

Governance Committee Agenda

23 January 2019 at 7pm

**Crompton Room, Civic Centre,
Duke Street, Chelmsford**

Membership

Councillor R.J. Poulter (Chairman)
Councillor I.S. Grundy (Vice-Chairman)

and Councillors

Councillors R.H. Ambor, S.D. Fowell, P.V. Hughes, F.B. Mountain,
and G.I. Smith

Parish Council Representatives

Councillor P.V. Brown (Little Waltham 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.**

GOVERNANCE COMMITTEE**23 January 2019****AGENDA****PART I****1. APOLOGIES FOR ABSENCE****2. MINUTES**

To receive the minutes of the Meeting held on 17 October 2018.

3. PUBLIC QUESTION TIME

Any member of the public may ask a question or make a statement at this point in the meeting. Each person has two minutes and a maximum of 15 minutes is allotted to public questions/statements, which must be about matters for which the Committee is responsible.

The Chairman may disallow a question if it is offensive, substantially the same as another question or requires disclosure of exempt or confidential information. If the question cannot be answered at the meeting a written response will be provided after the meeting.

4. 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.

5. CHAIRMAN'S ANNOUNCEMENTS**6. MONITORING OFFICER REPORT****7. ANNUAL GOVERNANCE STATEMENT OBJECTIVES UPDATE****8. APPOINTMENT OF INDEPENDENT PERSONS****9. GIFTS AND HOSPITALITY REPORT****10. WORK PROGRAMME****11. STANDARDS COMPLAINTS**

This item will determine the two complaints 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 cases in question in consultation with the Independent Person before returning with their decision.

12. URGENT BUSINESS

To consider any other matter which, in the opinion of the Chairman, 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 17 October 2018 at 7 p.m.

Present:

Councillor I.S. Grundy (Chairman)

Councillors R.H. Ambor, L. Denston, S.D. Fowell, F.B. Mountain and G.I. Smith

Parish Councillors –

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

1. **Apologies for Absence and Substitutions**

Apologies for absence were received from Councillors P.V. Hughes and R.J. Poulter, Parish Councillor Brown and the Independent Persons Mr S. Anthony and Mrs C. Gosling. Councillor L. Denston was appointed as the substitute for Councillor P.V. Hughes.

2. **Minutes**

The minutes of the meeting on 20 June 2018 were signed as a correct record by the Chairman.

In relation to Item 9 on the minutes the Committee was informed that the Chief Executive had approved under delegated authority from the Governance Committee the proposals put forward by the polling district review. It was noted that a message with specific details would be circulated to all Councillors.

3. **Public Question Time**

A member of the public asked a question regarding Appendix 1 to Item 6 on the agenda. The question related to a data breach issue. The Monitoring Officer confirmed he would write to the member of the public regarding the issue. It was also agreed that an annual report would be made at a future meeting regarding data breaches and the wider area of work.

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. **Chairman's Announcements**

No announcements were made.

6. Monitoring Officer Report

The Monitoring Officer provided an update on the complaints that had been received. It was noted that there had been no breaches of the code.

The Monitoring Officer informed the Committee that an error had been made on the appendix before them and that the wording agreed at the last meeting had not been inserted to the appendix. It was noted that the correct wording had been on the appendix on the Council's website since June.

The Monitoring Officer also reported that no new RIPA authorisations had been sought since the last Committee.

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 with the amendment detailed above; and
2. the remainder of the report be noted.

(7.01 p.m. to 7.09 p.m.)

7. Complaints to the Local Government and Social Care Ombudsman – Annual Review

The Committee considered a report containing information on the number of Ombudsman complaints received by Chelmsford City Council over the last year. A letter from the Local Government Ombudsman dated 18 July 2018 and summaries of the Council's performance were attached as appendices 1-2 to the report.

It was noted by the Committee that 18 enquires and complaints relating to Chelmsford City Council had been received by the Ombudsman. Of the 18 complaints made, only five, were upheld by the Ombudsman. This figure was higher than previous years, but they were from a variety of areas and therefore there was not a specific area of concern.

RESOLVED that the report be noted.

(7.10 p.m. to 7.13 p.m.)

8. Annual Whistleblowing Report

The Committee received a report updating it on the operation of the Council's Whistleblowing Policy and Procedure. The report covered the period since the last report in October 2017. It was noted that one case was ongoing, but the rest had been resolved. The Committee was informed that this was an average number to receive in line with previous years.

The Committee was informed that the ongoing case related to the Digital Transformation Programme and had led to changes being made and a report from the external auditors to Audit Committee in June 2018.

Councillor Fowell arrived at 7.18 pm

RESOLVED that the contents of the report as regards complaints received be noted.

(7.14 p.m. to 7.19 p.m.)

9. **Review of the Council's Constitution**

The Committee received a report containing proposed minor amendments to the Council's Constitution before their submission to Council in December 2018 for approval.

The proposals before the Committee were as follows:

Convening the Independent Remuneration Panel

The following be added to Part 3.4.2 of the Constitution as a delegation to the Chief Executive:

"to determine the membership of the Independent Remuneration Panel and convene the Panel when a review of members' allowances is due or required"

Approval of Councillors' Absence

The Governance Committee be given the following delegated authority in Part 3.4.5 of the Constitution:

"to approve under Section 85 of the Local Government Act 1972 the absence of a Councillor for more than six months if:

- a) the Governance Committee is satisfied that there is a valid reason for that absence, and;
- b) no meeting of the Council is scheduled before the date on which the councillor would be disqualified for failure to attend a meeting of the authority for six consecutive months."

Confirmation of Article 4 Directions

The following be delegated to the Director of Sustainable Communities and included in Part 3.4.5. of the Constitution:

"to confirm Article 4 Directions under the Town and Country Planning (General Permitted Development) Order 2015 where there are no objections following publication of a notice under Paragraph 1 of Schedule 3 to the Order."

The Committee was informed that the proposed changes reflected matters identified by officers and would assist the Council in the efficient discharge of its functions.

RESOLVED that the Council be recommended to approve the amendments to its Constitution detailed in Section 2 of the report.

(7.20 p.m. to 7.28 p.m.)

10. **Times of future meetings**

The Committee considered a suggestion to switch future meetings from 7pm to 2pm. The Committee agreed to continue with meetings at 7pm to ensure all members could attend.

RESOLVED that future meetings continue at 7pm as scheduled.

(7.29 p.m. to 7.30 p.m.)

11. **Work Programme**

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

RESOLVED that the report be noted.

(7.31 p.m. to 7.31 p.m.)

12. **Urgent Business**

There were no matters of urgent business to discuss.

The meeting closed at 7.31 p.m.

Chairman

GOVERNANCE COMMITTEE

23 January 2019

AGENDA ITEM 6

Subject	MONITORING REPORT
Report by	MONITORING OFFICER

Enquiries contact: Deputy Monitoring Officer - Graham White, 01245 606560, graham.white@chelmsford.gov.uk

Purpose

To keep the Committee informed about progress with Standards regime issues and other work of the Committee.

Recommendation(s)

1. To note the current statistical information as to complaints made and agree this should be published on the Council's website as set out in the Appendix.
2. To note the remainder of the report.

Corporate Implications

Legal:	These are set out in the report
Financial:	None
Personnel:	None
Risk Management:	None
Equalities and Diversity:	Complaints are monitored to ensure that there is no disproportionate dissatisfaction by the different equality target groups. This data is considered as part of the assessment process to ensure that there is no discrimination in service delivery.
Health and Safety:	None
IT:	None
Other:	None

Consultees	None
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Policies and Strategies

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

The Councillor Code of Conduct and the adopted Complaints Procedure

Corporate Plan Priorities

None of the plan priorities are applicable as the content of the report relates to statutory duties and responsibilities.

