

STANDARDS COMMITTEE

Date:	Monday 20th October, 2025
Time:	10.00 am
Venue:	Mandela Room

AGENDA

1. Welcome and Fire Evacuation Procedure

In the event the fire alarm sounds attendees will be advised to evacuate the building via the nearest fire exit and assemble at the Bottle of Notes opposite MIMA.

2. Apologies for Absence

3. Declarations of Interest

To receive any declarations of interest.

4. Minutes- Standards Committee - 14 July 2025 3 - 6

5. Quarterly Update Report to Standards Committee 7 - 12

6. Dispensation in respect of a Disclosable Personal Interest 13 - 44

7. Any other urgent items which in the opinion of the Chair, may be considered

Charlotte Benjamin
Director of Legal and Governance Services

MEMBERSHIP

Councillors A Romaine (Chair), I Morrish (Vice-Chair), M Saunders, J Thompson, D Branson, P Gavigan, L Hurst, J McConnell and J Rostron

Assistance in accessing information

Should you have any queries on accessing the Agenda and associated information please contact Susan Lightwing/Joanne McNally, 01642 728329/01642 729712, Joanne_McNally@middlesbrough.gov.uk; Sue_Lightwing@middlesbrough.gov.uk

STANDARDS COMMITTEE

A meeting of the Standards Committee was held on Monday 14 July 2025.

PRESENT: Councillors A Romaine (Chair), I Morrish (Vice-Chair), J Thompson, D Branson, P Gavigan, J McConnell and J Rostron

OFFICERS: T Frankland, S Lightwing and A Wilson

APOLOGIES FOR ABSENCE: were submitted on behalf of Councillor Saunders

25/1 **WELCOME AND FIRE EVACUATION PROCEDURE**

The Chair welcomed everyone to the meeting and explained the Fire Evacuation Procedure.

25/2 **DECLARATIONS OF INTEREST**

There were no Declarations of Interest at this point in the meeting.

25/3 **MINUTES- STANDARDS COMMITTEE - 7 APRIL 2025**

The minutes of the Standards Committee meeting held on 7 April 2025 were submitted and approved as a correct record.

25/4 **QUARTERLY UPDATE REPORT TO STANDARDS COMMITTEE**

A report of the Director of Legal and Governance Services was presented by the Deputy Monitoring Officer, to provide a quarterly update to the Standards Committee in relation to the recent and current position concerning Code of Conduct Complaints.

There were 14 outstanding complaints as of 3 July 2025. Eight of those were awaiting external information before they could be progressed further and six were with the independent person; two of these would be closed off within two weeks.

Members queried whether the figures related to Middlesbrough Councillors only or included parish councillors and whether complaints against former councillors were still included in the report.

The Deputy Monitoring Officer confirmed that the same process applied for both parish and Middlesbrough councillors. It was also confirmed that complaints against former councillors were included in the figures and the Deputy Monitoring Officer would run through the Members' Code of Conduct in the next agenda item to provide some more context around this. A discussion could be had whether Members wish for complaints to be continued if the subject is no longer a councillor, although at this stage the Committee could not sanction the Subject as the Code of Conduct only applied to current councillors.

Members queried whether the figures could be split down any further and whether there was a specific reason that the number of complaints in 2023 was so high. The Deputy Monitoring Officer advised that by splitting the data into smaller groups it would make the subjects potentially identifiable so it could not be more specific. A social media post was circulated in 2023 which generated a high number of complaints. The Deputy Monitoring Officer continued that it had been discussed in the past the best way in which to handle social media complaints and whether they should be recorded as separate complaints or as one if they are concerning the same post. It was decided that they would be recorded as separate complaints however the process in which complaints were classified was complex as there could be several complaints about the same thing that slightly differed.

The Deputy Monitoring Officer asked Members for their views on the way in which the monthly updates were currently presented. Members agreed that the monthly updates were useful and should continue as they are. It was useful to have a long stretch of years to compare as patterns could be identified, for example in election years there might be an increase.

The Deputy Monitoring Officer confirmed that any outstanding complaints that were awaiting action from Middlesbrough Council were up to date, any others were awaiting external action.

Members queried whether a complaint that was referred to the police would still go through the same process. The Deputy Monitoring Officer confirmed that up until there was an outcome with the police, the same process would be followed.

AGREED that the information provided was received and noted.

25/5

MEMBERS' CODE OF CONDUCT ARRANGEMENTS

The Deputy Monitoring Officer delivered a presentation in relation to the Code of Conduct complaints process.

The Deputy Monitoring Officer explained the role of the Independent Person, noting that the final decision would always lie with the Monitoring Officer but the Independent Person provided a view and the Monitoring Officer may consult the Independent Person at any stage in the process. In reference to a query from the last meeting, it was confirmed that Middlesbrough Council had appointed two Independent Persons.

Members queried the process around the recruitment of an Independent Monitoring Person, whether political affiliations were considered and the rates of pay. It was confirmed that the post was advertised like any Middlesbrough Council vacancy and open to anyone who has the transferrable skills needed to fulfil the role. Any obvious political affiliations would be considered but those who apply were not required to declare interests. The Deputy Monitoring Officer continued that the rate of pay had been a barrier to filling the post previously as there was a flat rate admin fee paid which was set at £1000 for the year. One of the current Independent Persons had been in post for around five years and one for two years, so it was not a position that was regularly recruited for.

