Governance Committee Agenda

22 July 2019 at 2pm

Crompton Room, Civic Centre,
Duke Street, Chelmsford

Membership

Councillor H. Ayres (Chair)
Councillor N.M. Walsh (Vice-Chair)

and Councillors

R.H. Ambor, K. Bentley, N.A. Dudley, D.G. Jones and I. Wright

Parish Council Representatives

Councillor V. Chiswell (Great Baddow Parish Council)
Councillor P.S. Jackson (Great Waltham Parish Council)
Councillor J. Saltmarsh (Woodham Ferrers and Bicknacre Parish Council)

Local people are welcome to attend this meeting, where your elected Councillors take decisions affecting YOU and your City. There will also be an opportunity to ask your Councillors questions or make a statement. If you would like to find out more, please telephone Daniel Bird in the Democracy Team on Chelmsford (01245) 606523 email Daniel.bird@chelmsford.gov.uk, call in at the Civic Centre, or write to the address above. Council staff will also be available to offer advice in the Civic Centre for up to half an hour before the start of the meeting.

If you need this agenda in an alternative format, please call 01245 606923. Minicom textphone number: 01245 606444.

Recording of the part of this meeting open to the public is allowed. To find out more please use the contact details above.
GOVERNANCE COMMITTEE

22 July 2019

AGENDA

PART I

1. APOLOGIES FOR ABSENCE
2. MINUTES
   To receive the minutes of the Meeting held on 18 June 2019.
3. DECLARATION OF INTERESTS
   All Members are reminded that they must disclose any interests they know they have in items of business on the meeting’s agenda and that they must do so at this point on the agenda or as soon as they become aware of the interest. If the interest is a Disclosable Pecuniary Interest they are also obliged to notify the Monitoring Officer within 28 days of the meeting.
4. CHAIR’S ANNOUNCEMENTS
5. STANDARDS COMPLAINT
   This item will determine the complaint made by way of a hearing pursuant to the procedure detailed at Part 5.1.2 Annex 5 of the Council’s Constitution. In line with paragraph 6 of the procedure after the passing of an appropriate resolution the Committee will retire and consider the case in question in consultation with the Independent Person before returning with their decision.
6. URGENT BUSINESS
   To consider any other matter which, in the opinion of the Chair, should be considered by reason of special circumstances (to be specified) as a matter of urgency.

PART II (EXEMPT ITEMS)
   None
MINUTES
of the meeting of the
GOVERNANCE COMMITTEE
on 18 June 2019 at 7.15 p.m.

Present:
Councillor H. Ayres (Chair)
Councillors R.H. Ambor, N.A. Dudley, D.G. Jones, N.M Walsh and I. Wright

Also in Attendance –
Designated Independent Person:
Mrs. C. Gosling

1. Apologies for Absence and Substitutions

   Apologies for absence were received from Councillor Bentley. No substitutions were made.

2. Minutes

   The minutes of the meeting on 23 January 2019 were signed as a correct record by the Chair.

3. Public Question Time

   There were no questions or statements made by members of the public.

4. Declarations of Interest

   All members were reminded to declare any Disclosable Pecuniary Interests or other registerable interests where appropriate in any of the items of business on the meeting’s agenda.

5. Chair’s Announcements

   The Chair informed the Committee that Mr. Anthony had stood down from his role as one of the Council’s Independent Persons. The Committee took this opportunity to thank Mr Anthony for his valued help over recent years.

6. Election of Vice Chair

   The Chair proposed that Cllr Walsh be elected as Vice Chair for the Committee. This was seconded by Cllr Jones.

   RESOLVED that Councillor N.M Walsh be elected as Vice Chair for the Committee.
7. **Monitoring Officer Report**

The Monitoring Officer provided members with an introductory training session on the role of the Governance Committee. Members were informed about how the Committee is structured and given an overview of the business it will be required to consider.

The Monitoring Officer provided an update on the complaints that had been received. It was noted that five new complaints had been received since the last meeting. The Monitoring Officer informed the Committee that a hearing to consider a complaint would be required soon and that they would be contacted regarding this.

**RESOLVED** that;

1. the current statistical information as to complaints made be noted and be published on the Council's website as set out in Appendix 1 before the Committee; and
2. the remainder of the report be noted.

(7.17 p.m. to 7.35 p.m.)


The Committee received an annual report on the Council’s use of RIPA.

It was noted by the Committee that there had been no uses of RIPA by the Council for the period, January to December 2018. The Monitoring Officer informed the Committee that approval from the Magistrates Court was required for a use of RIPA.

**RESOLVED** that the report be noted.

(7.36 p.m. to 7.37 p.m.)


The Committee considered a report on the operation of the Standards Regime at the Council in 2018/19. The submission of this report was not a statutory requirement, but it had been recognised as good practice and in line with the Council’s overall governance arrangements for Full Council to receive such a document.

**RECOMMENDED TO COUNCIL** that the Governance Committee's Annual Report on the operation of the Standards Regime for 2018/19 be approved for subsequent publication.

(7.38 p.m. to 7.39 p.m.)

10. **Parish and Town Council Representatives on the Committee**

The Committee received a report on the need to appoint three Parish Councillor representatives to the Committee. Statements of the experience of the five Parish Councillors concerned (Councillor Val Chiswell – Great Baddow Parish Council; Councillor Stephanie Troop – Galleywood Parish Council; Councillor June Saltmarsh – Woodham Ferrers and Bicknacre Parish Council; Councillor Peter Jackson – Great Waltham Parish Council and Councillor Mark Fleming – Rettendon Parish Council) had been received and were considered by the Committee.

The Committee agreed that the past experience of Councillors Jackson and Saltmarsh being on the Committee would be very useful and that the experience demonstrated by
Councillor Chiswell would be of benefit to the Committee. The Committee asked that their thanks be passed on to each of the Parish Councillors for their nomination.

**RESOLVED** that Councillor Val Chiswell (Great Baddow Parish Council), Councillor June Saltmarsh (Woodham Ferrers and Bicknacre Parish Council) and Councillor Peter Jackson (Great Waltham Parish Council) be appointed as the Parish Councillor representatives on the Committee for a term expiring at the elections in 2023, and that all nominees be notified.

(7.40 p.m. to 7.46 p.m.)

11. **Work Programme**

The Committee received a report setting out the Committee dates and the work programme.

The Monitoring Officer suggested that a report on the Employee Code of Conduct be added to the agenda for the October meeting. This was agreed by the Committee.

**RESOLVED** that:
1. the report be noted and;
2. a report on the Employee Code of Conduct be added to the work programme for the meeting on 16th October.

(7.47 p.m. to 7.48 p.m.)

12. **Urgent Business**

There were no matters of urgent business to discuss.

The meeting closed at 7.49 p.m.

Chair
### GOVERNANCE COMMITTEE
22 July 2019

**AGENDA ITEM 5**

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<th>Subject</th>
<th>Standards Complaint</th>
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<td>Report by</td>
<td>Monitoring Officer</td>
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**Enquiries contact:** Lorraine Browne, Monitoring Officer, 01245 606560, lorraine.browne@chelmsford.gov.uk

**Purpose**
To determine complaints of breach of the Councillors’ Code of Conduct by a Parish Councillor.

**Recommendation(s)**
1. To consider and determine the complaints against Cllr Hart.

**Corporate Implications**

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<tr>
<th>Legal</th>
<th>All legal considerations are contained in the body of the report.</th>
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<tr>
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<td>Personnel</td>
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<td>Equalities and Diversity</td>
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**Consultees**
The Independent Person
Policies and Strategies

The report takes into account the following policies and strategies of the Council:

The Council’s ethical framework

1. Introduction

1.1 A complaint was received by the Monitoring Officer on 27th August 2018 from Parish Councillor Fleming regarding the conduct of Parish Councillor Hart. The complaint alleged 8 separate allegations under the Parish Code of Conduct. The Monitoring Officer decided to refer the complaint to an external investigator for investigation. The investigator reported back their views concerning individual items of complaint as to whether each allegation amounted to a breach of the code of conduct or not. Members are asked to hear and determine whether there has been a breach of the code of conduct (and if so any appropriate action that should be taken) in respect of those allegations where the investigator considered that there had been a breach of the Code of Conduct.

2. The Complaints

2.1 The complaints against Cllr Hart are set out within an investigator’s report which can be found at Appendix 1. For ease of reference the 8 alleged breaches of the Code of Conduct are as follows :-

1. Failure to properly register position as a trustee on two charities associated with Bell Fields, ownership of the village hall and its car park, title of “the Lordship of the Manor of Rettendon” in the Register of Members Interests.

2. Failure to declare an appropriate interest in a planning application at a Parish Council meeting on 24 November 2015.

3. Failure to comply with the Code when submitting a planning application on 18 April 2017 on behalf of the local football club.

4. Failure to declare the appropriate interest when discussing matters related to the Trust at a Parish Council meeting on 28 November 2017.

5. Failure to declare the appropriate interest when discussing matters related to Battlesbridge Free Church at a Parish Council meeting on 28 November 2017.

6. a) Failure to comply with the Code by removing a Parish Council padlock and
   b) bringing the Parish Council into disrepute when subsequently throwing it across the table at a Parish Council meeting on 6 March 2018

7. Failure to comply with the Code by refusing to act on the findings of a Parish Council working party regarding the scope of manorial rights.

8. Failure to treat Councillor Fleming with respect by calling him a liar at Parish Council meetings on 19 December 2017 and 6 March 2018 and bringing the Council into disrepute in relation to this.
3. **Background Information**

3.1 The external investigator’s report is attached at Appendix 1 to the report and provides an overview of the complaints together with the background and the conclusions reached in each individual matter raised. In relation to items 2, 3, 5, 6a & 7 the Monitoring officer has determined that no further action should be taken and accordingly members are asked to only determine whether there has been any breach of the Code of Conduct in relation to the remaining items 1, 4, 6b & 8.

4. **Consultation with the Independent Person**

4.1 The Independent Person has been consulted in relation to the decision to take no further action (in relation to items 2, 3, 5, 6a & 7) and concurs with the Monitoring Officer’s decision in relation to these items.

5. **The Procedure**

5.1 The determination of complaints alleging breaches of the code of conduct by members is governed by the Complaints Procedure at Part 5.1.2 of the Constitution. This provides that the Monitoring Officer will review every complaint received and may consult with the Independent Person before taking a decision as to whether it:

- Merits no further investigation;
- Merits investigation;
- Should be referred to the Governance Committee.

5.2 Assessment criteria for complaints are set out at Annex 3 to Part 5.1.2 of the Constitution which specifies, amongst other things, that a complaint may be referred to the Governance Committee where it is serious enough, if proven, to justifying the range of actions available to the Governance Committee or where the Monitoring Officer considers it would not be appropriate to investigate.

5.3 The Committee should conduct a hearing to receive the report of the Investigating Officer and to hear the representations of the Councillor against whom the allegations are made. Before reaching decisions on the complaints the advice of the Independent Person must be sought.

5.4 If the Committee decides that there has been a breach of the code of conduct it must consider what, if any, action to take. Before reaching a decision the advice of the Independent Person must be sought.

**List of Appendices**

- Appendix 1 – Investigating Officer’s Report
- Appendix 2 – Parish Councillors’ Code of Conduct
- Appendix 3 – Hearing procedure
- Background papers
- Nil
Investigation into a complaint against Councillor Roy Hart of Rettendon Parish Council

A report for the Monitoring Officer of Chelmsford City Council

15 April 2019
Contents

1 Executive Summary
   Statement of complaint and outline of investigator recommendations as to whether the member was acting in member capacity and, if so, whether he breached the Code.

2 Official details of Councillor Hart
   An outline of the member’s position and history in the Council.

3 The relevant legislation & protocols
   Relevant parts of the Localism Act 2011 and the Council’s Code of Conduct for members.

