

# West Devon Standards Committee



West Devon  
Borough  
Council

<b>Title:</b>	<b>Agenda</b>
<b>Date:</b>	<b>Tuesday, 5th March, 2019</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Chamber - Kilworthy Park</b>
<b>Full Members:</b>	<p style="text-align: center;"><b>Chairman</b> Cllr Leech</p> <p style="text-align: center;"><b>Vice Chairman</b> Cllr Sheldon</p> <p><i>Members:</i> Cllr Evans Cllr Yelland Cllr Lamb</p>
<b>Interests – Declaration and Restriction on Participation:</b>	Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.
<b>Committee administrator:</b>	Member.Services@swdevon.gov.uk

<b>1.</b>	<b>Apologies for absence</b>	
<b>2.</b>	<b>Declaration of Interest</b>	
<b>3.</b>	<b>Minutes from Meeting 21 November 2017</b>	<b>1 - 2</b>
<b>4.</b>	<b>Annual Report 2018-2019</b>	<b>3 - 16</b>
<b>5.</b>	<b>Standards Complaints Process Review</b>	<b>17 - 50</b>

# 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 **21<sup>st</sup>** day of **November 2017** at **10.00am**.

**Present:** Cllr A F Leech – Chairman  
Cllr J Sheldon – Vice-Chairman  
  
Cllr B Lamb Cllr J Yelland

Sue Nightingale - Deputy Monitoring Officer  
Kathy Hoare - Senior Case Manager – Democratic Services

**Apologies received from:** Cllr J Evans

**\*SC 1 ITEMS REQUIRING URGENT ATTENTION**

Following a request, it was agreed that the response letter sent to Marcus Jones, Secretary of State for Communities in regard to sanctions would be circulated to all Members of the Committee.

**\*SC 2 CONFIRMATION OF MINUTES**

The Minutes of the Meeting held on 29 November 2016 were confirmed and signed by the Chairman as a true and correct record.

**\*SC 3 ANNUAL REPORT**

The Monitoring Officer presented the Annual Report to the Members.

Answering questions raised by Members, the Monitoring Officer confirmed that:

- Only one formal complaint was upheld this year that had been resolved on 2<sup>nd</sup> November;
- A monthly update would be given to the Chairman of the Committee on any complaint received that had moved to the stage of an Independent Person interview and upheld;
- Parish & Town Councils had the power to deal with their own dispensations;
- A training event for Parish & Town clerks/councillors in regard to standards would be arranged in the New Year and led by the Monitoring Officer;
- Officers time was taken up dealing with calls regarding complaints of which most were not classified as a complaint but more of a disagreement to a decision or enquiries about Personal and Disclosable Pecuniary Interests. In response, the Committee requested some indication of the time spent on calls and enquires and would raise this with the lead Hub Committee Member for Customer First;
- Recommendation for the annual meeting of the Standards Committee to revert back to a date in March.

It was then **RESOLVED** that:

1. The Annual Report be agreed;
2. The Monitoring Officer will update the Chairman on a monthly basis if any complaint moves to the stage of an IP assessment;
3. The Monitoring Officer will contact all Parish and Town Clerks with a date for a training session on the purpose and content of West Devon's Code of Practice in the New Year; and
4. That the wording 'dual-hatted' in the section on general dispensations to Borough Councillors in the Annual Report is changed to 'multi-hatted'.

(The Meeting terminated at 10.40 am)

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**Chairman**

# Agenda Item 4

Report to: **Standards Committee**

Date: **5 March 2019**

Title: **ANNUAL REPORT (2018-2019)**

Portfolio Area: **Support Services**

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **N/A**

Date next steps can be taken: **Council 26 March 2019**

Author: **Catherine Bowen** Role: **Monitoring Officer**

Contact: [Catherine.Bowen@swdevon.gov.uk](mailto:Catherine.Bowen@swdevon.gov.uk)

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## **RECOMMENDATIONS:**

- 1. To consider the Annual Report to the Standards Committee and make any necessary recommendations to the Council.**
- 2. To grant the General Dispensations as set out in Paragraphs 2.4 below from the Annual Meeting in 2019 to the Annual Meeting in 2023 so that:**
  - a. A General Dispensation is granted to all dual-hatted Members of West Devon Borough Council to speak and vote on matters where they are members of another local authority and in receipt of a Members' Allowance, and**
  - b. A General Dispensation is granted as set out in paragraphs 2.4.5.1 – 2.4.5.5 of this report**
- 3. To recommend to Council that Mr Trevor Kirkin and Mr Peter Boreham (South Hams District Council Independent Persons) are also appointed to West Devon Borough Council from the Annual Meeting in May 2019 until May 2019.**

## **1. Executive summary**

- 1.1.** The Standards Committee last met on 21 November 2017 and agreed to hold the scheduled annual meeting of the Standards Committee in March each year in order that the Committee can consider an annual report that coincides with the financial year.

- 1.2. This is the scheduled meeting of the Standards Committee for the municipal year 2018/19 and presents to members an Annual Report for the period December 2017 to March 2019. The report also requests Members to consider granting dispensations for the next Council (see paragraph 2.4 below) and appointing additional Independent Persons (see paragraph 2.5 below).
- 1.3. Dialogues are held regularly with the Chairman throughout the year on relevant standards matters.

## **2. Annual Report**

- 2.1. The Standards Committee last met in November 2017 and Members are therefore asked to consider the following updates on standards issues.

### **2.2. Standards Complaints**

2.2.1. Under the Localism Act 2011 the Monitoring Officer is responsible for standards matters and the Council must have a policy for considering complaints about Borough Members and Parish and Town Councillors within the Borough of West Devon. This report covers complaints received since the date of the last Standards Committee meeting in November 2017 to the end of February 2019.

2.2.2. During this period, the Council has received eleven formal standards complaints. One complaint referred to a Borough Councillor, three referred to Town Councillors and seven referred to Parish Councillors (4 of which were related complaints about the same Parish Council). The complaints alleged a range of breaches including treating others with disrespect, bullying, misuse of position, failure to declare an interest and bias.

2.2.3. In previous years, the Council received one standards complaint for the period April to November 2017, and three complaints were received in the previous calendar year.

2.2.4. The Standards sub-committee (three members of the Standards Committee) is responsible for considering complaints where (following an investigation) the Investigating Officer has found that there has been a breach of the Code. The sub-committee has not met since November 2017 as no complaints have been referred for investigation. The multiple complaints against several parish councillors in the same Parish Council were dealt with by way of informal resolution

2.2.5. The Monitoring Officer provides ongoing advice throughout the year to Borough Members and Town and Parish Councils on the Code of Conduct (in relation to both conduct and interests).

### **2.3. Standards Policy and procedure**

2.3.1. A review of the 'Dealing with Standards Complaints' policy is a separate report on this Agenda.

2.3.2. The Deputy Monitoring Officers have not reported any issues with the application of the standards policy and procedures during the period November 2017 to date.

