interest means a firm in which you or the relevant person is a partner or a body corporate of which you or the relevant person is a director, or in the securities of which you or the relevant person has a beneficial interest;

“ director “ includes a member of the committee of management of an industrial and provident society

“land” excludes an easement , servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or receive income;

*'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.

APPENDIX B

An interest under paragraph 1 *and 2 below* which relates to or is likely to affect:

1. Interests

(i) Any body of which the member is in a position of general control or management and to which he/she is 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 the member of the Council is a member or in a position of general control or management;

(iii) Any gifts or hospitality worth more than an estimated value of £25 which the member has received by virtue of his or her office.

and

2. Perception of Conflict

A reasonable member of the public with knowledge of all the relevant facts would think that your interest was so significant that it would be likely to prejudice your judgment.

FOOTNOTE 1

The test for perception is one of conflict of interest; which in other words means the interest must be perceived as likely to harm or impair your ability to judge the public interest..

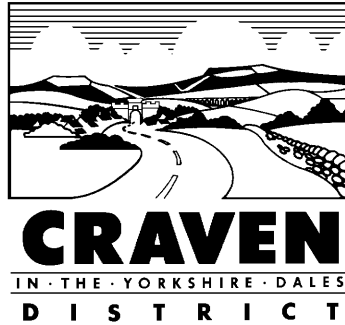
FOOTNOTE 2

This Code of Conduct is based on the template Code of Conduct for parish councils produced by the National Association of Local Councils (NALC) in 2012 who has given permission for its use by the District Council.

Reproduced with the kind permission of the National Association of Local Councils (NALC) in 2012.

APPENDIX C

Principle	Description
Preamble	The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.
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



Arrangements for dealing with standards allegations under the Localism Act 2011

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

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

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

1 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and available for inspection on the council’s website and on request from reception at the Council Offices, Belle Vue Square Broughton Road, Skipton.

Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the parish council or request the parish clerk to allow you to inspect the parish council’s Code of Conduct.

2 Making a complaint

If you wish to make a complaint, please write or email to –

The Monitoring Officer
Craven District Council
1 Belle Vue Square
SKIPTON
BD23 1FJ
amoppett@cravenc.gov.uk

The Monitoring Officer is a senior officer of the council who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the council's website, next to the Code of Conduct, and is available on request from Reception at 1 Belle Vue Square, Skipton.

Please do provide your name and a contact or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so (see paragraph 3 below).

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

3 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation, having regard to the Assessment Criteria adopted by the Council (attached as Appendix Two to these arrangements. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed.

Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council or your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.

In some cases, at his/her discretion, the Monitoring Officer may refer the complaint to the Standards Committee to decide whether or not it should be investigated or other action taken.

If a conflict of interest or other exceptional circumstances arise the Monitoring Officer or Independent Person may consult an independent third party.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Council. Where the member or the Council make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

If you (or the subject of the complaint) are dissatisfied with the suggested action, you may appeal to the Chair of the Standards Committee, who may uphold the decision or suggest an alternative course of action.

Confidentiality

The Monitoring Officer will decide whether a request by a complainant that their identity be withheld should be agreed. This decision will be reviewed by the Monitoring Officer at the initial assessment stage.

As a matter of fairness and natural justice, the subject of the complaint should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant's identity if on request from the complainant, or otherwise, he/she is satisfied that the complainant has reasonable grounds for believing that they or any witness relevant to the complaint may for example, be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the complainant's identity being disclosed.

If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, he or she will offer the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his or her identity withheld from the subject of the complaint.

4 How is the investigation conducted?

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

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview.

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

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

5 Withdrawal of a Complaint

In the event that a complainant withdraws a complaint at any time prior to a decision having been made by a Hearings Panel, the Monitoring Officer may, following consultation with the Independent Person and the Chair of Standards Committee, decide whether no further steps be taken in respect of that complaint. This determination will take into account whether it is in the public interest to proceed regardless of the complainant's wishes.

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

The Monitoring Officer will review the Investigating Officer's report and, if he or she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that he or she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the

Monitoring Officer is not satisfied that the investigation has been conducted properly, he or she may ask the Investigating Officer to reconsider his/her report.

In some cases, at his or her discretion, the Monitoring Officer may refer the Investigating Officer's report to the Standards Committee, if he or she disagrees with the Investigating Officer's conclusion(s).

7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the council. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee and the Parish Council for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate; the Monitoring Officer will refer the matter for a local hearing before the Hearings Panel.