4 The investigation
   An outline of the sources of evidence obtained and the conduct of the investigation.

5 The evidence
   Factual reasoning on key disputed areas and findings of fact.

6 Have there been failures to comply with the Code of Conduct?
   Investigator’s suggestions as to whether or not Councillor Hart broke the Code.

7 Recommendations
   Investigator’s suggestions as to recommendations.
1 Executive Summary

1.1 ch&i associates was appointed by the Monitoring Officer at Chelmsford City Council (the City Council) to investigate a complaint about the conduct of Councillor Roy Hart, a member of Rettendon Parish Council (the Parish Council).

Scope and focus of the investigation

1.2 There is a longstanding dispute between certain members of the Parish Council with regards two charities, now collectively known as the Rettendon Bell Fields Trust (the Trust)\(^1\). The dispute centres on the ability of the Parish Council to appoint new trustees: Councillor Fleming contends that the Parish Council is responsible for the ongoing management of the ‘Trust’; Councillor Hart believes that responsibility for the management of the two charities was passed to him and the other trustees who were appointed in 2013. It is not within the scope of this investigation to resolve this ongoing issue; however, several allegations have been made by Councillor Mark Fleming against Councillor Roy Hart, some of which are directly relevant to this dispute, that engage the Parish Council’s Code of Conduct. The City Council has asked me to focus on these issues.

1.3 In his complaint, Councillor Fleming alleged that Councillor Hart:

i. Failed to properly register his position as a trustee of the two charities associated with Bell Fields; his ownership of the village hall and its car park; and his title of ‘the Lordship of the Manor of Rettendon’ in his Register of Members’ Interests.

ii. Failed to declare the appropriate interest in a planning application at a Parish Council meeting on 24 November 2015 arising from his manorial rights.

iii. Submitted a planning application on 18 April 2017 on behalf of the local football club in which he made false representations.

iv. Failed to declare the appropriate interest when discussing matters related to the Trust at a Parish Council meeting on 28 November 2017.

v. Failed to declare the appropriate interest when discussing matters related to Battlesbridge Free Church at a Parish Council meeting on 28 November 2017.

vi. Removed a Parish Council padlock from the football club’s changing room door without permission and then threw it aggressively across the table at a Parish Council meeting on 6 March 2018.

\(^1\) Councillor Fleming stressed that he does not recognise the Rettendon Bell Fields Trust because Councillor Hart has never shown how the two distinct charities have been amalgamated.
vii. Refused to act on the findings of a Parish Council working party regarding the scope of his manorial rights, including the possibility that he is claiming wayleave payments on telegraph poles that are within the Parish boundary, but beyond what is reasonably thought to be the boundary of his manorial rights.

viii. Failed to treat Councillor Fleming with respect by calling him a liar at Parish Council meetings on 19 December 2017 and 6 March 2018.

Recommendation

1.4 My approach in this case has been to equip the 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 Parish Council’s Code of Conduct for Members (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.

1.5 Having considered the various allegations, I recommend that the City Council’s Standards Committee find that Councillor Hart:

i. Did fail to properly register his position as a trustee of the two charities associated with Bell Fields; his ownership of the village hall and its car park; and his title of ‘the Lordship of the Manor of Rettendon’ in his Register of Members’ Interests. I note though that during this investigation Councillor Hart has updated his Register as necessary. I also consider it relevant that the original form Councillor Hart was invited to complete was not fit for purpose.

ii. Did not fail to declare the appropriate interest in a planning application at a Parish Council meeting on 24 November 2015 arising from his manorial rights.

iii. Did not fail to comply with the Code when submitting a planning application on 18 April 2017 on behalf of the local football club.

iv. Did fail to declare the appropriate interest when discussing matters related to the Trust at a Parish Council meeting on 28 November 2017.

v. Did not fail to declare the appropriate interest when discussing matters related to Battlesbridge Free Church at a Parish Council meeting on 28 November 2017.

vi. Did not fail to comply with the Code by removing a Parish Council padlock from the football club’s changing room door without permission;
however, did bring the Parish Council into disrepute when he subsequently ‘threw it’ across the table at a Parish Council meeting on 6 March 2018.

vii. Did not fail to comply with the Code by refusing to act on the findings of a Parish Council working party regarding the scope of his manorial rights.

viii. Did fail to treat Councillor Fleming with respect by calling him a liar at Parish Council meetings on 19 December 2017 and 6 March 2018; and did bring the Parish Council into disrepute.

2 Official details of Councillor Roy Hart

2.1 Councillor Roy Hart has been a member of Rettendon Parish Council since 2005.

3 The relevant legislation & 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”.

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”.

3.2 Under section 28(1) of the Act a relevant authority must secure 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”.

3.3 For the purposes of this investigation, the “relevant authority” is Rettendon Parish Council.

3.4 Under 28(6) of the Act, a relevant authority other than a parish council must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. Paragraph 28(9) provides that an “allegation”, in relation to a relevant authority, means a written allegation -(a) that a member or co-opted member of the authority has failed to comply with the authority's code of conduct, or (b)that a member or co-opted member of a parish council for which the authority is the principal authority has failed to comply with the parish council's code of conduct.

3.5 For the purposes of this investigation, the principal authority is Chelmsford City Council.
3.6 By section 28(7), arrangements put in place under subsection 28(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.

3.7 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. In the case of a parish council, its principal authority will make recommendations of action, if any, to the parish council.

Disclosable Pecuniary Interests

3.8 Section 30 of the Act provides that a member or co-opted member of a relevant authority as defined in section 27(6) of 2011 Act, on taking office and in the circumstances set out in section 31, must notify the authority's monitoring officer of any disclosable pecuniary interest which that person has at the time of notification.

3.9 A ‘disclosable pecuniary interest’ is defined by section 30(3) as follows:

(3) For the purposes of this Chapter, a pecuniary interest is a disclosable pecuniary interest in relation to a person (“M”) if it is of a description specified in regulations made by the Secretary of State and either—

(a) it is an interest of M’s […]

3.10 Section 30(3) of the 2011 Act sets out the circumstances in which such an interest is a disclosable interest:

“(3) For the purposes of this Chapter, a pecuniary interest is a “disclosable pecuniary interest” in relation to a person (“M”) if it is of a description specified in regulations made by the Secretary of State and either—

(a) it is an interest of M’s, or
(b) it is an interest of—
(i) M’s spouse or civil partner,
(ii) a person with whom M is living as husband and wife, or
(iii) a person with whom M is living as if they were civil partners,

and M is aware that that other person has the interest.”

3.11 Section 31 of the 2011 Act concerns pecuniary interests in matters considered at meetings, or by a single member and provides (so far as is relevant):

(1) Subsections (2) to (4) apply if a member or co-opted member of a relevant authority—
(a) is present at a meeting of the authority or of any committee, subcommittee, joint committee or joint sub-committee of the authority, 

(b) has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, and 

(c) is aware that the condition in paragraph (b) is met. 

(2) If the interest is not entered in the authority's register, the member or co-opted member must disclose the interest to the meeting, but this is subject to section 32(3). 

(3) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member or co-opted member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date of the disclosure. 

(4) The member or co-opted member may not - 

(a) participate, or participate further, in any discussion of the matter at the meeting, or 

(b) participate in any vote, or further vote, taken on the matter at the meeting, 

but this is subject to section 33. 

[...] 

(9) Where a member or co-opted member of a relevant authority gives a notification for the purposes of subsection (3) or (7), the authority's monitoring officer is to cause the interest notified to be entered in the authority's register (whether or not it is a disclosable pecuniary interest). 

(10) Standing orders of a relevant authority may provide for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which, as a result of the operation of subsection (4), the member or co-opted member may not participate. 

(11) For the purpose of this section, an interest is "subject to a pending notification" if— 

(a) under this section or section 30, the interest has been notified to a relevant authority's monitoring officer, but 

(b) has not been entered in the authority's register in consequence of that notification."
3.12 For the purposes of section 30 of the 2011 Act, the Relevant Authorities (Disclosable Pecuniary Interests) Regulations ("the 2012 Regulations") specifies what is a "pecuniary interest".

3.13 In that regard, Regulation 2 provides:

"2. The pecuniary interests which are specified for the purposes of Chapter 7 of Part 1 of the Act are the interests specified in the second column of the Schedule to these Regulations."

3.14 The interests specified in the Schedule are divided into seven the categories identified in the first column, namely:

- Employment, office, trade, profession or vocation
- Sponsorship
- Contracts
- Land
- Licences
- Corporate tenancies
- Securities

3.15 For present purposes, the relevant "Prescribed descriptions" within the second column are those relating to Employment, Land, Licences and Securities.

**Employment, Office, Trade, Profession or Vocation:** Any employment, office, trade, profession or vocation carried on for profit or gain.

**Land:** Any beneficial interest in land which is within the area of the relevant authority*

**Licences:** Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer

**Securities:** Any beneficial interest in securities of a body where— (a)that body (to M's knowledge) has a place of business or land in the area of the relevant authority; 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. Note: It is not necessary to declare the nature or size of the holding, simply the name of the company or other body."

* "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 to receive an income;
Rettendon Parish Council’s Code of Conduct

3.15 Under Section 27(2) of the Localism Act the Parish Council established a Code of Conduct for members (the Code).

The Code adopted by the Parish Council includes the following paragraphs:

1. **Application of the Code**

   This Code of Conduct applies to you whenever you are acting in your capacity as a member or co-opted member (“referred to in this Code as Councillors”) of the Rettendon Parish Council including

   1.1 At formal meetings of the Council, its Committees and Sub-Committees, or Working Groups and other meetings at which business of the Council is discussed.

   1.2 When acting as a representative of the Council.

   1.3 In taking any decision as a Councillor.

   1.4 In discharging your functions as a Councillor.

   1.5 At briefing meetings with officers.

   1.6 At site visits or other visits to do with the business of the Council.

   1.7 When corresponding with the Council other than in a private capacity

2. **General Conduct**

   You must

   2.1 Provide leadership to the Council and communities within its area, by personal example.

   2.2 Respect others and not bully any person…

   2.5 Not conduct yourself in a manner which is likely to bring the Council into disrepute

   2.6 Use your position as a Councillor in the public interest and not for personal advantage.

3. **Disclosable Pecuniary Interests**

   You must
3.1 Comply with the statutory requirements to register, disclose and withdraw from participating in respect of any matters in which you have a disclosable pecuniary interest (see Annex 1), and specifically,

3.1.1 Ensure that your entries in the register of interests are kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change in respect of your disclosable pecuniary interests.

3.1.2 Make verbal declarations of the existence and nature of any disclosable pecuniary interest at any meeting at which you are present where an item of business affects or relates to the subject matter of that interest is under consideration, at or before the consideration of the item of business or as soon as that interest becomes apparent.

3.1.3 Withdraw from any meeting at which you have a disclosable pecuniary interest during the entire consideration of that item, unless a dispensation has been granted.

3.2 “Meeting” means any meeting organised by or on behalf of the Council and in particular in the circumstances as set out in paragraph 1 of this Code.

4. Other Interests

4.1 In addition to Paragraph 3, if you attend a meeting and there is an item of business to be considered in which you are aware you have a non-disclosable pecuniary interest or non-pecuniary interest, you must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as that interest becomes apparent.

4.1.1 You have a non-disclosable pecuniary interest or non-pecuniary interest in an item of business of your Council where –

4.1.2 A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Taxpayers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the Council’s administrative area;

4.1.3 Relates to an interest concerning either of the following:

4.1.3.1 Any person or body who employs or has appointed you;
4.1.3.2 Any contract for goods, services or works made between Chelmsford City Council and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description that would create a disclosable pecuniary interest but only where it has been fully discharged within the last 12 months.

