

Governance Committee Agenda



14 February at 2pm

**Marconi Room, Civic Centre, Duke Street,
Chelmsford, CM1 1JE**

Membership

Councillor H. Ayres (Chair)

and Councillors

K. Bentley, N.A. Dudley, D.G. Jones, M. Steel, A.G. Thorpe-Apps,
and N.M. Walsh

Parish Council Representatives

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

Local people are welcome to attend this meeting, where your elected Councillors take decisions affecting YOU and your City. There is also an opportunity to ask your Councillors questions or make a statement. These have to be submitted in advance and details are on the agenda page. If you would like to find out more, please telephone Daniel Bird in the Democracy Team on Chelmsford (01245) 606523 or email daniel.bird@chelmsford.gov.uk.

Governance Committee

14 February 2023

AGENDA

1. Apologies for Absence

2. Minutes

To consider the minutes of the meeting held on 18 January 2023

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 Complaints 18 and 31-35/21 Investigation and Hearing Report

This item will determine the 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.

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.

MINUTES OF THE GOVERNANCE COMMITTEE

18 January 2023 at 7pm

Present:

Councillor H. Ayres (Chair)

Councillors K. Bentley, N.A. Dudley, D.G. Jones and M. Steel

Also in attendance –

Parish Councillor V Chiswell

Independent Person –
Mrs P Mills

1. Apologies for Absence

Apologies for absence were received from Councillors Thorpe Apps, Walsh, the Independent person Mrs Gosling, Parish Councillor Jackson and Mrs Saltmarsh.

2. Minutes

The minutes of the meeting on 31st October 2022 were confirmed as a correct record.

3. Declarations of Interest

All Members were reminded to declare any Disclosable Pecuniary interests or other registerable interests where appropriate in any items of business on the meeting's agenda. None were made.

4. Public Question Time

No questions were asked or statements made by members of the public.

4. Chair's Announcements

No Announcements were made.

6. Monitoring Officer Report

The Committee received a report from the Monitoring Officer on the latest statistical data for complaints under the standards regime. The Committee heard that one hearing was outstanding and had now been set for the 14th of February. It was noted that three complaints had been received in 2022, which had been significantly less than in 2021. The Committee also heard that the City Council continued to encourage all Parishes to adopt the model code and quarterly meetings with parish clerks had continued to take place. It was noted that training sessions on the model code had also been continuing, with attendance by both City and Parish Councillors. It was noted that under the model code, it could now be a breach of the code if a Councillor refused to attend training in the future.

The Committee were also updated on the Independent Person recruitment process, and it was noted that one applicant had already been shortlisted. The Committee also heard that reviews of the Employee Code of Conduct and Whistleblowing Policy had taken place.

RESOLVED that;

1. the current statistical information as to complaints made be noted and published on the website;
2. the position in relation to the adoption of the model code of conduct at parish tier councils be noted;
3. the position concerning the review of the Employee Code of Conduct and Whistleblowing Policy be noted and;
4. the recruitment of a further Independent Person be noted.

(7.02pm to 7.14pm)

7. Review of Standards complaints procedures

The Committee received an update in relation to the review of the Council's Standards complaints procedure. It was noted that a periodic review had taken place to ensure compliance with changes in legislation and also in light of the high level of complaints in 2021. It was noted that a review of the investigation procedure would take place at a later date. The Committee were informed of a number of minor changes, that were detailed as tracked changes in the appendix. The Committee heard that the majority of those simply sought to clarify and provide more detail as to the current process.

In response to points raised by the Committee, it was noted that;

- the use of the word Council or City/Parish would be clarified.
- paragraph 1.4 that detailed the Monitoring Officer would be moved earlier in the document.

- Paragraph 4.2.3, referred to a report being provided to the Parish clerk not the full Parish Council.
- Paragraph 6.1 would be amended to clarify the involvement of an Independent Person at this stage.
- As part of the next step, when updating the investigation procedure, a flowchart style summary would be considered.

The Independent Person also stated they were supportive of the changes, which made the process a lot clearer for the reader.

RESOLVED that the proposed changes be approved.

(7.15pm to 7.28pm)

8. Work Programme

The Committee received a report updating them on their work programme. The hearing date of 14th February at 2pm was noted.

RESOLVED that the work programme be agreed.

(7.29pm to 7.33pm)

9. Urgent Business

There were no items of urgent business.

The meeting closed at 7.33pm.

Chair



Chelmsford City Council Governance Committee

14 February 2023

Standards Complaints 18 & 31-35/21 Investigation and Hearing Report

Report by:
Monitoring Officer

Officer Contact:
Lorraine Browne, Legal & Democratic Services Manager & Monitoring Officer,
lorraine.browne@chelmsford.gov.uk, 01245 606560

Purpose

To update members in relation to six complaints alleging breaches of the Rettendon Parish Council Code of Conduct by 7 councillors. To undertake a hearing in relation to the allegations concerning two councillors - Cllr Roy Hart and Cllr Mark Fleming.

Recommendations

1. To consider and determine whether there have been breaches of the code of conduct by Cllr Roy Hart and Cllr Mark Fleming, and if so what, if any, action should be taken.
 2. To note the outcome of the complaints in relation to Cllrs Denise Fleming, Sandie Cottey, James Knight, David Philips and Ray Ride
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1. Background

- 1.1 A complaint was received by the Monitoring Officer in April 2021 by Cllr Mark Fleming who alleged that Cllr Roy Hart had breached the code of conduct. This complaint was referred for investigation. In December 2021 5 further complaints were received by two other parish councillors. The allegations all relate to the registration or registration and declaration of interests by 7 parish councillors. The Monitoring Officer decided (in consultation with an Independent Person) to refer all complaints for investigation together by the same external investigator.
- 1.2 The investigator reported back their views concerning all the complaints and allegations. The Committee is asked to hear and determine whether there has been any breaches of the Rettendon Parish Council Code of Conduct (and if so any appropriate action that should be taken) in respect of the allegations against Cllr Roy Hart and Cllr Mark Fleming.
- 1.3 In relation to the remaining 5 councillors these have been dealt with administratively in consultation with an Independent Person and the Monitoring Officer has sent warning/reminder letters to the councillors concerned. The complaints regarding those councillors have been completed and no further action will now be taken. Committee members are asked to note this outcome.

2. Alleged breaches to be considered by Committee

- 2.1 The complaints against the councillors are set out within an investigator's report which can be found at Appendix 2. The external investigator's report provides an overview of the complaints together with the background and the conclusions reached in relation to each allegation. The report also includes some helpful guidance in relation to dispensations for committee members consideration. The Committee approved updated Dispensation guidance at its meeting in October 2022. This has been included at Appendix 3. The Committee is asked to make a formal determination in relation to the allegations concerning Cllrs Hart and M Fleming.
- 2.2. An overview of the matters for decision are as follows:
- 1. Whether Cllr Hart – failed to declare his interest in relation to the grant application for the Bell Fields Charities at a Parish Council meeting on 30 March 2021?
 - 2. Whether Cllr Mark Fleming failed to keep his register of interests up to date and whether his participation in the meeting on 30 March 2021 was improper?

3. Relevant procedures

- 3.1 The determination of complaints alleging breaches of the code of conduct by councillors 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 will consult an Independent Person before taking a decision to investigate a complaint.
- 3.2 The Committee should conduct a hearing to receive the report of the Investigating Officer and to hear the representations of the Councillor(s) against whom the allegations are made. Before reaching decisions on the complaints the advice of the Independent Person must be sought.
- 3.3 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 – Hearing Procedure for standards complaints

Appendix 2 - Final investigation report

Appendix 3 – City Council Dispensation guidance

Background papers:

Nil

Corporate Implications

Legal/Constitutional: These are set out in the report

Financial: None

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: None

Risk Management: None

Equality and Diversity: None

Health and Safety: None

Digital: None

Other: None

Consultees: None

Relevant Policies and Strategies:

Complaints Procedure and Dispensation Guidance

PART 5.1.2 ANNEX 5

GOVERNANCE COMMITTEE HEARING PROCEDURE

<u>ITEM NO.</u>	<u>PROCEDURE</u>	<u>NOTES</u>
1.	<p><u>Quorum</u></p> <p>1.1 Three voting members must be present throughout the hearing to form a quorum.</p> <p>1.2 Where the complaint refers to a Parish Councillor a co-opted Parish Councillor of the Governance Committee should be present.</p> <p>1.3 The Governance Committee shall nominate a Chair for the meeting, where neither the Chair nor Vice Chair of the Committee are in attendance.</p>	
2.	<p><u>Opening</u></p> <p>The Chair will-</p> <p>2.1 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.</p> <p>2.2 Ask all present to introduce themselves.</p> <p>2.3 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.</p>	