7.2 Local Hearing

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

The Council has agreed a procedure for local hearings, which is attached as Appendix Three to these arrangements.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding

and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

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

- 8.1 Where a Hearings Panel find that a Member has failed to comply with the Code of Conduct, the Council had delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly, the sanctions available to a Hearings Panel include, but are not restricted to one or a combination of the following:
- 8.1.1 Publish its findings in respect of the member's conduct;
 - 8.1.2 Report its findings to Council (or to the Parish Council) for information;
 - 8.1.3 Recommend to Council that the member be censured;
 - 8.1.4 Recommend to the member's group leader (or in the case of ungrouped members, recommend to Council) that he or she be removed from any or all committees or sub-committees of the Council;
 - 8.1.5 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training/coaching for the member;
 - 8.1.6 Recommend to Council (or recommend to the Parish Council) that the member be removed from all outside bodies and/or appointments to which they have been appointed or nominated by the Council (or the Parish Council);
 - 8.1.7 Withdraw (or recommend to the Parish Council that it withdraws) resources and/or facilities provided to the member by the Council such as computer, website and/or email and internet access etc.
 - 8.1.8 Place such restrictions on member's access to staff which may be reasonable in the circumstances provided that such restrictions do not prevent the member from carrying out their duties as a Councillor;
 - 8.1.9 Recommend the member apologise to the relevant person(s) affected. This could also include a recommendation that this is done in conjunction with the Monitoring Officer to ensure that it meets the Hearings Panel's expectations;
- 8.2 Consideration will also need to be given to the time period of the action and how it will be monitored.
- 8.3 The Monitoring Officer will report the outcome of the Hearings Panel to the next meeting of Standards Committee.

9 What happens at the end of the hearing?

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

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

10 Who is the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Standards Committee. The Standards Committee has decided that it will comprise a maximum of five members of the Committee, and comprising members drawn from at least 2 different political parties. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.

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

11 Who is the Independent Person?

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

A person cannot be "independent" if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the council;
- 11.2 *[Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the council's area], or*
- 11.3 Is a relative or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
 - 11.3.1 Spouse or civil partner;
 - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 Grandparent of the other person;
 - 11.3.4 A lineal descendent of a grandparent of the other person;
 - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

12 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she

considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

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

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

Appendix One The council's Code of Conduct

Appendix Two Assessment Criteria

Appendix Three Procedure for Hearings

Adopted by Standards Committee, 6th September 2016 (STN.311)



**Investigation into a complaint against
Councillor Alan Sutcliffe,
Craven District Council**

A report for the Monitoring Officer of
Craven District Council

14 November 2017

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1 Executive Summary

- 1.1 ch&i associates was appointed by the Monitoring Officer at Craven District Council (the District Council) to investigate five complaints about the conduct of Councillor Alan Sutcliffe, a member of the District Council. As part of this investigation I have considered whether Councillor Sutcliffe failed to comply with the District Council's Code of Conduct by using his position as Chairman of the Planning Committee in a manner that improperly disadvantaged others. I have also considered whether Councillor Sutcliffe's conduct was consistent with the principles of Openness, Honesty and Accountability.

Scope and focus of the investigation

- 1.2 The Monitoring Officer, in consultation with the District Council's Independent Person¹, considered complaints from [REDACTED] all of which concerned the alleged conduct of Councillor Alan Sutcliffe. A summary of the five complaints is set out below:

That Councillor Sutcliffe, as Chairman of the District Council's Planning Committee (the Committee) breached the District Council's Code of Conduct for Members ('the Code') in that:

- On **13 March 2017**, at a meeting of the Committee, members resolved to defer consideration of planning application 63/2016/17465 (the Candelisa² application) to *'enable the attendance of a representative of the Highways Authority³ to respond to concerns in respect of the cumulative traffic impact of this and other proposed developments in the vicinity - Wyvern Park - and the relationship between this development and highway improvements associated with the Wyvern Park proposal, namely, the proposed mini roundabout to be provided in Carleton Road connecting Carleton Road via a link road to the A629'* (minute PL.821).
- On **4 June 2017**, at a subsequent meeting of the Committee, Councillor Sutcliffe told those present that the Highways Authority had declined the Committee's invitation to attend and had instead submitted a written report. It is alleged that Councillor Sutcliffe then used his casting vote to approve the Candelisa application, contrary to committee convention.
- On **21 June 2017** at a public meeting organised by the Highways Authority, officers from the County Council were challenged as to why they had refused to attend the District Council's Planning Committee meeting; they responded by confirming that Councillor

¹ Appointed by the Council pursuant to section 28 of the Localism Act 2011.

² Candelisa are a UK based property development company who submitted the application.

