

APPENDIX 2

Part 1

CSPL Best Practice Recommendations

	CSPL Best Practice Recommendations	CBC current position	R A G	Proposal	R A G
BP1	Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.	Not in current code. Not currently an issue at CBC		<p>Could incorporate. Not currently an issue as there have not been significant allegations of this.</p> <p>Standards Committee Members would like definition of threshold for what amounts to a breach of the code</p>	
BP2	Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious	Not in current code. Not currently an issue at CBC		Requirement to cooperate: Could incorporate in the Code, though this has not been an issue in Chesterfield to date.	

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	allegations by councillors.			<p>Trivial and malicious allegations: It is not seen how the code can prevent this, other than by saying that to make such complaints would be a breach of the Code, however, assessment includes outcomes that could be used in these circumstances e.g. the Complaint should not be investigated because it is vexatious, malicious or obsessive.</p> <p>More explanation in the procedure or on website as to role of the council and assessor/investigator etc might aid clarity.</p>	
BP3	Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.	Not currently. Have been awaiting CSPL review		The CSPL review has been promised for several years and review of code postponed pending this. This recommendation seems to contradict the report's recommendation for a national code to achieve consistency	

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				across authorities. Local reviews would result in a divergence and multiplicity of codes over time, possibly diluting effectiveness and generate confusion again.	
BP4	An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.	While not on the home screen of the council's website, it can be reached quickly by searching on 'complain' or 'complaint' which takes one to a page with details of the code and the complaints process: https://www.chesterfield.gov.uk/your-council/the-council/your-councillors/complaints-about-members.aspx		A copy of the Code and the complaints procedure could be deposited at the Customer Services Centre, or available to be printed off there. There is a complaint or comment tab on the home page of the website which goes to a generic council complaint form: https://secure.chesterfield.gov.uk/forms/?contactus . While this could be used for a councillor complaint, a link to the additional information (left) has now been added.	
BP5	Local authorities should update their gifts and hospitality register at least	There is currently no legal requirement for members to		Democratic Services to remind members at least quarterly in the	

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	once per quarter, and publish it in an accessible format, such as CSV.	<p>update interests after election.</p> <p>This information is available on ModGov under each member's name, and members are reminded to update annually.</p> <p>Council also has voluntary registration below £50. https://www.chesterfield.gov.uk/your-council/the-council/your-councillors/members-interests.aspx</p>		<p>councillor e-newsletter.</p> <p>Little advantage in it being available as CSV, though consider making it available as a table showing all councillors (currently only accessible by individual councillor name)</p> <p>CSPL recommends to government requirement that G&H totalling £100 over a year from a single source should also be registered. We could voluntarily adopt this.</p> <p>Recommendation: that the Code of Conduct be amended to require gifts and hospitality totalling £100 over a year from a single source should be registered by members.</p>	
BP6	Councils should publish a clear and	Not currently. Cases assessed		The CSPL Report gives as an example of best practice the	

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	straightforward public interest test against which allegations are filtered.	on case by case basis.		<p>Northern Ireland Local Government Commissioner for Standards public interest test:</p> <p>1 ‘CAN’ we investigate your complaint?</p> <ul style="list-style-type: none"> • Is the person you are complaining about a councillor? • Did the conduct occur within the last six months? • Is the conduct something that is covered by the code? <p>2 ‘SHOULD’ we investigate your complaint?</p> <ul style="list-style-type: none"> • Is there evidence which supports the complaint? • Is the conduct something which it is possible to investigate? • Would an investigation be proportionate and in the public interest? <p><u>Recommendation:</u> that the councillor complaints procedure be amended to include this test or a similar public interest test.</p>	

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BP7	Local authorities should have access to at least two Independent Persons.	<p>CBC has 3 IPs.</p> <p>CSPL proposes 2 years maximum term, CBC currently allows 4 plus renewal. Two IPs were appointed at the end of 2018 for 4 years, the third IP's first term ends towards the end of 2019 and it is intended to ask if they want to continue for another term</p>		No change currently necessary, but review if term is changed to 2 years.	
BP8	An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.	CBC does this. IP asked to give views at assessment stage and at hearing. A councillor may speak with an IP about a complaint.		No change necessary	
BP9	Where a local authority makes a decision on an allegation of	Where a breach is found the decision would be published		No change necessary	

