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## WEST DEVON STANDARDS COMMITTEE - TUESDAY, 11TH FEBRUARY, 2014

Agenda, Reports and Minutes for the meeting

### Agenda No    Item

1.     **Agenda Letter** (Pages 1 - 4)
  
2.     **Reports**  
      Reports to Standards:
  - a)     Item 5 - Update on the work of the Independent Persons since their appointment  
          (Pages 5 - 12)
  - b)     Item 6 - Review of the Code of Conduct (Pages 13 - 24)
  - c)     Item 7 - Review of the (Standards) Complaints Process and Hearing Procedure  
          (Pages 25 - 74)
  
3.     **Minutes** (Pages 75 - 78)

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### PART ONE - OPEN COMMITTEE

1. **Apologies for Absence**

2. **Declarations of Interest**

Members are invited to declare any personal or disclosable pecuniary interests, including the nature and extent of such interests they may have in any items to be considered at this meeting.

If Councillors have any questions relating to predetermination, bias or interests in items on this Agenda, then please contact the Monitoring Officer in advance of the meeting.

3. **Items Requiring Urgent Attention**

To consider items which, in the opinion of the Chairman, should be considered by the Meeting as matters of urgency (if any).

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4. **Confirmation of Minutes**

Meeting held on 16<sup>th</sup> July 2013 (previously circulated)

5. **Update on the work of the Independent Persons since their appointment**

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6. **Review of the Code of Conduct**

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7. **Review of the (Standards) Complaints Process and Hearing Procedure**

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**Please note:** Appendices A and B carry their own pagination.

### PART TWO – ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF THE PRESS AND PUBLIC ON THE GROUNDS THAT EXEMPT INFORMATION MAY BE DISCLOSED (if any)

If any, the Committee is recommended to pass the following resolution:-

“**RESOLVED** that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the Meeting on the grounds that exempt information may be disclosed as defined in Part I of Schedule 12(A) to the Act”.

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# **STRATEGIC RISK ASSESSMENT**

## **Reports to Members**

Members will be aware of the requirement to take account of strategic risk in decision making. This note is designed to support Members consider strategic risks as part of the assessment of reports from officers.

There are an increasing number of issues that we have a statutory requirement to take into account which affect all aspects of the Council's policies and service delivery (e.g. Human Rights Act). There are also discretionary issues we choose to highlight in our reports (e.g. Financial Implications, and Impact on Council Priorities and Targets). Common Law duty requires Local Authorities to take into account all things they need to take into account! The Courts hearing Judicial Review applications make this their starting point in deciding whether any decision is reasonable.

Officers have a responsibility to assess the implications of recommendations to Members. Members should ensure that before making a decision they have undertaken a similar consideration relating to the risks associated with the report.

Examples of risk to be considered:-

### **Statutory Requirement :**

- Equalities and Discrimination, particularly Race Equality. (Consider the impact on each of the following equality areas: Race, Religion and Belief, Gender, Sexual Orientation, Disability, Age)
- Human Rights
- Crime and Disorder
- Health and Safety
- Employment Legislation
- Data Protection
- Freedom of Information
- Corporate activity with an impact on Areas of Outstanding Natural Beauty, National Parks, Sites of Special Scientific Interest, and biodiversity

### **Corporate Requirement :**

- Impact on Council's Reputation
- Impact on Priorities, Cross-Cutting themes, Targets and / or Commitments
- Impact on Standing Orders / Financial Regulations
- Impact on Council's Assets
- Financial Risks
- Compliance with National Policies and Guidance
- Impact on Sustainability

Members' attention is drawn to the Risk Assessment section within each report. Members are encouraged to consider whether the report has satisfactorily identified all likely negative impacts and mitigating action that will be taken. Members also need to

consider the opportunities presented by actions, noting that any change entails an element of risk. The challenge is to effectively manage that risk.

### RISK SCORING MATRIX

Impact/Severity		Target impact	Stakeholder impact	Finance impact
1	Insignificant	Low impact on outcome & target achievement & service delivery	Low stakeholder concern	Low financial risk
2	Minor	Minor impact on outcome & target achievement & service delivery	Minor stakeholder concern	Minor financial risk
3	Moderate	Moderate outcome & target achievement & service delivery	Moderate stakeholder concern	Moderate financial risk
4	Serious	High impact on outcome & target achievement & service delivery	High stakeholder concern	High financial risk
5	Very serious	Very high impact on outcome & target achievement & service delivery	Very high stakeholder concern	Very high financial risk
Likelihood/Probability		Risk	Opportunity	
1	Very low	Negligible chance of occurrence; has not occurred	Possible opportunity yet to be investigated with low likelihood of success	
2	Low	Low chance of occurrence; has occurred infrequently but within internal control	Opportunity being investigated with low likelihood of success	
3	Medium	Equal chance of occurrence or non occurrence; could occur more than once and be difficult to control due to external influences	Opportunity may be achievable with careful management	
4	High	More likely to occur than not occur; has occurred more than once and difficult to control due to external influences	Good opportunity which may be realised	
5	Very high	Very high chance of occurrence but not a certainty; has occurred recently	Clear reliable opportunity with reasonable certainty of achievement	

**Risk score = Impact/Severity x Likelihood/Probability**

<b>Likelihood</b>	5	5	10	15	20	25
	4	4	8	12	16	20
	3	3	6	9	12	15
	2	2	4	6	8	10
	1	1	2	3	4	5
	0	1	2	3	4	5
<b>Impact</b>						

<b>NAME OF COMMITTEE</b>	<b>Standards Committee</b>
<b>DATE</b>	<b>11 February 2014</b>
<b>REPORT TITLE</b>	<b>Standards complaints update and the role of the Independent Persons</b>
<b>Report of</b>	<b>Monitoring Officer</b>
<b>WARDS AFFECTED</b>	<b>All</b>

**Summary of report:**

To update Members on the number of complaints received since the new Standards regime was adopted in July 2012 and on the work and role of the Council's Independent Persons.

**Financial implications:**

There are no financial implications to this report. The Independent Persons each receive £500 per annum, and there would be financial implications if the investigation of specific cases are outsourced.

**RECOMMENDATIONS:**

It is recommended that Members note this report.

**Officer contact:**

Catherine Bowen, Monitoring Officer  
[cbowen@westdevon.gov.uk](mailto:cbowen@westdevon.gov.uk)

**1. BACKGROUND**

- 1.1 Following the abolition of the previous standards regime from 1 July 2012, the Council has adopted a new Code of Conduct together with processes to deal with allegations of a breach of the Code.

- 1.2 Whilst all Councils are now responsible for adopting their own Codes, the Borough Council remains responsible for maintaining Registers of Interest, and dealing with allegations of a breach of the Code, on behalf of Parish and Town Councils within its area.
- 1.3 A further provision under the new rules requires the Council to appoint one or more Independent Persons in a consultative and advisory capacity in relation to standards complaints. The rules set out requirements to consult the Independent Person where it is intended to refer a matter for investigation, and the Council's Policy provides that the Independent Person is consulted at all the main stages of the process. This ensures that the process is transparent, accountable and that each case has an input from an independent perspective.
- 1.4 The Council has three Independent Persons (Mrs Victoria Spence, Mr George Barnicott and Mr Martin Gleed) who were formally appointed by Council in accordance with the statutory provisions.

## **2. STANDARDS COMPLAINTS AND THE ROLE OF THE INDEPENDENT PERSONS**

- 2.1 As approximately 18 months have elapsed since the new regime was introduced and the new processes adopted by the Standards Committee, it is appropriate to update Members on progress and complaints received so far.
- 2.2 Attached at Appendix A is a table of complaints that West Devon Borough Council has received since the introduction of the new standards regime in July 2012. We have received four complaints during that period.
- 2.3 This compares with three complaints for the first 6 months of 2012 under the previous regime, none of which were referred for investigation. Eight complaints were received for the year 2011, five of which were referred for investigation and three of those proceeded to a Hearing and a breach of the Code found by the Standards Committee.
- 2.4 Under the new process, on receipt of a formal standards complaint, the Monitoring Officer asks the councillor (against whom the complaint is made) for comments on the allegations and these are then sent with the complaint and any other factual information (e.g. minutes of a Parish Council meeting, copy register of interests) to the Independent Person.
- 2.5 The Monitoring Officer then consults the Independent Person for his/her views before making a decision on what happens next. The options available at this stage are:

- No further action



- Informal resolution
  - Referral for investigation
  - Referral to the Standards Committee (who have same options as above).
- 2.6 The time taken from the date of receipt of the complaint to the issue of the Decision notice of No Further Action, is between 5-6 weeks. The timing for making the Decision is primarily dependent on receiving replies from the councillor against whom the complaint has been made. There has been a timely response from the Independent Persons once they have received all of the papers.
- 2.7 The matter referred for investigation and consequently a Hearing took just under 11 months from receipt of the complaint to the Hearing date.
- 2.8 Whilst the complaints obviously vary in nature, they may comprise a substantial and often complex amount of background issues. The Monitoring Officer has found the support of the Independent Persons in this advisory and consultative capacity invaluable. The Monitoring Officer consults the Independent Person on receipt of a complaint, before deciding what should happen next. Where a matter is referred for investigation, the Independent Person is consulted on the Investigating Officer report and is available throughout the Hearing for consultation by the Hearing Panel.
- 2.9 The Independent Person's views may also be sought by the councillor against whom the allegations have been made.

### **3. OTHER STANDARDS QUERIES**

- 3.1 Aside from inquires and advice on specific complaints the Monitoring Officer receives many queries in relation to the Code, Registers, interests and other matters primarily in relation to Parish Council matters. The request that such queries should be channelled through the Clerk is working well and ensures that consistent advice is directed through the proper officer.

### **4. LEGAL IMPLICATIONS AND STATUTORY POWERS**

- 4.1 The new powers on standards are set out in the Localism Act 2011 which have been in force since July 2012 and are far less prescribed than under the previous system.
- 4.2 The Standards Committee is responsible for providing and maintaining high standards of conduct by councillors and for an overview of the Code, and Code of Conduct complaints.