In order for a complaint to be investigated, it was advised that there were two sets of criteria. If the complaint failed one or more of these jurisdictional tests it could not be investigated as a breach of the Code, and the complainant must be informed that no further action would be taken in respect of the complaint. If a complaint passed both stages of the preliminary test, the subject of the complaint would be notified and there may be requests for additional information from the complainant and/or the Subject Member before deciding how to deal with the complaint.

The Monitoring Officer, in consultation with the Independent Person would then decide how to deal with the complaint. This will be by way of:

- a) Informal Resolution (with/without an investigation)
- b) Investigation
- c) Criminal Conduct
- d) No action

A Member queried whether the same process would be followed if someone made a statement during election time that was untrue and went on to become a councillor.

The Deputy Monitoring Officer advised that if someone made a statement that others simply did not agree with, this process would not be followed as the Subject was not in office at that time and this was one of the criteria. If the incident happened before a Member had signed the Code of Conduct it was difficult to hold them to account generally as the Code only applied to current councillors.

A Member noted that there was no remedy in place to deal with possible breaches of election regulations as the pre-election period was not covered in the Code of Conduct. The Deputy Monitoring Officer advised that complaints were not specifically categorised but some of the criteria did carry more weight. For example, if there was an incident whereby a large group of people had been affected, this may be treated slightly differently.

Members queried whether mediation would be an option in the event that the Code of Conduct was breached. It was confirmed that this could be an option but it depended on the

willingness of the Subjects.

Members raised that it would be useful to see the costs to the council for each type of investigation. The Deputy Monitoring Officer noted that for some investigations the only cost would be officer time, and the Monitoring Office tried to keep investigations internal where possible, but this was dependent on staffing capacity. External investigations were more complex as they could sometimes be charged hourly or alternatively at a fixed rate.

AGREED as follows that:

1. The information provided was received and noted.
2. The Deputy Monitoring Officer would provide Members with an overview of costs to the council in relation to Code of Conduct complaints and investigations for the past three years.

25/6

ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED

None.

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MIDDLESBROUGH COUNCIL

Report of:	Director of Legal and Governance Services - Charlotte Benjamin
Relevant Executive Member:	Mayor Chris Cooke
Submitted to:	Standards Committee
Date:	20 October 2025
Title:	Quarterly Update Report to Standards Committee
Report for:	Information
Status:	Public
Council Plan priority:	Delivering Best Value
Key decision:	No
Why:	Report is for information only
Subject to call in?	No
Why:	This report is for information to the Standards Committee

Proposed decision(s)

That the Standards Committee

- Notes the content of this report.

Executive summary

This report provides a quarterly update to the Standards Committee regarding the current position concerning Code of Conduct Complaints, and to identify any trends or patterns in regards to the type of complaints being received.

1. Purpose of this report and its contribution to the achievement of the Council Plan ambitions

1.1 To provide information by way of a quarterly update to the Standards Committee regarding the previous years and the current position concerning Code of Conduct Complaints.

1.2 In addition that the Committee considers the information to discuss possible areas of member development and improvements.

Our ambitions	Summary of how this report will support delivery of these ambitions and the underpinning aims
A successful and ambitious town	This report supports all of the ambitions as Councillors represent local residents, work to develop better services, and deliver local change. The public have high expectations of them and entrust them to represent our local area, taking decisions fairly, openly, and transparently. There is an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations. This report provides the Standards Committee with the information providing the current position to create and maintain public confidence in the role of councillor and local government. Maintaining that confidence will support the delivery of all of the ambitions and the underpinning aims.
A healthy Place	
Safe and resilient communities	
Delivering best value	

2. Recommendations

2.1 That the Standards Committee

- Notes the content of this report.

3. Rationale for the recommended decision(s)

3.1 Not applicable as report is for information only.

4. Background and relevant information

4.1 This report is provided to committee members to give an overview of the current, and recent position with regards to the Code of Conduct complaints received.

Year (Jan-Dec)	Total	Member on Member	Other non Member (ie member of public / officer)	ONGOING	CONCLUDED				
					No. withdrawn/ discontinued due to not re-elected	No. rejected	No. resolved informally	No. to investigation	No. to standards Committee after investigation
2019	27	9	18	0	4	9	10	4	3
2020	31	4	27	0	16	12	1	2	1
2021	33	13	20	0	7	5	19	2	1
2022	12	3	9	0	4	4	2	2	2
2023	59	10	49	0	9	30	14	6	0
2024	21	7	14	0	0	8	13*	0	0
2025	26	10	16	5	2	10	9	0	0

* This includes five complaints against the same Subject Member where following an investigation the matter was concluded by informal resolution.

4.2 The shaded columns show the breakdown of the ongoing and complaints outcomes and will add up to the total number for the year.

4.3 The outstanding complaints as at 1st October 2025 are as follows:

Year	Total Number Received	Total Number Ongoing	Number of Cllrs
2024	21	0	0
2025 (to date)	26	5	5
TOTALS	47	5	5

4.4 For clarification, the information shows each separate complaint. In some cases, we may get a number of complaints in regard to the same incident which can inflate the total number. We may also have the same complaint against a number of Councillors, which can again inflate the total number.