Attracting investment and delivering infrastructure

Facilitating suitable housing for local needs

Providing high quality public spaces

Promoting a more sustainable environment

Promoting healthier and more active lives

Enhancing participation in cultural activities

1. Complaints

1.1 The **Appendix** to this report sets out the latest statistical data related to complaints under the Standards Regime. Two new complaints were received.

1.2 Subject to any questions raised, the Committee is asked to confirm that this information should be published as set out in **Recommendation 1**.

2. Regulation of Investigatory Powers Act (RIPA)

2.1 Since the last Committee no new RIPA authorisations have been sought.

List of Appendices

Appendix 1 – Statistical Information regarding complaints made

Background Papers

Nil

Appendix I

Standards Enquiries and Investigations Statistics – Localism Act 2011 2018-2019 - To 14.1.19

Status of Complaint Categories	Total No.	Case No.	File No.	City, Parish or Town Councillor	Date Issue First Raised	Alleged Breach or Issue Raised	Current Position
1. No formal complaint	0						
2. No further action required after consultation with one of the Independent Persons	5	1/2018	L5900(9)	CCC	06.02.18	Alleged impropriety in the receiving, seeking or passing of information about the complainant.	No action can be taken: No evidence supplied by complainant.
		2/2018	L5900(9)	CCC	10.02.18	Alleged failure to respect others in correspondence	No evidence of disrespect in the correspondence referred to.
		3/2018	L5900(9)	MO	13.3.18	The Complainant believed he had been misled by the Monitoring Officer. An alleged failure to deal with the issue seriously; had been untruthful; had been biased and may have breached data protection restrictions.	The Director of Corporate Services responded on 4 April and found that none of the allegations were substantiated. This was appealed by the complainant on 10 April and a reply from the Director of Public Places on 3 May upheld the views of the earlier response.

Status of Complaint Categories	Total No.	Case No.	File No.	City, Parish or Town Councillor	Date Issue First Raised	Alleged Breach or Issue Raised	Current Position
		6/2018	L5900(9)	CCC	12.06.18	Councillor inappropriately rude at a civic function.	Councillor apologised, apology accepted, complainant satisfied.
		4/2018	L5900(9)	CCC	13.5.18	In their capacity as ward Councillor, failed to provide leadership by personal example; failed to respect others; displayed bullying behaviour and conducted themselves in a manner likely to bring the Council into disrepute.	The external investigators report found that the conduct complained of was not so severe as to amount to a failure to comply with the Code of Conduct. The Monitoring Officer accepted the finding and was satisfied that no further action was required and pursuant to delegated powers concluded the complaint on this basis.
3. Not able to legally pursue complaint	1	5/2018	L5900(9)	CCC	04.06.18	Councillor gave bad advice, failed to represent complainant at a tribunal which complainant lost with loss of benefit.	Councillor assisting complainant as a friend and not in her capacity as a Councillor. Code of Conduct therefore does not apply, no jurisdiction.

Status of Complaint Categories	Total No.	Case No.	File No.	City, Parish or Town Councillor	Date Issue First Raised	Alleged Breach or Issue Raised	Current Position
4. Complaint on hold	0						
5. Decision as to appropriate action still awaited	0						
6. Complaint being investigated	4	7/2018	L5900(9)	PC	27.8.18	In their capacity as Parish Councillor, breached the code of conduct in seven respects.	This complaint has been investigated by an external investigator whose report is awaited.
		8/2018	L5900(9)	PC	7.9.18	In their capacity as Parish Councillor, breached the Code of Conduct by failing to meet 5 principles of public life through actions on 6 th August by seeking to exclude residents from a Parish Council meeting.	This complaint has been investigated by an external investigator whose report is awaited.
		9/2018	L5900(9)	CCC		In their capacity as City Councillor, breached the	This complaint is being determined by the Committee at this meeting.

Status of Complaint Categories	Total No.	Case No.	File No.	City, Parish or Town Councillor	Date Issue First Raised	Alleged Breach or Issue Raised	Current Position
		10/2018	L5900(9)	CCC		Code of conduct in four respects. In their capacity as City Councillor, breached the Code of conduct in four respects.	This complaint is being determined by the Committee at this meeting.
Total	10						

Formal Complaint Outcomes

	File No.	Case No. and Councillor	Committee Date and Decision	Date Issue First Raised	Current Position
Outcome of Investigations					
Other Action					

GOVERNANCE COMMITTEE

23 January 2019

AGENDA ITEM 7

Subject:	ANNUAL GOVERNANCE STATEMENT OBJECTIVES UPDATE
Report by:	GRAHAM WHITE, INTERIM LEGAL AND DEMOCRATIC SERVICES MANAGER

Enquiries contact: Graham White tel: 01245 606560
email: graham.white@chelmsford.gov.uk

Purpose

To seek the views of the Committee on how the Annual Governance Statement Objectives are monitored.

Recommendation(s)

1. To note the report and agree that the targets are being adequately monitored elsewhere or;
2. to note the report and request that updates are provided at future meetings of the Committee monitoring the Annual Governance Statement objectives.

Corporate Implications

Legal:	None
Financial:	None
Personnel:	None
Risk Management:	None
Equalities and Diversity:	None
Health and Safety:	None
IT:	None
Other:	None

Consultees:	None
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Policies and Strategies

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

None

Corporate Plan Priorities

The report relates to the following priorities in the Corporate Plan

Attracting investment and delivering infrastructure

Facilitating suitable housing for local needs

Providing high quality public spaces

Promoting a more sustainable environment

Promoting healthier and more active lives

Enhancing participation in cultural activities

1. Introduction

- 1.1 At its meeting on 20th June 2018, the Governance Committee agreed to add a report to its work programme which 'would consider how the Committee can monitor the targets agreed as part of the Annual Governance Statement.
- 1.2 The Annual Governance Statement includes targets or areas for improvement every year and these are then looked at closely throughout the year by officers with the evidence then provided in the next Annual Governance Statement.
- 1.3 The targets agreed for 2018/19 were as follows:
 1. Ensuring compliance regarding the governance arrangements for the Riverside Ice and Leisure Centre redevelopment.
 2. Ensuring compliance regarding the governance arrangements for the Digital Transformation.
 3. Ensuring compliance regarding the governance arrangements for the new Local Plan.
 4. Ensuring compliance regarding the governance arrangements for the changes in Housing Services.
 5. Ensuring compliance regarding the governance arrangements for the Museum redevelopment.

2. Background

- 2.1 Officers have discussed how the AGS targets are monitored and believe that they are already being adequately monitored outside of the Governance Committee.
- 2.2 The targets are routinely reviewed each year when compiling the next Annual Governance Statement and information is provided then as to what took place during the year to ensure the target was met.
- 2.3 Regular reports are considered at project boards for the Digital Transformation and Riverside project and regular reports have been and continue to be requested by the Audit Committee for other targets.

2.4 Internal Audit also look at and monitor each of the targets throughout the year and have been receiving specific reports on the targets as part of the Annual Audit Plan for 2018/19.

3. Conclusion

3.1 Therefore, officers are of the view that the targets are already being monitored sufficiently and that specific reporting to the Governance Committee would be unnecessary and duplicate workloads. The targets are monitored throughout the year and the evidence is then provided in the next Annual Governance Statement which the joint Committee approves every June. However, if the Committee feel that specific monitoring reports would be beneficial this can be arranged for the next meeting in March 2019, and then in future years at more regular intervals between each Annual Governance Statement.