## 5. FINANCIAL IMPLICATIONS

- 5.1 There are no financial implications to this report. The Independent Persons each receive £500 per annum, and there would be financial implications if the investigations of specific cases are outsourced.

## 6. RISK MANAGEMENT

- 6.1 The Risk Management implications are shown at the end of this report in the Strategic Risks Template.

## 7. OTHER CONSIDERATIONS

<b>Corporate priorities engaged:</b>	All
<b>Considerations of equality and human rights:</b>	Considered on a case by case basis
<b>Biodiversity considerations:</b>	N/a
<b>Sustainability considerations:</b>	N/a
<b>Crime and disorder implications:</b>	N/a
<b>Background papers:</b>	N/a
<b>Appendices attached:</b>	Appendix A: Table of Standards Complaints 1 July 2012 to 31 January 2014

## STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1.	No overview of standards complaints received	Consistent approach to dealing with standards complaints and lessons learned to continual improve the process	3	2	6	↔	Monitoring the nature and number of complaints received	Monitoring Officer
2.	Failure to consult the Independent Persons	Perceived lack of transparency in the assessment of complaints	3	2	6	↔	Ensuring that the Independent Persons are consulted at key stages of the complaints process	Monitoring Officer

Direction of travel symbols ↓ ↑ ↔

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## Appendix A

### Table of Standards Complaints received since 1 July 2012

Date	Complaint Number	Complainant	Complaint against Parish or Borough Councillor	Independent Person	Final decision
4.09.12	WD02 060212	Member of the public	Parish Councillor	<b>Victoria Spense</b>	NFA
05.09.12	WD03 050912	Member of the public	Borough Councillor	<b>Victoria Spense</b>	NFA
21.11.12	WD04 211112	Member of the public	Parish Councillor	<b>Victoria Spense</b>	Referred for investigation. Hearing and finding of breach
28.08.13	WD05 280813	Member of the public	Borough Councillor	<b>George Barnicott</b>	NFA

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<b>NAME OF COMMITTEE</b>	<b>Standards Committee</b>
<b>DATE</b>	<b>11 February 2014</b>
<b>REPORT TITLE</b>	<b>Review of the Code of Conduct</b>
<b>Report of</b>	<b>Monitoring Officer</b>
<b>WARDS AFFECTED</b>	<b>All</b>

**Summary of report:**

The Standards Committee has a duty to advise the Council on the adoption and revision of the Members' Code of Conduct. The West Devon Members' Code of Conduct was adopted in June 2012 and Members' are asked to review the Code in the light of experience to date.

**Financial implications:**

There are no financial implications to this report.

**RECOMMENDATIONS:**

1. That Members recommend to Council that the West Devon Members' Code of Conduct is amended as shown highlighted in appendix A to this report

**Officer contact:**

Catherine Bowen, Monitoring Officer  
[cbowen@westdevon.gov.uk](mailto:cbowen@westdevon.gov.uk)

**1. BACKGROUND**

- 1.1 Following the abolition of the previous standards regime from 1 July 2012 (including the abolition of the National Code of Conduct) the Council adopted a West Devon Members' Code of Conduct on 26 June 2012 (attached at Appendix A) together with new processes to deal with allegations of a breach of the Code.

The Standards Complaints Process is considered in a separate report on this agenda.

- 1.2 The Localism Act says that all Councils are now responsible for adopting their own local Codes and can include such provisions as they deem appropriate save that the Code must:
  - be consistent with seven principles based on the Nolan Principles (see paragraph 1.2 of the Code at Appendix A), and
  - must include a requirement that Members register and declare Disclosable Pecuniary Interests (see Part II of the attached Code).
- 1.3 In order to provide consistency for Councillors across Devon who may serve on more than one Authority, most Devon Councils adopted either the 'Devon Code' (on which the West Devon Code is based) or the National Association of Local Council's (NALC) Code. Town and Parish Councils are also responsible for adopting their own local Codes, but those within the Borough of West Devon have largely adopted either the West Devon or the NALC Code.
- 1.4 In addition to the statutory provisions, the Council's Code also includes the General Obligations that were contained in the previous Code, and a requirement to declare Personal Interests (but in respect of which Members may take part and vote).
- 1.5 The Borough Council remains responsible for maintaining Registers of Interest, and dealing with allegations of a breach of the Code on behalf of Parish and Town Councils within its area.

## **2. ISSUES FOR CONSIDERATION**

- 2.1 There have been no major issues with the West Devon Members' Code of Conduct since its adoption in June 2012. However, on the basis of feedback from Members, and from the Monitoring Officer's perspective on an operational level, it would be clearer if there was an express provision that set out the rules for Members in situations where s/he does not have a Disclosable Pecuniary Interest, but where there would be a reasonable perception that the Member has an interest. For example, where a Member lives next door to an Application site or with regards to a matter that affects a member of the councillor's family or a close associate. Members are referred to suggested clause 7.3 at Appendix A for the Committee's consideration, together with consequent amendments to the definitions.
- 2.2 It is also recommended that (aside from Disclosable Pecuniary Interest where the law prohibits it) Members are permitted to speak on a matter where the public also has this right before leaving the meeting room. Please see paragraph 8.1(d) in Appendix A.



2.3 There is no express provision for the declaration of gifts and hospitality in the current Code. Whilst no issues have arisen on this matter to date (Members continue to declare such gifts in accordance with the spirit of the General Obligations set out in the Code) it would clarify matters if an express provision was included in the Code. Not all the Devon Councils' Codes include a gifts/hospitality provision but where express provision exists, the value ranges between £25 (which was the value in the old Code) and £100.

### 3. LEGAL IMPLICATIONS AND STATUTORY POWERS

3.1 The Localism Act 2011 introduced from July 2012 the requirements for a local Code of Conduct.

3.2 The Constitution requires the Standards Committee to advise the Council on the adoption of, and any revisions to, to the Members' Code of Conduct.

### 4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications to this report.

### 5. RISK MANAGEMENT

5.1 The Risk Management implications are shown at the end of this report in the Strategic Risks Template.

### 6. OTHER CONSIDERATIONS

<b>Corporate priorities engaged:</b>	All
<b>Considerations of equality and human rights:</b>	Considered on a case by case basis
<b>Biodiversity considerations:</b>	N/a
<b>Sustainability considerations:</b>	N/a
<b>Crime and disorder implications:</b>	N/a
<b>Appendices attached:</b>	Appendix A: West Devon Members' Code of Conduct (as amended)

**STRATEGIC RISKS TEMPLATE**

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1.	Failure to review the Members' Code of Conduct to ensure that it is fit for purpose and reflects current legislation and best practice	Consistent and clear rules regulating Members' Conduct	3	2	6	↔	Review and recommendation of changes to the Members' Code of Conduct	Monitoring Officer

Direction of travel symbols ↓ ↑ ↔

# West Devon Borough Council

## Members' Code of Conduct

### PART 1 GENERAL PROVISIONS

#### Public Duty and Private Interests: An introduction

1. This Code applies to you as a Member or a Co-opted Member of **West Devon Borough Council** ('the Council').
- 1.2 When acting in your capacity as a Member or Co-opted Member of the Council, you should have regard to the Principles of Public Life namely:
  - Selflessness
  - Honesty/Integrity
  - Objectivity
  - Accountability
  - Openness,
  - Personal judgement,
  - Respect for others
  - Duty to uphold the law,
  - Stewardship and
  - Leadership.
- 1.3 When acting in your capacity as a Member or Co-opted Member of the Council:
  - (a) you must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, a member of your family, close associate;
  - (b) you must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
  - (c) when carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit;
  - (d) you are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office;
  - (e) you must be as open as possible about your decisions and actions and the decisions and actions of the Council and should be prepared to give reasons for those decisions and actions in accordance with any statutory requirements

and any reasonable additional requirements imposed by the Council or contained in its Constitution,

(f) you must declare any private interests, whether disclosable or personal, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out at Part 2 of this Code;

(g) you must, when using or authorising the use by others of the resources of the Council, ensure that such resources are not used improperly for political purposes (including party political purposes) and that any use is in accordance with the Council's reasonable requirements;

(h) you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 or any similar Communications Protocol or Code produced by the Council;

(i) you must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

1.4 Whilst you may be strongly influenced by the views of others, it is your responsibility alone to decide what view to take on any question which Members have to decide.

1.5 Do nothing as a Member which you could not justify to the public.

1.6 The reputation of the Council depends on your conduct and what the public believes about your conduct.

1.7 It is not enough to avoid actual impropriety, you should at all times avoid any occasion for suspicion or appearance of improper conduct.

1.8 It is your responsibility to comply with the provisions of this Code.

## **Definitions**

2. In this Code:

**'close associate'** includes someone you are in either regular or irregular contact with over a period of time who is more than just an acquaintance and who is someone a reasonable member of the public might think you would be prepared to favour or disadvantage

**'family'** includes your parents; parent-in-law; son/daughter; brother/sister; son/daughter-in-law; stepson and stepdaughter; grandparent; grandchild; nephew/niece; uncle/aunt; or any of the above of a partner; any partners of these people

**'interest or interests'** have the meanings set out in Part 2 of this Code

**'meeting'** means any meeting of:

- the Council;
- any of the Council's Committees, Sub-Committees or Joint Committees,
- one or more Members, formal or informal and with or without officers, relating to the discharge of the Council's functions where a formal record is made by a Council Officer.

**'Member'** includes a co-opted member

**'Relevant Person'** means:

- you or
- your spouse or civil partner, or
- a person with whom you are living as husband and wife or as civil partners

and you are aware that that other person has an interest

**'relevant period'** means a period of 12 months ending with the date on which you notified the Monitoring Office of an interest

**'the Regulations'** means 'The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI2012/1464)' or any statutory amendment of them

### **Scope**

3. You must comply with this Code whenever you are acting in your official capacity, when:
  - (a) you are engaged on the business of the Council; or
  - (b) you behave so as to give a reasonable person the impression that you are acting as a representative of the Council.