³ North Yorkshire County Council (the County Council)

Sutcliffe, as Chair of the Committee, had instructed them not to attend.

Recommendation

- 1.3 My approach in this case has been to equip the District Council to determine the allegations through any of the routes open to it, namely:
 - a. The member *was not* acting in councillor capacity therefore the code was not engaged and the member did not breach it;
 - b. The member *was* acting in member capacity, but did not through their conduct breach any Code paragraph;
 - c. The member *was* acting in member capacity and breached the Code.
- 1.4 In my view, the allegations against Councillor Sutcliffe do fall within the jurisdiction of the Code because he was acting in his official capacity.
- 1.5 The investigation has established that Councillor Sutcliffe decided that a representative from the Highways Authority would not attend the Planning Committee meeting on **4 June 2017**. In my view this decision was poorly judged; the Committee had decided that they wanted an officer present to respond to their questions and interested members of the public were clearly expecting that to occur. It is my view though that any concerns about his conduct in relation to this matter are governance rather than ethical in nature. As such, I have concluded that Councillor Sutcliffe did not use his position improperly to confer a disadvantage to the complainants either in the way in which he voted or when deciding that a representative from the Highways Authority need not attend the Committee meeting of **4 June 2017**.
- 1.6 Having said that, I do consider that Councillor Sutcliffe's failure to properly explain and take responsibility for the latter decision is sufficient evidence of a breach of the Code as to warrant the District Council taking further action. Members have a responsibility to be honest and open about the decisions they make. While I do not consider that Councillor Sutcliffe lied to the Committee, his response led to those present making the reasonable assumption that the Highways Authority had decided not to attend the meeting.
- 1.7 In considering what action the Monitoring Officer should consider taking, I am not sure that further examination of the concerns highlighted or formal determination of these allegations through a public hearing is justified, particularly given the nature of the sanctions available.
- 1.8 The District Council's arrangements for dealing with standards allegations under the Localism Act 2011 state that the Monitoring Officer will review the investigating officer's report and after consulting with the independent person will consider whether local resolution should be attempted or the matter proceed direct to hearing before the hearings panel. My recommendation therefore is that

the Monitoring Officer seeks a local resolution to the matters raised in this report. Local resolution offers a proportionate and locally owned process.

- 1.9 I consider that the local resolution should involve Councillor Sutcliffe making a verbal apology at the next meeting of the Planning Committee for his failure to make it clear that he had instructed the Highways Authority not to attend the meeting of **4 June 2017**.
- 1.10 A summary of the findings of the investigation and outcome of the local resolution should be provided to the Council's Standards Committee. If Councillor Sutcliffe does not engage with the process in a manner that the Monitoring Officer considers sufficient, I believe that the breach of the Code highlighted in this report should be referred to the Standards Committee for a formal hearing.

2 Official details of Councillor Alan Sutcliffe

- 2.1 Councillor Sutcliffe (Conservative) was elected as a member of the District Council in May 2010; his current term of office ends in May 2018. Councillor Sutcliffe is the ward member for Gargrave and Malhamdale.
- 2.2 Councillor Sutcliffe is currently a member of the District Council's Planning Committee (Chair) and Select Committee. He also represents the District Council on the Airedale Internal Drainage Board and North Yorkshire County Council's Craven Area Committee.

3 The relevant legislation and protocols

Localism Act 2011

- 3.1 By section 27(1) of the Localism Act 2011 (the Act) a "relevant authority" is placed under a statutory duty to "promote and maintain high standards of conduct by members and co-opted members of the authority".
- 3.2 By section 27(2) of the Act a relevant authority "must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity".
- 3.3 Under section 28(1) of the Act a relevant authority must ensure that a code adopted by it is, when viewed as a whole, consistent with prescribed principles of standards in public life – the so called "Nolan principles".
- 3.4 The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which engenders public confidence in democracy, as was recognised by Beatson J, as he then was, in R (Calver) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin) when he held that there was a clear public interest in maintaining confidence in local

government while at the same time bearing in mind the importance of freedom of political expression or speech in the political sphere.

- 3.5 Under 28(6) of the Act, Local Authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision by the appointment of the authority of at least one “independent person” whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.
- 3.6 Section 28(11) of the Act provides that if a relevant authority finds that a member or a co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.

Craven District Council’s Code of Conduct

- 3.7 Under Section 27(2) of the Localism Act the District Council established a Code of Conduct for members (the Code). The Code adopted by the District Council includes the following relevant paragraphs:

Member obligations

When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations:

3. He/she shall not seek to improperly confer an advantage or disadvantage on any person.

APPENDIX C

The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services...