### **2.4. Dispensations**

- 2.4.1. The Standards Committee is responsible for granting dispensations under the Council's Dispensation Policy.
- 2.4.2. The Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced Disclosable Pecuniary Interests and new rules on dispensations as part of the new standards arrangements. It is a criminal offence for Members to fail to register a Disclosable Pecuniary Interest or to speak and/or vote where they have a Disclosable Pecuniary Interest unless they have obtained a dispensation.
- 2.4.3. The Dispensation Policy is attached at Appendix 1 and shows the criteria for determining dispensations together with the current dispensations that are extant; these are general dispensations relating to all West Devon Members.
- 2.4.4. As Members will note, the current dispensations were granted by the Standards Committee for the current Council term until the Council's Annual Meeting in May 2019, and the dispensations therefore need to be reconsidered prior to the May 2019 Annual Meeting.
- 2.4.5. In March 2015 this Committee granted a general dispensation to all members of West Devon Borough Council (until May 2019) to speak and vote where they would otherwise have a Disclosable Pecuniary Interest in the following matters:
- 2.4.5.1. Housing: where a Member (or spouse or partner) holds a tenancy or lease with the Council as long as the matter does not relate to the Member's particular tenancy or lease
  - 2.4.5.2. Statutory sick pay: if a Member receives this or is entitled to receive it
  - 2.4.5.3. An Allowance, travelling expense, payment or indemnity for Members
  - 2.4.5.4. Any ceremonial honour given to Members
  - 2.4.5.5. Setting the Council Tax or a Precept
- 2.4.6. In March 2015 this Committee also granted a General Dispensation to all dual-hatted Members of West Devon Borough Council until May 2019, to speak and vote on matters where they are a member of another local authority and in receipt of a Members' Allowance.
- 2.4.7. General Dispensations may be granted for a maximum of four years and the current dispensations expire at the Council's Annual Meeting in May 2019. The Standards Committee needs to reconsider the General Dispensations listed in paragraphs 2.4.5 and 2.4.6 above with a view to granting new Dispensations in the same terms, for the four-year term of the next Council i.e. from the Annual Meeting in May 2019 until the Annual Meeting in May 2023 in accordance with the criteria set out in Appendix 2.

## **2.5. Independent Persons**

- 2.5.1. The Council retains three Independent Persons in accordance with relevant regulations and these are Mr George Barnicott, Mr Martin Gleed and Mrs Victoria Spense. The Independent Persons are appointed for the term of the Council and will need to be reappointed at the Annual Meeting in May 2019.
- 2.5.2. The Committee is asked to discuss appointing two of the current South Hams Independent Persons in addition to the West Devon Independent Persons to cover instances where there are conflicts of interest or unavailability of the West Devon Independent Persons. Currently, both Councils have appointed three

Independent Persons but George Barnicott acts for both Councils already which means there would be 5 Independent Persons potentially available. There would be a financial implication of £1,000 for 2 additional Independent Persons per annum.

2.5.3. The Independent Persons are consulted in respect of each standards complaint received. The Council's 'Dealing with Standards Complaints' policy requires consultation in excess of the statutory requirements and this has proved particularly valuable in respect of the formal assessment of the complaints, from both the Monitoring Officer's perspective and providing more transparency for complainants.

## 2.6. Training

2.6.1. Standards training for West Devon Parish & Town Councils was carried out in April 2018 which was well attended. The Training covered standards and code of conduct (including an interactive quiz and debate) together with an update on elections and co-option and a session on Registers of Interest.

2.6.2. There are mandatory standards training sessions scheduled in the West Devon Member Induction Programme for May and June 2019 following the election.

2.6.3. Further Parish Council training has been requested. Whilst there is no doubt about the merits of this, the Council faces the usual resource and finance challenges in providing the training. Charging for the training can be considered.

## 3. Proposed Way Forward

3.1. The Annual Report provides a summary of the Standards Committee's responsibilities and the outcomes to date since the last scheduled Standards Committee in November 2017.

3.2. Members are asked:

3.2.1. To consider this Report and to make any necessary recommendations in order that the Committee can fulfil its responsibilities as set out in the Terms of Reference.

3.2.2. Consider appointing the South Hams Independent Persons as additional Independent Persons at West Devon Borough Council

3.2.3. To grant the General Dispensations set out in 2.4 of this report.

## 4. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The Standards Committee is responsible for promoting and maintaining high standards of conduct by Members and it is important that the Committee has an overview of actions taken over a period of time, with an opportunity to make any recommendations.</p> <p>It is important that the Committee has an overview of the number of, and types of standards complaints, received against both Borough Members and town and parish</p>



		<p>councillors and to make any necessary recommendation in relation to those complaints.</p> <p>The Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced Disclosable Pecuniary Interests and rules on dispensations as part of the new standards arrangements and the Constitution delegates powers to the Standards Committee to grant dispensations.</p>
Financial	N	If the South Hams Independent Persons are also appointed to West Devon in order that there are up to 5 Independent Persons available for consultation, then there this will cost the Council an extra £1,000 per year.
Risk		There is a risk that, without an annual report and overview, the Standards Committee cannot fulfil its responsibilities for promoting and maintaining high standards of conduct by Members.
<b>Comprehensive Impact Assessment Implications</b>		
Equality and Diversity		N/a to this report
Safeguarding		N/a
Community Safety, Crime and Disorder		N/a
Health, Safety and Wellbeing		n/a
Other implications		n/a

**Appendices:**

Appendix 1: Terms of Reference for the Standards Committee  
Appendix 2: Dispensation Policy and record of current dispensations.

**Background Papers:**

None

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# Standards Committee

## Composition

### 1. Membership of the Standards Committee

- 1.1. The Standards Committee shall comprise five Members of the Council
- 1.2. The Chairman and Vice Chairman shall be appointed by the Council in accordance with the Council's Procedure rules in Part 4 of the Constitution.
- 1.3. The Standards Committee may co-opt up to two parish / town council representatives from a parish/town council in the Borough

### 2. Membership of Sub-committees of the Standards Committee

- 2.1. The Standards Committee shall appoint sub-committees of three members to deal with specific standards complaints in accordance with the Dealing with (Standards) Complaints Policy and Hearing Policy
- 2.2. Sub-committees will consult (where co-opted) parish / town councillors on decisions relating to town or parish councillors

### 3. Quorum for the Standards Committee and its sub-committees:

- 3.1. **Three** members for the duration of the meeting.

