

# Public Document Pack



## TRAFFORD COUNCIL

### AGENDA PAPERS FOR STANDARDS COMMITTEE MEETING

Date: Thursday, 26 October 2017

Time: 6.30 p.m.

Place: Committee Room 2 and 3, Trafford Town Hall, Talbot Road, Stretford,  
M32 0TH.

<b>A G E N D A</b>	<b>PART I</b>	<b>Pages</b>
1.	<b>ATTENDANCES</b>  To note attendances, including officers, and any apologies for absences.	
2.	<b>MINUTES</b>  To receive and, if so determined, to agree as a correct record the minutes of the meeting held on 8 March 2017.	1 - 2
3.	<b>MEMBERS AWARENESS OF STANDARDS</b>  To receive an update from the Director of Legal and Democratic Services. A copy of a Plain English Guide to Standards from DCLG is attached.	3 - 14
4.	<b>OMBUDSMAN REPORT 2017</b>  To receive a report from the Director of Legal and Democratic Services.	15 - 20
5.	<b>DATA PROTECTION</b>  To receive an update from the Director of Legal and Democratic Services. A copy of the ICO guide on requirements for Members is attached.	21 - 28
6.	<b>DCLG CONSULTATION ON DISQUALIFICATION OF MEMBERS</b>  To receive an update from the Director of Legal and Democratic Services. A copy of a DCLG consultation is attached.	29 - 46

**7. REPORT OF THE MONITORING OFFICER**

To receive an oral report from the Director of Legal and Democratic Services.

**8. URGENT BUSINESS (IF ANY)**

Any other item or items (not likely to disclose “exempt information”) which, by reason of special circumstances (to be specified), the Chairman of the meeting is of the opinion should be considered at the meeting as a matter of urgency.

**THERESA GRANT**

Chief Executive

Membership of the Committee

Councillors Dr. K. Barclay (Chairman), K. Procter (Vice-Chairman), Miss L. Blackburn, R. Bowker, K. Carter, Mrs. L. Evans, M. Freeman, D. Hopps, P. Myers, A. Western, M. Whetton. Independent Co-Opted Members Mr. D. Goodman, Mr. C.E.G. Griffiths, Brown, A. Rudden and S. Neild.

Further Information

For help, advice and information about this meeting please contact:

A. Murray, Democratic Services Officer

Tel: 0161 912 4250

Email: [alexander.murray@trafford.gov.uk](mailto:alexander.murray@trafford.gov.uk)

This agenda was issued on **Wednesday, 18 October 2017** by the Legal and Democratic Services Section, Trafford Council, Trafford Town Hall, Talbot Road, Stretford M32 0TH.

# Public Document Pack Agenda Item 2

## STANDARDS COMMITTEE

8 MARCH 2017

### PRESENT

Councillor Dr. K. Barclay (in the Chair).

Councillors K. Procter (Vice-Chairman), R. Bowker, C. Boyes, P. Myers, Mr. D. Goodman, Mr. C. Griffiths, Mr R. Brown and Mr S. Neild.

#### In attendance

Jane Le Fevre

Monitoring Officer

Alexander Murray

Democratic and Scrutiny Officer

### APOLOGIES

Apologies for absence were received from Councillors Miss L. Blackburn, L. Dagnall, Mrs. L. Evans, M. Freeman, A. Western and A. Williams.

### 10. MINUTES

Mr Goodman noted that his middle initial had been recorded as G instead of J and asked that it be corrected.

#### RESOLVED:

- 1) That the minutes of the meeting held 14 September 2016 be agreed as an accurate record and signed by the Chairman once the above amendment has been made.

### 11. PLANNING PROTOCOL

The Monitoring Officer presented a report and the proposed planning protocol to the Committee. It was made clear to Committee Members that the Protocol was to apply to all Councillors involved in the Planning process not just those who sit on the Planning Committee. The Monitoring Officer had met with the Chairman of the Planning Committee prior to the meeting which had led to two additional areas being added to the Protocol. Those areas were site visit protocol and a requirement for members of the public to submit documents in advance of Planning Committee meetings in order that they can be verified.

The Committee were then given the opportunity to raise questions and propose amendments to the Planning Protocol. Members raised a number of questions and received detailed responses from the Monitoring officer. At the end of discussions the following amendments were to be made to the protocol; that a line be added to make it clear that the protocol applies to Councillors who act as substitutes, that a link to the protocol be put upon the planning webpage once it had been ratified by Council, that the reasons for information being classified be put within the document, that a part be added to the protocol relating to how members of the Planning Committee who lobbies on behalf of an application should act.

Members also requested that a section be added to make it clear to members of the public not to make emotional points relating to planning applications. The

**Standards Committee**  
**8.3.17**

---

monitoring officer informed members that there already was information on the Council's Planning Committee webpage and that she would speak the head of planning to see if it could be improved.

RESOLVED:

- 1) That the amendments listed above be made to the Planning Protocol before it goes before the Planning Committee.
- 2) That the Monitoring Officer is to consult with the head of planning regarding the improvement of information on the Council's Planning Committee webpage.

## **12. LOCAL STANDARDS UPDATE - ISSUES**

The Monitoring officer gave a brief overview of the work that had been done over the year relating to standards. The Committee were informed that the Monitoring Officer had attended the entirety of the Council's decision making Committees apart from the Joint Health Scrutiny Committee. The Monitoring Officer was satisfied with the way that the Committees were running. The Monitoring Officer noted that there had been a vast improvement in the timing of reports and the publishing of Committee and Executive decisions. One area that had been identified as an area for improvement was the publishing of officer decisions and the Monitoring officer was undertaking a piece of work to address the issue.