4 The investigation

4.1 This investigation was conducted by Alex Oram. Alex 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 the course of this investigation I have considered oral evidence given by Councillor Roy Hart and Councillor Mark Fleming. I have considered a substantial number of documents provided by Councillor Fleming, Councillor Hart and the City Council. I have also obtained necessary documents, such as the relevant minutes of meetings, Codes and policies, from the Parish Council website and the Charity Commission.

5 The evidence

Background

5.1 Bell Fields is located in Rettendon Common and made up of the upper field and lower field, which are separated by a fence. It is currently used as the home pitch (with changing rooms) by South Woodham Ferrers United Football Club (the Football Club). There is an ongoing dispute with regards the ownership and management of the field. It is undisputed though that there are two charities associated with the management of Bell Fields: the ‘Allotment for Exercise and Recreation’ (271480) and the ‘Allotment or the Labouring Poor’ (271479). Currently, the Charity Commission lists Councillor Hart as Trustee and Chair of both charities; his home address is also given as the address for each charity.

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2 Councillor Fleming provided me with a Land Registry Title dated 25 October 2016, which states that the land is owned by the Parish Council. This however is being challenged by Councillor Hart, who provided me with an ‘ORDER OF THE CHARITY COMMISSION FOR ENGLAND AND WALES’ which indicates that on 1 June 2018, the titles to the upper and lower fields were transferred to the Official Custodian for Charities under the power given in sections 69 and 90 of the Charities Act 2018 to be held in trust for the ‘Allotment for Exercise and Recreation’ (271480) and the ‘Allotment or the Labouring Poor’ (271479).
5.2 Councillor Fleming told me at interview that the governance surrounding Bell Fields charities has been unclear for a long time. He told me that the 1861 enclosure act provided that, as common land, the fields should be divided up and handed over to the church wardens to manage as an allotment for the labouring poor. At some point responsibility for it was passed to the Parish Council and it was largely abandoned. During 2013, the Parish Council decided to appoint individual members as Trustees; one of those appointed by the Parish Council was Councillor Hart.

5.3 Councillor Fleming told me that the dispute arose when the previous Clerk to the Parish Council resigned. Councillor Fleming said that instead of leaving the ‘log-in’ information (that related to the management of the two charities on the Charity Commission’s website) with either him (as Chair) or his successor (as the new Clerk), the former Clerk passed them to Councillor Hart (as a managing trustee). Councillor Fleming said that at this point Councillor Hart effectively ‘mutinied’; taking over the management of the two charities and therefore responsibility for Bell Fields without any further input from the Parish Council.

5.4 Councillor Fleming acknowledged at interview that the Parish Council’s paperwork relating to Bell Fields, including the rationale for appointing the trustees in 2013, is confusing at best. He also confirmed that the Charity Commission have shown little interest in helping them resolve the matter, telling them that it must be resolved locally. Councillor Fleming confirmed though that the Parish Council has received a legal opinion from a barrister who specialises in charity law, which stated that either the Parish Council as a body is the rightful trustee for both charities or, that the Parish Council has the sole authority to appoint trustees for a tenure of four years. Councillor Fleming contends that either way, Councillor Hart’s claim to be the ‘Managing Trustee’ in perpetuity is false and that the Parish Council should remain responsible for managing the two charities.

5.5 Councillor Hart told me that he was originally appointed as a trustee by the former Chair of the Parish Council, Mr Ron Fellows, along with all the other Parish councillors at the time. Councillor Hart said that initially everything was ‘loosely arranged’ and no meetings were held; Bell Fields was simply used primarily for football, as it had been for over ninety years. Councillor Hart said the dispute over the management of Bell Fields only started after Councillor Fleming and a group of his ‘supporters’ were elected to the Parish Council.4

3 Since that interview the Charity Commission have indicated that while they will not provide their authorisation under section 115(2) of the Charities Act 2011 for the Parish Council to pursue charity proceedings against the individual trustees, including Councillor Hart, it has taken the view that the Parish Council was appointed as the sole corporate trustee and that it is unlikely that they formally passed the trusteeship of the charities to the trustees who were appointed in 2013. The Commissions advice is for both parties to enter into an informed dialogue which included the sharing of their legal advice to reach a satisfactory conclusion.

4 Councillor Fleming commented on the draft report that in December 2014 Mr Fallows wrote: “the Charity Commission confirms that the Parish Council is the charity trustee for both sites having replaced the Churchwardens and Overseers of the Poor under the provisions of the Local Government Act 1894...”
5.6 Councillor Hart told me that the Parish Council’s current position is legally incorrect and that Councillor Fleming’s campaign to remove him as a trustee ignores the legal advice that was provided to the Parish Council by their original solicitors in July 2016. Councillor Hart said that this advice stated that the process followed in 2013 for the appointment / continued appointment of trustees was unclear and confirmed that there was nothing in the governing documents that might assist; as such, only the current trustees (rather than the Parish Council) had the ability to amend the governing documents, put a declaration of trust in place and/or remove / appoint trustees. This advice, which Councillor Hart provided to the investigation, suggested that if the Parish Council wanted to retain the ability to appoint trustees, they would either need the agreement of the current Trustees (to amend the governing documents) or the Charity Commission’s permission to remove them. The Parish Council was warned that they would not achieve the latter unless it could be shown that the current trustees were failing to fulfill the objectives of the respective charities.

5.7 Councillor Hart told me that he is currently the managing trustee of Rettendon Bell Fields Trust, an organisation he created with the agreement of trustees to manage the two charities referred to above. Councillor Hart told me that trustees meet twice a year and have very little to do: “We lease the land to the football club… there is no money involved whatsoever.”

5.8 It appears that during 2017, the Parish Council attempted to appoint a new set of trustees (the alternative trustees), led by Councillor Fleming. On 23 May 2017, Councillor Fleming met with Mr Fellows and, according to Councillor Fleming, he accepted that he had been appointed as a trustee on a four-year tenure and that this tenure had now finished. None of the alternative trustees were registered with the Charity Commission however, or seemingly accepted by Councillor Hart or his other registered trustees.

5.9 It is not within the scope of this investigation to comment on the ongoing dispute described above; our focus is on whether Councillor Hart has failed to comply with the Parish Council’s Code of Conduct. That said, it is important to understand the position taken by both sides as a context to the allegations made by Councillor Fleming.

Matters related to the planning application

5.10 On 18 April 2017, in his capacity as ‘Managing Trustee, Bell Fields’. Councillor Hart submitted a retrospective planning application to the City Council for two non-illuminated signs. The signs, which were situated on the outside of the changing room, simply indicated that it was the home of the football club and the Bells Field Trust.

5.11 In his complaint Councillor Fleming contended that this matter fell within the jurisdiction of the standards framework because Councillor Hart had referenced the fact that he was a member of the Parish Council on the application.

5 Councillor Fleming asserted that the one of the Charities had an annual recorded income of £2020, therefore Councillor Hart’s statement is misleading.
Councillor Fleming expressed the following concerns about Councillor Hart’s actions:

i. That Councillor Hart stated on the application that the community had been consulted; Councillor Fleming stated that there had been no consultation.

ii. That Councillor Hart asserted that these were new signs that replaced older signs which had been in place for 80 years; Councillor Fleming said that he could find no planning applications relating to an earlier sign.

iii. That the permission of the owner or any other person entitled to give permission for the display of an advertisement had been obtained.

5.12 Councillor Fleming raised all these concerns with the City Council at the time. The Planning Officer told Councillor Fleming that, with the application being retrospective, he had the advantage of the being able to view the signs in situ and had no reason to refuse the application. Councillor Fleming pointed out that the signs had been erected and the application submitted without the freeholder’s consent. The Planning Officer told Councillor Fleming this did not prevent him from approving the application, and that the freeholder would have to pursue their own course of action. Planning consent was awarded however on 13 June 2017, subject to compliance with several conditions.

5.13 In response to the complaint, Councillor Hart said that he submitted the application after enforcement action was taken against Bell Fields Trust and the Football Club; he presume initiated by Councillor Ride (at that time a member of the Parish Council and Chair of the City Council’s Planning Committee). Councillor Hart told me that Councillor Ride had said that action would be taken unless the Football Club stopped using Bell Fields and the signs (which simply read ‘South Woodham Ferrers United Football Club) were taken down: “The Football Club… was threatened with £2,500 fine also £500 for every day they remained.” Councillor Hart said that the trustees decided to try and resolve the matter and that he submitted the application in that capacity.

5.14 Councillor Hart acknowledged referencing his position as a parish councillor on the application form; he insisted though that this was in order to be transparent and a form of ‘declaring his interest as a parish councillor’. Councillor Hart said that it was clear that he was not acting in his capacity as a councillor or representing the Parish Council. Councillor Hart also insisted that he did not say anything that was false on the application: the intentions of the Football Club had been discussed numerous times in the Parish newsletter; the old sign had been present for as long as anyone could remember (at least 80 years) and while the landowner may not have given permission, he as managing trustee of Bell Fields had the authority to give permission.

Parish Council meeting, 28 November 2017

5.15 On 18 July 2017, Councillor Fleming emailed Councillor Hart instructing him to stop representing or claiming to represent either of the Bell Fields charities, to
stop referring to himself as managing trustee and to pass over all the necessary documentation, the keys for the gate locks and login details for the Charity Commission website. Councillor Hart did not respond.

5.16 On 30 August 2017, Councillor Fleming emailed the ‘alternative trustees’ to propose that they ask the Parish Council to instruct Tees Law to take action against Councillor Hart (or agree funds so that they could take action as the rightful trustees) and to pursue a response from the Football Club, who he stated had failed to respond to a request for evidence that they had the right to use Bell Fields. The email also stated that Councillor Fleming wanted the alternative trustees to ask the Parish Council for an agreement in principle for funding to works on the Bell Fields: “to include, initially, measures to prevent access along the boundary with Main Road”.

5.17 Councillor Fleming stated in his complaint that Councillor Hart again ignored his email and did not attend the subsequent meeting. Councillor Fleming said that had Councillor Hart attended the meeting with him he would have found out that when he wrote ‘prevent access’ he meant preventing unauthorised access to Bell Fields; not to prevent authorised access or block any other existing points of access.

5.18 On 28 November 2017, Councillor Hart attended a meeting of the Parish Council; Councillor Fleming was also in attendance as Chair.

5.19 During Item 177, titled ‘Highways and Footpaths’, Councillor Hart asked if ‘they’ are asking for funding to block off the entrance for Bell Fields. Councillor Fleming invited those present to say whether they knew who ‘they’ were or if they knew anything about plans to block off Bells Fields, as he knew nothing about it. Councillor Hart said that he was sure that he had seen some evidence suggesting that someone wanted to block access to Bell Fields; he told members that he would come back to the Parish Council once he had found it.

5.20 Councillor Hart told me that after the meeting he went back through his correspondence and found Councillor Fleming’s email of 30 August 2017 (referenced at paragraph 5.16). Councillor Hart said that he was astounded by Councillor Fleming’s denial given that it had in fact been him who wanted funding to prevent access.

5.21 Councillor Fleming told me that he had not been deliberately evasive in his response to Councillor Hart’s question; he genuinely did not know what Councillor Hart was talking about. Councillor Fleming said that he gave no thought to his email of 30 August 2017 when Councillor Hart asked about blocking off Bell Fields, in part because of the time that had elapsed since he had sent it and in part because he had never planned to ask for Bell Fields to be ‘blocked off’ in the manner that Councillor Hart seemed to be alleging. Councillor Fleming said that when Councillor Hart asked the question he actually thought that Councillor Hart was referencing a Facebook post from 19 November 2017 left on the Parish Council page, in which a member of the public alleged that former Parish Chair Ron Fellows had accosted two horse
riders on Bell Fields and told them that “they were going to put a lock on the gate”.