### 4. Roles and functions of the Standards Committee

- 4.1. To promote and maintain high standards of conduct by Councillors and co-opted Members;
- 4.2. To assist Councillors and co-opted Members to observe the Members' Code of Conduct;
- 4.3. To advise the Council on the adoption or revision of the Members' Code of Conduct, and on matters relating to the ethical conduct of the Council and its Members;
- 4.4. To advise and train Councillors and co-opted Members on matters relating to the Code of Conduct;
- 4.5. To grant dispensations to Borough Councillors (and where relevant, co-opted Members to the Borough Council) from requirements relating to Disclosable Pecuniary interests in the following circumstances:
  - 4.5.1. Where so many members of the decision-making body have a Disclosable Pecuniary Interest that Political Balance would be affected
  - 4.5.2. It is in the interests of the inhabitants that a dispensation be granted, or

4.5.3. It is appropriate to grant a dispensation

4.6. The Monitoring Officer can grant dispensations where so many members have a Disclosable Pecuniary Interest that it would impede the transaction of the business of the Council

4.7. The Monitoring Officer (in consultation with the Chairman and Vice-Chairman) or the Standards Sub-committee can grant dispensations in cases 4.5.1 – 4.5.3 where it would not be expedient to wait until the next scheduled Standards Committee meeting

4.8. To consult the Independent Person(s) in accordance with the Dealing with Complaints Policy and Hearing Policy.

4.9. To be responsible for the Dealing with Complaints Policy and Hearing Policy.

4.10. To consider complaints alleging a breach of the Code of Conduct by Borough Councillors (and any co-opted members where relevant) and those members of town and parish councils in the Borough of West Devon as referred by the Monitoring Officer.

4.11. To receive Investigation reports and to carry out hearings (including sanctions) in respect of allegations of misconduct for Borough members (and co-opted members where relevant) and town/parish council members and to recommend sanctions or other recommendations/actions.

## **5. Roles and functions of the Standards sub-committees**

5.1. To consider complaints alleging members' breach of the Code of Conduct as referred by the Monitoring Officer

5.2. To receive investigation reports and carry out Hearings (including consideration of sanctions or other actions) in respect of allegations of misconduct

### **Budget**

To have authority for spending within the allocated budget.



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# West Devon Borough Council

## Guidance on Dispensations

### The Law

The Localism Act 2011 provides rules on Dispensations from the prohibition of members from participating in matters in which s/he has a Disclosable Pecuniary Interest.

### Requests for Dispensations

#### Grounds:

A dispensation may be granted on the following grounds to enable a member to speak and/or vote where s/he would otherwise have a disclosable pecuniary interest:

1. That so many members of the Council have Disclosable Pecuniary Interests in a matter that it would impede the transaction of the business (i.e. it would otherwise be inquorate).
2. That without the dispensation, the representation of different political groups on the Council would be so upset as to alter the outcome of any vote on the matter.
3. That the Council considers that the dispensation is in the interests of persons living in the Council's area.
4. That without a dispensation no member of the Executive would be able to participate on the matter
5. That the Council considers that it is otherwise appropriate to grant a dispensation.

#### How to apply

A dispensation request must be made to the Monitoring Officer in writing or by email addressed to Catherine Bowen, Monitoring Officer, West Devon Borough Council, [Catherine.Bowen@swdevon.gov.uk](mailto:Catherine.Bowen@swdevon.gov.uk). Please use the Request Form at Appendix A.

Please submit a dispensation request well in advance of the date of the meeting for which the dispensation is sought and in any event, other than in exceptional circumstances, the dispensation request should be submitted **not less than 10 clear** days prior to the date of the meeting to which the dispensation request relates.

#### Criteria

The following **Criteria** will be considered in determining whether to grant dispensation requests:

1. Whether the nature of the member's interest is such that to allow her/him/them to participate would not damage public confidence in the conduct of the Council's business.

## West Devon Borough Council

2. Whether the interest is common to the member and a significant proportion of the general public; *if this is the case a dispensation is more likely to be granted.*
3. Is the participation of the member in the business that the interest relates to justified by a member's particular role or expertise?
4. Whether the interest is trivial or remote; *if this is the case a dispensation is more likely to be granted.*

### Procedure for Granting Dispensation Requests

- (i) Dispensations under Ground 1 may be granted by the Monitoring Officer
- (ii) Dispensation Requests under any other grounds will be considered by the Standards Committee
- (iii) Where it is not expedient to wait until the next scheduled Standards Committee meeting, a Dispensation Request under (ii) above may be granted by:
  - the Monitoring Officer in consultation with the Chairman and Vice Chairman of the Standards Committee, or
  - a Standards Sub-committee
- (iv) Dispensations may be granted:
  - To speak only
  - To speak and vote
  - For a maximum of four years

### Bias and Predetermination

There may be circumstances where you do not have a Disclosable Pecuniary Interest but where it would not be appropriate for you to speak and vote on a matter because you may be biased (or perceived to be biased) if you were to do so. For example, speaking and voting on a planning application relating to a close family member or neighbour. A dispensation cannot be granted in such circumstances to enable you to speak and vote. It is extremely unlikely that a dispensation will be granted in respect of a Disclosable Pecuniary Interest where circumstances of bias or predetermination may arise. For further information please contact the Monitoring Officer.



## West Devon Borough Council

### General Dispensations to Borough Councillors

At its meeting on **17 March 2015** the Standards Committee granted a **General Dispensation**:

- to all Members of West Devon Borough Council
- until the Annual meeting in **May 2019**
- to enable Members to speak and vote at meetings of the Council (as defined in the Code of Conduct) relating to:
- **Housing**: where the Councillor (or spouse or partner) holds a tenancy or lease with the Council as long as the matter does not relate to the Councillor's particular tenancy or lease
- **Statutory sick pay**: if a councillor receives this or is entitled to receive it
- An **Allowance**, travelling expense, payment or indemnity for Councillors
- Any **ceremonial honour** given to Members
- Setting the **Council Tax or a Precept**

At its meeting on **17 March 2015** the Standards Committee granted a **General Dispensation**:

To all dual-hatted Members of West Devon Borough Council to speak and vote on matters where they are a member of another local authority and in receipt of a Members' Allowance, from the Annual Meeting in May 2015 **until the Annual Meeting in May 2019**.

Where a Member is unsure whether these General Dispensations apply to his/her particular circumstances, s/he is advised to make a specific request to the Monitoring Officer.