3.	<p><u>The Complaint and Investigator's Findings</u></p> <p>3.1 The Investigating Officer will be invited to present their report, including any documentary evidence or other material, and to call any witnesses they require.</p> <p>3.2 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.</p> <p>3.3 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.</p>	<p>3.1.1 The report and other information referred to must be based on the complaint made to the Council and no new points will be allowed.</p> <p>3.2.1 This is the subject Councillor's opportunity to ask questions arising from the Investigator's report only and not to make a statement</p>
4.	<p><u>The Councillor's Case</u></p> <p>4.1 The Subject Councillor or their representative may present their case and call any witnesses in support.</p> <p>4.2 The Investigating Officer may question the subject Councillor or witnesses.</p> <p>4.3 Members of the Committee may question the Subject Member or witnesses.</p>	<p>4.1.1 Only evidence related to the information in the Investigator's Report will be allowed, not new evidence or issues.</p>
5.	<p><u>Summing Up</u></p> <p>5.1 The Investigator may sum up the Complaint.</p> <p>5.2 The Member or their representative may sum up their case.</p>	
6.	<p><u>The Decision</u></p> <p>6.1 The Committee will leave the room to consider the case presented in consultation with the Independent Person,</p>	<p>6.1.1 This will include voting and non-voting co-opted members of the Committee</p>

	<p>if present, and may request the Monitoring Officer or other legal advisor to the Committee to accompany them.</p> <p>6.2 On the Committee's return the Chair will announce the Committee's decision, namely that either-</p> <ul style="list-style-type: none"> • 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. <p>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-</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>6.5 On the Committee's return the Chair will announce the Committee's decision.</p> <p>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</p>	<p>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.</p> <p>6.6.1 This will include the publication of a decision on the Council's website and</p> <p>6.6.2 A copy will be sent to</p>
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	appropriate.	the subject Councillor, complainant(s) and where appropriate the relevant Parish or Town Council.
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Independent investigation into
a complaint from

Councillor Mark Fleming

concerning

Councillor Roy Hart

and complaints from

Councillor Barbara Wright &
Councillor Hazel Dale-Evans

concerning

Councillor Sandie Cottee
Councillor Denise Fleming
Councillor Mark Fleming
Councillor James Knight
Councillor David Phillips
Councillor Ray Ride

all of

Rettendon Parish Council

26 May 2022

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1: Executive Summary

- 1.1 In April 2021, Councillor Mark Fleming, Chair of Rettendon Parish Council (the Parish Council) submitted a complaint to Chelmsford City Council's Monitoring Officer about the conduct of Councillor Roy Hart, also a member of the Parish Council.
- 1.2 Councillor Fleming alleged that Councillor Hart, as a Trustee of the 'Bell Fields Charities', failed to declare the necessary interest at a meeting of the Parish Council on 30 March 2021. It was alleged that instead, Councillor Hart chose to involve himself directly in discussions and a vote concerning the awarding of a grant from the Parish Council to the Bell Fields Charities.
- 1.3 In December 2021, Councillors Barbara Wright and Hazel Dale-Evans, both members of the Parish Council, submitted complaints to Chelmsford City Council's Monitoring Officer regarding the conduct of the following members of the Parish Council: Councillor Sandie Cottee, Councillor Denise Fleming, Councillor Mark Fleming, Councillor James Knight, Councillor David Phillips and Councillor Ray Ride.
- 1.4 Councillors Wright and Dale-Evans alleged that all six councillors failed to include their respective positions as Trustees of the Bell Fields Charities in their Register of Member's Interests within the 28 days required following their appointment on 20 July 2021. In her complaints, Councillor Wright noted that Councillors D Fleming and Ride were already Trustees and that Councillor M Fleming had previously been a Trustee (since 2017), and yet none of them had included their respective positions at those times either.
- 1.5 In one of her complaints, Councillor Wright also questioned whether Councillor Mark Fleming had acted properly when resigning as a Trustee in March 2021 in order to participate in awarding the Bell Fields Charities a grant at the Parish Council meeting of 30 March 2021.
- 1.6 Finally, Councillor Dale-Evans expressed concern about the involvement of the Bell Fields Charities' Trustees in the Parish Council's decision of 30 November 2021 to amend their standing orders so as to allow Parish councillors (rather than the Clerk) the ability to award dispensations: *"I would further say that a move for a vote for dispensation has arisen (and was passed) without sufficient explanation as to the purpose of this move and this has consolidated the position of conflict of interest and risks bringing the council into disrepute."*
- 1.7 The relationship between the Parish Council and the Bell Fields Charities has since 2017 been hugely contentious and expensive. In our view it has fuelled a personal animosity that now appears to exist between certain councillors and likely damaged the reputation of the Parish Council as a whole; at times, significantly affecting its ability to function effectively for the benefit of parishioners.

- 1.8 The investigation into the complaints referred to above has highlighted several potential breaches of the Code. Some councillors have simply not paid close enough attention to ensuring that their Register of Interests are kept up to date, while others appear to have wilfully ignored their responsibility under the Code so as to continue to pursue their own agenda in relation to the Bell Fields Charities.
- 1.9 When considering what action should be taken to address these matters, we are not sure that pursuing those complaints that concern failures by numerous members to update their respective Register of Interests to determination stage would be the best use of public resources, especially given that those members have now made the necessary inclusion. Instead, we recommend that the Monitoring Officer take 'other action', by directing all Parish councillors to schedule time with either her or the Clerk to go through their Register and ensure that it is up to date and accurate. We would remind members that it is their personal responsibility to ensure that these documents are filled in properly and in a timely manner.
- 1.10 That said, we consider that Councillor Hart's failure to comply with the Code at the Parish Council meeting of 20 March 2021 must be viewed more seriously, given that he knowingly chose to participate in a decision concerning the awarding of a grant to the Bell Fields Charities despite having been directly advised not to do so by the Monitoring Officer. As such, we are of the view that this matter need be referred to the Council's Standards Committee so that a formal decision can be made.
- 1.11 We are also of the view that the concerns expressed about Councillor Mark Fleming's participation during the same meeting also be referred for a standards hearing. While Councillor Fleming appears to have believed that his resignation as a trustee allowed for his full participation as Chair of the Parish Council to award the grant, we consider his involvement an improper use of his position.
- 1.12 Finally, we would encourage all members to use this as an opportunity to discuss with each other and the Monitoring Officer how the Parish Council might best deal with matters relating to the Bell Fields Charities in the future, including whether / what type of dispensations are appropriate. When doing so, Members should also be reminded of their responsibility not to participate in decisions where they might be biased / predetermined.

2: Councillors' official details

2.1 We have confirmed that the following are all members of Rettendon Parish Council who have agreed to abide by the Parish Council's Code of Conduct

- Councillor Sandie Cottee
- Councillor Denise Fleming
- Councillor Mark Fleming
- Councillor Roy Hart
- Councillor James Knight
- Councillor David Phillips
- Councillor Ray Ride

3: Relevant legislation and protocols

The Localism Act 2011

- 3.1 Section 27 of the Localism Act 2011 (the Act) provides that a relevant Authority must promote and maintain high standards of conduct by members and co-opted members of the Authority. In discharging this duty, the Authority must adopt a code dealing with the conduct that is expected of members when they are acting in that capacity. For the purposes of this investigation, the relevant Authority is Rettendon Parish Council.
- 3.2 Section 28 of the Act provides that the Authority must secure that its Code of Conduct is, when viewed as a whole, consistent with the following principles: - Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty; Leadership.
- 3.3 Under 28(6) of the Act, Local Authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision by the appointment of the Authority of at least one “independent person” whose views are to be sought, and taken into account, by the Authority before it makes its decision on an allegation that it has decided to investigate. For the purposes of this investigation, the relevant Authority is Chelmsford City Council.
- 3.4 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.

Rettendon Parish Council's Code of Conduct

- 3.5 Under Section 27(2) of the Localism Act the Council established a Code of Conduct for members (the Code).
- 3.6 The Code most recently adopted by the Parish Council (on 29 June 2021) includes the following paragraphs:

Protecting your reputation and the reputation of the local authority

9. Interests

As a councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority. You need to register your interests so that the public, local authority

employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer. [...]

Appendix B Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in Table 2

(Other Registerable Interests).

"Disclosable pecuniary interest" means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.

3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Nonparticipation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in Table 1, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest.

Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

Disclosure of Other Registerable Interests

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which directly relates to one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non- Registerable Interests

7. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

8. Where a matter arises at a meeting which affects –

- a. your own financial interest or well-being;
- b. a financial interest or well-being of a friend, relative, close associate; or
- c. a body included in those you need to disclose under Disclosable Pecuniary Interests as set out in Table 1 you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter affects your financial interest or well-being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest. [...]

Table 2: Other Registerable Interests

You have a personal interest in any business of your authority where it relates to or is likely to affect:

- a) any body of which you are in general control or management and to which you are nominated or appointed by your authority
- b) any body
 - (i) exercising functions of a public nature
 - (ii) any body directed to charitable purposes or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

3.7 Prior to the 29 June 2021, the Parish Council's Code provided the following in relation to Interests

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

Our appointment

- 4.1 The Council's Monitoring Officer appointed Alex Oram of ch&i associates to conduct the investigation. Alex has been conducting member conduct investigations since 2003. He was previously employed by Standards for England as its principal investigator who was responsible for conducting many of their most complex, politically sensitive, and high-profile investigations into member conduct.