The Committee were told that Trafford Council had continued to have low levels of Complaints against members. There had only been four complaints made against members during the municipal year and all incidents had reached a conclusion. The Monitoring officer described each of the complaints and the actions taken by the Council to resolve them. One of the complainants had not been satisfied with the outcome of their complaint but the Monitoring officer had consulted with an independent person and they agreed that the Council had done all they could.

RESOLVED:

- 1) That the update be noted by the Committee.

The meeting commenced at 6.30 pm and finished at 7.33 pm



Department for  
Communities and  
Local Government

## Openness and transparency on personal interests

A guide for councillors

© Crown copyright, 2013

*Copyright in the typographical arrangement rests with the Crown.*

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This document/publication is also available on our website at [www.gov.uk/dclg](http://www.gov.uk/dclg)

If you have any enquiries regarding this document/publication, email [contactus@communities.gov.uk](mailto:contactus@communities.gov.uk) or write to us at:

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/CommunitiesUK>

September 2013

ISBN: 978-1-4098--3604-9

# The Guide

This guide on personal interests gives basic practical information about how to be open and transparent about your personal interests. It is designed to help councillors, including parish councillors, now that new standards arrangements have been introduced by the Localism Act 2011<sup>1</sup>.

## Why are there new rules?

Parliament has abolished the Standards Board regime and all the rules under it. It has done this because that centrally-imposed, bureaucratic regime had become a vehicle for petty, malicious and politically-motivated complaints against councillors. Rather than creating a culture of trust and openness between councillors and those they represent, it was damaging, without justification, the public's confidence in local democratic governance.

The new standards arrangements that Parliament has put in place mean that it is largely for councils themselves to decide their own local rules. It is essential that there is confidence that councillors everywhere are putting the public interest first and are not benefiting their own financial affairs from being a councillor. Accordingly, within the new standards arrangements there are national rules about councillors' interests.<sup>2</sup>

Such rules, in one form or another, have existed for decades. The new rules are similar to the rules that were in place prior to the Standards Board regime. Those rules, originating in the Local Government Act 1972 and the Local Government and Housing Act 1989, involved local authority members registering their pecuniary interests in a publicly available register, and disclosing their interests and withdrawing from meetings in certain circumstances. Failure to comply with those rules was in certain circumstances a criminal offence, as is failure to comply in certain circumstances with the new rules.

## Does this affect me?

Yes, if you are an elected, co-opted, or appointed member of:

- a district, unitary, metropolitan, county or London borough council
- a parish or town council
- a fire and rescue authority
- a transport or other joint authority
- a combined authority or an economic prosperity board
- the London Fire and Emergency Planning Authority
- the Broads Authority

---

<sup>1</sup> The Guide should not be taken as providing any definitive interpretation of the statutory requirements; those wishing to address such issues should seek their own legal advice.

<sup>2</sup> The national rules are in Chapter 7 of the Localism Act 2011 and in the secondary legislation made under the Act, particularly in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (S.I. 2012/1464).

- a National Park authority
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

## How will there be openness and transparency about my personal interests?

The national rules require your council or authority to adopt a code of conduct for its members and to have a register of members' interests.

The national rules require your council's code of conduct to comply with the Seven Principles of Public Life, and to set out how, in conformity with the rules, you will have to disclose and register your pecuniary and your other interests. Within these rules it is for your council to decide what its code of conduct says. An illustrative text for such a code is available on the Department's web site.<sup>3</sup>

Your council's or authority's monitoring officer (or in the case of a parish council the monitoring officer of the district or borough council) must establish and maintain your council's register of members' interests. Within the requirements of the national rules it is for your council or authority to determine what is to be entered in its register of members' interests.

## What personal interests should be entered in my council's or authority's register of members' interests?

Disclosable pecuniary interests, and any other of your personal interests which your council or authority, in particular through its code of conduct, has determined should be registered.

Any other of your personal interests which you have asked the monitoring officer, who is responsible for your council's or authority's register of members' interests, to enter in the register.

As explained in the following section, your registration of personal interests should be guided by your duty to act in conformity with the seven principles of public life. You should ensure that you register all personal interests that conformity with the seven principles requires. These interests will necessarily include your membership of any Trade Union.

## What must I do about registering my personal interests?

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

---

<sup>3</sup> <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>



order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships.**<sup>4</sup>.

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. Any suggestion that you should tell the monitoring officer about your pecuniary interests only in the immediate aftermath of your being elected is wholly incompatible with this duty, with which you must comply.

If you have a disclosable pecuniary interest which is not recorded in the register and which relates to any business that is or will be considered at a meeting where you are present, you must disclose<sup>5</sup> this to the meeting and tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must tell the monitoring officer within 28 days of disclosing the interest. For this purpose a meeting includes any meeting of your council or authority, of its executive or any committee of the executive, and of any committee, sub-committee, joint committee or joint sub-committee of your authority.

If you have a disclosable pecuniary interest which is not shown in the register and relates to any business on which you are acting alone, you must, within 28 days of becoming aware of this, tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must also stop dealing with the matter as soon as you become aware of having a disclosable pecuniary interest relating to the business.

When you are first elected, co-opted, or appointed a member to your council or authority, you must, within 28 days of becoming a member, tell the monitoring officer who is responsible for your council's or authority's register of members' interests about your disclosable pecuniary interests. If you are re-elected, re-co-opted, or reappointed a member, you need to tell the monitoring officer about only those disclosable pecuniary interests that are not already recorded in the register.

## What are pecuniary interests?

A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider

---

<sup>4</sup> <http://www.public-standards.gov.uk/about-us/what-we-do/the-seven-principles/>

<sup>5</sup> If the interest is a sensitive interest you should disclose merely the fact that you have such a disclosable pecuniary interest, rather than the interest. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

financial interests they might have (for example trust funds, investments, and assets including land and property).