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	misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.	<p>on the website. It would contain this level of detail.</p> <p>Where no breach found, the councillor decides whether or not there is publication.</p> <p>Elsewhere in the report the CSPL proposes that all decisions are published</p>			
BP10	A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.	<p>CBC does this https://www.chesterfield.gov.uk/your-council/the-council/your-councillors/complaints-about-members.aspx</p>		No change necessary	
BP11	Formal standards complaints about the conduct of a parish councillor towards <i>[sic]</i> a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.	<p>Not required at present. Difficult to see how this could be required, especially as it would mean that a complaint direct by a clerk would be usually then be rejected.</p>		This would need to be adopted by the Town or Parish Council. Suggest liaison on this with the parish councils.	

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		Complaints by a clerk might be symptomatic of wider disfunction at a parish council			
BP12	Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.	The MO does this and it is usually not an unreasonable burden. Some local authorities have many parish councils and it can take much of a MOs time.		No change necessary	
BP13	A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.	<p>This occurs in practice and the regulatory solicitors are alive to the risks and take appropriate steps, though there is no formal procedure.</p> <p>Would ask a MO from a neighbouring authority is a conflict prevented MO, DMO and the regulatory solicitors</p>		<p>Could make this explicit.</p> <p>Greater liaison with MOs of neighbouring authorities and MO networks.</p> <p>Monitoring Officer could consider whether or not the investigator should be a solicitor and the solicitor attends instead as</p>	

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		<p>from looking at a complaint.</p> <p>We have previously been asked to investigate complaints for other authorities under the former Code of Conduct. Reciprocal arrangements would be made again if necessary.</p> <p>While a councillor on one case has not understood role of investigator (suggested they were acting for the complainant), the greater issue is suspicion by the complainant that they will not get a fair hearing by committee due to political interests or that IPs may be biased.</p>		<p>advocate at hearing.</p> <p>Information on website on how conflicts by assessor, investigator, IP and committee are prevented. However, pressure to have an 'independent' examination should be considered on a case by case basis.</p>	
BP14	Councils should report on separate bodies they have set up or which they own as part of their annual	Not currently at CBC		Liaise with Internal Audit with a view to greater information in annual governance statement.	

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	governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.			Less easy to legally require transparency	
BP15	Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.	Generally this is currently done on an ad hoc basis in view of low frequency of complaints		Explore ways of formalising this, though given low frequency of complaints at Chesterfield, these should remain ad hoc.	
	Green		9		12
	Yellow		5		3
	Red		1		0

Part 2

Recommendations to Government

	Recommendation	Responsible body	Comment	Voluntarily adopt?	R A G
R1	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association	The current code of conduct uses the 2012 LGA model code	N/A - Requires updated LGA model code.	
R2	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government	Regulations in effect March 2019 for local elections. ¹ Home address are not published on register of interests in 'sensitive' cases. Members will be advised of the right to apply for this once elected. Government	In effect already We must require addresses, unless deemed sensitive, until the law is changed.	

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784214/Letter_from_the_Minister_for_Local_Government.pdf

	Recommendation	Responsible body	Comment	Voluntarily adopt?	R A G
			says: <i>“The Government would encourage monitoring officers to look sympathetically at such requests where there are legitimate concerns of abuse or intimidation.”</i>		
R3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government	Requires a change in the law. Each case assessed on its merits currently.	No – needs change in law.	
R4	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member	Government	This is a provision akin to previous statutory model members’ codes, to cover the ‘do you know who I am...’ type situation.	No – needs change in law.	

	Recommendation	Responsible body	Comment	Voluntarily adopt?	R A G
	or as a representative of the local authority.				
R5	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government	Requires legislation	No – needs change in law.	
R6	Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	Government	There is already a register for gifts and hospitality over £50, and a voluntary register for under £50. Gifts totalling £100 over a year could be included in our Code of Conduct prior to a model code.	Yes <u>Recommendation:</u> That the Council's members' code of conduct is amended to include disclosure of gifts and hospitality totalling £100 over a year.	
R7	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in	Government	The effect of Section 31 is that where a member at a meeting is	Pending any legislation, this test could be included in member	