The complaints

- 4.2 In his complaint against Councillor Roy Hart, Councillor Mark Fleming stated:

"On 23 March 2021, RPC's clerk sent email to those members of RPC who are also trustees of the "Bell Fields" charities. This included clear advice from CCC MO, Lorraine Browne, regarding how these members should behave if RPC is asked to consider a grant application from the trustees of either charity. The agenda for RPC's meeting on 30 March 2021 included (item 202-20/21) a request for RPC to consider and possibly agree a grant application from the trustees. As chair of the meeting, I asked our clerk to remind members of the advice received on 2 separate occasions during the meeting. Despite having received advice from the MO in writing via our clerk regarding this specific situation, Cllr Hart failed to declare an interest in this item at all during the meeting, took an active part in discussion of the matter, and then voted. (Other councillors who are also trustees followed the MO's advice, ie they duly declared their interest, took no part in the discussion and did not vote.) Cllr Hart's behaviour was witnessed by all other members of RPC, by the clerk, and by various members of the public. The meeting was recorded. Given the advice from the MO well in advance of the PC meeting, it seems Cllr Hart has breached the code of conduct, specifically: - failure to declare an interest (5.1.1.4.1) - failing to exercise independent judgement by ignoring advice from a statutory officer (5.1.1.2.1.9) - failure to apply the Nolan principles (5.1.1.2.1.11).¹

- 4.3 In her complaints, Councillor Wright alleged that following the Parish Council's decision to appoint Councillors M Fleming, D Fleming, Ride, Phillips, Knight and Cottee as Trustees the Allotment for the Labouring Poor, and the Allotment for the Exercise and Recreation, all six councillors failed to update their respective Register of Member's Interests within the 28 days required by the Localism Act 2011. Councillor Wright pointed out that Councillor Denise Fleming and Councillor Ray Ride were already Trustees at this time and that Councillor Mark Fleming had been a Trustee since 2017 (again, all omitted from their respective Registers), resigning the position in March 2021 for the sole purpose of using his position as a Parish councillor to award the Bell Fields Charities a grant the following month.

¹ These are references to the City Council's Code of Conduct, rather than the Parish Council Code.

- 4.4 Councillor Dale-Evans also complained that the six councillors referred to above failed to include their positions as Trustees in the Bell Fields Charities in their respective Register of Member's Interests within the required time. In addition, Councillor Dale-Evans stated: *"I would further say that a move for a vote for dispensation has arisen (and was passed) without sufficient explanation as to the purpose of this move and this has consolidated the position of conflict of interest and risks bringing the council into disrepute."* Councillor Dale-Evans also expressed concern to the grant that was awarded by the Parish Council to the Bell Fields Charities in April 2021, stating that since that time *"there has been little information as to progress since that date, contrary to the policy of this council."*

Our approach

- 4.5 During this investigation we reviewed documentary evidence obtained from the City Council, relevant Parish councillors and on various publicly available websites. We watched a recording of a relevant meeting, which was conducted via videoconference. And we also interviewed Councillor Mark Fleming, Councillor Denise Fleming, Councillor Barbara Wright, Councillor James Knight, Councillor Roy Hart, and Councillor Hazel Dale Evans.² Our draft report and provisional recommendations were sent to all relevant parties to give them an opportunity to comments; we received written responses from Councillors Phillips, Cottee, Wright and Dale-Evans. We have carefully considered the points they raised before finalising this report.

The evidence

Background

- 4.6 On 5 December 1861 by an award made under the Inclosure Act 1845, two plots of land within the parish of Rettendon in Essex were allotted for the benefit of the local inhabitants. It is common ground that the allotments created two separate charitable trusts (the Bell Fields Charities). The first charity (the "Allotment for the Exercise and Recreation", charity number 271480) was established under the Award by the allotment to the "Churchwardens and Overseers of the Poor of Rettendon of a parcel of land (numbered lot 44) forming part of what is now known as the Bell Fields. The second charity (the "Allotment for the Labouring Poor", charity number 271479) was established under the award by the allotment to the "said Churchwardens and Overseers of the Poor" of a second parcel of land (numbered lot 43) also forming part of Bell Fields, "to be held by them and their successors in Trust as an allotment for the Labouring Poor of Rettendon.
- 4.7 Until 2013 it was common ground that the Parish Council was the sole trustee of the Bell Fields Charities. On 20 May 2013, members of the Parish Council voted for five of their number to be appointed as Trustees.

² Councillors Ride, Cottee and Phillips were given the opportunity to speak with us.

- 4.8 At the Parish Council elections in May 2015, many longstanding councillors either chose not to stand again or lost their seats. It was at this point that concerns over the trusteeship of the Bell Fields Charities emerged. The minutes of the annual general meeting held on 18 May 2015 record under item 25, "Upper and Lower Bell Field": *"Agreed: professional charity law advice re: the charity status of the two above charities based on historic documentation to be received and guidance re: a governing document, trustees responsibilities and liabilities, etc etc to be sort [sic] by the Clerk."*
- 4.9 The advice was sought after the existing trustees refused to recognise the authority of the Parish Council to appoint new trustees. Their position was that only existing trustees could elect their successors (on a four-year cycle). The majority of the Parish Council at that time believed that the authority to elect trustees remained with the Parish Council.
- 4.10 On 25 July 2017, at an extraordinary general meeting of the Parish Council, Members passed a resolution by which the following members of the Council were "affirmed" in their appointment as trustees of the Bell Fields Charities: Councillors Ride, D Fleming, Jones, M Fleming and Copsey. Councillor Hart, who refused to recognise the legitimacy of the newly elected members, is recorded as saying that he was already an official trustee.
- 4.11 On 21 July 2020, the dispute was heard in the High Court³. Justice Zacaroli concluded *"that the [Parish] Council has the power... to appoint others to trustees of the charities, but that any such appointment is limited to a period of four years, and it is the council alone that has the power to appoint further trustees whether at the end of the relevant four-year term or to fill any vacancies in the interim."* As such, it was decided that the four-year term of those Trustees appointed in May 2013 ended in 2017; and that those councillors who were appointed at the meeting of 25 July 2017 were the valid trustees of the Bell Fields Charities up until July 2021, at which time the Parish Council would have the power to elect new trustees. Justice Zacaroli also found though that at the meeting of 25 July 2017, the Parish Council had implicitly approved of Councillor Hart continuing as a trustee despite him not being formally appointed.
- 4.12 Importantly in terms of the allegation against Councillor Hart - Justice Zacaroli also found that at the meeting of 25 July 2017, the Parish Council implicitly approved of Councillor Hart continuing as a trustee, despite him not being formally appointed.
- 4.13 Despite the Court confirming the identity of the legal Trustees on 21 July 2020, only Councillor Hart included the position in his Register of Member's Interests. Those councillor / trustees who did not include Councillor Mark Fleming, Councillor Denise Fleming and Councillor Ride.

³ *Rettendon Parish Council v [Councillor] Hart, Mrs Copsey, Mrs Clark, Mrs Prebble, Mr Harvard, Mr Marshall and Her Majesty's Attorney General*

- 4.14 The Parish Council subsequent claimed for their costs to be paid by Councillor Hart and his fellow defendants. This claim though was dismissed in the High Court on 23 November 2020.

Monitoring Officer's advice

- 4.15 On 30 November 2020, the City Council's Monitoring Officer (at the request of the Parish Clerk, made shortly after the High Court's decision on costs) emailed the Parish Clerk with detailed advice as to how members of the Parish Council should register and manage interest in the Charities.
- 4.16 The Monitoring Officer's advice was as follows:

Registration of Interests in relation to Bell Field Trusts

Under the Parish Council's Code of Conduct, all Councillors are required to register and keep up to date the register of interests which must include all Disclosable Pecuniary Interests (DPI) as well as Other Pecuniary Interests (OPI) and Non-Pecuniary Interests (NPI). DPI's are set out in regulations and must be included in the Code of Conduct whilst Councils can adopt further interests as necessary which include OPIs and NPIs. The register of interests form provides the various categories of interests that should be registered. All councillors have a responsibility for ensuring that their register of interests is updated and relevant interests declared is very much an integral part of maintaining high ethical standards and ensuring public confidence in the decisions taken by public bodies.

Being a trustee will normally fall within the NPI category as a membership a) to which a councillor has been appointed or nominated by the Council and/or c) directed towards charitable purposes. I understand that currently Cllrs Hart, D Fleming, M Fleming and Ride are all trustees. I have checked the register of interests for all 4 councillors and only Cllr Hart's current register mentions the Bell Field Trusts. Given the position in relation to the trusts has now been confirmed by a court I would ask that the remaining 3 trustees update their register of interests and provide me with their updated forms. I would ask that this oversight be addressed as quickly as possible. I note that Cllr Hart has included the trust in the OPI section of his form. Should any councillor wish to discuss this further I would be happy to schedule an appointment to explain this further and would ask that contact is made through the parish clerk so that arrangements can be made.