List of Appendices

None

Background Papers

None

GOVERNANCE COMMITTEE

23 January 2019

AGENDA ITEM 8

Subject	APPOINTMENT OF INDEPENDENT PERSONS
Report by	MONITORING OFFICER

Enquiries contact: Graham White, Interim Legal & Democratic Services Manager, tel: 01245 606923, email: graham.white@chelmsford.gov.uk

Purpose

The purpose of this report is to recommend to Council that the current Independent Persons be reappointed for a term until the local elections in May 2023.

Recommendation(s)

1. To recommend to Full Council the re appointment of Mr Steven Anthony and Mrs Clarissa Gosling as the Council's Independent Persons for a term expiring at the local elections in May 2023.

Corporate Implications

Legal:	None
Financial:	None
Personnel:	None
Risk Management:	None
Equalities and Diversity:	None
Health and Safety:	None
IT:	None
Other:	None

Consultees	Legal and Democratic Services Manager
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Policies and Strategies

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

Not applicable.

Corporate Plan Priorities

The report relates to the following priorities in the Corporate Plan

Attracting investment and delivering infrastructure	<input type="checkbox"/>
Facilitating suitable housing for local needs	<input type="checkbox"/>
Providing high quality public spaces	<input type="checkbox"/>
Promoting a more sustainable environment	<input type="checkbox"/>
Promoting healthier and more active lives	<input type="checkbox"/>
Enhancing participation in cultural activities	<input type="checkbox"/>

1. Background

- 1.1 The Council is required under the Localism Act 2011 to promote and maintain high standards of conduct by its members and co-opted members. Therefore, in accordance with the requirements of the act the Councillors' Code of Conduct include provision for the appointment of at least one Independent person to undertake the duties described in the arrangements.
- 1.2 The Independent Persons are appointed at Full Council and their current terms are due to expire in May 2019. The Monitoring Officer has contacted Mr Anthony and Mrs Gosling who are both happy to continue in their roles until May 2023.

2. Conclusion

- 2.1 As the two current Independent Persons are happy to continue in their role the Committee are invited by the Monitoring Officer to recommend this to Council.

List of Appendices

Appendix 1 – Practice Note – Protocol for the Independent Person

Background Papers

Nil

CONSTITUTION PRACTICE NOTE

PROTOCOL FOR THE INDEPENDENT PERSON

1. The Localism Act 2011 requires the Council to promote and maintain high standards of conduct by its members and co-opted members. To this end the Council has adopted a Councillors' Code of Conduct and has agreed arrangements for dealing with an allegation that a member or co-opted member has breached the Code. In accordance with the requirements of the Act these arrangements include provision for the appointment of at least one Independent Person to undertake the duties described in the arrangements.
2. To discipline or dismiss the Council's Head of Paid Service, Monitoring Officer or Chief Finance Officer requires the undertaking of a statutory procedure and as part of that an Independent Panel must be established, the views, advice or recommendations of which must be considered by the Full Council prior to any decision being made. The Independent Panel must include at least two Independent Persons appointed under the Localism Act 2011 by the Council or by another local authority.

Appointment

3. To be eligible for appointment as an Independent Person a person must not be or have been within the previous 5 years a member, co-opted member or officer of the Council or of a Parish Council of which the Council is the principal authority, nor a relative or close friend of such member or officer.
4. A candidate should not be involved actively in party politics and should be independent of local government. It is essential that a candidate can demonstrate personal integrity and honesty, a keen interest and commitment to maintaining high standards in public life, experience of exercising sound judgment in relation to complex matters and strong oral and written communication skills. It would be beneficial for a candidate to demonstrate experience of managing or advising upon misconduct issues in another context, understanding the pressures and constraints of serving as a member of an accountable public body and knowledge of public sector governance issues.
5. An Independent Person may only be appointed pursuant to a formal recruitment process requiring a public advertisement, submission of applications and selection, usually by interview. A person's appointment must be approved by the full Council. An Independent Person is the holder of a statutory office and not an employee of the Council. No salary or honorarium

is payable but the Council may pay the Independent Person's expenses by way of an allowance or otherwise.

Role of the Independent Person

6. The primary role of the Independent Person is to be available for consultation at various points in the arrangements for dealing with misconduct complaints upon various issues as follows:
 - (i) The Monitoring Officer will review every complaint received and may consult the Independent Person before taking a decision as to whether or not the complaint merits investigation. The Independent Person should provide an objective and impartial opinion which the Monitoring Officer will take into account in making the decision.
 - (ii) Where an investigation has been undertaken, a draft report will be submitted by the Investigator to the Monitoring Officer, or be prepared by the Monitoring Officer. The Monitoring Officer may ask the Independent Person for a view upon whether the report is satisfactory or whether further investigation is necessary, and whether or not the report should be submitted to the Governance Committee.
 - (iii) The Monitoring Officer may consider that the matter can reasonably be resolved without a hearing and may consult both the Independent Person and the Complainant and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future.
 - (iv) Where a complaint is the subject of a Governance Committee hearing, the Independent Person must attend. After all the evidence has been presented the Committee will seek the views of the Independent Person before determining whether or not the member breached the Code of Conduct. The Independent Person does not take part in the decision-making process of the Committee nor vote upon whether or not the complaint is upheld.
 - (v) Where the Governance Committee determines that a member has breached the Code, it will seek the views of the Independent Person upon any sanction to be imposed.
 - (vi) The Independent Person may be consulted by the Monitoring Officer or other authorised representative of the Council at any stage in the arrangements for dealing with misconduct complaints.

- (vii) The Independent Person may be consulted by a member or co-opted member of the Council or of a Parish Council for which the Council is the principal authority if that person's behaviour is the subject of an allegation.
 - (viii) Where the Independent Person is consulted by the Monitoring Officer or other authorised representative of the Council or a member or co-opted member pursuant to paragraphs (vi) or (vii) above, the Independent Person does not represent the Council or any other party to a complaint whilst being an impartial point of reference and source of advice for both. Consultations with the Independent Person are confidential between the parties and the content or outcome of such consultation may only be disclosed by either, if both parties agree to such disclosure.
7. A further role of the Independent Person arises from the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended). By virtue of amending regulations in 2015, there is a prescribed statutory process for disciplining or dismissing an authority's Head of Paid Service, Monitoring Officer or Chief Finance Officer. A decision to discipline or dismiss must be taken by Full Council which must consider, amongst other things, advice, views or recommendations from an independent panel. That panel must include at least two Independent Persons appointed under Section 28(7) of the Localism Act 2011 by the Council or by another local authority.
 8. In addition to the statutory duties, the Independent Person is invited to attend meetings of the Governance Committee and may participate in all aspects of the Committee's work in a non-voting capacity. The Independent Person will be consulted in respect of changes to the Council's ethical framework.
 9. When the Council has more than one Independent Person, the Monitoring Officer shall ensure that the workload is shared out between those persons as the Monitoring Officer considers appropriate.

Training

10. Training for the roles of the independent person with particular reference to local government governance and practice will be provided in-house by the Monitoring Officer and other senior officers and where appropriate through external courses. Training for disciplinary and/or dismissal proceedings against a statutory officer will be provided externally.
11. Independent persons are persons of experience from a context other than that of local government but which can be valuable in bringing a fresh perspective to public sector governance and ethical framework issues.

GOVERNANCE COMMITTEE

23 January 2019

AGENDA ITEM 9

Subject:	GIFTS AND HOSPITALITY REPORT
Report by:	GRAHAM WHITE, MONITORING OFFICER

Enquiries contact: Graham White tel: 01245 606560
email: graham.white@chelmsford.gov.uk

Purpose

To update the Committee on offers of Gifts and Hospitality from January to December 2018.

Recommendation

It is recommended that the report be noted.