## Do I have any disclosable pecuniary interests?

You have a disclosable pecuniary interest if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules (see annex). Interests or your spouse or civil partner, following the approach of the rules under the 1972 and 1989 Acts, are included to ensure that the public can have confidence that councillors are putting the public interest first and not benefiting the financial affairs of themselves or their spouse or civil partner from which the councillor would stand to gain. For this purpose your spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

## Does my spouse's or civil partner's name need to appear on the register of interests?

No. For the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is **your** disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.

## Does my signature need to be published online? Won't this put me at risk of identity theft?

There is no legal requirement for the personal signatures of councillors to be published online.

## Who can see the register of members' interests?

Except for parish councils, a council's or authority's register of members' interests must be available for inspection in the local area, and must be published on the council's or authority's website.

For parish councils, the monitoring officer who is responsible for the council's register of members' interests must arrange for the parish council's register of members' interests to be available for inspection in the district or borough, and must be published on the district or borough council's website.

Where the parish council has its own website, its register of members' interests must also be published on that website.

This is in line with the Government's policies of transparency and accountability, ensuring that the public have ready access to publicly available information.

## Is there any scope for withholding information on the published register?

Copies of the register of members' interests which are available for inspection or published must not include details of a member's sensitive interest, other than stating that the member has an interest the details of which are withheld. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

## When is information about my interests removed from my council's register of members' interests?

If you cease to have an interest, that interest can be removed from the register. If you cease to be a member of the authority, all of your interests can be removed from the register.

## What does having a disclosable pecuniary interest stop me doing?

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not:

- participate in any discussion of the business at the meeting, or if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business, or
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

In certain circumstances you can request a dispensation from these prohibitions.

## Where these prohibitions apply, do I also have to leave the room?

Where your council's or authority's standing orders require this, you must leave the room. Even where there are no such standing orders, you must leave the room if you consider your continued presence is incompatible with your council's code of conduct or the Seven Principles of Public Life.

## Do I need a dispensation to take part in the business of setting council tax or a precept?

Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support.

If you are a homeowner or tenant in the area of your council you will have registered, in accordance with the national rules, that beneficial interest in land. However, this disclosable pecuniary interest is not a disclosable pecuniary interest in the matter of setting the council tax or precept since decisions on the council tax or precept do not materially affect your interest in the land. For example, it does not materially affect the value of your home, your prospects of selling that home, or how you might use or enjoy that land.

Accordingly, you will not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support, which is in any event a decision affecting the generality of the public in the area of your council, rather than you as an individual.

## When and how can I apply for a dispensation?

The rules allow your council or authority in certain circumstances to grant a dispensation to permit a member to take part in the business of the authority even if the member has a disclosable pecuniary interest relating to that business. These circumstances are where the council or authority considers that:

- without the dispensation so great a proportion of the council or authority would be prohibited from participating in that business as to impede the council's or authority's transaction of that business,
- without the dispensation the representation of different political groups dealing with that business would be so upset as to alter the likely outcome of any vote,
- the granting of the dispensation is in the interests of people living in the council's or authority's area,
- without the dispensation each member of the council's executive would be prohibited from participating in the business, or
- it is otherwise appropriate to grant a dispensation.

If you would like your council or authority to grant you a dispensation, you must make a written request to the officer responsible for handling such requests in the case of your council or authority.

## What happens if I don't follow the rules on disclosable pecuniary interests?

It is a criminal offence if, without a reasonable excuse, you fail to tell the monitoring officer about your disclosable pecuniary interests, either for inclusion on the register if you are a newly elected, co-opted or appointed member, or to update the register if you are re-elected or re-appointed, or when you become aware of a disclosable pecuniary interest which is not recorded in the register but which relates to any matter;

- that will be or is being considered at a meeting where you are present, or
- on which you are acting alone.

It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of your authority where that business involves a disclosable pecuniary interest. It is also a criminal offence to continue working on a matter which can be discharged by a single member and in which you have a disclosable pecuniary interest.

If you are found guilty of such a criminal offence, you can be fined up to £5,000 and disqualified from holding office as a councillor for up to five years.

## Where can I look at the national rules on pecuniary interests?

The national rules about pecuniary interests are set out in Chapter 7 of the Localism Act 2011, which is available on the internet here:

<http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7/enacted>

and in the secondary legislation made under the Act, in particular The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 which can be found here:

<http://www.legislation.gov.uk/uksi/2012/1464/contents/made>

# Annex A

## Description of Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your **disclosable pecuniary interests** under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

- Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.
- Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. The relevant period is the 12 months ending on the day when you tell the monitoring officer about your disclosable pecuniary interests following your election or re-election, or when you became aware you had a disclosable pecuniary interest relating to a matter on which you were acting alone.
- Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority –
  - under which goods or services are to be provided or works are to be executed; and
  - which has not been fully discharged.
- Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.
- Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.
- Any tenancy where (to your knowledge) –
  - the landlord is your council or authority; and
  - the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

- Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where –
  - (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
  - (b) either –
    - the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
    - if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

This page is intentionally left blank



**TRAFFORD COUNCIL**

**Report to: Executive**  
**Date: 25 September 2017**  
**Report for: Information**  
**Report of: Executive Member for Corporate Resources**

**Report Title**

**Report on Complaints Determined by the Local Government Ombudsman 2016/17**

**Summary**

**There is a statutory duty to report to Members on adverse outcomes of complaints formally investigated by the Local Government Ombudsman. This report sets out the background to this duty, and provides Members with a summary of complaints determined in 2016/17.**

**Recommendation(s)**

**That the content of the report be noted.**

**Contact person for access to background papers and further information:**

Name: J.M.J. Maloney  
 Extension: 4298

Background Papers: None.