**Dispensation Request**

<p><b>Name of Councillor</b></p>	
<p><b>Nature and description</b> of interest for which dispensation sought:</p>	
<p><b>Period</b> for which dispensation is sought.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• This may be for a maximum period of 4 years.</li> <li>• Where a dispensation is sought for a particular meeting, please specify date of meeting.</li> </ul>	
<p><b>Grounds</b> on which the dispensation is sought:</p> <ul style="list-style-type: none"> <li>• Please refer to grounds set out in the attached guidance.</li> <li>• Please provide supporting reasons as to why you consider the dispensation request should be granted.</li> <li>• Please state whether you are seeking a dispensation to <b>speak and to vote</b> or to <b>speak only</b> on the particular matter.</li> </ul>	

# Agenda Item 5

Report to: **Standards Committee**

Date: **5 March 2019**

Title: **Review of Procedure for Dealing with Standards Complaints**

Portfolio Area: **Resources & Performance**

Wards Affected: **All**

Relevant Scrutiny Committee: **Overview & Scrutiny Panel**

Urgent Decision: **N** Approval and clearance obtained: **N/a**

Date next steps can be taken: **Council 26 March 2019**

Author: **Catherine Bowen** Role: **Monitoring Officer**

Contact: [Catherine.Bowen@swdevon.gov.uk](mailto:Catherine.Bowen@swdevon.gov.uk)

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## Recommendations:

- 1. To recommend that the Council adopts the revised 'Dealing with Standards Complaints' procedure attached at Appendix A to this report, from the Annual Meeting on 21 May 2019**
- 2. To delegate the review of the associated hearing procedure to the Monitoring Officer in consultation with Chairman of the Standards Committee**

## 1. Executive summary

1.1 The purpose of this report is to review the Council's 'Dealing with Standards Complaints' procedure. The procedure sets out how the Council deals with complaints that Borough Councillors and West Devon Parish/Town Councillors have broken their respective Codes of Members' Conduct.

1.2 The revised procedure is attached as Appendix A to this report and the proposed amendments are shown highlighted in yellow. The contents page and paragraph numbering will be completed once the final document has been agreed. The main proposed changes to the existing procedure are set out below in paragraph 2.

## 2. Background

2.1 The current standards regime was introduced in 2012 by the Localism Act 2011 and the Act required councils to adopt a Code of Members' Conduct and 'principal' councils to adopt a procedure for dealing with complaints that a councillor(s) had broken his/her Code of Conduct. For Borough Councils, the

complaints procedure must also cover Code of Conduct allegations about Parish/Town Councillors within the Borough Council's area.

- 2.2 The Council's current procedure 'Dealing with Standards Complaints' has worked well since 2012. However, it is considered timely for a review of this process with a focus on improving transparency, management of complainants' expectations earlier in the process (particular in relation to the Council's powers and potential outcomes/sanctions) and improving timescales for the delivery of decisions.
- 2.3 The whole procedure has been reviewed as Members will note from the highlighted parts in Appendix A, but the main proposed amendments are:
  - 2.3.1 Management of Expectations - it is accepted that the current procedure could be clearer through all stages of the process, as to what the standards procedure can and cannot consider, and what the potential outcomes could be if it is decided that the Code of Conduct has been broken. The Monitoring Officer will also amend the complaints form and accompanying guidance notes to ensure further clarity and transparency.
  - 2.3.2 The introduction of an 'Initial Assessment' stage which authorises the Monitoring Officer to reject complaints that do not satisfy three preliminary tests: the complaint must be about a named councillor, the councillor must have been a councillor at the time the allegation was made and, if proven, the complaint would disclose a breach of the Code of Conduct. The Monitoring Officer may also reject complaints at this stage if she considers that the complaint falls within one or more of the defined criteria set out on pages 9 and 10 of Appendix A. If there is any doubt at this stage, then the complaint will progress to the formal assessment stage of the complaint process as set out on pages 10 and 11 of Appendix A. The 'formal assessment' process is the procedure which all complaints currently follow.
  - 2.3.3 Finding of breach by the Monitoring Officer without an investigation (please see page 14 of Appendix A). The reasoning behind this provision is that, in some cases, it is not in the public interest to refer a case for investigation. For example, in some complaints it is apparent (and often accepted by the subject councillor) that there has been a breach of the Code during the assessment stage, and in some cases the Councillor has already provided a remedy for the issues raised by the complainant. Where there is any doubt, the matter will be referred for investigation. There will be a right to request a review by the Councillor where the Monitoring Officer has found a breach without an investigation (please see page 16-17 of Appendix A). The complaint will be reviewed by a different officer.
  - 2.3.4 Where a matter has been referred for an investigation and the Investigating Officer has found that there has been a breach of the Code, the Monitoring Officer has power to accept that decision and apply sanctions or make recommendations without the matter being referred to a hearing. Serious and complex matters will be referred to a hearing. The hearing procedure will sit (as it does now) in a separate document and Members are requested to delegate the review of the hearing procedure to the Monitoring Officer in consultation with the Chairman of the Standards Committee.
  - 2.3.5 It is proposed to publish the outcomes of all decisions where there has been a breach of the Code. A summary of the complaint and the decision will

continue to be referred to the Standards Committee but also published on the Council's website. Where there is a decision to take no further action at the formal assessment stage, the Councillor has the option to decide whether or not to publish the decision.

2.3.6 The inclusion of the sanctions in an appendix to the 'Dealing with Standards Complaints' procedure together with a more detailed explanation about the limitations on the Council's powers in regard to sanctions. The sanctions are currently set out only in the hearing procedure and complainants are not necessarily aware of the limitations on the Council's powers in relation to standards matters.

2.4 Whilst the requirement is to have three Members of the Standards Committee as members of the Standards Panel that will consider a standards matter, a fourth Member is identified and fully briefed to ensure that we have capacity in the event of conflict or illness etc.

### 3. Options available and consideration of risk

3.1 The Council has the option of retaining the current 'Dealing with Standards Complaints' procedure, adopting the revised procedure as set out in Appendix A, or adopting a different procedure. The risk of retaining the current procedure is that the Council does not adequately manage complainants' expectations which causes frustration to the complainants as to what the standards process can achieve and some complaints will continue to take some months before they are concluded.

3.2 The proposed amendments as set out in Appendix A have been arrived at through a discussion with other monitoring officers in Devon and Cornwall as to their current practice, and also following consultation with the Standards Panel and the Council's Independent Persons (these are the independent people appointed by the Council in a consultative and advisory role).

### 4. Proposed Way Forward

4.1 The proposal is to amend the current 'Dealing with Standards Complaints' procedure in line with the amendments set out in Appendix A in order to better manage complainants' expectations, provide more transparency and to make the process both more cost effective and timely.

