

## STANDARDS COMMITTEE

<b>Date:</b> Monday 17th October, 2022
<b>Time:</b> 10.00 am
<b>Venue:</b> Mandela Room

### AGENDA

1. Welcome and Evacuation Procedure
2. Apologies for Absence
3. Declarations of Interest  
To receive any declarations of interest.
4. Minutes- Standards Committee - 8 July 2022 3 - 6
5. Quarterly Update Report to Standards Committee 7 - 12
6. Gifts and Hospitality 13 - 20
7. Dispensation in respect of a Disclosable Personal Interest 21 - 50
8. Any other urgent items which in the opinion of the Chair, may be considered

Charlotte Benjamin  
Director of Legal and Governance Services

Town Hall  
Middlesbrough  
Friday 7 October 2022

## MEMBERSHIP

Councillors T Mawston (Chair), M Saunders (Vice-Chair), D Coupe, S Dean, S Hill, D Rooney, J Rostron, M Storey and S Walker

### **Assistance in accessing information**

**Should you have any queries on accessing the Agenda and associated information please contact Susan Lightwing, 01642 729712, [susan\\_lightwing@middlesbrough.gov.uk](mailto:susan_lightwing@middlesbrough.gov.uk)**

**STANDARDS COMMITTEE**

A meeting of the Standards Committee was held on Friday 8 July 2022.

**PRESENT:** Councillors T Mawston (Chair), M Saunders (Vice-Chair), D Coupe, S Dean, D Rooney, J Rostron and M Storey

**OFFICERS:** S Lightwing, A Perriman and S Reynolds

**APOLOGIES FOR ABSENCE:** Councillors S Hill and S Walker

22/1 **WELCOME AND EVACUATION PROCEDURE**

The Chair welcomed all present and read out the Building Evacuation Procedure.

22/2 **DECLARATIONS OF INTEREST**

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

22/3 **MINUTES - STANDARDS COMMITTEE - 11 MAY 2022**

The minutes of the Standards Committee meeting held on 11 May 2022 were submitted and approved as a correct record.

22/4 **QUARTERLY UPDATE REPORT TO STANDARDS COMMITTEE**

A report of the Director of Legal and Governance Services was presented to provide a quarterly update to the Standards Committee regarding the recent and current position concerning Code of Conduct Complaints and to give the Committee assurance about the practice and process.

The last update incorrectly showed the total complaints for 2021 as 35. This had been updated to reflect the true figure of 33. By way of explanation, one matter had been closed and then reopened as there was an ongoing issue, which had then been counted twice in error. The other entry was a table header row which should not have been included in the initial count. The rest of the figures had been adjusted accordingly. The introduction of the dashboard would reduce the risk of this human error occurring in the future.

There was 1 complaint from 2020, and 8 complaints from 2021 at various stages of the process which had not yet concluded. Further details of those complaints could not yet be provided, so as not to prejudice any outcomes, and/or create a conflict should any of those complaints need to come to Standards Committee at a future date.

Concern was expressed regarding the length of time taken for some of the complaints and how much longer it might take for them to be resolved. It was explained that some complaints could have been complex or include matters that were not in the Council's control. Further details would be made available to the Standards Committee along with costings for complaints that had been processed.

Since the last quarterly update, 1 complaint from 2021 had been resolved, the details of which were included in the submitted report. The motion to censure would take place at the Council meeting scheduled for 7 September 2022.

There had been 6 complaints submitted to date in 2022, one of which was subsequently withdrawn by the complainant, leaving 5 complaints, 4 of which were ongoing, and 1 resolved by way of informal resolution, namely advice and guidance, as set out in the previous update.

As mentioned in the previous report to the Committee, there was a code of conduct complaints dashboard in place in order to be able to improve the monitoring of the performance in regards to the complaints, and better analyse outcomes. The performance dashboard would enable analysis of patterns and outcomes concerning complaints. A demonstration of the dashboard was provided to the Standards Committee, albeit anonymised

due to confidentiality, to demonstrate the analysis and data it held.