*Implications:*

Relationship to Policy Framework/Corporate Priorities	<i>Complaint outcomes are potentially relevant across the range of Council policies.</i>
Financial	<i>None directly arising from this information report.</i>
Legal Implications:	<i>None directly arising from this information report.</i>
Equality/Diversity Implications	<i>None directly arising from this information report.</i>
Sustainability Implications	<i>None directly arising from this information report.</i>
Resource Implications e.g. Staffing / ICT / Assets	<i>None directly arising from this information report.</i>
Risk Management Implications	<i>None directly arising from this information report.</i>
Health & Wellbeing Implications	<i>None directly arising from this information report.</i>
Health and Safety Implications	<i>None directly arising from this information report.</i>

## **Background**

### **1. Complaints to the Local Government Ombudsman**

Services provided by the Council and agencies working on its behalf are subject to the jurisdiction of the Local Government Ombudsman, who is empowered to investigate complaints of maladministration and / or injustice in relation to the delivery of those services.

Ordinarily the Ombudsman will only investigate complaints which have completed progress through all stages of the Council's Corporate or Statutory complaints procedures. The Ombudsman also operates, for the majority of complaints, a 2-stage assessment process, whereby complaints are only referred for investigation where, on the face of it, it appears that this could be warranted.

It follows from this that the population of complaints actually referred by the Ombudsman for detailed investigation is comparatively small, and will tend to involve the most long-running and intractable issues; there is thus a significant likelihood that any complaint subject to detailed investigation will be upheld.

### **2. The Requirement to Report to Members**

There are two distinct circumstances where reports on Ombudsman complaints are required to Members.

- In rare, and generally particularly serious, cases where the Ombudsman has formally issued a "Public Interest" report, LGA '74 s. 30(1) provides that a report must be made to Members.
- There is a broader requirement, under LGHA '89, to advise Members of any findings of "maladministration", whether under a Public Interest report or a more usual Decision Statement.

### **3. Change in Ombudsman Complaint Classification / Need to Report**

It is many years since the Ombudsman issued a Public Interest report in relation to Trafford. Generally this would only be in the most serious cases of what was deemed to be "maladministration", and in all likelihood where significant injustice to the complainant, arising from that maladministration, had also been identified.

More recently, the Ombudsman amended its classification / definition system, to refer primarily to a binary distinction of complaints as being "Upheld" or "Not Upheld". Crucially, however, any complaint now deemed to be upheld is classed as "Maladministration", however trivial the identified fault, and whether or not any injustice arose to the complainant as a result of that fault. As a result of this descriptive change, the Council now receives comparatively regular findings of "Maladministration". Another consequence of the use of this term to define the finding in these cases is that it also triggers the statutory requirement under LGHA '89 to report on "Maladministration" findings to Members.

Whilst there has been no substantive change in the complaints environment or the Council's performance, this additional reporting requirement has arisen essentially from a change in the Ombudsman's terminology.

#### **4. Complaints 2016/17**

For the purposes of this report, the complaints included are those recorded in the Ombudsman's Annual Letter for 2016/17 as having been formally determined within that municipal year.

Annexe A provides for Members' information an anonymised summary of cases where complaints have been upheld, and thus, under the current classification, deemed to involve "maladministration". Details are included of service area, subject of the complaint, and outcome following the Ombudsman's investigation.

Of the 27 complaints formally investigated, 14 (52%) were upheld. It should be noted that owing to the length of investigation several of these related to ongoing complaints primarily handled in the previous year. (In the previous year 60% were upheld; though the small population and timing issues make it difficult to draw any secure conclusions from this.) Of the 14 complaints upheld in 2016/17, 2 involved no remedial action at all; and 4 more involved no direct financial penalty. This suggests that, whilst some administrative fault had been identified, it had comparatively minor if any adverse impact on the complainant. In a number of cases, where "Injustice" has been identified, this has been relatively trivial (minor service failure, inadequate communication, etc.), with correspondingly minor remedies proposed (or indeed no remedy, as any injustice had already been rectified). In 2 cases the Ombudsman agreed that recommended payments could be netted off associated charges owed by the complainants. In general, any more significant impacts resulted not from direct payments recommended, but from complainants being accorded greater access to services and / or protected from recovery of charges which might otherwise have been due. In relation to the small number of complaints which could be considered to be more serious and involving more significant remedies, in none of these cases has the Ombudsman sought to issue a "Public Interest Report". This suggests that in the Ombudsman's terms these are not amongst the most concerning complaints they encounter.

#### **Other Options**

None: there is a duty for these findings to be reported to Members.

#### **Reasons for Recommendation**

To satisfy a statutory duty in ensuring that Members are informed of the outcome of Ombudsman investigations.

**Finance Officer Clearance** *(type in initials)* **NB**

**Legal Officer Clearance** *(type in initials)* **JLF**

#### **CORPORATE DIRECTOR'S SIGNATURE**



To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.