### 5. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The Standards Committee is responsible for standards matters including reviewing policies and procedures relating to standards.</p> <p>The Localism Act 2011 does not prescribe the process for dealing with standards complaints; it states that relevant Councils must have a process but devolves the details to the relevant Councils. West Devon Borough Council is a relevant Council and the Localism Act also makes West</p>

		Devon responsible for dealing with standards complaints made against parish and town councillors within its area.
Financial	Y	<p>Costs are difficult to predict and quantify with standards queries and complaints, as there is no way of knowing how many complaints will be made, or of those, how many complaints will have an outcome of a 'breach'.</p> <p>However, if the proposed amendments are made to the Procedure, this will reduce the amount of officer time spent on standards complaints and significantly reduce the costs of referring a matter for formal investigation. It is also anticipated that through the improved management of expectations and the Initial assessment stage, that fewer formal complaints will be received for matters which do not disclose a potential breach of the Code of Conduct.</p>
Risk	Y	Potential risks are set out in paragraph 3 and the reasons for the proposed amendments are set out in paragraph 2.2
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	These are addressed with in the attached procedure and during specific standards complaints
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other implications	N	

### **Supporting Information**

#### **Appendices:**

**Appendix A:** revised procedure 'Dealing with Standards Complaints'

# **West Devon Borough Council**

## **Standards Committee**

### **Dealing with Standards Complaints**

# Contents

**NB – numbering and final headings to be inserted at final draft stage**

Dealing with Complaints' Procedure  
Definitions  
Introduction

**Appendix 1:** Deciding on whether to apply sanctions / other actions where there has been a Breach of the Code

**Appendix 2:** Hearing Procedure



## 1. Definitions

Term	Meaning
Chairman	Chairman of the Standards Committee
Clerk	The Clerk to a Parish/Town Council
Code of Conduct	<p>The West Devon Borough Council Code of Members' Conduct or the relevant Parish/Town Council Code of Conduct.</p> <p>The West Devon Borough Council Code of Conduct applies to all elected or co-opted councillors when engaged in the business of the Council or when the Councillor behaves so as to give a reasonable person the impression that s/he is acting as a representative of his/her Council.</p> <p><b>NB:</b> It is important to check the relevant Council's Code; Parish / Town Councils are responsible for adopting their own Codes and may differ from the Borough Council Code</p>
Complainant	The person who has made the complaint to the Monitoring Officer about the Councillor
Complaint	A written allegation under the Localism Act 2011 that a Councillor has failed to comply with the relevant Council's Code of Conduct
Council	West Devon Borough Council
Councillor	The elected or co-opted Borough or Parish/Town Councillor against whom the complaint has been made
Hearing	A hearing of the Standards Hearing Panel to decide whether the Code has been broken and what (if any) sanctions should apply
Independent Person	A person appointed under the Localism Act 2011 in a consultative role in relation to 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
Law	The Localism Act 2011 is the law under which West Devon Borough Council derives its duties and powers in relation to standards and dealing with complaints that a Councillor has not complied with the Code of

	Conduct. West Devon Borough Council is responsible for administering its own Code and for dealing with Complaints about its own Councillors and also Parish and Town Councillors.
Monitoring Officer	The statutory officer with duties and powers in relation to standards under the Localism Act 2011. Reference to the 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 Panel	A sub-committee of three members appointed by the Standards Committee to consider Standards matters including hearings
Parish or Town Council	The relevant Town or Parish Council with the borough of West Devon
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

## 2. Introduction

The Localism Act 2011 requires West Devon Borough Council to:

- Adopt its own Code of Members' Conduct
- Make arrangements for dealing with standards Complaints
- Appoint Independent Person(s)

### Arrangements for dealing with Complaints

This document sets out how the Council will deal with Complaints that a West Devon Borough Council or a West Devon Parish/Town Councillor has broken his/her authority's Code of Conduct. Complaints will be **considered** by the Monitoring Officer (and/or the Standards Committee) in consultation with the Independent Person.

### The Code of Conduct

Members' Codes of Conduct deal with the conduct expected of **elected and co-opted** 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. Parish and Town Councils are responsible for adopting their own Codes of Conduct and copies are available from the Parish/Town Clerk.

### The Standards Committee and its sub-committees

The Standards Committee has overall responsibility for the adoption and application of the Code of Conduct and standards functions under the Localism Act 2011. The Committee may appoint subcommittees (Standards Panel) to deal with specific matters. ~~Some parts of the process are delegated to the Monitoring Officer.~~

### The 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 Council has appointed three Independent Persons who are allocated Complaints on a rotation basis.**

**The Independent Person's** views:

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

The Independent Person does not make formal decisions on Complaints, and the Council is not bound by the views of the Independent Person. The Independent Person does not represent the Councillor or the Council and must remain impartial and objective. There is no right for a Complainant to seek the views of the Independent Person.

### **Matters not covered by this procedure**

This procedure **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/bodies
- a service provided by the Council
- Council Officers (employees, **including the Clerk**)

must be made under West Devon Borough Council's Corporate Complaints Procedure (please see the Council's website) or directed to the relevant Parish or Town Council.

**Example:** if a Complaint relates to a Councillor's behaviour in relation to the determination of a planning application then this Procedure will only consider the Councillor's behaviour. This Procedure cannot comment on the decision relating to the planning application and will not change the planning decision even where a breach of the Code may be found.

The Council **cannot** deal with a complaint under this Procedure which relates to:

- People who are not councillors of the relevant 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 **i.e. when a Councillor is engaged in the business of the Council or when the Councillor behaves so as to give a reasonable person the impression that s/he is acting as a representative 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 (e.g. failing to declare a Disclosable Pecuniary Interest). Such complaints may be referred to the Police (see **paragraph x below**).

**Example:** (obvious example of a councillor acting in private capacity)

### **Important: Potential Outcomes of a Standards Complaint**

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 will decide what action is appropriate, based on the particular circumstances of the Complaint, the relevant Code of Conduct and in accordance with the criteria set out in this document.

Whilst the Council takes its duties and powers seriously with regards to the standards regime (and this Procedure ensures that there is a fair process for considering and dealing with standards complaints) there are limitations on the potential outcomes to standards complaints (see paragraph x below) and the potential sanctions, where a Councillor is found to have broken the Code (see paragraph y below).

The ability of the Council to impose and enforce meaningful sanctions or remedial action was severely curtailed by the changes to the standards regime introduced by the Localism Act 2011 which also repealed all of the preceding ethical governance legislation in its entirety.

**Example 1:** A Complainant makes a Complaint that a Councillor has broken his/her Code of Conduct. The Monitoring Officer considers the Complaint (after consultation with the Independent Person ) and decides that the outcome should be 'no further action' for given reasons (see outcomes at paragraph x below) . There is no right for a review or appeal of this decision by the Complainant or the Councillor and this is then the end of that matter.

**Example 2:** A Complainant makes a Complaint that a Councillor has broken his/her Code of Conduct. The Monitoring Officer refers the matter for investigation and the Investigating Officer finds that the Councillor has broken the Code. The Complainant has asked that the Councillor is suspended or removed from the Council. However, the Council has no powers to apply these sanctions and has recommended that the Councillor makes an apology and attends training on ethical standards (see Sanctions at Paragraph y below)

### 3. How to make a complaint

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

- Email: [catherine.bowen@swdevon.gov.uk](mailto:catherine.bowen@swdevon.gov.uk) (Q. Do we want a Monitoring Officer email address that other officers can access?)
- Mail:

The Monitoring Officer  
West Devon Borough Council  
c/o South Hams District Council  
Follaton House  
Totnes  
Devon

There is a **Code of Conduct Complaint Form** available on the Council's website and paper copies are available from the Monitoring Officer on request. There are guidance notes attached to the form to help with completing the Code of Conduct Complaint Form. **Complainants will be required to confirm they have read and understood both the guidance notes and this procedure before submitting a complaint.**

(NB: I will also review and update the Complaints Form as part of this process)

### 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 not the Complainant's first language.

### Receipt of complaints

### Request for further information

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

- the Complainant
- the Councillor

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

## Initial Assessment of Complaint

When a complaint is received, the Monitoring Officer will carry out an **Initial Assessment** to determine whether the Complaint falls within this Standards Complaint Procedure.