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

4 The investigation

- 4.1 This investigation was conducted by Alex Oram on behalf of the Council's Monitoring Officer. Alex⁴ is a director of ch&i associates, a company with a successful track record of conducting complex investigations, assessments and case reviews within the regulatory, charity, NHS and local government sectors. Alex has been conducting member conduct investigations since 2003. He was previously employed by Standards for England as a principal investigator responsible for conducting many of their most complex, politically sensitive and high-profile investigations into member conduct.
- 4.2 During this investigation, we have considered evidence provided by [REDACTED] (the complainants), the District Council, the County Council and Councillor Alan Sutcliffe, including an audio recording of the Committee meeting of 4 June 2017. We have also spoken with Councillor Sutcliffe, [REDACTED], Mr Neville Watson (the District Council's Development Control Manager), Councillor Andy Solloway (District and County Councillor), Councillor Brian Shuttleworth (District Councillor) and Mr Andrew Mather (the District Council's Member Support Manager).

5 The evidence

Committee meeting, 13 March 2017

- 5.1 On **13 March 2017**, the District Council's Planning Committee (the Committee) met to consider planning application reference 63/2016/17465: *Residential development for 67 houses with associated off-street parking, access roads and cycle circuit track, land at Carleton Road, Skipton* (the Candelisa⁵ application).
- 5.2 At the meeting [REDACTED] was given the opportunity to present the collective objections of a number of local residents to the Committee. Their primary concern related to the cumulative traffic impact of this and other proposed developments in the vicinity; primarily Wyvern Park.⁶ Although the Highways Authority (North Yorkshire County Council) had submitted no objection to the Candelisa application, certain members of the District Council felt that not all of the concerns raised by residents had been fully addressed in the Highways Authority's written representations.

⁴ Alex is not a lawyer and any information in this report should not be construed as legal advice; all reasoning is based on his extensive experience of having conducted over 300 standards investigations.

⁵ Candelisa are a UK based property development company who submitted the application.

⁶ Wyvern Park was a development that had already been granted permission but where development works were yet to start.

- 5.3 The Committee resolved to defer consideration of the Candelisa application to enable the attendance of a representative of the Highways Authority. Members specifically wanted more information regarding the possible cumulative traffic impact of this and other proposed developments in the vicinity. They also wanted to clarify the relationship between the Candelisa development and highway improvements associated with the Wyvern Park proposal; namely, the proposed mini roundabout to be provided in Carleton Road connecting Carleton Road via a link road to the A629.
- 5.4 After the meeting Mr Neville Watson, the District Council's Development Control Manager, arranged to meet with representatives of the Highways Authority to discuss the concerns raised. Mr Watson told me at interview that to an extent this meeting quickly became unnecessary after Candelisa commissioned and produced an additional engineer's report. This report considered the traffic impact of their proposed development in a way that fully incorporated scenarios where the previously agreed Wyvern Park scheme (and its associated highways improvements) both did and did not proceed.
- 5.5 Having reviewed the engineer's report, the Highways Authority revisited their original report and recommendation of 'No objection' to the Candelisa application. Officers decided to submit a more detailed report to the District Council to set out their position, which concluded that neither scenario (the completion or not of the Wyvern Park development and associated changes to the local road network) would cause severe traffic problems. Their revised submission to the Committee made clear that they still had no objection to the Candelisa application, including any arising from traffic impact.

Did Councillor Sutcliffe instruct the Highway's Officer not to attend the subsequent Committee meeting?

- 5.6 The Candelisa application was listed to be considered at the Committee meeting of **4 June 2017**. As a result, it was one of the matters under consideration when, on **24 May 2017**, Mr Watson met with Committee Chair Councillor Alan Sutcliffe and his Vice-Chair, Councillor Thompson, for the Chairman's Briefing⁷.
- 5.7 During discussions about the Candelisa application, Mr Watson asked Councillor Sutcliffe whether the Committee still required the attendance of an officer from the Highways Authority to answer questions about the potential cumulative traffic impact of this and other proposed developments in the vicinity; he told Councillor Sutcliffe that the County Council had confirmed that an officer from North Allerton could attend to present their new report. Councillor Sutcliffe told Mr Watson that he did not consider their attendance to be necessary any longer because all the questions raised by members at the previous meeting had been fully addressed in the latest report. Councillor Sutcliffe made the point that even if an officer from the Highways Authority did attend, he/she would have no power to reverse the Authority's decision not to object to the Candelisa application. Councillor Sutcliffe told Mr Watson that he also feared that the officer's presence risked diverting any

⁷ Mr Watson meets with the Chair of the Committee prior to every meeting to discuss the relevant agenda

debate away from the material planning considerations, to the rights and wrongs of the formal position taken by the Highways Authority.