4.5 Of the 5 outstanding complaints:

- 3 (received March 2025) are awaiting the outcome of an investigation or other external processes before they can continue. In essence these are 'stayed' by the Local Authority.

- 2 (received August & September 2025) have been considered by the Independent Person and are being progressed in accordance with the code of conduct procedure.

4.6 You will note that 11 complaints, which relate to 4 Councillors, have been concluded since the last update. These complaints were resolved by way of informal resolution, some further to an investigation, and some did not require an investigation. As the committee will be aware, in some cases informal resolution is considered the most appropriate, simplest, and cost-effective way of resolving the complaint.

4.7 The prevalent theme of complaints continues to be the inappropriate use of social media. Of the 26 complaints received to date in 2025, almost half of them have an element of alleged inappropriate social media use.

4.8 As set out in the last update an external provider was commissioned to provide training around standards and in particular social media use. All members were encouraged to attend. The session was completed online on 12th September out of 47 Council Members, only 12 attended. Also in attendance were 2 parish councillors, and a parish council clerk.

4.9 The theme of complaints will be continued to be monitored to consider what additional support is required.

4.10 By way of update regarding the appointment of a permanent governance solicitor to assist and support in standards matters following a successful growth bid, this post was advertised though no applications were received. The post will therefore be readvertised in due course.

4.11 Relevant action points:

- **Review of monthly updates**
 - o Cllr Morrish suggestion of including a column for those complaints with outside bodies – is this useful?
- **Engagement with training**
 - o Are there any suggestions as to how we can engage more members in the training provided around standards
 - o Is there any additional/specific training you would like to see

5. Ward Member Engagement if relevant and appropriate

5.1 Not applicable.

6. Other potential alternative(s) and why these have not been recommended

6.1 Not applicable as report is for information only.

7. Impact(s) of the recommended decision(s)

Topic	Impact
Financial (including procurement and Social Value)	There is no financial impact as the report is for information and discussion only.
Legal	There is no legal impact as the report is for information and discussion only.
Risk	The report contributes to the Council demonstrating its approach to monitoring and maintaining standards of behaviour and ethical governance
Human Rights, Public Sector Equality Duty and Community Cohesion	There are no issues affecting human rights, the public sector equality duty or community cohesion.
Reducing Poverty	There is no impact on reducing poverty as the report is for information and discussion only.
Climate Change / Environmental	There is no impact on the Council's climate change or environmental aspirations as the report is for information and discussion only.
Children and Young People Cared for by the Authority and Care Leavers	There is no impact on children and young people cared for by the Authority and care leavers as the report is for information and discussion only.
Data Protection	There are no issues of data protection as the report is for information and discussion only.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
None		

Appendices

1	None
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Background papers

Body	Report title	Date
None		

Contact: Ann-Marie Wilson – Head of Legal Services (People)**Email:** annmarie_wilson@middlesbrough.gov.uk

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IDDLBROUGH COUNCIL	
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Report of:	Director of Legal and Governance Services – Charlotte Benjamin
Relevant Executive Member:	The Mayor – Chris Cooke
Submitted to:	Standards Committee
Date:	20 October 2025
Title:	Dispensation in respect of a Disclosable Pecuniary Interest
Report for:	Decision
Status:	Public
Council Plan priority:	Delivering Best Value
Key decision:	No
Why:	Decision does not reach the threshold to be a key decision
Subject to call in?	No
Why:	Is not a key decision

Proposed decision(s)
That the Standards Committee: APPROVES the granting of dispensation to Councillor David Coupe as follows: a) This dispensation is for a period of three years, or for so long as Councillor David Coupe is a Non-Executive Director of Border to Coast Pensions Partnership Limited ('the company') whichever is the shorter. b) Councillor David Coupe should be allowed to participate, or participate further, in any discussion of any matter concerning the Company at the meetings of the Teesside Pension Funds Committee; and/or c) Councillor David Coupe can participate in any vote, or further vote, taken on the matter at the said meeting(s) PROVIDED THAT he shall not participate in any discussion or vote where changes to the remuneration of Directors of the Company are discussed.

Executive summary

The purpose of this report is for Standards Committee to determine a request from Councillor David Coupe for a dispensation to allow him to continue to attend and participate in the Teesside Pension Fund Committee notwithstanding his Disclosable Pecuniary Interest arising from his appointment as a Non-Executive Director of Border to Coast Pensions Partnership Limited.

A dispensation has been granted by Standards Committee in this regard previously, at a meeting on 17th October 2022. This dispensation was granted for three years and therefore expired on 17th October 2025. Due to internal processes at Boarder to Coast Councillor Coupe's three-year tenure between 2025 to 2028 is being split between a one-year term and a two-year term.

Standards Committee are being asked to determine the following:

- a) Whether to grant the dispensation and the terms of the dispensation;
- b) Whether the dispensation should extend to voting as well as participation in debate; and
- c) The length of time the dispensations should operate for.

Standards committee is being asked to consider this decision as per Section 2(j) of their terms of reference which confirms that they are responsible for 'granting dispensations to Members, Co-opted members and Parish Councillors and the Mayor from the requirements relating to declarations of interest'.