**OMBUDSMAN DECISIONS 2016/17 – UPHELD COMPLAINTS**

Refs.	Notes	Directorate	Description	Outcome
<b><u>UPHELD:</u></b>				
14019826	13.4.16	CFWB	Failure to provide suitable education.	Small compensation payments to affected parents and child. (Recommendation to make apology withdrawn by LGO.)
15002412	19.4.16	CFWB	Failure clearly to identify a care home without a top-up fee.	Finding of maladministration but no injustice; no consequent actions to be taken.
14019553	25.4.16	CFWB	Delays / inadequacies in implementing SEN statement following Tribunal decision.	Payments recommended for educational benefit and distress / time / trouble; with review of other procedural issues to be undertaken.
15008807	26.4.16	CFWB	Failure properly to consider home to school transport application / appeal.	Apology; fresh appeal to be held; and Council's policy to be reviewed to ensure clarity.
15020323	4.7.16	EGEI	Failure to impose a planning condition, leading to overlooking.	Council to arrange appropriate tree planting in mitigation. (Alternative resolution then proposed by complainant and agreed by Council.)
15001482	6.7.16	CFWB	Delays in converting learning disability assessment into EHC Plan; & consequent impact on education.	Apology; & payments in support of education, and time and trouble in pursuing the complaint.
15015337	21.7.16	CFWB	Failure to send regular invoices in relation to top-up payments for care services.	Apology; & payment in respect of distress and anxiety (though this to be offset against complainant's existing care debt).

16006630	6.9.16	EGEI	Service failure in relation to assisted collection.	Upheld; but no further action taken since Council had already taken satisfactory steps to remedy the position.
15013600	29.9.16	CFWB / T&R	Accuracy of record-keeping / notifications in respect of social care charges.	Provision of updated records; apology; & time and trouble payment. (NOTE - Significant post-decision discussions with LGO, & agreement that payment be netted off outstanding debts.)
15018837	1.12.16	CFWB	Errors in the making of SEN provision.	Upheld. Alternative school placement agreed; modest payments agreed to complainant and child for time & trouble and for educational benefit.
15014352	16.1.17	CFWB	Failure to ensure appropriate IMCA support in contesting DOL case.	Apology, & time and trouble payment.
16003197	31.1.17	EGEI	Failure to respond properly to correspondence and fault in Committee report.	Apology and advice to service officers. (No financial settlement and no implications for Planning decision.)
16005922	27.2.17	CFWB / T&R	Failure properly to assess contributions to homecare, and consequent recovery implications.	Apology; waiver of outstanding disputed recovery sum and minor time & trouble payment.
16009165	16.3.17	CFWB	Failure to communicate adequately in respect of appropriate safeguarding action taken.	Apology in respect of failure in communication.

This page is intentionally left blank

# Advice for elected and prospective councillors

## Data Protection Act

### Contents

Introduction.....	2
The role of the councillor .....	2
Use of personal information .....	2
Multi-member wards .....	4
Notification .....	5
Offences.....	6
Security .....	6
More information .....	7

## Introduction

1. The Data Protection Act 1998 (DPA) is based around eight principles of good information handling. These give people specific rights in relation to their personal information and place certain obligations on those organisations that are responsible for processing it
2. An overview of the main provisions of the DPA can be found in [The Guide to Data Protection](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help data controllers to fully understand their obligations and promote good practice.
4. This guidance aims to provide elected and prospective councillors with advice on how the DPA applies to them.

## The role of the councillor

5. Councillors are likely to have three different roles:
  - As a member of the council, for example, as a cabinet member or a member of a committee.
  - A representative of residents of their ward, for example, in dealing with complaints.
  - They may represent a political party, particularly at election time.

## Use of personal information

6. When councillors consider using personal information, they should take into account the context in which that information was collected to decide whether their use of the information will be fair and lawful, as required by principle 1 of the DPA:
  - Where a councillor is representing an individual resident who has made a complaint, the councillor will usually have the implied consent of the resident to retain relevant personal data provided and to disclose it as appropriate. The resident will also expect that the organisations (including the local authority) who are the subject of the complaint will disclose personal data to the councillor. If



there is any uncertainty regarding the resident's wishes, it would be appropriate to make direct contact with the resident to confirm the position.

- Sensitive personal information is treated differently; for example, where consent is being relied on this should be explicit in nature. However, in the context of a complaint, councillors – and organisations making disclosures to them - will usually be able to rely on the [Data Protection \(Processing of Sensitive Personal Data\)\(Elected Representatives\) Order 2002](#) as a condition for processing.
- Personal information held by the local authority should not be used for political purposes unless both the local authority and the individuals concerned agree. It would not be possible to use a list of the users of a particular local authority service for electioneering purposes without their consent. An example would be using a local authority list of library users to canvass for re-election on the grounds that the councillor had previously opposed the closure of local libraries.
- When campaigning for election as the representative of a political party, candidates can use personal information, such as mailing lists, legitimately held by their parties. However, personal information they hold in their role as representative of local residents, such as complaints casework, should not be used without the consent of the individual.
- When campaigning for election to an office in a political party, councillors should only use personal information controlled by the party if its rules allow this. It would be wrong, for instance, to use personal information which the candidate might have in their capacity as the local membership secretary, unless the party itself had sanctioned this.
- Candidates for election should be aware that political campaigning falls within the definition of direct marketing. Consequently, they should have regard to the requirements of the DPA (in particular section 11) and the Privacy and Electronic Communication (EC Directive) Regulations 2003 which set out specific rules that must be complied with for each type of marketing communication. For further information on this, the Information

Commissioner has produced [Guidance on Political Campaigning](#) which is available on our website.

### **Multi-member wards**

7. In some types of local authority, councillors are elected under a multi-member system where more than one councillor represents a particular ward.
8. As a result, there may be situations where a councillor who represents a resident may need to pass on that particular individual's personal information to another councillor in the same ward. The councillor will only be allowed to disclose to the other ward councillor the personal information that is necessary:
  - to address the resident's concerns;
  - where the particular issue raises a matter which concerns other elected members in the same ward; or
  - where the resident has been made aware that this is going to take place and why it is necessary.

If a resident objects to a use or disclosure of their information, their objection should normally be honoured.

