

## POLICY AND RESOURCES COMMITTEE

29 January 2024

### PART I

#### PROPOSED AMENDMENT TO THE CONSTITUTION ON RECORDING OF PRIVATE MEETINGS

##### 1. Summary

The Council's constitution contains no provision on the recording of private meetings. It is proposed a provision should be added to the Protocol on Member/Officer Relations and the Member Code of Conduct which prohibits the audio and/or visual recording of private meetings (including private video and telephone calls) unless the prior consent of those attending has been obtained.

##### 1 Details

- 1.1 The recording of a private meeting either openly or covertly, without the consent of those attending, raises several legal complexities including consideration of compliance with the Regulation of Investigatory Powers Act 2000, data protection law, the right to privacy and the Human Rights Act 1998 and the protections around confidential information. For these reasons it is proposed that the constitution should prohibit this unless the prior consent of those attending the meeting has been obtained.
- 1.2 It is therefore proposed to add the following sentence to paragraph 8.3 of the Protocol on Member/Officer Relations contained at Part 5 of the constitution: 'Video and/or audio recordings of private meetings, private video calls and private telephone calls are not permitted except with the prior consent of all those in attendance' as shown in Annex 1. It is further proposed to amend the Member code of conduct to include the following provision: 'In private meetings, private video calls and private telephone calls including those with Council officers, you should not, or encourage others to, openly or covertly electronically record video and/or audio of the meeting or telephone conversation without the prior consent of those in attendance' as shown in Annex 2.
- 1.3 The proposed amendments seek to ensure that there is compliance with the law in relation to the electronic recordings of private meetings when some or all of those present have not consented to the recording and avoid the risk of legal action against the individual and/or Council.

##### Options and Reasons for Recommendation

- 2.1 There are three options. The recommended option is for the Council to accept the recommendations in this report by adopting the proposed additions to the Protocol on Member/Officer Relations and the Member code of conduct as shown in Annexes 1 and 2. This will help ensure the authority is complying with the law on the recording of private meetings.

2.2 The second option is do nothing. This is not recommended as it means the authority and/or Member and/or Officer is left open to the risk of legal challenge in the event of an unauthorised recording of a private meeting.

2.3 The third option is to request Officers to amend the proposed amendments to Annexes 1 and 2.

### **3 Policy/Budget Reference and Implications**

3.1 There are no direct policy or budget implications. Full Council will be required to approve the proposed amendments to the constitution.

### **4 Financial Implications**

4.1 There are no direct financial implications.

### **5 Legal Implication**

5.1 The Localism Act 2011 ('the Act'), section 27 imposes a duty on the authority to promote and maintain high standards of conduct by members and to adopt a Member code of conduct.

5.2 Section 28 of the Act sets out what must be in the code of conduct including adherence to the Nolan principles and pecuniary interests. Sub-section 28(3) states that sections 29 to 34 of the Act, which relates to pecuniary interests, do not limit what may be included in a relevant authority's code of conduct, but nothing in a relevant authority's code of conduct prejudices the operation of those sections. Sub-section 28(5) provides that a relevant authority may—(a) revise its existing code of conduct, or (b) adopt a code of conduct to replace its existing code of conduct.

5.3 The Council adopted the LGA Model Code of Conduct in May 2021. The Council has absolute discretion to vary its Code of Conduct so long as it complies with the provisions in section 28 of the Act. The proposed amendments to the Code comply with section 28.

### **6 Staffing Implications**

There are no direct staffing implications.

### **7 Equal Opportunities Implications**

There are no direct equal opportunities implications. It is a legal requirement to have a Member code of conduct.

### **8 Climate Change and Sustainability Implications**

8.1 There are no direct climate or sustainability implications.

### **9 Communications and Website Implications**

9.1 If proposed amendments to the constitution are approved the constitution website page will be updated.

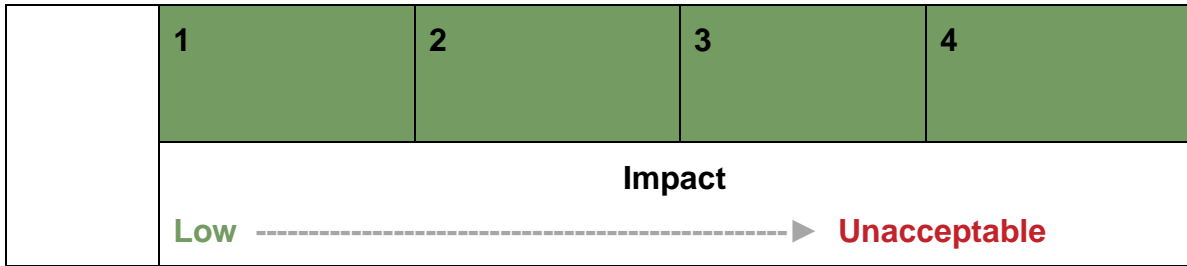
## 10 Risk and Health & Safety Implications

10.1 The risk management implications of this report are detailed below.

Nature of Risk	Consequence	Suggested Control Measures	Response <i>(tolerate, treat, terminate, transfer)</i>	Risk Rating <i>(combination of likelihood and impact)</i>
An individual records a private meeting without consent.	Potential successful challenge to that individual and/or the Council via an adverse decision of the Ombudsman and/or Courts and/or Information Commissioner .	Adopt constitutional provisions that prohibit recordings of private meetings unless the recording is authorised.	Tolerate	4-6

10.2 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

<b>Very Likely</b> <i>Remote</i> Likelihood ↓	<b>Low</b> <b>4</b>	<b>High</b> <b>8</b>	<b>Very High</b> <b>12</b>	<b>Very High</b> <b>16</b>
	<b>Low</b> <b>3</b>	<b>Medium</b> <b>6</b>	<b>High</b> <b>9</b>	<b>Very High</b> <b>12</b>
	<b>Low</b> <b>2</b>	<b>Low</b> <b>4</b>	<b>Medium</b> <b>6</b>	<b>High</b> <b>8</b>
	<b>Low</b>	<b>Low</b>	<b>Low</b>	<b>Low</b>



**11 Recommendation**

11.1 That the Committee recommends to full Council:

- i) The adoption of the additional wording to the Protocol on Member/Officer Relations detailed at Annex 1.
- ii) The adoption of the additional wording to the Member Code of Conduct detailed at Annex 2.

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**Data Quality**

Data sources: NA

Data checked by:

Stephen Rix

Data rating:

<b>1</b>	<b>Poor</b>	
<b>2</b>	<b>Sufficient</b>	<b>X</b>
<b>3</b>	<b>High</b>	

**Background Papers**

None

**Appendices**

Annex 1 – Proposed Amendments to the Protocol on Member/Officer Relations

Annex 2 – Proposed Amendments to the Member Code of Conduct