

## Harborough District Council

### Report to the Communities Scrutiny Panel Meeting of 16 February 2023



<b>Title:</b>	<b>Report 2: Armed Forces Covenant</b>
<b>Status:</b>	Public – For Discussion
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<b>Appendices:</b>	Nil

### Executive Summary

- i. To provide the Communities Scrutiny Panel with an update on the delivery of the agreed objectives of the Armed Forces Covenant.

### Recommendations

- a. The Communities Scrutiny Panel is requested to note the Armed Forces Covenant Duty became legally enforceable from 22 November 2022, and that Harborough District Council is well placed to meet its obligations.

### Reasons for Recommendations

- i. The Statutory Guidance issued by the government to Councils in respect of Overview and Scrutiny (May 2019) requires effective scrutiny to have a defined impact “on the ground”, with the committee making recommendations that will make a tangible difference to the work of the authority. It encourages scrutiny panels to consider carefully which topics are most important to the Council and therefore where its input can make the biggest impact for the benefit of residents. It also suggests that “overview” relates to development of policy while scrutiny involves looking at decisions which have been made, or are about to be made, to ensure they are fit for purpose.
- ii. A key part of the overview and scrutiny function is to influence policy and hold Cabinet to account. A scrutiny panel does this by receiving and analysing information and or evidence and then asking questions about it.
- iii. A further function is to provide an opportunity for the public and stakeholders to have their views and perspectives considered in the Council’s decision making process.

- iv. Scrutiny recommendations are the primary means by which Cabinet, or other executive function decision makers, can be asked to:
  - a. address a specific issue;
  - b. consider a course of action,
  - c. disclose or provide information;
  - d. provide an update to the panel on a particular area.

## Purpose of Report

1. To provide an update on the delivery of the agreed objectives of the Armed Forces Covenant.

## Background

2. The Armed Forces Covenant is a statement of the moral obligation which exists between the nation, the Government, and the Armed Forces, the purpose of which is to ensure members of the Armed Forces Community are treated fairly and are not disadvantaged as a result of their Service. Its core principles were enshrined in law, for the first time, in the Armed Forces Act 2011. More recently, the Armed Forces Act 2021 introduced the legal requirement for some specified public bodies, including the NHS and local authorities, to pay due regard to the principles of the Covenant when conducting specified public functions in the areas of housing, healthcare, and education; this is the Armed Forces Covenant Duty. The Covenant Duty came into force on 22 November 2022.

## Details

3. The legal obligation is that a specified body, exercising a relevant function, must have due regard to:
  - The unique obligations of, and sacrifices made by, the Armed Forces Community<sup>1</sup>.
  - The principle that it is desirable to remove disadvantages arising for Service people from membership, or former membership, of the Armed Forces (and Armed Forces Community).
  - The principle that special provision for Service people may be justified by the effects on such people of membership, or former membership, of the Armed Forces (and Armed Forces Community). Examples often quoted include the bereaved and the most seriously wounded, both physically and mentally.
4. The Covenant Duty does not eliminate or replace any existing Covenant commitment but extends it by making it a legal obligation, which applies whether a specified body has

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<sup>1</sup> Armed Forces Community includes Serving personnel, Reservists, Veterans, and family members of any of these individuals.

previously signed the Covenant pledge or not. All other areas of the Covenant remain extant as a moral or voluntary commitment.

5. The Covenant Duty guidance is not at all prescriptive, the key tenet being that due regard is applied when dealing with a member of the Armed Forces Community. Since 2020 the Armed Forces Officer (AFO) has been working with colleagues to help them understand what this means in practice. In essence staff are required to be mindful of the Armed Forces Covenant and Covenant Duty (pay due regard) and, where appropriate, ask an individual if they are currently serving in the Armed Forces, have done so previously, or are closely related to someone who is/has. Staff should continue to follow organisational policies, protocols, and procedures, but, where appropriate, act on the relevant information given, even if only signposting elsewhere. Staff should maintain a record of when a member of the Armed Forces Community has been identified, what decision has been made, and any contributing factors.