9. The councillor should not pass on personal information which is not connected to the resident's case.

#### **Example**

A resident asks one of the councillors in a multi-member ward for help about teenagers acting in an intimidating way in the area. The councillor wishes to share the resident's complaint with the other ward councillors because it is an issue of general concern.

The councillor lets the resident know that he wants to give the details of their complaint to the other ward councillors and why he wants to do that, rather than giving a general description of the complaint to other ward councillors.

If the resident objects, then his wishes are respected and only the general nature of the complaint is shared.

## Notification

10. In considering whether they need to register their processing with the Commissioner, councillors must first decide in which role they are processing personal information:

- **As a member of the council**

Councillors may have access to, and process, personal information in the same way as employees. In this case it is the council rather than the councillor that determines what personal information is used for and how it is processed. For example, if a member of a housing committee has access to tenancy files to consider whether the local authority should proceed with an eviction, the councillor is carrying out the local authority's functions and so does not need to register in their own right.

- **As a representative of the residents of their ward**

When councillors represent residents of their ward, they are likely to have to register in their own right. For example, if they use personal information to timetable surgery appointments or take forward complaints made by local residents.

- **As a representative of a political party**

When acting on behalf of a political party, for instance as an office holder, councillors are entitled to rely upon the registration made by the party.

When individuals campaign on behalf of political parties to be the councillor for a particular ward, they can rely on the parties' registration if the party determines how and why the personal information is processed for the purpose of their individual campaigns.

If a prospective councillor is not part of any political party but campaigning to be an independent councillor for a particular ward, they need to have their own registration.

11. There is an exemption from registration where the only personal information which is processed takes the form of paper records.

12. A standard form for registration by councillors has been created to simplify the procedure.

## Offences

13. The DPA contains a number of criminal offences, including:
  - Failure to register when required to do so. For example, a councillor who holds computerised records of residents' details for casework purposes would commit an offence if they had not registered this use of personal information.
  - Making unauthorised disclosures of personal information. For example, a councillor who discloses personal information held by the council to their party for electioneering purposes without the council's consent could commit an offence.
  - Procuring unauthorised disclosures of personal information. For example, a councillor who obtains a copy of personal information apparently for council purposes, but in reality for their own personal use (or the use of their party), is likely to have committed an offence.

## Security

14. Councillors should be aware that they need to arrange for appropriate security to protect personal information. They must take into account the nature of the information and the harm that can result. They should consider what technical and organisational measures, such as use of passwords, computer access privileges, procedures and staff training, are appropriate to keep the information safe. Councils should also take appropriate measures in the same way.

## More information

15. Additional guidance is available on [our guidance pages](#) if you need further information on other parts of the DPA.
16. If you need any more information about this or any other aspect of data protection, please [contact us](#), or visit our website at [www.ico.org.uk](http://www.ico.org.uk).

This page is intentionally left blank



Department for  
Communities and  
Local Government

## Disqualification criteria for Councillors and Mayors

Consultation on updating disqualification criteria for local  
authority members



© Crown copyright, 2017

*Copyright in the typographical arrangement rests with the Crown.*

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This document/publication is also available on our website at [www.gov.uk/dclg](http://www.gov.uk/dclg)

If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Department for Communities and Local Government  
Fry Building  
2 Marsham Street  
London  
SW1P 4TF  
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/CommunitiesUK>

September 2017

ISBN: 978-1-4098-5102-8



# Contents

<b>Scope of the consultation</b>	<b>4</b>
<b>Basic Information</b>	<b>5</b>
<b>Introduction</b>	<b>7</b>
<b>The Current Disqualification Criteria</b>	<b>9</b>
<b>Sexual Offences</b>	<b>11</b>
<b>Anti-Social Behaviour</b>	<b>13</b>
<b>Retrospection</b>	<b>15</b>
<b>Questions</b>	<b>16</b>
<b>About this consultation</b>	<b>17</b>

# Scope of the consultation

**A consultation paper issued by the Department for Communities and Local Government on behalf of the Secretary of State**

<b>Topic of this consultation:</b>	This consultation paper sets out the government’s proposals for updating the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly.
<b>Scope of this consultation:</b>	<p>The Department for Communities and Local Government is consulting on proposals to update the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly, if they are subject to:</p> <ul style="list-style-type: none"> <li>• the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as ‘being on the sex offenders register’);</li> <li>• a civil injunction granted under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014; or</li> <li>• a Criminal Behaviour Order made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014.</li> </ul> <p>Any changes to the disqualification criteria would require changes to primary legislation, in particular the Local Government Act 1972, the Local Democracy, Economic Development and Construction Act 2009, and the Greater London Authority Act 1999.</p> <p>The proposed changes would not act retrospectively.</p>
<b>Geographical scope:</b>	The proposals in this consultation paper apply to certain authorities in England, including local authorities, combined authorities and the Greater London Authority. They do <u>not</u> apply to authorities in Wales, Scotland or Northern Ireland.
<b>Impact Assessment:</b>	No impact assessment has been produced for this consultation.

