

# Public Document Pack

**Mid Devon District Council**

## **Standards Committee**

**Wednesday, 18 October 2017 at 6.00 pm**  
**Phoenix 1, 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 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.

### **2 MINUTES (Pages 5 - 10)**

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

### **3 CHAIRMAN'S ANNOUNCEMENTS**

To receive any announcements the Chairman of the Committee may wish to make.

### **4 APOLOGIES AND SUBSTITUTE MEMBERS**

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

5 **INDEPENDENT PERSONS**

To receive an update from the Monitoring Officer and to consider feedback from the Independent Persons arising from their attendance at meetings of the Council.

6 **REVIEW OF CONSTITUTIONAL ITEMS**

To receive an update from the Monitoring Officer on those matters arising from the Constitution raised at the meeting in July 2017 and to hear further from the Monitoring Officer about her work on the Constitution generally

7 **DISQUALIFICATION CRITERIA FOR COUNCILLORS AND MAYORS**  
(Pages 11 - 28)

To consider the attached consultation document and provide a response to the DCLG.

8 **DRAFT GUIDELINES ON MEMBERS CORRESPONDENCE** (Pages 29 - 34)

Arising from matters discussed at the last meeting in July 2017, to consider a report of the Monitoring Officer.

9 **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.

**10 MEMBERS' ACCESS TO (AND USE OF) INFORMATION AND EXEMPT INFORMATION** *(Pages 35 - 38)*

The Monitoring Officer would like the Committee to consider whether the Protocol on Member/Officer Relations is sufficiently robust in dealing with the sharing with third parties (and the media) of exempt information and/or correspondence with officers. Sections 11, 12 and 13 are relevant of the Protocol are relevant.

**11 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

Tuesday, 10 October 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](mailto:jstuckey@middevon.gov.uk)

Public Wi-Fi is available in all meeting rooms.

This page is intentionally left blank

## MID DEVON DISTRICT COUNCIL

**MINUTES** of a **MEETING** of the **STANDARDS COMMITTEE** held on 26 July 2017 at 6.00 pm

### **Present**

#### **Councillors**

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

### **Apologies**

#### **Councillor(s)**

L D Taylor, Mrs N Woollatt and Mrs E J Slade

### **Also Present**

#### **Officer(s):**

Kathryn Tebbey (Legal Services Manager and Monitoring Officer), Sally Gabriel (Member Services Manager), Maria De Leburne (Solicitor) and Julia Stuckey (Member Services Officer)

## **39 ELECTION OF CHAIRMAN (CHAIRMAN OF THE COUNCIL IN THE CHAIR)**

**RESOLVED** that Cllr Mrs J Binks be elected Chairman of the Committee for the municipal year 2017/18.

Cllr Mrs Binks then took the Chair.

(Cllr Mrs J Roach requested that her vote against the decision be recorded)

## **40 ELECTION OF VICE CHAIRMAN**

**RESOLVED** that Cllr C R Slade be elected Vice-Chairman of the Committee for the municipal year 2017/18.

## **41 APOLOGIES AND SUBSTITUTE MEMBERS**

Apologies were received from Cllr Mrs E J Slade, Cllr L D Taylor and Cllr Mrs N Woollatt who was substituted by Cllr Mrs J Roach.

## **42 PUBLIC QUESTION TIME**

Referring to item 12 on the agenda (the Constitution) Mr N Quinn said that having a limit of only one person being able to speak in objection of an application appears biased towards the applicant since there is normally only one applicant but tend to be many objectors. Mr Quin went on to raise the following points and questions:

"If it is merely a matter of time, I believe that most objectors would prefer that Councillors spend as much time as is needed to discuss all aspects of an application. Saving a Council 10 minutes is a poor price to pay against the impact that some decisions can have on a person's life. Would this Committee please raise the number of objectors that can speak during an application?"

The public are often not consulted about applications prior to submission and have little time to put their case in writing. Access to information is difficult for some without computers or bus services. The planning files which are supposed to be accessible on line are often out of date or incomplete. Officers are supposed to record meetings, phone conversations and advice but don't always do this.

Objectors tend to be normal people who see things in a way that normal people do. They are not versed in Planning Law and have not had the specialist training those officers and Members have. When they make objections, they write what they feel. Once they do, the officer summarises the lovingly crafted points into a number of short bullet points in no particular order or leaves their objections out altogether 'because they are not valid planning points'. There is currently no feedback on letters of objection. Could the system be changed to offer more support for this who are obviously concerned but whose objection is invalid?

It is difficult to choose who should speak and what they say since everybody believes that their objection is the most important. Even a small application can create a large number of objectors. I have recently spoken to Committee as an objector spokesperson representing more than 50 households because the proposed development is on a public amenity area located in the middle of a housing estate and everybody is concerned about it. It was easy for us to talk and discuss but more scattered objectors, or where there is animosity, could have great difficulty in agreeing on one person to talk. Could the system be changed where there was a disagreement on who should speak?