Purpose of this report and its contribution to the achievement of the Council Plan ambitions

1. The purpose of this report is for Standards Committee to determine a request from Councillor David Coupe for a dispensation to allow him to continue to attend and participate in the Teesside Pension Fund Committee notwithstanding his Disclosable Pecuniary Interest arising from his appointment as a Non-Executive Director of Border to Coast Pensions Partnership Limited

Our ambitions	Summary of how this report will support delivery of these ambitions and the underpinning aims
A successful and ambitious town	This report will support the delivery of all these ambitions and the underpinning aims by ensuring good governance around decision making.
A healthy Place	
Safe and resilient communities	
Delivering best value	

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2. Recommendations

2.1 That the Standards Committee

APPROVES the granting of dispensation to Councillor David Coupe as follows:

- a) The dispensation is for a period of three years, or for so long as Councillor David Coupe is a Non-Executive Director of Border to Coast Pensions Partnership Limited ('the company') whichever is the shorter.
- b) Councillor David Coupe should be allowed to participate, or participate further, in any discussion of any matter concerning the Company at the meetings of the Teesside Pension Funds Committee; and/or
- c) Councillor David Coupe can participate in any vote, or further vote, taken on the matter at the said meeting(s) PROVIDED THAT he shall not participate in any discussion or vote where changes to the remuneration of Directors of the Company are discussed.

3. Rationale for the recommended decision(s)

3.1 To enable Councillor Coupe to participate in the business of the Teesside Pension Fund Committee while he is a member of the Board of Directors of Border to Coast Pensions Partnership Limited.

4. Background and relevant information

4.1 The standards committee are being asked to determine the following:

- a) Whether the dispensation is required;
- b) Whether to grant the dispensation and the terms of the dispensation;
- c) Whether the dispensation should extend to voting as well as participation in debate; and
- d) The length of time the dispensations should operate for.

4.2 Under s31 (4) of the Localism Act 2011 an Elected Member who has a Disclosable Pecuniary Interest (DPI) in a matter under consideration is not permitted to participate in the discussion or vote on the matter unless s/he has first obtained a dispensation under s33.

4.3 Section 33 (2) includes a number of situations where a dispensation can be considered, but should be granted "only if, after having regard to all relevant circumstances" the Committee considers that one of those situations applies.

4.4 The statutory grounds under s33 (2) for the granting of a dispensation are where the authority –

(a) considers that without the dispensation the number of persons prohibited by section 31(4) 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 to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each Elected Member of the authority's executive would be prohibited by section 31(4) 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.

4.5 In this instance the dispensation is sought for Councillor David Coupe under ground e) above for the reasons set out within this report.

Proposed Dispensation

4.6 At a meeting where a DPI or other significant interest arises, an Elected Member must declare it at that meeting. This is in addition to declaring it and registering it in the Council's Register of Member Interests.

4.7 Where an Elected Member has a significant interest, that Elected Member can only make such representations at a meeting of the Council that a member of the public can make. Their interest would be noted and the Elected Member can continue to take part in the meeting to the extent that a member of the public would be able to participate.

4.8 Councillor David Coupe has been appointed as a Director by Border to Coast Pensions Partnership Limited ("the Company"). By way of background the Company is owned by the administering authorities of eleven local government pension funds and was established to provide collective investment across those funds.

4.9 The role is remunerated by the Company and at present directors fulfilling the "shareholder director" role are paid £15,000 per annum by the Company. This salary has been determined by the Company's remuneration committee and has the approval of all of the Partner Funds in the pension pool (and the respective shareholders).

4.10 It is expected that Councillor Coupe in carrying out the role will make a time commitment which is expected to be at least three days per month, with availability for meetings, induction and training as required. He is likely to sit on Board Committees as well as the main board and will be obliged to travel to the Company headquarters in Leeds for regular meetings

4.11 The role is described as follows:

- ☐ Support the Chair and Executive Team in instilling the appropriate culture, values and behaviours in the boardroom and beyond.
- ☐ Provide independent oversight and scrutiny of Border to Coast including:
- ☐ Provide an impartial and independent view of Border to Coast and its operations, removed from the day-to-day running of the business
- ☐ Oversee the performance of the Board and Executive Team in meeting strategic objectives, including monitoring financial controls and risk management systems.
- ☐ Draw on wider experience, in other organisations, to provide the Board and Border to Coast Executive Team with a breadth of understanding and insight, including:
- ☐ Challenge and contribute to the development of the strategy of Border to Coast
- ☐ Support the development of a suitable succession plan for the Board and CEO
- ☐ Use specialist knowledge to input to decision making processes
- ☐ Promote a culture of responsible investment and stewardship throughout the organisation.
- ☐ Commit to building a full understanding of Border to Coast, especially in those areas of the business with a significant level of risk.
- ☐ Take time to understand various stakeholder needs and ensure these are addressed at Board level.

4.12 In order to meet the above requirement, the Company wishes to have representation of its shareholders on its Board and requests the Joint Committee with oversight of the Company to nominate potential candidates for this role. There are two directors nominated by the shareholder funds on two-year appointments, one of which expires each year. It is to this role that Councillor David Coupe has been appointed. The term of office for a shareholder director has been reviewed by the Company and a standard term for a Shareholder Director is three years. Under the Company's terms and conditions, Share Holder Directors can hold their positions for a maximum of six years, with an additional year in extraordinary circumstances. Councillor Coupe has completed his first three-year term.