### **General obligations**

4. You must:
  - (a) treat others with courtesy and respect,
  - (b) when reaching decisions on any matter, do so on the merits of the circumstances and in the public interest **and** have reasonable regard to any relevant advice provided to you by an officer of the Council.
5. You **must not**:

- (a) attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
- (b) do anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010);
- (c) bully any person (bullying may be characterised as any single act or pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine or coerce or has the effect of undermining or coercing an individual or group of individuals by gradually eroding their confidence or capability which may cause them to suffer stress or fear);
- (d) intimidate or attempt to intimidate any person who is or is likely to be:
- (i) a complainant,
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings,
- in relation to an allegation that any Member has failed to comply with the Council's Code of Conduct;
- (e) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council;
- (f) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
- (i) you have the consent of a person authorised to give it;
  - (ii) you are required by law to do so;
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - (iv) the disclosure is:
    - (a) in the public interest; and
    - (b) made in good faith and
    - (c) in compliance with the reasonable requirements of the Council;
- (g) prevent another person from gaining access to information to which that person is entitled by law;
- (h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

## **PART 2 INTERESTS**

### **Registration of Interests**

6. You **must, within 28 days** of:

- (a) this Code being adopted by, or applied to, the Council; or
- (b) your taking office as a Member or Co-opted Member of the Council,

whichever is the later, and annually thereafter, provide written notification to the Council's Monitoring Officer of:

- (i) any disclosable pecuniary interest as defined by Regulations, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife); and
- (ii) any other personal interest laid down by the Council, as set out at paragraph 7 below;

which will be recorded in the Council's Register of Members' Interests and made available for public inspection including on the Council's website at: [www.westdevon.gov.uk](http://www.westdevon.gov.uk)

- 6.1 **Within 28 days** of becoming aware of any new interest or change to any interest already registered, you must register details of that new interest or change by providing written notification to the Council's Monitoring Officer.
- 6.2 Whether or not an interest within paragraphs 7.1 and 7.2 below has been entered onto the Council's register, you must disclose any interest to any meeting at which you are present in any matter being considered, in line with paragraph 8 below, where the matter is not a 'sensitive interest'.
- 6.3 Following any disclosure of an interest not on the Council's register or the subject of pending notification, you must notify the Monitoring Officer of the interest within **28 days** beginning with the date of disclosure.
- 6.4 In relation to **disclosable pecuniary interests** in this Part of the Code the expressions in the left hand column below have the meanings attributed to them in the right hand column:

<b>'body in which the relevant person has a beneficial interest'</b>	means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director or in the securities of which the relevant person has a beneficial interest
<b>'director'</b>	includes a member of the committee of management of an industrial and provident society
<b>'land'</b>	excludes an easement, servitude, interest, or right over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income

<b>'relevant authority'</b>	means the authority of which you are a member
<b>'relevant person'</b>	means you, your spouse or civil partner, a person with whom you are living with as husband and wife or a person with whom you are living with as if you are civil partners
<b>'securities'</b>	means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

### **Disclosable Pecuniary Interests**

7. The interests you **must** register are:

7.1 Those **disclosable pecuniary interests** defined by the Regulations, namely:

(a) **Employment** - any employment, office, trade, profession or vocation carried on for profit or gain by you or a relevant person;

(b) **Sponsorship** - any payment or provision of any other financial benefit (other than from the Council) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a Member, or towards your expenses, including any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992;

(c) **Contracts** - any contract which is made between you or, so far as you are aware, a relevant person (as defined at Paragraph 2 above) (or a body in which the relevant person has a beneficial interest) and the Council:

(1) under which goods or services are to be provided or works are to be executed; and

(2) which has not been fully discharged

(d) **Land** - any beneficial interest in land held by you, or so far as you are aware, a relevant person, which is within the area of the Council;

(e) **Licence** - any licence (alone or jointly with others) to occupy land held by you, or so far as you are aware, a relevant person in the area of the Council which will last for a month or longer

(f) **Corporate Tenancies** - any tenancy where (to your knowledge):

(1) the landlord is the Council; and

(2) the tenant is a body in which you or, so far as you are aware, a relevant person has a beneficial interest.



(g) **Securities** - any beneficial interest that you or, so far as you are aware, a relevant person has in securities of a body where:

(1) that body (to your knowledge) has a place of business or land in the area of the Council and

(2) either:

(a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

### **Personal or other interests**

7.2 **Those other personal interests** specified by the Council, including:

(a) Your membership of any body to which you have been appointed by the Council or exercising functions of a public nature directed to charitable purposes or whose principal purposes include influence of public opinion or policy, your membership of any other local Authority and of any political party or trade union.

(b) In addition to those interests listed at 7.1 and 7.2 (a) above which you are required to register, you may wish also to declare membership of any body which, in your view, might create a conflict of interest in carrying out your duties as a Councillor.

(c) the name and address of any person or body from whom you have received a gift or hospitality with an estimated value of at least (£25.00)

7.3. Where a matter arises at a Meeting which affects the wellbeing or financial interest or position of you, any relevant person, member of your family or close associate (other than a Disclosable Pecuniary Interest) more than it would affect the majority of people living within the ward or electoral division affected by the matter.

7.4 Where the Council's Monitoring Officer agrees that any information relating to your interests is '**sensitive information**' namely information whose availability for inspection by the public is likely to create a serious risk that any person may be subjected to violence or intimidation, you need not include that information when registering that interest, or, as the case may be, any change to that interest.

7.5 You must, **within 28 days** of becoming aware of any change of circumstances which means that information excluded is no longer sensitive information, notify the Council's Monitoring Officer asking that the information be included in the Council's Register of Members' Interests.

## **Declaration of Interests and participation in meetings**

8. Unless a dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a **Disclosable Pecuniary Interest** as defined by the Regulations and you must also observe any restrictions the Council may place on your involvement in matters where you have any interest as defined by the Council and shown at Paragraph 7 above.
- 8.1 Where you have **any** interest in **any** business of the Council and you attend **any** meeting at which that business is to be considered, you must:
- (a) **disclose** to that meeting the **existence and nature** of that interest (unless it is a sensitive interest in which case you need only disclose the fact that there is a disclosable pecuniary interest in the matter concerned);
  - (b) **disclose any interest** in accordance with the Council's reasonable requirements, no later than the commencement of the consideration of the business in which you have that interest, or (if later) the time at which the interest becomes apparent to you;
  - (c) where you have a **Disclosable Pecuniary Interest**, withdraw from the room or chamber where a meeting considering the business is being held at the commencement of the consideration of that business in which you have that interest, or (if later) the time at which the interest becomes apparent to you;
  - (d) where you have an interest under **Paragraph 7.3** you shall not take part in the discussion or vote on that matter save that you may speak on the matter before withdrawing from the Meeting room if members of the public are also allowed to speak at the Meeting.
  - (e) not seek to influence improperly any decision about that business;

**unless** you have obtained a dispensation from the Council's Monitoring Officer or the Standards Committee.

<b>NAME OF COMMITTEE</b>	<b>Standards Committee</b>
<b>DATE</b>	<b>11 February 2014</b>
<b>REPORT TITLE</b>	<b>Review of the Code of Conduct Complaints Procedures</b>
<b>Report of</b>	<b>Monitoring Officer</b>
<b>WARDS AFFECTED</b>	<b>All</b>

**Summary of report:**

The procedures for dealing with standards complaints and standards hearings have been in operation for approximately 18 months and the purpose of this report is to review those processes in the light of experience since their introduction.

**Financial implications:**

There are no financial implications to this report.

**RECOMMENDATIONS:**

That Members consider the procedures for ‘Dealing with Standards Complaints’ and the ‘Hearing Procedure’ (appendices A and B to this report) and delegate any amendments to the Monitoring Officer in consultation with the Chairman and Vice Chairman.

**Officer contact:**

Catherine Bowen, Monitoring Officer  
[cbowen@westdevon.gov.uk](mailto:cbowen@westdevon.gov.uk)

**1. BACKGROUND**

- 1.1 Following the abolition of the previous standards regime in July 2012, the Council adopted a West Devon Members’ Code of Conduct on 26 June 2012 together with new processes to deal with allegations of a breach of the Code. Copies of the process ‘Dealing with Standards Complaints’ is attached at Appendix A and the Hearing Procedure is attached at Appendix B.

- 1.2 The Standards Committee has a duty to consider complaints alleging a breach of the Code of Conduct and by Borough Councillors and members of the Town and Parish Councils with the Borough of West Devon. In order to consider such allegations, the Standards Committee has adopted a procedure for Dealing with Standards Complaints and a Hearing Procedure. These procedures have been in operation for approximately 18 months and the purpose of this report is to review the operation and application of these processes in the light of experience to date and best practice, and to consider any amendments accordingly.

## **2. ISSUES FOR CONSIDERATION**

- 2.1 As set out in the separate report on this agenda on standards complaints received so far since the introduction of new standards regime under the Localism Act in July 2012, the Council has received four complaints. In respect of three of those complaints, after considering both the complaint and the Councillor's response (and in consultation with the Independent Person) no further action was taken. The fourth matter was referred to a Hearing following an investigation.
- 2.2 The standards complaints procedures, (particularly the Hearing procedure) were based on processes that were prescribed by the Standards Board under the previous standards regime. Although the Council has received few complaints alleging a breach of the Code, the Standards Committee is asked to consider (along with any Member suggestions) the following recommendations which the Monitoring Officer considers will improve and streamline the current processes.
- 2.3 With regards to Appendix A 'Dealing with complaints':
- 2.3.1 To combine Stages 1 and 2 of the Monitoring Officer assessment of the complaint. To a large extent they are repetitive, and in practice the Monitoring Officer asks the councillor (who is the subject of the complaint) for his/her comments in any event.
- 2.3.2 Consider a further option at Stage 1 of 'other actions' such as referring the matter back to the Parish or Town Council for local resolution, recommending training, or referral to Political Group Leaders.
- 2.3.3 With regards to Appendix B 'Hearing Procedure':
- 2.3.4 Streamline stages 1 and 2 of the Hearing with regards to the findings of facts and evidence so that both are dealt with together to enable a more simplified process.
- 2.3.5 Amend the pre-hearing process to accord with the above

### **3. LEGAL IMPLICATIONS AND STATUTORY POWERS**

- 3.1 The Localism Act 2011 introduced requirements for a local Code of Conduct from 1 July 2012. Each Council is responsible for deciding how to deal with those complaints.
- 3.2 The responsibility for procedures dealing with standards complaints has been delegated to the Standards Committee and the Monitoring Officer.