Objectors tend to be normal people, unused to the ways of Council Committees and procedures. We are generally not used to public speaking. There is currently a restriction of only 3 minutes in which to make the case for everybody. This places a lot of pressure on the individual concerned. It is too short a time to cover what may be large number of objector points so the speaker may have to talk so fast as to sound like the terms and conditions people on adverts. This is not good for either the speaker or the Committee. Would this Committee consider a requirement to offer support to objectors to help them with their presentation and/or do it for them?

There is no written record in the Minutes of the verbal presentations made during the consideration of an application. The rigid order of speaking and the inability to respond to statements is a problem as well. Please consider that there may be statements made in speeches which may be untrue and which nobody can correct because they have already spoken and are not allowed to. Members may well make decisions based on incorrect information. Can this Committee make some provision to allow for the challenge of a verbal statement made during the consideration of an application?"

The Chairman informed Mr Quinn that his questions would be considered with the agenda item.

#### **43 MINUTES**

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

#### 44 **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman informed Members that she was pleased to say that two thirds of Members had attended Code of Conduct training set up by the Monitoring Officer.

The Chairman advised Members that from now on Standards Committee meetings would be calendared for three a year, rather than on the ad hoc basis that had happened in the past.

Following the Peer Review and discussions at the Programming Panel the Chairman proposed that an informal workshop between meetings be put in place to encourage Members to become more involved with moving items forward and to flag important issues. This was **AGREED**.

#### 45 **START TIME FOR MEETINGS**

It was **AGREED** that the start time of meetings remain at 6.00pm.

#### 46 **MONITORING OFFICER'S UPDATE**

The Monitoring Officer confirmed that the purpose behind scheduling meetings for the municipal year was to ensure that Standards issues were addressed in a proactive rather than a reactive way, as had been the case in the past. The informal workshops proposed by the Chairman would also assist in Members taking charge of the Standards agenda in the Council. The officer had appointed the two Deputy Monitoring Officers and started to meet with them regularly. Meetings had taken place with the newly appointed Independent Members and Code of Conduct training had been provided to Members.

#### 47 **THE ROLE OF THE INDEPENDENT PERSONS**

The Monitoring Officer explained that the Independent Persons were a statutory appointment and that although the requirement was for one it was a good idea to have two. The role was set out within the Constitution and mainly involved providing support, advice and assistance in relation to complaints; however, these duties could be extended with their agreement and the approval of Members. The Monitoring Officer proposed that the Independent Persons could be charged with attending a number of meetings throughout the year, reporting back to the Standards Committee (via the Monitoring Officer) on how it had felt to be at the meeting as a member of the public. The feedback provided could be used to shape future discussions.

Discussion took place regarding:

- The role of the Independent Persons regarding Town and Parish Councils;
- The use of Independent Persons at Devon County Council and how they provided feedback on areas such as audibility, presentation and behaviour;
- The Whistleblowing Policy and bullying and whether the Independent Persons could be used as a point of contact for this;

- The fact that any information that could improve the public image of Members would be helpful.
- Independent Persons may be able to highlight procedures that the public did not understand or did not work for the public, regarding areas such as public question time
- It was **AGREED** that an information sheet regarding procedures for the Planning Committee be produced to improve understanding.

The Independent Persons informed the Committee that they would not want to stifle independence in Members but that there may be some work that could be done to help improve how the Council appeared to the public in order to improve image and performance. They did not consider that the role needed to be confrontational and would like to assist in reducing the number of complaints received. Attending meetings would also raise their profile and Members would become aware of who they were, this would be an evolving process and the methods of reporting would need to be established.

The Monitoring Officer suggested that this would be a process that evolved over time. In the first instance she would meet with the Independent Persons in advance of the next meeting and would provide a report to highlight key issues that they had observed. This would help her to identify what training was required.

It was **RESOLVED** that the Independent Members be asked to attend, as observers, meetings of the Council during the remainder of the Municipal year and that an update be provided to the October meeting of the Committee.

(Proposed by Cllr C R Slade and seconded by Cllr Mrs J Roach)

#### 48 **MEMBER TRAINING**

The Monitoring Officer informed Members that she had held a Code of Conduct Training session to ensure that all Members were up to speed with the Code. She intended to hold further sessions for those that had been unable to attend. Following this she planned to hold some training for Town and Parish Councils in the autumn and was currently arranging dates for this.

The Monitoring Officer asked for suggestions for further training required and it was **AGREED** that this would be a discussion topic at the first workshop session.

#### 49 **MEMBERS CORRESPONDENCE WITH THE PUBLIC**

The Monitoring Officer explained that within the Officer Code of Conduct there was reference to timescales for responding to correspondence. The officer asked Members if they considered it necessary to have some sort of guidance on reasonable response times for Member correspondence.