5.22 During Item 179, titled ‘Items for Councillors’, Councillor Hart referred to the issue of the dispute surrounding the Bell Fields’ charities, saying that he felt strongly that the Parish Council should stop spending a lot of money against something that was working well. Councillor Fleming told Councillor Hart that there was a very simple way of putting an end to the legal action; agree to engage in an open conversation about the right of the Parish Council to appoint trustees and for those trustees to be recognised. Councillor Hart responded: ‘We don’t recognise you’.

5.23 In his complaint, Councillor Fleming said that by raising the matter in a Parish Council meeting, Councillor Hart was clearly ignoring his inherent conflict of interest; the Parish Council had decided to take action against him as a trustee and yet at no time did he ever declare an interest in the matter. Councillor Fleming contended that this was in fact a Disclosable Pecuniary Interest (DPI) on the basis that if court action should be necessary, indemnity costs would be sought by the Parish Council against Councillor Hart personally. Councillor Fleming also made the point that Councillor Hart’s purported position as ‘Managing Trustee’ of the Bell Fields had never been included in his Register of Members’ Interests.

5.24 Item 180 was titled ‘To agree to change the venue of the next Parish Council meeting to Battle Bridge Free Church’. During the meeting Councillor Hart questioned why this was being done, stating “I totally disagree with this. This is the centre of Rettendon here. This is where we’ve had meetings… Is this going to be a regular thing in Battlesbridge? Because it puts me in a very awkward position which I won’t go in to.”

5.25 Councillor Fleming provided evidence that Councillor Hart was the registered owner of Battlesbridge village hall and the car park nearby; Battlesbridge Free Church was based at the village hall and this was the proposed location of the next Parish Council meeting. Councillor Fleming asserted that Councillor Hart clearly had a conflict of interest in the decision and yet publicly refused to declare it, as demonstrated by his comment above. Councillor Fleming also noted that while Councillor Hart’s Register included his ownership of a car park in Maltings Road, it made no reference to his ownership of the village hall.

5.26 Councillor Hart confirmed at interview that he did own the freehold of the land on which sat the Church / Village Hall; he also acknowledged that he had not included it on his Register of Members’ Interests. Councillor Hart said that this was simply an oversight on his part; he did not think that it was required given the circumstances surrounding the purchase and ongoing leasing arrangements. Councillor Hart explained that the brewery, who previously owned the land, had only offered the Free Church a very short-term lease, which in his view put the church hall was under threat. Councillor Hart said: “I

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6 Councillor Fleming said that this was made explicitly clear to Councillor Hart in a letter from Tees & Co solicitors dated 25 June 2018.
7 Rettendon Memorial Hall
purchased the land for a considerable amount and leased it back to the Church for 299 years for £50.00, which works out to be approximately 16 pence per year. It must never be sold off and if the church closes it must revert back to the community i.e. a village hall.” Following Councillor Fleming’s complaint, Councillor Hart submitted an updated copy of his Register to the City Council’s Monitoring Officer on 15 November 2018; this included ‘Land Registry Title Battlesbridge EX727364 Income 17p PA for 299 years’.

5.27 Councillor Hart told me that his aversion to the Parish Council holding its next meeting at Battlesbridge Free Church had nothing to do with his ownership of the freehold. Councillor Hart said that the ‘awkward position that he did not want to go in to’ referred to the fact that he had promised himself that he would never enter the building again until Councillor Denise Fleming (the complainant’s wife) had properly apologised for her behaviour at a Parish Council meeting held on 14 December 2015 in the Battlesbridge Free Church. Councillor Hart said that Councillor Denise Fleming had said “You do not fucking know me” in an aggressive manner towards two people present; she then came forward repeating the ‘F’ word: “She was brought before the Governance Committee but did not turn up, for legal reasons, and failed to make a written apology to the two ladies, one has since passed away. She has now withdrawn her personal apology, not only is this disgraceful behaviour, she then had a six-page solicitors letter served on the two ladies, both widows, threatening them with costly barristers’ fees in the high court for defamation. The two ladies were very distressed. I sent a copy of the CD [of a recording of Councillor D Fleming’s outburst] to the magistrates’ court, the reply came back that if I was not out of the six months’ time they would prosecute her.”

5.28 In his comments on the draft report, Councillor Fleming disputed the detail of Councillor Hart’s account of his wife’s conduct. I do not though need to consider the veracity of either account in order to consider whether Councillor Hart has failed to comply with the Code.

Parish Council meeting, 19 December 2017

5.29 On 19 December 2018, Councillor Roy Hart attended a meeting of the Parish Council; Councillor Mark Fleming was also in attendance as Chair.

5.30 During a discussion about the minutes of the previous meeting, Councillor Hart referred to his question about the plans to block off the access to Bell Fields (shown in paragraph 5.19) and then to Councillor Fleming’s email dated 30 August 2017 (shown in paragraph 5.16.) Councillor Hart asserted that Councillor Fleming had clearly not been truthful when claiming no knowledge of the plans to block the access and asked the Clerk to note that Councillor Fleming was a liar.

8 Councillor Hart submitted as evidence a letter from a legal advisor at HM Courts and Tribunals Service, which confirmed that had the CD been brought to his attention within 6 months he would have issued a summons under Section 5 of The Public Order Act 1986. He also submitted a copy of a letter in which he stated that he would not enter Battlesbridge Free Church again after incident involving Councillor D Fleming.
Councillor Hart told me that his comments were wholly justified given Councillor Fleming’s misleading response to his question about Bells Field at the previous meeting. Councillor Hart said that the email dated 30 August 2017: “was signed by Mark [Councillor Fleming] saying he required funding for works on the Bell Fields to include initial measures to prevent access with the boundary on the main road. When confronted, he had lied through his teeth. I feel very strongly about this as it’s been going on for a long time. Councillor Fleming claimed no knowledge whatsoever when first confronted. I do have concerns that he is deliberately misleading the Council and when I called him out in public, people cheered.”

Councillor Fleming reiterated that at the time the question was asked he had not associated it with his email of 30 August 2017. Councillor Fleming also asserted in the first instance that the email was sent in his capacity as a Trustee, not as parish councillor, as was clear by the fact that he had referred to seeking funding from the Parish Council; as such Councillor Hart should not have raised it at a Parish Council meeting. Councillor Fleming also stressed that he had merely wanted to ensure that Bell Fields was secure and not left vulnerable to Travellers. Councillor Fleming said: “He didn’t give me the opportunity to explain. I probably hadn’t worded my email with absolute clarity, but Councillor Hart should have approached me so that I could have explained my meaning.”

Parish Council meeting, 6 March 2018

On 12 February 2018, following a letter from the Parish Council’s solicitors (Tees & Co), the Football Club agreed to remove all their signage and the padlock from the changing room door by 17 February 2018. Councillor Fleming said that on the advice of their solicitors, a replacement padlock was purchased by the Parish Council and fitted to the changing room door.

On 6 March 2018, Councillor Roy Hart attended a meeting of the Parish Council; Councillor Mark Fleming was also in attendance as Chair. Under item 246, titled ‘Items for Councillors’, Councillor Hart announced that he had cut the new padlock off the changing room door.

9 In his comments on the draft report, Councillor Fleming stated: “Between sending the 30 Aug 2017 email to trustees, and the 28 November 2017 Parish Council meeting, I sent 61 emails regarding parish council business, 88 personal emails, and an estimated 1,350 work-related emails. No reasonable person would expect me to realise that Councillor Hart’s vague question pertained specifically to my 30 August 2017 message… Were Councillor Hart acting in good faith and driven by a desire to get to the facts he would have let me know in advance of the 28 November meeting that he was referring to my 30 August 2017 email and provided me the opportunity to respond. Had he been acting in good faith, Councillor Hart should have asked the Clerk to add an item to the agenda for our 19 December 2017 meeting to discuss. This would have enabled councillors, including me, to prepare. Councillors who attended the meeting to which the 30 Aug email pertains would have had the opportunity to verify my assertion that missing out the word “unauthorised” was an honest mistake, entirely unintentional, and corrected immediately at the meeting to which Clr Hart was invited.”

10 Councillor Fleming said that he was advised by Tees & Co that they had secured a conveyancing document which proved that the Parish Council owned a triangle of land adjacent to the northern boundary of the Upper Field (where the changing room was located), therefore any lease agreement between the Football Club and Councillor Hart’s ‘Trust’ was null and void. He had therefore instructed them to inform the Football Club that their agreement with Bell Fields Trust was invalid.
In his complaint, Councillor Fleming stated that Councillor Hart ‘threw it across the table past our Clerk and towards the Chairman. Regardless of whether [Councillor Hart] had the authority to remove the padlock, throwing it across the table is unacceptable behaviour.” Councillor Fleming told me at interview that he thought the removal of the lock hugely disrespectful towards the Parish Council, though it did not occur to him to pursue Councillor Hart for criminal damage.

Councillor Hart told me: “Yes I instigated cutting of the padlock that had been unlawfully put on the changing room by the Parish Council and replaced it with a new padlock. The football club plus my fellow registered trustees have been subject to gross intimidation by Tees and Co acting on behalf of the Rettendon Parish Council. We are standing firm for which I thank them. As for the accusation ‘threw the lock across the table at the chairman’ it was a total exaggeration the chairman was sitting about 6ft away and I slid the lock along the table towards the chairman. There was no danger whatsoever.”

During the public part of the meeting, numerous questions were asked about why the compiler of the Rettendon & Battlesbridge newsletter had been instructed by the Parish Council to exclude specific text from an article submitted by Councillor Hart. Councillor Fleming tried to explain that it was because Councillor Hart had incorrectly claimed that the Parish Council was on a quest to stop football on the Bell Fields. Councillor Hart asserted that Councillor Fleming was the main objector and that it was in writing that the Football Club had been told to stop playing football on Bell Fields by the Parish Council’s solicitors. Councillor Fleming pointed to the fact that there was no Parish Council resolution or even an agenda item related to actually stopping football on Bell Fields. Councillor Hart told Councillor Fleming: “You’ve got a habit of lying now”; he then referred to his previous accusation made at the Parish Council meeting on 19 December 2018 (shown in paragraph 5.18 of this report): You were lying through your teeth last time… you’ve never apologised.” Councillor Fleming invited Councillor Hart to retract his accusation; Councillor Hart refused.

Councillor Fleming told me at interview that the Parish Council has had issues with the editor of the monthly newsletter on more than one occasion because she publishes information based on his Chairman’s report without giving him the right to read it first. Councillor Fleming added that she had allowed Councillor Hart to submit several articles that were critical of the Parish Council; in his view this was not appropriate given that Councillor Hart was a member of the Parish Council and that the newsletter was funded by them. Councillor Fleming said that his intention at the meeting had been to make it clear that he was not personally aware of any plans to stop football on the Bells Field or to build houses on there. Councillor Fleming said that the letter to the Football Club had been sent because their current lease was unlawful; it did not automatically follow that the Parish Council were trying to stop football on Bell Fields as the new Trustees would have likely sought to enter a similar, lawful agreement to allow the Football Club to continue.

Councillor Hart told me that Councillor Fleming was being completely disingenuous when claiming that he (through the auspices of the Parish Council)
was not trying to stop football on the field, citing the letter from Tees & Co to the Football club as clear evidence. Councillor Hart commented that it was also understandable that people were concerned about the future of Bells Field. Councillor Hart pointed out that the Parish Council had originally gone to a different firm of solicitors to seek an opinion on the ‘trustee’ dispute, however Councillor Fleming has not liked their position and so dropped them. A representative from Tees & Co then approached Councillor Fleming and offered to assist them with the matter; Councillor Hart told me that Tees & Co also represent a well-known local property developer who has already created much unrest in the parish.