Complaints will be rejected with a decision of 'No Further Action' at this stage if the Complaint does not satisfy one or more of the following three tests:

- **The Complaint is about (one or more) named Councillors of the Council or a relevant Parish/Town Council**
- **The Councillor was a Councillor at the time of the alleged Complaint**
- **If proven, the Complaint would disclose a breach of the relevant Code of Conduct**

Complaints that are not rejected will then be considered further, but may be rejected at this stage if the Monitoring Officer considers that (based on the information contained in the Complaint) one or more of the following criteria apply:

### Criteria: no further action at **Initial Assessment**

- **The Complaint relates to a Councillor acting in his/her private capacity**
- 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.
- Action has already been taken on the matter and there is no merit in pursuing the matter any further
- The Complaint is the same or substantially the same as a complaint previously dealt with
- The conduct complained of happened **more than 6 months** so long ago that **and** it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue (unless, in the Monitoring Officer's opinion, **there are exceptional circumstances which would merit the complaint being progressed**)
- The Complaint is **considered on an objective test to be** trivial or insubstantial or discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
- The Complaint is (or appears to be) malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive
- The Complaint is not considered to disclose sufficiently serious potential breaches of the code to merit further consideration,

<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 and 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 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>
<ul style="list-style-type: none"> <li>• The Complaint is from a Councillor about another Councillor in the same Council and the Monitoring Officer considers that the allegations to be such that the issues between the Councillors ought to be capable of informal resolution (with or without the assistance of the Clerk or some other person)</li> </ul>
<ul style="list-style-type: none"> <li>• It would otherwise be inappropriate to expend the Council's resources on determining the Complaint having regard to the circumstances of the Complaint, any previous related complaints and the public interest.</li> </ul>

If the Complaint is rejected with a decision of 'No further Action at this **Initial Assessment** stage, the Monitoring Officer will **within [10 working] days:**

- write to the Complainant stating that the decision is No Further Action together with the reasons why
- write to the Councillor to advise that a Complaint\*\* has been received but advising that the Complaint has been rejected or that the decision is that No Further Action is to be taken, together with the reasons why
- advise the Clerk (where relevant) that a Complaint has been received against a parish/town Councillor(s) but advising that the Complaint has been rejected or that the decision is that No Further Action is to be taken, together with the reasons why

\*\* The Complainant's details will only be withheld in exceptional circumstances where a request for confidentiality has been granted (see 'Confidentiality' at **paragraph x below**).

## Formal Assessment of Complaint

Complaints that are not rejected at the **Initial Assessment** stage will be assessed in accordance with the following **Formal Assessment** procedure.

The Monitoring Officer will:

- acknowledge receipt of the complaint **within [10 working days]**
- write to advise the Complainant what happens next



- advise the Clerk (where relevant) that a Complaint has been received against a Parish/Town Councillor
- write to the Councillor to advise that a Complaint\*\* has been received and ask the Councillor to provide written comments on the Complaint **within 14 working days** (unless the Monitoring Officer agrees in writing to extend the time due to reasonable circumstances)
- at this **Formal Assessment Stage**, the Councillor will be asked to restrict his/her written response to two sides of A4 and supporting documents
- advise the Councillor of the Independent Person appointed **and advise that s/he can consult the Independent Person throughout the process**
- consult the Independent Person (providing full details of the Complaint, the Councillor's response and any other relevant factual information). The Independent Person will provide his/her views on the Complaint within [**14 working days**]

\*\* The Complainant's details will only be withheld in exceptional circumstances where a request for confidentiality has been granted (see 'Confidentiality' at **paragraph x below**).

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 views from the Independent Person

The Monitoring Officer will make one (or more) of the following decisions:

<b>The Monitoring Officer will make one of the following decisions:</b>
• To take No Further Action (in accordance with the Criteria set out below)
• To make no finding as to whether there has been a breach of the Code but seek to resolve the Complaint informally
• <b>To make no finding as to whether there has (or may have) been a breach of the Code and that No further Action be taken as the public interest does not merit further investigation</b>
• To refer the Complaint for investigation to determine whether there has been a breach of the Code.
• <b>A finding of a breach of the Code without an investigation.</b>
• To refer the matter to the Police (or other relevant body) where the Complaint alleges that a criminal offence may have occurred under the Localism Act
• <del>To refer the Complaint to the Standards Committee (or subcommittee) which will have the same options as above</del>

Within 5 working days of making the Decision, the Monitoring Officer will issue a Decision Notice to the relevant parties explaining what decision has been made and why, in accordance with 'Notification of Decisions' (**Paragraph x below**) set out below.

**Further information on the procedure for each of these outcomes**

**To take No Further Action and/or no finding as to whether there has been of a breach of the Code**

The Monitoring Officer will 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

If no further action is to be taken then the Monitoring Officer will issue a Decision Notice. This will then be the end of the matter.

<b>Criteria: no further action at Formal Assessment stage</b>
• The Complaint relates to a Councillor acting in his/her private capacity
• The Complaint does not disclose any breach of the Code
• 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.
• Action has already been taken on the matter and there is no merit in pursuing the matter any further
• The Complaint is the same or substantially the same as a complaint previously dealt with
• The conduct complained of happened more than 6 months so long ago that and it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue (unless, in the Monitoring Officer's opinion, there are exceptional circumstances which would merit the complaint being progressed)
• The Complaint is considered on an objective test to be trivial or insubstantial or discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
• The Complaint is (or appears to be) malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive, and the Complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration.
• The Complaint is not considered to disclose sufficiently serious potential breaches of the code to merit further consideration,
• The Complaint is covered by the Council's Persistent and Vexatious Complaints Policy

<ul style="list-style-type: none"> <li>• The Councillor has provided a satisfactory remedy to the Complaint or made reasonable endeavours to do so and 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 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 (see paragraph x below)</li> </ul>
<ul style="list-style-type: none"> <li>• The Complaint is from a Councillor about another Councillor in the same Council and the Monitoring Officer considers that the allegations to be such that the issues between the Councillors ought to be capable of informal resolution (with or without the assistance of the Clerk or some other person)</li> </ul>
<ul style="list-style-type: none"> <li>• It would otherwise be inappropriate to expend the Council's resources on determining the Complaint having regard to the circumstances of the Complaint, any previous related complaints and the public interest.</li> </ul>

### **Informal Resolution**

The Monitoring Officer 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 decides (taking into account the criteria below) that informal resolution is appropriate, then the Complaint cannot be referred back to the Monitoring Officer 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
- referring the matter back to the Parish/Town Council for local resolution (with any appropriate recommendations)
- referral to Political Group Leader
- any other steps (not including investigation) which appear appropriate

~~If the Councillor (or Parish/Town Council) makes a reasonable offer of informal 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.~~ **Contradicts the above**

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

- An investigation / **decision by the Monitoring Officer** is in the public interest
- An allegation challenges the Councillor's honesty or integrity

<b>Criteria: Informal Resolution or Other Action</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>• 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>

### **Finding of a breach of the Code without an Investigation**

The Monitoring Officer may make a finding that there has been a breach of the Code based on the Complaint, the Councillor's response, and any supporting documentation or information and after having consulted the Independent Person.