Discussion took place regarding:

- It was considered good practice to acknowledge correspondence;



- The difficulty in responding to ‘round robin’ correspondence and the need to take into account that variety of correspondence received;
- The public needed to know how to interact with Members;
- The variety of methods of communication such as telephone, in person, email and by post.

It was **RESOLVED** that the Monitoring Officer be asked to provide guidance on responding to correspondence to the Committee for consideration and that this issue generally be included in Member induction training.

(Proposed by the Chairman)

## 50 THE CONSTITUTION

The Monitoring Officer informed Members that she had some concerns regarding a number of areas within the Constitution.

### State of the District Debate – Rule 17 of the Council Procedure Rules

The Officer informed Members that the wording within this section required clarification as there was currently reference to ‘calling’ and ‘holding’.

It was **RESOLVED** that the Monitoring Officer be asked to produce wording to clarify this section.

(Proposed by Cllr Mrs J Roach and seconded by Cllr C L Slade)

### Procedure for speaking at Committee – Paragraph 9 of the Protocol of Good Practice for Councillors Dealing with Planning Matters – Appendix J to the Constitution

The Monitoring Officer explained that she had some concerns with regard to this section of the Constitution due to the position of single Member wards, should the Member have a conflict of interest or was unable to attend a meeting. The constitution did not provide any flexibility or discretion to allow for this. The officer considered that it was necessary to clarify this area in order to protect the council from criticism and to make the order of speaking clear. Mr Quinn’s comments from Public Question Time needed to be given some consideration.

Discussion took place regarding:

- The issue of not being able to correct false statements and time restrictions on speakers;
- The difficulty in knowing whether it was better for the applicant or objector to speak first;
- The use of Public Question Time;
- A leaflet explaining planning procedure would clarify the situation for the public;

- Member Services Officers currently provided guidance to the public;
- A letter from the Planning Service sent to objectors outlined procedure but did not give mention to Public Question Time.

It was **RESOLVED** that the Monitoring Officer be asked to provide a report regarding the procedure for speaking at Committee and that the Member Services Manager continue work on a guide for speakers attending the meeting.

(Proposed by the Chairman)

#### The rights of non-Cabinet members to ask questions and make statements during the business of Cabinet

The Monitoring Officer explained that current wording within the Constitution was not clear as to whether or not non-Cabinet Members could speak to an item at Cabinet Meetings.

The Leader informed the Committee that Non Cabinet Members were currently permitted to speak and that he encouraged this.

It was **RESOLVED** that the Monitoring Officer be asked to provide wording that would ensure that at a meeting of the Cabinet the Leader may allow non cabinet Members to speak on any agenda item and that this be inserted into an appropriate place within the Constitution.

(Proposed by the Chairman)

## 51 **ISSUES ARISING FROM RECENT CASES AND DECISIONS**

The Deputy Monitoring Officer outlined a recent case between Hussain and Sandwell Metropolitan Borough Council which concerned an attempt to prevent a local authority from continuing with an investigation into alleged wrongdoing by elected Council Members.

## 52 **COMPLAINTS**

The Monitoring Officer informed the Committee that since her appointment she had received one complaint, which following consultation with the Independent Persons it had been agreed did not merit further investigation.

## 53 **IDENTIFICATION OF ITEMS FOR THE NEXT MEETING**

Complaints

Findings of the Independent Persons

Review of the Constitutional items discussed at agenda item 12

Draft guidelines on Members correspondence

(The meeting ended at 7.54 pm)

**CHAIRMAN**



Department for  
Communities and  
Local Government

## Disqualification criteria for Councillors and Mayors

Consultation on updating disqualification criteria for local authority members



© Crown copyright, 2017

*Copyright in the typographical arrangement rests with the Crown.*

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This document/publication is also available on our website at [www.gov.uk/dclg](http://www.gov.uk/dclg)

If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Department for Communities and Local Government  
Fry Building  
2 Marsham Street  
London  
SW1P 4TF  
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/CommunitiesUK>

September 2017

ISBN: 978-1-4098-5102-8

# Contents

<b>Scope of the consultation</b>	<b>4</b>
<b>Basic Information</b>	<b>5</b>
<b>Introduction</b>	<b>7</b>
<b>The Current Disqualification Criteria</b>	<b>9</b>
<b>Sexual Offences</b>	<b>11</b>
<b>Anti-Social Behaviour</b>	<b>13</b>
<b>Retrospection</b>	<b>15</b>
<b>Questions</b>	<b>16</b>
<b>About this consultation</b>	<b>17</b>

# Scope of the consultation

**A consultation paper issued by the Department for Communities and Local Government on behalf of the Secretary of State**