4.13 Due to internal process at the Company, Councillor Coupe's second three-year term is split between one year for 2025/26 and two years between 2026/2028.

4.14 By assuming that role as a paid director Councillor David Coupe has a DPI.

4.15 Councillor David Coupe has made a request for a dispensation in order to allow him to continue to participate as a member of the Teesside Pension Fund Committee.

4.16 In order to provide clarity and certainty Leading Counsel's advice has been previously sought in 2019 on behalf of the Joint Committee, which oversees the Company in respect of the legality of the granting of a dispensation and what that dispensation might cover. A copy of the advice is attached at Appendix 1

4.17 In considering the request for a dispensation Standards Committee is asked to have regard to the following:

a) The appointment of shareholder directors has been accepted by the Joint Committee at the request of the Company as being advantageous to the operation of the Company. It is on the Council's interest that the Company should operate as effectively as possible and it is considered that the "shareholder directors" have an important role in maintaining the ethos and operation of the Company as a key provider of investment services to the collective Border to Coast Local Government Pension Fund Schemes.

b) The nomination of Directors from the Joint Committee necessarily draws on a small pool of Elected Members who have appropriate experience of the Local Government Pension Fund scheme. To draw from a wider pool would not necessarily provide the knowledge and experience valued by the Company.

c) The close alignment of the Partner Funds as Shareholders with the Company should promote public confidence in the Company and does provide reassurance to those shareholder Administering Authorities.

d) There is not considered to be any personal benefit, save for the payment of an allowance, to the Elected Member concerned. The involvement of shareholder directors in the main Board of the Company is considered to provide a public benefit.

e) The participation of Councillor David Coupe in discussion at Teesside Pension Fund Committee meetings is considered to be beneficial to informing that debate. His experiences as a member of the Board of the Company will inform debate. In any event, as one of a committee of 15, a single vote should not be decisive.

4.18 It is noted that participation in the Board meetings of the Company will not involve the Member in making any direct investment decision or decision as to the selection of an investment manager as these are executive functions of the Company and are carried out in accordance with its internal processes (including where appropriate compliance with relevant procurement regulations).

5. Ward Member Engagement if relevant and appropriate

5.1 There has been no ward member engagement as it is not relevant in the circumstances.

6. Other potential alternative(s) and why these have not been recommended

6.1 The committee can refuse the request for a dispensation however this would prevent Councillor Coupe from being able to participate in decision making for Teesside Pension Fund Committee if he were to remain a member of the Board of Directors of the Company.

7. Impact(s) of the recommended decision(s)

Topic	Impact
Financial (including procurement and Social Value)	There are no financial implications or impact on any budgets or the Medium-Term Financial Plan (MTFP) arising from the content of this report.

Legal	Section 33 of the Localism Act 2011 provides that Dispensations can be granted in respect of Disclosable Pecuniary Interests (“DPIs”). Section 33 (1) requires that an Elected Member must make a written request for a dispensation. Section 33 (3) provides that a dispensation must specify the period for which it has effect and that period may not exceed 4 years for each dispensation granted. The consideration of whether to grant a dispensation under s33 is delegated to the Standards Committee as per their terms of reference.
Risk	This decision will have a positive impact and support good governance and transparency
Human Rights, Public Sector Equality Duty and Community Cohesion	The subject of this report is not a policy, strategy, function or service that is new or being revised therefore an equality impact assessment is not required.
Reducing Poverty	The decision will have no impact on this area, either positively or negatively.
Climate Change / Environmental	The decision will have no impact on this area, either positively or negatively.
Children and Young People Cared for by the Authority and Care Leavers	The decision will have no impact on this area, either positively or negatively.
Data Protection	The decision will have no impact on this area, either positively or negatively.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Ensure the Dispensation is recorded.	Monitoring Officer	27 th October 2025

Appendices

1	Copy of Leading Counsel's advice in respect of the legality of the granting of a dispensation and what that dispensation might cover
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Background papers

Body	Report title	Date
Report of Executive Member for Finance and Governance and Director of Legal and Governance Services	Standards Committee report of 17th October 2022 - Dispensation in respect of a Disclosable Personal Interest	17 th October 2022

Contact: Charlotte Benjamin
Email: charlotte_benjamin@middlesbrough.gov.uk

**LOCAL GOVERNMENT PENSION SCHEME
("LGPS")**

**BORDER TO COAST PENSIONS PARTNERSHIP LIMITED
("Border to Coast")**

OPINION

INTRODUCTION

1. I am instructed to advise twelve LGPS "administering authorities" ("the Authorities"). They are:-

- (1) Bedford Borough Council, which administers the Bedfordshire Pension Fund;
- (2) Cumbria County Council, which administers the Cumbria Pension Fund;
- (3) Durham County Council, which administers the Durham Pension Fund;
- (4) The East Riding of Yorkshire Council, which administers the East Riding Pension Fund;
- (5) Lincolnshire County Council, which administers the Lincolnshire Pension Fund;
- (6) Middlesbrough Borough Council, which administers the Teesside Pension Fund;
- (7) Northumberland County Council, which administers the Northumberland Pension Fund;

- (8) North Yorkshire County Council, which administers the North Yorkshire Pension Fund;
- (9) The Council of the Borough of South Tyneside, which administers the Tyne and Wear Pension Fund;
- (10) The South Yorkshire Pensions Authority, which administers the South Yorkshire Pension Fund;
- (11) Surrey County Council, which administers the Surrey Pension Fund; and
- (12) Warwickshire County Council, which administers the Warwickshire Pension Fund.