Declaration of Interests in relation to the Bell Field Trusts at Parish meetings

In the meantime, should any matters that relate to the trust arise at a meeting where any of the 4 trustee councillors are present, each councillor in attendance must at the very least declare that they have an NPI in the item at a meeting. The Councillors will also need to carefully consider

their position in relation to predetermination / bias as set out below first. However, a Member who only has an NPI (and is not pre-determined or biased - see below for further information concerning this) must declare their interest but can remain in a meeting, participate and vote. There is nothing to prevent a clerk from politely reminding Members whether they would wish for their interest as a trustee to be declared and noted in the minutes. This may help encourage members generally to do so in future and avoid technical breaches of the Code of Conduct. I do note from some of the parish minutes that I have seen that some parish councillors have made declarations of interests in relation to unconnected matters, including one of the trustees at a recent meeting.

Potential Bias/Pre-determination in relation to parish business relating to Bell Field Trusts

Advice has been given by myself and previous Monitoring Officers concerning this. Lawful decision making by local authorities and public confidence in decisions reached for the communities served depends upon councillors withdrawing from cases where this is the right thing to do and specifically where any councillor is unable to judge the public interest objectively as a result of actual or perceived bias or indeed pre determination. I would ask each councillor whether they are genuinely open to consider the available options in reaching a decision in the public interest and/or whether they have already made their mind up before any discussion or meeting takes place. Failure to adhere to these rules renders any decision reached by the Parish Council open to challenge and illegality. I note that Rettendon Parish Council has 9 seats and that a quorum for decision making would ordinarily be 3 councillors. I have not looked in detail at the Parish Council meeting rules and would be happy to discuss how to achieve a quorum further if that would be helpful, particularly in view of remote meetings.

To recap I would ask that following actions are taken:-

- Cllrs D & M Fleming and Ride update their register of interests so as to include the trusts.
- In the meantime, any issues relating to the trusts that arise during parish meetings at which any of the 4 trustees are present they must at the very least declare their NPI.
- All 4 trustees (and potentially other parish councillors) should also consider their position concerning predetermination / bias and if this arises, they must declare their biased / pre-determined position and withdraw from the meeting/consideration of the issue.
- Should any councillor (or the clerk) wish for any clarification contact is requested via the clerk.

- 4.17 On 1 December 2020, Councillor Mark Fleming emailed the Parish Clerk with updated Register of Members' Interests forms ('Register') for himself and Councillor Denise Fleming. Both now included their respective position as Trustee of the Charities in Section 3 Part 1, where councillors are required (under their Code, but not any wider legislation) to record their registerable non-pecuniary interests (NPIs)⁴. Unfortunately, the Parish Clerk did not forward these forms on to the City Council's Monitoring Officer, and therefore the version of their respective Register that appeared on the City Council's website did not reflect the change.
- 4.18 I have no record of Councillor Ride, who was Chair of the Trustees, updating his own Register at this time.

Meeting of 3 December 2020

- 4.19 At the Parish Council meeting of 3 December 2020, Councillor Hart used the public forum part of the meeting to read a position statement about the High Court case. Councillor Hart claimed that the Parish Council had lost the substantive parts of the case, which was demonstrated by the Judge's words and lack of costs award. Councillor Hart pointed out that it had been confirmed that he was a Trustee and that he had acted reasonably when relying on the original legal advice provided by Birkett Long. Councillor Hart went on to question whether those Parish councillors who had voted to spend twice the annual precept on the legal case against him without insurance had been negligent; and asked whether they had insurance to reimburse residents or whether it would come from their own pockets. Councillor Hart went on to state that if the Parish Council chose to appeal, he would hand his case to a QC, which would incur costs recoverable from the Parish Council. He said he was saying this to be on record, not as a threat.
- 4.20 Councillor Hart did then declare a non-pecuniary interest in Items 132-20/21 and 133-20/21, which concerned ownership of the Bell Fields and whether they wished to appeal any part of the High Court judgement. Members unanimously voted to take no further action with regards the matter.
- 4.21 Councillor Hart told us at interview: *"That court case took a big toll on me, it lasted 3 years and I lost £11,000, meanwhile they (the Parish Council) lost around £100,000 because they didn't get insurance, despite being told to. They've taken over the Bell Fields. Now it's on their asset list and they are passing all these things. All of this money and turmoil just for me not to earn a single penny in order to protect the bell fields for the residents whom they were awarded to."*

Grant application from the Trust

⁴ **NPI Category 1: MEMBERSHIPS** - Your membership of or the fact that you are in a position of general management and control of a body that falls within one or more of the following descriptions:
a. to which you have been appointed or nominated by the Council
b. exercising functions of a public nature
c. directed towards charitable purposes
d. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

- 4.22 In early 2021, Trustees decided to apply for a grant from the Parish Council to assist to cover costs with regards to the maintenance of Bell Fields. Councillor Mark Fleming told us that the village largely supported use of the Bell Fields for football, however the hire to the football club was not enough to meet the costs. He explained that long term the Trust hoped to seek other forms of revenue, such as sponsorship. Immediate shortfalls though needed to be covered.
- 4.23 On 29 March 2021, Councillor Mark Fleming resigned his position as a Trustee. In his resignation letter to Councillor Ride (as Chair of the Trustees) he wrote: *"The volume of correspondence over the last few days regarding the trustees' grant application to Rettendon Parish Council has caused me to reflect on my roles as trustee and chair of RPC. My conclusion is that I can better serve the residents of the parish by eliminating any perceived or potential conflict of interest arising from the two roles, and that, of the two, the role I should focus on is that for which I was elected by residents. Hence, with reluctance, I have decided to resign as a trustee of both charities with immediate effect. Please do kindly add this to the minutes of the next trustees' meeting."*
- 4.24 On 30 March 2021, the Parish Council considered the grant application from the Bell Fields Charities.
- 4.25 At the various Parish Council meetings that had taken place since the Monitoring Officer had advised on the matter, all those councillors who were also Trustees had followed the advice by declaring a Non-Pecuniary Interest in any matters related to the Bell Fields Charities. Councillor Denise Fleming and Councillor Ride did so again at the meeting of 30 March 2021. And because the relevant agenda item concerned a decision to that directed impacted on Bell Fields Charities financial position, they also chose to take no part in the discussion or vote.⁵
- 4.26 Councillor Mark Fleming did not declare any interest in the matter, having resigned from as a Trustee the previous day. Councillor Mark Fleming acknowledged at interview that his resignation as a Trustee motivated by his desire to take an active part in the Parish Council's consideration of the grant application: "I did resign very, very specifically as a Trustee, so that I could participate in the vote to approve. I voted for the parish council to grant funds to the trustees, and I resigned very specifically to avoid any conflict of interest".
- 4.27 Councillor Hart also chose not to declare an interest and took an active part in the discussion. Councillor Hart said at interview that he understood that the advice offered by the Monitoring Officer meant that he should have declared an interest and considered whether it was appropriate to participate in the discussion and vote. He though felt that circumstance warranted him ignoring that advice, stressing that there was no question of either him or the Trust benefitting financially from his involvement: *"I believe that I shouldn't have to keep quiet when I see things being drastically done wrong. I view it to have*

⁵ Councillor Ride did though make a statement, which simply described the reasons for the funding application

been of utmost importance and therefore I would have found it dishonourable not to speak up and represent the needs of the residents. I knew I wasn't going to win the vote: they were all against me. But I don't think I could live with myself if I had said nothing."

- 4.28 Councillor Hart initially read a statement regarding his involvement with the Bell Fields Charities, which included addressing various rumours with regards his intentions for the playing fields. He then spoke strongly against any grant being awarded to the Bell Fields Charity until an independent report had been provided with regards the state of the field. When Councillor Denise Fleming challenged Councillor Hart on a point he was making, the Clerk reminded any members who were Trustees of the Monitoring Officer's advice. Councillor Denise Fleming accepted the advice and withdrew. Councillor Hart confirmed that he was deliberately ignoring the advice and would not be stopped from speaking.
- 4.29 Members went on to discuss the application and the impact on the football club if the necessary maintenance was not carried out. The majority accepted that the Parish Council should do whatever they could to ensure that it was ready to host the football club in time for the coming season. Some concern was expressed though at the lack of information with regards the ongoing deficit between funds and costs.
- 4.30 Councillor Hart spoke against the grant application, stating that the money was not needed and that he would prove Councillor Mark Fleming and the Trustees wrong. Councillor Hart told members that he had a track record of getting things done at a saving to the public purse and if given time, he would do it again.
- 4.31 Councillor Hart told us that he strongly supported the Bell Fields Charity; his issue was with the way in which the 'new' Trustees were running it. Both Councillor Hart and Councillor Dale-Evans also told me at interview that they had serious concerns about the way in which the grant was likely to be spent and the lack transparency from the Bell Fields Charities.
- 4.32 With four councillors in favour, three abstentions and two against, the Parish Council resolved to "*award the amount for which the Trustees of the Upper Bell Field charity had applied.*" Councillor Mark Fleming voted in favour; Councillor Hart voted against.
- 4.33 Councillor Dale-Evans, who was also strongly against the awarding of the grant, questioned Councillor Mark Fleming's participation. She told us: "*A major issue I have with the voting was that it was so obvious that Fleming had resigned as a trustee in order to swing the vote. To the best of my knowledge Fleming had been involved in the decision to apply to the Council for a grant and therefore he should not have participated in the vote either.*"

Appointment of Trustees, July 2021

- 4.34 With the Trustees' tenure of office due to end on 25 July 2021, the Parish Council met on 20 July 2021 to appoint / reappoint Trustees for the next 4 years.