## Implications of Decisions

6. The MOD anticipates that specified bodies may be challenged in the future when a potential complainant believes they have not been given due regard; in the worst case this could have financial or reputational consequences. The Armed Forces Covenant Duty does not introduce any new enforcement mechanism, and the MOD has no formal powers to arbitrate disputes; a complaint should be raised with the body concerned and follow that body's standard complaints process. Should this process fail to achieve an adequate resolution, complainants may be able to engage in a mediation, appeal, or tribunal process, or to refer the matter to the relevant ombudsman where appropriate.
7. The next stage for the AFO is to look at the measurement and recording of relevant information, and to monitor and identify best practice from elsewhere. As a result of the vagaries of dispute resolution, it is important to understand any precedents from other local authorities and to understand how they were managed and resolved. To date there have been no legal challenges under the Covenant Duty since being signed into law last November.

## Corporate Priorities

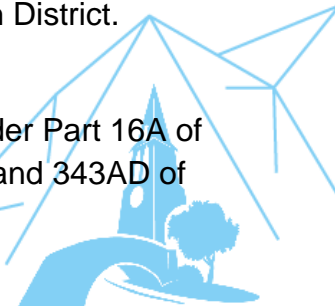
8. Compliance with the Armed Forces Covenant Duty meets Corporate Plan 2022 – 2031 Key Activity KA.02.06, in that it helps to provide better support to serving and veteran personnel and their families in the community, and it better supports those transitioning to civilian life.

## Financial

9. There are no immediate financial implications (see Risk Management below). Of note, additional funding has been provided to support the work of the AFO through grants from the Armed Forces Covenant Trust Fund, specifically in 2 project areas: Sustaining the Covenant and the Development of a Veterans Welfare Hub in Harborough District.

## Legal

10. Regulations in relation to the Armed Forces Covenant make provision under Part 16A of the Armed Forces Act 2006 ("the Act"). Sections 343AA, 343AB, 343AC and 343AD of



the Act set out a duty to have due regard to the principles of the armed forces covenant in respect of England, Wales, Scotland and Northern Ireland respectively. Statutory guidance was issued by the Secretary of State under section 343AE(1) of the Act in relation to the duty, and this guidance was also approved as of 22 November 2022.

### **Policy**

11. Throughout the early stages of the process, dating back to 2020, existing policies were reviewed and any implications of the new legislation addressed as part of a wider Covenant Duty related work plan. Due to the non-prescriptive nature of the legislation significant changes in policy were not required. Going forward, the need to show 'due regard' is about demonstrating fairness and equality within current policy, avoiding disadvantage to the Armed Forces Community.

### **Environmental Implications including contributions to achieving a net zero carbon Council by 2030**

12. None directly arising from this report.

### **Risk Management**

13. The level of risk is considered by most local authorities to be low, and it is clear from wider engagement by the AFO, that HDC has taken more interest and responded more appropriately than most. It will take time to understand what impact this legislation will have, and to what extent it potentially increases the financial or reputational risk of failing to meet the Covenant Duty. The Ministry of Defence (MOD) do not expect to see enough evidence to make a judgement on the success of the legislation or its impact on the Specified Bodies (such as local authorities) for at least 5 years.

### **Equalities Impact**

14. Being a member of the Armed Forces, or a member of the wider Armed Forces Community, is not a protected characteristic. However, there are clear similarities in that taking 'due regard' when making decisions to ensure they are not at a disadvantage, can be viewed as within the spirit of equalities statutory duty.

### **Data Protection**

15. None identified to date, although ongoing engagement with the MOD on the measurement of outcomes related to the Covenant Duty has still not identified what, if any, data needs to be stored or shared with them.

### **Summary of Consultation and Outcome**

16. No decision is required so there has been no local consultation. There has been extensive engagement within the Council staff, with other Locals Authorities, with veteran charities and with the MOD with the aim of understanding the legislation and it's implications.

### **Alternative Options Considered**

17. None, the implementation of the Covenant Duty is mandated on all Local Authorities.

### **Background papers**

18. The MOD has issued Statutory Guidance on the Armed Forces Covenant Duty (Issued under section 343AE(1) of the Armed Forces Act 2006) which is available online at <https://www.gov.uk/government/publications/armed-forces-covenant-duty-statutory-guidance>

