

Public Document Pack

Mid Devon District Council

Standards Committee

Tuesday, 4 April 2017 at 6.00 pm
Exe Room, Phoenix House, Tiverton

Those attending are advised that this meeting will be recorded

Membership

Cllr Mrs J B Binks
Cllr Mrs F J Colthorpe
Cllr C J Eginton
Cllr F J Rosamond
Cllr Mrs E J Slade
Cllr C R Slade
Cllr Mrs M E Squires
Cllr L D Taylor
Cllr Mrs N Woollatt

A G E N D A

Members are reminded of the need to make declarations of interest prior to any discussion which may take place

1 APOLOGIES AND SUBSTITUTE MEMBERS

To receive any apologies for absence and notices of appointment of Substitute Members (if any).

2 PUBLIC QUESTION TIME

To receive any questions relating to items on the Agenda from members of the public and replies thereto.

Note: A maximum of 30 minutes is allowed for this item.

3 MINUTES (Pages 5 - 20)

To approve as a correct record the minutes of the last meeting of this Committee (attached).

4 CHAIRMAN'S ANNOUNCEMENTS

To receive any announcements the Chairman of the Committee may

wish to make.

5 **STANDARDS ISSUES** *(Pages 21 - 130)*

To consider a revised Code of Conduct and a set of procedures for dealing with complaints against Councillors.

6 **COMPLAINTS**

To receive an update from the Monitoring Officer with regard to any on-going complaints being dealt with. During the discussion it may be necessary to consider passing the following resolution to protect the Members of District, Town and Parish Council's being discussed.

During discussion of this item it may be necessary to pass the following resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Committee will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

ACCESS TO INFORMATION ACT – EXCLUSION OF THE PRESS AND PUBLIC

RECOMMENDED that under section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act, namely information relating to an individual

7 **IDENTIFICATION OF ITEMS FOR THE NEXT MEETING**

Members are asked to note that the following items are already identified in the work programme for the next meeting:

Stephen Walford
Chief Executive
Monday, 27 March 2017

Anyone wishing to film part or all of the proceedings may do so unless the press and public are excluded for that part of the meeting or there is good reason not to do so, as directed by the Chairman. Any filming must be done as

unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Member Services Officer in attendance so that all those present may be made aware that is happening.

Members of the public may also use other forms of social media to report on proceedings at this meeting.

Members of the public are welcome to attend the meeting and listen to discussion. Lift access the first floor of the building is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available. There is time set aside at the beginning of the meeting to allow the public to ask questions.

An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, or

If you would like a copy of the Agenda in another format (for example in large print) please contact Julia Stuckey on:

Tel: 01884 234209

E-Mail: jstuckey@middevon.gov.uk

Public Wi-Fi is available in all meeting rooms.

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MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **STANDARDS COMMITTEE** held on 25 January 2017 at 6.00 pm

Present

Councillors

Mrs J B Binks (Chairman)
F J Rosamond, C R Slade,
Mrs M E Squires, Mrs N Woollatt,
C J Eginton and Mrs E J Slade

Also Present

Councillor(s)

R M Deed, N V Davey, Mrs S Griggs and Mrs J Roach

Also Present

Officer(s):

Stephen Walford (Chief Executive), Jill May (Director of Corporate Affairs and Business Transformation), Maria De Leburne (Solicitor), Sally Gabriel (Member Services Manager) and Julia Stuckey (Member Services Officer)

25 **APOLOGIES AND SUBSTITUTE MEMBERS**

There were no apologies given.

26 **PUBLIC QUESTION TIME**

There were no members of the public in attendance.

27 **MINUTES**

The Minutes of the last meeting were approved as a true record and signed by the Chairman.

28 **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman welcomed the newly appointed Independent Persons Mr John Smith and Mr David Williamson to the meeting.

The Chairman also welcomed Donna Nolan, Deputy Chief Executive and Monitoring Officer from Mendip District Council and Maria De Leburne, Solicitor.

29 **STANDARDS REGIME - PEER REVIEW**

The Committee had before it a report * from Donna Nolan, the Deputy Chief Executive and Monitoring Officer, Mendip District Council.

Following the recent resignation of the Council's Monitoring Officer the Chief Executive had sought a peer review of the Council's current standards regime.

The review had been undertaken mindful of the fact that the Council had appointed a new Legal Services Group Manager and Monitoring Officer and the report had been

prepared with the intention of assisting the Council and the new post holder improve its current standards regime.

Ms Nolan explained that the Localism Act 2011 (the Act) made fundamental changes to the system of regulation of standards of conduct for Councillors and Co-opted Members. The report reviewed the Council's system and revisited the changes brought into force by the Act and recommended points for debate and proposed actions to assist the Council to further improve its system. To enable consideration of the recommendations a number of model documents and examples were appended to the report.

Ms Nolan informed the Committee that it was important to note that the report did not highlight any fundamental issues in respect of the Council's current ethical standards regime.

Ms Nolan thanked officers for their support in undertaking this review. She reported that officers had been very cooperative and helpful and that she had found it to be an interesting piece of work.

1 The Code of Conduct

In accordance with the Act, the Council had adopted a new Code of Conduct governing elected and Co-opted Members' conduct, when acting in that capacity. The Council had discretion as to what it included in its Code of Conduct provided it was consistent with the following seven Nolan principles.

Discussion took place regarding:

- The website address within the document required changing;
- This authority did not have prejudicial interests within its Code of Conduct;
- The number of authorities that had adopted the code.

It was **RECOMMENDED** that Council, subject to an amendment to paragraph 5.1 of appendix 1 to remove text so that the paragraph started at 'The Monitoring Officer must...'

- | a) The current Code of Conduct be reviewed and consideration be given to;
 - the introductory comments in the code;
 - the descriptors of the seven Nolan principles;
 - legal definition of Disclosable Pecuniary Interests;
 - inter-relationship of the Code and criminal sanctions;
 - dispensations:
 - sensitive Interests;
 - pre-determination;
 - gifts and hospitality
- | b) Review guidance and training provided to Members and Co-opted Members of this Council and Parish Councillors and Co-opted Members of relevant Parish Councils in relation to the Code of Conduct.

(Proposed by the Chairman)

2 Disclosable Pecuniary Interests

Ms Nolan explained what a Disclosable Pecuniary Interest (DPI) was and that Councillors must declare interests of their spouse or civil partner.

Discussion took place regarding:

- Training could be undertaken when the new Monitoring Officer was in post;
- Member Services sent reminders that Register of Interest forms must be updated via the weekly information sheet;
- The use of the Annual Council meeting to remind Members of the need to update paperwork;
- The Monitoring Officer should check forms for accuracy;
- A protocol between the authority and police to ensure that the police were aware of their obligation to investigate;
- The need to liaise with parish clerks to ensure that they understood the requirements.

It was **RECOMMENDED** that Council:

- a) Guidance be reviewed and training provided to Members and Co-opted Members of this Council and Parish Councillors and Co-opted Members of relevant Parish Councils regarding the status of DPI's.
- b) The process be reviewed for pro-actively ensuring the Council's Register of Interests is reviewed on a regular basis; and that changes in circumstances are notified.
- c) A protocol be agreed with the Police in relation to allegations of a failure to declare a DPI.

(Proposed by the Chairman)

3 Arrangements for Dealing with Misconduct Complaints

Ms Nolan explained that the Act required the Council to adopt arrangements for dealing with complaints of misconduct both by Councillors and Co-opted Members of the Council and by Parish Councillors and Co-opted Members of Parish Councils within its district. Such complaints could only be dealt with in accordance with these arrangements which must set out in some detail the process for dealing with them and the actions that could be taken against a Councillor who was found to have failed to comply with the Code of Conduct.

Discussion took place regarding the matter of 'perception'. Ms Nolan explained that legislation was clear that the code engaged when a Member was acting in an official capacity. She referred to a case involving Ken Livingston (Mayor of London) who had been found guilty following a complaint by a journalist when he had left an official event and was waiting for a taxi. The Standards Board upheld the complaint but the High Court overturned the decision. The judge made a distinction between the 'man' and the 'office'. This was a case that was often referred to by Monitoring Officers. She agreed that it was not always clear when a Councillor was acting in an official capacity and gave an example of a Member having a pint in a pub with friends and being approached by a constituent as opposed to a Member agreeing to meet a constituent in the pub.

Discussion took place regarding:

- The Scheme of Delegation allowed for the Monitoring Officer to hear complaints, involving Standards at a hearing, with regular updates to meetings;
- The local resolution process would allow for delegation to the Monitoring Officer in consultation with the Independent Persons;
- The role of Independent Person was to check and challenge as to whether local resolution was appropriate;
- The importance of training clerks;
- Monitoring Officer delegations within the model included allowing the Monitoring Officer the right to depart from the arrangements where considered expedient to do so in order to secure the effective and fair consideration of any matter;
- Fraudulent claims could be dealt with by the Monitoring Officer, Audit team or the police;
- The difficulty of seeking to embed an appeals process. If an appeals process was put in place there would be no one to hear the appeal as the Monitoring Officer would not be in a position to do so, having dealt with the original case and the Standards Committee Members could not hear any appeal (Ms Nolan was not aware of any other Councils that did include an appeals process);
- The need for the Councillor involved in a complaint to receive full details regarding the complaint, within a reasonable time.

It was **RECOMMENDED** that Council:

- a) Ensure the scheme of delegation was up to date regarding the procedure for dealing with complaints.
- b) That a legal jurisdiction criteria test be introduced as a preliminary test to the process for determining complaints.**
- c) That the “local assessment criteria” test be reviewed.
- d) That consideration be given to enabling the Monitoring Officer to seek additional information from the Complainant and the Subject Member (or, if applicable, the Parish Clerk) before deciding how to deal with the complaint.
- e) That consideration be given to including in the arrangements for dealing with complaints process a delegation to the Monitoring Officer to seek to resolve the complaint locally/informally.
- f) With the addition of the word ‘full’ between provide and details at (a) and that ‘or other close associates’ be added after family members that consideration be given to adopting a procedure for Investigation of a Complaint.
- g) With the addition of the wording ‘or a legal representative’ at the end of 2.2.1 that consideration be given to updating the Hearing Panel Procedure.

(Proposed by the Chairman)

4 Sanctions

Ms Nolan explained that the Act did not give the Council or its Standards Committee any powers to impose sanctions such as suspension on errant Councillors. So, where a failure to comply with the Code of Conduct was found, the range of actions which the Council could take in respect of the councillor was limited. She further

explained the importance of having clear sanctions to help with public expectation.

It was **RECOMMENDED** to Council that:

- a) The range of sanctions available should be made clear in the complaints process and procedures.
- b) **That the sanction referred to in Article 10 of the Constitution 10.4(10) be removed.**

(Proposed by the Chairman)

5 Appeals Against Decision

Ms Nolan explained that there was no requirement by the Act to put in place any appeals mechanism against decisions taken by the Monitoring Officer or the Standards Committee. Any decision would be open to judicial review by the High Court if it was unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose. Complaints of maladministration in dealing with a complaint fell within the jurisdiction of the Local Government Ombudsman.

Discussion took place regarding:

- The lack of help available from the Ombudsman for Councillors and the expense of Judicial Review.

It was **RECOMMENDED** that Council:

That the current appeal process be reviewed.

(Proposed by the chairman)

6 Independent Person(s)

The arrangements adopted by the Council must include provision for the appointment by the Council of at least one Independent Person.

The Independent Person must be appointed through a process of public advertisement, application and appointment by a majority of the Members of the Council.

Ms Nolan highlighted the importance of discussion with the Independent Persons to agree protocols to suit local circumstances.

It was **RECOMMENDED** that Council:

- a) Review the process and procedures for consulting of the Independent Person(s) in the complaints process, including local resolution (if adopted).
- b) Determine the process for consulting with the Independent Person(s) and how the issue of potential conflict of interest would be addressed.
- c) Consider the adoption of an Independent Person Protocol.
- d) Consider the adoption of an arrangement to share the use of Independent

- Persons with another principal Council, in the event of a conflict of interest.
- e) Ensure that (i) the provision of the Local Authorities (Standing Orders) (England) (Amendment Regulations) have been adopted; and that the Independent Persons are aware of their formal statutory role in advising the Council prior to any vote on whether to dismiss the Council's Head of Paid Service, Monitoring Officer and Chief Finance Officer. (ii) that the Constitution and relevant HR Policies and Procedures reflect the Regulations.

(Proposed by the Chairman)

7 The Register of Councillors Interests

The Monitoring Officer was required to maintain a register of interests, which must be available for public inspection and available on the Council's website. The Monitoring Officer was also responsible for maintaining the register for Parish Councils within the district, which also had to be open for public inspection at the Council offices and on the Council's website.

Ms Nolan explained a recent incident whereby the Information Commissioner had declared that Register of Interest forms should clearly identify which interest related to the Member and which interest related to their spouse/civil partner. Most authorities had adopted a standard form but Ms Nolan advised that this form be adapted for the next election. She did not consider it necessary to undertake the huge amount of work that would be involved to issue this form prior to that.

Discussion took place regarding:

- Some Councillors, particularly in parish councils preferring to resign rather than declare their interests;
- 'Sensitive Interests' and the fact that the Monitoring Officer could agree that an Interest was sensitive and therefore did not have to be made public;
- The challenge of getting forms completed.

It was **RECOMMENDED** that Council:

With the addition of the wording 'and from the 23 February 2017 to introduce new guidance and forms for new and re-elected Members' at the end of the sentence for a)

- a) Review the Declaration of Interest Form in terms of potential data protection issues.
- b) Update the current guidance on the administration and declaration of Sensitive Interests.
- c) Introduce guidance to aid interpretation of the Declaration of Interests Form.
- d) Update the execution clause on the Declaration of Interests form.
- e) Determine a proportionate approach to introducing a revised Declaration of Interest Form and accompanying guidance.

(Proposed by the Chairman)

8 Procedure when Disclosable Pecuniary Interests Arise

The duty to disclose and withdraw would arise whenever a Councillor attended any meeting of the Council, a Committee or Sub-committee, or of the Executive, and was aware that he/she had a DPI in any matter being considered at the meeting. It applied even if the Councillor would be absent from that part of the meeting where the matter in question was under consideration.

It was **RECOMMENDED** that Council:

Determine whether appropriate guidance and procedures were in place to address the process for withdrawal where DPI's arise.

(Proposed by Chairman)

9 Dispensations

Ms Nolan explained the circumstances when it may be appropriate for a Monitoring Officer or Committee to grant dispensation. Parish Councils were responsible for determining requests for dispensation by a Parish Councillor and not the Council.

It was **RECOMMENDED** that Council:

- a) Review the current procedure relating to the grant of dispensations.
- b) Review the guidance provided to Parish Councils relating to the grant of dispensations.

(Proposed by the Chairman)

10 Bias and Predetermination

Ms Nolan outlined information within the report, explaining that the Act addressed the common law position regarding predetermination. The fact that a Councillor may have campaigned for or against a proposal was not in itself to be taken as proof that they were not open-minded. However, a Councillor on a decision making Committee must still have an open mind when coming to the meeting, so that all the relevant considerations presented to the meeting could be taken into account. This would allow for Councillors to feel less constrained about voting at a Town or Parish Council Meeting before the matter came to a District Council but Councillors should, nevertheless, avoid doing or saying something before the decision making meeting took place that showed that they had already – and finally – made up their minds on the issue.

It was **RECOMMENDED** to Council that:

- a) Guidance and training provided to Members regarding bias and predetermination be reviewed.
- b) *Subject to the removal of the words 'Consider the' at the start of the sentence and replacing 'in' with 'of' following inclusion so that the sentence reads - The inclusion in the Code of Conduct of an advisory note regarding pre-determination be considered.*

(Proposed by the Chairman)

11 Other Matters Arising as a result of the Review

Ms Nolan put forward a further set of recommendations following her review and it was **RECOMMENDED** that Council:

- a) **A flow chart and guide (as outlined in Appendix 16) to explain the complex procedure of making a complaint be adopted.**
- b) The Complaint Form be updated to make it clear that the complaint would be shared with the Independent Person, the Subject Councillor, Group Leader (if relevant) and the Parish or Town Clerk (if relevant).
- c) The Officers' Code of Conduct and specifically include the Principles of Public Life be updated;
- d) In the interests of consistency, if the Monitoring Officer Protocol was to be contained within the constitution then Protocols associated with the Head of Paid service and Chief Finance Officer should be included.
- e) The Member/Officer Protocol be reviewed:
- f) Including details regarding Member Gifts and Hospitality in the Code of Conduct be reviewed.
- g) The status of the Personal Interests Form be reviewed.
- h) Consistency between the Code of Conduct and Code of Good Practice for Planning be reviewed so as to ensure any amendments adopted following this review.
- i) The terms of reference of the Standards Committee be reviewed should the review outlined in the report be undertaken.

(Proposed by the Chairman)

The Chairman thanked Ms Nolan for the amount of work that she had put into the report and expressed the gratitude of the Council.

It was **RESOLVED** that a letter be sent to the Leader of Mendip District Council thanking him for 'lending' Ms Nolan and for the amount of work she had undertaken. The Chairman also thanked the Members in attendance for the amount of work they had undertaken prior to the meeting.

Note: - Report * previously circulated and attached to Minutes.