Corporate Implications

Legal:	None
Financial:	None
Personnel:	None
Risk Management:	None
Equalities and Diversity:	None
Health and Safety:	None
IT:	None
Other:	None

Consultees:	None
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Policies and Strategies

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

None

Corporate Plan Priorities

The report relates to the following priorities in the Corporate Plan

Attracting investment and delivering infrastructure

Facilitating suitable housing for local needs

Providing high quality public spaces

Promoting a more sustainable environment

Promoting healthier and more active lives

Enhancing participation in cultural activities

1. Background

- 1.1 At its meeting on 20th January 2010, the Standards Committee agreed that an annual report should be made on offers of Gifts and Hospitality which have been made to Members of the Council and when the Governance Committee assumed responsibility for these matters, this annual report was brought to this Committee.

2. Offers Made

- 2.1 The offers of gifts and hospitality to members of Chelmsford Council for the period January to December 2018 can be found at **Appendix 1**. In summary, there was one declaration by members.
- 2.2 A summary of the offer of gifts and hospitality to Officers of the Council can be found at **Appendix 2**.

List of Appendices

Appendix 1 – Offers of Gifts and Hospitality (Councillors) – January to December 2018

Appendix 2 – Offers of Gifts and Hospitality (Officers) – January to December 2018

Background Papers

None

APPENDIX 1

Offers of Gifts and Hospitality (Councillors) – January to December 2018

No.	Date	Councillor	Gift/Hospitality	Value	Organization	Whether Accepted
Cllr 57	29/5/18	Scott	2 tickets for summer ball (charity fundraising event)	£60 per ticket	Mr S Dunster	Yes

APPENDIX 2

Officer Gifts and Hospitality from January to December 2018

Report Number	Date of report	Directorate	Description of gift/hospitality	Estimated Value	Giver/Offerer	Accepted/Refused
OFF 188	22/2/18	Sustainable Communities	Tea and Sandwiches	£15.20	David Bishop	Accepted
OFF 189	23/4/18	Sustainable Communities	Meal	£25	Anglia Ruskin University	Accepted
OFF 190	24/4/18	Chief Executive	Chelsea Flower Show – Entry & Lunch	£100	Royal Horticultural Society	Accepted
OFF 191	15/6/18	Sustainable Communities	2x Wicker Hampers	£104	Smith Homes Ltd	Accepted and donated to Mayor's Charities
OFF 192	10/7/18	Chief Executive	Essex Cricket T20 Tickets	£50 est	Martin Lunn, Essex & Suffolk Water	Accepted
OFF 193	13/8/18	Sustainable Communities	Dinner as part of awards ceremony	£30	Countryside Properties	Accepted
OFF 194	18/10/18	Sustainable Communities	Flowers	£20	Mr and Mrs Pahwa	Accepted

GOVERNANCE COMMITTEE

23 January 2019

AGENDA ITEM 10

Subject	WORK PROGRAMME
Report by	MONITORING OFFICER

Enquiries contact: Graham White, Interim Legal & Democratic Services Manager, tel: 01245 606923, email: graham.white@chelmsford.gov.uk

Purpose

The purpose of this report is to receive members' comments on the Committee's work programme for 2018/2019.

Recommendation(s)

1. Members are invited to comment on the Committee's work programme, attached as **Appendix 1** to this report, and make any necessary amendments to it.

Corporate Implications

Legal:	None
Financial:	None
Personnel:	None
Risk Management:	None
Equalities and Diversity:	None
Health and Safety:	None
IT:	None
Other:	None

Consultees	Legal and Democratic Services Manager
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Policies and Strategies

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

Not applicable.

Corporate Plan Priorities

The report relates to the following priorities in the Corporate Plan

Attracting investment and delivering infrastructure

Facilitating suitable housing for local needs

Providing high quality public spaces

Promoting a more sustainable environment

Promoting healthier and more active lives

Enhancing participation in cultural activities

1. Background

- 1.1 The work programme (the Programme) is reviewed by the Committee at each meeting. The current version is attached at **Appendix 1** to this report and includes the proposed work for each meeting in 2018-2019, based on the Programme content for recent years.

2. Conclusion

- 2.1 Members are invited to comment on the Committee's work programme and make any necessary amendments to it.

List of Appendices

Appendix 1 - Governance Committee Work Programme 2018/19

Background Papers

Nil

GOVERNANCE COMMITTEE WORK PROGRAMME

23 January 2019

Monitoring Officer Report

AGS Objectives

Appointment of Independent Persons

Gifts and Hospitality Report

Work Programme

20 March 2019

Monitoring Officer Report

RIPA Annual Review

Work Programme

19 June 2019 (Joint Meeting with Audit Committee)

Review of Local Code of Corporate Governance and Annual Governance Statement 2018/19

19 June 2019

Monitoring Officer Report

Annual Report of the Committee

Work Programme

16 October 2019

Ombudsman Complaints

Monitoring Officer Report

Annual Report on Whistleblowing

Work Programme

Ad hoc reports

Politically exempt officer posts

Training

GOVERNANCE COMMITTEE

23 January 2019

AGENDA ITEM 11

Subject	Standards Complaints
Report by	Monitoring Officer

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Purpose

To determine complaints of breach of the Councillors' Code of Conduct by City Councillors

Recommendation(s)

1. To consider and determine the complaint against Cllr Millane.
2. To consider and determine the complaint against Cllr Ride.

Corporate Implications

None

Legal:	All legal considerations are contained in the body of the report.
Financial:	None
Personnel:	None
Risk Management:	None
Equalities and Diversity:	None
Health and Safety:	None
IT:	None
Other:	None

Consultees	The Independent Person
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Policies and Strategies

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

The Council's ethical framework

Corporate Plan Priorities

The report relates to the following priorities in the Corporate Plan

Attracting investment and delivering infrastructure	<input type="checkbox"/>
Facilitating suitable housing for local needs	<input type="checkbox"/>
Providing high quality public spaces	<input type="checkbox"/>
Promoting a more sustainable environment	<input type="checkbox"/>
Promoting healthier and more active lives	<input type="checkbox"/>
Enhancing participation in cultural activities	<input type="checkbox"/>

1. Introduction

- 1.1 On 18 October 2018 a member of the public made complaints that Cllr Millane and Cllr Ride had breached the Councillors' Code of Conduct. The complaints are separate but substantially similar and to determine one complaint in isolation would prejudice the outcome of the other. Consequently, it is appropriate that the Committee should consider the complaints at the same time whilst determining each separately.

2. The Complaints

- 2.1 The complaint against Cllr Millane is attached at Appendix 1.
- 2.2 The complaint against Cllr Ride is attached at Appendix 2.

3. Background Information

- 3.1 The complaints have their origins in a complaint made by a member of the public to the Council's Data Protection Officer that the councillors had made data breaches. This complaint was investigated by the Monitoring Officer acting as Data Protection Officer while the post holder was away on extended parental leave. The facts and the outcome are set out in the decision letter which is reproduced at Appendix 3 with redactions to preserve the anonymity of the complainant.

4. Response by Cllr Millane and Cllr Ride

- 4.1 A response to the complaints from Cllr Millane and Cllr Ride is attached at Appendix 4.

5. Monitoring Officer's comments

- 5.1 The comments of the Monitoring Officer are attached at Appendix 5 and the Councillors Code of Conduct is Appendix 6.

6. Consultation with the Independent Person

6.1 The Independent Person, Ms Clarissa Gosling, has been consulted and concurs with the Monitoring Officer's decision to refer the complaints to Committee for determination.

7. The Procedure

7.1 The determination of complaints of breach 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.

7.2 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 for him/her to investigate.

7.3 In the current cases the circumstances giving rise to the complaints are fully documented from previous considerations and further investigation would not render additional useful material. If proven, the Committee would have at its disposal the range of available actions.