Matters related to Councillor Hart’s position as Lord of the Manor of Rettendon

5.40 Councillor Hart became ‘Lordship of the Manor of Rettendon’ on 9 March 1979. In his complaint, Councillor Fleming made a number of allegations in relation to Councillor Hart’s title:

i. That he has not included all the properties in his Register of Interests in which he is able to place a charge (including the property of a fellow member of the Parish Council);

ii. That he failed to declare the appropriate interest in a planning application that was considered at a Parish Council meeting on 24 November 2015; and

iii. That he has refused to consider the findings of a Parish Council Working Party, which was tasked with investigating the hereditary rights within Rettendon Parish in August 2017.

5.41 Manors are of ancient origin dating from before Norman times. The extent of the manor was usually determined by the original grant from the Crown or superior lord. A manor was self-contained with its own customs and rights within its defined area. There are three separate elements of manors that can affect HM Land Registry:

- lordship of the manor: whoever owns the lordship of the manor is entitled to refer to themselves as lord of that manor, for example, Lord of the manor of Keswick;

- manorial land: because a manor was a defined area it included the physical land within that area. Such land could either be freehold or leasehold;

- manorial rights: rights which were part and parcel of the manorial title and which were usually kept by the lord on disposal of parts of the manorial land, for example, the right to hunt, shoot or fish

These elements may exist separately or be combined. The lordship title cannot be subdivided, but the manorial land and the manorial rights can be. Confusion can be caused, as ‘manor’ can refer to either the lordship and/or the manorial
land. Under the Land Registration Act 2002 manorial rights are categorised as overriding interests, so a landowner takes subject to them even if they are not mentioned in their register. However, under section 117 of the Land Registration Act 2002 every holder of a manorial title was required to register his or her interest by 13 October 2013; otherwise, the rights would be extinguished with the next sale of the manorial property - in this case Councillor Hart’s home; Toad Hall.

5.42 In order to secure his manorial rights, the Land Registry (at Councillor Hart’s request), wrote to all residents within Rettendon to ensure that his fishing, shooting and mineral rights over their land were not extinguished. Councillor Hart subsequently announced publicly that he had no intention of doing anything with his ‘rights’ and invited all property owners to complete a form to ensure that they were extinguished. Councillor Hart was quoted in the local and national press at the time as stating that he did not want to write to all residents in such a manner, however had he not done so he might have lost the small income he receives from the rental of telegraph poles (wayleaves payments).

5.43 Councillor Fleming told us that despite retaining his manorial rights, Councillor Hart never registered or declared the pecuniary interest that regularly arises from his title. As an example, Councillor Fleming pointed to the consideration of a planning application relating to a property known as Sunnymede on Hawk Hill, which was considered by the Parish Council on 25 November 2015. The title document for the property shows that there is a ‘manorial rights’ charge due to Councillor Hart; despite his, Councillor Hart did not declare an interest in the planning application.

5.44 Councillor Fleming said that after the Land Registry wrote to all parishioners, he considered it a matter that the Parish Council should investigate further on their behalf. Councillor Fleming said that the working party’s findings included the fact the Land Registry had used Rettendon’s parish boundary to define the area in which the Lordship of the Manor of Rettenden could apply charges; in their view this was incorrect as certain properties within that boundary had not been included in the original boundary of the Mayor of Rettendon. As a result, the Parish Council wrote to Councillor Hart to request that he arrange for the removal of charges from the titles of the relevant properties that sat outside his rightful area; advise the relevant UK power networks that he should not receive payment on utility assets in the relevant areas; advise the Land Registry of the errors in their current definition of the boundary for his title; and advise the Parish Council of any other manorial rights from which he benefits in this area. Councillor Fleming stated: “The findings are that it’s possible [that] charges have been applied to some houses incorrectly, and that Councillor Hart may be receiving wayleave payments to which he is not entitled. Councillor Hart says he doesn’t feel obliged to do anything about the investigation into his manorial rights. Does this not conflict with the Nolan principles of integrity, respect (for those home-owners burdened with incorrectly applied manorial rights charges), and leadership?”

5.45 In response to this aspect of the complaint, Councillor Hart acknowledged that he had never included his ‘Lordship of the Manor’ title and associated rights in
the Register of Member’s Interests despite receiving ‘a couple of thousand pounds as a result of wayleaves’\(^\text{11}\). Councillor Hart said that in the first instance, everyone knew of his title following his letters, public notice and associated press coverage in 2013. He further stated that he had not been aware that it was something he needed to include. Following Councillor Fleming’s complaint, Councillor Hart submitted an updated copy of his Register to the City Council’s Monitoring Officer on 15 November 2018; this included ‘Land Registry Title EX702453 The Lordship or Reputed Lordship of the Manor of Rettendon otherwise Rettendon, Essex’. Councillor Hart also pointed out that he has never tried to assert his rights over anyone’s private property: “I have kept to my word, this also applies to private business premises and private land”. Councillor Hart told me at interview that he had probably signed in excess of 1000 forms waiving his rights to individual properties.

5.46 Councillor Hart also acknowledged that he was aware of the Parish Council’s ‘investigation’ into his manorial rights, however, does not feel any obligation to do anything about it: “It was not me who defined where the letters were sent and which post codes. The Land Registry decided where the boundaries of Rettendon are, not me! I am not sure the Manorial Boundaries etc. are anything to do with the Parish Council. We gained the title by the water of the River Crouch running through our property and turning the miller’s Tide Mill that we own and have restored, unbeknown to us the Queens Stewardship of The Manor came with it. I am not sure what the allegation against me is”.

6 Have there been failures to comply with the Code of Conduct?

6.1 The complaints about Councillor Hart were clearly about a serving councillor and actions that took place while he was a member of the Parish Council. Councillor Fleming therefore might well have assumed that all of his concerns fell within the scope of the standards framework. Before I can consider whether Councillor Hart’s conduct amounts to a failure to comply with the Code of Conduct, however, I need to consider whether he was acting as a councillor when the alleged conduct took place.

Official Capacity

6.2 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 Parish Council’s Code reiterates this in section 1, stating that the Code applies whenever an individual is acting in their capacity as a member or co-opted member of the Rettendon Parish Council including: At formal meetings of the Council, its Committees and Sub-Committees, or Working Groups and other meetings at which business of the Council is discussed; when acting as a representative of the Council; In taking any decision as a Councillor; in discharging your functions as a Councillor; at briefing meetings with officers; at site visits or other visits to do with the business

\(^{11}\) Telephone pole rental paid by the utility companies.
of the Council; and when corresponding with the Council other than in a private capacity.

6.3 The Code therefore only applies to members when conducting Council business or when carrying out their constituency work. A distinction must be drawn between the individual as a councillor and the individual as an individual; a councillor is not a councillor twenty-four hours a day. Conduct that might be regarded as reprehensible and even unlawful is not necessarily covered by the Code; a link to that person’s membership of their authority is needed.

6.4 In offering my own views on this I recognise that the Localism Act is vague on the key point of what acting in ‘official capacity’ involves. Nor do we have any case law arising from the Localism Act to assist us on this. What we do have however is well established case law from earlier hearings. Whilst the wording in the current Code varies slightly from the previous model codes of conduct, cases concerning the former model codes remain of relevance to how councils must interpret what ‘official capacity’ means.

6.5 Turning to the specific allegations set out in paragraph 1.2 of this report:

That Councillor Hart failed to properly register his position as a trustee of the two charities associated with Bell Fields; his ownership of the village hall and its car park; and his title of ‘the Lordship of the Manor of Rettendon’ in his Register of Members’ Interests.

Councillor Hart’s responsibility to keep his Register of Members’ Interests updated and correct arises as a direct result of his membership of the Parish Council, therefore any allegations relating to his failing to do this would fall within the jurisdiction of the standards framework.

6.6 That Councillor Hart failed to declare the appropriate interest in a planning application at a Parish Council meeting on 24 November 2015 arising from his manorial rights; failed to declare a disclosable pecuniary interest when discussing matters related to the Trust at a Parish Council meeting on 28 November 2017; failed to declare the appropriate interest when discussing matters related to Battlesbridge Free Church at a Parish Council meeting on 28 November 2017 and failed to treat Councillor Fleming with respect by calling him a liar at Parish Council meetings on 19 December 2017 and 6 March 2018.

Councillor Hart attended the Parish Council meetings relevant to this investigation in his capacity as a member of the authority; further his responsibility to declare an interest arises as a direct result of his membership of the Parish Council. Accordingly, I am satisfied that he was acting in his official capacity in relation to these allegations.

6.7 That Councillor Hart submitted a planning application on 18 April 2017 on behalf of the local football club in which he made false representations.

Councillor Hart insists that the planning application was submitted in his private capacity and I am inclined to agree with him. The application states that it was
submitted by Mr Hart as Managing Trustee of Bell Fields. While it is evident that Councillor Hart was originally appointed as a trustee because he was a member of the Parish Council, by 2017 the dispute over who should manage the two charities / act as trustees meant that Councillor Hart was clearly no longer acting as a representative of the Parish Council with regards his position as a trustee; indeed, his actions put him and the other registered trustees in direct opposition to it. Accordingly, I am satisfied that Councillor Hart’s actions as managing trustee would not engage the Code unless he tried to use his position as a councillor to benefit either charity or he dealt with matters related to the Bell Fields Trust during a Parish Council meeting.

Councillor Fleming pointed out that in section 6 of the planning application, Councillor Hart referenced his position with the Parish Council. Section 6 of the application form invites the applicant to declare whether they ‘are / are related’ to a ‘member of staff / elected member of the Authority’. Given that the authority in question is the City Council, I am of the view that Councillor Hart was not required to declare his membership of the Parish Council here. Having said that, I have seen no compelling evidence that would lead me to consider that Councillor Hart was doing anything other than taking a cautious approach to the requirements of the application form; in my view he included his position to ensure transparency rather in an attempt to use his position to improperly advantage the Trust / purport to be representing the Parish Council. The legislation is clear that being known as a councillor is not sufficient to engage the Code of Conduct unless the context (and not simply the alleged behaviour) is such as to bring the individual within the ambit of the Code.

In addition, I am aware that Councillor Hart stated on the application that he had the permission of the landowner or ‘any other person entitled to give permission’: I am satisfied that in making this declaration, Councillor Hart was not referring to having the authority of the Parish Council; rather, he considered himself, as managing trustee, capable of giving himself such permission. Accordingly, I believe this matter falls outside the jurisdiction of the Code. In reaching this conclusion I recognise that Councillor Hart’s application had the potential to become Parish Council business, in that the Parish Council would have been a key consultee. Had that been the case, I would have expected Councillor Hart to ensure that he played no role in any Parish Council considerations as his conduct at meetings would engage the Code.

6.8 That Councillor Hart removed a Parish Council padlock from the football club’s changing room door without permission and then threw it aggressively across the table at a Parish Council meeting on 6 March 2018.

Councillor Hart was not conducting Parish Council business or acting as a councillor when he removed the Parish Council’s padlock from the changing room door; I have already explained above why I consider his conduct as ‘Managing Trustee’ falls outside the scope of the Code. I am satisfied though that is subsequent actions at the Parish Council meeting on 6 March 2018 were carried out in his official capacity given that he attended the meeting as a councillor.
6.9 That Councillor Hart refused to act on the findings of a Parish Council working party regarding the scope of his manorial rights, including the possibility that he is claiming wayleave payments on telegraph poles that are within the Parish boundary, but beyond what is reasonably thought to be the boundary of his manorial rights.

While Councillor Hart’s manorial rights might require him to register and declare his title when acting as a councillor (I will explore this in further detail below), it is generally not a matter that would fall within the jurisdiction of the Code. Councillor Hart secured the title many years before becoming a councillor and any charges he makes within the parish are made in his private rather than his official capacity. While I can understand why Councillor Fleming might be disappointed that a member of his own authority has not responded to / engaged with the Parish Council’s investigation into the scope of his manorial rights, it is perhaps not surprising given Councillor Hart’s view that this matter has nothing to do with the Parish Council and his belief that the decision to investigate the matter was motivated by a desire attack him rather than benefit the parishioners. Regardless, this is not a matter that engages the Code.