Standards Action Sheet from Minute 29

30 COMPLAINTS (1:51:51)

The Solicitor informed the Committee that she had provided advice to three Parish Councils and one Town Council since November 2016. All had been resolved apart from one where advice was being provided to the clerk.

The Solicitor had also handled four complaints in connection with two matters and had concluded that there had been no breach of the Code. Two of these complaints had been withdrawn and the others closed.

Four new complaints had been received that day.

31 IDENTIFICATION OF ITEMS FOR THE NEXT MEETING

(The meeting ended at 7.55 pm)

CHAIRMAN

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Minute Annex

Standards Committee 25 January 2017 RECOMMENDATIONS to Council

To be Approved

Recommendation	Action	Appendix
3) Arrangements for Dealing with Misconduct Complaints	That a legal jurisdiction criteria test be introduced as a preliminary test to the process for determining complaints.	Appendix 4
4) Sanctions	That the sanction referred to in Article 10 of the Constitution 10.4(10) be removed.	
11) Other Matters Arising as a result of the Review	A flow chart and guide to explain the complex procedure of making a complaint be adopted.	Appendix 16

Work to be Progressed

Recommendation	Action	Appendix
1) Code of Conduct	<p>a) The current Code of Conduct be reviewed and consideration be given to;</p> <ul style="list-style-type: none"> the introductory comments in the code; the descriptors of the seven Nolan principles; legal definition of Disclosable Pecuniary Interests; inter-relationship of the Code and criminal sanctions; dispensations: sensitive Interests; pre-determination; gifts and hospitality <p>b) Review guidance and training provided to Members and Co-opted Members of this Council and Parish Councillors and Co-opted Members of relevant Parish Councils in relation to the Code of Conduct.</p>	<p>Appendix 1</p> <p>Appendix 1</p>
2) Disclosable Pecuniary	a) Guidance be reviewed and training provided to Members and Co-opted	Training issue

Interests	<p>Members of this Council and Parish Councillors and Co-opted Members of relevant Parish Councils regarding the status of DPI's.</p> <p>b) The process be reviewed for pro-actively ensuring the Council's Register of Interests is reviewed on a regular basis; and that changes in circumstances are notified.</p> <p>c) A protocol be agreed with the Police in relation to allegations of a failure to declare a DPI.</p>	<p>Create process</p> <p>Appendix 2</p>
3) Arrangements for Dealing with Misconduct Complaints	<p>a) Ensure the scheme of delegation was up to date regarding the procedure for dealing with complaints.</p> <p>c) That the "local assessment criteria" test be reviewed.</p> <p>d) That consideration be given to enabling the Monitoring Officer to seek additional information from the Complainant and the Subject Member (or, if applicable, the Parish Clerk) before deciding how to deal with the complaint.</p> <p>e) That consideration be given to including in the arrangements for dealing with complaints process a delegation to the Monitoring Officer to seek to resolve the complaint locally/informally. With the addition of the word 'full' between provide and details at (a) and that 'or other close associates' be added after family members</p> <p>f) That consideration be given to adopting a procedure for Investigation of a Complaint. With the addition of the wording 'or a legal representative' at the end of 2.2.1</p> <p>g) That consideration be given to</p>	<p>Appendix 3</p> <p>Appendix 5</p> <p>Procedure for Assessment</p> <p>Appendix 6</p> <p>Appendix 7</p> <p>Appendix 8</p>

	updating the Hearing Panel Procedure.	
4) Sanctions	a) The range of sanctions available should be made clear in the complaints process and procedures.	Complaints process
5) Appeals against Decision	That the current appeal process be reviewed.	Review process
6) Independent persons	<p>a) Review the process and procedures for consulting of the Independent Person(s) in the complaints process, including local resolution (if adopted).</p> <p>b) Determine the process for consulting with the Independent Person(s) and how the issue of potential conflict of interest would be addressed.</p> <p>c) Consider the adoption of an Independent Person Protocol.</p> <p>d) Consider the adoption of an arrangement to share the use of Independent Persons with another principal Council, in the event of a conflict of interest.</p> <p>e) Ensure that (i) the provision of the Local Authorities (Standing Orders) (England) (Amendment Regulations) have been adopted; and that the Independent Persons are aware of their formal statutory role in advising the Council prior to any vote on whether to dismiss the Council's Head of Paid Service, Monitoring Officer and Chief Finance Officer. (ii) that the Constitution and relevant HR Policies and Procedures reflect the Regulations.</p>	<p>Review process</p> <p>Develop processes for consulting</p> <p>Appendix 9</p> <p>Find another authority to work with</p> <p>Add to constitution</p>
7) Register of Councillors interests	a) Review the Declaration of Interest Form in terms of potential data protection issues.	<p>Update form</p> <p>Appendix 1</p> <p>Appendix 10</p>

	<ul style="list-style-type: none"> b) Update the current guidance on the administration and declaration of Sensitive Interests. c) Introduce guidance to aid interpretation of the Declaration of Interests Form. d) Update the execution clause on the Declaration of Interests form. e) Determine a proportionate approach to introducing a revised Declaration of Interest Form and accompanying guidance 	<p>Appendix 11</p> <p>Appendix 12</p>
8) Procedure when Disclosable Pecuniary Interests Arise	Determine whether appropriate guidance and procedures were in place to address the process for withdrawal where DPI's arise.	Clarify in code of conduct Appendix 1
9) Dispensations	<ul style="list-style-type: none"> a) Review the current procedure relating to the grant of dispensations. b) Review the guidance provided to Parish Councils relating to the grant of dispensations. 	<p>Appendix 1</p> <p>Appendix 13</p> <p>Appendix 14</p>
10) Bias and Predetermination	<ul style="list-style-type: none"> a) Guidance and training provided to Members regarding bias and predetermination be reviewed. b) Subject to the removal of the words 'Consider the' at the start of the sentence and replacing 'in' with 'of' following inclusion so that the sentence reads - The inclusion in the Code of Conduct of an advisory note regarding pre-determination be considered. 	<p>Appendix 15</p> <p>Appendix 1</p>
11) Other Matters Arising as a result of the Review	<ul style="list-style-type: none"> b) The Complaint Form be updated to make it clear that the complaint would be shared with the Independent Person, the Subject Councillor, Group Leader (if relevant) and the Parish or Town Clerk (if relevant). 	<p>Appendix 18</p> <p>Update Constitution</p>

	<p>c) The Officers' Code of Conduct and specifically include the Principles of Public Life be updated;</p> <p>d) In the interests of consistency, if the Monitoring Officer Protocol was to be contained within the constitution then Protocols associated with the Head of Paid service and Chief Finance Officer should be included.</p> <p>e) The Member/Officer Protocol be reviewed:</p> <p>f) Including details regarding Member Gifts and Hospitality in the Code of Conduct be reviewed.</p> <p>g) The status of the Personal Interests Form be reviewed.</p> <p>h) Consistency between the Code of Conduct and Code of Good Practice for Planning be reviewed so as to ensure any amendments adopted following this review.</p> <p>i) The terms of reference of the Standards Committee be reviewed should the review outlined in the report be undertaken.</p>	<p>Create and include in Constitution</p> <p>review</p> <p>Appendix 1</p> <p>Workshop following annual meeting</p>
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STANDARDS COMMITTEE 4 APRIL 2017

Standards Issues

Portfolio Holder Cllr C J Eginton - Leader
Responsible Officer Jill May – Monitoring Officer

Reason for Report: To consider a revised Code of Conduct and a set of procedures for dealing with complaints against Councillors

RECOMMENDATION(S): that the following be recommended to Council

- a) The Code of Conduct for Councillors and Co-opted Members be approved.
- b) The updated Complaint Form and the procedure be approved
- c) The protocol between Mid Devon District Council and the Police Investigations and offences under the Localism Act 2011 Section 24 be approved.
- d) The updated Monitoring Officer's delegations be approved.
- e) The Local/Informal Resolution Process be approved.
- f) The Procedure for investigating the Complaint be approved.
- g) The Hearing Panel Procedure be approved.
- h) The Independent Person/s Protocol be approved.
- i) Members Register of Interest form and guidance be approved, this to include disclosable pecuniary interests.
- j) The request for dispensation and the procedure for granting dispensations be approved.
- k) The dispensations Procedure Guide for Parish Councils be approved.
- l) The guidance note on bias and predetermination process be approved.
- m) That an appeal/review procedure be considered and approved if required.

Financial Implications: None identified

Legal Implications: The Council need to ensure that further to the Standards Regime Peer Review all procedures are reviewed, and in accordance with the Localism Act 2011. These procedures ensure that Councillors, the authority and members of the public are clear on how any complaints or standards issues are dealt with regarding Councillors.

Risk Assessment: It is important to ensure that the Council has a code of conduct and a set of procedures for dealing with complaints against councillors that if appropriate, fit for purpose and is legally sound.

1.0 Introduction

- 1.1 At the meeting of the Committee on 25 January 2017, Members received a report (attached at appendix 1) from Donna Nolan, the Monitoring Officer at Mendip Council following a request from the Chief Executive requesting a review of "Standards" issues at this Council.

- 1.2 The report reviewed the Council's system, revisited the changes brought into force by the Localism Act and recommended points for debate and proposed actions to assist the Council to further improve its system. To enable consideration of the recommendations a number of model documents and examples were appended to the report.
- 1.3 The Committee at its meeting on 25 January 2017 approved all the recommendations set out in the review with some amendments and these were put before Council on 22 February 2017 alongside a bundle of appendices as examples of documents which could be used.

2.0 Recommendations to Council

- 2.1 The Council meeting on 22 February 2017 approved 3 specific recommendations:
- That a legal jurisdiction criteria test be introduced as a preliminary test to the process for determining complaints.
 - That the sanction referred to in Article 10 of the Constitution (10.4 (10)) be removed.
 - A flow chart and guide to explain the complex procedure of making a complaint be adopted.
- 2.2 The Constitution has been amended accordingly removing the sanction referred to in Article 10. The other 2 recommendations will form part of a complaints procedure bundle which when approved will form an additional appendix to the Constitution, so that all the relevant information is available in one place.
- 2.3 The Council also considered and approved a list of issues that required further consideration by the Standards Committee.

3.0 Work to be progressed

- 3.1 The following headings outline the additional items which require consideration:
- The Code of Conduct to be reviewed
 - Guidance with regard to disclosable pecuniary interests
 - Arrangements for dealing with misconduct complaints
 - A clear range of sanctions be published
 - The current appeal process be reviewed.
 - Processes and procedures/protocols for the Independent Persons
 - The Register of Councillors Interests
 - Procedures for dispensations
 - Guidance with regard to predetermination and bias
 - Other matters arising as a result of the review
- 3.2 Attached to this report is a set of procedures and processes for approval which go some way to addressing the issues outlined in Ms Nolan's report,

these include the amendments suggested at the previous meeting of the Standards Committee.

- 3.3 Discussion took place at the previous meeting with regard to an appeal or review mechanism. The view of Ms Nolan was that an appeal mechanism was not necessary; however the committee did discuss the issues relating to the process. In light of further discussion which took place at Full Council on 22nd February 2017, Members were clear that an appeal process was not, in absolute terms, appropriate for the reasons made clear by Ms Nolan in her external review of the council's process.
- 3.4 Discussion at Full Council reflected that there was an opportunity to 'consider' the council's process, and as such officers have explored ways in which the various concerns of Members could be addressed. It is considered that, if Members were so minded, a process could be introduced which permitted a limited appeal mechanism to allow for a secondary sub-committee of the Standards Committee to be utilised in the event of specific (and limited) criteria, thus providing confidence for Members. A procedure has therefore been added to the appendix 2.
- 3.5 Many of the issues addressed within the review refer to training for both Members of this Council and for the Town and Parish Councils; these will be addressed when the new Legal Services Manager and Monitoring Officer takes up her post in April.
- 3.6 At this point any outstanding issues that require attention will be addressed and brought before the Committee for consideration.

4.0 Summary

- 4.1 Appended to this report are a set of procedures/protocols (appendix 2) for approval in line with the recommendations outlined in the review undertaken by Ms Nolan.
- 4.2 They seek to address issues that have arisen within the Standards Regime of this Council.
- 4.3 The proposed set of procedures will form a bundle that will be appended to the Constitution when approved.

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Circulation of the Report: [Councillor C J Eginton, Leader and Leadership/Management Team]

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Report of: Donna Nolan

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Date: 25 January 2017

The Standards Regime – Peer Review

1. Purpose of Report

- 1.1 The Localism Act 2011 (the Act) made fundamental changes to the system of regulation of standards of conduct for Councillors and Co-opted Members. This report reviews the Council's system.
- 1.2 This report revisits the changes brought into force by the Act and recommends points for debate and proposed actions to assist the Council to further improve its system. To enable consideration of the recommendations a number of model documents and examples are appended to this report.
- 1.3 It is important to note that this report does not highlight any fundamental issues in respect of the Council's current ethical standards regime.

2. Introduction

- 2.1 Following the recent resignation of the Council's Monitoring Officer the Chief Executive has sought a peer review of the Council's current standards regime.
- 2.2 This review has been undertaken mindful of the fact that the Council has appointed a new Legal Services Group Manager and Monitoring Officer and thus this report has been prepared with the intention of assisting the Council and the new post holder ameliorate its current standards regime.
- 2.3 Sally Gabriel, Member Services Manager and Jill May, Director of Corporate Affairs and Business Transformation, have been very supportive in enabling this review.

3. The Code of Conduct

- 3.1 In accordance with the Act, the Council has adopted a new Code of Conduct governing elected and Co-opted Members' conduct, when acting in that capacity. The Council has discretion as to what it includes in its Code of Conduct provided it is consistent with the following seven Nolan principles :–

- **Selflessness**

Holders of public office should act solely in terms of the public interest.

- **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

- **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

- **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

- **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

- **Honesty**

Holders of public office should be truthful.

- **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

3.2.1 The Act requires the registration and disclosure of Disclosable Pecuniary Interests (DPIs) which are defined by Regulations.

3.2.2 A DPI covers the Members (and his/her spouse or civil partner) “employment, office, trade, profession or vocation”; any “sponsorship” of the Member including contributions towards their elections expenses, and trade union membership; “contracts” between the Member and Council; “land” in which the Councillor has an interest and lies within the authority’s area and “any corporate tenancies”; and certain “securities” the Member may hold.

3.2.3 The Act also requires an authority’s Code of Conduct to include such provision as it deems appropriate for the registration and disclosure of other non-disclosable pecuniary interests and non-pecuniary interests.

Recommendation

- (1) *Review the current Code of Conduct and consider in particular;*
 - a) *the introductory comments in the code;*
 - b) *the descriptors of the seven Nolan principles;*
 - c) *legal definition of Disclosable Pecuniary Interests;*
 - d) *inter-relationship of the Code and criminal sanctions (see also paragraph 4 below);*
 - e) *dispensations (see also Section 11 below);*
 - f) *sensitive interests (see also Section 9 below);*
 - g) *pre-determination (see also Section 12 below);*
 - h) *gifts and hospitality.*

At Appendix 1 is a comprehensive model Code of Conduct, which consolidates all the above key matters into one document.

- (2) *Review guidance and training provided to Members and Co-opted Members of this Council and Parish Councillors and Co-opted Members of relevant Parish Councils in relation to the Code of Conduct.*

4. Disclosable Pecuniary Interests

- 4.1 The Act prohibits Councillors with a DPI from participating in authority business. A DPI is defined under the Act and includes:

- a. an interest of the Member/Co-opted Member; or
- b. an interest of:
 - i. the Member's/Co-opted Member's spouse or civil partner;
 - ii. a person with whom the Member/Co-opted Member is living as husband and wife; or
 - iii. a person with whom the Member/Co-opted Member is living as if they were civil partners.

and the Member/Co-opted Member is aware that the other person has the interest.

- 4.2 A new (or re-elected) Member of the Council must notify the Monitoring Officer of any DPI (or any unregistered “disclosable pecuniary interest” if the case of a re-elected Member) before the end of 28 days beginning with the day on which the person becomes a Member/Co-opted Member of the Council.
- 4.3 Unless otherwise registered in the register of interests a Member/Co-opted Member attending a Council meeting (i.e. meeting of the Council, or any committee, sub-committee, joint committee or sub-joint committee of the Council), must disclose that “disclosable pecuniary interest(s)” to the meeting.
- 4.4 A Member/Co-opted Member does not have to disclose the nature of the disclosable pecuniary interest if it is sensitive. A sensitive disclosable pecuniary interest is one which if disclosed could lead to the Member/Co-opted Member or a person connected with him/her, being subjected to violence or intimidation.
- 4.5 Where an unregistered disclosable pecuniary interest is disclosed at a meeting the relevant Member/Co-opted Member must notify the Monitoring Officer of the disclosable pecuniary interest with 28 days of the date of the meeting in question.
- 4.6 There is no explicit requirement for a Councillor/Co-opted Member to keep the register up to date, except on re-election or re-appointment, but it is likely that Councillors will register new interests from time to time, as this will avoid the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.