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

7.5 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 - Complaint of breach of Code of Conduct by Cllr Millane

Appendix 2 - Complaint of breach of Code of Conduct by Cllr Ride

Appendix 3 - Data Protection Officer's decision upon complaint of data breaches

Appendix 4 - Response by Cllr Millane and Cllr Ride

Appendix 5 - Monitoring Officer's comments

Appendix 6 - Councillors' Code of Conduct

Background papers

Nil

Complaint of breach of Code of Conduct by Cllr Millane

1. Disclosing the identity of a person who sent a private email as a member of the public to another CCC member. The contents of the email were read out at a meeting attended by many members of the public. This action has already been confirmed as a data breach by the data protection officer, it should have remained on the data base of the CCC. It is my opinion that Cllr Millane read out the contents, with the intent of inciting what was a potentially volatile situation. This constitutes a breach of the code of conduct expected by an experienced Chelmsford City Councillor.

2. Additionally the complainant referred to other incidents as follows:

3. Witnessed this occurring at another Parish Council, where the identity of a member of the public was disclosed, who had made a phone call to the planning office at CCC offices when Cllr Millane had been present. This disclosure was without the person's permission.

4. The Monitoring Officer requested from the complainant specific details on the particulars of the code which were considered to have been breached together with details of the additional incident referred to. The complainant has responded as follows:

5. Cllr Millane mentioned the name of the author and went on to read out parts of the email to the Leader of the Council clearly addressing the gypsy and traveller members of Meadow Lane who had attended. This, in my opinion was a deliberate attempt to inflame a situation that had clearly been stage-managed since there was nothing on the agenda that could possibly have indicated that the Parish Council was going to discuss the proposed planning development – only the meeting that had taken place at another venue and was not hosted by the Parish Council.

6. Cllr Millane has breached the code of conduct as set out in;

7. 5.1.1.2.1.2: Respect others and not bully any person

There was no respect for the member of the public by the disclosure of the email nor was there any respect for the members of the Parish Council who had little or no idea what this was about since it had no place at the meeting.

8. 5.1.1.2.1.4: respect the confidentiality of information which you receive as a councillor by

5.1.1.2.1.5: (i) Not disclosing confidential information to third parties unless required by law and only then after receiving confirmation from the Monitoring Officer to do so.

There is no doubt the email was private and should have been confidential to the sender and the recipient.

9. (quotation from data protection officer's decision letter)

"It was reasonable for Cllr Whitehead, acting in his capacity as Leader of the Council to apprise the Ward Councillors of the comments/criticisms of them and to obtain their comments to enable him to maintain the management and oversight of the issue. Thus such disclosure was in the course of the Leader's council business and an internal matter"

10. Agreed, and that's where it should have stayed, within the confines of the CCC database not become part of a public statement.

11. (quotation from data protection officer's decision letter)

"By attributing statements and quotations to (the author) in their statements to the Parish Council, Cllrs Millane and Ride disclosed personally identifiable information without (the Monitoring Officer's) consent. This is a data breach. No other sensitive, confidential or otherwise protected data was disclosed."

12. The data protection officer has confirmed this is a data breach. Furthermore, I disagree that no other sensitive, confidential or otherwise protected data was disclosed. The email was protected and its contents, not just the name of the person who sent it.

13. (quotation from data protection officer's decision letter)

"In this case the statements and quotations were accurate and no misleading information was given. Disclosure of comments by (the author) upon a planning issue and about ward councillors as described above are not considered to be so serious or substantial as to have adverse consequences for (the author). Is no consequential financial loss, risk of physical, material or non-material damage, or loss of opportunities. There is unlikely to be any reputational damage."

14. The data protection officer was not there and was taking the words of two persons – the Ward Councillors – who think it is perfectly acceptable to behave in this manner in their capacity as Councillors of Chelmsford City Council. The "adverse consequences" could have been an escalation to what was obviously an emotionally charged atmosphere. The "consequential ... risk of physical, material and non-. Not only was this incorrect, but material damage" are and were very obvious. Cllr Millane's comments only made the situation worse which I believe was his intention."

15. 5.1.1.2.1.6: Not conduct yourself in a manner which is likely to bring the Council into disrepute.

There has been other occasions where Cllr Millane has mentioned details that should have remained within the confines of CCC.

16. On 31 May 2016, acting in his capacities as a Ward and Parish Councillor, Cllr Millane announced in public at a meeting of Rettendon Parish Council that a named party had made a FOI request to CCC in respect of the ongoing issues surrounding the changes that were made to the Defined Settlement Boundary.

17. During the Rettendon Parish Council meeting in December 2016, during an item about the defined settlement boundary in Rettendon Common, Cllr Millane made it known that he had heard a conversation between a “named person” and a planning officer as both he and Cllr Ride were present in that office at the time. A complaint was made to (a senior planning officer) by the named person so you can check these records. This was clearly a breach of data since the person named might not have wanted this made public at that time.

18. Cllr Millane is currently the Chair of two important committees and is a member of the CCC Planning Committee. These roles demand that sensitive information should be kept confidential at all times. Either he has deliberately broken the code of conduct through his data breach or is unaware of his responsibilities, either way he should not be in such a privileged position.

19. These comments were made as part of an update as Ward Councillor so were given in his capacity as a City Councillor.

Complaint of breach of Code of Conduct by Cllr Ride

1. On 6 August 2018 at a meeting of Runwell Parish Council, disclosing the identity of a person who sent a private email as a member of the public to another CCC member. The contents of the email were read out as well, the meeting was attended by many members of the public. This action has already been confirmed as a data breach by the data protection officer, it should have remained on the data base of the CCC. It is my opinion that Cllr Ride read out the contents, with the intent of inflaming what was a potentially volatile situation. This constitutes a breach of the code of conduct expected by an experienced Chelmsford City Councillor.

2. The Monitoring Officer requested from the Complainant specific details on the particulars of the code which were considered to have been breached and the Complainant has responded as follows:

3. Cllr Ride mentioned the name of the author and went further to read out parts of the email to the Leader of the Council clearly addressing the gypsy and traveller members of Meadow Lane who had attended. This, in my opinion was a deliberate attempt to inflame a situation that had clearly been stage-managed since there was nothing on the agenda that could possibly have indicated that the Parish Council was going to discuss the proposed planning development – only the meeting that had taken place at another venue and was not hosted by the Parish Council.

4. Cllr Ride has breached the code of conduct as set out in;

5. 5.1.1.2.1.2: Respect others and not bully any person

There was no respect for the member of the public by the disclosure of the email nor was there any respect for the members of the Parish Council who had little or no idea what this was about since it had no place at the meeting.

6. 5.1.1.2.1.4: Respect the confidentiality of information which you receive as a councillor by

5.1.1.2.1.5: (i) Not disclosing confidential information to third parties unless required by law and only then after receiving confirmation from the Monitoring Officer to do so.

There is no doubt the email was private and should have been confidential to the sender and the recipient.

7. (quotation from data protection officer's decision letter)

"It was reasonable for Cllr Whitehead, acting in his capacity as Leader of the Council to apprise the Ward Councillors of the comments/criticisms of them and to obtain their comments to enable him to maintain the management and oversight of the issue. Thus such disclosure was in the course of the Leader's council business and an internal matter"

8. Agreed, and that's where it should have stayed, within the confines of the CCC database not become part of a public statement.

9. (quotation from data protection officer's decision letter)

"By attributing statements and quotations to (the author) in their statements to the Parish council, Cllrs Millane and Ride disclosed personally identifiable information without (the Monitoring Officer's) consent. This is a data breach. No other sensitive, confidential or otherwise protected data was disclosed."

10. The data protection officer has confirmed this is a data breach. Furthermore, I disagree that no other sensitive, confidential or otherwise protected data was disclosed. The email was protected and its contents, not just the name of the person who sent it.