- 5.8 Councillor Sutcliffe told me at interview that as far as he was concerned the Committee's decision to request the attendance of a Highways Officer so that he/she could respond to questions about their initial report had been made moot by the fact that they had produced a much more comprehensive report that fully addressed all questions raised. Councillor Sutcliffe stressed that he had no personal objection to an officer from the Highways Authority attending the Committee meeting; he simply viewed it as unnecessary and potentially distracting. Councillor Sutcliffe acknowledged that the decision to effectively 'uninvite' the officer had been his; he was of the view though that neither Mr Watson or Councillor Thomson⁸ appeared to have any concerns about it.
- 5.9 Mr Watson told me at interview that while he agreed with Councillor Sutcliffe to the extent that the latest report from the Highways Authority did address the questions and concerns previously raised by the Committee, he did express some disquiet with Councillor Sutcliffe's decision. Mr Watson told me that clearly members of the Committee would be expecting an officer from the Highways Authority to attend and therefore he would have thought it sensible to have provided one; the arrangements for the officer's attendance had already been made. Mr Watson added that in his view the presence of a Highways officer would have more likely reassured members and reinforced the position of the Highways Authority, which in turn supported the planning officer's recommendation to approve the Candelisa application.
- 5.10 On **1 June 2017**, Mr Watson contacted [REDACTED], a Highways Authority officer, to inform him that Councillor Sutcliffe had decided that he did not need to attend the forthcoming Committee meeting.
- 5.11 There appears to be no dispute over the fact that I was Councillor Sutcliffe who decided that the Highways Officer would not attend the Committee meeting to answer questions about the Candelisa application despite the Committee having previously deferred the matter for that very reason. Based on the evidence I have seen and without any evidence to the contrary, I have no reason to doubt that Councillor Sutcliffe took that decision for the reasons he gave me (as set out in paragraphs 5.7 & 5.8 above).

Did Councillor Sutcliffe tell the Committee that the Highways Authority declined their invitation to attend the subsequent Committee meeting?

- 5.12 On **4 June 2017**, the Committee again considered the Candelisa application. After the relevant planning officer had presented her report (recommending approval), County Councillor Solloway presented objections on behalf of a group of residents⁹. The planning applicant's agents and then the two relevant ward

⁸ I note that Councillor Thompson had not been present at the earlier meeting in **March 2017** when the Committee resolved to invite the Highways officer to attend. The Council's Monitoring Officer also informed me that the Chairman's briefing is normally also attended by one of the Council's solicitors, however on this occasion this did not occur.

⁹ In Mr Forman's absence

councillors were also given an opportunity to address the Committee. The primary focus of the objections centred on the likely impact the proposed development would have on local traffic.

- 5.13 At this point in the meeting Councillor Sutcliffe reminded members that the Committee could not rely on what residents claimed would be the likely impact on local traffic; they had a responsibility to rely on the professional advice received from the County Council's Highways Department. Councillor Sutcliffe told those present that any refusal based on highways concerns would be indefensible at appeal given that the Highways Authority had indicated in detail that they had no objection on highways grounds.
- 5.14 Councillor Shuttleworth, a member of the Committee, expressed his dissatisfaction with the fact that an officer from the Highways Authority was not present: *"I think it is a snub"*. Councillor Shuttleworth expressed concern that members still did not fully understand how the Highways Authority could support their position of 'no objection' given the weight of anecdotal evidence suggesting that the area was already experiencing severe traffic. Councillor Shuttleworth ended: *"I really do feel slighted that Highways did not send a representative. Is there any particular reason for that?"*
- 5.15 Councillor Sutcliffe responded: *"The Highways Authority are not obliged to be cross examined at a Planning Committee meeting. Their role is as a written consultee and they have supplied their opinion based on a fair amount of research and a load of conditions included in it and that really is about as far as we can expect them to go"*.¹⁰
- 5.16 Councillor Shuttleworth then questioned whether the research could be relied on given that it had been commissioned by the applicants. Councillor Sutcliffe responded: *"I think as a professional firm of consultants I would expect them to maintain their professional integrity. As such I think their results can be relied on. I would make the point that the County Highways did a lot of looking at this themselves – they did not just rely on a report from the applicant's consultants"*. Mr Watson supported this view, stating that the Highways Authority would have highlighted any flaws in the research.
- 5.17 All five complainants stated in their complaints that Councillor Sutcliffe told those present that the Highways Authority had 'DECLINED' to attend the Committee meeting. ██████████ told me that although he had not been at the meeting, he had spoken with those present (including the other four complainants) and all had been disconcerted at Councillor Sutcliffe's conduct: *"The belief of the community is that had Highways attended the outcome may have been different and that the Chairman had no right to tell them not to attend. The Chairman also then lied to the Planning committee and those who were at the meeting as observers."*
- 5.18 At interview Councillor Sutcliffe denied the allegation that he had misled the Committee, stating that he never told those present that the Highways Authority