Failure to disclose DPIs

- 4.7 A person commits an offence if, without reasonable excuse, he/she fails to register or disclose a DPI as required or knowingly or recklessly provides information in relation to a DPI that is false or misleading.
- 4.8 A person who commits an offence as outlined in paragraph 4.1, shall upon summary conviction be liable to a fine not exceeding £5,000 (five thousand pounds) and may be disqualified for a period not exceeding 5 years from being or becoming a Member or Co-opted Member of a Council.
- 4.9 Any criminal proceedings shall be brought by or on behalf of the Director of Public Prosecutions and may be brought within 12 months of the date evidence existed that was both in the knowledge and to the opinion of the prosecutor, sufficient to warranted proceedings.

Recommendation

- (1) *Review guidance and training provided to Members and Co-opted Members of this Council and Parish Councillors and Co-opted Members of relevant Parish Councils regarding the status of DPI's.*
- (2) *Review the process for pro-actively ensuring the Council's Register of Interests is reviewed on a regular basis; and that changes in*

circumstances are notified.

- (3) *Agree a protocol with the Police in relation to allegations of a failure to declare a DPI.*

At Appendix 2 is a comprehensive model Police Protocol which details how both the Monitoring Officer and the Police will handle and investigate criminal offences created by the Act.

5. Arrangements for dealing with misconduct complaints

Arrangements

- 5.1 The Act requires the Council to adopt arrangements for dealing with complaints of misconduct both by Councillors and Co-opted Members of the Council and by Parish Councillors and Co-opted Members of Parish Councils within its district. Such complaints can only be dealt with in accordance with these arrangements which must set out in some detail the process for dealing with them and the actions that may be taken against a Councillor who is found to have failed to comply with the Code of Conduct.
- 5.2 Statutory provisions of the Localism Act do not give the Standards Committee or the Monitoring Officer special powers to deal with complaints, and thus the Council must have delegated appropriate powers to the Standards Committee and to the Monitoring Officer.

Recommendation

- (1) *Ensure the scheme of delegation is up to date regarding the procedure for dealing with complaints.*

At Appendix 3 is a model delegation to the Monitoring Officer which details matters relevant to the Act most likely to be delegated to that Officer.

- (2) *That a legal jurisdiction criteria test is introduced as a preliminary test to the process for determining complaints.*

At Appendix 4 is a model legal jurisdiction test which details the first stage assessment criteria to be applied by the Monitoring Officer upon receipt of a complaint.

- (3) *That the “local assessment criteria” test is reviewed.*

At Appendix 5 is a comprehensive model local assessment criteria test to be applied by the Monitoring Officer to determine if further action is appropriate in relation to those complaints which meet the legal jurisdiction test.

- (4) *That consideration is given to enabling the Monitoring Officer to seek*

additional information from the Complainant and the Subject Member (or, if applicable, the Parish Clerk) before deciding how to deal with the complaint.

- (5) *That consideration is given to including in the arrangements for dealing with complaints process a delegation to the Monitoring Officer to seek to resolve the complaint locally/informally.*

At Appendix 6 is a model local resolution process which enables the Monitoring Officer, in consultation with the Independent Person, to resolve complaints informally at any time in the process. Such an approach is often the simplistic and most cost effective way of resolving a complaint.

- (6) *That consideration is given to adopting a procedure for Investigation of a Complaint.*

At Appendix 7 is a model Investigation of Complaint Procedure, which explains the role of the Investigating Officer and the processes relating to the investigation.

- (7) *That consideration is given to updating the Hearing Panel Procedure.*

At Appendix 8 is a comprehensive model Hearing Panel Procedure which consolidates rules, processes and the sanctions available to them in the event the Committee determine that a Member has failed to comply with the Code of Conduct.

6. Sanctions

- 6.1 The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or impose requirements for training on errant Councillors. So, where a failure to comply with the Code of Conduct is found, the range of actions which the Council can take in respect of the councillor is limited. In practice, this might include the following:
- (a) reporting its findings to a meeting of the full Council [*or to the relevant Parish Council*] for information and/or censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
 - (b) issuing a press release/or other appropriate publicity;
 - (b) recommending to the Councillor's political group leader (or in the case of un-grouped Councillors, recommend to Council or to committees) that they be removed from any or all Committees or Sub-Committees of the Council for a specified period;
 - (c) recommending to the Leader of the Council that an Executive Councillor be removed from the Executive, or removed from particular portfolio responsibilities;

- (d) recommending appropriate training for the Councillor;
 - (e) recommending to the Council the removal of the Councillor [*or recommending to the relevant parish council that the councillor be removed*] from all outside appointments to which they have been appointed or nominated by the Council [*or by the relevant parish council*] for a specified period;
 - (f) withdrawing [*or recommending to the relevant parish council that it withdraws*] facilities provided to the councillor by the Council for a specified period, for example electronic access to the Council's systems; or
 - (g) excluding [*or recommending that the relevant parish council excludes*] the Councillor from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings; or,
 - (h) instructing the Monitoring Officer to apply the local/informal resolution process; or,
 - (i) sending a formal letter to the Councillor.
- 6.2 Such sanctions can take effect immediately or take effect at a later date and the sanction can be time limited.
- 6.3 Without the consent of the relevant Member and subject to any disciplinary action within the Members' own political group, the sanctions available following a finding of a breach of the Code of Conduct, following investigation, are very limited. It is not permissible to suspend or disqualify the Councillor or to withdraw any basic or special responsibility allowance.
- 6.4 There is a particular difficulty in respect of Parish Councils, as the Act gives the Standards Committee no power to do any more in respect of a Member of a Parish Council than make a recommendation to that Parish Council on action to be taken in respect of the Member. Parish Councils will be under no obligation to accept any such recommendation.

Recommendation

- (1) *The range of sanctions available should be made clear in the complaints process and procedures.*
- (2) *That the sanctions referred to in Article 10 of the Constitution, and in particular paragraph 10.4(10) should be reviewed.*

7. Appeals against a Decision

- 7.1 There is no requirement by the Act to put in place any appeals mechanism

against decisions taken by the Monitoring Officer or the Standards Committee. Any decision would be open to judicial review by the High Court if it was unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose. Complaints of maladministration in dealing with a complaint fall within the jurisdiction of the Local Government Ombudsman.

Recommendation

(1) *Review the current appeal process.*

8. Independent Person(s)

Independence

- 8.1 The arrangements adopted by the Council must include provision for the appointment by the Council of at least one Independent Person.
- 8.2 The Independent Person must be appointed through a process of public advertisement, application and appointment by a majority of the Members of the Council.
- 8.3 A person is considered not to be “independent” if –
- he is, or has been within the last five years, an elected or Co-opted Member or an Officer of the Council or of any of the Parish Councils within the district;
 - he is, or has been within the last five years, an elected or Co-opted Member of any Committee or Sub-Committee within the district; or
 - he is a relative or close friend of a current elected or Co-opted Member or officer of the Council or any parish council within the district, or of any elected or Co-opted member of any Committee or Sub-Committee of such Council.

For this purpose, “relative” comprises –

- (a) The candidate’s spouse or civil partner;
- (b) any person with whom the candidate is living as if they are spouses or civil partners;
- (c) the candidate’s grandparent;
- (d) any person who is a lineal descendent of the candidate’s grandparent;
- (e) a parent, brother, sister or child of anyone in paragraphs (a) or (b);
- (f) the spouse or civil partner of anyone within paragraphs (c), (d) or (e); or

- (g) any person living with a person within paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

Functions of the Independent Person

8.4 The functions of the Independent Person(s) are:

- They must be consulted by the Council before it makes a decision on an allegation of misconduct by a Councillor that it has decided to investigate including before it decides on action to be taken in respect of that councillor (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- they may be consulted by the authority in respect of a standards complaint at any other stage; and
- they may be consulted by a Councillor or Co-opted Member of the Council or of a Parish Council against whom a complaint has been made.

8.5 This causes some problems, as it would be inappropriate for an Independent Person who has been consulted by the councillor against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

How many Independent Persons?

8.6 The Act gives discretion to appoint one or more Independent Persons, but provides that the Independent Person must be consulted before any decision is taken on a complaint which has been investigated.

8.7 In practice in Councils where more than one Independent Person is appointed one will essentially act as a 'reserve'; whilst other Councils share Independent Persons thus ensuring the "reserve" will not have been consulted before any decision is taken on a complaint.

Recommendation

- (1) *Review the process and procedures for consulting of the Independent Person(s) in the complaints process, including local resolution (if adopted).*
- (2) *Determine the process for consulting with the Independent Person(s) and how the issue of potential conflict of interest will be addressed.*

- (3) *Consider the adoption of an Independent Person Protocol.*

At Appendix 9 are two model Independent Person Protocols.

- (4) *That the adoption of an arrangement to share the use of Independent Persons with another principal Council, in the event of a conflict of interest is considered.*
- (5) *Ensure that the provision of the Local Authorities (Standing Orders) (England) (Amendment Regulations) have been adopted; and that the Independent Persons are aware of their formal statutory role in advising the Council prior to any vote on whether to dismiss the Council's Head of Paid Service, Monitoring Officer and Chief Finance Officer. Ensure that the Constitution and relevant HR Policies and Procedures reflect the Regulations.*

9. The Register of Councillors' Interests

- 9.1 The Monitoring Officer is required to maintain a register of interests, which must be available for public inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils within the district, which also have to be open for public inspection at the Council offices and on the Council's website.
- 9.2 Where a Councillor is concerned that disclosure of the detail of an interest (either a DPI or any other interest which they would be required to disclose) at a meeting or on the register of interests would lead to the councillor or a person connected with them being subject to violence or intimidation, they may request the Monitoring Officer to agree that the interest is a "sensitive interest".
- 9.3 If the Monitoring Officer agrees, then such interests may be excluded from the Council's Register of Interests that is available for public inspection or published. The Councillor then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting.
- 9.4 The Monitoring Officer is required by the Act to set up and maintain registers of interest for each parish council within the district, available for inspection at the Council offices and on the Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.

Recommendation

- (1) *Review the Declaration of Interest Form in terms of potential data protection issues.*
- (2) *Update current guidance on the administration and declaration of Sensitive Interests.*

The model Code of Conduct at Appendix 1 contains appropriate

guidance regarding Sensitive Interests.

At Appendix 10 is a model Sensitive Interests Registration Form for completion by a Member wishing to have an interest treated as sensitive.

- (3) *Introduce guidance to aid interpretation of the Declaration of Interests Form.*

At Appendix 11 is an example of guidance to accompany a Declaration of Interest Form to aid accurate completion of such forms.

- (4) *Update the execution clause on the Declaration of Interests form.*

At Appendix 12 is a model comprehensive execution clause, which includes reference to criminal sanctions pursuant to the Act.

- (5) *Determine a proportionate approach to introducing a revised Declaration of Interest Form and accompanying guidance.*

10. Procedure where Disclosable Pecuniary Interests arise

- 10.1 The duty to disclose and withdraw arises whenever a Councillor attends any meeting of the Council, a Committee or Sub-committee, or of the Executive, and is aware that he/she has a DPI in any matter being considered at the meeting. It applies even if the Councillor would be absent from that part of the meeting where the matter in question is under consideration.
- 10.2 Where these conditions are met, the Councillor must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). The Councillor does not have to make such a disclosure if he/she has already registered the DPI although in practice in the interests of transparency other Members make such a public declaration.
- 10.3 Where the Councillor does make a disclosure of a DPI not on the register, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the Register of Interests.
- 10.4 If a Councillor has a DPI in any matter, he/she must not participate:
- (a) in any discussion of the matter at the meeting. The Act does not define “discussion”, this precludes making representations;
 - (b) in any vote on the matter,
- unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 10.5 Failure to comply with the requirements described in paragraphs 10.2, 10.3 or

10.4 above becomes a criminal offence, rather than leading to sanctions.

- 10.6 The Council's Code of Conduct must make appropriate provisions for disclosure and withdrawal in respect of interests other than DPIs.

Disclosure and Withdrawal in respect of matters to be determined by a lead councillor

- 10.8 Matters can be decided by the Leader or an executive councillor acting under the scheme of delegation to Executive Councillors. The Act provides that, when a Councillor becomes aware that they will have to deal with a matter and that they have a DPI in that matter:

- (a) unless the DPI is already entered in the register of interests or is subject to a pending notification, they have 28 days to notify the Monitoring Officer that they have such a DPI; and
- (b) they must take no action in respect of that matter other than to refer it another person or body to take the decision.

Recommendation

- (1) *Determine whether appropriate guidance and procedures are in place to address the process for withdrawal where DPI's arise.*

The model Code of Conduct at Appendix 1 contains appropriate procedures relating to withdrawal where a DPI arises.

11. Dispensations

- 11.1 The Act made significant changes to the provisions on dispensations.

- 11.2 A dispensation can be granted in the following circumstances:

- (a) that so many Members of the decision-making body have DPIs in a matter that it would impede the transaction of the business. (In practice this means that the decision-making body would be inquorate as a result);
- (b) that, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
- (c) that the authority considers that the dispensation is in the interests of persons living in its area;
- (d) that, without a dispensation, no member of the Executive would be able to participate on a particular item of business; or

- (e) that the authority considers that it is otherwise appropriate to grant a dispensation.
- 11.3 Any grant of a dispensation must specify how long it lasts for, up to a maximum of four years.
- 11.4 The Localism Act gives discretion for this power to be delegated to Standards Committee or a Sub-Committee, or to the Monitoring Officer. The circumstances described in (a) and (d) in paragraph 11.2 above are objective, and many Councils have delegated dispensations on these grounds to the Monitoring Officer, thus enabling dispensations to be granted “at the door of the meeting”. In practice this can be very useful. The circumstances described in (b), (c) and (e) of paragraph 11.2 are rather more subjective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee (possibly after consultation with the Independent Person).
- 11.5 Parish Councils are responsible for determining requests for a dispensation by a Parish Councillor, and not the Council.

Recommendation

- (1) *Review the current procedure relating to the grant of dispensations.*

The model Code of Conduct at Appendix 1 contains appropriate procedures relating to the grant of dispensations.

At Appendix 13 is a model Dispensation Form for completion by a Member requesting a dispensation.

- (2) *Review the guidance provided to Parish Councils relating to the grant of dispensations.*

At Appendix 14 is an example guide to Parish Councils regarding the grant of dispensations.

12. Bias and Predetermination

- 12.1 The Act addressed the common law position regarding predetermination. The Act provides, in essence, that “*a decision maker is not to have..... a closed mind when making the decision..... just because the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took..... or might take in relation to that matter.....*”
- 12.2 The Act essentially abolished the concept of pre-determination. The fact that a Councillor may have campaigned for or against a proposal is not in itself to be taken as proof that they are not open-minded.
- 12.3 However, a Councillor on a decision making Committee must still have an open mind when the Councillor comes to the meeting, so that all the relevant

considerations presented to the meeting can be taken into account. While Councillors can feel less constrained about, say voting at a Town or Parish Council Meeting before the matter comes to a District Council, Councillors should, nevertheless, avoid doing or saying something before decision making meeting takes place that shows that they have already – and finally – made up their minds on the issue.

- 12.4 Thus, before a meeting, Councillors may legitimately be publically pre-disposed. However, at the decision making meeting, Councillors must carefully consider all the evidence that is put before them and must be prepared to modify or change their initial view in the light of the arguments and evidence perceived. They must make their final decision at the meeting with an open mind based on all the evidence.
- 12.5 Decisions taken by Councillors with pre-determined views are vulnerable to legal challenge, which, if successful, could in turn lead to a breach of the Code of Conduct.

Recommendation

- (1) *Review guidance and training provided to Members regarding bias and predetermination.*

At Appendix 15 is a short note prepared for Members on bias and predetermination.

- (2) *Consider the inclusion in the Code of Conduct of an advisory note regarding pre-determination.*

The model Code of Conduct at Appendix 1 contains an advisory note regarding pre-determination.

13. Other matters arising as a result of this Review

As part of this review, other recommendations have emerged within the jurisdiction of this Committee:

- (1) *The adoption of a flow chart and guide to explain the complex procedure of making a complaint.*

At Appendix 16 is an example of a flowchart to summarise the procedure of making a complaint regarding a Member.

At Appendix 17 is a guide for the public to making such a complaint.

- (2) *Update the Complaint Form to make it clear that the complaint will be shared with the Independent Person, the Subject Councillor, Group Leader (if relevant) and the Parish or Town Clerk (if relevant).*

At Appendix 18 is an example form of wording regarding the disclosure of the complaint form to those outlined above.

- (3) Update the Officers' Code of Conduct and specifically include the Principles of Public Life;*
- (4) In the interests of consistency, if the Monitoring Officer Protocol is to be contained within the constitution then Protocols associated with the Head of Paid service and Chief Finance Officer should be included.*
- (5) Review the Member/Officer Protocol:*
- (6) Consider including details regarding Member Gifts and Hospitality in the Code of Conduct.*

The model Code of Conduct at Appendix 1 contains details regarding Gifts and Hospitality.

- (7) Review the status of the Personal Interests Form.*
- (8) Review consistency between the Code of Conduct and Code of Good Practice for Planning so as to ensure any amendments adopted following this review.*
- (9) Review the terms of reference of the Standards Committee should the review outlined in this report be undertaken.*

14. Conclusions

14.1 If the Committee are minded to update policy, procedure and approach following this report and provided the model documentation appended to this report is generally approved then a comprehensive update should not be unduly onerous.