Did Councillor Hart fail to comply with the Code?

6.10 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 conduct themselves in a manner that would not either reduce the public’s confidence in that member being able to fulfil their role; or adversely affect the reputation of members generally, in being able to fulfil their role.

Registering and declaring pecuniary and non-pecuniary interests

6.11 A Member’s duty to register and declare their pecuniary and non-pecuniary interests was introduced as part of the Localism Act 2011. The interests that constitute Disclosable Pecuniary Interests (DPIs) are set out in regulations made by Parliament and detailed in paragraph 3.15 of this report. All authorities were given the power to define which interests should be included in their Members’ Register, however the DPIs were compulsory.

6.12 In 2013 the Department for Communities and Local Government produced a document titled: “Openness and transparency on personal interests. A guide for councillors”; in which it states:

Under your council’s code of conduct you must act in conformity with the Seven Principles of Public Life. One of these is the principle of integrity – that ‘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. Your registration of personal interests should be guided by
this duty and you should give the monitoring officer who is responsible for your council’s or authority’s register of members’ interests any information he or she requests in order to keep that register up to date and any other information which you consider should be entered in the register. All sitting councillors need to register their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered as required by your authority’s code, or your duty to act in conformity with the Seven Principles of Public Life, such as your membership of any Trade Union.

6.13 In the Parish Council’s Code it states that if a member attends a meeting and there is an item of business to be considered in which they are aware they have a non-disclosable pecuniary interest or non-pecuniary interest, they must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as that interest becomes apparent.

Did Councillor Hart properly complete his Register of Members’ Interests

6.14 In his complaint, Councillor Fleming alleged that Councillor Hart failed to properly register his position as a trustee of the two charities associated with Bell Fields; his ownership of the village hall and its car park; and his title of ‘the Lordship of the Manor of Rettendon’ in his Register of Members’ Interests.

6.15 A review of Councillor Hart’s register as provided with the complaint (dated 12 June 2015) shows that he had indeed failed to include any of the above. Since the complaint was made however, Councillor Hart has acknowledged that this was an oversight and updated his register (dated 15 November 2018) to ensure that they are all now included.

6.16 I am gratified by Councillor Hart’s response to this aspect of the complaint, in that he resolved the matter with the City Council’s Monitoring Officer shortly after our meeting. That said, his failure to have properly completed his Register in the first instance means that I have no choice but to recommend that he is found to have failed to comply with the Code of Conduct in relation to these allegations.

6.17 The Localism Act requires members to register any land in which they have a beneficial interest that is within the relevant council’s area as a disclosable pecuniary interest. Councillor Hart has confirmed that he owns the land the church hall stands on, along with the neighbouring car park. Although Councillor Hart has leased the land back to the church for a peppercorn rent, he is still required to include his interest in the land in his Register. Furthermore, while the regulations specify that a member’s interest in a specific piece of 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 (which would mean that Councillor Hart would not be required to declare a DPI simply because he holds such rights over all those properties in the parish that have not actively ‘opted out’), the income he receives from wayleaves requires him to include his manorial rights in the Register.
6.18 In addition to DPIs, the Parish Council’s Code requires the registration of Non-Pecuniary Interests (NPIs). A member must declare it if they are in a position of general management and control of a body that falls within one or more of the following descriptions:

- A body to which they have been appointed or nominated by the Council; exercising functions of a public nature;
- a body directed towards charitable purposes or one whose principal purpose includes the influence of public opinion or policy.

Councillor Hart is registered with the Charity Commission as trustee and Chair of the ‘Allotment for Exercise and Recreation’ (271480) and the ‘Allotment or the Labouring Poor’ (271479); further, his home address is also given as the address for each charity. Councillor Hart is not remunerated for this position; therefore, it is not as DPI. Councillor Hart should have included it in his Register as an NPI however.

6.19 Although I have found that Councillor Hart did indeed fail to comply with this aspect of the Code, I would draw attention not only to the fact that he has taken steps to correct the matter, but also to what I consider to be the inadequacy of the initial form Councillor Hart was invited to complete. Without downplaying the seriousness of Councillor Hart’s omissions, it should be noted that Councillor Hart’s Register dated 12 June 2015 was completed using a two page template that omitted many of the DPI categories councillors are required to include by law (such as their beneficial interest in any land in the relevant area) and made no reference to the registration of NPIs at all. This contrasts with the more recent template used, which is five pages long and includes all the necessary categories members are required to register. It is difficult to be too critical of Councillor Hart for failing to declare the interests referred to above given that the form he was asked to use did not specifically invite him to do so. Further, I have seen no evidence to suggest that his omissions have disadvantaged anyone or improperly advantaged Councillor Hart.

Has Councillor Hart declared the appropriate interests at Parish Council meetings?

6.20 In his complaint Councillor Fleming referenced three occasions where he felt that Councillor Hart had failed to declare the appropriate interest: in a planning application at a Parish Council meeting on 24 November 2015; when discussing matters related to the Trust at a Parish Council meeting on 28 November 2017; and when discussing matters related to Battlesbridge Free Church at the same meeting.

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12 I recognise that if a member has a Disclosable Pecuniary Interest that they fail to register then under the Localism Act they have not only failed to comply with the Code; they have potentially committed a criminal offence. That said, a criminal prosecution will not be pursued unless the member cannot offer a reasonable excuse for any omission; I do not consider that to be the case here. To date there has only been one prosecution in a case where the member participated in a meeting where the matter under consideration related to one of his DPIs.
6.21 To firstly look at whether Councillor Hart’s should have declared a Disclosable Pecuniary Interest in any of the above: Councillor Fleming alleged that Councillor Hart had a DPI in the planning application considered on 24 November 2015 because the property to which the application related showed a manorial rights related charge on its title. He also alleged that Councillor Hart should have declared a DPI when discussing whether the Parish Council should hold their next meeting at Battlesbridge Free Church on 28 November 2017. As detailed above; Councillor Hart’s manorial rights and his ownership of the land on which the church sits are DPIs that Councillor Hart is required to include on his Register.

6.22 The Localism Act says that a member must not take part in a discussion or vote on a matter if they “have a DPI in any matter to be considered”, unless they have been granted a dispensation. This wording is reflected in the Parish Council’s Code, which states that a member must “Comply with the statutory requirements to register, disclose and withdraw from participating in respect of any matters in which you have a disclosable pecuniary interest”. It is particularly important that members err on the side of caution when considering whether they have a DPI in a matter because while the wording is not particularly helpful when it comes to understanding what ‘having a DPI in a matter’ means, a decision taken in the course of a meeting of the authority, or any committee, may be declared unlawful and liable to be quashed where there is non-compliance with these requirements.

6.23 In the first criminal conviction case under the Localism Act, R v Flowers [2015], a former Leader of Dorset County Council was convicted of participating in and voting on the Council’s Local Development Strategy despite having a DPI in the matter. At that time, Councillor Flowers was a non-executive director of Synergy Housing Limited (a housing charity); although he was not in receipt of a salary, he had received various remuneration payments for the years 2010 to 2013. The prosecution contended that Councillor Flowers knew that the housing charity would benefit from the approval of the Strategy and therefore that he should not have participated. At the hearing of the case, the Judge noted that the defendant Member was of good character and that, in the Member’s view, the matters that were considered at the meeting were broad in nature and did not concern detailed issues of planning and ownerships. District Judge Nicholls said that whilst Flowers’ participation in the 25 February 2013 meeting could not on the evidence before the court have led to any direct benefit to himself, the 2011 Act made it clear he should not take part or vote at that meeting because it would have led to a direct benefit to the housing charity. The Judge concluded that before the meeting the defendant Member should have taken time to consider his position or sought advice from the Monitoring Officer or a dispensation. In the absence of a dispensation, the defendant Member should not have taken part in that meeting. A conditional discharge and costs were imposed.

6.24 In R(Freud) v Oxford City Council (2013) EWHC 4613 (admin) the High Court had to consider, amongst many other grounds, a challenge by Mr Freud to a planning permission granted to the Oxford University on the basis that the Committee Chairman (Mr Cook) and other members of the Planning Committee were employed by the University. Mr Justice Ouseley held that Councillor Cook did not have a disclosable pecuniary interest in the application for planning permission by the University because the decision would not have financially impacted on
him personally as he was not employed by the part of the University promoting the application. The Court also held that a number of councillors who had been students at, or who held the degree of Master of Arts awarded by the University, also did not have a disclosable pecuniary interest. Mr Justice Ousley commented “I have no doubt that the change [in the legislation relating to interests] was in part intended to stop indirect relationships of the sort Mr Cook enjoys here at Oxford University requiring him not to participate in debates about each and every planning application that might be made in Oxford by the university”

6.25 In R (Kelton) v Wiltshire Council, the High Court considered a claim for judicial review which challenged the grant of planning permission for a scheme of up to 35 custom built residential dwellings, including 9 affordable homes. At issue was the participation of one of the councillors on the Council’s planning committee, Councillor Magnus Macdonald, whose vote carried the decision in favour of granting the outline planning permission. One of three challenges considered by the Court relied on the argument that, under Section 31 of the Localism Act, Councillor Macdonald had a disclosable pecuniary interest in the planning application. It was alleged that Councillor Macdonald should have been disqualified from participating because he was a director of Selwood Housing Association (“Selwood”), a not for profit organisation named in the application as the probable partner who would be responsible for the affordable housing part of the development; Councillor Macdonald received £3000 per annum as director of Selwood. It was alleged that Councillor Macdonald was aware that Selwood stood to benefit directly from the grant of permission; as a remunerated director of Selwood, Councillor Macdonald was statutorily disqualified from participation in the meeting and should have withdrawn. Dismissing the ground of challenge based upon the alleged DPI and breach of the disqualification requirement in section 31 of the 2011 Act, Cranston, J held that the member did not have a direct pecuniary in the planning application, as the committee’s decision to grant planning permission to the applicants did not directly lead to the member obtaining any benefit and the company in which the member had a financial interest was not a party to the decision. Furthermore, in the Judge’s view Councillor Macdonald did not have a DPI in the matter under consideration at the point of decision, no contract had been signed between Selwood and the developers. The Judge noted that Selwood had advised the applicants over a period as such may have built up goodwill, but at the time of the grant of planning permission the affordable housing part of the development was yet to be tendered. As a result, Councillor Macdonald was not disqualified under Section 31.13

6.26 The decisions in both the Kelton and Freud cases suggest that for a member to have a declarable DPI which precludes them from participating and voting on a matter there needs to be a very direct relationship between a pecuniary interest to the member and the subject matter under consideration. The Flowers criminal case on the other hand presents a slightly wider interpretation. While it is sensible for all members to seek advice on these matters and perhaps err on the side of caution when deciding whether to participate or not, in my view the narrower

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13 It should be noted that in this case the grant of planning permission was overturned however as it was found that Councillor Macdonald showed bias.
construction is the correct one to apply when considering if a member has breached the Code. This is consistent with both the legislation and the Government’s explanatory memorandum, which included:

“These [prescribed DPIs] are the interests that are considered most likely to lead to a conflict of interests if a member’s interest was related to the business of the authority that the member was taking part in. By having the member declare such interests and as a consequence having their ability to take part in related business of the authority curtailed, it gives the public assurance that local authority members are not putting their own interests ahead of those of the public…The description of pecuniary interests are adapted from those in the Local Authorities (Members’ Interests) Regulations 1992, which described those pecuniary interests that were to be declared under the arrangements that operated before the introduction of the Standards Board regime. As failure to comply with the rules on disclosure of interests is a criminal offence, the descriptions are of those interests of a member, or their spouse or civil partner, a person with whom the member is living with as husband or wife or a person with whom the member is living with as if they were civil partners, would reasonably be aware of and are much more narrowly drawn than the ‘personal and prejudicial’ interests of the Standards Board regime, where failure to declare was a civil, rather than criminal, wrong.” [my emphasis]
still amount to a declarable interest, which is also subject to restrictions on member participation in discussions. Part 4 of the Parish Council’s Code deals with Other Interests, both non-disclosable pecuniary and non-pecuniary interests; it is this part of the Code that is relevant to any considerations as to whether Councillor Hart had an interest in any discussions or decisions related to the Trust / Bell Fields as a result of his position as a trustee of the two relevant charities. It should also be noted that this part of the Code uses ‘wider’ qualifying terms such as ‘relates to’ and ‘affects’; the nexus between the matter under consideration and the interest does not have to be as direct as is required when considering whether a member has a DPI.