It was suggested that if possible, an alert system should be set up on the Dashboard to notify Officers of progress on each complaint on a regular basis and provide prompts when deadlines for action were approaching.

Regarding the use of outside agencies to conduct complaints, it was the Monitoring Officer who made the decision to have a complaint investigated externally based on a number of factors, including complexity, capacity and time consumption. Generally the NEPO procurement framework was used to procure legal firms and their costs were fixed, however in certain circumstances some cases require a departure from the framework. All investigation reports provided by external agencies were carefully checked and queries could be raised by Middlesbrough Council Members or Officers.

Further documentation had been produced to assist members of the public with making a complaint and to understand the process. This documentation was attached to the submitted report at Appendix 1. Since the Committee papers were issued a minor amendment had been made to the document at paragraph 8.2, first sentence to read: "the following non-exclusive factors will be taken into consideration by the Local Authority."

For information, a copy of the template document for the Independent Person (IP) to follow when making a determination of whether to accept or reject a complaint was attached at Appendix 2 to the submitted report. In essence this was to provide a level of consistency and record management to easily follow the rationale of decision making by the IP.

**AGREED** as follows that:

1. The information provided was received and noted.
2. Standards Committee would be provided with information in relation to the length of time taken for some of the complaints and how much longer it might take for them to be resolved as well as the costs.

22/5

#### **EXCLUSION OF PRESS AND PUBLIC**

The Chair sought the views of the Committee as to whether consideration of Agenda Item 7 – Investigation Report Outcome - should be held in private or open session. As there were no objections, it was determined that the item would be considered in public.

**ORDERED** that Agenda Item 7 – Investigation Report Outcome – was considered in public.

22/6

#### **INVESTIGATION REPORT OUTCOME**

A report was presented in relation to the outcome of a Standards Investigation for Members to note.

The Head of Legal Services explained that former Councillor Ashley Waters was investigated as a result of a complaint following a Licensing Sub Committee. Whilst the investigation concluded, the matter did not proceed to Standards Committee due to the resignation of the Councillor.

The background to the complaint was outlined to the Committee. It was emphasised that no determination was made by the Standards Committee on this issue.

Members raised queries in relation to the length of time taken to complete the investigation, the costs and the Councillor's resignation from the Committee and subsequently the Council. A range of potential sanctions available to Standards Committee where the Code of Conduct had been found to be breached were also considered.

Discussion took place in relation to the training provided to Members of the Licensing and Licensing Sub Committees and other Committees generally. It was noted that Members' training on licensing had been adapted following lessons learned from this particular incident. It was suggested that future training might include case studies and role play to encourage more Member interaction.

**AGREED** that the information provided was received and noted.



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<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	Director of Legal And Governance Services Executive Member for Legal And Governance Services
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<b>Submitted to:</b>	Standards Committee
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<b>Date:</b>	17 October 2022
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<b>Title:</b>	Quarterly update report to Standards Committee
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<b>Report for:</b>	Discussion
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<b>Status:</b>	Public
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<b>Strategic priority:</b>	Quality of service
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<b>Key decision:</b>	No
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<b>Why:</b>	Report is for information only
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<b>Urgent:</b>	No
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<b>Why:</b>	Not applicable
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<b>Executive summary</b>
<p>This report provides a quarterly update to the Standards Committee in regards to the recent and current position concerning Code of Conduct Complaints so that the committee has assurance about the practice and process.</p> <p>The report also updates the committee in regards to the recommendations made at the Standards Hearing on the 11<sup>th</sup> May 2022 in regards to breaches of the Code of Conduct by Councillor McTigue.</p>

## Purpose

1. To provide information only by way of a quarterly update to the Standards Committee in regards to the recent and current position concerning Code of Conduct Complaints so that the committee has assurance about the practice and process.
2. To update the committee in regards to the recommendations made at the Standards Hearing on the 11<sup>th</sup> May 2022 in regards to breaches of the Code of Conduct by Councillor McTigue.