¹⁰ Taken verbatim from an audio recording of the meeting

officer had declined to attend. Councillor Sutcliffe made the point that none of the Committee members at the meeting said words to the effect '*I do not understand the rationale behind the report from the Highways Authority*'; had members felt that their concerns and questions remained unanswered they could have asked for the application to be deferred again.

- 5.19 Mr Watson also told me that he could not recall Councillor Sutcliffe saying that the Highways Officer had declined the Committee's invitation to attend. Mr Watson did also say though that he did not think that Councillor Sutcliffe had been clear about the fact that it had been he who had told the Highways Authority that they no longer needed to send a representative.
- 5.20 In my draft report I provisionally concluded, based on the audio recording of the Committee meeting, that Councillor Sutcliffe did not explicitly tell those present that the Highways Authority had declined their invitation to attend. It was my view though Councillor Sutcliffe's explanation as to their absence (as set out in paragraph 5.15 above) understandably left those in attendance with the impression that the decision had been left out of the Committee's hands; including his own.
- 5.21 In his comments on the draft report, ██████████ expressed concern at the fact that I had not interviewed any of the other complainants, all of whom had attended the Committee meeting, to establish whether the audio recording was accurate: *"How strange that the recording of the meeting in question took so long to be posted on the website (you commented on this when we spoke, and I noted that fact and you also commented when it surprisingly reappeared). How strange that everyone there heard Councillor Sutcliffe state that the Highways had declined to attend and yet this part of the recording is strangely missing? How concerning also that you have failed to interview any of those who complained and attended the June meeting. This fact alone undermines your whole report and I believe makes it invalid and inadmissible."*
- 5.22 I informed ██████████ that I had not interviewed the other complainants because I did not consider it necessary to establish the facts of this case; the only conduct relevant to this investigation that they claimed witness to was Councillor Sutcliffe's comments at the Committee meeting. Once I was able to obtain a recording of that meeting, evidence that I had no reason to doubt the accuracy of, then interviewing witnesses to establish exactly what Councillor Sutcliffe said became unnecessary.¹¹ I told ██████████ that I would review my provisional findings once I had received any comments from ██████████ and ██████████ ██████████ all of whom were provided with a copy of my draft report and provisional conclusions. None of them made any comment on my provisional findings of fact and recommendations, however because of ██████████ concerns the Monitoring Officer instructed me to interview Councillor Solloway and the Member Support Manager responsible for the audio recording to ensure that it represented an accurate record of the Committee meeting.

¹¹ While it is important to establish the facts in a case, Standards investigations must be proportionate and reflect the 'light touch' regulation that Parliament intended when it revised the standards framework in 2011

- 5.23 Councillor Solloway told me that his main recollection of the Committee meeting was the non-attendance of a Highways officer; he was very surprised to see that they they had not sent a representative and assumed that they had been told not to come.¹² Councillor Solloway said that he could not recall Councillor Sutcliffe specifically addressing the issue; he does though think he would have remembered if Councillor Sutcliffe had explicitly told those present that the Highways department had declined to attend.
- 5.24 Councillor Solloway told me that both he and the County Councillor responsible for Highways were very concerned about Councillor Sutcliffe's decision to 'uninvite' the Highways officer and his subsequent failure to openly take responsibility for the decision. Councillor Solloway said that although he does not think it would have necessarily impacted on the decision that was made, the application was a very emotive issue locally and therefore the reputation of the Highway department was put at risk.
- 5.25 The District Council's Member Support Manager was able to confirm that the recording of the Committee meeting had not been edited and was therefore an accurate account of what was said¹³. He told me that delay in publishing the recording on the District Councils website had simply been an administrative error which was rectified as soon as it was brought to their attention that it was not available. He was also able to confirm that no councillor would be able to influence whether an audio recording was published or not¹⁴.
- 5.26 Given the above, I remain satisfied that Councillor Sutcliffe did not explicitly tell those present that the Highways Authority had declined the Committee's invitation to attend the meeting. It is still my view though that Councillor Sutcliffe's explanation as to their absence (as set out in paragraph 5.15 above) understandably left those in attendance with the impression that the decision had been left out of the Committee's hands; including his own.