4.35 It was resolved that that any member of the Parish Council who explicitly confirmed their agreement to be a Trustee of the Charities be appointed for a maximum tenure of four years. The minutes of the meeting state that Councillors Cottee, D Fleming, M Fleming, Knight, Phillips, Ride and Wright were subsequently appointed as Trustees. Councillors Hart and Dale Evans were not, having decided to decline the opportunity.⁶

4.36 None of the above updated their Registers following that decision.

Dispensation advice

4.37 On 13 October 2021, the Parish Clerk emailed the City Council's Monitoring Officer:

"Six of our councillors are now Bell Fields trustees - they will be approaching the Council in the near future for a grant and have therefore asked for dispensations. At Rettendon this is the Proper Officer's decision, but I imagine it will be called into question if the dispensations are granted and so any advice would be welcome. I have read the guidance and grounds for granting dispensations. The first and most obvious ground is [that] so many councillors [have the interest] that not granting the dispensation would impede the business of the Council, but it seems to suggest this only applies if there would therefore be no quorum. As we have three councillors who are not trustees, this would not apply So I wondered if you had any view as to whether this reason could be used."

4.38 The Monitoring Officer responded:

"Thanks for getting in touch. I do not believe there is any case law on this so there is not much to go on in relation to dispensations save for that the request must be in writing by the councillor(s) concerned and the statutory grounds that are available. It is therefore a matter of interpretation, but I am happy to give you my perspective. I generally advise members not to participate in decisions relating to financial matters for a body in which the member has an interest, particularly a grant. This is because it is important that the public have confidence in the impartiality of decisions made. Therefore, if a dispensation is sought in this context, it is important that there is a clear basis for this being granted. A dispensation relates to an interest held but cannot override bias or predetermination in any event. Therefore, if a dispensation was granted and the member participated but was held to have been biased or pre-determined the dispensation would not be effective anyway in relation to a legal challenge on this basis. Assuming the remaining members who are not trustees do not have issues with bias / predetermination and there is a quorum who could take the decision, I would agree with you that it is unclear how the business of the Council is impeded at all, or it would otherwise be appropriate to grant the dispensation. Given

⁶ Councillor Wright resigned as a Trustee shortly afterwards

the sensitivity of the trust locally a quorum of members who are non-trustees would be an appropriate, cleaner & safer approach to decision making from the parish council perspective.

- 4.39 At the Parish Council meeting of 30 November 2021, Members consider the following agenda item:

100-21/22 Standing Orders

To agree to amend Item 13.e in the Parish Council's Standing Orders to:
"A decision as to whether to grant a dispensation shall be made by a meeting of the Council, or committee or sub-committee for which the dispensation is required and that decision is final."

And

Item 13.g to:

"Subject to standing orders 13(d) and (f), a dispensation request shall be considered at the beginning of the meeting of the Council, or committee or sub-committee for which the dispensation is required."

- 4.40 The minutes report:

Cllr Hart said he was opposed to this Item and said the non-declaration of interests was in breach of the Council's Code of Conduct clause 3.1.3.

A recorded vote was requested.

Cllr M Fleming voted in favour of the motion.

Cllr Ray Ride voted in favour of the motion.

Cllr James Knight voted in favour of the motion.

Cllr David Phillips voted in favour of the motion.

Cllr Barbara Wright voted against the motion.

Cllr Hazel Dale Evans voted against the motion.

Cllr Roy Hart voted against the motion.

Cllr Sandie Cottee abstained.

- 4.41 Whilst Members agreed that they would take responsibility for considering any requests for dispensation in the future, they did not go on to consider whether Trustees of the Charities should be granted a dispensation or not in relation to future decisions.

Councillor Denise Fleming

- 4.42 On 1 December 2021, Councillor Denise Fleming updated her Register. Under Section 3, Category 1 of Registerable Non-Pecuniary Interests she included her position as Trustee of the Charities.

- 4.43 Councillor Denise Fleming focus at interview was very much on what she considered to be ongoing deficiencies in the Registers of other members of the Parish Council; in particular, the failure of many to include any information about their spouse / partner and whether the complainants had been supported financially by Councillor Hart. Councillor Denise Fleming said that the Parish Council would benefit from further training and guidance on both completing the Registers and on when interests should be declared at Parish Council meetings.
- 4.44 Councillor Denise Fleming acknowledged that her Register as published did not include her position as a Trustee at the time of complaint; the fault for this though lay with the Parish Clerk, who had failed to forward her updated version to the Monitoring Officer despite having been sent it on 1 December 2020.
- 4.45 Councillor Denise Fleming said that the Parish Council only decided to take responsibility for making decisions on dispensations because the Parish Clerk had been left in a very difficult position over the Trust when the power had been delegated to her. Councillor Fleming said that it was really all down to the problems caused by Councillor Hart in constantly seeking to challenge the Parish Council, of which he is a member despite not being a resident.

Councillor Sandy Cottee

- 4.46 On 8 December 2021, Councillor Cottee updated her Register. She included her position as a Trustee of the Charities; she though listed it erroneously under DPI Category 4: Land⁷. Councillor Cottee emailed the Monitoring Officer with her updated Register on 16 December 2021. She apologised for what she described as an oversight.
- 4.47 In her comments on the draft report, Councillor Cottee reiterated that her failure to update her Register of Member's Interests in a timely manner "was *unintentional and an oversight. I apologised and updated my details accordingly and I will pay closer attention to this if my circumstances change in the future.*" Councillor Cottee added: "*So that I can be better informed about how to deal with matters concerning the Bell Fields in future, I would appreciate the opportunity to discuss this with the monitoring officer and I will make contact. I will also speak to our Clerk regarding my Register of Personal Interest and ensure the details are up to date and correct.*"
- 4.48 In relation to the other complaint, where I did not declare an interest as a Trustee of the Bell Fields Charities on 30 November 2021, I accept responsibility. I was concerned that the decision to amend the standing orders so as to allow Parish councillors (rather than the Clerk) the ability to award dispensations, could create a bias and it felt important that I could be included in any discussion and decision outcome. On all other occasions I have made a declaration of interest and will continue to do so.

⁷ Any Land in which you have a beneficial interest and that is within the Council's area

Councillor Mark Fleming

- 4.49 On 9 December 2021, Councillor Mark Fleming updated his Register. Under Section 3, Category 1 of Registerable Non-Pecuniary Interests he included his position as Trustee of the Charities.
- 4.50 Councillor Mark Fleming acknowledged that he had not included his position as a Trustee in his Register while his position was being legally challenged; and that he did not then update his Register until he was requested to do so by the Monitoring Officer on 30 November 2020. Councillor Mark Fleming
- 4.51 Councillor Mark Fleming confirmed that he did resign as a Trustee on 29 March 2021 in part because he wanted to make sure that he could participate in the discussion and vote as a Parish Councillor to approve the Bell Field Charities' grant application: *"I voted for the Parish Council to grant funds to the trustees, and I resigned very specifically to avoid any conflict of interest. So, I was voting purely in my capacity as a parish councillor, I was at that point, not a Trustee."* Councillor Fleming said that he made sure that he did not seek to become a Trustee again until *'a respectable period of time'* had elapsed and the term of office for all Trustees had come to an end (in July 2021). It was at this point all members of the Parish Council were given the opportunity to be appointed in a new four-year term.
- 4.52 Councillor Mark Fleming confirmed that members of the Parish Council voted to make decisions on dispensations because it took an *"unreasonable burden off the Clerk"*. Councillor Fleming said that the Parish Clerk had previously been reluctant to grant dispensations herself, particularly in relation to the Bell Fields Charities, because she believed there to be valid arguments both for and against.
- 4.53 Councillor Mark Fleming also indicated that it would be useful for all members of the Parish Council to be given the opportunity to sit down with the Monitoring Officer to review their Register of Interests to ensure that they are correct. Councillor Fleming indicated that he knew of a number that continued to be inaccurate, either because interests had been put in the wrong sections or because the relevant councillor's spouse's full interests had not been included.

Councillor Ray Ride

- 4.54 On 10 December 2021, Councillor Ride updated his Register. Under Section 3, Category 1 of Registerable Non-Pecuniary Interests he included his position as Trustee of the Charities.
- 4.55 Councillor Ride did initially respond to the investigation by asking for copies of the relevant paperwork. He did not though make further contact or offer any written submissions.