2. Border to Coast:-

- (1) Is a “Teckal” entity wholly-owned and controlled by the Authorities;
- (2) Provides asset pooling services to each of the Authorities;
- (3) Has issued share capital comprising 12 A shares of nominal value; and
- (4) Has Articles of Association, which are before me, and which (i) refer, as regards appointment of Directors (Article 18.1), to a Shareholders’ Agreement (“the Shareholders’ Agreement”),

which is before me, and which (ii) provides (Article 20) for Directors' expenses.

3. Clause 2 of the Shareholders' Agreement identifies the business of Border to Coast. Clause 4 relates to finance and regulatory capital. Clause 6 is concerned with amongst other matters a Strategic Plan and the Annual Budget.

4. Clause 7 relates to Directors and Management, including Board appointments; and Clause 8 to Board Meetings and Resolutions. The conduct of Border to Coast's business is addressed in Clause 9. Schedule 1 contains matters reserved for shareholder approval.

5. In addition to the Shareholders' Agreement there is an Inter Authority Agreement ("the IAA"). This establishes governance arrangements in relation to Border to Coast. This is supplemented by a "Governance Charter", which is before me, dated March 2019 ("the Governance Charter").

6. The IAA relates to a statutory Joint Committee ("the JC") of elected members from the Authorities established pursuant to Sections 101 and 102 of the Local Government Act 1972 ("LGA 1972"). The purpose of the JC is to undertake the activities set out in the "Terms of Reference" at Clause 9 and

Schedule 1. Schedule 2 contains the Constitution of the JC. Schedule 4 sets out shared objectives.

7. The provisions of Schedule 1 include that:-

- “1. The primary purpose of the Joint Committee is to exercise oversight over the investment performance of the collective investment vehicles comprised in the BCPP Pool.
2. The Joint Committee will provide effective engagement with the Authorities as the BCPP Pool vehicles are established and ultimately operated. It will encourage best practice, operate on the basis that all partners have an equal say and promote transparency and accountability to each Authority.”

8. The provisions of Schedule 2 include that:-

- “1. The Joint Committee shall consist of one elected member appointed by each Authority. The member so appointed must at all times during the appointment, be a member of the committee or sub-committee of that Authority which discharges the functions of that Authority with respect to pensions.”

“7. Each member of the Joint Committee shall comply with any relevant code of conduct of his or her Authority when acting as a member of the Joint Committee.”

9. The shared objectives in Schedule 4 include:-

“1. To provide to the authorities a compliant and effective means of meeting the Government’s requirement for the pooling of LGPS funds and thereby to achieve scale, improve governance, enhance capability and capacity to deliver infrastructure investment and fees savings and to comply with any current and future governance requirements placed on the investment function of LGPS administering authorities.”

10. My advice is sought with respect to Non-Executive Directors of Border to Coast being two elected members of the Authorities and appointed as Directors by the Authorities as shareholders in Border to Coast (“the Directors”). There is before me a “Role Profile” for such Directors, who have a “contract for services” with Border to Coast, by whom they are remunerated.

11. There is also before me a JC Report on 16 January 2018 about these appointments. This refers to the potential level of remuneration.

THE GOVERNANCE CHARTER

12. The Governance Charter:-

- (1) Was agreed both by the Board of Border to Coast and by the JC;
- (2) Sets out how Border to Coast will conduct its own internal governance; and
- (3) Is a public domain document.

13. A diagram within Clause 1 shows the governance structure. Clause 1.1 sets out the purpose of the Governance Charter; and Clause 2 sets out Border to Coast's Strategy. Clause 3 sets out the roles of each Authority and of amongst others the JC.

14. Clause 4 addresses the role of the Authorities as shareholders. Its provisions include that:-

“As noted in the advice provided to the Partner Funds by Eversheds in January 2017, a shareholder representative must be nominated (as the Administering Authority cannot physically appear at a Company's shareholder meeting). Further, “such a person is representing the Administering Authority and acting on

instructions from the Authority. It does not therefore matter legally whether that person is a member or an officer since no delegated powers are being exercised.

Eversheds also advised that ordinarily conflicts of interest were not expected to arise between the customer and shareholder roles. It was therefore possible in the ordinary course of events for the same representative to hold both shareholder and Joint Committee roles. However, Eversheds did recommend that each Administering Authority may wish to have a conflicts of interest policy in place.”

15. Clause 5.1 relates to the roles of the Board and the Non-Executive Directors. Appendix 111 sets out the Legal and Regulatory Duties of the Board, including duties under the Companies Act 2006. It refers to the seven Nolan Principles of Public Life.

THE DIRECTORS

16. The JC nominated two individuals to act as Non-Executive Directors of Border to Coast, Councillor Sue Ellis (from South Yorkshire Pension Fund) and Councillor John Weighell (from North Yorkshire County Council). The nominees were approved by the Border to Coast Board, the Shareholders, and subsequently by the FCA, and took up their appointments last autumn.