Did Councillor Sutcliffe use his casting vote to approve the Candelisa application, contrary to committee convention?

- 5.27 When the Committee was called on decide whether to approve the Candelisa application, four members voted against it and four members (including Councillor Sutcliffe) voted in favour; the remaining members abstained. As a result, Councillor Sutcliffe was called on to make the Chair's casting vote. Councillor Sutcliffe cast it in favour of the application, authorising Mr Watson to approve the Candelisa application subject to numerous conditions and to the applicant first entering into a Section 106 Planning Obligation to secure the provision of affordable housing and a contribution towards open space provision.

¹² Councillor Solloway told me that he had taken it upon himself to ensure that the Highways department had the capacity to send a senior officer to the Committee meeting and therefore he was confident that they would have contacted him had they made the decision not to attend.

¹³ The recording that was published on the website had been split into 2 parts because of file size limitations. A comparison with the original recording confirmed though no parts of the recording had been deleted during this process.

¹⁴ Only an intervention from the District Council's on the grounds that a recording included confidential or defamatory information would stop an audio recording being published; that did not happen in this instance.

Councillor Sutcliffe told the meeting *"In effect, our feet have been cut from beneath us. We have to base our decision on our written response from the Highways Authority and if we don't, it would inevitably result in an appeal."*

- 5.28 Mr Forman told me at interview that in his view convention dictated that Councillor Sutcliffe should have used his casting vote as Chair to maintain the status quo.
- 5.29 Councillor Sutcliffe rejected this argument, telling me that he can vote as he wishes and that for him to have used his casting vote differently to his original vote would have been perverse. Councillor Sutcliffe added that if he felt any responsibility to use his casting vote in a particular way (rather than as he wished) it would be to support an officer recommendation; on this occasion, his own view and that of the planning officers were congruent.
- 5.30 Having conducted some general research into the matter I have found evidence of advice to those who chair meetings that supports ██████████ position. Those who argue in support of a Chair using their casting vote to preserve the status quo do so because it ensures, without there being a clear majority, that the issue under consideration is free to be raised again at a later meeting; indeed, this is the convention for the Speaker in the House of Commons (known as Speaker Denison's rule). Mr Watson and the Council's Monitoring Officer confirmed with me however that there is no such convention within the District Council; the Council's procedural rules state:

16.2 Chairmans's Casting Vote

If there is an equal number of votes for and against, the Chairman will have a second or casting vote. There is no restriction on how the Chairman chooses to exercise a casting vote.

Meeting with the Highways Authority, 21 June 2017

- 5.31 On **21 June 2017**, approximately 80 residents of the Carleton Road Area (including ██████████) and Councillor Solloway met with officers from the Highways Authority to discuss their concerns about the Candelisa development. When asked why a representative from the Highways Authority had failed to attend the Committee meeting on 4 June 2017, ██████████ (the County Council's Area Highways Manager) told those present that while it was correct that Highways Officers are not obliged to attend planning committee meetings, on this occasion it had been Councillor Sutcliffe who had instructed them not to attend.
- 5.32 In his complaint, ██████████ stated that this information was met with *'a large amount of anger, disbelief and disgust by the large audience.'* ██████████ stated in his complaint: *"There is something very odd and unacceptable about this chain of events that requires urgent investigation please. The belief of the community is that had Highways attended the outcome may have been different and that the Chairman had no right to tell them not to attend. The Chairman also then lied to the Planning committee and those who were at the meeting as observers."*

6 Have there been failures to comply with the Code?

Official Capacity

- 6.1 Before I make a recommendation as to whether Councillor Sutcliffe's conduct amounts to a failure to comply with the Code of Conduct, I need to decide if he was acting as a councillor (i.e. acting in his official capacity). Section 27(2) of the Localism Act 2011 requires all relevant authorities to adopt a code of conduct "*dealing with the conduct that is expected of members ... when they are acting in that capacity.*" The District Council has reiterated this in its Code, stating "*Whenever you are acting as a member or co-opted member of this Council you must act in accordance with the following obligations*".
- 6.2 There can be no question that Councillor Sutcliffe was acting in his capacity as a District Councillor when he attended the various meetings described above. As such I am confident that his conduct at the various meetings referred to above falls within the jurisdiction of the standards framework.

Did Councillor Sutcliffe fail to comply with the Code of Conduct?