11. (quotation from data protection officer's decision letter)

"In this case the statements and quotations were accurate and no misleading information was given. Disclosure of comments by (the author) upon a planning issue and about ward councillors as described above are not considered to be so serious or substantial as to have adverse consequences for (the author). Is no consequential financial loss, risk of physical, material or non-material damage, or loss of opportunities. There is unlikely to be any reputational damage."

12. The data protection officer was not there and was taking the words of two persons – the Ward Councillors – who think it is perfectly acceptable to behave in this manner in their capacity as Councillors of Chelmsford City Council. The "adverse consequences" could have been an escalation to what was obviously an emotionally charged atmosphere. The "consequential ... risk of physical, material and non-material damage" are and were very obvious. Cllr Ride's comments only made the situation worse which I believe was his intention."

13. 5.1.1.2.1.6 Not conduct yourself in a manner which is likely to bring the Council into disrepute.

Cllr Ride has persistently breached the code of conduct that others seem to follow but he has no intention of doing so.

14. March 2015: Failure to disclose directorship and membership under members' interests.

15. September 2015: External investigation into why a self-contained dwelling was built on Cllr Ride's land without prior planning permission.

16. June 2017 Rettendon Parish Council. Failure to declare an interest as a governor of Rettendon School, then proceeded to vote in favour of a grant by the PC to the School. He has never apologised in public and the minutes were never amended, despite the Monitoring Officer saying this was going to happen.

17. The point here is that although the cases above have been investigated and "concluded" within whatever powers the Governance Committee and the Monitoring Officer deemed appropriate, they have still occurred. Cllr Ride is never in the

slightest bit concerned by this as the sanctions are too weak and ineffective, therefore he believes he can operate by a different set of standards to his peers.

Data Protection Officer's decision upon complaint of data breaches.

Decision letter to the complainant dated 16 August 2018 from the acting Data Protection Officer

Further to the previous correspondence, I have now had the opportunity to investigate the matter which is the subject of your email of 7 August 2018 to the Council's Data Protection Officer, a capacity in which I am acting while the post holder is away from the office on extended leave.

The facts as I have ascertained them are as follows:

1. On 25 July 2018 in your capacity as a resident of Runwell you sent an email to Cllr Whitehead, the Leader of the Council regarding a planning matter already in the public domain.
2. On the same day Cllr Whitehead replied to your email. That email sent via the Council's email system had at its foot the usual Council disclaimer stating, inter alia, that 'This email (including any attachments) is intended only for the recipient(s) named. It may contain confidential or privileged information and should not be read, copied or otherwise used by any other person.' In fact Cllr Whitehead's email did not contain any confidential or privileged information.
3. On 27 July 2018, Cllr Whitehead met the two Ward Councillors, Cllrs Millane and Ride who had been made aware that there had been an exchange of correspondence between you and Cllr Whitehead but were unaware of its contents. They enquired whether you had written to Cllr Whitehead in confidence and were told you had not. This email was not marked private and/or confidential nor did it state that the contents were not to be shared with others. Cllr Whitehead supplied them with copies of the exchange to enable them to deal with the matter in the course of their duties as Ward Councillors with Cllr Whitehead maintaining overall management of the issue.
4. On the agenda for the meeting of Runwell Parish Council for its meeting on 6 August 2018, item 9 related to Planning. There were two items under this heading of which the second stated '2. Meadow Lane Development. (i) Land Group – Community Engagement Event Thursday 5th July 2018. Comments to forward to Land Group.' [This item was] advanced up the agenda due to the number of members of the public in attendance for this item.
5. The two Ward Councillors [were invited] to speak and Cllr Millane read out a short statement (a copy of which has been provided) in which were two references to matters referred to in the email from you to Cllr Whitehead.

(i) We have been accused by [name redacted] of making divisive comments and suggestions of Social Cleansing are totally unfounded;

(ii) [Name redacted] keeps suggesting that Ray and myself have never set foot in Meadow Lane.

A member of the public asked Cllr Millane how he knew these things and he waved the email correspondence in the direction of the member of the public though made no further reference to it and did not circulate it.

6. Cllr Ride then made a statement. Some of the statement was as set out in the copy provided, though I am informed that off the cuff remarks were also made. In the course of the statement and helpfully contained in the copy provided there were two quotations from the email from you to Cllr Whitehead.

(i) 'The number of 'Traveller pitches' that would need to be replaced Is in excess of 37, these will have to be found within Chelmsford of course '

(ii) '.... to try and eradicate the whole Traveller community, who are not all in favour of this.'

7. On 7 August 2018 you wrote to the Council's Data Protection Officer complaining that the foregoing statements amounted to a breach of the Council's data protection protocol.

A personal data breach includes a breach of security leading to the unauthorised disclosure of personal data. Personal data is any information relating to an identified or identifiable natural person whether it relates to his or her private, professional or public life. An identifiable person is one who can be identified directly or indirectly from the disclosure. Personally identifiable information is information which can be used to distinguish a person's identity, such as their name.

The non-confidential email from you was disclosed by Cllr Whitehead to the two Ward Councillors but I do not regard this as a data breach. It was reasonable for Cllr Whitehead, acting in his capacity as Leader of the Council to apprise the Ward Councillors of the comments/criticisms of them and to obtain their comments to enable him to maintain the management and oversight of the issue. Thus such disclosure was in the course of the Leader's council business and an internal matter.

By attributing statements and quotations to you in their statements to the Parish Council, Cllrs Millane and Ride disclosed personally identifiable information without your consent. This is a data breach. No other sensitive, confidential or otherwise protected data was disclosed.

When a data breach has occurred it is necessary to establish the likelihood and severity of the resulting risk to people's rights and freedoms. If it is likely that there will be a risk, the ICO must be notified. If it is unlikely to have serious or substantial adverse consequences for individuals it is not necessary to notify the ICO but justification for that view must be given.

In this case, the statements and quotations were accurate and no misleading information was given. Disclosure of comments by you upon a planning issue and about Ward Councillors as described above are not considered to be so serious or substantial as to have adverse consequences for you. There is no consequential financial loss, risk of physical, material or non-material damage, or loss of opportunities. There is unlikely to be any reputational damage.

The Council will take steps to maintain the integrity of its data protection protocol and Cllrs Millane and Ride will be advised as to their future references to email correspondence. In addition a letter will be sent to all City Councillors reminding them of their obligations in this regard. Future training courses for members will include appropriate examples of instances which may cause personal data breaches.

A copy of this email will be sent to Cllrs Whitehead, Millane and Ride.

Complaints of breach of Code of Conduct by Cllr Millane and Cllr Ride

Response by Cllr Millane and Cllr Ride

1. It is nonsensical that the complainant can put in a complaint as a member of the public. He is masquerading as a member of the public and in fact throughout the entirety of the events referred to in the complaint he has used knowledge which he can only have gained as Chairman of Runwell Parish Council. Furthermore this complaint is politically inspired as part of a campaign to discredit us.
2. It is clearly the same complainant as in the data breach matter as quotations are given from the data protection officer's decision letter which was sent only to ourselves and the complainant. All the 'member of the public' attribution is about is trying to demonstrate that he is not acting as a parish councillor so that the code of conduct does not apply to him.
3. In the data breach matter neither the email from the complainant to Cllr Whitehead nor the reply were conditioned by confidentiality and so by referring to matters within the correspondence at the Parish Council meeting, we had not broken any code of conduct rules on preserving confidentiality.
4. We do not accept the complainant's allegation that referring to the correspondence was intended *to incite a potentially volatile situation* or that it was *a deliberate attempt to inflame a situation that had clearly been stage managed since there was nothing on the agenda that could possibly have indicated that the Parish Council was going to discuss the proposed development – only the meeting that had taken place at another venue and was not hosted by the Parish Council*. Any stage management was effected by the complainant. He put Meadow Lane on the agenda.
5. It is disingenuous for the complainant to say no respect was shown to the 'member of the public' by the disclosure of personally identifiable information. The complainant was chairing the Parish Council meeting at the time and was acting in his capacity as such. The level of respect afforded was appropriate for a political opponent.
6. Contrary to the complaint, the issue of Meadow Lane did have a place at the meeting. It is a major issue in the community. Members of the public were aware that it was on the agenda and a number of travellers and members of the community generally attended the meeting for this item. It was important that the public were aware of the initiative and of ward councillors' involvement to stimulate it. Furthermore we had no underlying agenda of divisiveness or in pursuit of social cleansing that we most strongly deny.