## Background and relevant information

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

Year (Jan-Dec)	Total complaints	Member on Member	Other on Member (ie member of public, officer)	No. withdrawn/ not progressed by complainant	No. rejected	No. resolved informally	No. to investigation	No. to standards Committee after investigation
2019	27	9	18	4	9	10	4	3
2020	31	4	27	17	13	1	2	1
2021	33	13	20	1	4	17	4	1
2022 (to date)	9	3	6	2	0	2	0	0

4. There is 1 complaint from 2020, and 6 complaints from 2021 at various stages of the process which have not yet concluded. We are unable to give any specifics about those complaints at this time so as not to prejudice any outcomes, and/or create a conflict should any of those complaints need to come to Standards Committee at a future date.

This is an update to the figures previously given whereby it has been clarified 2 of the 2021 complaints had been resolved previously as follows:

**Ref 11247** – Complaint was rejected in consultation with the Independent Person.

**Ref 11731** – Concluded by way of investigation as per the update given to the standards committee on the last occasion.

5. There have been 9 complaints submitted to date in 2022, 2 of which were subsequently withdrawn by the complainant, 2 have been resolved, leaving 5 ongoing.
6. Since the last quarterly update, 1 further complaint from 2022 has been resolved (included in the figures at para 4), the details of which are as below:

**Ref 14031** – A complaint against a Councillor from a Member of the Public in which it was alleged that the Councillor had misused council resources and had brought the Local Authority into disrepute. The complaint was resolved by way of informal resolution and appropriate advice and guidance was given. Complaint made 28.04.22, resolved 22.07.22.



7. On 11<sup>th</sup> May 2022 the Standards Committee, in consultation with the Independent Person, ordered that sanctions were imposed on Councillor J McTigue as a result of a number of breaches of the Members Code of Conduct. An update in regards to those sanctions is provided as follows:

1. Councillor McTigue to provide a written apology to the Council employee who was the subject of the complaint, by 6 July 2022, with a copy provided to the Standards Committee. **UPDATE:** Not complied with. Cllr McTigue has refused to write the letter to date.
2. Councillor McTigue to receive one-to-one training on the appropriate use of social media and the Member/Officer Protocol, to be provided by the relevant Council Officer(s), and this should be completed by 6 July 2022. **UPDATE:** Not complied with. Training was offered however Cllr McTigue refused to participate.
3. Councillor McTigue to be subject of a motion of public censure at the Council meeting scheduled for 6 July 2022. **UPDATE:** The motion to censure was considered at the Council meeting of 7 September 2022 however was not heard due to a procedural motion which was submitted at the time, voted on and it was moved to move on to the next order of business.
4. Should sanctions 1 and 2 above not be completed within the stated timescale, Councillor McTigue would be subject to further public censure.

**UPDATE:** The committee should consider whether there should be public censure for Councillor McTigue given sanctions 1 and 2 have not been complied with as set out above.

As well as the issue of public censure the committee may also wish to seek the views of the Independent Person John Race as to whether or not additional or alternative sanctions would be appropriate in the circumstances.

8. At the meeting of this committee on 8th July 2022 concern was expressed regarding the length of time taken for some of the complaints and how much longer it might take for them to be resolved. It was explained that some complaints could have been complex or include matters that were not in the Council's control, however it was agreed that Standards Committee would be provided with information in relation to the length of time taken for some of the complaints and how much longer it might take for them to be resolved as well as the costs.