Councillor Dave Phillips

- 4.56 On 14 December 2021, Councillor Phillips updated his Register. Under Section 3, Category 1 of Registerable Non-Pecuniary Interests he included his position as Trustee of the Charities.
- 4.57 Councillor Phillips confirmed after reading our draft report that the delay on amending his Register was an oversight that he has ensured has been corrected. He added: *"I whole heartedly agree with you that a meeting with the Monitoring Officer would be an excellent step to ensure that all councillors are aware of their duties and responsibilities with regard to declarations of interest, as well as a discussion on the needs for dispensations to be resolved and I shall be asking the clerk to arrange this as soon as possible."*

Councillor James Knight

- 4.58 On 27 December 2021, Councillor Knight updated his Register. Under Section 3, Category 1 of Registerable Non-Pecuniary Interests he included his position as Trustee of the Charities. He also referenced the position under DPI Category 4 Land, when registering the fact that he had applied for an allotment plot on the Lower Bell Field.
- 4.59 Councillor Knight told us at interview about the problems the Parish Council had experience in trying to secure control over the Bell Fields Charities from Councillor Hart and those who supported him. Councillor Knight said that Councillor Hart has since 2015 effectively been trying to interfere with what should be an intrinsic connection between the Parish Council and the Bell Fields Charities.
- 4.60 Councillor Knight acknowledged not having updated his Register within 28 days of being appointed as a Trustee. Councillor Knight said that he did not know that this omission or the Parish Council's potential awarding of dispensations was an 'issue' prior to the November 2021 meeting because nobody had told him; he was clear that he had never sought to hide the fact that he was a Trustee, and he did not believe that it ever gave him a conflict of interest. Councillor Knight was clear that he would not wish his position as a Trustee to compromise his ability to act as a Parish Councillor and would prioritise that over all else.

5: Has there been a failure to comply with the Code?

Capacity

- 5.1 Before we consider whether any of the councillors complained about failed to comply with the Parish Council's Code of Conduct, we need to be satisfied that the relevant conduct falls within the jurisdiction of the Localism Act. The Code does not seek to regulate what members do in their purely private and personal lives. The Code only applies to members when conducting Council business or when carrying out their constituency work. 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.
- 5.2 Given that an individual's responsibility to properly complete their Register is intrinsically linked to their position as a councillor, we are satisfied that any allegation that a person failed to do so would automatically fall within the scope of the standards framework. Further, all of the additional concerns raised related to the actions of councillors in Parish Council meetings, which would always be considered within the jurisdiction of the Localism Act.

Code Principles

- 5.3 The intention of the Code is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy. In adhering to the principles set out in the Code, there is an expectation that members will abide by their own authority's Code of Conduct.
- 5.4 Paragraph 9 of the Parish Council's Code states:

As a councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority. You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

Register of Interests

- 5.5 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. All authorities were given the power to define which interests should be included in their Member's Register, however the DPIs were compulsory.
- 5.6 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.

- 5.7 There has been no suggestion that any of the councillors complained about stood to financially benefit personally from their being a Trustee of the Bell Fields Charities. Accordingly, their role as a Trustee would not be considered to be a DPI. The Parish Council though has clearly set out the type of 'Other Registerable Interests' (ORI) it requires its members to include in their Register and pay careful regard to acting in their official capacity:

"You have a personal interest in any business of your authority where it relates to or is likely to affect:

a) any body of which you are in general control or management and to which you are nominated or appointed by your authority

b) any body

- (i*
-+) exercising functions of a public nature*
- (ii) any body directed to charitable purposes or*

(iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)”

5.8 Under the Parish Council’s previous Code, these ORI’s were known as Non-Pecuniary Interests (NPIs). As helpfully set out in the Monitoring Officer’s advice of 30 November 2020, holding the position of Trustee clearly qualifies as an NPI (under the previous Code); this would be equally true as an ORI under the current Code.

5.9 A member is required under section 30 (1) of the Localism Act 2011 (the Act)), to notify the relevant monitoring officer within 28 days of becoming a member of any DPIs that they hold at the time of notification. If a member does not hold an interest at the time of notification, then the legal requirements in respect of notification of subsequently obtained DPIs are: -

- If present at a meeting in which a matter in which they have a disclosable pecuniary interest is being or is to be considered, they must disclose it to that meeting (s31(1) of the Act) and
- Must notify the monitoring officer within 28 days of that disclosure (s31(3) of the Act).

Therefore, there is a continuing obligation on members to notify new disclosable pecuniary interests that arise after becoming a member, but that obligation only arises when that member attends a meeting in which a matter in which they have a disclosable pecuniary interest is to be or is being considered.

5.10 The Parish Council’s Code has extended this responsibility to ORIs, requiring all councillors to register their relevant interests *“within 28 days of becoming a member or your re-election or re-appointment to office.”* While no specific reference has been made in the current Code to a councillor’s continuing obligation to register new ORIs that arise after they become a member, it is a requirement that was again clearly signposted to all members of the Parish Council in the Monitoring Officer’s advice.

Disclosure of NPIs and ORIs

5.11 Under the Council’s previous Code (applicable to all incidents that occurred prior to June 2021) councillors were required to declare the existence of their NPI whenever a matter relating to the Bell Fields Charities arose during a Parish Council meeting. This was made clear to members in the Monitoring Officers advice of 30 November 2020: *“should any matters that relate to the trust arise at a meeting where any of the 4 trustee councillors are present, each councillor in attendance must at the very least declare that they have an NPI in the item at a meeting.”* This advice also reminded councillors that they would also need to carefully consider their position in relation to pre-determination / bias, which we will reference further below.

- 5.12 In June 2021, the Parish Council adopted a new Code which placed even more restrictions on the ability of Trustees to involve themselves in matters related to the Bell Fields Charity as Parish councillors. Appendix B, Paragraph 6 of the Code states that where a matter arises at a meeting which directly relates to a councillor's ORI, that councillor must not only disclose the interest; they may only speak on the matter under consideration if members of the public are also allowed to speak at the meeting: *“but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.”*
- 5.13 Accordingly, without a dispensation being granted, councillors who are also Trustees can only speak about Trust matters when members of the public are also allowed to speak; and must leave the meeting during any ensuing discussion or vote.

Disclosure of Non-Registerable Interests

- 5.14 Under the most recently adopted Code, DPIs and OPIs are not the only interests that members are required to declare during meetings. A Non-Registerable Interest (NRI) is declarable where a matter arises at a meeting which directly relates to a councillor's financial interest or well-being or a financial interest or well-being of a relative or close associate⁸. In those circumstances, a councillor again may only speak on the matter if members of the public are also allowed to speak at the meeting, but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.
- 5.15 Under the Parish Council's previous Code, an NRI effectively formed part of the descriptor for NPI's.

Bias and pre-determination

- 5.16 Bias and predetermination are not explicitly mentioned in the Code of Conduct; the code provisions on declarations of interest are about ensuring councillors do not take decisions where they or those close to them stand to lose or gain improperly. However, guidance offered by the Local Government Association stresses the need for councillors to ensure pay regard to them, stating:

“Both the courts and legislation recognise that elected councillors are entitled, and indeed expected, to have and to have expressed their views on a subject to be decided upon by the local authority. In law, there is no pretence that such democratically accountable decision-makers are

⁸ Importantly, the interest must affect the councillor or their relevant person to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and; a reasonable member of the public knowing all the facts would believe that it would affect their view of the wider public interest

intended to be independent and impartial as if they were judges or quasi-judges.

Nonetheless, decisions of public authorities do involve consideration of circumstances where a decision-maker must not act in a way that goes to the appearance of having a closed mind and pre-determining a decision before they have all of the evidence before them and where they have to act fairly. Breaches of the rules of natural justice in these circumstances have and do continue to result in decisions of local authorities being successfully challenged in the courts. These issues are complex, and advice should be sought and given in the various situations that come up, which is why there are no direct paragraphs of the code covering this, although it does overlap with the rules on declarations of interest.

While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code of Conduct, but councillors need to be clear that they are not biased or predetermined going into the decision-making process. Otherwise, the decision is at risk of being challenged on appeal or in the Courts.

To quote a leading judgment in this field "*All councillors elected to serve on local councils have to be scrupulous in their duties, search their consciences and consider carefully the propriety of attending meetings and taking part in decisions which may give rise to an appearance of bias even though their actions are above reproach.*"

Did Councillor Hart fail to comply with the Code?

- 5.17 Councillor Mark Fleming alleged that Councillor Hart failed to declare his interest in the Bell Fields Charities at the Parish Council meeting on 30 March 2021; and that he ignored his inherent conflict of interest to speak and vote on a grant application that had been submitted by the Bell Fields Charities to the Parish Council.
- 5.18 Councillor Hart has accepted that during the meeting of 30 March 2021, he knowingly refused to declare his interest, despite being warned both by Councillor Mark Fleming (as Chair) and the Clerk that he had a NPI in the matter. In our view this represented a failure to comply with paragraph 4.1 of the Code applicable at that time. Councillor Hart expressed the view that his participation was more important than adhering to the requirements of the Code. This though is not a matter for him to decide, and had he thought his involvement merited a dispensation, he should have applied for one.

Did Councillor Mark Fleming fail to comply with the Code?