This will be appropriate where:

- On the balance of probabilities, the information provided at the Formal Assessment stage demonstrates that the Code has been broken, and/or
- The Councillor admits the breach of the Code (whether or not s/he has offered to remedy the breach)
- In either of the above cases
  - it is reasonable to conclude that an investigation is unlikely to establish any further evidence regarding the Complaint, or
  - the public interest does not justify undertaking an investigation

NB. Please refer to the Councillor's Right of Review to this part of the process in **Paragraph x below**.

Where the Monitoring Officer finds that there has **been a breach of the Code**, the Monitoring Officer will (in consultation with the Independent Person):

- facilitate a local resolution (see paragraph x below), or
- In accordance with Appendix 1 below, consider whether it is appropriate to impose sanctions or recommend other action and if so, which sanctions/actions are appropriate.

## Councillor's right to request a Review

Where the Monitoring Officer has determined without an investigation, that the Councillor has broken the Code, the Councillor will have a right to request a review of that decision. This right will arise whether there has been a finding of a breach with or without the imposition of sanctions or recommended action(s).

Within **14 working days** of the issue of the Decision Notice that the Councillor has broken the Code of Conduct, the Councillor:

- May make a written request that the Decision be reviewed
- Must provide substantive reasons to support the request for a review of the decision which have not been previously provided (together with any relevant supporting documentation). Disagreement with the decision without giving substantive reasons or simply repeating the original response will result in the Request for Review being refused.

The Monitoring Officer will appoint a different officer to the one who made the original decision, to consider the Request for a Review (the **Review Officer**). The Independent Person will normally be the same Independent Person that considered the original complaint. A decision on the Request for a Review will be issued within [**14 working days**] of receipt of the request.

**Where a Request for a Review is refused**, the Review Officer will issue a Decision Notice with reasons, in accordance with the Rules set out below

**Where a request for a Review is granted**, the Review Officer will:

- Notify the Councillor that the request has been agreed
- Advise the Complainant that the Request for a Review has been received and provide a copy of the Request for Review, the reasons and any supporting documents and ask for a written response (restricted to 2 sides of A4) to be provided to the Review Officer [within 14 working days] from the date that the information is supplied
- Provide the Request for Review, the reasons and any supporting documents, together with the Complainant's response, to the Independent Person for his/her comments within [14 working days] from the date that the documents are supplied

- The Review Officer will review the Complaint in the light of all of the information using the same process, options and criteria as set out in Paragraphs x to y above for **Formal Assessment** of the Complaint.
- The Review Officer may make a different decision to the original decision made by the Monitoring Officer.
- There is no right to a further review at the conclusion of this Review stage.

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

If the complaint identifies potential criminal conduct under the Localism Act 2011 (or a breach of other regulations) the Monitoring Officer may refer the matter to the Police or other regulatory authority or body.

It may not be appropriate to progress the Complaint through this procedure for a potential breach of the Code in such circumstances, until the conclusion of the Police (or other appropriate body) investigation.

The Monitoring Officer will ask the Complainant at the determination of the Police (or other body's) procedure whether s/he wishes to continue with the standards Complaint.

### **Referral to the Standards Committee (or sub-committee)**

~~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 Committee (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.~~

I have deleted this as there have no instances in 6 years that have warranted this course of action

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

Where the Monitoring Officer 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 whether to conduct interviews or invite statements
- 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 Councillor and Complainant
- send a copy to the Monitoring Officer
- ask for the Independent Person's comments on the draft Report
- 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.
- whilst the investigation will be undertaken as expeditiously as reasonably practicable, it is not possible to specify a timescale within which the investigation must be concluded.

## Outcomes of an Investigation

The Investigating Officer will make one of the following findings:

- that the Code has not been broken
- that the Code has been broken

### **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:

- send a copy of the Report to the Complainant and Councillor
- Advise the following of the finding of no breach:
  - Clerk - if the matter relates to a Parish/Town councillor
  - Independent Person
  - The Chairman of the Standards Committee
- Advise all parties that all documents relating to the complaint will remain confidential.

This will normally be the end of the matter, and no further action will be taken. However, the Monitoring Officer has discretion to refer the Report to the Standards Committee to consider whether the Investigating Officer's findings should be accepted.

### **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 and Chairman):

- Facilitate a **local resolution** (where appropriate) or,
- **Agree** with the Investigating Officer's findings that there has been a breach of the Code and **apply sanctions / other action or make recommendations** in accordance with Appendix 1, or
- Refer the matter to a Standards Panel for a **Hearing** for serious or complex complaints where it is in the public interest that the Complaint is considered by the Standards Panel, and in all of the circumstances the Monitoring Officer considers that it is necessary.

The procedures for Hearings falls outside the scope of this procedure (see xxxxxxxxx).

### **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 to **impose sanctions or** to hold a formal hearing. In such cases, the Monitoring Officer will consult:

- the Independent Person
- **the Chairman**
- 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.

## **Hearing**

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

- local resolution is not appropriate or possible, or
- 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 will normally be 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) as appropriate

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~~

## Notification of Decisions

The Monitoring Officer'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 **review** / appeal

During the pre-election period known as 'Purdah', Complaints will be accepted and will be assessed at the discretion of the Monitoring Officer. However, no Decision Notices will be issued during the Purdah period.

## Publicity

**Finding of a breach:**

- Where there has been a finding of a breach of the Code, the Decision Notice will be published on West Devon Borough Council's website after 10 working days of the Decision Notice being issued to the relevant parties.
- All findings of a breach of the Code of Conduct will be reported in full to the Standards Committee .

**Finding of No Further Action at formal assessment stage:**

- The Monitoring Officer will ask the Councillor whether s/he wishes the Decision to be published. If no response is received within 10 working days then the Decision will be published on the Council's website.

Decisions/rejections at the **Initial Assessment** stage will not be published.