9. Current ongoing complaints – timescales and progress.

Ref Number	Date Submitted	Current Stage	Next Steps
10969	02.12.20	On hold pending outcome of other concurrent external proceedings outside of code of conduct process.	Awaiting outcome
11234	13.01.21	Has been investigated and is progressing to a standards hearing	Awaiting date of hearing

11924	12.05.21	Awaiting outcome of linked cross complaint which is subject to investigation	Awaiting outcome
12114	16.06.21	External investigation ongoing.	Awaiting outcome.
12332	16.06.21	Part of 12114 above.	Awaiting outcome.
12541	09.09.21	Views of IP have been obtained and complaint was accepted.	Decision to be made as how to resolve
12548	12.09.21	As above 12548 – same issue, different complainant	As above
13799	10.02.22	Currently on hold at request of complainant	To be kept under review
14052	03.05.22	Views of IP have been obtained	Decision to be made as to whether to accept/reject and the next steps.
14801	26.08.22	Views of IP have been obtained	Decision to be made as to whether to accept/reject and the next steps.
14843	05.09.22	Views of IP have been obtained	Decision to be made as to whether to accept/reject and the next steps.
14992	28.09.22	New complaint	To be sent to IP for consideration

10. External Costs associated with code of conduct complaints over the last three years is as follows:

YEAR	TOTAL COST
2020	0
2021	£45,814
2022 (to date)	£1,981

This of course does not take into account internal resources used to deal with each complaint, primarily officer time.

### **What decision(s) are being recommended?**

11. That the Standards Committee consider whether any additional or alternative action is required further to the recommendations being made at the Standards Committee Hearing on 11<sup>th</sup> May 2022 in respect of breaches of the Code of Conduct by Councillor McTigue not being complied with.

### **Rationale for the recommended decision(s)**

12. It is for the Standards Committee, with the assistance of the Independent Person John Race if they so wish, to consider whether or not additional or alternative sanctions for

Councillor McTigue would be appropriate in the circumstances of the non compliance with the previous recommendations made.

### **Other potential decision(s) and why these have not been recommended**

13. The alternative is to 'do nothing' however the committee may be of the view that this would undermine the standards process.

### **Impact(s) of the recommended decision(s)**

#### ***Legal***

14. There is no legal impact.

#### ***Strategic priorities and risks***

15. Not applicable.

#### ***Human Rights, Equality and Data Protection***

16. There are no issues of equality and diversity.

#### ***Financial***

17. There is no financial impact.

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

18. To be determined dependent on recommendations of the committee.

Action	Responsible Officer	Deadline

### **Appendices**

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### **Background papers**

No background papers were used in the preparation of this report.

**Contact:** Charlotte Benjamin  
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<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	Executive Member for Finance and Governance and Director of Legal and Governance Services
<b>Submitted to:</b>	Standards Committee
<b>Date:</b>	17 October 2022
<b>Title:</b>	Annual Review of Gifts and Hospitality
<b>Report for:</b>	Information
<b>Status:</b>	Public
<b>Strategic priority:</b>	All
<b>Key decision:</b>	No
<b>Why:</b>	Not applicable
<b>Urgent:</b>	No
<b>Why:</b>	Not applicable

<b>Executive summary</b>	
The Monitoring Officer is required to review the Register of Gifts and Hospitality for Officers and Members on an annual basis and report details of the entries to the Standards Committee, to ensure that members and officers comply with the Members' Code of Conduct and the Officers' Code of Conduct, respectively.	

**Purpose**

1. To present details of the Register of Gifts and Hospitality for Officers and Members.

**Background and relevant information**

2. The Council's Code of Conduct requires Councillors and Co-opted Members to declare and register the receipt of either gifts or hospitality with a value of £25 or more. The Monitoring Officer is required to establish and maintain a register in relation of gifts and hospitality and to produce a report to Standards Committee, on an annual basis, outlining details any gifts and hospitality received by members and officers of the Council.

3. Members register their interests in three ways:

- By completing an annual declaration of financial and personal interests. These interests are published on the Council website under each individual councillor's profile. [Your Councillors | Middlesbrough Council](#)
- By making declarations at meetings where they have interest in a matter to be considered at that meeting. Declarations made in such circumstances are recorded in the minutes of those meetings and are entered in the Register of Disclosures and General Notices.
- By declaring and registering when receiving either gifts or hospitality with a value of £25 or more. The declaration should include details of the gift or hospitality, its approximate value and details of the person or body that provided it. Although not a requirement, Members also occasionally register gifts or hospitality of lesser value.