6.32 As stated previously, the rights and wrongs of the dispute between the complainant and the subject member over the management of the Trust cannot be dealt with as part of this investigation. Councillor Hart’s responsibility to comply with the Code in relation to his position with the Trust however is central to our considerations. As a named trustee, Councillor Hart has an NPI in any Parish Council matter that concerns Trust business; I further consider that Councillor Hart has shown himself to be so invested in the matter that his well-being is likely to be affected by decisions relating to Bell Fields to a greater extent than the majority of the Council Taxpayers. The Parish Council’s Code provides that in these circumstances, while Councillor Hart is still able to participate and vote on such matters, he must ensure that he formally declares his interest.

6.33 While there appears to have been no ‘decision’ to be made in relation to the Trust at the meeting of the 28 November 2017, Councillor Hart raised matters relating to it on at least two occasions; this included asking the Parish Council to cease its legal action against them. In my view Councillor Hart should have formally declared his interest at this point of the meeting; by failing to do so I consider that he failed to comply with paragraph 4.1 of the Code.

6.34 That said, I note that Councillor Hart is not the only councillor who is a member of the Trust. In addition, the complainant and other councillors are currently involved in a legal action to establish that in fact they are the rightful Trustees; during the investigation Councillor Fleming purported to be able to act as a Trustee independently of the Parish Council. While I have only been instructed to consider whether Councillor Hart has failed to declare the necessary interests, it is only fair to comment that I have seen no evidence of any councillor declaring an interest in this matter at any Parish Council meeting. It seems to me that the governance surrounding the relationship between the Trust and the Parish Council has historically been poor and that it continues to be so when it comes to councillors trying to resolve this dispute during Parish Council meetings. I have seen evidence of the City Council’s Monitoring Officer warning the complainant of these risks dating back to August last year, stating “Councillors should also consider whether they are able to make decisions based on Wednesbury reasonableness where a decision concerns them directly. In that situation a member may not be able to vote in the public interest at the expense of his own interests and in that event at common law that would amount to bias and potentially predetermination and a member may choose to withdraw to avoid allegations in that regard or for a challenge to be made upon the validity of the decision.” I would invite all councillors to give careful consideration to this advice.
Did Councillor Hart fail to treat Councillor Fleming with respect when calling him a liar at two Parish Council meetings?

6.35 Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. The circumstances in which the behaviour occurred are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.

6.36 Any consideration as to whether Councillor Hart failed to comply with the Code must also take into account his right to free speech. In Heesom v Public Service Ombudsman for Wales Mr Justice Hickinbottom considered a councillor’s right to free speech in some detail. His considerations drew attention to a number of earlier cases in which the following propositions could be derived:

a. While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests.

b. The enhanced protection applies to all levels of politics, including local.

c. Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.

d. Whilst, in a political context, article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.

e. The protection goes to “political expression”; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.

f. Past cases draw a distinction between fact on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis. What amounts to a value judgment as opposed to fact will be generously construed in favour of the former; and, even where something expressed is not a value judgment but a statement of fact (e.g. that a council has not consulted on a project), that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if
incorrect) factual basis for saying it, “reasonableness” here taking account of the political context in which the thing was said

g. As article 10(2) expressly recognises, the right to freedom of speech brings with it duties and responsibilities. However, any restriction must respond a “pressing social need”.

h. Politicians are required to have a thick skin and be tolerant of criticism and other adverse comment. Civil servants are, like politicians, subject to the wider limits of acceptable criticism. However, unlike politicians they are involved in assisting with and implementing policies, not making them. As such they must enjoy public confidence in conditions free from perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive attacks when on duty.

In considering whether a breach finding would amount to a disproportionate restriction on Councillor Hart’s right to freedom of expression I am firstly mindful that under the Localism Act the range of sanctions is very limited; as such, any interference of his rights is likely to be minimal. Having said that, I must give weight to the fact that all the allegations concern his conduct towards and about elected councillors; politicians are required to have a thick skin and be tolerant of criticism and other adverse comments. In addition, in a political context, councillors can be slightly more exaggerated and offensive in their language than what might be considered acceptable outside that context.

6.37 The investigation has established that Councillor Hart called Councillor Fleming a liar at Parish Council meetings on 19 December 2017 and 6 March 2018. Councillor Hart was very clear at interview that he stands by his accusations. In his view, Councillor Flemings denial of having any knowledge of plans to block off Bell Fields at the Parish Council meeting of 28 November 2017 was a demonstrable lie given Councillor Fleming’s own email dated 30 August 2017, in which he said he was seeking an agreement in principle for funding to works on the Bell Fields: “to include, initially, measures to prevent access along the boundary with Main Road”. Councillor Hart also asserted that Councillor Fleming’s claim that he was not trying to stop football on Bell Fields was another lie, as evidenced by the letter sent to the football club by Tees & Co on behalf of the Parish Council, which instructed them to stop using Bell Fields because their lease with the Trust was null and void.

6.38 Taking account of the Nolan principle of leadership, there is general ethical obligation on councillors to consider carefully, when using their position as councillors to make an allegation about another person, whether they can substantiate any assertions made with evidence. If a councillor uses his position to make allegations in bad faith, for an improper motive, then the councillor is likely to be in breach of the members’ code of conduct. In the case of Buchanan (APE0417 2009)¹⁴ the First-Tier Tribunal found that the councillor could not have reasonably believed in the truth of the serious misconduct allegations he had

¹⁴ Considered under the previous local government standards regime
made about an officer. The Tribunal found that the councillor had acted maliciously, as he had made his complaints as an act of revenge to cause damage to the officer because the officer had complained about him and damaged his political career. The Tribunal concluded that the councillor’s conduct was disreputable and disqualified him from office.

6.39 Having discussed the matter with Councillor Hart, I am satisfied that he did not act in bad faith when accusing Councillor Fleming of being a liar. The Code is not intended to constrain members’ involvement in local government, including the role of members to challenge their colleagues during debate. Members can question and probe each other and officers, provided it is done in an appropriate way. People who stand for public office must be prepared to have their integrity questioned (to an extent) and deal with the ‘rough and tumble’ of local politics. Given the evidence provided by Councillor Hart, I am of the view that Councillor Fleming’s responses to his questions (complete denial) somewhat misleading.

6.40 That said, I have been involved in a few cases in the past where a member’s use of the word ‘liar’ has been considered a breach of the Code, including during the previous standards regime at National Tribunal hearings. It is clear from previous findings that a councillor accusing somebody of being a liar during a public meeting is more likely than not considered to be a failure to treat that person with respect even where the allegation has been made in good faith.

6.41 Just to touch briefly on considerations from past cases that I was involved in that are relevant to this matter. Councillor Adkins of Ashfield District Council was found to have breached the Code when he called Chief Superintendent Holmes a liar during a Council meeting. In that instance, the Tribunal considered whether the ‘truth’ of the accusation was relevant to their considerations; did it matter if the Chief Super had lied and could Councillor Adkins prove it. The Tribunal decided that there were circumstances where the veracity of the accusation might be relevant, however in this case it was considered that Councillor Adkins belief that what he was saying was true did not justify the comment: "There is nothing wrong with making fair criticism of a public official in an appropriate manner but to impugn the integrity of a police officer on the flimsiest of information in a public forum was clearly unacceptable". Councillor Adkin’s was suspended from office for 3 months.

6.42 Councillor Mason of Needham Market Town Council was also found to have breached the Code when he called another councillor and the clerk 'proven blatant liars' at a Town Council meeting; he was disqualified from office for a year. Councillor Mason’s conduct was viewed particularly seriously as his accusation was premeditated and utterly unrelated to any matter being discussed; the accusation had little justification; one of the accused was a Council officer with no right of reply and the accusation was made as the councillor accused of being a liar was being appointed as Mayor - a particularly special occasion that was ruined by Councillor Mason's unprovoked attack.

6.43 Shortly after the Mason case the Tribunal upheld an appeal from Councillor Whipp, whose standards committee had found that he too had failed to comply with the Code when calling somebody a liar; on this occasion the accusation was
made towards two other councillors'. Importantly in that case, the Judge upheld the appeal in part because Councillor Whipp had called two other councillors liars - unlike officers or members of the public, councillors have a right of response at a Council meeting and therefore the opportunity to refute such an accusation. The Judge also concluded that the member's use of the term 'liar' had some justification (Councillor Whipp had some evidence that his colleagues had knowingly not told the truth). The Judge also considered it relevant that Councillor Whipp had made the accusation in the heat of the moment and in direct response to claims made by the other two councillors; the accusation was not premeditated, and it related directly to the business under discussion. It was noted in this case that while the term 'liar' was well known to be considered 'unparliamentary language', this was not relevant to a Council unless they had a custom or tradition of enforcing the same rules of debate.

6.44 Although the Whipp case shows that a councillor's use of the term 'liar' does not automatically amount to a breach of the Code, the same Judge commented that any use of the term 'liar' might reasonably be considered to have brought a councillors office or authority into disrepute regardless of its justification - "The Appeals Tribunal considers, however, that the use of the word 'liars' is inappropriate in the proceedings of a public body even where it does not amount to disrespect. The term is a strong one, which may generally be expected to generate more heat than light in debate. Its use might breach the provisions of the Code of Conduct which require a councillor not to do anything which might bring his office or authority into disrepute. This does not appear to have been considered by the Standards Committee and there is an absence of evidence and submissions on which the Appeals Tribunal can make a determination."

6.45 It is my view that a councillor accusing another person of deliberately lying is very rarely justified as it leaves no room for the concept that the alleged 'liar' has made a genuine mistake; it is usually better described as an inflammatory attack at an individual's personal credibility. In his comments on the draft report, Councillor Fleming made the point that while Councillor Hart may have not agreed with what he was saying and believed it to be inconsistent with his earlier actions, he had no evidence of his ever having lied at a Parish Council meeting. When considering whether Councillor Hart failed to comply with the Code I consider the 'Whipp' case to be very informative. Given Councillor Fleming’s position as a Chair of the Council and the fact that Councillor Hart had some justification for at least strongly challenging the veracity of Councillor Fleming’s responses I believe it could be argued that his conduct just fell short of a breach (as I indeed provisionally concluded in my draft report). Having carefully considered Councillor Fleming’s comments though, in particular the fact that Councillor Hart’s comments were premeditated and, importantly, that Councillor Hart made no attempt to alert Councillor Fleming or anyone else to the fact that he was basing his assertion on the content of the 30 August 2017 email, I am of the view that on balance Councillor Hart did fail to treat Councillor Fleming with respect.

6.46 Further to that, paragraph 2.5 of the Code provides that a member must “Not conduct yourself in a manner which is likely to bring the Council into disrepute”. In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, conduct by a member which
could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties will bring the authority into disrepute. In my view Councillor Hart could have expressed himself in a far less inflammatory manner at the two Parish Council meetings and still made the point he was trying to get across. I consider that instead, Councillor Hart chose to deliberately act in an inflammatory manner, both in his use of provocative language and by ‘throwing / sliding’ the padlock across the table towards Councillor Fleming. While Councillor Hart should perhaps not be held solely responsible for the ongoing dispute over Bell Fields, I cannot see how his actions at the meetings on 19 December 2017 and 6 March 2018 could have done anything other than reduce the public’s confidence in the Parish Council’s ability to fulfil its functions or damaged its reputation. Accordingly, I consider that Councillor Hart failed to comply with paragraph 2.5 of the Code.