- 6.3 The intention of the Code is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy. In adhering to the principles set out in the Code there is an expectation that members will not use their position improperly to confer on or secure an advantage or disadvantage and act in an open and transparent manner.
- 6.4 It is not in dispute that it was Councillor Sutcliffe who decided that a representative from the Highways Authority would not attend the Committee meeting on 4 June 2017. In my view the decision was poorly judged; the Committee had decided that they wanted an officer present to respond to their questions and interested members of the public were clearly expecting that to occur. In considering whether Councillor Sutcliffe breached the Code though it is important to focus on whether he used his position improperly to secure an advantage for the applicants or disadvantage for those who opposed it.
- 6.5 There are many circumstances where it is proper for a member to attempt to confer a desirable outcome, or advantage, for their constituent(s); this in turn might disadvantage others. Councillor Sutcliffe's conduct would only be improper if he was to try to use his public position to further his own private interest (or the interest of a friend/close associate) to the detriment of the public interest. I have seen no evidence that supports this being the case; on the other hand, Councillor Sutcliffe's stated reasons for deciding that the Committee no longer needed a Highways officer present are convincing. In addition, I am inclined to concur with Mr Watson's view that if the presence of an officer from the Highways Authority was going to have any discernible impact on the decision taken by members, it is more likely to have encouraged members to support the planning officer's recommendation to approve the application. The position taken by Highways was made very clear in their revised report; as such I am not persuaded that their absence led to any disadvantage to the complainants.

- 6.6 Subsequent to taking that decision, it is alleged by all the complainants that Councillor Sutcliffe told the Committee that it had been the Highways Authority who had 'DECLINED' to attend. This investigation has established that although this was not actually the case, it is understandable that the way in which Councillor Sutcliffe chose to answer left those present making the reasonable assumption that the decision had been out of the Committee's (including Councillor Sutcliffe's) hands. While I accept that Councillor Sutcliffe's response was factually correct, in my view it lacked the openness and honesty I would expect of a councillor in such circumstances. Councillor Sutcliffe had made the decision and should have been prepared to be accountable for it, even in the face of what might have been a hostile response.
- 6.7 With regards the way Councillor Sutcliffe used his casting vote; while I can understand why [REDACTED] may have expected Councillor Sutcliffe to support the status quo, I do not consider it a standards issue. The Council does not operate any type of convention for such situations and Councillor Sutcliffe gave this investigation cogent reasons for voting in the way that he did. As a member of the Committee, Councillor Sutcliffe has a responsibility to make all decisions for planning reasons. If the Candelisa application had been declined, any appeal to the Planning Inspectorate would have been difficult for the Council to defend on planning grounds on the basis that the Chair had used his casting vote to reject it because of an unwritten convention to maintain the status quo.

7 Recommendation

- 7.1 The investigation has established that Councillor Sutcliffe decided that a representative from the Highways Authority would not attend the Planning Committee meeting on 4 June 2017. In my view this decision was poorly judged; the Committee had decided that they wanted an officer present to respond to their questions and interested members of the public were clearly expecting that to occur. It is my view though that any concerns about his conduct in relation to this matter are governance rather than ethical in nature. As such, I have concluded that Councillor Sutcliffe did not use his position improperly to confer a disadvantage to the complainants either in the way in which he voted or when deciding that a representative from the Highways Authority need not attend the Committee meeting of 4 June 2017.
- 7.2 Having said that, I do consider that Councillor Sutcliffe's failure to properly explain and take responsibility for the latter decision is sufficient evidence of a breach of the Code as to warrant the District Council taking further action. Members have a responsibility to be honest and open about the decisions they make. While I do not consider that Councillor Sutcliffe lied to the Committee, his response led to those present making the reasonable assumption that the Highways Authority had decided not to attend the meeting.
- 7.3 In considering what action the Monitoring Officer should consider taking, I am not sure that further examination of the concerns highlighted or formal determination

of these allegations through a public hearing is justified, particularly given the nature of the sanctions available.

- 7.4 The District Council's arrangements for dealing with standards allegations under the Localism Act 2011 state that the Monitoring Officer will review the investigating officer's report and after consulting with the independent person will consider whether local resolution should be attempted or the matter proceed direct to hearing before the hearings panel. My recommendation therefore is that the Monitoring Officer seeks a local resolution to the matters raised in this report. Local resolution offers a proportionate and locally owned process.
- 7.5 I consider that the local resolution should involve Councillor Sutcliffe making a verbal apology at the next meeting of the Planning Committee for his failure to make it clear that he had instructed the Highways Authority not to attend the meeting of 4 June 2017.
- 7.6 A summary of the findings of the investigation and outcome of the local resolution should be provided to the Council's Standards Committee. If Councillor Sutcliffe does not engage with the process in a manner that the Monitoring Officer considers sufficient, I believe that the breach of the Code highlighted in this report should be referred to the Standards Committee for a formal hearing.