### **4. FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications to this report.

### **5. RISK MANAGEMENT**

- 5.1 The Risk Management implications are shown at the end of this report in the Strategic Risks Template.

### **6. OTHER CONSIDERATIONS**

<b>Corporate priorities engaged:</b>	All
<b>Considerations of equality and human rights:</b>	Considered on a case by case basis
<b>Biodiversity considerations:</b>	N/a
<b>Sustainability considerations:</b>	N/a
<b>Crime and disorder implications:</b>	N/a
<b>Appendices attached:</b>	Appendix A: Dealing with Standards Complaints Appendix B. Hearing Procedure (standards)

## STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1.	Failure to review the procedures for dealing with standards complaints to ensure that it is fit for purpose and reflects current legislation and best practice	Consistent and clear rules regulating Members' Conduct and dealing with allegations of misconduct.	3	2	6	↔	Regular Review of the procedures relating to standards complaints	Monitoring Officer

Direction of travel symbols ↓ ↑ ↔

# **West Devon Borough Council**

## **Standards Committee**

### **Dealing with Standards Complaints**

## **Contents**

(To follow)

Appendix A - Hearing Procedure

Appendix B – Paper Hearing Procedure



## 1. Definitions

Term	Meaning
Code of Conduct	The West Devon Borough Council Code of Members' Conduct or the relevant Parish/Town Council Code of Conduct
Complainant	The person who has made the complaint to the Monitoring Officer about the Councillor
Council	West Devon Borough Council
Councillor	The Councillor against whom the complaint has been made
Hearing	A hearing of the Hearing Panel to decide whether the Code has been broken and what (if any) sanctions should apply
Hearing Panel	A subcommittee of the Standards Committee responsible for carrying out Hearings
Independent Person	A person appointed under the Localism Act 2011 in an advisory and consultative role in relation to Code of Conduct complaints
Investigating Officer	A person appointed by the Monitoring Officer to carry out an investigation into allegations of a breach of the Code
Investigating Officer's Report	The Final Report written by the Investigating Officer following investigation
Monitoring Officer	Includes her nominated representative or persons appointed on her behalf
Officer	An employee of the Council

Standards Committee	The Council's Standards Committee
Standards Sub-Committee	A sub-committee of three member appointed by the Standards Committee
Within specified number of working days	These are the targets that the Council has set itself in order to deal with matters and will use all reasonable endeavours to meet these targets

## **Introduction**

The Localism Act requires the Council to:

- Adopt a Code of Members' Conduct
- Make arrangements for dealing with complaints
- Appoint Independent Person(s)

### **The Code of Conduct**

The Code deals with conduct expected of councillors when they are acting in an official capacity. The Code also includes provisions for registering and declaring pecuniary and other interests.

The Council has adopted a Members' Code of Conduct which can be inspected on the Council's website.

Town and Parish Councils must also adopt a Code of Conduct and copies are available from the Clerk to the Town or Parish Council.

### **Arrangements for dealing with Complaints**

This document sets out how the Council will deal with complaints that a Borough Councillor or West Devon Parish/Town Councillor has broken his/her Authority's Code of Conduct. The complaint will be dealt with by the Monitoring Officer and/or the Standards Committee in consultation with the Independent Person.

### **The Standards Committee and its sub-committees**

The Standards Committee has overall responsibility for the Code of Conduct standards functions under the Localism Act 2011. The Standards Committee may appoint subcommittees of three members to deal with specific matters.

### **Independent Person**

The Council must appoint at least one **Independent Person**. The Independent Persons are not members of the Council and their role is advisory and consultative.

**The Independent Person's views:**

- **must be** sought by the Monitoring Officer or the Standards Committee before the Council makes a decision to investigate a complaint
- **may be** sought at any other stage by the:
  - Monitoring Officer
  - Standards Committee
  - Standards Sub-committee
  - Councillor

**Matters not covered by this procedure**

This procedure applies to complaints that the Code of Conduct has been broken.

It does not deal with complaints about matters that are not covered by the Members' Code of Conduct. Complaints about:

- a decision or action of the Council or one of its committees
- a service provided by the Council
- council officers

should be made under the Council's Corporate Complaints Procedure (please see the Council's website).

Also, the Council cannot deal with a complaint which relates to:

- People who are not members (i.e. councillors) of the Council
- Conduct which occurred when the Councillor was not a member of the Council
- Conduct which applies in a Councillor's private life; the Code only applies to a councillor's behaviour as a member of the Council.
- Conduct which occurred when the Councillor was acting as a member of another authority.
- Complaints that a councillor has committed an offence under the Localism Act (such as failing to declare a Disclosable

Pecuniary Interest). Such complaints must be referred to the Police.

## How to complain

Any complaints about the conduct of a West Devon Borough Councillor, co-opted member or a West Devon Parish or Town councillor must be made **in writing** to:

The Monitoring Officer  
West Devon Borough Council  
Kilworthy Park  
Devon  
PL19 0BZ  
Email: [cbowen@westdevon.gov.uk](mailto:cbowen@westdevon.gov.uk)  
Fax: 01822 813634

There is a **Code of Conduct Complaint Form** available on the Council's website and paper copies are available from the Monitoring Officer.

There are guidance notes to help with the Complaint Form.

## Help

Although complaints should be made in writing, we can make reasonable adjustments to assist anyone who has a disability that prevents him/her from making a complaint in writing. We can also help if English is the complainant's first language.

## Receipt of complaints

### Request for further information

In order to come to a decision, the Monitoring Officer (or the Standards Committee) may request additional information or clarification (at any time) from:

- the Complainant
- the Councillor
- Clerk (where the matter relates to a town or parish councillor).

**NB.** It is important to note that not every complaint about a breach of the Code of Conduct will be referred for investigation or local resolution. The Monitoring Officer or the Standards Committee will decide what action is appropriate, based on adopted criteria.

**Stage 1 - Initial Consideration of Complaint**

**Stage 1 - Initial Assessment by the Monitoring Officer**

The Monitoring Officer will:

- acknowledge receipt of the complaint **within 5 working** days of receiving it.
- consult the Independent Person
- carry out an initial assessment of the complaint normally within **10 working days**
- take no further action if the complaint :
  - falls outside of the scope of the Code of Conduct or
  - falls within one or more of the **Criteria** set out below

The Monitoring Officer will:

- write and tell the Complainant to explain why the matter is not progressing beyond stage 1
- write and tell the Councillor, providing details of the complainant (unless confidentiality has been requested) the complaint, the decision made and the reasons
- provide the same details to the Clerk if a complaint has been made against a town/parish councillor

<p><b>Stage 1</b>  <b>Criteria: no further action at initial assessment</b></p>
<ul style="list-style-type: none"> <li>• the complaint does not disclose any breach of the Code</li> </ul>
<ul style="list-style-type: none"> <li>• Action has already been taken on the matter and there is no merit in pursuing the matter any further</li> </ul>
<ul style="list-style-type: none"> <li>• The complaint is the same or substantially the same as a complaint previously dealt with</li> </ul>
<ul style="list-style-type: none"> <li>• The conduct complained of happened so long ago that it is</li> </ul>

considered to be inequitable, unreasonable or otherwise not in the public interest to pursue
<ul style="list-style-type: none"> <li>• The complaint is trivial or insubstantial</li> </ul>
<ul style="list-style-type: none"> <li>• The complaint discloses such a minor or technical breach of the Code that it is not in the public interest to pursue</li> </ul>
<ul style="list-style-type: none"> <li>• The complaint is (or appears to be) malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive</li> </ul>
<ul style="list-style-type: none"> <li>• The complaint is not considered to disclose sufficiently serious potential breaches of the code to merit further consideration</li> </ul>
<ul style="list-style-type: none"> <li>• The complaint is covered by the Council's Persistent and Vexatious Complaints Policy</li> </ul>
<ul style="list-style-type: none"> <li>• The Councillor has provided a satisfactory remedy to the complaint or made reasonable endeavours to do so</li> </ul>
<ul style="list-style-type: none"> <li>• The complaint is about a Councillor who is no longer a councillor and there are no overriding public interest reasons to merit further consideration</li> </ul>
<ul style="list-style-type: none"> <li>• The complaint is an anonymous complaint</li> </ul>

## Stage 2 – Assessment of complaints

This part of the procedure applies to those complaints which are to be taken beyond the initial assessment in Stage 1.

The Monitoring Officer will:

- write to advise the Complainant, the Councillor (and the Clerk where appropriate) that the matter is being progressed to a Stage 2 assessment
- consult the Independent Person (providing full details of the complaint)
- advise the Councillor of the Independent Person consulted and advise that s/he can consult the Independent Person
- Ask the Councillor to provide written comments (to the Monitoring Officer and Independent Person) on the complaint (within a specified time)



- At this preliminary stage the Councillor will be asked to restrict his/her written response to two sides of A4 and supporting documents

The Monitoring Officer will consider the complaint:

- on its merits and according to the facts,
- in the context of any written submissions and supporting documentation from the Councillor,
- taking into consideration any response from the Independent Person

The Monitoring Officer will make one (or more) of the following decisions (in accordance with the Criteria set out under the relevant headings below) **within ? working days** of receiving the original complaint:

<b>The Monitoring Officer will make one of the following decisions:</b>
• To take no further action
• To make no finding as to whether there has been a breach of the Code but seek to resolve the complaint informally
• To refer the complaint for investigation to determine whether there has been a breach of the Code
• To refer the matter to the Police where the complaint alleges that a criminal offence may have occurred under Chapter 7 of the Localism Act
• To refer the complaint to the Standards Committee (or subcommittee) which will have the same options as above

### **To take no further action**

The Monitoring Officer (or the Standards Sub-committee) may decide that no further action will be taken in respect of the complaint as the complaint falls within the Criteria set out below.