14.2 Such a comprehensive update should focus on the following key areas:

- Adopting a Code of Conduct that amalgamates all key obligations and interests, ensuring the process for registration, disclosure, sensitive interests and dispensation are clear.
- Updating the Complaint Form, and introducing guidance to the public on the process, ensuring transparency on the range of sanctions available.
- Updating the Procedure on Receipt of Complaint, including the ability to resolve complaints informally and the need for an appeal procedure.
- Updating the Procedure for Investigating a Complaint.
- Updating the Hearing Procedure Process.
- Updating the Register of Interest Form.
- Introducing Protocols with the Police and the Independent Persons.

CODE OF CONDUCT FOR COUNCILLORS AND CO-OPTED MEMBERS

1. Introduction and Interpretation

- 1.1 This Code came into effect on February 2016 and applies to you only when acting in your capacity either as a Councillor or Co-opted (voting) Member of the Council or its Committees and Sub-committees.

1.2 The Nolan Principles

It is your responsibility to comply with the provisions of this Code which will assist the Council in meeting its statutory obligation to promote and maintain high standards of conduct by its Councillors and Co-opted Members in accordance with the following principles:

- **Selflessness.** Holders of public office should act solely in terms of the public interest.
- **Integrity.** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.
- **Objectivity.** Holders of public office must act and take decisions impartially fairly and on merit using the best evidence and without discrimination or bias.
- **Accountability.** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness.** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty.** Holders of public office should be truthful.
- **Leadership.** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

2. DPIs

2.1 In this Code:-

A “disclosable pecuniary interest” is an interest within the prescribed descriptions set out below that you have personally, or is an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners, and you are aware that that other person has the interest:

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a Member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate Tenancies	Any tenancy where (to M’s knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.

Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to M’s knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) 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.</p>
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These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” 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;

“director” includes a member of the Committee of management of an industrial and provident society;

“land” includes an easement, servitude, interest or right in or 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;

“M” means a Member of a relevant authority;

“Member” includes a Co-opted Member;

“relevant authority” means the authority of which M is a Member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31 (7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” 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.

“meeting” means any meeting of:-

- (a) the Council;
- (b) the Executive of the Council;
- (c) any of the Council’s or its Executive’s Committees, Sub-committees, joint committees, joint Sub-committees or area committees, including any site visit authorised by the Council, the Executive or any of the aforementioned Committees.

2.2 This Code does not cover matters in respect of which the Localism Act 2011 specifically provides that criminal sanctions will apply.

2.3 A failure of a Councillor or Co-opted Member to comply with this Code is not to be dealt with otherwise than in accordance with arrangements approved by the Council under which allegations of such failure can be investigated and decisions on such allegations can be made. In particular, a decision is not invalidated just because something that occurred in the process of making the decision involved a failure by a Councillor or Co-opted Member to comply with the Code.

3. General Obligations

3.1 You must treat others with respect.

3.2 You must not:-

- (a) do anything which may cause the Council to breach any of the equality enactments;
- (b) bully any person;
- (c) 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 a Councillor or Co-opted Member (including yourself) has failed to comply with this code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

3.3 You must not:-

- (a) 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:-
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the Council; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

3.4 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute, or in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by Councillors and Co-opted Members.

3.5 You:-

- (a) must not use or attempt to use your position as a Councillor or Co-opted Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the Council's resources:-
 - (i) act in accordance with the Council's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

3.6 When reaching decisions on any matter you must have regard to any relevant advice provided to you by the Council's Chief Finance Officer or Monitoring Officer where that Officer is acting pursuant to their statutory duties.

3.7 You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council.

4. Predetermination

4.1 Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as a Councillor.

4.2 However you should not place yourself under any financial or other obligation to outside organisations that might seek to influence you in the performance of your official duties.

4.3 When making decisions you must consider the matter with an open mind and on the facts before the meeting at which the decision is to be made.

4.4 If a Councillor considers that they could be biased or they have predetermined their position to a decision, he or she should disclose this and should not take part in the decision making process whenever it becomes apparent that the matter is being considered.

5. Registration

5.1 The Monitoring Officer must, by law, establish and maintain a register of interests, open for inspection by the public at the Council's offices and publicly accessible on our website:

<https://democracy.middevon.gov.uk/mgMemberIndex.aspx?bcr=1>

5.2 You must, before the end of 28 days beginning with the day on which you became a Councillor or Co-opted Member of the Council, notify the Monitoring Officer of any disclosable pecuniary interests which you have at the time when the notification is given. You should be aware that these interests include those of your spouse or civil partner, a person with whom you are living as husband or wife or a person with whom you are living as if they were a civil partner so far as you are aware of the interests of that person. These interests will then be entered on the register of interests.

5.3 Where you become a Councillor or Co-opted Member of the Council as a result of re-election or re-appointment, paragraph 5.2 applies only as regards disclosable pecuniary interests not entered in the register when the notification is given.

6. Participation with a DPI

6.1 Subject to paragraphs 8.1 to 8.4 (*dispensations*), if you are present at any meeting and you are aware that you have, or any other person referred to in paragraph 5.1 above has, a disclosable pecuniary interest in any matter that will be, or is being, considered at that meeting, you must, irrespective of whether that interest has been registered:

- (a) disclose the nature of the interest to the meeting (or, if it is a sensitive interest as described in paragraph 9 below, disclose merely the fact that it is a disclosable pecuniary interest);
- (b) not participate in any discussion or vote regarding that matter; and
- (c) withdraw immediately from the room or chamber (including the public gallery) where the meeting considering that matter is being held.

Where you have not previously notified the Monitoring Officer of that disclosable pecuniary interest you must do so within 28 days of the date of the meeting at which it became apparent.

6.2 Subject to paragraphs 8.1 to 8.4 (*dispensations*), if you are aware that you have, or any other person referred to in paragraph 5.2 above has, a disclosable pecuniary interest in any matter on which either:

- (a) you are authorised to make decisions, or
- (b) you are consulted by an Officer discharging powers delegated to them,

you must not, in relation to (a) above, take any decision on that matter or, in relation to (b) above, participate in any consultation with such Officer in respect of that matter.

Where you have not previously notified the Monitoring Officer of that disclosable pecuniary interest you must do so within 28 days of the date on which it became apparent.

6.3 You may participate in any business of the Council where that business relates to the Council's functions in respect of:-

- (a) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (b) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full-time education, or are a parent

governor of a school, unless it relates particularly to the school which the child attends;

- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to Councillors or Co-opted Members
- (e) any ceremonial honour given to Councillors; and
- (f) setting Council Tax or a precept under the Local Government Finance Act 1992.

7. Gifts and Hospitality

7.1 As a Councillor or Co-opted Member of the Council you must avoid accepting any gift, hospitality or other favour which could give the impression of compromising your integrity, honesty or objectivity. In particular, you

- (a) should avoid any behaviour which might reasonably be seen as motivated by personal gain;
- (b) should exercise caution in accepting any gifts or hospitality which are (or which you might reasonably believe to be) offered to you because you are a Councillor or Co-opted Member;
- (c) should never accept significant gifts or hospitality (i.e. anything with a value of £25 or more) from suppliers or contractors seeking to acquire or develop business with the Council; and
- (d) must, within 28 days of receipt or acceptance, notify the Monitoring Officer of any gift you receive or hospitality you accept (of a value of £25 or more) for inclusion in the register of interests.

8. Dispensations

8.1 A Councillor or Co-opted Member with a disclosable pecuniary interest in a matter may submit a written request to the Monitoring Officer for the grant of a dispensation allowing that Councillor or Co-opted Member to participate in any discussion and/or vote on that matter at a meeting.

8.2 The Monitoring Officer may, after having had regard to all relevant circumstances, grant a dispensation to the Councillor or Co-opted Member only if, he considers that without the dispensation:

- (a) the number of persons prohibited from participating in any particular business in relation to the matter would be so great a proportion of the body transacting the business as to impede the transaction of that business, or
 - (b) considers that without the dispensation each Member of the Executive would be prohibited from participating in any particular business to be transacted by the Executive in relation to the matter.
- 8.3 The Standards Committee may, after having had regard to all relevant circumstances, grant a dispensation to the Councillor or Co-opted Member only if, the Committee considers that:
 - (a) without the dispensation the representation of different political groups on the body transacting the particular business would be so upset as to alter the likely outcome of any vote relating to that business, or
 - (b) granting the dispensation is in the interests of persons living in the District, or
 - (c) it is otherwise appropriate to grant the dispensation.
- 8.4 Any dispensation granted must specify the period for which it has effect, and the period specified may not exceed four years.
- 9. Sensitive Information**
- 9.1 Paragraphs 9.2 and 9.3 apply where:
 - (a) a Councillor or Co-opted Member of the Council has an interest (whether or not a disclosable pecuniary interest), and
 - (b) the nature of the interest is such that the Councillor or Co-opted Member, and the Monitoring Officer, consider that disclosure of the details of the interest could lead to the Councillor or Co-opted Member, or a person connected with that Councillor or Co-opted Member, being subject to violence or intimidation.
- 9.2 If the interest is entered in the register of interests, copies of the register that are made available for inspection, and any version of the register published on the Council's website, must not include details of the interest (but may state that the Councillor or Co-opted Member has an interest the details of which are withheld under this provision of the Code).
- 9.3 Where a disclosable pecuniary interest is not entered on the register of interests and would otherwise require disclosure at a meeting, the Councillor or

Co-opted Member shall be entitled to merely disclose at the meeting the fact that they have such an interest in the matter concerned.

10. Removal of entries in the register

10.1 An entry in the register of interests will be removed once the person concerned:

- (a) no longer has the interest, or
- (b) is (otherwise than transitorily on re-election or re-appointment) neither a Councillor nor a Co-opted Member of the Council.

PROTOCOL BETWEEN THE MID DEVON DISTRICT COUNCIL AND THE DEVON AND CORNWALL POLICE

INVESTIGATIONS AND OFFENCES UNDER LOCALISM ACT 2011 SECTION 34

Introduction

1. This protocol applies in the Mid Devon District Council area to the handling and investigation of criminal offences created by Section 34 of the Localism Act 2011.
2. The purposes of this protocol are:
 - to assist the initial investigation and handling of criminal offences connected with the Localism Act 2011,
 - to assist officers and staff in identifying and correctly categorising such offences and
 - to provide guidance as to their handling and initial investigation.
3. If such offences are not investigated correctly, there is a clear risk of adverse publicity for both the police and the local authority concerned. It is important that supervising staff who have the responsibility of reviewing the reports and investigation logs relating to such offences under the 2011 Act are aware of the potential for adverse publicity within these reports and undertake any review with this aspect in mind.

Offences – general considerations

4. Offences under Section 34 are relevant to Members of Councils who are elected, or have a vote on any Committee or Sub-Committee which exercises any function or decision making power on behalf of the Council. Section 34 applies to Members of County Councils, Fire and rescue authorities, District and Borough Councils, and local parish councils.
5. Section 34 lists a number of different offences relating to the disclosure of relevant interests in such Committees and extend to those interests held by family members living at the same address.
6. Investigators should note that whilst offences under Section 34 are summary only offences, the consent of the Director of Public Prosecutions is required in order for a prosecution to proceed. Accordingly there is a level of seriousness attached to these offences.
7. All officers should note that these offences relate to persons who are elected in their role in Councils and should therefore be mindful of the need for impartiality in the political context, and also the potential for adverse publicity and possible media attention in relation to the issues surrounding such offences. For

example, Planning Committees in local councils can deal with issues in which there is intense local interest.

8. Officers should also be wary in situations in which an investigation may need to be conducted in the period immediately prior to the holding of local or national elections. If pre-election purdah has commenced and an allegation has been made in relation to an offence contrary to the Localism Act against an existing member who is also a candidate in any forthcoming election, then it will be necessary for the matter to be recorded and investigated in due course. However, no investigation shall normally take place until after the election.

Offences – specific considerations

9. The offences under Section 34 are as follows:
 - **Failure to comply with an obligation imposed on a person by section 30(1).** Failure to declare, within 28 days of appointment as a member or co-opted member, any disclosable pecuniary interests. Such interests are to be kept in the authority's register.
 - **Failure to comply with an obligation imposed on a person by section 31(2).** Failure to disclose an interest to the relevant meeting if not so recorded in the authorities register subject to the provisions of sensitive disclosures. If there is such a sensitive disclosure as defined by Section 32(1) then it is sufficient for a member to declare that an interest exists.
 - **Failure to comply with an obligation imposed on a person by section 31(3).** Failure to notify the monitoring officer of an interest not recorded on the authorities register and not subject to a pending notification within 28 days of such a disclosure.
 - **Failure to comply with an obligation imposed on a person by section 31(7).** Failure to notify the Monitoring officer of an interest within 28 days of the member becoming aware of a disclosable pecuniary interest in any matter to be dealt with or being dealt with by the member in the course of discharging a function of a relevant authority.
 - **Participates in any discussion or vote in contravention of section 31(4).** A Member or co-opted member may not participate, or participate further in any discussion of the matter at the meeting.
 - Unless he has a dispensation to do so (under section 33 of the Act) so granted by the authority. A Member or co-opted member may not participate in any vote, or further vote taken on the matter at the meeting. Unless he has a dispensation to do so (under section 33 of the Act) so granted by the authority.
 - **Takes any steps in contravention of Section 31(8).** The member must not take any steps or any further steps in relation to the matter (except for the purposes of enabling the matter to be dealt with otherwise than by the member)

- **Knowingly providing false or misleading information OR is reckless as to whether information is true and not misleading in under Section 30(1).** Failure to declare, within 28 days of appointment as a member or co-opted member, any disclosable pecuniary interests. Such interests are to be kept in the authority's register.
 - **Knowingly providing false or misleading information OR is reckless as to whether information is true and not misleading in under Section 31(2).** Failure to disclose an interest to the relevant meeting if not so recorded in the authorities register subject to the provisions of sensitive disclosures. If there is such a sensitive disclosure as defined by Section 32(1) then it is sufficient for a member to declare that an interest exists.
 - **Knowingly providing false or misleading information OR is reckless as to whether information is true and not misleading in under Section 31(3).** Failure to notify the monitoring officer of an interest not recorded on the authorities register and not subject to a pending notification within 28 days of such a disclosure.
 - **Knowingly providing false or misleading information OR is reckless as to whether information is true and not misleading in under Section 31(7).** Failure to notify the Monitoring officer of an interest within 28 days of the member becoming aware of a disclosable pecuniary interest in any matter to be dealt with or being dealt with by the member in the course of discharging a function of a relevant authority.
10. The Localism Act should not be used as a basis for investigation and possible prosecution where there are more serious and substantial offences involved, for example, misconduct in public office, or offences under the Fraud Act 2006 or Bribery Act 2010. Such offences will be recorded and dealt with in accordance with established processes in relation to such matters, and with reference to the relevant force policy and the Investigations Department.

Administrative requirements

11. Offences under Section 34 are not notifiable and therefore a crime report is not required for [Home Office] National Crime Recording Standards purposes. As with other non-notifiable offences however, it is best practise for the allegation to still be recorded on the Guardian/Niche system.
12. Suspect interviews should be conducted with a view to the circumstances of the investigation and fully comply with current codes of practice.
13. Investigators should bear in mind that a lot of investigative work can be avoided by an early account from the suspect of these offences and in early liaison with the council Monitoring Officer, that the relevant circumstances that gave rise to the report are actually correctly reported.

14. Investigators should also be mindful of the case of Richardson v Chief Constable West Midlands Police and the provisions of PACE code G for the necessity of arrest.