<b>Topic of this consultation:</b>	This consultation paper sets out the government's proposals for updating the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly.
<b>Scope of this consultation:</b>	<p>The Department for Communities and Local Government is consulting on proposals to update the criteria disqualifying individuals from standing for, or holding office as, a local authority member, directly-elected mayor or member of the London Assembly, if they are subject to:</p> <ul style="list-style-type: none"><li>• the notification requirements set out in the Sexual Offences Act 2003 (commonly referred to as 'being on the sex offenders register');</li><li>• a civil injunction granted under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014; or</li><li>• a Criminal Behaviour Order made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014.</li></ul> <p>Any changes to the disqualification criteria would require changes to primary legislation, in particular the Local Government Act 1972, the Local Democracy, Economic Development and Construction Act 2009, and the Greater London Authority Act 1999.</p> <p>The proposed changes would not act retrospectively.</p>
<b>Geographical scope:</b>	The proposals in this consultation paper apply to certain authorities in England, including local authorities, combined authorities and the Greater London Authority. They do <u>not</u> apply to authorities in Wales, Scotland or Northern Ireland.
<b>Impact Assessment:</b>	No impact assessment has been produced for this consultation.

# Basic Information

<b>To:</b>	This consultation is open to everyone. We particularly seek the views of individual members of the public, prospective and current councillors and those bodies that represent the interests of local authorities and councillors at all levels.
<b>Body responsible for the consultation:</b>	The Local Government Stewardship Division in the Department for Communities and Local Government is responsible for conducting the consultation.
<b>Duration:</b>	The consultation will begin on Monday 18 September 2017. The consultation will run for 12 weeks and will close on Friday 8 December 2017. All responses should be received by no later than 5pm on Friday 8 December 2017.
<b>Enquiries:</b>	<p>If you have any enquiries, please contact:</p> <p>Stuart Young email: <a href="mailto:stuart.young@communities.gsi.gov.uk">stuart.young@communities.gsi.gov.uk</a></p> <p>DCLG Tel: 0303 44 40000</p> <p>How to respond:</p> <p>Please respond by email to: <a href="mailto:Section80consultation@communities.gsi.gov.uk">Section80consultation@communities.gsi.gov.uk</a></p> <p>Alternatively, please send postal responses to:</p> <p>Stuart Young Department for Communities and Local Government 2nd Floor, NE, Fry Building 2 Marsham Street London SW1P 4DF</p> <p>Responses should be received by 5pm on Friday 8 December 2017.</p>
<b>How to respond:</b>	<p>You can respond by email or by post.</p> <p>When responding, please make it clear which questions you are responding to.</p> <p>When you reply it would be very useful if you could confirm whether you are replying as an individual or submitting an</p>

	<p>official response on behalf of an organisation, and include:</p> <ul style="list-style-type: none"> <li>- your name</li> <li>- your position (if applicable)</li> <li>- the name and address of your organisation (if applicable)</li> <li>- an address, and</li> <li>- an email address (if you have one)</li> </ul>
--	--



# Introduction

1. Local authority members (i.e. councillors), mayors of combined authorities, members of the Greater London Assembly and the London Mayor take strategic decisions that affect all our lives. They decide how best to use taxpayers' money and manage local authority resources, including property, land and assets. They also have a leading role to play in building and preserving a society where the rights and freedoms of individuals are respected. They should be community champions. It is vital, therefore, that they have the trust of the electorate.
2. The Government considers that there should be consequences where councillors, mayors and London Assembly members fall short of the behaviour expected of anyone in a free, inclusive and tolerant society that respects individuals and society generally, and where this has led to enforcement action against an individual.
3. Existing legislation prevents individuals standing, or holding office, as a local authority member, London Assembly member or directly-elected mayor if they have, within five years of the day of the election, or since their election, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment, suspended or not, for a period of not less than three months without the option of a fine.
4. The Government considers that the law should be updated to reflect new options which exist to protect the public and address unlawful and unacceptable behaviour.
5. This consultation proposes updating the disqualification criteria in section 80 of the Local Government Act 1972, paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, and section 21 of the Greater London Authority Act 1999 to prohibit those subject to the notification requirements (commonly referred to as 'being on the sex offenders register') and those subject to certain anti-social behaviour sanctions from being local authority members, London Assembly members or directly-elected mayors.
6. This consultation does not propose changing the disqualification criteria for Police and Crime Commissioners (PCCs). For the purposes of this consultation, 'local authority member' also extends to directly-elected mayors and co-opted members of authorities, and 'local authority' means:
  - a county council
  - a district council
  - a London Borough council
  - a parish council

The disqualification criteria in section 80 of the Local Government Act 1972, paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009, and section 21 of the Greater London Authority Act 1999 do not cover the Council of the Isles of Scilly or the Common Council of the City of

London. Therefore, the proposals in this consultation do not extend to these councils.