If no further action is to be taken then the Monitoring Officer will write to the Complainant and the Councillor with this decision and reasons. This will then be the end of the matter.

**Criteria: no further action (following stage 2 assessment)**

- |   |
|---|
| <ul style="list-style-type: none"><li>• The complaint satisfies one or more of the Criteria for 'no further action' considered at Stage 1 above</li></ul>   |
| <ul style="list-style-type: none"><li>• It has not been possible to determine whether there has been a breach of the Code and the alleged conduct does not merit an investigation having regard to the public interest.</li></ul> |

### **Informal Resolution**

The Monitoring Officer (or the Standards Sub-committee) may decide to seek to resolve the complaint informally without the need for a formal investigation.

The decision to resolve the complaint informally will normally be an alternative to a referral for investigation, and the purpose will not be to determine whether or not the Councillor has broken the Code. In such cases, the Monitoring Officer will make it clear to the parties involved that no conclusion has been reached about what happened and no decision has been made as to whether or not the Councillor has breached the Code of Conduct.

If the Monitoring Officer (or the Standards Sub-committee) decides (taking into account the criteria below) that informal resolution is appropriate, then the complaint cannot be referred back to the Monitoring Officer (or Standards Committee) if the informal resolution is perceived to have failed. If further concerns are raised, they will need to be reported as a new complaint.

The following actions may be appropriate for informal resolution:

- apology
- explanation
- training
- meditation or conciliation
- any other steps (not including investigation) which appear appropriate

If the Councillor (or Town/Parish Council) makes a reasonable offer of local resolution, but the Complainant is not willing to accept that offer, then the Monitoring Officer will take that into account in deciding whether the complaint merits formal investigation.

Complaints **should not** be referred for informal resolution when:

- An investigation is in the public interest
- An allegation challenges the Councillor's honesty or integrity
- If proven to be true, the alleged conduct would undoubtedly warrant a sanction.

<b>Criteria: Informal Resolution</b>
<ul style="list-style-type: none"> <li>• Less serious complaints</li> </ul>
<ul style="list-style-type: none"> <li>• The Councillor accepts that there are grounds for the complaint and offers an apology</li> </ul>
<ul style="list-style-type: none"> <li>• A general breakdown in relationships:               <ul style="list-style-type: none"> <li>• (including those between members and officers)</li> <li>• evidenced by a pattern of allegations of minor breaches</li> <li>• where there is interpersonal conflict</li> <li>• allegations and retaliatory allegations from the same councillors particularly where this is to such an extent that it becomes difficult to conduct the business of the Council.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Complaints where the public interest in conducting an investigation does not justify the costs of an investigation</li> </ul>
<ul style="list-style-type: none"> <li>• Poor understanding (by Councillor or Councillor's authority) of the Code and relevant procedures</li> </ul>
<ul style="list-style-type: none"> <li>• Where informal resolution provides the best opportunity to resolve the issue, prevent any similar issues arising in the future and promote good governance.</li> </ul>

### **To refer the complaint for investigation**

Where the Monitoring Officer (or Standards Sub-committee) decides that a complaint merits a formal investigation, the Monitoring Officer will appoint an Investigating Officer. Complaints will normally be referred for investigation where there are potentially serious breaches of the Code and/or where it would be in the public interest.

The Investigating Officer may be:

- the Monitoring Officer
- another officer of the Council
- an officer of another Authority
- an external investigator

Investigations will be carried out in accordance with the guidance on 'How to Conduct an Investigation' produced by the former Standards for England. The Investigating Officer will:

- decide who to interview (by phone or in person at the Investigating Officer's discretion)
- ask for relevant supporting documentation from any of the relevant parties
- produce a draft written report for comment by the Complainant and the Councillor
- ask for the Independent Person's comments on the draft Report
- the Investigating Officer will have regard to any comments made on the draft report and will accept those comments at his/her discretion
- submit a Final Report to the Monitoring Officer setting out (with reasons) whether s/he considers that the Councillor has broken the Code.
- **Timescales**

### **Referral to the Police or other regulatory authorities**

If the complaint identifies criminal conduct under the Localism Act (or a breach of other regulations by any other person) the Monitoring Officer may refer the matter to the Police or other regulatory authority.

It may not be appropriate to progress the complaint through this procedure for potential breach of the Code in such circumstances, until the conclusion of the Police investigation.

### **Referral to the Standards Committee or its sub-committees**

The Monitoring Officer may refer the complaint at any stage of the complaint process to the Standards Committee (or its sub-committee) for consideration.

Any such meeting of the Standards (or subcommittee) shall be deliberative only and shall not be open to the public. The decision as to how the matter will be progress will remain with the Monitoring Officer. Press, members of the public, the Councillor and Complainant will not be allowed to attend these meetings.

The Monitoring Officer has discretion to decide whether to refer to the Standards Committee but the following factors may be relevant:

- Seriousness of the complaint
- Conflict of interests
- Potential public interest
- Political sensitivity

The Standards Committee (or sub-committee) has the same options in relation to the complaint as above and will consult the Independent Person before making any decision.

### Notification of Decisions

The Monitoring Officer's (or the Standards Committee's) decision will be set out in a **Decision Notice**. Within **five working days** of the decision being made, the Monitoring Officer will send the Decision Notice to the relevant parties, including:

- the Complainant
- the Councillor
- the Independent Person
- Parish/Town Clerk (if relevant)

The **Decision Notice** will:

- Summarise the complaint
- Give the decision
- Give reasons for the decision
- Say briefly what will happen next (if relevant)
- Explain that there is no right of appeal

### Outcomes of an Investigation

The Investigating Officer will make one of the following findings:

- that the Code has not been broken
- that there has been a breach of the Code.

### **Investigating Officer decides that the Code has not been broken**

The Monitoring Officer will (**within 14 working days**) of receipt of the Investigating Officer's Final Report:

- Write to the Complainant and the Councillor enclosing a copy of the Report
- Advise the following of the finding of no breach:
  - Clerk- if the matter relates to a parish or town councillor
  - Independent Person
  - Standards Committee
- Advise that all documents relating to the complaint will remain confidential.

This will then be the end of the matter, and no further action will be taken.

### **Investigating Officer decides that the Code has been broken**

Where the Investigating Officer finds that the Code has been broken the Monitoring Officer will (in consultation with the Independent Person):

- Facilitate a **local resolution** where appropriate
- Refer the matter to the Hearing Panel for a '**paper hearing**' where Councillor accepts the Investigating Officer's Report.
- Refer the matter for a **Hearing** before the Hearing Panel

### **Local Resolution**

After an Investigating Officer's finding of a breach, the Monitoring Officer may consider that the matter may be reasonably resolved without the need for a formal hearing. In such cases she will consult:

- the Independent Person
- the Complainant
- the Councillor

to try and agree a local resolution which satisfies both parties, and which will seek to ensure a higher standard of conduct in the future.

Such resolution may include:

- the Councillor agreeing that his/her behaviour was unacceptable
- the Councillor offering an apology
- the Councillor offering other remedial action

If the Councillor complies with the suggested resolution the Monitoring Officer will report the matter to the Standards Committee (and Town & Parish Council where appropriate) and that will be the end of the matter.

### **'Paper' Hearing**

The matter may be dealt with by way of a 'paper' hearing where:

- local resolution is not appropriate or possible, or
- where local resolution is not appropriate, the Councillor accepts the findings of the Investigating Officer's Report and does not wish to make any further representations (save for written representations on possible sanctions) on the Report at a formal Hearing
- there are no overriding public interest or other reasons why the matter should be referred to a formal Hearing.

Please see Appendix B.

### **Hearing**

The Monitoring Officer will refer the matter to the Hearing Panel for a Hearing where:

- local resolution is not appropriate or possible, or
- the Complainant and/or the Councillor do not co-operate in any local resolution
- the Councillor does not wish to deal with the matter without a formal hearing.

A hearing is a **public meeting** in which the Councillor and the Investigating Officer will be asked to make representations to the Hearing Panel before it decides:

- whether the Councillor has broken the Code of Conduct
- what action (if any) to recommend
- what sanctions (if any) to apply

Please see Appendix A for the **Hearing Procedure**.

### **Hearing outcomes**

- That there has been no breach of the Code
- That the Code has been broken

The Hearing Panel has no power to:

- suspend members
- disqualify members
- withdraw members' allowances

### **Other issues relating to complaints**

#### **Confidentiality**

As a matter of fairness and in the interests of natural justice, a Councillor should normally be told that a complaint has been made and by whom.

However, there may be instances when the Complainant asks for his/her identity to be withheld. Such requests will only be granted in exceptional circumstances and at the discretion of the Monitoring Officer or the Standards Committee / Sub-committee.

The following criteria will be taken into account when considering requests for confidentiality:

- Complainant has reasonable grounds for believing that s/he (or someone else) will be at a risk of physical harm if his/her identity is disclosed
- Complainant is an officer who works closely with the Councillor and is afraid of the consequences to his/her employment if



identity is disclosed
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- |   |
|---|
| <ul style="list-style-type: none"><li>• Complainant (or someone else) suffer from serious health condition and there are medical risks associated with his/her identity being disclosed. In such circumstances the Monitoring Officer may wish to request medical evidence.</li></ul> |
|---|

The Complainant will be asked if s/he wishes to withdraw the complaint where:

- it is not possible to pursue the complaint without revealing the Complainant's identity (e.g. allegations of bullying), or
- the Complainant's request for confidentiality is refused.

In some circumstances the public interest in proceeding with an investigation may outweigh the Complainant's wish for confidentiality. The Monitoring Officer or Standards Committee / Sub-committee will decide where the balance lies in the particular circumstances of each complaint.