# Basic Information

<b>To:</b>	This consultation is open to everyone. We particularly seek the views of individual members of the public, prospective and current councillors and those bodies that represent the interests of local authorities and councillors at all levels.
<b>Body responsible for the consultation:</b>	The Local Government Stewardship Division in the Department for Communities and Local Government is responsible for conducting the consultation.
<b>Duration:</b>	The consultation will begin on Monday 18 September 2017. The consultation will run for 12 weeks and will close on Friday 8 December 2017. All responses should be received by no later than 5pm on Friday 8 December 2017.
<b>Enquiries:</b>	<p>If you have any enquiries, please contact:</p> <p>Stuart Young email: <a href="mailto:stuart.young@communities.gsi.gov.uk">stuart.young@communities.gsi.gov.uk</a></p> <p>DCLG Tel: 0303 44 40000</p> <p>How to respond:</p> <p>Please respond by email to: <a href="mailto:Section80consultation@communities.gsi.gov.uk">Section80consultation@communities.gsi.gov.uk</a></p> <p>Alternatively, please send postal responses to:</p> <p>Stuart Young Department for Communities and Local Government 2nd Floor, NE, Fry Building 2 Marsham Street London SW1P 4DF</p> <p>Responses should be received by 5pm on Friday 8 December 2017.</p>
<b>How to respond:</b>	<p>You can respond by email or by post.</p> <p>When responding, please make it clear which questions you are responding to.</p> <p>When you reply it would be very useful if you could confirm whether you are replying as an individual or submitting an</p>

	<p>official response on behalf of an organisation, and include:</p> <ul style="list-style-type: none"><li>- your name</li><li>- your position (if applicable)</li><li>- the name and address of your organisation (if applicable)</li><li>- an address, and</li><li>- an email address (if you have one)</li></ul>
--	--

# Introduction

1. Local authority members (i.e. councillors), mayors of combined authorities, members of the Greater London Assembly and the London Mayor take strategic decisions that affect all our lives. They decide how best to use taxpayers' money and manage local authority resources, including property, land and assets. They also have a leading role to play in building and preserving a society where the rights and freedoms of individuals are respected. They should be community champions. It is vital, therefore, that they have the trust of the electorate.
2. The Government considers that there should be consequences where councillors, mayors and London Assembly members fall short of the behaviour expected of anyone in a free, inclusive and tolerant society that respects individuals and society generally, and where this has led to enforcement action against an individual.
3. Existing legislation prevents individuals standing, or holding office, as a local authority member, London Assembly member or directly-elected mayor if they have, within five years of the day of the election, or since their election, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment, suspended or not, for a period of not less than three months without the option of a fine.
4. The Government considers that the law should be updated to reflect new options which exist to protect the public and address unlawful and unacceptable behaviour.
5. This consultation proposes updating the disqualification criteria in section 80 of the Local Government Act 1972, paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, and section 21 of the Greater London Authority Act 1999 to prohibit those subject to the notification requirements (commonly referred to as 'being on the sex offenders register') and those subject to certain anti-social behaviour sanctions from being local authority members, London Assembly members or directly-elected mayors.
6. This consultation does not propose changing the disqualification criteria for Police and Crime Commissioners (PCCs). For the purposes of this consultation, 'local authority member' also extends to directly-elected mayors and co-opted members of authorities, and 'local authority' means:
  - a county council
  - a district council
  - a London Borough council
  - a parish council

The disqualification criteria in section 80 of the Local Government Act 1972, paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, and section 21 of the Greater London Authority Act 1999 do not cover the Council of the Isles of Scilly or the Common Council of the City of

London. Therefore, the proposals in this consultation do not extend to these councils.

# The Current Disqualification Criteria

7. Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:
  - are employed by the local authority;
  - are employed by a company which is under the control of the local authority;
  - are subject to bankruptcy orders;
  - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine;
  - are disqualified under Part III of the Representation of the People Act 1983;
  - are employed under the direction of various local authority committees, boards or the Greater London Authority; or
  - are a teacher in a school maintained by the local authority.
  
8. Paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 sets out the criteria on disqualification from standing as, or being, a directly-elected mayor of a combined authority. A person is disqualified from being elected or holding office as the mayor of a combined authority if they:
  - hold any paid office or employment (other than the office of mayor or deputy mayor), including any appointments or elections made by or on behalf of the combined authority or any of the constituent councils of the combined authority;
  - are subject to bankruptcy orders;
  - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine; or
  - is disqualified for being elected or for being a member of a constituent council under Part 3 of the Representation of the People Act 1983.
  
9. Section 21 of the Greater London Authority Act 1999 disqualifies someone from being the Mayor or an Assembly member if they:
  - are a member of staff of the Authority;
  - hold an office that disqualifies the holder from being Mayor or an Assembly member;
  - are subject to bankruptcy orders are bankrupt or have made a composition agreement with creditors;
  - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine;
  - are disqualified under section 85A or Part III of the Representation of the People Act 1983 from being the Mayor or an Assembly member; or

- are a paid officer of a London borough council who is employed under the direction of:
  - a council committee or sub-committee whose membership includes the Mayor or someone appointed on the nomination of the Authority;
  - a joint committee whose membership includes a member appointed on the nomination of the council and a member appointed on the nomination of the Authority;
  - the council executive, or one of its committees, whose membership includes the Mayor or someone appointed on the nomination of the Authority;
  - a member of the council's executive who is the Mayor or someone appointed on the nomination of the Authority.



# Sexual Offences

10. The Government considers that anyone who is subject to sex offender notification requirements, commonly referred to as 'being on the sex offenders register', should be barred from standing for election, or holding office, as a local authority member, directly-elected mayor or member of the London Assembly. The period of time for which they would be barred would end once they were no longer subject to these notification requirements.

11. An individual can become subject to notification requirements by committing certain criminal acts or being issued with certain types of civil order:

- Being subject to sex offender notification requirements is an automatic consequence of being cautioned or convicted of a sexual offence listed in Schedule 3 of the Sexual Offences Act 2003 (see: <http://www.legislation.gov.uk/ukpga/2003/42/schedule/3>).
- Sexual Harm Prevention Orders are civil orders intended to protect the public from offenders convicted of a sexual or violent offence who pose a risk of sexual harm to the public by placing restrictions on their behaviour. Offenders who are subject to Sexual Harm Prevention Orders become subject to notification requirements.
- Notification Orders are civil orders intended to protect the public in the UK from the risks posed by sex offenders who have been convicted, cautioned, warned or reprimanded for sexual offences committed overseas. Such offenders may be British or foreign nationals convicted, cautioned etc. abroad of a relevant offence. Offenders who are subject to Notification Orders become subject to notification requirements.