17. Shortly after accepting the appointment Councillor Weighell made a disclosure pursuant to Section 30 of the Localism Act 2011 (“LA 2011”) of a pecuniary interest in Border to Coast. As Councillor Weighell chairs the Pension Committee of North Yorkshire Council he sought a dispensation pursuant to Section 33 of LA 2011 from that Council’s Standards Committee.

18. The terms of the dispensation offered were that he should leave the room whenever a matter concerning Border to Coast was discussed which would include approval of minutes of meetings. Councillor Weighell determined that he was unable to work effectively within the proposed dispensation. He resigned from his role as a director of Border to Coast so that he could continue to be an effective chair of the Pensions Committee of North Yorkshire Council.

19. The majority of the Authorities remain broadly supportive of the principle of having shareholder nominated directors, so long as they can operate effectively and without unreasonable conflicts of interest. They are, however, concerned that the experience of one of the initial Directors threatens the satisfactory operation of their respective Pensions Committees or of the Board of Border to Coast.

20. Pensions Committees overseeing the provision of LGPS Schemes have a variety of tasks to perform. These can broadly be divided into administration and Investment functions. Different Committees place different emphasis on their oversight of these functions, with some focussing heavily on investment, and others spending a considerable amount of time overseeing administrative functions (including valuations and dealing with members and employers). Such differences in focus will have an impact on the amount of business affected by any dispensation relating to a Directorship of Border to Coast.

21. Specifically areas of concern are decisions in a Pensions Committee (or its Investment Sub-Committee) about:-

- (1) Making asset allocation (where choices are made as to whether to invest with Border to Coast (a potential area of conflict between Fund and Company) or as to which of the investment vehicles offered by Border to Coast should be invested in and in what amounts;
- (2) Directing future investment direction (the Funds have the right to suggest that sub funds that might be created by Border to Coast to meet particular needs); and

- (3) Overseeing investment performance of the investments made by the Pool on the Fund's behalf.

22. The Authorities are not concerned at this stage about possible conflicts in the other direction, where a Director might favour a particular fund manager. This is regarded as being a matter for Border to Coast to regulate. At present the Authorities are satisfied that Border to Coast has suitable measures in place to manage the potential for such a conflict through its own disclosure and conflicts of interest policy.

23. It is also the case that manager procurement is undertaken using an OJEU compliant process which results in selection. The Board have a role in approving that process. However, the procurement is undertaken by officers, and it is the process (and scoring) that results in selection decisions.

24. Border to Coast does not carry out any administrative functions for the Funds. There is a general acceptance that the Funds will invest through Border to Coast.

25. Whilst pensions pooling is intended to take the day to day investment decisions away from individual Pensions Committees (including the choice of

fund managers) the Pensions Committees retain the function of oversight of the Pooling Body (in this case Border to Coast), of investment performance and also the decisions as to asset allocation for the funds under their control. This means that they are regularly involved in scrutinising the pooling body and will work with it to shape the available investments to meet their own strategic investment objectives.

STANDARDS

26. There are four obligations upon elected members under LA 2011 and Regulations thereunder:-

- (1) Proper conduct, in accordance with the Nolan Principles and the relevant Code of Conduct: Sections 27 and 28;
- (2) Registration of interests: Section 29;
- (3) Disclosure of pecuniary interests on taking office: Section 30;
and
- (4) Limitations upon participation in meetings in consequence of pecuniary interest: Section 31.

27. These limitations are however subject to Section 33, which relates to dispensations, in limited circumstances.

28. The Non-Executive Directorships in Border to Coast being paid:-

- (1) They should be registered; and
- (2) There will be occasions when there will be a disclosable pecuniary interest (“DPI”) that will prima facie prevent participation in the business of the Pensions Committee of the Authority; but
- (3) This is subject to appropriate dispensation by the Authority from time to time.

29. As pension pooling develops, there is, as my helpful Instructions observe, some emerging guidance on governance that should be taken into account. This includes:-

- (1) October 2016 CIPFA guidance for LGPS administering authorities on “Investment Pooling: Governance Principles”, which deals at pages 17/18 with “Recognizing and Managing Potential Conflicts of Interest”;

- (2) The January 2019 Review by the Committee on Standards in Public Life of “Local Government Ethical Standards”, pages 43-51 inclusive of which relate to Councillors’ interests; and
- (3) January 2019 draft Statutory Guidance on Asset Pooling, Section 4 of which relates to Governance.

ADVICE SOUGHT

30. I am asked eight questions. I address them in the order in which they are raised in my Instructions dated 4 June 2019.

FIRST QUESTION

31. I am asked whether the holding of a paid role as a Non-Executive Director of Border to Coast should cause any Councillor holding that role to disclose it.

32. My answer is: “Yes”.

33. This is in accordance with both Sections 29 and 30 of LA 2011.

SECOND QUESTION

34. In addition, Section 31 of LA 2011, subject to Section 33 thereof, requires disclosure at meetings, and restricts participation in them, when there is a DPI. I am asked whether I can give any general guidance as to the circumstances in which a member of a Pensions Committee of an Authority has, or does not have, a DPI by virtue of being a paid director of Border to Coast.