- 5.19 Councillors Wright and Dale-Evans both alleged that Councillor Mark Fleming had failed to keep his Register of Interests updated properly to reflect the fact that he was a Trustee of the Bell Fields Charities. Councillor Wright (in her

complaint) and Councillor Dale Evans (at interview) also questioned his participation in a vote to award the Bell Fields Charities a grant in March 2021.

- 5.20 Councillor Mark Fleming was originally appointed by the Parish Council as a Trustee of the Bell Fields Charities on 25 July 2017. While the Code technically required that he include that position in his Register within 28 days, we consider it relevant that the dispute between the Parish Council and the sitting Trustees with regards who had the authority to appoint new Trustees meant that he was not properly recorded by the Charity Commission as being a Trustee until the matter had been settled in the High Court. Once that decision had been made though, on 21 July 2020, Councillor Mark Fleming should have ensured that his Register was updated so that the position was included in the NPI section of the form. His failure to do so was flagged by the Monitoring Officer in her advice note of 30 November 2020.
- 5.21 Councillor Mark Fleming responded quickly to the Monitoring officer's advice, updating his Register and sending it to the Clerk the following day. I note that the Clerk unfortunately did not pass this form to the Monitoring Officer and therefore his published Register did not reflect the change. I would not hold Councillor Fleming responsible for what was an administrative error, however.
- 5.22 Councillor Mark Fleming subsequently resigned his position as a Trustee on 29 March 2021, before being reappointed on 20 July 2021. Despite these changes in his status, Councillor Mark Fleming did not check / correct his Register of Interests until 9 December 2021. In our view this represents a failure to comply with his responsibility to ensure that his Register is updated within 28 days of any relevant changes.
- 5.23 Turning to Councillor Mark Fleming's involvement in awarding the grant at the Parish Council meeting of 30 March 2021: He clearly believed that by resigning as a Trustee, he no longer had a conflict of interest in the matter. While we accept that maybe this did not give him a declarable interest (as a Trustee), we are of the view that his participation represented an improper use of his position as a councillor due to bias / pre-determination.
- 5.24 Councillor Fleming had been actively involved as a Trustee in the submission of the grant application, and by his own admission had predetermined how he would vote on the matter as a Parish councillor. In those circumstances, it is our view that Councillor Fleming's involvement in awarding the grant was an improper use of his position which left the Parish Council's decision vulnerable to legal challenge. As stated in the LGA guidance: *"A single councillor who is guilty of bias is enough to strike out the whole decision when challenged before the courts. This can cause huge cost and reputational damage for the local authority yet is seldom due to actual corruption or even consciously favouring a personal interest over the public interest on the part of the councillor involved and may have no repercussions for them personally."*

Did Councillor Denise Fleming fail to comply with the Code?

- 5.25 Councillors Wright and Dale-Evans both alleged that Councillor Denise Fleming had failed to keep her Register of Interests updated properly to reflect the fact that she was a Trustee of the Bell Fields Charities
- 5.26 As with her husband, Councillor Denise Fleming was originally appointed by the Parish Council as a Trustee of the Bell Fields Charities on 25 July 2017. While the Code technically required that she include that position in her Register within 28 days, we consider it relevant that the dispute between the Parish Council and the sitting Trustees with regards who had the authority to appoint new Trustees meant that she was not properly recorded by the Charity Commission as being a Trustee until the matter had been settled in the High Court. Once that decision had been made though, on 21 July 2020, Councillor Denise Fleming should have ensured that her Register was updated so that the position was included in the NPI section of the form. Her failure to do so was flagged by the Monitoring Officer in her advice note of 30 November 2020.
- 5.27 Councillor Denise Fleming responded quickly to the Monitoring officer's advice, updating her Register entry and sending it to the Clerk the following day. I note that the Clerk unfortunately did not pass this form to the Monitoring Officer and therefore her published Register did not reflect the change. I would not hold Councillor Fleming responsible for what was an administrative error, however.
- 5.28 There were no changes in Councillor Denise Fleming's status as a Trustee between that point and the complaint being made; although she was reappointed as a Trustee during this period, she reasonably believed that her Register continued to correctly reflect her position with the Bell Fields Charities.

Did Councillor Sandie Cottee fail to comply with the Code?

- 5.29 Councillors Wright and Dale-Evans both alleged that Councillor Sandie Cottee had failed to keep her Register of Interests updated properly to reflect the fact that she was a Trustee of the Bell Fields Charities.
- 5.30 Councillor Cottee was appointed as a Trustee on 20 July 2021 but did not update her Register to reflect this until 16 December 2021. While this does represent a failure to comply with paragraph 9.1 of the Parish Council's Code, I have no reason to believe that it was anything other than an oversight and am gratified by both Councillor Cottee's apology and actions to rectify the situation.

Did Councillor James Knight fail to comply with the Code?

- 5.31 Councillors Wright and Dale-Evans both alleged that Councillor James Knight had failed to keep his Register of Interests updated properly to reflect the fact that he was a Trustee of the Bell Fields Charities.
- 5.32 Councillor Knight was appointed as a Trustee on 20 July 2021 but did not update his Register to reflect this until 27 December 2021. While this does represent a

failure to comply with paragraph 9.1 of the Parish Council's Code, I have no reason to believe that it was anything other than an oversight and am gratified by the fact that he has now updated his Register to include this position.

Did Councillor David Phillips fail to comply with the Code?

5.33 Councillors Wright and Dale-Evans both alleged that Councillor David Phillips had failed to keep her Register of Interests updated properly to reflect the fact that he was a Trustee of the Bell Fields Charities.

5.34 Councillor Phillips was appointed as a Trustee on 20 July 2021 but did not update his Register to reflect this until 14 December 2021. While this does represent a failure to comply with paragraph 9.1 of the Parish Council's Code, I have no reason to believe that it was anything other than an oversight and am gratified by the fact that he has now updated his Register to include this position.

Did Councillor Ray Ride fail to comply with the Code?

5.35 Councillors Wright and Dale-Evans both alleged that Councillor Ray Ride had failed to keep his Register of Interests updated properly to reflect the fact that he was a Trustee of the Bell Fields Charities

5.36 As with Councillors Mr and Mrs Fleming, Councillor Ride was originally appointed by the Parish Council as a Trustee of the Bell Fields Charities on 25 July 2017. While the Code technically required that he include that position in her Register within 28 days, we consider it relevant that the dispute between the Parish Council and the sitting Trustees with regards who had the authority to appoint new Trustees meant that he was not properly recorded by the Charity Commission as being a Trustee until the matter had been settled in the High Court. Once that decision had been made though, on 21 July 2020, Councillor Ride should have ensured that his Register was updated so that the position was included in the NPI section of the form.

5.37 Councillor Ride's failure to do so was flagged by the Monitoring Officer in her advice note of 30 November 2020. Despite this advice, and his reappointment in June 2021, Councillor Ride failed to update his Register until 10 December 2021. While this does represent a failure to comply with paragraph 9.1 of the Parish Council's Code, I have no reason to believe that it was anything other than an oversight and am gratified by the fact that he has now updated his Register to include this position.

Matters related to dispensations

5.38 The final aspect of the complaint concerned the Parish Council's decision to change their standing orders and take responsibility for awarding dispensations in the future.

5.39 We are of the view that this is a decision that every councillor was entitled to be involved in; and that the real concern as held by the complainants is that in the

future, councillors will vote to award themselves dispensation with regards to any discussions relating to the Bell Fields Charities.

5.40 While possible future actions are clearly outside the scope of any Code of Conduct investigation, the Monitoring Officer has asked us to comment on how members of the Parish Council might best be able to manage their potential conflict of interest in the future. We do so only to assist the Parish Council and its members in making their own decisions on the matter.

5.41 The granting of dispensations under the Localism Act can relieve a councillor from either or both of the restrictions on speaking or voting on matters in which they hold an interest. A dispensation must specify the period for which it has effect, which may not exceed four years.

5.42 The legislation provides that a relevant authority (which includes the Parish Council) may only grant a dispensation if, after having had regard to all relevant circumstances, the authority:

- (a) considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;
- (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;*
- (c) considers that granting the dispensation is in the interests of persons living in the authority's area;
- (d) if it is an authority operating executive arrangements, considers that without the dispensation each Member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive;* or
- (e) considers that it is otherwise appropriate to grant a dispensation.

* Grounds (b) and (d) are not directly applicable to the Parish Council but are included for completeness and context.

5.43 Factors that should be taken into consideration by the Parish Council in deciding whether to grant a dispensation under one or more of the specific statutory grounds include:

- maintaining public confidence ie. Is the nature of the Member's interest such that allowing them to participate would risk damage to public confidence in the conduct of the Parish Council business?

- granting a dispensation to vote has a more direct influence over the decision-making process than a dispensation to speak, goes beyond simply representing the views of constituents and carries more risk of damaging public confidence. Therefore, a dispensation to vote will only be granted in exceptional circumstances.
- Equivalent public rights - the existence of such public speaking rights are a relevant consideration. Therefore, a dispensation to speak is more likely to be granted for the purpose of making representations, answering questions or giving evidence relating to the business where the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or some other reasonable expectation.
- Is the interest common to the Member and a significant proportion of the general public? If so, a Member may be less likely to be influenced by that interest, and granting a dispensation may carry less risk of damaging public confidence.
- Is the participation of the Member in the business that the interest relates to justified by their particular knowledge, role or expertise? The potential contribution would have to be of especial value to the decision-making process and provide a perspective that would not otherwise be available. Would the Member's participation assist or potentially distort the debate?
- Does the Member have a particular viewpoint that might not otherwise be represented and might assist the debate in relation to that particular matter – whether this relates to age, race, disability, gender, sexual orientation, religion or belief, or any other protected characteristic?