### **Withdrawal of complaints**

Requests to withdraw complaints will normally be granted but in considering such requests the Monitoring Officer (in consultation with the Independent Person as appropriate) will consider the following:

- |   |
|---|
| <ul style="list-style-type: none"><li>• Does the public interest in taking some action on the complaint outweigh the Complainant's wish to withdraw it?</li></ul> |
| <ul style="list-style-type: none"><li>• Can the complaint be investigated without the Complainant's participation?</li></ul>                                      |
| <ul style="list-style-type: none"><li>• Is there an identifiable underlying reason for the request to withdraw the complaint?</li></ul>                           |

### **Multiple complaints**

Several complaints may be received from different complainants on the same matter and these may be considered by the Monitoring Officer at the same time. However, the Monitoring Officer will make a separate decision on each individual complaint.

### **Anonymous complaints**

Anonymous complaints will only be referred for investigation if the complaint includes documentary or other evidence showing an exceptionally serious or significant matter.

## Other issues

### **Public access to meetings and records**

- The initial assessment and consideration of the complaint by the Monitoring Officer (and consultations with the Independent Person) will take place in private i.e. the public and press are not allowed to attend these meetings. This is because these meetings may have to consider unfounded and potentially damaging complaints against councillors which it would not be appropriate to make public.
- Initial assessment and consideration papers that do not progress past stages 1 and 2 will not be disclosed to the public. However the original complaint will be disclosed to the councillor – see above).
- Hearings will be open to the public and press unless exempt information under Schedule 12A of the Local Government Act 1972 is likely to be disclosed. The Hearing Panel may exercise its discretion to exclude the public and press from all or part of the Hearing.
- Documents relating to complaints that have not been referred for investigation will be kept for 12 months.
- Other documentation will be kept in accordance with the Council's records retention policy.
- Decision Notices will be available for inspection for 6 years from the date that Decision has been notified to the Councillor.
- Papers relating to Committee and sub-committee meetings will be kept for 6 years from the date of the meeting. However, sections of documents relating to parts of the Hearing that were held in private will not be made available for public inspection.

- Data Protection requirements will be considered and complied with and may prevent disclosure of some documents.

### **Conflicts of interest**

The consideration of complaints must be conducted with impartiality and fairness. If any officer, member or Independent Person has any personal or professional conflict of interest in relation to a complaint s/he should have no (further) involvement in dealing with that complaint. Please see the guidelines set out below.

### **Members**

A member of the Standards Committee who has been involved in an earlier part of the process can be a member of the Hearing Panel that determines the complaint at the end of the investigation.

Members must not discuss complaints with anyone who is not a member of the committee and discussion between Standards Committee members should only take place at meetings of the Standards Committee or its subcommittees.

### **Officers**

An officer who has previously advised the Councillor or the Complainant should consider whether s/he should take part in the complaints process having regard to public perception and the public interest.

Officers who take part in the consideration of the complaint must not take part in the investigation of that matter.

The role of any officer who has a conflict of interest in a matter will be undertaken by another officer.

### **Independent Person**

Where an Independent Person has a conflict, another Independent Person will be appointed to deal with that matter.

**Guidelines as to when a Standards Committee Member, Independent Person or Officer should not take part in this procedure:**

- If s/he is the Complainant

<ul style="list-style-type: none"> <li>• If s/he is closely associated with some one who is a Complainant</li> </ul>
<ul style="list-style-type: none"> <li>• S/he is a potential witness or victim relating to a complaint</li> </ul>
<ul style="list-style-type: none"> <li>• The complaint is likely to affect the well-being or financial position of the member/officer /Independent Person (or of a family member, friend, or someone with whom s/he has a close association)</li> </ul>
<ul style="list-style-type: none"> <li>• The member/officer is directly or indirectly involved in the case in any way.</li> </ul>
<ul style="list-style-type: none"> <li>• A family member, friend or close associate of the Standards Committee member / officer / Independent Person is involved in the case.</li> </ul>
<ul style="list-style-type: none"> <li>• The member / officer / Independent Person has an interest in any matter relating to the case</li> </ul>

### **Complaints about dual-hatted councillors**

Councillors who belong to more than one authority may have breached more than one Code of Conduct, and it is therefore possible that the Monitoring Officer of more than one authority may receive a complaint on the same matter.

When a complaint is received about a dual-hatted councillor, the Monitoring Officer should check if a similar complaint has been received by the other authority.

### **Variation and Review of this procedure**

This Procedure may be amended from time to time by the Monitoring Officer to take in to account any changes in law, guidance as to best practice or in the light of experience.

The Monitoring Officer will review this Procedure every two years or as otherwise necessary.

Any substantial amendments or variations will be approved by the Standards Committee.

## **Appeals**

There is no right of appeal by the Complainant or the Councillor against the decision of:

- the Monitoring Officer
- the Standards Committee (or its subcommittees)
- the Hearing Panel

If the Complainant reasonably believes that the Council has failed to deal with his/her complaint properly s/he may make a complaint to the Local Government Ombudsman.

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**West Devon Borough Council**  
**Standards Committee**

**Hearing Procedure**

## Hearing Procedure

Where the Investigating Officer finds that the Code has been broken, the Monitoring Officer may (after consultation with the Independent Person) decide that the matter should be dealt with before the Hearing Panel, in accordance with the following Procedure.

### Timescales

The Monitoring Officer will arrange for a subcommittee of the Standards Committee (known as the Hearing Panel) to meet to hear the complaint.

The Hearing Panel will deal with the matter as soon as is reasonably practicable and (subject to exceptional circumstances) will aim to do so **within 3 months** of receiving the Investigating Officer's Final Report.

The Monitoring Officer will send a copy of the Investigating Officer's Final Report to the following **within 14 days** of receiving it:

- The Councillor
- The Complainant
- The Independent Person (inviting any comments).

The Monitoring Officer will also notify the following that the Final Report has been received:

- The Standards Committee
- Independent Person
- Parish /Town Clerk (where relevant)

### The Hearing Panel

The Hearing Panel is a subcommittee of the Standards Committee. It comprises three members of the full Standards Committee and they must



be present throughout the whole Hearing. One of the three members will act as Chairman.

**The Independent Person** is invited to attend all meetings of the Hearing Panel and his/her views may be sought and taken into account before the Hearing Panel takes any decision on whether the Councillor has broken the Code of Conduct and as to any action to be taken.

## **The Pre-Hearing Process**

The purpose of the pre-hearing process is two-fold:

- To ascertain whether it is appropriate to deal with the matter as a Paper Hearing
- Where the matter is to be referred to a formal hearing, it will enable matters to be dealt with more fairly and economically, identifying potential areas of difficulty and enabling the hearing to focus on specific unresolved elements
- A valuable part of the Pre-Hearing process is an attempt to focus the relevant parties' attention on isolating all relevant disputes of fact between them.

The matter may be dealt with by way of a 'paper' hearing where:

- the Councillor accepts the findings of the Investigating Officer's Report and does not wish to make any further representations (save for written representations on possible sanctions) on the Report at a formal Hearing
- there are no overriding public interest or other reasons why the matter should be referred to a formal Hearing.
- Please refer to Appendix B for the procedure.

### **The Pre-hearing process will:**

- Identify where the Councillor accepts the findings of the Investigating Officer and does not wish to make any representations on the Report (please see Appendix B)

- Identify whether the Councillor disagrees with any of the findings of fact in the Investigating Officer's Report
- Identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
- Identify whether evidence about these disagreements will need to be heard during the hearing
- Consider whether any parts of the Hearing / Report (or other documents) should be withheld from the public prior to the hearing, on the grounds that they contain "exempt" material.

### **Exempt / confidential information**

The Standards Committee is subject to the normal requirements on confidential and exempt information as apply to any other Committee under the Local Government Act 1972.

The Monitoring Officer will consider whether these provisions apply in advance of the Hearing and may consult the views of:

- the Independent Person
- Chairman of the Hearing Panel
- any other party

The pre-hearing process will usually be carried out in writing by the Monitoring Officer unless she considers that a meeting of the people involved is necessary.

### **Stage 1 – the Councillor**

The Monitoring Officer will send to the Councillor:

- the proposed date for the hearing
- a letter explaining what happens next
- the **Councillor's Response Form**
- date by which the completed forms should be returned to the Monitoring Officer.

The **Councillor's Response Form** will set out whether the Councillor:

- will be attending the hearing;
- wants to be represented at the hearing by a solicitor/barrister or other person;
- disagrees with any of the findings of fact in the Investigating Officer's report (including reasons for the disagreements);
- wants to give evidence at the hearing;
- wants to call witnesses to give evidence at the hearing;

## Stage 2 – the Investigating Officer

Once the Councillor's Response Form has been received from the Councillor, the Monitoring Officer will write to the Investigating Officer:

- Inviting the him/her to comment on the Councillor's response
- Setting out the date by which the response should be received by the Monitoring Officer.

The Investigating Officer will:

- Give any comments on the Councillor's written response
- Advise whether s/he wishes to be represented at the hearing
- Advise if s/he wishes to call witnesses to give evidence at the hearing;

## Stage 3 - witnesses

The Councillor and the Investigating Officer will be responsible for providing outline statements of the evidence that their witnesses intend to give. This will allow the Hearing Panel to decide how many witnesses may reasonably be needed (and deal with any duplication) and to identify the issues it will be dealing with at the Hearing.

### Other witnesses

The Hearing Panel may also invite other witnesses (including the Complainant) to attend the Hearing if it feels it would help determine the

case. However, the Hearing Panel cannot order witnesses to appear or to give evidence. Further guidance on this should be sought from the Monitoring Officer.

#### **Stage 4 – Briefing Note - Pre-hearing summary**

Once the written response is received from the Investigating Officer, the Monitoring Officer (in consultation with the Chair of the Hearing Panel) will prepare a **Briefing Note** (Pre- hearing summary) which will include the following information:

- Date, time and place of the hearing;
- A summary of the complaint;
- An outline of the main facts of the case which are agreed;
- An outline of the main facts of the case which are not agreed;
- Identify (where known) the evidence which the Investigating Officer and Councillor (and any witnesses) are expected to give
- Confirmation of whether the Councillor and the Investigating Officer will be attending or be represented at the hearing;
- Confirm any witnesses who will be asked to give evidence
- Any comments from the Independent Person on the Investigating Officer's Final Report.
- A copy of the Hearing Procedure
- Any other matters that the Monitoring Officer considers appropriate

Where practicable before the Hearing, the Briefing Note will be sent to:

- The members of the Standards Committee

- The Councillor;
- The Investigating Officer;
- Any other relevant person

Members of the Hearing Panel should consider immediately on receipt of the papers whether there are any potential conflicts of interest.