7 Recommendations

7.1 My approach in this case has been to equip the 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 Parish Council’s Code of Conduct for Members (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.

7.2 Having considered the various allegations, I am recommending that the City Council’s Standards Committee find that Councillor Hart:

i. Did fail to properly register his position as a trustee of the two charities associated with Bell Fields; his ownership of the village hall and its car park; and his title of ‘the Lordship of the Manor of Rettendon’ in his Register of Members’ Interests. I note though that during this investigation Councillor Hart has updated his Register as necessary. I also consider it relevant that the original form Councillor Hart was invited to complete was not fit for purpose.

ii. Did not fail to declare the appropriate interest in a planning application at a Parish Council meeting on 24 November 2015 arising from his manorial rights.

iii. Did not fail to comply with the Code when submitting a planning application on 18 April 2017 on behalf of the local football club.

iv. Did fail to declare the appropriate interest when discussing matters related to the Trust at a Parish Council meeting on 28 November 2017.
v. **Did not** fail to declare the appropriate interest when discussing matters related to Battlesbridge Free Church at a Parish Council meeting on **28 November 2017**.

vi. **Did not** fail to comply with the Code by removing a Parish Council padlock from the football club’s changing room door without permission; however, **did** bring the Parish Council into disrepute when he subsequently ‘threw it’ across the table at a Parish Council meeting on **6 March 2018**

vii. **Did not** fail to comply with the Code by refusing to act on the findings of a Parish Council working party regarding the scope of his manorial rights.

viii. **Did** fail to treat Councillor Fleming with respect by calling him a liar at Parish Council meetings on **19 December 2017** and **6 March 2018**; and **did** bring the Parish Council into disrepute.
Rettendon Parish Council  
Code of Conduct for Councillors.  

Minute 52 12/13  
The Rettendon Parish Council confirm that that as from 1st July 2012 the Council has been operating in accordance with the New Model Code of Conduct in line with the Chelmsford City Council Model.

1. **Application of the Code**  
This Code of Conduct applies to you whenever you are acting in your capacity as a member or co-opted member (“referred to in this Code as Councillors”) of the Rettendon Parish Council including-

1.1 At formal meetings of the Council, its Committees and Sub-Committees, or Working Groups and other meetings at which business of the Council is discussed.
1.2 When acting as a representative of the Council.
1.3 In taking any decision as a Councillor.
1.4 In discharging your functions as a Councillor.
1.5 At briefing meetings with officers.
1.6 At site visits or other visits to do with the business of the Council.
1.7 When corresponding with the Council other than in a private capacity.

2. **General Conduct**  
You must-

2.1 Provide leadership to the Council and communities within its area, by personal example.
2.2 Respect others and not bully any person.
2.3 Recognise that officers (other than political assistants) are employed by and serve the whole Council.
2.4 Respect the confidentiality of information which you receive as a Councillor by-
   2.4.1 Not disclosing confidential information to third parties unless required by law and only then after receiving confirmation from the Monitoring Officer to do so; and
   2.4.2 Not obstructing third parties’ legal rights of access to information.
2.5 Not conduct yourself in a manner which is likely to bring the Council into disrepute
2.6 Use your position as a Councillor in the public interest and not for personal advantage.
2.7 Accord with the Council’s reasonable rules on the use of public resources for private and political purposes.
2.8 Exercise your own independent judgment, taking decisions for good and substantial reasons by-
   2.8.1 Attaching appropriate weight to all relevant considerations including, where appropriate, public opinion and the views
of political groups.

2.8.2 Paying due regard to the advice of officers, and in particular the advice of the statutory officers, that is the Clerk and Responsible Finance Officer.

Stating the reasons for your decisions where those reasons are not otherwise apparent.

2.9 Account for your actions, particularly by supporting the Council’s scrutiny function

2.10 In your decisions and actions apply the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership and, as far as reasonably possible, assist the Council to act within law.

3. Disclosable Pecuniary Interests

You must-

3.1 Comply with the statutory requirements to register, disclose and withdraw from participating in respect of any matters in which you have a disclosable pecuniary interest (see Annex 1), and specifically,

3.1.1 Ensure that your entries in the register of interests are kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change in respect of your disclosable pecuniary interests.

3.1.2 Make verbal declarations of the existence and nature of any disclosable pecuniary interest at any meeting at which you are present where an item of business affects or relates to the subject matter of that interest is under consideration, at or before the consideration of the item of business or as soon as that interest becomes apparent.

3.1.3 Withdraw from any meeting at which you have a disclosable pecuniary interest during the entire consideration of that item, unless a dispensation has been granted.

3.2 “Meeting” means any meeting organised by or on behalf of the Council and in particular in the circumstances as set out in paragraph 1 of this Code.

4. Other Interests

4.1 In addition to Paragraph 3, if you attend a meeting and there is an item of business to be considered in which you are aware you have a non-disclosable pecuniary interest or non pecuniary interest, you must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as that interest becomes apparent.
interest in an item of business of your Council where –

4.1.2 A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Taxpayers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the Council’s administrative area;

4.1.3 Relates to an interest concerning either of the following-

4.1.3.1 Any person or body who employs or has appointed you;

4.1.3.2 Any contract for goods, services or works made between Chelmsford City Council and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description that would create a disclosable pecuniary interest but only where it has been fully discharged within the last 12 months.

5. **Gifts and Hospitality**

5.1 You must within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50, which you have accepted as a Councillor from any person or body other than the Council, including the name of the donor.

5.2 The Monitoring Officer will place your notification on a public register of gifts and hospitality.

5.3 The duty to notify the Monitoring Officer does not apply to a gift, benefit or hospitality that comes within any description approved by the Council for this purpose.
Code of Conduct Annex

Disclosable Pecuniary Interests

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011.

Disclosable Pecuniary Interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as follows-

<table>
<thead>
<tr>
<th>Interest</th>
<th>Prescribed Description</th>
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<tbody>
<tr>
<td>Employment, office, trade, profession or vocation</td>
<td>Any Employment, office, trade, profession or vocation carried on for profit or gain.</td>
</tr>
<tr>
<td>Sponsorship</td>
<td>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) act 1992</td>
</tr>
<tr>
<td>Contracts</td>
<td>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged</td>
</tr>
<tr>
<td>Land</td>
<td>Any beneficial interest in land which is within the area of the relevant authority</td>
</tr>
<tr>
<td>Licences</td>
<td>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer</td>
</tr>
<tr>
<td>Corporate tenancies</td>
<td>Any tenancy where (to M’s knowledge) – the landlord is the relevant authority; and the tenant is a body in which the relevant person has a beneficial interest</td>
</tr>
<tr>
<td>Securities</td>
<td>Any beneficial interest in securities of a body where- (a) that body (to M’s knowledge) has a place of business or land in the area of the relevant authority; and</td>
</tr>
</tbody>
</table>
For this purpose—

“the Act” means the Localism Act 2011;

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

“director” includes a member of the committee of management of an industrial 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 to receive an income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“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.

(b) either—

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issue 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.
PART 5.1.2 ANNEX 5

GOVERNANCE COMMITTEE HEARING

PROCEDURE
<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>PROCEDURE</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td><strong>Quorum</strong></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>Three voting members must be present throughout the hearing to form a quorum.</td>
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<tr>
<td>1.2</td>
<td>Where the complaint refers to a Parish Councillor a co-opted Parish Councillor of the Governance Committee should be present.</td>
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<tr>
<td>1.3</td>
<td>The Governance Committee shall nominate a Chair for the meeting, where neither the Chair nor Vice Chair of the Committee are in attendance.</td>
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<tr>
<td>2.</td>
<td><strong>Opening</strong></td>
<td></td>
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<td></td>
<td>The Chair will-</td>
<td></td>
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<tr>
<td>2.1</td>
<td>Explain the procedure for the hearing and remind all parties to turn off mobile phones, audible alarms and pagers, or other equipment that either is capable of recording the meeting or interrupting proceedings.</td>
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<tr>
<td>2.2</td>
<td>Ask all present to introduce themselves.</td>
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<tr>
<td>2.3</td>
<td>Ask the Councillor against whom the complaint has been made (“the subject Councillor”), or their representative, whether they wish to briefly outline the subject Councillor’s position.</td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>The Complaint and Investigator's Findings</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>3.1.1</td>
<td>The report and other information referred to must be based on the complaint made to the Council and no new points will be allowed.</td>
<td></td>
</tr>
<tr>
<td>3.2.1</td>
<td>This is the subject Councillor’s opportunity to ask questions arising from the Investigator’s report only and not to make a statement.</td>
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<tr>
<td>3.1</td>
<td>The Investigating Officer will be invited to present their report, including any documentary evidence or other material, and to call any witnesses they require.</td>
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</tr>
<tr>
<td>3.2</td>
<td>The subject Councillor, or their representative, may question the Investigating Officer upon the content of their report and any witnesses that have been called about the evidence they have provided.</td>
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<tr>
<td>3.3</td>
<td>Members of the Committee may question the Investigating Officer on the content of their report and comments made to the Committee as well as any witnesses present.</td>
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</table>

<table>
<thead>
<tr>
<th>Section</th>
<th>The Councillor's Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1.1</td>
<td>Only evidence related to the information in the Investigator’s Report will be allowed, not new evidence or issues.</td>
</tr>
<tr>
<td>4.1</td>
<td>The Subject Councillor or their representative may present their case and call any witnesses in support.</td>
</tr>
<tr>
<td>4.2</td>
<td>The Investigating Officer may question the subject Councillor or witnesses.</td>
</tr>
<tr>
<td>4.3</td>
<td>Members of the Committee may question the Subject Member or witnesses.</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Section</th>
<th>Summing Up</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>The Investigator may sum up the Complaint.</td>
</tr>
<tr>
<td>5.2</td>
<td>The Member or their representative may sum up their case.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Section</th>
<th>The Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1.1</td>
<td>This will include voting and non-voting co-opted members of the Committee.</td>
</tr>
<tr>
<td>6.1</td>
<td>The Committee will leave the room to consider the case presented in consultation with the Independent Person.</td>
</tr>
</tbody>
</table>
if present, and may request the Monitoring Officer or other legal advisor to the Committee to accompany them.

6.2 On the Committee’s return the Chair will announce the Committee’s decision, namely that either-

- The Committee decides that the subject Councillor has failed to follow the Code of Conduct; or
- The Committee decides that the subject Councillor has not failed to follow the Code of Conduct; and
- The Committee will give reasons for its decision.

6.3 If the Committee decides that the subject Councillor has failed to follow the Code of Conduct, it will then hear from the Investigator and the subject Councillor or their representative as to-

- Whether any action should be taken in relation to the subject Councillor, and if so
- What form that action should take; and
- Whether any recommendations should be made to the Council, or where appropriate the Parish or Town Council, with a view to promoting high standards of conduct amongst Councillors.

6.4 The Committee will leave the room to consider these representations and to decide what if any action should be taken, in consultation with the Independent Person, if present, and may request the Monitoring Officer or other legal advisor to the Committee to accompany them.

6.5 On the Committee’s return the Chair will announce the Committee’s decision.

6.6 The Chair will confirm that a full written decision shall be issued within 10 working days following the hearing and that the Committee’s findings will be published as

6.4.1 & 6.5.1 Where the subject Councillor is a Parish or Town Councillor the Committee can only make recommendations to the Parish or Town Council as to the action that it feels appropriate.

6.6.1 This will include the publication of a decision on the Council’s website and

6.6.2 A copy will be sent to
| appropriate. | the subject Councillor, complainant(s) and where appropriate the relevant Parish or Town Council. |