# The Current Disqualification Criteria

7. Under section 80 of the Local Government Act 1972, a person is disqualified from standing as a candidate or being a member of a local authority, if they:
  - are employed by the local authority;
  - are employed by a company which is under the control of the local authority;
  - are subject to bankruptcy orders;
  - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine;
  - are disqualified under Part III of the Representation of the People Act 1983;
  - are employed under the direction of various local authority committees, boards or the Greater London Authority; or
  - are a teacher in a school maintained by the local authority.
8. Paragraph 9 of schedule 5B to the Local Democracy, Economic Development and Construction Act 2009 sets out the criteria on disqualification from standing as, or being, a directly-elected mayor of a combined authority. A person is disqualified from being elected or holding office as the mayor of a combined authority if they:
  - hold any paid office or employment (other than the office of mayor or deputy mayor), including any appointments or elections made by or on behalf of the combined authority or any of the constituent councils of the combined authority;
  - are subject to bankruptcy orders;
  - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine; or
  - is disqualified for being elected or for being a member of a constituent council under Part 3 of the Representation of the People Act 1983.
9. Section 21 of the Greater London Authority Act 1999 disqualifies someone from being the Mayor or an Assembly member if they:
  - are a member of staff of the Authority;
  - hold an office that disqualifies the holder from being Mayor or an Assembly member;
  - are subject to bankruptcy orders are bankrupt or have made a composition agreement with creditors;
  - have, within 5 years before being elected, or at any time since being elected, been convicted in the UK, Channel Islands or Isle of Man of any offence and have received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine;
  - are disqualified under section 85A or Part III of the Representation of the People Act 1983 from being the Mayor or an Assembly member; or

- are a paid officer of a London borough council who is employed under the direction of:
  - a council committee or sub-committee whose membership includes the Mayor or someone appointed on the nomination of the Authority;
  - a joint committee whose membership includes a member appointed on the nomination of the council and a member appointed on the nomination of the Authority;
  - the council executive, or one of its committees, whose membership includes the Mayor or someone appointed on the nomination of the Authority;
  - a member of the council's executive who is the Mayor or someone appointed on the nomination of the Authority.

# Sexual Offences

10. The Government considers that anyone who is subject to sex offender notification requirements, commonly referred to as 'being on the sex offenders register', should be barred from standing for election, or holding office, as a local authority member, directly-elected mayor or member of the London Assembly. The period of time for which they would be barred would end once they were no longer subject to these notification requirements.
11. An individual can become subject to notification requirements by committing certain criminal acts or being issued with certain types of civil order:
- Being subject to sex offender notification requirements is an automatic consequence of being cautioned or convicted of a sexual offence listed in Schedule 3 of the Sexual Offences Act 2003 (see: <http://www.legislation.gov.uk/ukpga/2003/42/schedule/3>).
  - Sexual Harm Prevention Orders are civil orders intended to protect the public from offenders convicted of a sexual or violent offence who pose a risk of sexual harm to the public by placing restrictions on their behaviour. Offenders who are subject to Sexual Harm Prevention Orders become subject to notification requirements.
  - Notification Orders are civil orders intended to protect the public in the UK from the risks posed by sex offenders who have been convicted, cautioned, warned or reprimanded for sexual offences committed overseas. Such offenders may be British or foreign nationals convicted, cautioned etc. abroad of a relevant offence. Offenders who are subject to Notification Orders become subject to notification requirements.
12. The duration of the notification requirement period (i.e. how long a person is on the sex offenders register) is set out in the Sexual Offences Act 2003 and in the table below. The courts have no discretion over this.

Where the (adult) offender is:	The notification period is:
Sentenced to imprisonment for life or to a term of 30 months or more	An indefinite period
Detained in a hospital subject to a restriction order	An indefinite period
Sentenced to imprisonment for more than 6 months but less than 30 months imprisonment	10 years
Sentenced to imprisonment for 6 months or less	7 years
Detained in a hospital without being subject to a restriction order	7 years
Cautioned	2 years

Conditional discharge	The period of the conditional discharge
Any other description (i.e. community sentence, fine)	5 years

These periods are halved for offenders who are under 18 on the date of the caution, conviction or finding, as defined within the 2003 Act.

13. Offenders who are subject to the notification requirements must notify the police of (amongst other things) their: name, date of birth, national insurance number, home address, passport number, bank account and credit card details. They must do this annually, any time the details change or when they travel abroad. They must also notify the police when they stay or reside with a child for more than 12 hours.
14. Further information on the Sexual Offences Act 2003 can be found at: <https://www.gov.uk/government/publications/guidance-on-part-2-of-the-sexual-offences-act-2003>.
15. The Government does not propose including another type of civil order, the Sexual Risk Order, as this person would not have been convicted or cautioned of a sexual offence under the Sexual Offences Act 2003 and are not subject to notification requirements for registered sex offenders. A Sexual Risk Order does require the individual to notify to the police their name and their home address. A Sexual Risk Order can be sought by the police against an individual who has not been convicted, cautioned etc. of an offence under Schedule 3 or Schedule 5 of the 2003 Act but who is nevertheless thought to pose a risk of harm to the public in the UK and/or children or vulnerable adults abroad.

**Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. who is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

# Anti-Social Behaviour

16. Anti-social behaviour blights people's lives and can leave victims feeling powerless. These are a range of powers to the courts, police and local authorities to tackle the problems in the table below.