7. The Parish Council minutes of the meeting of 6 August 2018 state that *Chelmsford City Councillor Lance Millane read out a comment including references to Land Group negotiations re Meadow Lane and a statement directed at the Chairman*. There is no reference to the contribution made by Cllr Ride nor to the content of the statements made by both of us.
8. With reference to the allegations regarding Cllr Millane solely;
 - 8.1 I do not regard my conduct of May 2016 to have brought the Council into disrepute. I was advised by the Monitoring Officer that I should not have been made aware that an FOI request had been made. Ann Coronel told me I had nothing to answer for.
 - 8.2 With regard to the incident in December 2016, I had visited the City Council Monitoring Officer and was reassured by her that I had nothing to worry about and no breach of anything had occurred.
9. With reference to allegations regarding Cllr Ride solely;
 - 9.1 March 2015 – In the run-up to the City Council election in 2015, this was an attempt by the complainant to discourage people from voting for myself and Cllr Millane. I had not failed to disclose interests. The Monitoring Officer had advised me that it was not necessary to make certain disclosures. She later said that it might be best to make declarations and on both occasions I followed the advice given.
 - 9.2 September 2015 - After an independent investigation, one minor failure to declare an interest was found and was rectified. The Monitoring Officer considered it necessary to give additional advice on this point to all members as she was not sure the position was fully understood.
 - 9.3 June 2017 – This was an oversight and an interest had not been declared as it should have been. Contrary to the complainant's comments, the Monitoring Officer's requirements were fully met by me. An apology was given to the Parish Council and is minuted (Minute 165 -17/18).
 - 9.4 I have never ignored decisions and advice of the Monitoring Officer and have always responded quickly in accordance with them. To suggest that I conduct myself to a different set of standards to those to which all members are required to adhere is a seriously libellous statement which I will pursue separately unless such allegations are withdrawn unreservedly. .
10. We consider that these complaints against us are politically motivated in an attempt to reduce our standing in the local community. Elections are less than six months away and evidently the campaign has already started.

Monitoring Officer's comments

1. Application of the Code of Conduct

1.1 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 Council has reiterated that in its code which provides:

5.1.1.1.1 This Code of Conduct applies to you whenever you are acting in your capacity as a member ... of the Chelmsford City Council including -
...
5.1.1.1.5 In discharging your functions as a ward councillor.

1.2 In the principal situation cited in these complaints, the circumstances surrounding the data breaches the subject of complaint to the Data Protection Officer, both members were acting in their capacities as ward councillors and the code of conduct applied.

1.3 In the two other factual situations described by the complainant in relation to Cllr Millane, relating to events at meetings of Rettendon Parish Council, the councillor was acting either as a ward councillor or as a parish councillor and thus the City Council code of conduct applied if acting as a ward councillor and the Rettendon code of conduct, which mirrors the City Council code, applied if acting as a parish councillor.

1.4 In the case of Cllr Ride, the first and second additional matters referred to concerned whether or not in his capacity as a City Councillor Cllr Ride had properly declared all his interests. The disclosure of interests for the register of interests is a legal requirement and in so doing Cllr Ride was acting within his capacity as a member in matters to which the code applied.

1.5 The third additional matter related to events at a meeting of Rettendon Parish Council when Cllr Ride was acting in his capacity as a member of Rettendon Parish Council to which the Rettendon code applied.

2. The Complaint

Respect the confidentiality of information you receive as a councillor by not disclosing confidential information to third parties unless required by law and only then after receiving confirmation from the Monitoring Officer to do so.

- 2.1 There appears to be consensus between the parties that the events surrounding the data breaches are accurately set out in the Data Protection Officer's decision letter (Appendix 3). The decision by the Data Protection Officer was that Cllr Millane and Cllr Ride both disclosed personally identifiable information without the complainant's consent. Those disclosures enabled the complainant to be identified by persons present at the meeting of Runwell Parish Council and that amounted to a data breach.
- 2.2 It is the complainant's view that the email from the member of the public to the Leader of the Council was confidential and that consequently the disclosure of extracts at the Parish Council meeting was disclosure of confidential information to third parties and breached the above provision of the code.
- 2.3 Cllr Millane and Cllr Ride do not consider that the email was confidential and that having asked the Leader of the Council whether or not the email was confidential, they had been told it was not (see Appendix 3 Paragraph 3).
- 2.4 The Data Protection Officer referred to it as 'the non-confidential email' (see Appendix 3 Paragraph 7, 3rd para) and in the following paragraph stated 'No other sensitive, confidential or otherwise protected data was disclosed.'
- 2.5 The complainant to the data breach complaint was dissatisfied with aspects of the Data Protection Officer's decision and referred the matter to the Information Commissioner's Office. In an email of 22 November 2018 the ICO stated;
- Having looked over the evidence in this case it is clear that a breach of the GDPR did take place in this instance and you are correct in your assertion that it does not need to be reported to the ICO because there is a lack of detriment.*
- With that the ICO closed the case and did not make any reference to the disclosure of confidential material from the email, merely confirmed the Data Protection Officer's finding of data breaches due to the disclosure of personally identifiable information.
- 2.6 The evidence of the events which occurred in the data breach issue are that Cllr Millane and Cllr Ride did not regard the email from the member of the public to the Leader of the Council as confidential as they had asked the question themselves and been told that it was not.
- 2.7 Paragraph 5.1.1.2.1.5 of the code of conduct is written in terms that require a councillor to respect, and so effectively maintain, confidentiality

in information provided. This means that a breach can only occur if the Councillor was aware of the confidential information they received. In this case the councillors were told specifically by the Leader of the Council that it was not confidential and had no reason to question that. As the councillors were told that the document was not confidential a breach of the code for failing to respect the confidentiality of the information cannot have taken place.

2.8 The email was not regarded as confidential, and even if it was the councillors had been told it was not. Consequently if they did not regard it as confidential, there was no confidentiality which needed to be respected. Furthermore disclosure of elements of it could not amount to disclosing to third parties confidential information received as a councillor. Thus it is considered that there have not been breaches of the Code of Conduct.

Respect others

2.9 The complainant considers that the act of disclosing personally identifiable information (the data breaches) by its very nature does not show sufficient respect for the member of the public thereby identified.

2.10 The Councillors consider that this allegation is disingenuous as the complainant is not a bona fide member of the public. Furthermore, the 'member of the public' identified in the data breaches was not bona fide either. Indeed, the Councillors maintain that the two members of the public are one and the same, a person holding public office and a political opponent who is using the member of the public tag to avoid any suggestion that the code of conduct would apply to their behaviour. They consider that the level of respect shown was appropriate for a political opponent.

2.11 Any behaviour which departs from established norms of behaviour in the area can be disrespectful. Different standards will apply in different contexts. Comments are more likely to be disrespectful if they amount to a personal attack or if they are unjustified.