The process

15. A statement and analysis of the reporting and investigative process is set out below.

No.	Step	Notes
1	Receipt of report of possible offence	<p>It is expected that these offences will be reported to police from one of the following classes of persons though this list is not exhaustive:-</p> <ul style="list-style-type: none"> • Political rival or associate of the named suspect. • Employee of council reporting direct to police as a 'whistleblower'. • From the Monitoring Officer or Independent Person within the Council, as nominated under the Localism Act with designated responsibility to report such offences. The Monitoring Officer will have first applied the Legal Jurisdiction Test before referral to Police. • From a member of the public reporting as an offence of 'corruption' or misconduct in public office. • From members of the press by enquiry to the Police Media office. • Person who feels aggrieved at a recent decision of the council or councillor concerned. <p>Such reports be received in writing, via email, via telephone or as verbal reports. They may also be made by persons approaching officers on patrol or by way of attendance at the front counter. They may also be made anonymously via any of these routes.</p> <p>Not all members of the public or members of councils will recognise a Localism Act offence and so they may report the crime as one of the</p>

		<p>following types:-</p> <ul style="list-style-type: none"> • Corruption. • Fraud by abuse of position of Trust. • Bribery. • Misconduct in Public Office. • Breach of codes of conduct (in public office). <p>The Monitoring Officer at the Council should be notified as soon as any complaint is received (except where notification of the complaint has been received from the Monitoring Officer)</p>
2	Legal jurisdiction criteria test	<p>The application of these criteria represents a test of relevance.</p> <p>If the report has been made directly to the Council the Monitoring Officer should have ensured that these criteria are met prior to any reporting to Police.</p> <p>Conversely, if the report has been made directly to Police, the Local Neighbourhood Manager will request that the Monitoring Officer undertakes this test prior to further police involvement.</p> <p>The criteria are:</p> <ul style="list-style-type: none"> (a) Did the alleged conduct occur before the adoption of the Code of Conduct? (b) Was the person who is the subject of the complaint a Member of the District or Parish Council at the time of the alleged conduct? (c) Was the person complained of acting in an official capacity at the time of the alleged conduct? (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority? (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct? (f) The complaint is about dissatisfaction with the District or Parish Council's decisions, policies and priorities

		<p>Prior to acceptance of the criminal investigation by police, the Neighbourhood Manager will make contact with the Council Monitoring Officer and request that they assess the complaint against the above criteria and confirm that the criteria are satisfied.</p> <p>Provided the criteria are all met, the allegation will be recorded as a crime and a police investigator will be appointed.</p>
3	Creation of Storm Record	<p>In all cases a storm record should be created that records the details of the allegations as follows:-</p> <ul style="list-style-type: none"> • Name and address and contact details of complainant / informant. • Name and address of suspect – if known. • Grounds for complaint – i.e. what interest has the suspect not declared and at which council meeting?
4	Assessment and Allocation	<p>Following the recording of a complaint as a crime it will be assessed by the Incident Assessment Unit and allocated accordingly.</p> <p>The officer to whom the case is allocated should be the Local Beat Manager unless the matter is serious or complex in which case advice from Investigations should be sought.</p> <p>If the suspect is a member of police staff the investigation will be referred to the Force Professional Standards Department.</p>
5	<p>Investigating Officer contacts Monitoring Officer</p> <p>Initial investigative review by Crime Supervisor/Investigative Officer</p>	<p>The Investigating Officer must make early contact with the relevant Council's Monitoring Officer outlining the nature of the allegation.</p> <p>The Council's Monitoring Officer will provide advice and assistance with regard to evidential capture. S/he will also determine who within their Council to notify, this may include the Chief Executive, Leader or Press Officer for example but will be at their discretion.</p> <p>(The Council's Monitoring Officer will already have undertaken the Legal Jurisdiction Test).</p>

		<p>On allocation the Investigating Officer should consider performing the following investigative actions. These actions should be reviewed on a case by case basis and made proportionately to the circumstances of the offence being investigated.</p> <p><u>In liaising with the Monitoring Officer, the Investigating Officer should:</u></p> <ul style="list-style-type: none"> • Request that register of interests is checked and minutes of relevant meeting are made available or be sign posted to their whereabouts. • Inquire whether the named suspect been the subject of similar complaints in the past? • Inquire whether the named informant been the subject of similar complaints in the past? • Ask for any other relevant material or intelligence on the offence, the suspects and witnesses involved or the circumstances surrounding it. • Ask for any other information relating to the 'personal interest' complained of that is held by the council. • Ascertain whether it is possible through the circumstances complained of, that the suspect or another party has substantially benefited by the failure to disclose the personal interest. • Ascertain if a substantial crime has been committed within the Localism Act definition OR another substantive crime e.g. Bribery Act, Misconduct in public office at common law, Fraud by abuse of position of trust. If the circumstances of the complaint indicate a wider, more substantive criminal act, this will be referred to the Investigations department. <p><u>Material to be requested from the Monitoring Officer</u></p> <p>The Investigating Officer will seek the views expressed by the Monitoring Officer and if appropriate by the Independent person as nominated by the Council under the Localism Act.</p>
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		<p>These views should be in writing and contain answers to the following questions and are disclosable under Criminal Procedures and Investigations Act 1996 (CPIA).</p> <p>The Independent Person or Monitoring Officer is a potential witness in the case and he or she should be aware that subsequent to providing this information they may be required to provide a witness statement and attend court as a witness, in order to provide evidence on the following:</p> <ul style="list-style-type: none"> • What circumstances were reported to the Monitoring Officer/Independent Person regarding this offence? • What complaints have been received against the named suspect to this offence historically and from whom? • If not reported to the police, what was the basis of this decision? Where is this decision and rationale recorded? • What explanation was given in any previous complaint against the suspect by either the suspect themselves or any other person? • What other complaints have been received from or against the complainant in this case and how were these dealt with? • What has the suspect said either in explanation or mitigation or remorse about the offence to any other person and where is this recorded and who witnessed this relevant comment <p>Where not available via other means e.g. on District/Parish Council website request that police are provided with copies of the following:-</p> <ul style="list-style-type: none"> • Register of interests that relate to the matter under investigation. • The suspect's entries on that register both current and historic. • Copies of any letters notices or restrictions that were sent to the suspect that require or request them to notify the council of their interests and copies of the response of the suspect to any such notices or requests.
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		<ul style="list-style-type: none"> • Where relevant, the minutes of the meetings where the interest was not declared. • Names and contact details and role of persons present at the meeting (s) concerned • Specific records made at the meeting by the secretary or clerk to the meeting • (Some meetings in some councils are video recorded and copies of these should be requested and preserved). • Any publicised minutes or sanctioned record of the meetings concerned. <p>The Investigating Officer should request that a search is made of the following communications or records and formally request that steps are taken to preserve them for possible review by police:-</p> <ul style="list-style-type: none"> • Any emails, messages, letters or other correspondence received by the council in relation to the matter under investigation. Both prior to, during and after the relevant period of the offence. • Any emails, messages or communications or other correspondence received or sent by the suspect during the relevant period of the offence. • Any emails, messages or communications or other correspondence received or sent by the complainant during the relevant period of the offence. <p>It should be noted that the Localism Act 2011 requires that a 'sensitive register' of personal interests is recorded and maintained by the Council. The interpretation of "sensitive" in this regard is similar in definition to the sensitivity of police information and includes the risk of subjection to personal violence or threat of life. Initial investigators should be mindful of the existence of such sensitive information and, in accordance with established principles. They should not record such interests on any crime report log.</p>
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		<p>Other material to be sought with respect to the disclosable interest</p> <p>The investigating officer should ensure that suitable checks are made to establish that the alleged 'interest' of the suspect has been in existence and known by the suspect.</p> <p>The actual checks made are different in each circumstance and the following is a guide only.</p> <ul style="list-style-type: none"> • Companies House including filed reports, current and historic directors and shareholders, previous company names, names and addresses of company office holders, accountants and tax advisers (if so recorded). • HMRC checks for declared earnings under PAYE VAT return for the relevant period. • Public, open source (E.g. Google) checks and local media websites and 'blogs'. • Police data and intelligence sources including PNC, PND etc. • Council voters checks on appropriate addresses and persons. • Council tax records for occupancy held on appropriate addresses and persons. • Checks via area Financial Investigator on the subject and the disclosable interest under investigation • Any other check that the investigating officer believes is relevant to the investigation.
6.	Response to potential evidence of wider criminal activity	<p>Where the reviewing officer believes that the following factors may be present then the matter should be reported to the Investigations department as appropriate:-</p> <ul style="list-style-type: none"> • The suspect has potentially made substantive gains from the failure to disclose the interest. E.g. suspect has voted on building works to be instigated when their family member runs a local building firm and that firm has gained from the award of the contract. • The suspect has been the subject of similar complaints to either police or council in the past from different complainants.

		<ul style="list-style-type: none"> • There are substantial complicating factors in the investigation that require detailed investigation. <p>Possible examples are as follows:- The whistle-blower in the council who has reported the complaint is now being subject to pressure from the suspect in terms of employment or capability to continue in their role.</p> <ul style="list-style-type: none"> • There are corporations or limited companies involved with commercial interests AND the suspect or their family members or their associates are involved in these companies. • Investigation of the offences requires production orders or search warrants to review special procedure material as defined under Schedule 1 PACE (this includes business records held in confidence) • There is a political element to either the nature, the substance of the complaint, the suspect or the informant that relates to an important public interest or local issue being promoted by one or more registered political parties. • The complaint is made around an issue that is relevant to a local election and or the complaint is in a Purdah period or just after an election • The circumstances of the allegation constitute a substantial crime of:- <ul style="list-style-type: none"> ○ Bribery as defined in the Bribery Act 2010, ○ Misconduct in public office at common law ○ Fraud by abuse of position of trust contrary to the Fraud Act 2006. • The reviewing officer believes that the surrounding circumstances require that the matter be dealt with by the Investigations department. Examples include, but are not limited to:-
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		<ul style="list-style-type: none"> ○ Risk of a 'Critical Incident' ○ Cross border criminality with a National or international context. ○ The complainant or the suspect are serving police officers or civilian staff or are family members, or otherwise related to, serving police officers or civilian staff. ○ There exists substantial and relevant sensitive information relating to the offence. ○ There is a serious risk of prejudice to an important public interest. ○ The reviewing officer believes that the offence and the circumstances surrounding it are not suitable for investigation by Officers in a different district or area. <p>It should be noted that referral of the report to Serious Crime Directorate should only be made where there are substantial grounds for doing so. The essence of the Localism Act is to ensure greater transparency and public accountability and these principles should be mirrored in the police investigation.</p> <p>Where an investigating officer identifies a more serious notifiable offence (e.g. pecuniary advantage) a crime report for this crime will be created in consultation with the Investigations Department. [note: fraud offences will be recorded by Action Fraud]</p> <p>Where a more substantive crime is alleged/recognised. (e.g. Fraud by abuse of position of trust) then a crime report for this crime will be generated, and Investigations notified prior to allocation.</p> <p>Where an alleged offence is deemed sensitive then an Investigations Detective Inspector must be notified.</p>
7	Internal notifications	<p>The investigating officer will expeditiously notify the relevant LPA Commander or in their absence the District Superintendent.</p> <p>If the matter is out of hours then the Duty Superintendent will be notified if appropriate to the circumstances.</p>

		<p>Any of these individuals will then consider whether the matter should be brought to the attention of the Force Gold Commander.</p> <p>The investigating officer will also notify the Council/Force media officer.</p>
8	Disposal	<p>Once the outcome of an investigation is known, early notification must be made to the Incident Assessment Unit and also to the relevant Monitoring Officer who will then consider what if any action will be taken by the Council in accordance with their code and arrangements.</p> <p>It must be borne in mind by supervisors that the disposal of a Localism Act crime may attract adverse publicity and potentially call into question the reputation of the Force or wider police service in particular were a more substantive crime to be overlooked.</p> <p>Closure of the investigation should be reviewed by an officer of at least the rank of Inspector.</p> <p>Upon closure of the investigation, the reviewing officer must ensure that the decisions made during the course of the investigation are recorded and justified in accordance with the National Decision Making Model.</p> <p>Any internal notifications carried out as set out above will also be replicated upon closure of the investigation.</p>

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MONITORING OFFICER DELEGATIONS

1. Appointed as Proper Officer for the purposes of receiving applications for dispensation pursuant to section 33(1) of the Localism Act 2011.
2. To grant dispensations to Members pursuant to section 33(2) of the Localism Act 2011 and paragraph 8 of the adopted Code of Conduct to speak only or to speak and vote where:
 - (a) so many members of the decision-making body have disclosable pecuniary interests in a matter that it would impede the transaction of the business; or
 - (b) without a dispensation, no member of the Cabinet would be able to participate on a particular item of business.
3. Appointed to receive complaints relating to alleged breaches of the adopted Code of Conduct and to process complaints in accordance with the adopted Arrangements for dealing with Code of Conduct Complaints.
4. The right to depart from the arrangements for dealing with code of conduct complaints, where considered expedient to do so in order to secure the effective and fair consideration of any matter.

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LEGAL JURISDICTION TEST

1. Legal Jurisdiction Criteria Test:
 - (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
 - (b) Was the person complained of a member of the District Council or Parish Council at the time of the alleged conduct?
 - (c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
 - (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
 - (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
 - (f) The complaint is about dissatisfaction with the District Council's or Parish Council's decisions, policies and priorities, etc.
2. If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 30 working days of receipt of the complaint by the Monitoring Officer.

Approved by Council 22 February 2017

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LOCAL ASSESSMENT CRITERIA TEST

1. Local Assessment Criteria Test:

If the complaint satisfies the jurisdiction test, the Monitoring Officer will then apply the following local assessment criteria test:

- (a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (c) No, or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (d) The Complainant is unreasonably persistent, malicious and/or vexatious;
- (e) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (f) The alleged misconduct happened more than 3 months ago;
- (g) The complaint is relatively minor and/or dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;
- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (k) The complaint is about a deceased person;
- (l) The complaint is about a person who is no longer a District Councillor or Parish Councillor or Co-opted Member.

2. The Monitoring Officer can seek additional information from the Complainant and the Subject Member (and/or, if applicable, the Parish Clerk) before deciding how to deal with the complaint.

3. If one or more of the local assessment criteria applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 30 working days of receipt of the complaint by the Monitoring Officer.

LOCAL/INFORMAL RESOLUTION PROCESS

1. The Monitoring Officer may, after consultation with the Independent Person, seek to resolve a complaint informally at any stage in the process, whether without the need for an investigation or before or after an investigation has been commenced or concluded. In so doing, the Monitoring Officer will consult with the Complainant and the Subject Member to seek to agree what they consider to be a fair resolution, which will help to ensure higher standards of conduct for the future.
2. Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:
 - (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related District or Parish Council procedures; or
 - (b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
 - (c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
 - (d) The conduct complained of appears common to a number of members of the District or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other District or Parish Council procedures, etc; or
 - (e) The conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
 - (f) The complaint appears to reveal a lack of guidance, protocols and procedures within the District or Parish Council; or
 - (g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
 - (h) The complaint consists of allegations and retaliatory allegations between Councillors; or
 - (i) The complaint consists of allegations about how formal meetings are conducted; or
 - (j) The conduct complained of may be due to misleading, unclear or misunderstood advice from Officers.

3. Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other Councillors including the whole District or Parish Council where it may be useful to address systemic behaviour:
 - (a) training;
 - (b) conciliation/mediation;
 - (c) mentoring;
 - (d) apology;
 - (e) instituting changes to the District (or Parish) Council's procedures;
 - (f) conflict management;
 - (g) development of the District (or Parish) Council's protocols;
 - (h) other remedial action by the District (or Parish) Council;
 - (i) other steps (other than investigation) if it appears appropriate to the Monitoring Officer in consultation with the Independent Person
4. If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer will report the matter to the Standards Committee [and, if applicable, the Parish Council] for information, but will take no further action against the Subject Member.
5. Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Standards Committee.
6. If the Complainant or Subject Councillor do not agree the precise details of the Informal Resolution e.g. the actual wording of an apology, the Monitoring Officer shall still be entitled to resolve the Complaint by Informal Resolution.

PROCEDURE FOR INVESTIGATING THE COMPLAINT

1. Preliminaries

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3 The Subject Member and the Complainant will be advised that the investigation is for fact finding purposes only.
- 1.4 Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5 The Investigating Officer will not make recommendations on sanctions.
- 1.6 Within 20 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment and:
 - (a) provide full details of the complaint to the Subject Member;
 - (b) detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
 - (c) detail the sections of the Code of Conduct that appear to be relevant to the complaint;
 - (d) request contact details of any potential witnesses;
 - (e) require that confidentiality is maintained and that details of the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or other close associates or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.
- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.

- 1.8 The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer or Hearing Panel.

2. The Draft Report

- 2.1 On the conclusion of their investigation the Investigating Officer will issue a draft report (clearly labelled 'DRAFT') to the Monitoring Officer for review.
- 2.2 Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'CONFIDENTIAL' and will detail:
- (a) the relevant provisions of the law and the relevant paragraphs of the Code of Conduct;
 - (b) a summary of the complaint;
 - (c) the Subject Member's response to the complaint;
 - (d) relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation;
 - (e) a list of any documents relevant to the matter;
 - (f) a list of those persons/organisations who have been interviewed;
 - (g) a statement of the Investigating Officer's draft findings of fact and reasons;
 - (h) the Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct;
 - (i) that the Investigating Officer will present a final report once they have considered any comments received on the draft.
- 2.3 Once the Investigating Officer has received any responses from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled 'FINAL'.

3. Consideration of Investigating Officer's Final Report

- 3.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.
- 3.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no

evidence of a failure to comply with the Code of Conduct; they will inform the Parties in writing that no further action is considered necessary.

- 3.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either:
- (a) take no action or
 - (b) seek informal resolution or
 - (c) refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in the Hearing Panel Procedure to these Arrangements.

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HEARING PANEL PROCEDURE

1. Rules of Procedure

- 1.1 The Hearing Panel consists of 3 voting elected Members drawn from the Standards Committee, one of whom shall be elected as Chairman.
- 1.2 The quorum for a meeting of the Hearing Panel is 3 comprising 3 elected Members.
- 1.3 The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearing Panel in writing.
- 1.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Panel. The hearing will be held in public no earlier than 20 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied to exclude the public and press from meetings of the Hearing Panel where it is likely that confidential or exempt information will be disclosed.
- 1.5 Once a hearing has started, the District Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.
- 1.6 All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 1.7 Where the Subject Member fails to attend the Hearing Panel and where the [Hearing Panel] is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously. [Janik v Standards Board for England and Adjudication Panel for England (2007)]

2. Right to be accompanied by a Representative

- 2.1 The Subject Member may choose to be accompanied and/or represented at the Hearing Panel by a fellow Councillor, friend or colleague, or a legal representative.