## Other issues relating to complaints

### Confidentiality

As a matter of fairness and in the interests of natural justice, a Councillor should normally be told **at the outset** 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 (sub) Committee**). The Monitoring Officer may consult the Independent Person.

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

- The 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
- The Complainant is an officer who works closely with the Councillor and is afraid of the consequences to his/her employment if identity is disclosed
- The Complainant (or someone else) suffers from a 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.
- The public interest: in some circumstances the public interest in proceeding with an investigation may outweigh the Complainant's wish for confidentiality.

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.

### Withdrawal of complaints

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

- Does the public interest in taking some action on the complaint outweigh the Complainant's wish to withdraw it?
- Can the complaint be investigated without the Complainant's participation?

- Is there an identifiable underlying reason for the request to withdraw the complaint?

### **Multiple complaints about the same Councillor**

Where several Complaints are received from different Complainants about the same Councillor that relate to the same matter, these may be considered by the Monitoring Officer as a single complaint. The Monitoring Officer may issue a separate decision on each individual complaint or issue a single Decision Notice but make clear that it relates to more than one complainant.

### **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.

### **Where a councillor ceases to be councillor**

If at any time during the Complaints process the Councillor ceases to be a Councillor for whatever reason, then (unless there are overriding public interest reasons to merit continuing with the process) the complaint will not be considered any further and the matter closed.

## **Other issues**

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

- The assessments, review 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 deliberations. This is because the Monitoring Officer may have to consider unfounded and potentially damaging complaints against councillors which it would not be appropriate to make public.
- Initial and formal assessments and consideration papers that do not progress to the initial assessment stage will not be disclosed to the public. (However the original complaint will be disclosed to the councillor – see above).
- Hearings (except paper 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. **Please see the Hearing Procedure at Appendix X.**

- Documents relating to complaints that have not been referred for investigation **or that have a finding of No Further Action**, 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 (but not publication) 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 (or paper hearing) that were held in private will not be made available for public inspection.
- Data Protection and Freedom of Information 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 or review 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 Committee Member, Independent Person or Officer should not take part in this procedure:**

- If s/he is the Complainant
- If s/he is closely associated with some one who is a Complainant
- S/he is a potential witness or victim relating to a complaint
- 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)
- The member/officer is directly or indirectly involved in the case in any way.
- A family member, friend or close associate of the Standards Committee member / officer / Independent Person is involved in the case.
- The member / officer / Independent Person has an interest in any matter relating to the case

**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 three years or as otherwise necessary.

Any substantial amendments or variations will be considered by the Standards Committee who will make any necessary recommendations to the Executive /Council.

**Appeals**

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

- the Monitoring Officer
- the Review Officer
- the Standards Committee
- the Standards 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.

\*\* the Councillor has a right of review against the decision of the Monitoring Officer in accordance with paragraph xxx above where the finding is a breach of the Code

## **Appendix 1**

### **Deciding on whether to apply sanctions for breaching the Code, and if so, what sanctions are appropriate**

The powers of the Council to impose and enforce sanctions or remedial action has been severely limited since the introduction of the current standards regime under the Localism Act 2011.

If the Monitoring Officer or Review Officer finds that the Councillor has broken the Code of Conduct, s/he will have regard to the following in deciding whether to:

- apply sanction(s) and if so what form those sanctions should take
- make any recommendations to the relevant Council with a view to promoting high standards of conduct amongst Members.
- make a recommendation or stipulations as to timing of any sanctions or recommendations.

The Monitoring Officer / Review Officer may consult the Independent Person before making this decision.

### **Consideration of sanctions/actions or recommendations**

In deciding what (if any) action to take, the Monitoring Officer/Review Officer 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 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.

Account should be taken 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 Monitoring Officer/Review Officer will ensure that it is reasonable and in proportion to the Councillor's behaviour.

### **Mitigating or Aggravating factors**



When making a decision on actions to take, the Monitoring Officer/Review Officer will consider the seriousness of the breach of the Code and any potential consequences, having 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>• The breach was a minor or technical breach</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>

<b>The Monitoring Officer/Review Officer may impose one (or any combination of) the following:</b>	
<b>No further action</b>	One or more of the above mitigating factors may be appropriate here
<b>Censure</b>	<p>This is effectively the only real sanction that the Council impose and will be the appropriate sanction to the most serious breaches of the Code. The Monitoring Officer will consult the Independent Person and Chairman of the Standards Committee with regards to the wording of the Censure/</p> <p>In respect of Parish/Town Councillors, the Monitoring Officer will consider whether it is appropriate for the Council to censure the Councillor or request that the Councillor's own</p>

	Council should give effect to the sanction
Other Action	<p>The Council does not have the power to compel any Councillor to comply with recommendations for remedial actions. The Council must rely on the Councillor's conscience and willingness to observe and uphold the Code of Conduct. Notwithstanding this, the Council may request or recommend some action on the part of the Councillor or the wider relevant Council.</p> <p>Examples of <b>Other Action</b> include one or more of the following:</p> <ul style="list-style-type: none"> <li>• Asking the Councillor to make an <b>apology</b></li> <li>• <b>Training for the individual Councillor</b> on the Code of Conduct and ethical standards or Council procedures to help the Councillor observe the and uphold the Code in the future</li> <li>• <b>Training for the whole Council or identified members such as the Chairman</b> on the Code of Conduct and ethical standards or Council procedures to help the wider Council address any underlying issues that the Complaint has raised</li> <li>• Recommend (or recommend to the Town / Parish Council) that the Councillor's political group (or in the case of an un-grouped Councillor, recommend to Council or a Committee) that the Councillor's membership of Committees, sub-committees or outside bodies, is reviewed where there is a link to the Conduct that has resulted in a breach of the Code.</li> <li>• 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</li> <li>• 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)</li> <li>• Withdraw (or recommend to the Town / Parish Council that it withdraws ) facilities provided to the councillor (e.g. computer, website, and/or</li> </ul>

	email and Internet access)
Failure to give effect to Other Action	<p>It is not possible for Council (or any other body) to enforce any of the sanctions/actions or recommendations. Refusal to do so by the Councillor is difficult to address. A further complaint for failure to comply with sanctions and recommendations could be considered but the public interest in doing so has to be weighed up with the amount of public resource that would be involved against any potential effect on the Councillor's behaviour.</p> <p>If a Parish or Town Council fails to comply with any recommendation for other action involving the whole (or part the) Council then that is a matter for that Council, and there is no action that West Devon Borough Council can properly take.</p>
Suspension or disqualification from office	<p>The Council has no power to suspend or disqualify the Councillor; to request this would be unlawful.</p> <p>The only way that a councillor can cease to hold office is through his/her resignation (which cannot be forced) or by the Councillor not being re-elected in the next Council election.</p>
Withdrawing allowances	The Council has no power to withdraw members' allowances.

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