2.12 There is no evidence to weigh up in respect of this matter, just the opinions of the parties as stated in the preceding paragraphs. Accordingly the Committee must reach its own conclusion as to whether by breaching the General Data Protection Regulation Cllr Millane and Cllr Ride failed to respect another person and breached the code of conduct.

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

2.13 With regard to Cllr Millane;

2.14 Incident 31 May 2016 – This was the subject of a formal complaint to the Council to which the then Monitoring Officer responded on 25 July 2016, concluding that there had been no breach of the code of conduct and no further action was taken.

2.15 Incident December 2016 - A complaint was made and the Monitoring Officer concluded that there was no breach of the code as the councillor was not aware that the information disclosed was confidential, a necessary component to the maintenance of confidentiality (similar to paragraph 2.7 above).

2.16 A complaint was also made that revealing the name of the third party amounted to a data breach under the Data Protection Act 1998 and this was upheld by the Planning and Strategic Housing Policy Manager as disclosing the name was disclosure of personally identifiable information.

2.17 In both these additional cases there was no breach of the code of conduct though in the second case there was a data breach. The complainant's allegation is that when taken together with the more recent data breach, Cllr Millane has either deliberately made data breaches or is unaware of his responsibilities but should be.

2.18 There is no statutory or judicial interpretation as to conduct which is likely to bring the Council into disrepute. Generally, it is necessary to consider whether the conduct would make people generally think less of the authority. Misconduct which does not or cannot come to the attention of the outside world will not bring the authority into disrepute.

2.19 There is no evidence that the conduct referred to above has brought the Council into disrepute to date.

2.20 The Committee must decide whether the two data breaches made by Cllr Millane amount to conduct likely to bring the Council into disrepute.

2.21 With regard to Cllr Ride;

- 2.22 Incident March 2015 – against the allegation of failure to declare interests Cllr Ride maintains that he followed the advice of the Monitoring Officer not to make certain disclosures and later when the Monitoring Officer changed her mind and advised it would be best to do so, he complied with the advice.
- 2.23 Incident September 2015 -This matter was investigated independently and the investigator found that the majority of the conduct complained about had been undertaken before Cllr Ride became a councillor or in his capacity as a private individual. The code of conduct was not applicable in such circumstances.
- 2.24 The investigator concluded that on his declaration of interests form Cllr Ride should have been more explicit as to his property ownerships and whilst the investigator regarded this as a breach of the code he accepted that Cllr Ride appeared to have made a genuine and understandable mistake given the complex history of the property and there was no intention to deceive. There was no evidence that the failure has improperly advantaged Cllr Ride.
- 2.25 The Governance Committee at its meeting on 26 April 2016 agreed that this could be resolved by an informal resolution whereby Cllr Ride submitted an appropriately explicit declarations of interest form which he did along with a personal statement. The outcome of the informal resolution was noted by the Committee at its meeting on 30 June 2016 and there was no finding of a breach of the code.
- 2.26 Incident June 2017 – The Monitoring Officer received a complaint that Cllr Ride had failed to declare an interest disclosed on his register of interests form at a meeting of Rettendon Parish Council. Cllr Ride acknowledged the oversight, apologised and informed the Parish Council. This did amount to a breach of the code but was not regarded as serious or with any intention to deceive and his behaviour at the meeting was consistent with that required had such interest been declared.
- 2.27 There is no evidence that the conduct referred to above has brought the Council into disrepute to date.
- 2.28 The three incidents all concern declarations of interest and have all been resolved informally. The Committee must decide whether these incidents give rise to conduct by Cllr Ride which is likely to bring the Council into disrepute.**

PART 5.1.1

COUNCILLORS CODE OF CONDUCT

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5.1.1.1 APPLICATION OF THE CODE

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|-----------|---|
| 5.1.1.1.1 | 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 Chelmsford City Council including- |
| 5.1.1.1.2 | At formal meetings of the Council, its Committees and Sub-Committees, its Cabinet or cabinet working groups and other meetings at which business of the Council is discussed. |
| 5.1.1.1.3 | When acting as a representative of the Council. |
| 5.1.1.1.4 | In taking any decision as a Cabinet member or as a Ward Councillor. |
| 5.1.1.1.5 | In discharging your functions as a Ward Councillor. |
| 5.1.1.1.6 | At briefing meetings with officers. |
| 5.1.1.1.7 | At site visits or other visits to do with the business of the Council. |
| 5.1.1.1.8 | When corresponding with the Council other than in a private capacity. |

5.1.1.2 GENERAL CONDUCT

- | | |
|-------------|--|
| 5.1.1.2.1 | You must- |
| 5.1.1.2.2.1 | Provide leadership to the Council and communities within its area, by personal example. |
| 5.1.1.2.1.2 | Respect others and not bully any person. |
| 5.1.1.2.1.3 | Recognise that officers (other than political assistants) are employed by and serve the whole Council. |
| 5.1.1.2.1.4 | Respect the confidentiality of information which you receive as a Councillor by- |
| 5.1.1.2.1.5 | <ul style="list-style-type: none"> (i) 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 (ii) Not obstructing third parties' legal rights of access to information. |
| 5.1.1.2.1.6 | Not conduct yourself in a manner which is likely to bring the Council into disrepute |
| 5.1.1.2.1.7 | Use your position as a Councillor in the public interest and not for personal advantage. |

- 5.1.1.2.1.8 Accord with the Council's reasonable rules on the use of public resources for private and political purposes.
- 5.1.1.2.1.9 Exercise your own independent judgement, taking decisions for good and substantial reasons by-
- (i) Attaching appropriate weight to all relevant considerations including, where appropriate, public opinion and the views of political groups.
 - (ii) Paying due regard to the advice of officers, and in particular the advice of the statutory officers, that is the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer.
 - (iii) Stating the reasons for your decisions where those reasons are not otherwise apparent.
- 5.1.1.2.1.10 Account for your actions, particularly by supporting the Council's scrutiny function.
- 5.1.1.2.1.11 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 the law.
- 5.1.1.3 DISCLOSABLE PECUNIARY INTERESTS**
- 5.1.1.3.1 You must-
- 5.1.1.3.1.1 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,
- (i) 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.
 - (ii) 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.
 - (iii) 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.
- 5.1.1.3.2 "Meeting" means any meeting organised by or on behalf of the Council and in particular in the circumstances as set out in paragraph 5.1.1.1 of this Code.

5.1.1.4 OTHER INTERESTS

5.1.1.4.1 In addition to Paragraph 5.1.1.3, 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.

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

5.1.1.4.2.1 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 Tax payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the Council's administrative area;

5.1.1.4.2.2 It relates to an interest concerning either of the following-

- (i) Any person or body who employs or has appointed you;
- (ii) 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.

5.1.1.5 REGISTRATION OF INTERESTS

5.1.1.5.1 Where you are required to notify the Monitoring Officer as to any interest registerable under the Localism Act 2000 or this Code, you should do so using the City Council's agreed Notice of Registerable Interests form.

5.1.1.5.2 The Monitoring Officer has issued guidance in the form of a Constitution Practice Note to assist in your completion of the Notice, but it is your responsibility to ensure that the content of the Notice is accurate, complies with the legal requirements and that all registerable interests are notified to the Monitoring Officer within the appropriate timescales.

5.1.1.6**GIFTS AND HOSPITALITY****5.1.1.6.1**

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.

5.1.1.6.2

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

5.1.1.6.3

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.

Annex**Definition of 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-

Interest	Prescribed Description
Employment, office, trade, profession or vocation	Any Employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the 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
Contracts	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- (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged
Land	Any beneficial interest in land which is within the area of the 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
Corporate tenancies	Any tenancy where (to M's knowledge) – (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest
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 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

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.