3. The Conduct of the Hearing

- 3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- (a) elect a Chairman;
- (b) apologies for absence;
- (c) declarations of interests;
- (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.7 above);
- (e) introduction by the Chairman, of members of the Hearing Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
- (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

- 3.2 The Chairman may exercise his/her discretion and amend the order of business, where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

- 3.3 The Hearing Panel may adjourn the hearing at any time.

3.4 Presentation of the complaint

- (a) The Investigating Officer presents their report including any documentary evidence or other material and calls their witnesses. No new points will be permitted;
- (b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;

- (c) The Hearing Panel may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer.

3.5 Presentation of the Subject Member's case

- (a) The Subject Member or their representative presents their case and calls their witnesses;
- (b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- (c) The Hearing Panel may question the Subject Member and any witnesses called by the Subject Member.

3.6 Summing up

- (a) The Investigating Officer sums up the complaint;
- (b) The Subject Member or their representative sums up their case.

3.7 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct.

3.8 Deliberations of the Hearing Panel

Deliberation in private

- (a) The Hearing Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and from whom.

3.9 Announcing decision on facts found

- (a) The Hearing Panel will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct.

- (b) Where the Hearing Panel finds that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take.
- (c) When deciding whether to apply one or more sanctions, the Hearing Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
 - i. What was the Subject Member's intention and did they know that they were failing to follow the District (or Parish) Council's Code of Conduct?
 - ii. Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
 - iii. Has there been a breach of trust?
 - iv. Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
 - v. What was the result/impact of failing to follow the District (or Parish) Council's Code of Conduct?
 - vi. How serious was the incident?
 - vii. Does the Subject Member accept that they were at fault?
 - viii. Did the Subject Member apologise to the relevant persons?
 - ix. Has the Subject Member previously been reprimanded or warned for similar misconduct?
 - x. Has the Subject Member previously breached the District (or Parish) Council's Code of Conduct?
 - xi. Is there likely to be a repetition of the incident?
- (d) Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will adjourn and deliberate in private.

- (e) If evidence presented to the Hearing Panel highlights other potential breaches of the District (or Parish) Council's Code of Conduct, then the Chairman will outline the Hearing Panel's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

3.10 Formal Announcement of Decision

- (a) Where the complaint has a number of aspects, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Hearing Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- (c) Having taken into account the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chairman will announce:
 - i. the Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
 - ii. the sanctions (if any) to be applied;
 - iii. the recommendations (if any) to be made to the District (Parish) Council or Monitoring Officer;
 - iv. that there is no right of appeal against the Panel's decision and/or recommendations.

4. Range of Possible Sanctions

- 4.1 Subject to paragraph 4.3 below, where the Hearing Panel determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/recommended:
 - (a) reporting its findings to a meeting of the full Council *[or to the relevant Parish Council]* for information and/or censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
 - (b) issuing a press release/or other appropriate publicity;
 - (b) recommending to the Councillor's political Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the

Council for a specified period;

- (c) recommending to the Leader of the Council that an Executive Councillor be removed from the Executive, or removed from particular portfolio responsibilities;
 - (d) recommending appropriate training for the Councillor;
 - (e) recommending to the Council the removal of the Councillor *[or recommending to the relevant Parish Council that the Councillor be removed]* from all outside appointments to which they have been appointed or nominated by the Council *[or by the relevant Parish Council]* for a specified period;
 - (f) withdrawing *[or recommending to the relevant Parish Council that it withdraws]* facilities provided to the Councillor by the Council for a specified period, for example electronic access to the Council's systems; or
 - (g) excluding *[or recommending that the relevant parish council excludes]* the Councillor from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings; or,
 - (h) instructing the Monitoring Officer to apply the local/informal resolution process; or,
 - (i) sending a formal letter to the Councillor.
- 4.2 The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 4.3 The Hearing Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

5. Publication and Notification of the Hearing Panel's Decision and Recommendations

- 5.1 Within 20 working days of the Hearing Panel's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the District Council's website.

- 5.2 Within 20 working days of the announcement of the Hearing Panel's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, in the format of the Decision Notice template below to:
- (a) the Subject Member;
 - (b) the Complainant;
 - (c) (the Clerk to the Parish Council)
 - (d) Mid Devon District Council's Standards Committee (applicable only where the Subject Member is serving at both District and County level);
- 5.3 The Monitoring Officer will report the Hearing Panel's decision and recommendations to a meeting of the Standards Committee for information.

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INDEPENDENT PERSON PROTOCOL

This Protocol sets out the expected conduct of Mid Devon District Council's Independent Persons (IP) when carrying out their consultation functions in relation to an allegation that a Member, or co-opted Member, of the District Council, or a Member, or co-opted Member, of a Town or Parish Council within the District, has failed to comply with the relevant Council's Code of Conduct.

Principles

1. The role of the IP is set down in legislation (section 28 of the Localism Act 2011). *Arrangements put in place by the Council must include provision for the appointment by the authority of at least one independent person, whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and in any other such circumstances it considers appropriate.*
2. The purpose of the IP role is to enable the public to have confidence in how the District Council deals with allegations of misconduct and to promote and maintain high ethical standards of conduct for members, ensuring they are adequately trained and understand the Code of Conduct.
3. This Protocol applies to all IPs equally and complements the Monitoring Officer Protocol. If the Council is in a position where less than three IPs are appointed due to vacancies, this Protocol still applies in its entirety, so long as one IP is in place (as required by the legislation).
4. The Protocol has been prepared in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.
5. In carrying out the role, the IP will ensure that he/she –
 - (a) Acts in accordance with –
 - (i) any relevant legislation or guidance and the respective Council's Code of Conduct in force at the time; and
 - (ii) the agreed processes/ procedures approved by the District Council's Standards Committee and the Council's Constitution; and
 - (b) Acts impartially at all times, without political bias or prejudice and in accordance with the rules of natural justice; and

- (c) Maintains confidentiality at all times.
6. The IP role is consultative at various stages of the process, in accordance with the Complaints procedure and Monitoring Officer's (MO) role is to give advice to the Standards Committee or Sub-Committee.
 7. The IP is not a member of the Council's Standards Committee or Sub-Committee but is able to attend meetings of the Committee, as a member of the public.
 8. The outcome of any prior consultation with the IP undertaken by the MO will be included within any written report presented to the Standards Committee or Sub-Committee for their consideration. The IP views must be sought before a decision is made after a complaint has been investigated. This will be undertaken by the MO in the first instance, but it may be appropriate for the Committee or Sub-Committee to do this directly in exceptional circumstances.
 9. If the Standards Committee or Sub-Committee invites the IP to attend any meeting, the IP does not have any voting rights when doing so.
 10. The MO will consult the IP on complaints received in accordance with the Council's procedure and requests for dispensations received in accordance with the Localism Act 2011.
 11. While the MO will have regard to the views expressed by the IP, he/she is not bound to accept his/her views on the matter.
 12. When deciding on how to progress with a complaint, the MO/IP should consider the conduct complaints assessment criteria.
 13. The IP should inform the MO if they feel there are circumstances which would suggest that they had a conflict of interest e.g. being a friend of either the complainant or Member concerned; or have previously been involved in the matter.
 14. If all of the IPs are conflicted out from dealing with the issue, the MO will consider making a request to use the services of an IP from another principal authority.
 15. All contact with the IP should be made through the MO and should the IP be contacted directly by a complainant or Member, he/she should inform the MO immediately.
 16. In terms of confidentiality, the IP must not discuss any matters about a complaint, either past or present, with the media or any other third party without appropriate advice having been taken.

17. The IP must provide the MO with appropriate methods of contact e.g. email and telephone numbers, and must make themselves available at all reasonable times.
18. On those occasions when the IP knows that they will not be contactable, he/she must inform the MO with as much reasonable notice as possible so that the reserve IP can be advised that he/she would be required to stand-in as necessary during this period.
19. The IP should be prepared to give the Standards Committee or Sub-Committee, through the written report, an independent view on the complaint and the merit of the evidence put forward as required to assist the Committee in coming to a decision on the matter.
20. When discussing the complaint with the complainant or the Member subject of the complaint, the IPs role is not to give views on the merit of the complaint or the evidence in support but to give advice and reassurance on the process.
21. In each complaint, one IP will be allocated a role by the MO, which will be one of the following:
 - (a) Available to the Complainant – see paragraph 20 above; or
 - (b) Available to the Member subject of the Complaint - see paragraph 20 above; or
 - (c) Available to the Standards Committee or Sub-Committee for consultation as part of the complaints procedure and in accordance with the Localism Act 2011.
22. The MO will rotate the roles between the IPs on a case by case basis. Should less than 3 IPs be appointed at any time, so long as 1 IP is in place the IP will be expected to be available for the respective parties set out in 21 (a-c).
23. The MO will ensure that the IPs are kept up to date with changes in legislation, national guidance or good practice.

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REGISTER OF MEMBER'S INTERESTS

DECLARATION OF A SENSITIVE INTEREST

I, Councillor..... (please print)

a Member of Council

request that the interest(s) which I have detailed below should be treated as Sensitive Interests for the reasons which I have stated, and as such I understand that they need not appear in the Register of Members' Interests and will not be detailed on the Council's web pages.

Category of interest (i.e. insert appropriate heading from the registration proforma e.g. "Land")	
Describe the nature of your interest (i.e. insert what you would otherwise have written on your registration form)	
Brief explanation why you consider this to be a Sensitive Interest	

Signature (Councillor)	
Date	
Signature (Monitoring Officer)	
Date	

NB: This form will be retained by the Monitoring Officer

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**REGISTER OF MEMBERS' INTERESTS
GENERAL NOTICE OF REGISTRABLE INTERESTS**

GUIDANCE NOTES FOR DISTRICT /TOWN AND PARISH COUNCILS

Every elected, re-elected or co-opted Member of Mid Devon District Council or a Town or Parish Council within Mid Devon District is required to notify the Monitoring Officer (within 28 days of being elected, re-elected or co-opted onto the authority) of all current "disclosable pecuniary interests" of which they are aware. The Secretary of State has issued Regulations setting out what constitutes a "disclosable pecuniary interest".

The Localism Act 2011 provides that this will cover the interests not just of the Member, but also of his/her spouse, civil partner or person with whom he/she lives as if they were spouses or civil partners, in so far as the Member is aware of his/her partner's interests. Please note that a bridged version of your Declaration of Interest will be published on the Council's website. The interests you declare in relation to your spouse/civil partner or person with whom you live as if you were a spouse or civil partner will appear on the website as your interests. Your signature will not be published.

Failure to register any such interest, failure to register within 28 days of election, re-election or co-option, or the provision of misleading information on registration without reasonable excuse, will be criminal offences and is liable on conviction to a fine currently not exceeding £5,000 and/or disqualification as a Member for up to 5 years.

These notes give general guidance on what items Members should include on the disclosable pecuniary interests form.

Members' attention is drawn to the following:

- The onus is on the individual Member to use their own judgment about making a declaration as the Member is personally responsible for the accuracy of the contents
- If in doubt about whether or not something should be declared, Members are urged to err on the side of openness and avoid the risk of not registering something in error
- Complete the register with sufficient detail to accurately identify what the interest is, as failing to do so could place the Member at risk of failing to comply with the Localism Act 2011

- Mark ‘**none**’ on the register if you have no interest to register in any category. Do **not** leave a box empty.
- Do not use initials, abbreviations or acronyms
- If you are a Member of any other authority, please complete a separate form for each one

Relevant part of disclosable pecuniary interests form	Guidance
<p><u>Employment</u>, office, trade, profession or vocation carried out for profit or gain.</p>	<p>You should show every employment, office, trade, profession or vocation that you and your partner have to declare for income tax purposes.</p> <p>Give a short description of the activity concerned; for example, “Computer Operator”, “Accountant”, “Nurse”, “Property Developer”, “Retired” etc.</p> <p>If you are an employee, you should give the name of your employer; if employed by a company, please give the name of the company paying your wages or salary, not that of the ultimate holding company.</p> <p>If you are a Partner or Director, please give the name of the Partnership or Company.</p> <p>If you are Self Employed, please give your trading name and the nature of your business.</p> <p>Where you hold an office, give the name of the person or body which appointed you. In the case of a public office, this will be the authority which pays you. In the case of a teacher in a maintained school, the local education authority; in the case of an aided school, the school’s governing body.</p>

<p><u>Sponsorship</u> received in respect of carrying out duties as a member of my Council area, or towards my election expenses</p>	<p>You should declare the name of any person or body that has made any payments to you in the last year towards your expenses as a councillor or towards your election expenses. You do not need to declare the amounts of any payments, only the name of the person or body making them.</p> <ul style="list-style-type: none"> • This would usually mean a political party at election time and • This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. <p>You do not need to include payments or Members' allowances from your Parish/Town Council.</p>
<p>Any beneficial interest in <u>securities</u> (stocks, shares, bonds...) of a body where (a) that body has a place of business or land in my Council area and</p> <p>Either</p> <p>The total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body</p> <p>Or</p> <p>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 you have a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>	<p>You should list the names of any companies, industrial and provident societies, co-operative societies, or other bodies corporate that (to your knowledge) are active in your Council area and in which you or your partner have a substantial interest. You do not need to show the extent of your interest.</p> <p>You have a substantial interest if you own shares or other securities in the company with a nominal value of more than £25,000 or more than 1/100th of the issued share or securities. If there are several classes of shares or securities, the fraction of 1/100th applies to any of these classes.</p> <p>This requirement also covers shared securities held in the name of other people (e.g. trustees) in which you have a beneficial interest. You do not need to show the actual amount of your beneficial interest.</p> <p>Please note that the nominal value is the value on the face of the security and not its value at the time acquired or its current monetary value.</p> <p>A company or body corporate is active in your Council area if it has land or a place of business in your Council area.</p>

<p><u>Contracts</u> between myself (or body in which I have a beneficial interest) and the Council (or organisation contracted to carry out business on its behalf)</p>	<p>You should list any contract made between yourself or your partner or a body in which either of you have a beneficial interest and the Council (or an organisation contracted to carry out business on its behalf):</p> <ul style="list-style-type: none"> a) under which goods or services are to be provided or works are to be executed; and b) which has not been fully discharged. <p>You need not include details of the financial arrangements, but state briefly the contractor, what the contract is and for how long.</p> <p>Where the contract relates to use of land or a property, it must be identified.</p>
<p><u>Land or property</u> in my Council area in which I have a beneficial interest</p>	<p>You should include any land in your Council area in which you or your partner have a beneficial interest. You should give the address or a brief description to identify it. If you live in the District, you should include your home under this heading whether as owner, lessee, or tenant.</p> <p>You should also include any property from which you receive rent, or of which you are the mortgagee.</p> <p>When the information to be recorded relates to a house or a flat, this does not present any difficulty in providing an address. However, the registration of other land interests such as farm land or other land with no address is problematic: in these circumstances, you should include sufficient information to enable it to be identified (e.g. a map should be attached to the form).</p> <p>“Land” includes any buildings or parts of buildings (and, e.g. allotments). Please attach a map if appropriate.</p> <p>You do not need to register land that you own that is outside your Council’s area.</p>
<p><u>Any licence</u> (alone or jointly with others) to occupy land in my Council area for a month or longer</p>	<p>You should include land in the area of your Council area which you or your partner have a right to occupy, but neither own nor have a tenancy of. This could include where you live with a partner or family member who owns the property. You should give the address or a brief description to identify it.</p> <p>“Land” includes any buildings or parts of buildings. Please attach a map if appropriate.</p>

<p>Any <u>tenancy</u> where (a) the landlord is the Council; and (b) the tenant is a body in which the relevant person has a beneficial interest</p>	<p>“Land” includes any buildings or parts of buildings. Please attach a map if appropriate.</p>
<p><u>Membership</u> of other bodies as follows:</p> <p>(a) Body to which I have been appointed or nominated by the authority as its representative;</p> <p>(b) Public authority or body exercising functions of a public nature;</p> <p>(c) Company, industrial and provident society, charity or body directed to charitable purposes;</p> <p>(d) Body whose principal purposes include the influence of public opinion or policy</p>	<p>(a) This will include, for example, where the Council has appointed you to sit on an outside body.</p> <p>(b) This includes regional and local development agencies, other government agencies, other Councils, public health bodies, organisations carrying out housing functions and school governing bodies.</p> <p>(c) This will include, for example National Trust, English Heritage, Rotary Club, Lions Club, local charitable trusts and Freemasons. Freemasons who are members of the Grand Charity must register membership of the Grand Charity in their Register of Members’ Interests. If an individual lodge is one which has charitable status or could be described as a body directed towards charitable purposes, then membership of that lodge would also need to be registered.</p> <p>(d) This will include membership of a political party as well as membership of any pressure group or other organisation which includes lobbying as one of its principal purposes.</p>

Disclosure of Gifts and Hospitality

You must reveal the name of any person from whom you have received a gift or hospitality with an estimated value of at least £25 which you have received in your capacity as a member of the Council.

You must register any gifts or hospitality **worth £25 or over** that you receive **in connection with your official duties as a Member**, and the source of the gift or hospitality. (An accumulation of small gifts received over a short period that add up to £25 or over should also be registered).

You automatically have a personal interest in a matter under consideration if it is likely to affect a person or body who gave you a gift or hospitality that is registered. If that is the case, you must declare at the meeting the existence and nature of the gift or hospitality, the person who gave it to you and how the business under consideration relates to that person.