4. Declarations are entered in a Register of Gifts and Hospitality. Details of entries received for the period January 2021 – December 2021 are attached at Appendix A - Members and Appendix B - Officers.

#### **What decision(s) are being recommended?**

5. That Standards Committee notes the report and the declarations made.

#### **Rationale for the recommended decision(s)**

6. The Council's Code of Conduct requires Councillors and Co-opted Members to declare and register the receipt of either gifts or hospitality with a value of £25 or more.

#### **Other potential decision(s) and why these have not been recommended**

7. No other options were considered.

#### **Impact(s) of the recommended decision(s)**

#### ***Legal***

8. The Monitoring Officer is required to review the Register of Gifts and Hospitality for Officers and Members on an annual basis and report details of the entries to the Standards Committee. The Registers may be inspected by the public during normal office opening hours.

#### ***Strategic priorities and risks***

9. The relevant risks this decision would influence are cited below, with an explanation as to why they are relevant and how it would affect each risk.

Reports will positively impact on risk of failure to achieve good governance by reducing the likelihood of it occurring.

### ***Human Rights, Equality and Data Protection***

10. The subject of this report is not a policy, strategy, function, or service that is new or being revised. It is considered that an equality impact assessment is not required.

### ***Financial***

11. There are no financial implications arising from the recommendations within this report

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

Action	Responsible Officer	Deadline

### **Appendices**

1	Appendix A – Members Register of Gifts and Hospitality 2021
2	Appendix B – Officer Register of Gifts and Hospitality 2021
3	

### **Background papers**

Body	Report title	Date

**Contact: Charlotte Benjamin**

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**MIDDLESBROUGH COUNCIL  
REGISTER OF GIFTS AND HOSPITALITY  
MEMBERS 2021**

**INDEX**

COUNCILLOR	ITEM	RECEIVED FROM	DATE RECEIVED	CONSENT GIVEN	
				YES	NO
A Preston	Rotary Club of Middlesbrough Dinner. Estimated value £35.00 on 14/11/21	Middlesbrough Rotary Club	12.11.2021	YES	
Cllr M Smiles	Three course awards ceremony at Ramside Hall on 9 December 2021. Estimated Value £50.00	Idrees Rashid of CVFM a not for profit organisation	9.12.2021	YES	

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**MIDDLESBROUGH COUNCIL  
REGISTER OF GIFTS AND HOSPITALITY  
OFFICERS 2021**

OFFICER	ITEM	RECEIVED FROM	DATE RECEIVED	CONSENT GIVEN	
				YES	NO
Richard Painter	Amazon vouchers of £50, following a collection from Governors and Staff after Service Level Agreement provided by Governor Development Service came to an end.	Governing Board of Harrowgate Hill Primary School, Darlington.	25.3.2021	YES	
Richard Horniman	Attendance at NE Property Awards on 8 July 2021	Chaloner Group (Geoff Hogg)	8.7.2021	YES	
Joanne Brown & Tammy Andrews	Afternoon Tea Voucher for 2 (Brockley Hall) Value Approx £57	Given by library customer – Mrs Elaine Mark on 1 <sup>st</sup> July 2021	1.7.2021	YES	
Susan Lightwing	1 bottle of prosecco and 1 box of chocolates £25	Given by Councillor Hubbard and Saunders	28.7.2021	YES	
Richard Horniman	Tees Women in Business Awards, (including meal only) at Hardwick Hall	City Fibre	27.9.2021	YES	
Ian Wright	Meal at Marriott Hotel Leeds as part of Border to Coast Partnership estimated value £25	Border to Coast Pension Partnership	29.9.2021	YES	