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	<p>their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter”.</p>		<p>aware they have a disclosable pecuniary interest in the matter they must declare that interest (if not already registered) (and notify the MO of the interest within 28 days) and must not participate (further) in any discussion or vote on the matter. Local rules can also require a member leave the room.</p> <p>This reverts to a test applied under the previous members’ conduct regime. The test is akin to the common law test for bias.</p>	<p>training.</p> <p><u>Recommendation:</u> That members be advised in training and guidance that they should not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice their consideration or decision-making in relation to that matter.</p>	
R8	<p>The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term</p>	<p>Government</p>	<p>We currently appoint IPs for 4 years, with ability to renew for a further 4.</p>	<p>Not deemed appropriate unless there is a change in the law.</p>	

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	of two years, renewable once.		In an authority with 3 IPs and relatively few complaints, a term of 2 years + 2 would mean that an IP would have less opportunity to build skills and experience. It is suggested that the council makes representations in the event that there is government consultation on this provision.		
R9	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government	<p>Not the current practice on assessment decisions, would be recorded in hearing decisions, but not minutes.</p> <p>Pending update of the code, we could seek views of our IPs with a view to recording.</p>	<p>Yes, but in summary form.</p> <p><u>Recommendation:</u> That, where appropriate, a summary of the IPs view be included in decisions and minutes.</p>	

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R10	A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government	This has the effect of an IP having the power to overrule a Standards hearing's decision relating to a suspension penalty. While their view should be taken into account, this recommended change gives too much power into an unelected person.	Currently no power to suspend. Consider making representations if government consultation.	
R11	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government / all local authorities	The Council could voluntarily adopt this provision. Enquiries are being made of the Council's insurance officer.	Subject to advice.	
R12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and	Government	The Council has a standards committee with 2 non-voting parish council representatives. Since the 2011 changes to	Could consider non-voting Independent Members for the committee. Recommendation:	

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	impose sanctions.		the standards system it no longer may have voting independent members, but could decide to have non-voting independent members attend Standards Committee. Independent members are different to Independent Persons.	That the committee considers whether or not non-voting independent members of the committee would help enhance standards of conduct for the council, and, if appropriate, how many.	
R13	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government	No current right of appeal to the LGO, and no current power of suspension.	No – needs change in law.	

	Recommendation	Responsible body	Comment	Voluntarily adopt?	R A G
R14	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government	This recommendation is unclear, as it appears to propose an investigatory and determining role for the LGO, when the local authority carries out investigations and makes decisions. Will the LGO be reviewing a decision or considering afresh?	No – needs change in law.	
R15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government	Standards and Audit Committee considers the MO's annual report on standards which contain this level of information. Given how few complaints are received, these statistics are not currently published as it would be relatively easy to identify the councillors effected when no breach is	Recommendation: that the committee considers whether or not to publish summary information about complaints and their outcome.	

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			found (breach of their data protection rights), especially if no breach is found. But this information could be published voluntarily in summary form as good practice.		
R16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government	There was a power to suspend under the previous standards system. It was used positively in some cases to give time for member retraining.	No – needs change in law.	
R17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government	Some councils already consider that they have this power, and this has not been tested in the courts. Chesterfield has not needed to consider this issue yet, but would, pending legislation, if	Consider, pending legislation, if appropriate for a standards case.	

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			appropriate.		
R18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government		No – needs change in law.	
R19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish councils	For parish councils. This council could enquire about level of qualification required at its two parishes.		
R20	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.	Government		No – needs change in law.	
R21	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.	Government	Currently this Council can only recommend to a parish which sanction is appropriate, but the parish cannot choose a different sanction.	No – needs change in law.	

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R22	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government		No – needs change in law.	
R23	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government	This is already in progress, and a new page to be added to the Council's website about the external auditor (Mazars).	Already underway	
R24	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government			
R25	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their	Political groups National political parties	The Council has a formal induction programme and one has been developed for	The MO should seek assurances from the political groups as to requiring members to	

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	model group rules.		May 2019. It is hoped that groups will require their members to attend these as they relay essential information about law conduct and practice to members. There currently can be difficulty in ensuring attendance at face to face training other than induction.	attend training	
R26	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association	The Council's Internal Audit unit intends to carry out a review of member and officer ethical standards in 2020/21.		