Once three years have passed since you registered the gift or hospitality in your Register of Interests, your obligation to disclose that interest to any relevant meeting ceases.

Gifts received in a personal capacity do not need to be registered.

REGISTER OF MEMBER'S INTERESTS

NOTICE OF REGISTRABLE INTERESTS

(NB: Before completing this Notice, Members are recommended to study the Department for Communities and Local Government guidance document ["Openness and transparency on personal interests"](#))

Please write in block capitals throughout this Notice avoiding abbreviations

I, Councillor

a Member of Council ('the Council')

Hereby give notice that I have set out below under the appropriate headings my interests, which I am required to declare under my Council's Code of Conduct. These include any Disclosable Pecuniary Interests under Sections 29 to 31 of the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, and I have put '**none**' where I have no such interests under any heading.

I understand and acknowledge the following:

1. I must complete, sign and return this notice within 28 days of my election or appointment to office. I understand that I must register my disclosable pecuniary interests and any non-pecuniary interests as required under my Council's Code of Conduct or that I choose to disclose providing notification to the Council's Monitoring Officer.
2. If my circumstances change I must, within 28 days of becoming aware of any changes to the interests specified above, provide written notification to the Monitoring Officer of that change. I should do this by completing the Register Update Form which is available by e-mailing the Monitoring Officer at monitoringofficer@middevon.gov.uk.
3. Part 1 of this Notice contains Disclosable Pecuniary Interests as prescribed by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. Part 2 contains *non-pecuniary* interests which I have registered in accordance with my Council's Code of Conduct or which I have voluntarily registered.
4. Disclosable pecuniary interests include not only my interests but also the interests of my spouse or civil partner, (or person with whom I am living as such), with the exception of sponsorship, where I need only include my own interests. If I wish to differentiate between my interests and those of my spouse/civil partner (or person with whom I are living as such) I will note my declaration accordingly and will arrange for my spouse or civil partner, (or

person with whom I am living as such) to complete the relevant Consent to the Processing of Personal Data, pursuant to the Data Protection Act 1998.

5. The Localism Act 2011 has created specific criminal offences in relation to the disclosure of pecuniary interests (Part 1 of this register). I understand that without a reasonable excuse it is a **criminal offence**:
- i to fail to register a Disclosable Pecuniary Interest (DPI) I am aware of within 28 days of my election or re-election;
 - ii to take part in the debate or vote at any meeting where I have registered or unregistered DPI;
 - iii to fail to declare at a meeting and / or to take part in the debate or vote, if I am aware I have a DPI which is not yet registered or notified to the Monitoring Officer;
 - iv if I have declared an unregistered DPI at a meeting, to fail to register that within 28 days of that declaration;
 - v to provide false or misleading information in relation to any registration or to be reckless as to its accuracy;
 - vi to take any steps or further action on a matter in which I have a DPI other than referring it elsewhere;

I recognise any such failure is a direct contravention of the Localism Act 2011 and a criminal offence; and may be investigated by Devon and Cornwall Constabulary and referred to the Director of Public Prosecutions. **I understand that upon conviction a Member or co-opted Member may be fined up to a maximum of £5,000.**

I recognise that I have a legal duty to complete this Notice and that I should not:

- 1. Omit any information which ought to be given in this notice;
- 2. Provide information that is materially false or misleading;
- 3. Fail to update this information as my circumstances change.

Signed: (Councillor) **Dated:**

DATE RECEIVED:

Signed: (Monitoring Officer)

Dated:

Request for a Dispensation

Request to Monitoring Officer by the Members listed below (“your” and “you” means the members making the request for a dispensation):-

1. Please summarise the matter to which your interest relates

2. What is the nature of your interest?

3. For which meeting(s) or period are you seeking a dispensation?

Until the end of my office in mm/yyyy or such sooner period as relevant to my personal circumstances.

4. Please set out in detail the reason(s) why you consider you should be granted a dispensation.

Dispensation granted by the Monitoring Officer to the above mentioned Members to allow them to freely and fully participate and vote in relation to the following:

Signed..... Councillor X

Date.....

Signed: Monitoring Officer

Date:

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DISPENSATIONS PROCEDURE GUIDE FOR PARISH COUNCILS

1. Introduction

- 1.1 Parish Councils are now responsible for determining requests for a dispensation by a Parish Councillor under Section 33 of Localism Act 2011. This is because they are a “relevant authority” under section 27(6) (d) of the Act.
- 1.2 This guide explains:
 - (a) The purpose and effect of dispensations;
 - (b) the procedure for requesting dispensations;
 - (c) the criteria which are applied in determining dispensation requests; and
 - (d) the terms of dispensations.

2. Purpose and effect of Dispensations

- 2.1 In certain circumstances Councillors may be granted a dispensation which enables them to take part in Council business where this would otherwise be prohibited because they have a Disclosable Pecuniary Interest. Provided Councillors act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law.
- 2.2 Section 31(4) of the Localism Act states that dispensations may allow the Councillor:
 - (a) to participate, or participate further, in any discussion of the matter at the meeting(s); and/or
 - (b) to participate in any vote, or further vote, taken on the matter at the meeting(s).
- 2.3 If a dispensation is granted, the Councillor may remain in the room where the meeting considering the business is being held.
- 2.4 Please note: If a Parish Councillor participates in a meeting where he/she has a Disclosable Pecuniary Interest and he/she does not have a dispensation, they may be committing a criminal offence under s34 Localism Act 2011.

3. Process for making requests

- 3.1 Any Councillor who wishes to apply for a dispensation must fully complete a Dispensation Request form and submit it to the Proper Officer of the Parish Council (i.e. the Parish Clerk) as soon as possible before the meeting which the dispensation is required. Applications may also be made at the Parish Council meeting itself (if Parish Councils have a standing item on the agenda to deal with dispensation requests) and the nature of the interest has only become apparent to a Councillor at the meeting itself.

- 3.2 Suggested wording for a new standing agenda item on declaration of interests and dispensations is as follows:

Declarations of interest and dispensations

- 2.1 To receive declarations of interest from Councillors on items on the agenda

- 2.2 To receive written requests for dispensations for disclosable pecuniary interests (if any)

- 2.3 To grant any requests for dispensation as appropriate

A request for dispensation must be made on an individual basis.

4. Consideration by the Parish Council

- 4.1 The Parish Council can either delegate to the Parish Clerk the authority to grant dispensations or reserve such decisions for the full Parish Council. If the Parish Council decides to delegate this role to the Parish Clerk then it will need to make a formal resolution to this effect, on the lines of:

- 4.2 "RESOLVE that the Council delegates the power to grant dispensations to the Clerk. The power rests with the relevant authority under section 33(1) of the Localism Act 2011 and the basis is set out under section 33(2). "

- 4.3 The Parish Clerk or the parish Council may grant a dispensation to a Councillor who has a Disclosable Pecuniary Interest to participate in any discussion of a matter at a meeting and/or to participate in any vote on the matter (as per para. 2 above) if they consider that:

- (a) So many members of the decision-making body have disclosable pecuniary interests that it would impede the transaction of the business (i.e. the meeting would be inquorate); or

(b) the authority considers that the dispensation is in the interests of persons living in the authority's area; or

(c) it is otherwise appropriate to grant a dispensation.

4.4 The Parish Council may wish to extend the provisions of the above paragraph to apply in the same way in the case of a "non-disclosable pecuniary interest" or a "non-pecuniary interest", as defined in the Code of Conduct, but this is at the discretion of the Council.

4.5 The terms of any dispensation shall be in accordance with paragraph 6.

4.6 The Clerk or Parish Council should formally notify the Councillor of their decision and reasons in writing at the earliest opportunity and in any event within 5 working days of the decision.

5. Criteria for Determination of Requests

5.1 In reaching a decision on a request for a dispensation the Parish Council or the Parish Clerk (as appropriate) will take into account:

(a) The nature of the Councillor's prejudicial interest;

(b) the need to maintain public confidence in the conduct of the Council's business;

(c) the possible outcome of the proposed vote;

(d) the need for efficient and effective conduct of the Council's business; and

(e) any other relevant circumstances.

6. Terms of Dispensations

6.1 Dispensations may be granted:

(a) For one meeting; or

(b) for a period not exceeding 4 years.

7. Disclosure of Decision

7.1 Any Councillor who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates. A copy of the dispensation will be kept with the Register of Councillors' Interests.

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GUIDANCE NOTE ON BIAS AND PREDETERMINATION PROCESS

What is Bias and Predetermination?

The law on bias and predetermination (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly.

Decision makers are entitled to be **predisposed** to particular views. However, **predetermination** occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision.

The leading case on local authority bias and predetermination¹ acknowledges the difference between judges sitting judicially and councillors making decisions in a democratic environment. Given the role of councillors, there must be 'clear pointers' before predetermination is established.

Section 25 Localism Act 2011

Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because:–

- (a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
- (b) the matter was relevant to the decision.

The section makes it clear that if a councillor has given a view on an issue, this, considered in isolation, does not show that the councillor has a closed mind on that issue. So, the mere fact that a Councillor has campaigned on an issue or made public statements about their approach to an item of council business does not prevent that councillor from being able to participate in discussion of that issue and to vote on it.

Having said this, the use of the words 'just because' in section 25 suggest that other factors when combined with statements made etc. can still give rise to accusations of predetermination. This has also been the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading to the decision, (and also, where appropriate, those following the decision) rather than looking at individual events in isolation.

¹ (R(Lewis)v Persimmon Homes Teeside Ltd [2008] EWCA Civ 746

The case law has also made it clear that the words used by particular Members and the interpretation put on those words is of particular importance. So care still needs to be taken when making statements in advance of the determination of planning applications as there is a risk that they can be misinterpreted or taken out of context.

Guidance

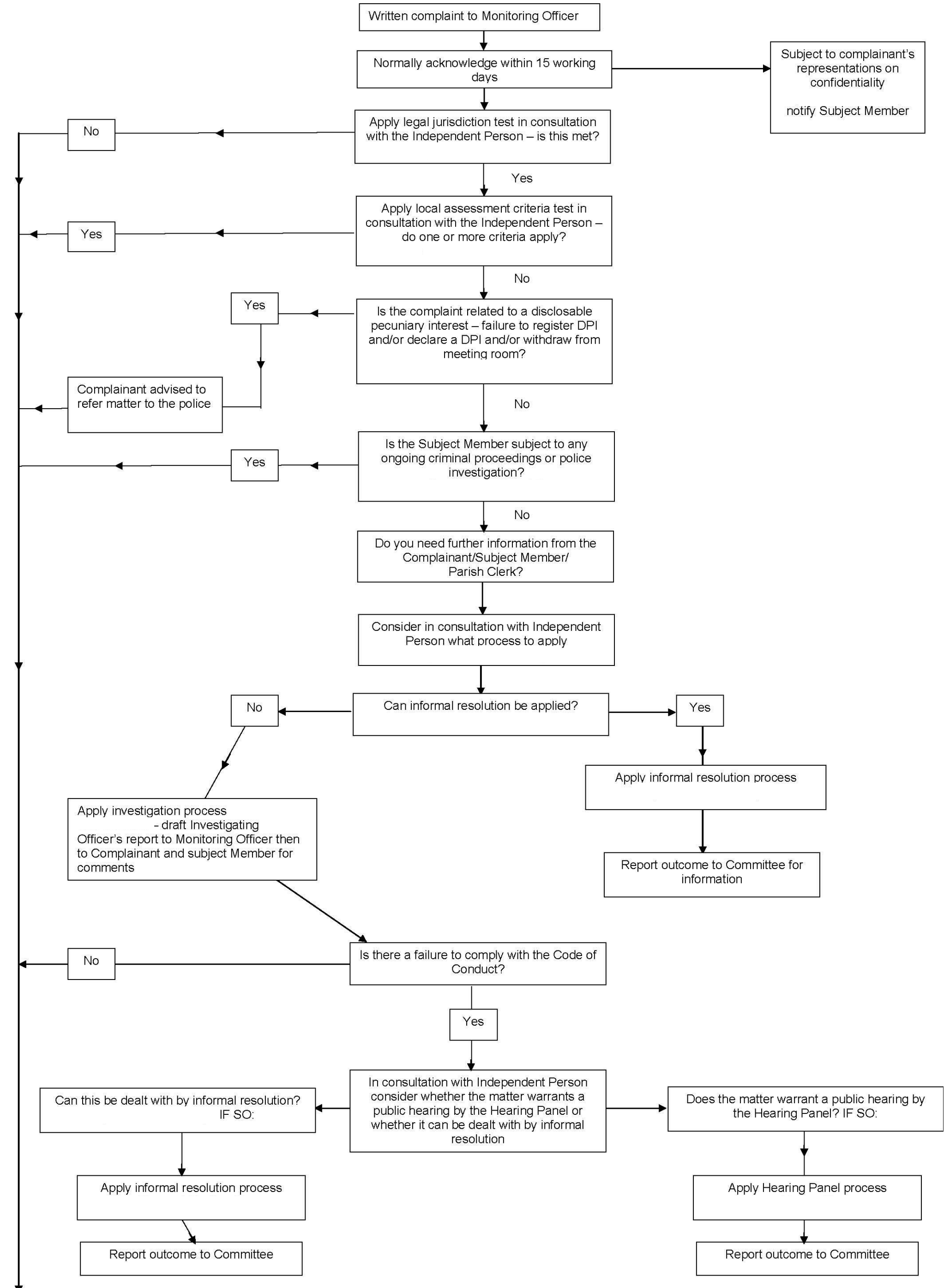
With this in mind:-

- It is always advisable to avoid giving the impression that you have made up your mind prior to the decision making meeting and hearing the officer's presentation and any representations made on behalf of the applicant and any objectors.
- With this in mind, if you do comment on a development proposal in advance the decision, consider using a form of words that makes it clear that you have yet to make up your mind and will only do so at the appropriate time and in the light of the advice and material put before you and having regard to the discussion and debate in the Panel meeting.
- Particular care should be taken where there are chance encounters with objectors to development proposals or in the context of meetings which are not formally minuted. These are situations where the risk of what you say being misrepresented or taken out of context is particularly high.

Concluding Comments

As a Councillor operating within a political environment you should not be afraid to express views on issues. However, in doing so it is important that you avoid giving the impression that you have already made up your mind and that your part in the decision is a foregone conclusion.

MID DEVON DISTRICT COUNCIL - Procedure on Receipt of a Complaint (Appendix P)



NO FURTHER ACTION

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GUIDE TO MAKING A COMPLAINT ABOUT A COUNCILLOR

1. Introduction

- 1.1 Councillors are elected by the general public to represent the constituents of an electoral division (in the case of the County Council) or a ward (in the case of a District Council).
- 1.2 Councillors should conduct themselves in a way that is beyond reproach. However, if you believe that a councillor has breached the Code of Conduct this leaflet explains how to make a complaint and how your complaint will be dealt with.
- 1.3 The District Council takes all complaints seriously and it is our experience that many complaints can be resolved quickly and effectively on an informal basis. We would welcome the opportunity to help put things right for you at an early stage without the need for a formal complaint.
- 1.4 Please contact the Monitoring Officer to discuss your complaint further.

2. How to Make a Complaint

- 2.1 If we cannot address the problem for you informally, you have the right to make a formal complaint. To do this you need to send your complaint in writing (either using the form accompanying this leaflet or by downloading it from the Council's website) marked confidential, to the Monitoring Officer. Please ensure that when submitting your complaint you provide sufficient information to enable a decision to be made as to whether an investigation or other action is warranted.

3. Who You Can Complain About

- 3.1 You can complain about elected councillors, or co-opted members, of the District Council (a Co-opted Member is a voting member of a Council or one of its Committees, who was appointed to their position rather than being elected).

4. What You Can Complain About

- 4.1 You can complain about a Councillor breaching any part of their Council's Code of Conduct.
- 4.2 Arrangements adopted by the Council set out the types of behaviour that can be

investigated. There are some complaints that cannot be investigated, including:

- (a) Complaints where a Councillor is not named;
- (b) complaints that are not in writing;
- (c) acts carried out in a Councillor's private life when they are not carrying out the work of the Council;
- (d) incidents or actions that are not covered by the Code of Conduct;
- (e) incidents that are about a fault in the way the Council has or has not done something – this is something that may be dealt with by a different complaint procedure;
- (f) complaints about people employed by local Councils – this would be dealt with by the employer;
- (g) incidents that happened before a Councillor was elected;
- (h) incidents that happened either before the authority adopted its local Code of Conduct;
- (i) complaints about the way in which the Council conducts and records its meetings.

5. Before You Complain

5.1 Before you send us your complaint, you should be aware that in the interests of fairness and natural justice, we believe Councillors who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with details of the complaint.

5.2 Details of the complaint will be given to:

- (a) The Monitoring Officer of the Council and his staff in order to handle the matter; and
- (b) the Councillor(s) you are complaining about
- (c) Members of the Standards Committee
- (d) The Town/Parish Clerk (if applicable)
- (e) The Independent Person
- (f) The Group Leader (if applicable)

6. What Happens To Your Complaint?

6.1 When we receive your complaint, we will write to you to let you know that we have received it. Your complaint will then be referred to the Monitoring Officer. The Monitoring Officer (acting in consultation with the Independent Person) will decide either to:

- (a) Not refer the complaint for investigation; or
- (b) refer the complaint for investigation; or
- (c) apply the informal resolution process either before or after an investigation; or
- (d) following Investigation; to refer the complaint to the Hearing Panel; or
- (e) take no action and close the matter; or
- (f) refer the complaint to the relevant political group leader for action.