Ian Wright	Society of Municipal Treasurers annual conference including overnight stay and dinner – Est value £120	The Society of Municipal Treasurers	14/15 Oct 2021	YES	
Charlotte Nicol	Dinner for the freelands award with MIMA staff Est Value £50	Elinor Morgan, Artistic Director of MIMA	24.11.2021	YES	
Richard Painter	£35 Amazon Voucher - Gift voucher provided as a result of support provided to the school, due to leaving the authority and no longer providing this service.	Holmwood School	15.12.2021	YES	

<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	Executive Member for Finance and Governance and Director of Legal and Governance Services
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<b>Submitted to:</b>	Standards Committee
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<b>Date:</b>	17 October 2022
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<b>Title:</b>	Dispensation in respect of a Disclosable Personal Interest
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<b>Report for:</b>	Decision
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<b>Status:</b>	Public
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<b>Strategic priority:</b>	All
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<b>Key decision:</b>	No
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<b>Why:</b>	Not applicable
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<b>Urgent:</b>	No
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<b>Why:</b>	Not applicable
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**Executive summary**

The report is required to provide Standards Committee with the information needed to allow them to consider the application for a dispensation under the Code of Conduct.

The decision required is as follows:

That the Standards Committee 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.

## **Purpose**

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 Pension Fund Committee notwithstanding his Disclosable Personal Interest arising from his appointment as a Non-Executive Director of Border to Coast Pensions Partnership Limited.

## **Background and relevant information**

2. Under s31 (4) of the Localism Act 2011 an Elected Member who has a 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.
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. 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.
5. In this instance the dispensation is sought for Cllr David Coupe under ground e) above for the reasons set out below.

## **Proposed Dispensation**

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.
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.

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.
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).
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.
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.
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 is currently under review and it looks likely that it will be increased from two to three years,

13. By assuming that role as a paid director Councillor David Coupe has a DPI.
14. Councillor David Coupe has made a request for a dispensation in order to allow him to continue to participate as a member of the Pension Fund Committee.
15. In order to provide clarity and certainty Leading Counsel's advice has been sought 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.
16. 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.
17. 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).

**What decision(s) are being recommended?**

18. That the Standards Committee 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.

It is proposed that a dispensation be granted as follows:

For a period of three years (or for so long as Councillor David Coupe is a Director of the Company) whichever is the shorter that:

- (a) 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 Pensions Committee; and/or
- (b) 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.

**Rationale for the recommended decision(s)**

- 19, If Councillor Coupe is to become a member of the Board, he should be allowed to participate in the business of the Board.

**Other potential decision(s) and why these have not been recommended**

20. Refuse the request for a dispensation. This would prevent Councillor Coupe from being a member of the Board.

**Impact(s) of the recommended decision(s)**

***Legal***

21. 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.

The consideration of whether to grant a dispensation under s33 is delegated to the Standards Committee.

### **Strategic priorities and risks**

22. This decision will have a positive impact and support good governance.

### **Human Rights, Equality and Data Protection**

23. The subject of this report is not a policy, strategy, function or service that is new or being revised. It is considered that an equality impact assessment is not required.

### **Financial**

24. There are no financial implications or impact on any budgets or the Medium-Term Financial Plan (MTFP) arising from the content of this report.

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

Action	Responsible Officer	Deadline
<a href="#">Grant the Dispensation</a>	Monitoring Officer	10 October 2022

### **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
2	
3	

### **Background papers**

Body	Report title	Date
Opinion of James Goudie QC originally delivered to the Border to Coast Pensions Partnership Joint Committee		

**Contact: Charlotte Benjamin**

**Email: [charlotte\\_benjamin@middlesbrough.gov.uk](mailto:charlotte_benjamin@middlesbrough.gov.uk)**

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

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

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**O P I N I O N**

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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")**

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**OPINION**

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56  
10/06/19

David Hayward

South Tyneside Council

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