12. The duration of the notification requirement period (i.e. how long a person is on the sex offenders register) is set out in the Sexual Offences Act 2003 and in the table below. The courts have no discretion over this.

<b>Where the (adult) offender is:</b>	<b>The notification period is:</b>
Sentenced to imprisonment for life or to a term of 30 months or more	An indefinite period
Detained in a hospital subject to a restriction order	An indefinite period
Sentenced to imprisonment for more than 6 months but less than 30 months imprisonment	10 years
Sentenced to imprisonment for 6 months or less	7 years
Detained in a hospital without being subject to a restriction order	7 years
Cautioned	2 years

Conditional discharge	The period of the conditional discharge
Any other description (i.e. community sentence, fine)	5 years

These periods are halved for offenders who are under 18 on the date of the caution, conviction or finding, as defined within the 2003 Act.

13. Offenders who are subject to the notification requirements must notify the police of (amongst other things) their: name, date of birth, national insurance number, home address, passport number, bank account and credit card details. They must do this annually, any time the details change or when they travel abroad. They must also notify the police when they stay or reside with a child for more than 12 hours.
14. Further information on the Sexual Offences Act 2003 can be found at: <https://www.gov.uk/government/publications/guidance-on-part-2-of-the-sexual-offences-act-2003>.
15. The Government does not propose including another type of civil order, the Sexual Risk Order, as this person would not have been convicted or cautioned of a sexual offence under the Sexual Offences Act 2003 and are not subject to notification requirements for registered sex offenders. A Sexual Risk Order does require the individual to notify to the police their name and their home address. A Sexual Risk Order can be sought by the police against an individual who has not been convicted, cautioned etc. of an offence under Schedule 3 or Schedule 5 of the 2003 Act but who is nevertheless thought to pose a risk of harm to the public in the UK and/or children or vulnerable adults abroad.

**Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. who is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

# Anti-Social Behaviour

16. Anti-social behaviour blights people's lives and can leave victims feeling powerless. These are a range of powers to the courts, police and local authorities to tackle the problems in the table below.

17. The Government considers that an individual who is subject to an anti-social behaviour sanction that has been issued by the court, i.e. a Civil Injunction or a Criminal Behaviour Order, should be barred from standing for election, or holding office, as a local authority member, directly-elected mayor or member of the London Assembly. The period of time for which they would be barred would end once they were no longer subject to the injunction or Order.

## Anti-Social Behaviour (ASB) Powers

Type	Power	Description
Issued by the court to deal with individuals	<b>Civil Injunction</b>	A civil order with a civil burden of proof. The injunction can include both prohibitions and positive requirements to tackle the underlying causes of the behaviour. Applications can be made by police, councils, social landlords, Transport for London, Environment Agency, Natural Resources Wales and NHS Protect.
	<b>Criminal Behaviour Order</b>	A court order available on conviction. The order can be issued by any criminal court against a person who has been convicted of an offence. It is aimed at tackling the most persistently anti-social individuals who are also engaged in criminal activity. The order can include both prohibitions and positive requirements. Applications are made by the prosecution, in most cases by the Crown Prosecution Service, either at its own initiative or following a request from the police or council.
Used by the police to move problem groups or individuals on	<b>Dispersal Power</b>	A flexible power which the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to a local community. It allows the police to deal instantly with someone's behaviour and prevent it escalating. The use of the power must be authorised by an officer of at least inspector rank, to be used in a specific locality for up to 48 hours or on a case by case basis. This is to ensure that the power is used fairly and proportionately and only in circumstances in which it is necessary.

Issued by councils, the police and social landlords to deal with problem places	<b>Community Protection Notice</b>	A notice designed to deal with particular problems which negatively affect the community's quality of life. The Notice can be issued to anyone aged 16 or over, businesses or organisations. This is a two-stage power and a written warning has to be issued first. Failure to stop the behaviour or take action to rectify the problem would lead to the notice being issued. The power can be used by councils, police and social landlords (if designated by the council).
	<b>Public Spaces Protection Order</b>	Designed to deal with anti-social behaviour in a public place and apply restrictions to how that public space can be used to stop or prevent anti-social behaviour. The order is issued by the council. Before the order can be made, the council must consult with the police and whatever community representatives they think appropriate, including regular users of the public space. Before the order is made the council must also publish the draft order.
	<b>Closure Power</b>	A fast and flexible two-stage power. Can be used to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder, including residential, business and licensed premises. The police and councils are able to issue Closure Notices for up to 48 hours and the courts are able to issue Closure Orders for up to six months if satisfied that the legal tests have been met. Following the issue of a Closure Notice, an application must be made to the magistrates' court for a closure order.

**Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

# Retrospection

18. Legislation does not generally apply retrospectively, the principle being that the law should operate in a clear and certain manner and the public is entitled to know the state of the law at a particular time.
19. The proposals in this consultation would not apply retrospectively, i.e. any incumbent local authority member, directly-elected mayor or member of the London Assembly, who is on the sex offenders register or subject to a Civil Injunction or Criminal Behaviour Order at the time the changes come into force would not be affected.
20. Such individuals would of course be prevented from standing for re-election after the changes came into force.

# Questions

**Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?**

**Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q5. Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?**

**Q6. Do you have any further views about the proposals set out in this consultation paper?**

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.  
Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

This page is intentionally left blank