5.44 In the context of the Bell Fields Charities; clearly had all councillors agreed to also become Trustees, then a dispensation would have been necessary for the Parish Council to be quorate when discussing matters relevant to it. The fact that three councillors choose not to become Trustees means however that this is not the case. We think it arguable though that relationship between the Parish Council and the Bell Fields Charities and the relatively high number of councillors who are Trustees (well over half of the Parish Council) makes the awarding of dispensations a reasonable decision, particularly in relation to enabling them to at least speak on the matter. Those councillors who are not Trustees have expressed concern about what they perceive to be the lack of transparency and updates from the Bell Fields Charities. Trustees are clearly best placed to do this for the Parish Council and under the current Code, may require a dispensation in order to do so.

5.45 Many of the councillors I spoke with did not believe that their position as Trustees and as Parish councillors necessarily left them conflicted in any case; and I suspect would argue that it was in the interests of parishioners for a dispensation to be granted to allow them to both participate and vote. These councillors were

only appointed to the Bell Fields Charities because they were elected to the Parish Council and in both regards, would seek to make decisions that were in the best interests of their community.

- 5.46 While we can understand this position, we would also remind any individual councillor who might be considering submitting an application for dispensation to remember their legal responsibilities (as Trustees) to always act in the charity's best interests. We would encourage those councillors to avoid putting themselves in a position where their duty to their charity conflicts with either their personal interests or the wider public interest. And as Parish councillors, not to involve themselves in any decisions which might put the Parish Council at risk of challenge due to bias / pre-determination. The latter would be as true for non-Trustees as it would be for Trustees; and a dispensation does not mean that Parish Council decisions cannot be legally challenged on this basis.

6. Recommendations

- 6.1 The relationship between the Parish Council and the Bell Fields Charities has since 2017 been hugely contentious and expensive. In our view it has fuelled the personal animosity that exists between certain councillors and likely damaged the reputation of the Parish Council; at times, significantly affecting its ability to function effectively for the benefit of parishioners.
- 6.2 The relationship between the Parish Council and the Bell Fields Charities has since 2017 been hugely contentious and expensive. In our view it has fuelled a personal animosity that now appears to exist between certain councillors and likely damaged the reputation of the Parish Council as a whole; at times, significantly affecting its ability to function effectively for the benefit of parishioners.
- 6.3 The investigation into the complaints referred to above has highlighted several potential breaches of the Code. Some councillors have simply not paid close enough attention to ensuring that their Register of Interests are kept up to date, while others appear to have wilfully ignored their responsibility under the Code so as to continue to pursue their own agenda in relation to the Bell Fields Charities.
- 6.4 When considering what action should be taken to address these matters, we are not sure that pursuing those complaints that concern failures by numerous members to update their respective Register of Interests to determination stage would be the best use of public resources, especially given that those members have now made the necessary inclusion. Instead, we recommend that the Monitoring Officer take 'other action', by directing all Parish councillors to schedule time with either her or the Clerk to go through their Register and ensure that it is up to date and accurate. We would remind members that it is their personal responsibility to ensure that these documents are filled in properly and in a timely manner.
- 6.5 That said, we consider that Councillor Hart's failure to comply with the Code at the Parish Council meeting of 20 March 2021 must be viewed more seriously, given that he knowingly chose to participate in a decision concerning the awarding of a grant to the Bell Fields Charities despite having been directly advised not to do so by the Monitoring Officer. As such, we are of the view that this matter need be referred to the Council's Standards Committee so that a formal decision can be made.
- 6.6 We are also of the view that the concerns expressed about Councillor Mark Fleming's participation during the same meeting also be referred for a standards hearing. While Councillor Fleming appears to have believed that his resignation as a trustee allowed for his full participation as Chair of the Parish Council to award the grant, we consider his involvement an improper use of his position.
- 6.7 Finally, we would encourage all members to use this as an opportunity to discuss with each other and the Monitoring Officer how the Parish Council might best

deal with matters relating to the Bell Fields Charities in the future, including whether / what type of dispensations are appropriate. When doing so, Members should also be reminded of their responsibility not to participate in decisions where they might be biased / predetermined.

Guidance and Application in relation to dispensations for City Councillors

Dispensation process and application form

1. Introduction – City Council dispensations

The City Council Governance Committee or the Monitoring Officer is responsible for determining dispensations under Section 33(2) of the Localism Act 2011 in relation to City Councillors. This guidance explains :-

The purpose and effect of dispensations

The procedure for requesting a dispensation together with an application form

The criteria which are applied in determining dispensation requests including the terms of the dispensation

Parish (including town, village and community) Councils are responsible for determining dispensations in relation to parish councillors (including town, village and community councillors) and should have in place appropriate arrangements to determine applications. It is a matter for the parish tier council to decide whether decisions will be made by the parish tier council or delegate the decision to their clerk. This guidance may be used in helping parish tier councils to make such decisions. Similarly, in relation to Essex County Councillors these are dealt with by Essex County Council.

2. Purpose and effect of dispensation

In certain circumstances councillors may be granted a dispensation which enables them to take part in Council business where this would otherwise be prohibited under the Code of Conduct or by law. Provided Councillors act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law. However, it should be noted that a dispensation does not authorise a councillor's participation where bias and/or pre-determination arises.

3. Process for making requests

Any councillor who wishes to apply for a dispensation must fully complete the attached Dispensation Application form and submit it to the Monitoring Officer at least 15 working days before the meeting for which the dispensation is required. Applications may be accepted within a shorter period in exceptional circumstances.

In order to avoid delay Councillors must ensure that they give full details of the grounds for their request and submit it to the Monitoring Officer as soon as they become aware that a dispensation is necessary.

A request for a dispensation must be made on an individual basis. Group applications are not permitted. However, the Council can put in place and review standing dispensations where it is considered appropriate.

4. Statutory grounds for dispensation

Section 31 of the Localism Act provides that the City Council can only grant a dispensation if, after having had regard to all relevant circumstances, the authority:

- (a) Considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business
- (b) Considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business
- (c) Considers that granting the dispensation is in the interests of persons living in the authority's area
- (d) If it is an authority operating executive arrangements, considers that without the dispensation each Member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive, or
- (e) Considers that it is otherwise appropriate to grant a dispensation

5. Consideration by Monitoring Officer

The Monitoring Officer will consider requests for a dispensation in the order in which they are received having regard to the legislative requirements and this guidance.

The Monitoring Officer may grant a dispensation in relation to grounds (a) or (d) if they consider it is appropriate to do so.

The Monitoring Officer will notify the councillor of their decision and reasons in writing at the earliest opportunity and in any event within 5 working days of the decision.

If a dispensation is not fully granted by the Monitoring Officer the Councillor may appeal to the Governance Committee and arrangements to consider such an appeal will be made as soon as reasonably practicable.

6. Consideration by Governance Committee

The Governance Committee will consider requests for a dispensation referred by the Monitoring Officer in the order in which they were received having regard to the law and this guidance.

The Governance Committee has delegated authority to consider dispensations in relation to grounds (b), (c) or (e) but may grant a dispensation in relation to any of the statutory grounds (eg where an appeal against the Monitoring Officer decision is considered).

Meetings of the Governance Committee will usually be open to the public and any councillor who has submitted a request will have the opportunity to attend and make representations in support of their application.

The Monitoring Officer will notify the Councillor of the Committee's decision and reasons in writing at the earliest opportunity and in any event within 5 working days of the decision.

7. Criteria for determination of requests

In reaching a decision on a request for a dispensation the Monitoring Officer or Governance Committee will take into account:-

- (a) Whether the request meets the statutory grounds set out in the Localism Act 2011
- (b) The nature of the Councillor's interest
- (c) The extent to which the request could have been avoided or other arrangements could be made
- (d) The need to maintain public confidence in the conduct of the Council's business
- (e) The extent to which there is some personal benefit by agreeing to a dispensation
- (f) The possible outcome of the proposed vote
- (g) The need for efficient and effective conduct of the Council's business
- (h) Any other relevant circumstances

8. Terms of Dispensations

Dispensations may be granted for one meeting or for a period not exceeding 4 years.

A dispensation may allow the Councillor to

Participate or participate further in any discussion of the matter at the meeting(s): and/or

Participate in any vote, or further vote taken on the matter at the meeting(s)

A dispensation may be subject to a specific condition (eg notification of any change in circumstances)

If a dispensation is granted the Councillor may remain in the room where the meeting considering the business is being held.

9. Disclosure of Decision

Any councillor who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates

A copy of the dispensation will be kept on the website with the Register of Councillor's interests.