17. The Government considers that an individual who is subject to an anti-social behaviour sanction that has been issued by the court, i.e. a Civil Injunction or a Criminal Behaviour Order, should be barred from standing for election, or holding office, as a local authority member, directly-elected mayor or member of the London Assembly. The period of time for which they would be barred would end once they were no longer subject to the injunction or Order.

## Anti-Social Behaviour (ASB) Powers

Type	Power	Description
Issued by the court to deal with individuals	<b>Civil Injunction</b>	A civil order with a civil burden of proof. The injunction can include both prohibitions and positive requirements to tackle the underlying causes of the behaviour. Applications can be made by police, councils, social landlords, Transport for London, Environment Agency, Natural Resources Wales and NHS Protect.
	<b>Criminal Behaviour Order</b>	A court order available on conviction. The order can be issued by any criminal court against a person who has been convicted of an offence. It is aimed at tackling the most persistently anti-social individuals who are also engaged in criminal activity. The order can include both prohibitions and positive requirements. Applications are made by the prosecution, in most cases by the Crown Prosecution Service, either at its own initiative or following a request from the police or council.
Used by the police to move problem groups or individuals on	<b>Dispersal Power</b>	A flexible power which the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to a local community. It allows the police to deal instantly with someone's behaviour and prevent it escalating. The use of the power must be authorised by an officer of at least inspector rank, to be used in a specific locality for up to 48 hours or on a case by case basis. This is to ensure that the power is used fairly and proportionately and only in circumstances in which it is necessary.

Issued by councils, the police and social landlords to deal with problem places	<b>Community Protection Notice</b>	A notice designed to deal with particular problems which negatively affect the community's quality of life. The Notice can be issued to anyone aged 16 or over, businesses or organisations. This is a two-stage power and a written warning has to be issued first. Failure to stop the behaviour or take action to rectify the problem would lead to the notice being issued. The power can be used by councils, police and social landlords (if designated by the council).
	<b>Public Spaces Protection Order</b>	Designed to deal with anti-social behaviour in a public place and apply restrictions to how that public space can be used to stop or prevent anti-social behaviour. The order is issued by the council. Before the order can be made, the council must consult with the police and whatever community representatives they think appropriate, including regular users of the public space. Before the order is made the council must also publish the draft order.
	<b>Closure Power</b>	A fast and flexible two-stage power. Can be used to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder, including residential, business and licensed premises. The police and councils are able to issue Closure Notices for up to 48 hours and the courts are able to issue Closure Orders for up to six months if satisfied that the legal tests have been met. Following the issue of a Closure Notice, an application must be made to the magistrates' court for a closure order.

**Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**



# Retrospection

18. Legislation does not generally apply retrospectively, the principle being that the law should operate in a clear and certain manner and the public is entitled to know the state of the law at a particular time.
19. The proposals in this consultation would not apply retrospectively, i.e. any incumbent local authority member, directly-elected mayor or member of the London Assembly, who is on the sex offenders register or subject to a Civil Injunction or Criminal Behaviour Order at the time the changes come into force would not be affected.
20. Such individuals would of course be prevented from standing for re-election after the changes came into force.

# Questions

**Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?**

**Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?**

**Q5. Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?**

**Q6. Do you have any further views about the proposals set out in this consultation paper?**

# About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.  
Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

This page is intentionally left blank



## **Standards Committee: Guidance on Member Correspondence**

The Standards Committee recognises that Members of the Council receive a considerable volume of correspondence by letter and email. However, complaints are sometimes made about a member's approach to correspondence and it has been queried whether this could amount to a breach of the code of conduct. This guidance is offered to help members avoid getting into such difficulty.

### **A Answering correspondence**

- 1 You should try to answer correspondence promptly. When you are going to be away, consider whether to put an "out of office" automated reply. Such a reply does not need to state that you are away until a certain date – indeed, there is a risk in doing so, given that your home addresses are published. However, you could include something along the following lines:  
  
"Thank you for your email. I will reply as soon as I reasonably can."
- 2 Remember that the Council's Customer Services team is a useful resource for members. If you receive a complaint from a member of the public about the service they have received, you should consider referring them to
- 3 The Standards Committee recognises that there are times when members may find themselves overwhelmed by the sheer volume of correspondence, particular in relation to controversial matters. [The Standards Committee takes the view that it would rarely regard a failure to answer correspondence as a breach of the Code of Conduct unless combined with some other complaint about the member's conduct.]
- 4 Furthermore, members may find that some correspondents, perhaps because they do not receive the reply they are seeking, repeat the same request in a series of emails or letters. Again, the Standards Committee would not regard a failure or refusal to continue to correspond on the issue as a breach of the Code. However, it recommends that the member sends a polite final response, making it clear that they regard the correspondence as at a close.