## The Hearing

### Purpose of the Hearing

The main purpose of a Hearing is to:

- decide whether or not a Councillor has failed to follow the relevant Code of Conduct and,
- decide what action should be taken (if any)
- if so, to decide whether or not any sanction should be applied and (if so) what form the sanction should take.

The Hearing Panel's role is to be inquisitorial and not adversarial, with power to determine through a hearing not an investigation. The Hearing Panel's work should at all times be demonstrably fair, independent and politically impartial.

The Hearing Panel controls the procedure and evidence presented at the Hearing, including the number of witnesses and the way in which witnesses are questioned.

### Procedure Rules

#### The following Rules will apply to the Hearing:

##### Quorum

- Three members to be present throughout the Hearing

##### Chairman

- The Chairman can make such changes as s/he thinks fit in order to ensure a fair and efficient meeting.
- The Chairman may ask any party who behaves rudely, unreasonably or disruptively to leave the Hearing and may continue the Hearing in that party's absence

##### Votes

- Each member of the Hearing Panel shall have a vote, and all

matters/issues shall be decided by a simple majority of votes cast.

- Abstentions shall not be permitted.

### **Legal advice**

- Legal advice can be sought from the Legal Advisor at any time during the Hearing or while it is considering the outcome.
- The advice may be given in private if necessary but the substance of any legal advice should be shared with the Councillor and Investigating Officer if they are present.

### **Representatives**

- The Investigating Officer may be represented at the Hearing.
- The Councillor may be represented by a solicitor or barrister, or any other person if s/he wishes. If the Councillor wishes to have a non-legal representative, then the Hearing Panel must consent beforehand, but it may refuse permission if the representative is directly involved in the matter concerned.
- The Hearing Panel can withdraw permission to allow a representative if that representative (after appropriate prior warning by the Chairman) disrupts the hearing.

### **Witnesses**

- The Councillor and the Investigating Officer may call witnesses to give evidence at the Hearing. Prior notice will have been given, and the Hearing Panel may limit the number of witnesses if it believes the number is unreasonable or if there is duplication.
- The Councillor and Investigating Officer must make his/her own arrangements to ensure that his/her witness (es) attend the Hearing.
- Witnesses of facts that are disputed should normally attend the hearing and be prepared to be cross-examined. Witnesses as to the character of the Councillor will usually present their evidence in writing and may not attend the Hearing.

### **Evidence**

- Evidence will not be given under oath
- Factual evidence will be decided on the balance of probabilities
- The Hearing Panel will normally only need to consider the Investigating

Officer's Report and any other supporting documents.

- The Hearing Panel may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the Report.
- Cross-examination may be allowed but questions must be asked through the Chairman.
- Members of the Hearing Panel can ask questions of the parties directly.
- New evidence will only be admitted in exceptional circumstances

### **The Hearing Panel**

- Should aim where possible to complete a hearing in one sitting on the same day.
- At any time during the whole process, the Hearing Panel may question any of the people involved or any of the witnesses.
- May retire to consider its findings in private

### **The Independent Person**

- Will be invited to attend the Hearing
- May be consulted by the Hearing Panel prior to its making a decision about whether the Code has been broken and/or whether to impose sanctions

### **Costs**

- The Councillor is responsible for his or own costs including any representation
- Expenses for any witnesses will not be paid



## The Hearing

### Parties

Unless otherwise specified, the parties to the hearing will be:

- The Councillor
- The Investigating Officer

The Complainant will not be a party to the proceedings unless called as a witness by the Investigating Officer.

Also in attendance will be the Legal advisor and any witness as agreed. The Independent Person will be invited to attend all Hearings.

### Preliminary Issues

The Chairman will make the formal introductions and explain how the Committee is to run the hearing.

Representations as to whether the Hearing (or any part of it) should not be in public (or whether any documentation should be withheld) will be made at this stage. The Hearing Panel will decide whether the public interest is better served by disclosing or maintaining the exemption.

Where the Hearing Panel does not resolve to exclude the press and public from all or any part of the Hearing, the agenda and reports (which have been withheld in advance of the Hearing) shall be made available to the press and public during the Hearing and collected in at the end of the Hearing.

### **Exclusion of Press and Public**

The Hearing Panel may resolve to exclude the press and public from the Hearing, or any part thereof, where it appears likely that confidential or exempt information will be disclosed.

The Investigating Officer's final report, pre-hearing summary and copies of any relevant documents shall be withheld from the press and public in advance of the meeting and at the meeting, until this question is resolved.

The Chairman shall ask the Member, the Investigating Officer and the Monitoring Officer whether they wish to ask the Panel to exclude the Press or public from all or any part of the Hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Panel shall then determine whether to exclude the press and public from all or any part of the hearing.

Where the Panel does not resolve to exclude press and public, copies of any documents which have been withheld from the press and public shall forthwith be made available to the press and public. These documents will be collected at the Hearing.

### **Attendance of the Councillor and Investigating Officer at the Hearing**

If the Councillor stated during the Pre-hearing process that s/he wished to attend to make an oral representation, and is not reasonably able to attend to give his/her evidence, the Hearing will be adjourned to another date.

If the Councillor has stated that s/he does not wish to attend to make an oral representation, or has failed to attend without reasonable excuse, the Hearing may continue in the Councillor's absence.

If the Investigating Officer is not present, the Hearing Panel shall only conduct the Hearing if it is satisfied that there are no substantial points of difference, or that any points of difference can be satisfactorily resolved in the absence of the Investigating Officer.

### **Adjournment of hearing for further information**

The Hearing Panel may adjourn the Hearing at any stage and require the Monitoring Officer to seek further information or undertake further investigation. The Hearing Panel can only make this request once per case.

## Stages of the Hearing

The **Hearing** is essentially divided up into three stages:

**Stage 1:**

Summary of complaint and agreement as to the **facts**. In this stage of the procedure, the Hearing Panel will only be determining **the facts** of the matter.

**Stage 2:**

Deciding whether the Code has been broken

**Stage 3:**

Deciding whether sanctions would be appropriate and if so which sanctions.

## Hearing - Stage 1

- **Summary of allegation**
- **agreement as to finding of facts**

The Investigating Officer and the Councillor will be invited to give a brief opening summary of their case.

The Chairman of the Hearing Panel will then:

- summarise the allegation and
- give an outline of the main facts agreed
- identify any areas of disagreement as to the facts in the Investigating Officer's Report

The following scenarios may arise:

- a) no disagreements and no representations to be made**
- b) disagreements but no representations**

If the Councillor and Investigating Officer:

- agree with the facts set out in the Investigating Officer's Report, or
- do not agree all of the facts, but do not wish to make any representations to the Hearing Panel

then the Hearing Panel will find the facts as set out in the Investigating Officer's Report.

- c) Disagreements and representations**

Where the Councillor and the Investigating Officer do not agree about the facts set out in the Investigating Officer's Report, any representations will be heard in the following order (unless the Chairman directs otherwise):

## Investigating Officer

- The Investigating Officer will be invited to make representations in support of his/her Report regarding the relevant **findings of fact**.
- The Investigating Officer may call any supporting witnesses to give evidence **as to the facts**.
- The Councillor may be given the opportunity to challenge any evidence **as to facts** put forward by any witness called by the Investigating Officer.
- The Councillor will not be permitted to question the Investigating Officer directly.

## Councillor

- The Councillor will have the opportunity to make representations to support his/her version of the facts, and
- (with the Hearing Panel's permission) call any witnesses to give evidence on the facts.
- The Investigating Officer will be permitted to challenge any evidence as to facts put forward by witnesses called by the Councillor.

Once all the representations have been heard, the Hearing Panel will retire to consider its findings in private and announce its findings to the Hearing.

**d) If the Councillor does not agree with the facts set out in the Investigating Officer's Report but has not previously notified the Hearing Panel**

If the Councillor disagrees with any relevant fact in the Report, but has not given prior notice of the disagreement, s/he must give good reasons for not mentioning it before the date of the Hearing. Having considered the Councillor's explanation for not raising the issue at an earlier stage, the Committee may:

**If the Investigating Officer is not present:**

- Consider whether or not it would be in the public interest to continue in his/her absence.
  - If it is decided to continue with the Hearing, the Hearing Panel must rely on the information in the Investigating Officer's report.
  - If it is decided not to continue with the Hearing, the Hearing Panel must adjourn the hearing to allow the Investigating Officer to attend or for appropriate witnesses to be called.

**If the Investigating Officer is present:**

- Allow the Councillor to make representations about the issue and invite the Investigating Officer to respond and call any witnesses as necessary.

On deciding that it has heard all the evidence, the Hearing Panel will make its findings of fact in private. The Chairman will then announce the Committee's findings of fact to the Hearing.

## **The Hearing - Stage 2**

### **Deciding whether the Code has been breached**

The Hearing Panel must then consider whether, based on the facts that it has found under Stage 1, the **Councillor has failed to follow** the Code of Conduct.

- The Councillor will be invited to give relevant reasons why the Hearing Panel should not decide that s/he has failed to follow the Code;
- The Investigating Officer will be invited to make any representations
- The Councillor should be invited to make any final relevant points.

**The Hearing Panel will consider the evidence in private and make one of the following findings:**

- That the Councillor has not breached the Code of Conduct
- That the Councillor has failed to comply with the Code of Conduct

The Hearing Panel will then announce its decision to the Hearing on whether or not the Councillor has failed to follow the Code of Conduct.

**If the Hearing Panel decides that the Councillor has not breached the Code**

The Hearing Panel will consider whether it should make any recommendations to the Council concerned.

Otherwise that is the end of the matter.

## **The Hearing - Stage 3**

### **Deciding on sanctions for breaching the Code**

If the Hearing Panel finds **that the Councillor has broken the Code of Conduct**, it will consider verbal or written representations from the Councillor and the Investigating Officer as to whether it should:

- a) impose any sanction(s) and if so, what form they should take
- b) make any recommendations to the relevant Council with a view to promoting promoting high standards of conduct amongst members.
- c) make a recommendation / stipulation as to timing of sanctions.