6.2 In assessing your complaint the following and criteria will be used:

6.3 Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the person complained of a member of the Council at the time of the alleged conduct?
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- (f) The complaint is about dissatisfaction with the Council's decisions, policies and priorities, etc.

6.4 If the complaint fails one or more of the jurisdiction tests, no further action will be taken and the complaint will be rejected. You will be notified accordingly with reasons, normally within 10 working days.

- 6.5 Local assessment criteria test:
- 6.6 If the complaint satisfies the jurisdiction test, the following local assessment criteria test will then be applied:
- (a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
 - (b) the complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
 - (c) no or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
 - (d) the complaint is malicious, trivial, politically motivated or 'tit-for-tat';
 - (e) the Complainant is unreasonably persistent, malicious and/or vexatious;
 - (f) the alleged misconduct happened more than 3 months ago;
 - (g) the complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
 - (h) the circumstances have changed so much that there would be little benefit arising from an investigation or other action;
 - (i) the complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;
 - (j) the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
 - (k) the complaint is about a deceased person;
 - (l) The complaint is about a person who is no longer a Council or Co-opted Member.
- 6.7 If one or more of the local assessment criteria applies to the complaint, no further action will be taken and the complaint will be rejected. You will be notified

accordingly with reasons, normally within 10 working days.

7. Informal Resolution

If your complaint meets the local assessment criteria and is considered suitable for informal resolution the Monitoring Officer (acting in consultation with the Independent Person) will contact you and the Councillor you have complained about to agree a fair resolution, which will help to ensure higher standards of conduct for the future.

8. The Investigation

- 8.1 If your complaint is referred for investigation, you will have an opportunity to provide the investigator with any further detailed information or documents that you consider to be relevant.
- 8.2 At the end of an investigation, a decision will be taken whether there is evidence of a failure to comply with the Code of Conduct and, if so, whether to:
- i. take no action; or
 - ii. seek informal resolution; or
 - iii. refer the matter for consideration by the Hearing Panel.
- 8.3 A Hearing Panel is a panel made up of councillors of the Council's Standards Committee. The Hearing Panel can decide if there has been a breach of the Code, and if so what sanction to recommend.

9. Sanctions

The range of sanctions available to the Hearing Panel if they decide there has been a breach of the Code includes the following:

- (a) reporting its findings to a meeting of the full Council *[or to the relevant Parish Council]* for information and/or censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
- (b) issuing a press release/or other appropriate publicity;
- (c) recommending to the Councillor's political Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council

for a specified period;

- (d) recommending to the Leader of the Council that an Executive Councillor be removed from the Executive, or removed from particular portfolio responsibilities;
- (e) recommending appropriate training for the Councillor;
- (f) recommending to the Council the removal of the Councillor *[or recommending to the relevant Parish Council that the Councillor be removed]* from all outside appointments to which they have been appointed or nominated by the Council *[or by the relevant Parish Council]* for a specified period;
- (g) withdrawing *[or recommending to the relevant Parish Council that it withdraws]* facilities provided to the Councillor by the Council for a specified period, for example electronic access to the Council's systems; or
- (h) excluding *[or recommending that the relevant Parish Council excludes]* the Councillor from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings; or,
- (i) instructing the Monitoring Officer to apply the local/informal resolution process; or,
- (j) sending a formal letter to the Councillor.

10. Additional Help

- 10.1 Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.
- 10.2 We can also help if English is not your first language. However, we recommend that you always try to find a friend or relative who can speak or read English to help you with your enquiry initially. This will help both you and us to deal with your needs more effectively.
- 10.3 If you need advice or any support in completing this form, please contact the Monitoring Officer as soon as possible or contact your local Citizens Advice Bureau, Law Centre or other advice centre.

COMPLAINT FORM - DISCLOSURES

Your address and contact details will not usually be released unless necessary to deal with your complaint.

The following people will see this form:

- Members of the Standards Committee
- Monitoring Officer of the Mid Devon District Council
- The Town/Parish Clerk (if applicable)
- The Independent Person
- The Group Leader (if applicable)

A brief summary of your complaint will also be shared with the Councillor(s) against whom you are complaining. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete **Section C** of this Form and also discuss your reasons or concerns with the Council's Monitoring Officer.

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CODE OF CONDUCT FOR COUNCILLORS

COMPLAINT FORM

(Before completing this form please read the attached Guidance Notes)

A. Your details

1. Please provide us with your name and contact details. Anonymous complaints will only generally be considered if there is independent evidence to substantiate the complaint.

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

Your address and contact details will not usually be released unless necessary to deal with your complaint.

The following people will see this form:

- Members of the Standards Committee
- Monitoring Officer of the Mid Devon District Council
- The Town/Parish Clerk (if applicable)
- The Independent Person
- The Group Leader (if applicable)

A brief summary of your complaint will also be shared with the councillor(s) against whom you are complaining. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete **Section C** of this Form and also discuss your reasons or concerns with the Council's Monitoring Officer.

2. Please tell us which complainant type best describes you:

- ☐ Member of the public
- ☐ An elected or co-opted councillor of an authority
- ☐ An independent member of the Standards Committee
- ☐ Member of Parliament
- ☐ Local authority monitoring officer
- ☐ Other council officer or authority employee
- ☐ Other ()

3. Equality Monitoring Form - please fill in the attached form.

The *Equality Act 2010* requires us to monitor certain characteristics to ensure that we do not inadvertently discriminate against members of a particular group. It would, therefore, be helpful if you would complete the attached form, although this is not compulsory. The answers will be removed and kept entirely separate from your complaint and will be completely confidential. They will be used for statistical purposes only, in which individuals will not be identified.

B. Making your complaint

The sanctions available are governed by the Localism Act 2011. For a brief summary of sanctions available and other information about the process and time scales, please refer to the attached Guidance Notes.

4. Please provide us with the name of the councillor(s) you believe have breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name

5. Please explain in this section (or on separate sheets) what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one councillor you should clearly explain what each

individual person has done (with dates /witnesses) that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account when a decision is made whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information or other relevant documentary evidence to support your allegation(s).

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

C. Confidentiality of complainant and the complaint details

Only complete this next section if you are requesting that your identity is kept confidential

6. In the interests of fairness and natural justice, we believe councillors who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that you have justifiable grounds, for example:
- you believe you may be victimised or harassed by the councillor(s) against whom you are submitting a written complaint (or by a person associated with the same); or
 - you consider that you may receive less favourable treatment from the Council because of the seniority of the councillor against whom you are submitting a written complaint in terms of any existing Council service provision or any tender / contract that you may have or are about to submit to the Council.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

(Continue on separate sheet(s), as necessary)

D. Remedy sought

Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint.

(Continue on separate sheet(s), as necessary)

E. Additional information

7. Complaints must be submitted in writing. This includes fax and electronic submissions. Frivolous, vexatious and politically motivated tit-for-tat complaints are likely to be rejected.
8. In line with the requirements of the Disability Discrimination Acts 1995 and 2005 and the Equalities Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.

If you need any support in completing this form, please contact the Monitoring Officer, or the Deputy Monitoring Officer, as soon as possible.

Monitoring Officer
Mid Devon District Council
Phoenix House
Phoenix Lane
Tiverton
Devon
EX16 6PP

Tel: 01884 255255
Fax: 01884 234318
E-mail: Monitoringofficer@middevon.gov.uk

Signed

Date

Mid Devon District Council

Equality Monitoring Form - Information for monitoring purposes only

Ethnic Origin

Choose one section from (A) to (E), and then tick the appropriate box to indicate your cultural background. Please also complete (F) & (G).

A White

- | | | |
|----------------------------------|-------------------------------------|--------------------------------------|
| <input type="checkbox"/> British | <input type="checkbox"/> Polish | <input type="checkbox"/> Romany |
| <input type="checkbox"/> Irish | <input type="checkbox"/> Portuguese | <input type="checkbox"/> White Other |

Any other White background please write here:

B Mixed

- | | |
|--|--|
| <input type="checkbox"/> White and Black - Caribbean | <input type="checkbox"/> Asian and Black |
| <input type="checkbox"/> White and Black – African | <input type="checkbox"/> White and Asian |

Any other Mixed background please write here:

C Asian or Asian British

- | | |
|------------------------------------|--------------------------------------|
| <input type="checkbox"/> Indian | <input type="checkbox"/> Kashmiri |
| <input type="checkbox"/> Pakistani | <input type="checkbox"/> Bangladeshi |

Other Asian background please write here:

D Black or Black British

- | | |
|------------------------------------|----------------------------------|
| <input type="checkbox"/> Caribbean | <input type="checkbox"/> African |
|------------------------------------|----------------------------------|

Any other Black background please write here:

E Chinese or other ethnic group

- | | | |
|-------------------------------------|----------------------------------|---------------------------------|
| <input type="checkbox"/> Chinese | <input type="checkbox"/> Arab | <input type="checkbox"/> Afghan |
| <input type="checkbox"/> Vietnamese | <input type="checkbox"/> Kurdish | |

Any other please write here:

F Your age

- | | | |
|--|--|------------------------------------|
| <input type="checkbox"/> 19 years or under | <input type="checkbox"/> 35 – 49 years | <input type="checkbox"/> 65+ years |
| <input type="checkbox"/> 20 – 34 years | <input type="checkbox"/> 50 – 64 years | |

G Your sex

- ☐ Male ☐ Female

COMPLAINT APPEAL PROCEDURE

After a decision has been made regarding a complaint any decision is open to judicial review by the High Court if the decision is alleged to be unreasonable, or taken improperly, or if it sought to impose a sanction which the Authority had no power to impose.

Also, a complaint of maladministration in dealing with a complaint falls within the jurisdiction of the Local Government Ombudsman.

However, a limited appeal mechanism in relation to these decisions allows for a sub-committee appeals panel of 3 members of the Standards Committee, who must not have heard the original matter to review the appeal. This is subject to specific and limited criteria, thus providing confidence for members.

It is important that the appeal does not become another hearing, but focuses on reviewing the decision that was taken and re-hears the relevant evidence to test this decision.

The appeal panel would not reinvestigate the complaint itself and would only review the decision of the standards committee/subcommittee and ensure there were no errors procedurally.

The appeal must be made within 5 working days of the Standards Sub Committee decision being given. The appeal should be in writing and sent to the Monitoring Officer.

Under this appeal the parties will not be able to introduce new evidence, as this should have been provided within the investigation process/hearing stage, unless the evidence was not available at the time of the original hearing (this would need to be supported by evidence that it was not available at the time of the original hearing). **The subcommittee is the decision maker** and the appeal panel's decision is not to be taken to the Standards Committee for further approval. The Standards Committee are to be notified of the decision of the appeals panel.

As per the Hearing Procedure each party are able to present their case and refer to their original supporting witness evidence (and new evidence if agreed by MDDC prior to the hearing), and both parties and the panel are able to question each witness. MDDC would present their case first, and then the Member would present their case afterwards.

Nothing in this procedure will prevent the panel from inviting either party or representative to describe or clarify any statement they have made.

Should the panel believe that further investigation or evidence is required, then an adjournment may be called to enable this to take place. The hearing will be reconvened as soon as practicably possible.

Following the 'summing up' both parties will withdraw from the hearing. The panel will deliberate in private only recalling both parties to clarify points of uncertainty on evidence already given. If recall is necessary, both parties will be requested to return notwithstanding that only one is concerned with the point giving rise to doubt.

The panel will reconvene to announce their decision to both parties verbally where possible. In any event the parties will be notified of the decision in writing within 7 working days of the appeal panel hearing.

REGISTER OF MEMBERS' INTERESTS

GENERAL NOTICE OF REGISTRABLE INTERESTS

I, Councillor

a Member ofCouncil (the Council') give notice that

Either

I have no registrable interests which are required to be declared under the Council's Code of Conduct, and I have put 'none' where I have no such interests under any heading.

Or

I have set out below under the appropriate headings my interests, and those of my spouse/civil partner (or person with whom I am living as such) of which I am aware, which I am required to declare under the Council's Code of Conduct. These include any disclosable pecuniary interests under sections 29 to 31 of the Localism Act 2011 and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and I have put 'none' where I have no such interests under any heading.

Note:

1. Where you consider that information relating to any of your interests is a 'Sensitive Interest' you need not include that interest provided you have consulted with the Monitoring Officer and he/she agrees that it need not be included. A 'Sensitive Interest' is an interest which could create or is likely to create a serious risk that you or a person connected with you may be subjected to violence or intimidation.
2. Where the interest is no longer a 'Sensitive Interest' you must notify the Monitoring Officer within 28 days of that change.
3. This form gives general guidance, but is not comprehensive. The Council's Code of Conduct gives precise requirements. The Localism Act and the Regulations named above should be referred to where necessary. Continuation sheets should be used where needed and clearly marked.

1. Employment, Office, Trade, Profession or Vocation

- 1.1 You should disclose any employment, office, trade, profession or vocation carried on for profit or gain, including the name of any person or body who employs or has appointed you.

.....
.....

And of your spouse/civil partner (or person with whom you are living as such) of which you are aware

.....
.....

2. Sponsorship

2.1 You should declare any payment or provision of any other financial benefit (other than from the Council) made or provided within the last 12 months in respect of expenses incurred by you in carrying out your duties as a member, or towards your election expenses.

Note – This includes any payment or financial benefit from a trade union

.....
.....

And of your spouse/civil partner (or person with whom you are living as such) of which you are aware

.....
.....

3. Securities

3.1 You should detail any beneficial interest in securities of a body which has to your knowledge a place of business or land in the area of the Council and

Either

The total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body

Or

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 you have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

.....
.....

And of your spouse/civil partner (or person with whom you are living as such) of which you are aware

.....
.....

4. **Contracts**

- 4.1 You should detail any current undischarged contract made between you, or a body in which you have a beneficial interest, and the Council under which goods or services are to be provided or works are to be executed.

.....
.....

And of your spouse/civil partner (or person with whom you are living as such) of which you are aware

.....
.....

5. **Land, Licences and Corporate Tenancies**

5.1 Land

You should detail any beneficial interest in land in the area of the Council (excluding any easement, or right in or over land which does not carry the right to occupy or receive income).

.....
.....

And of your spouse/civil partner (or person with whom you are living as such) of which you are aware

.....
.....

5.2 Licences

You should detail any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.

.....
.....

And of your spouse/civil partner (or person with whom you are living as such) of which you are aware

.....
.....

5.3 Corporate Tenancies

You should detail any tenancy where to your knowledge the Council is the landlord and the tenant is a body in which you have a beneficial interest.

.....

.....

And any such tenancy of your spouse/civil partner (or person with whom you are living as such) of which you are aware

.....

.....

6. **Membership of other bodies**

Councillors and co-opted Members of the Council should give details of any:

- (a) Body to which he/she has been appointed or nominated by the authority as its representative;
- (b) Public authority or body exercising functions of a public nature;
- (c) Company, industrial and provident society, charity or body directed to charitable purposes;
- (d) Body whose principal purposes include the influence of public opinion or policy

Name and Nature of Organisation	Category (a)– (d) above	Position Held

7. Disclosure of Gifts and Hospitality

7.1 You must reveal the name of any person from whom you have received a gift or hospitality with an estimated value of at least £25 which you have received in your capacity as a member of the Council.

Date of receipt of Gift/Hospitality	Name of Donor	Reason and Nature of Gift/Hospitality

You are reminded that you must update the register within 28 days of receiving any further gift or hospitality with an estimated value of at least £25 by completing a continuation sheet which may be obtained from Democratic Services at Mid Devon District Council.

8. Changes to Registered Interest

8.1 I understand that I must, within 28 days of becoming aware of any new or change in the above interests, including any change in relation to a sensitive interest, provide written notification therefore to Mid Devon District Council's Monitoring Officer.

8.2 I understand that the details of my registered interests will appear on the Mid Devon District Council's website and where relevant the Parish/Town Council, website.

8.3 I recognise that it is a breach of the Council's Code of Conduct to:

- (1) Omit information that ought to be given in this notice;
- (2) Provide information that is materially false or misleading;
- (3) Fail to give further notices in order to
 - bring up to date information given in this notice;
 - declare an interest that I acquire after the date of this notice and have to declare

and that any breach of the Code of Conduct can be referred to the Standards Committee at Mid Devon District Council.

- 8.4 I understand that failure (without reasonable excuse) to register or disclose any disclosable pecuniary interest in accordance with section 30(1) or 31 (2), (3) or (7) of the Localism Act 2011, or participating in any discussion or vote in contravention of section 31 (4) of the Localism Act 2011, or taking any steps in contravention of section 31 (8) of the Localism Act 2011 is a criminal offence and risks a fine not exceeding level 5 on the standard scale (currently £5,000) or disqualification as a member for a period not exceeding 5 years.

Signed(Councillor) **Dated**

RECEIVED:

Signed (Monitoring Officer) **Dated**

AMENDMENTS

Signed - Member	Dated	Signed - Monitoring Officer	Dated