## **B Blind copying email (bcc)**

If you are copying an email you write to other people, it is not recommended that you conceal other recipients. One such occasion can be where you want to send the same email to a number of parties equally, but to do so in the same email would involve disclosing private email addresses – which will often be private data. Generally, however, it is recommended that you copy emails openly.

## **C Confidentiality**

Think carefully before copying or forwarding an email or letter to another person, including your reply. Even if the letter or email is not marked as “Private” or “Confidential”, it may contain confidential or personal information which the write may not want to share with a third party. This includes their home address – which can be an issue at any time, but particularly if the person is vulnerable or at risk (of which you may be unaware).

Further, emails which involve a series of replies, with or without attachments, may contain information, information or comments which the writer may not want to be forwarded. This includes communications with the press. It would always be appropriate to seek the writer’s consent before forwarding correspondence.

**GUIDANCE ON MEMBERS' CORRESPONDENCE**

**Cabinet Member(s):** Cllr Clive Eginton, Leader of the Council  
**Responsible Officer:** Kathryn Tebbey, Monitoring Officer

**Reason for Report:** to consider:

- (a) whether guidance should be given to Members on dealing with correspondence in the form attached at Appendix 1;
- (b) whether a Member's failure to reply to correspondence in a timely manner (or at all) could on its own, and in principle, amount to a breach of the Code of Conduct; and
- (c) whether to recommend that the Local Assessment Criteria be amended

**RECOMMENDATION:** that the Standards Committee considers the report, the draft Guidance at Appendix 1 and decides how it wishes to proceed in relation to the reasons (a) to (c) set out above.

**Relationship to Corporate Plan:**

**Financial Implications:** None, other than potential reduction in time spent on complaints about correspondence.

**Legal Implications:** There is no legal obligation on Members to reply to correspondence. However, the Code of Conduct covers several matters, including that of showing respect. Were a complaint to be received arising from a failure to reply to correspondence, the Monitoring Officer would need to consider the complaint against the Legal Jurisdiction Test and the Local Assessment Criteria (Appendix K to Constitution) before deciding whether to proceed with an investigation or local/informal resolution.

**Risk Assessment:** issuing guidance to members and setting clear local assessment criteria will reduce the risk of uncertainty as to whether a complaint merits investigation as a potential breach of the Code of Conduct

**Equality Impact Assessment:** Any guidance issued to Members needs to recognise and take account of any equalities issues, for example any disability which impacts upon a Member's ability to deal with correspondence, or which might result in a member of the public suffering a detriment directly or indirectly out of a protected characteristic. At the drafting of the report, no such issues have been identified in the guidance, but Members will wish to consider this as part of their overall consideration.

## **1.0 Introduction**

- 1.1 At the meeting of the Standards Committee on 26 July 2017, the Monitoring Officer discussed concerns raised with her by a member of the public about the alleged failure of a member of the Council to reply to correspondence. In that particular incidence, the Monitoring Officer had dealt with the issue informally. However, as members of the Committee indicated at the meeting, it did raise issues about how members should be expected to deal with their correspondence, particularly in relation to that received from members of the public from their electoral ward.

## **2.0 Guidance**

- 2.1 The Monitoring Officer has considered the position of a selection of other councils. Whilst many councils are silent on the matter, some have issued guidance. Such guidance varies between being quite prescriptive in tone and content (despite being only guidance) to a more general set of principles. It is the Monitoring Officer's opinion that prescriptive guidance is unhelpful, as it does not recognise or address the following:

- the rights of Members to conduct their ward business as they see fit, subject to acting lawfully and in accordance with the Constitution – ultimately, it is a matter for the electorate to decide whether to elect or re-elect a member and how they perform their role as the local representative is no doubt a factor in that.
- setting an expectation of a reply within a certain period of time will not always match the complexity of the issues raised, the need to seek further information, or indeed the Member's own position – they may be on holiday or unwell.
- those circumstances, particularly where correspondence has been protracted, where there is nothing more the Member feels that he/she can say, or where it is clear that the member of the public will not accept the Member's reply unless it matches their own take on the matter.

- 2.2 The attached draft guidance (Appendix 1) is just that – a draft for members of the Standards Committee to consider whether to take forward (or amend) and issue to Members of the Council. The Monitoring Officer is not proposing that this be adopted as part of the Constitution, but rather suggesting that it be issued by the Standards Committee in its role as the committee responsible for monitoring, maintaining and raising standards.

## **3.0 Code of Conduct implications**

- 3.1 If a Member fails to reply to correspondence, they are at risk of a potential complaint under the Code of Conduct – for example, in relation to showing respect. That is not to reach a presumption that such a complaint would be upheld. It would depend very much on the circumstances.



3.2 The Monitoring Officer would be interested in hearing the Standards Committee's views on this point and whether, in their opinion, such matters should be specifically included, excluded or left to judgment in any particular case. The Monitoring Officer considers that, whilst she would be happy to raise the issue with the Member concerned, a failure to reply to correspondence is not really what the Code of Conduct is aimed at. However, there will be some cases, for example, when combined with another allegation capable of being a breach of the Code, which might merit further investigation – or at the least, a local/informal resolution process.