The Hearing Panel may consult the Independent Person before making this decision.

### **Actions that the Hearing Panel may take if the Councillor has broken the Code**

In deciding what (if any) action to take, the Hearing Panel should bear in mind the aim of upholding and improving the standard of conduct expected of councillors as part of the process of fostering public confidence in local democracy.

The action taken or recommended by the Hearing Panel should be designed to discourage or prevent the Councillor from any future non-compliance, discourage similar action by others, and maintain public confidence in the Code of Conduct.

The Hearing Panel should take account of the actual consequences which have followed as a result of the Councillor's actions whilst at the same time bearing in mind what the possible consequences may have been even if they did not materialise.

In determining a sanction, the Hearing Panel will ensure that it is reasonable and in proportion to the Councillor's behaviour.



## Mitigating or Aggravating factors

When making its decision on actions to take, the Hearing Panel will consider the seriousness of the breach of the Code and any potential consequences. The Hearing Panel will have regard to any mitigating or aggravating factors.

<b>Mitigating factors</b>
<ul style="list-style-type: none"><li>• An honest (but mistaken) belief that the action was not a breach of the code (particularly where such a view has been formed after taking appropriate advice)</li></ul>
<ul style="list-style-type: none"><li>• A Councillor's previous record of good service</li></ul>
<ul style="list-style-type: none"><li>• Substantiated evidence that the Councillor's actions have been affected by ill-health</li></ul>
<ul style="list-style-type: none"><li>• Recognition that there has been a failure to follow the Code; co-operation in rectifying that failure; an apology to affected person where that is appropriate; self reporting of the breach</li></ul>
<ul style="list-style-type: none"><li>• Compliance with the Code since the events giving rise to the finding of the breach</li></ul>
<b>Aggravating factors</b>
<ul style="list-style-type: none"><li>• Dishonesty</li></ul>
<ul style="list-style-type: none"><li>• Continuing to deny facts despite clear evidence to the contrary</li></ul>
<ul style="list-style-type: none"><li>• Seeking unfairly to blame other people</li></ul>
<ul style="list-style-type: none"><li>• Failing to follow appropriate advice or warnings</li></ul>
<ul style="list-style-type: none"><li>• Previous breaches – particularly if they are a similar nature</li></ul>
<ul style="list-style-type: none"><li>• Persisting with a pattern of behaviour which involves repeatedly failing to abide by the Code</li></ul>

**Where there has been a breach of the Code, the Hearing Panel may impose one (or any combination of) the following:**

Censure or reprimand of the Councillor

Publish its findings in respect of the Councillor's conduct

Reports its findings to the Council (or the Town / Parish Council)

Recommend to the Councillor's Group Leader (or in the case of an ungrouped Councillor, recommend to Council or a Committee) that s/he be removed from any or all Committees or sub-committees of the Council

Instruct the Monitoring Officer to (or recommend that the Town / Parish Council) arrange training for the Councillor

Recommend (or recommend to the Town / Parish Council) that the Councillor be removed from all outside appointments to which s/he has been appointed or nominated by the Authority

Withdraw (or recommend to the Town / Parish Council that it withdraws) facilities provided to the councillor (e.g. computer, website, and/or email and Internet access)

Exclude (or recommend that the Town / Parish Council excludes) the Councillor from the Council's offices or other premises (with the exception of meeting rooms as necessary for attending council, committee or subcommittee meetings)

**NB the Hearing Panel has no power to suspend or disqualify the Councillor or withdraw members' allowances**

## **The Decision**

### **Decision**

The Hearing Panel will give a verbal decision at the Hearing on whether the Councillor has broken the Code of Conduct and any actions it wishes to impose.

## **The Written Decision**

The full decision in writing (Form 4) will be issued by the Monitoring Officer (in consultation with the Chairman) **within 14 days** of the Hearing to:

- The members of the Hearing Panel
- The Councillor
- The Complainant
- Clerk to Town or Parish Council/County Solicitor (if appropriate)

## **Making the Decision public**

A summary of the Decision, and the reasons for it will be reported to the next ordinary Standards Committee meeting.

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# Agenda Item 3

At a Meeting of the **STANDARDS COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **11<sup>th</sup>** day of **FEBRUARY 2014** at **2.00 pm**.

**Present:**

	Cllr J McInnes – Chairman
	Cllr D M Horn – Vice-Chairman
Cllr A Clish-Green	Cllr A F Leech
Cllr J B Moody	Cllr P J Ridgers

Chief Executive  
Monitoring Officer  
Committee & Ombudsman Link Officer

**In attendance:** Mr G Barnicott – Independent Person  
Mr M Gleed – Independent Person  
Mrs V Spence – Independent Person

**SC 4 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors S C Bailey, R E Baldwin and M V L Ewings.

**\*SC 5 CONFIRMATION OF MINUTES**

The Minutes of the Meeting held on 16<sup>th</sup> July 2013, were confirmed and signed by the Chairman as a correct record.

**\*SC 6 STANDARDS COMPLAINTS UPDATE AND THE ROLE OF THE INDEPENDENT PERSONS**

The Monitoring Officer presented a report (page 5 to the Agenda) updating the Committee on the number of complaints received since the introduction of the new Standards Regime in July 2012 and on the work and role of the Council's Independent Persons. A table presented with the report as Appendix A (page 10 to the Agenda) showed that four complaints had been received and referred to the Independent Persons for a view. Three of the complaints required no further action whilst the fourth had been referred to a full investigation resulting in a formal hearing before the Standards Committee.

The role of the Independent Persons under the new process is to express a view as to whether any action should be considered in relation to a formal standards complaint being received. The options available are no further action; informal resolution; referral for investigation; and referral to the Standards Committee (who have the same options available). The Council's Monitoring Officer and the Independent Persons consider complaints independently and then discuss the most appropriate way forward. The person complained of is kept informed throughout and it is only the facts of the complaint which are considered.

It was **RESOLVED** that the report be noted and that the Monitoring Officer be requested to provide the Committee on a 6 to 9 monthly basis with statistical information in table format of complaints received, the action being taken and the resulting outcomes.

## SC 7

### REVIEW OF THE CODE OF CONDUCT

The Monitoring Officer presented a report (page 11 to the Agenda) on a review of the Council's Code of Conduct. The West Devon Members' Code of Conduct was adopted in June 2012 and Members were asked to review the Code in the light of experience.

There had been no major issues with the Code of Conduct since its adoption in June 2012, however, on the basis of feedback from Members and from the Monitoring Officer's perspective for clarity, a number of amendments were being proposed. These were highlighted in Appendix A presented with the report (page 15 to the Agenda) and were:

1. in "Definitions" (paragraph 2) the following clarifications were proposed:
  - (i) **'close associate'** includes someone you are in either regular or irregular contact with over a period of time who is more than just an acquaintance and who is someone a reasonable member of the public might think you would be prepared to favour or disadvantage;
  - (ii) **'family'** includes your parents; parent-in-law; son/daughter; brother/sister; son/daughter-in-law; stepson and stepdaughter; grandparent; grandchild; nephew/niece; uncle/aunt; or any of the above of a partner; any partners of these people.
2. in "Personal or other interests":
  - (i) 7.2 (c) the name and address of any person or body from whom you have received a gift or hospitality with an estimated value of at least £25.00
  - (ii) 7.3 Where a matter arises at a Meeting which affects the wellbeing or financial interest or position of you, any relevant person, member of your family or close associate (other than a Disclosable Pecuniary Interest) more than it would affect the majority of people living within the ward or electoral division affected by the matter.
3. in "Declaration of Interests etc":
  - (i) 8.1 (d) where you have an interest under **Paragraph 7.3** you shall not take part in the discussion or vote on that matter save that you may speak on the matter before withdrawing from the Meeting room if members of the public are also allowed to speak at the Meeting.

It was **RESOLVED** to **RECOMMEND** to Council that the West Devon Members' Code of Conduct be amended as shown highlighted in Appendix A to the report.

**\*SC 8**

**REVIEW OF THE CODE OF CONDUCT COMPLAINTS PROCEDURE**

The Monitoring Officer presented a report (page 23 to the Agenda) on a review of the Code of Conduct Complaints Procedure in the light of experience since its introduction in June 2012. Two appendices were presented with the report: Appendix A – Dealing with Standards Complaints, and Appendix B – Hearing Procedure. (Both appendices carried their own pagination).

It was being proposed that the following changes be made:

1. To Appendix A – 'Dealing with complaints'
  - (i) to combine Stages 1 and 2 of the Monitoring Officer assessment of the complaint; and,
  - (ii) to consider a further option at Stage 1 of 'other actions' such as referring the matter back to the Parish or Town Council for local resolution, recommending training or referral to Political Group Leaders.
  
2. To Appendix B – 'Hearing Procedure'
  - (i) to streamline Stages 1 and 2 of the Hearing with regards to the findings of facts and evidence so that both are dealt with together to enable a more simplified process; and,
  - (ii) to amend the pre-hearing process to accord with the above.

By invitation, the Chief Executive reported on an investigation that he had carried under Stage Two of the Council's Complaints Procedure relating to a Standards Hearing conducted during the Autumn 2013. Two suggestions relating to procedure had arisen from the Chief Executive's extensive review of the complaints in addition to the two proposals above. Firstly that whilst the Standards Hearing was a legal process, was it possible for a complaint to be discussed by the parties concerned with a view to resolution before embarking on a hearing? Secondly, the protracted Hearing process was time consuming and cumbersome and this would benefit from streamlining providing the revised process retained its integrity. A possible option would be to hold a "paper hearing" where there would be no Committee involvement except where sanctions may be applied.

It was **RESOLVED** that the revised scheme, taking account of the comments of the Chief Executive, be delegated to the Monitoring Officer in consultation with the Chairman and Vice-Chairman and then circulated to Members of the Standards Committee for comment.

(The Meeting terminated at 3.00 pm.)

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