35. I agree that the situations described in (1) and (3) of paragraph 21 above are obvious conflicts of interest that would be caught by Section 31 of LA 2011.

THIRD QUESTION

36. I am asked whether it is open to the Standards Committee (or equivalent) of any authority to allow a Councillor disclosing a DPI to continue to participate in the business of the Authority which involves Border to Coast.

37. My answer is: "Yes".

38. Section 31 of LA 2011 provides:-

“(1) Subsections (2) to (4) apply if a member ... of a relevant authority –

(a) is present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority,

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

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

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

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

(4) The member ... may not -

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

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

But this is subject to section 33.”

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

39. Section 33 provides (emphasis added):-

“(1) A relevant authority may, on a written request made to the proper officer of the authority by a member ... of the authority, grant a dispensation relieving the member ... from either or both of the restrictions in section 31(4) in cases described in the dispensation.

(2) A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority -

- (a) considers that without the dispensation the number of persons prohibited by section 31(4) 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) ... , or
 - (e) considers that it is otherwise appropriate to grant a dispensation,
- (3) A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years,
- (4) ...”

40. To my mind, both (c) and (e) are capable of being generally applicable in the circumstances.

FOURTH QUESTION

41. My views are sought on the extent to which it would be reasonable (or legal) for any dispensation to operate. In other words, can a blanket

dispensation be given which recognises the close relationship between the Authorities and Border to Coast and allows the Director to play a full role using discretion to determine when an actual conflict arises (in conjunction with the Authority's Monitoring Officer)? Alternatively, are there any limits on the extent of the dispensation that can be granted?

42. I consider that a blanket dispensation can be given which allows a Pensions Committee member to be a Director of Border to Coast and retain full participation in the Pensions Committee.

43. I suggest that the dispensation simply state that the member may participate fully at meetings of the Pensions Committee (and/or Sub-Committee) in relation to matters concerning Border to Coast, save the remuneration of Directors.

FIFTH QUESTION

44. The fifth question is premised on a dispensation being potentially available. As indicated above, my opinion is that a dispensation is indeed potentially available.

45. I am asked to provide guidance as to the appropriate extent of such a dispensation. As indicated above, my opinion is that it does not require to be limited, save as not to apply to the remuneration of Directors and can be provided in a blanket fashion, rather than on a meeting by meeting basis.

SIXTH QUESTION

46. An alternative route is for the Councillor not to be paid by Border to Coast for being a Non-Executive Director. In my opinion, this would allow the continued participation of the Councillors in the business of their respective Pensions Committees. There would in my view be no offence contrary to Section 34 of LA 2011. Nor in my view would decisions of the Pensions Committee be challengeable.

47. A possible complication however might be if Border to Coast reimbursed the Councillors for expenses. In principle, I regard this as distinct from payment and unobjectionable. However, care would have to be taken to ensure that the “expenses” were not such as to appear to constitute concealed remuneration.

SEVENTH QUESTION

48. The seventh question does not arise on the basis of my above views. However, whereas I see no legal impediment to broadening the group of candidates for Non-Executive Directors of Border to Coast to avoid direct conflicts, I for my part do see the value of a candidate being at least a Pensions Committee member and preferably its chair.

EIGHTH QUESTION

49. Finally, I am asked to consider whether a member holding a remunerated post as a Director of Border to Coast disqualifies the member from holding office as a member, given that the appointment, albeit at the invitation of Border to Coast, is confirmed by the Authority, as shareholder. My answer is: “No”.

50. Section 80(1)(a) of LGA 1972 provides:-

“(1) Subject to the provisions of section 81 below, a person shall be disqualified for being elected or being a member of a local authority . . . if he -

- (a) holds any paid office or employment (other than the office of chairman, vice-chairman, deputy chairman, presiding member or deputy presiding member or, in the case of a local authority which are operating executive arrangements which involve a leader and cabinet executive, the office of executive leader or member of the executive) appointments or elections to which are or may be made or confirmed by the local authority or any committee or sub-committee of the authority or by a . . . joint committee ... on which the authority are represented or by any person holding any such office or employment:"

51. Section 81 is not relevant for present purposes.

52. Section 80(1)(a) and Section 80(2) (b) were considered by Richards J. as he then was, in Islington London Borough Council v Camp (2004) LGR 58, in which I appeared for Ms Camp, at pages 75-80 inclusive.

53. The question is whether the paid office as Director of Border to Coast is made or confirmed by the Authority. In that event, there would be disqualification.

54. I do not however believe that the appointment is made or confirmed by the Authority. It is as I see it made by Border to Coast, and never confirmed by the Authority as such. I regard the confirmation as being by the shareholders of Border to Coast. No confirmatory decision appears to be made through the Authority's decision making processes. Moreover, the Authority is one only of twelve shareholders.

CONCLUSION

55. I shall be happy to discuss any point that may arise and to advise further as required.

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JAMES GOUDIE QC
10 June 2019

**LOCAL GOVERNMENT PENSION
SCHEME
("LGPS")**

**BORDER TO COAST PENSIONS
PARTNERSHIP LIMITED
("Border to Coast")**

OPINION

SG
10/06/19

David Hayward

South Tyneside Council

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