3.3 It is open to the Standards Committee to set its own local assessment criteria – to be found on page 283 of the Constitution. If Members reach the view that a failure to reply to correspondence should not, on its own, amount to a breach of the Code of Conduct, they could look to express this in the criteria. For example, some words could be included in 1(g), which currently reads:

“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.”

3.4 One option would be to add words to the end of 1(g), for example:

“Where the only ground for complaint is a failure to reply to correspondence, this would not normally be regarded as sufficient to amount to a breach of the code of conduct.”

**Contact for more Information:** Kathryn Tebbey, Group Manager for Legal Services and Monitoring Officer, (01884) 234210, [Monitoringofficer@middevon.gov.uk](mailto:Monitoringofficer@middevon.gov.uk)

**Circulation of the Report:**

**List of Background Papers:**

This page is intentionally left blank

## **Protocol on Member/Officer Relations**

### **11.0 Members' access to documents and information**

- 11.1 This part of the protocol should be read in conjunction with the Access to Information Rules in the Council's constitution.
- 11.2 Members may request senior officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as members. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:-
- it is in the public domain; and
  - it is not barred by the Data Protection Act from being given.
- 11.3 All Members will receive agendas and documents for the Committees that they are on. Members may also have access to documents for committees they are not on provided:-
- he/she can demonstrate a reasonable need to see the documents in order to carry out his/her roles as a member (the "need to know" principle); and
  - the documents do not contain "confidential" or "exempt" information as defined by the law.
- 11.4 Disputes as the validity of a member's request to see a document on a need to know basis will be determined by the Monitoring Officer. Officers should seek his/her advice if in any doubt about the reasonableness of a member's request.
- 11.5 A member should obtain advice from the Monitoring Officer in circumstances where he/she wishes to have access to documents or information:-
- where to do so is likely to be in breach of the Data Protection Act;
  - where the subject matter is one in which he/she has a pecuniary or personal interest as defined in the members' code of conduct; or
  - where it is specified that the matter is "confidential" or "exempt".
- 11.6 Information given to a member must only be used for the purpose for which it was requested.
- 11.7 It is an accepted convention that a member of one party group will not have a need to know and, therefore, a right to inspect a document which forms part of the internal workings of another party group.
- 11.8 Members and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so.
- 11.9 When requested to do so, officers will keep confidential from other members advice requested by a member.

- 11.10 Where an item is discussed that is Part Two (i.e. excludes the press and public) Members must ensure that they do not share the confidential information with anyone outside of the Council Chamber, until otherwise directed by the Chief Executive or Head of Service.
- 11.11 Members and officers must not prevent another person from gaining access to information to which that person is entitled by law.

## **12.0 Media Relations**

- 12.1 All formal relations with the media must be conducted in accordance with the Council's agreed procedures and the law on local authority publicity.
- 12.2 Press releases or statements made by officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.
- 12.3 Officers will keep relevant members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
- 12.4 Before responding to enquiries from the media, officers shall ensure they are authorised to do so.
- 12.5 Likewise, officers will inform the Council's public relations co-ordinator of issues likely to be of media interest, since that officer is often the media's first point of contact.
- 12.6 If a member is contacted by, or contacts, the media on an issue, he/she should:-
- indicate in what capacity he/she is speaking (eg as ward member, in a personal capacity, as Cabinet member, as Chairman of Policy Development Group, as committee chairman, on behalf of the Council, or on behalf of a party group);
  - be sure of what he/she wants to say or not to say;
  - if necessary, and always when he/she would like a press release to be issued, seek assistance from the Council's public relations co-ordinator and/or relevant senior officer, except in relation to a statement which is party political in nature;
  - consider the likely consequences for the Council of his/her statement (eg commitment to a particular course of action, image, allegations of jumping to conclusions);
  - never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;
  - consider whether to consult other relevant members: and
  - take particular care in what he/she says in run up to local or national elections to avoid giving the impression of electioneering, unless he/she has been contacted as an election candidate or political party activist.
- 12.7 If a Member or officer shares information with the media that is confidential they will be subject to further action under the code of conduct or disciplinary procedure.

## **13.0 Correspondence**

- 13.1 Correspondence between an individual member and an officer or member should not be copied to another member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, ie there should be no “blind” copies.
- 13.2 Official letters written on behalf of the Council should normally be in the name of the relevant officer. It may be appropriate in some circumstances (eg representations to a Government Minister) for letters to appear in the name of an Cabinet member, a Chairman of a Policy Development Group or the chairman of the Scrutiny Committee or Audit Committee.
- 13.3 The Chairman may initiate correspondence in his/her own name.
- 13.4 Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a member.
- 13.5 When writing in an individual capacity as a ward member, a member must make clear the fact.

This page is intentionally left blank