

## CODE OF CONDUCT FOR COUNCILLORS AND CO-OPTED MEMBERS

### 1. Introduction and Interpretation

- 1.1 This Code came into effect on 5 July 2012 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	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (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.

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 As a Councillor or Co-opted Member of the Council you must avoid participating in any decision where you could reasonably be seen as having an interest which compromised your honesty or objectivity. Equally you should avoid any action which might reasonably lead others to conclude that you were not acting selflessly or with integrity. In order to assist with this and to promote openness and accountability, 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:

<http://www.mendip.gov.uk/contactacouncillor>

- 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 .....COUNCIL AND THE .....POLICE**

### **INVESTIGATIONS AND OFFENCES UNDER LOCALISM ACT 2011 SECTION 34**

#### **Introduction**

1. This protocol applies in the..... 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	<b>Receipt of report of possible offence</b>	<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"> <li>• Political rival or associate of the named suspect.</li> <li>• Employee of council reporting direct to police as a 'whistleblower'.</li> <li>• 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.</li> <li>• From a member of the public reporting as an offence of 'corruption' or misconduct in public office.</li> <li>• From members of the press by enquiry to the Police Media office.</li> <li>• Person who feels aggrieved at a recent decision of the council or councillor concerned.</li> </ul> <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 following types:-</p> <ul style="list-style-type: none"> <li>• Corruption.</li> <li>• Fraud by abuse of position of Trust.</li> <li>• Bribery.</li> <li>• Misconduct in Public Office.</li> <li>• Breach of codes of conduct (in public office).</li> </ul>

		<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	<b>Legal jurisdiction criteria test</b>	<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"> <li>(a) Did the alleged conduct occur before the adoption of the Code of Conduct?</li> <li>(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?</li> <li>(c) Was the person complained of acting in an official capacity at the time of the alleged conduct?</li> <li>(d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?</li> <li>(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?</li> <li>(f) The complaint is about dissatisfaction with the District or Parish Council's decisions, policies and priorities</li> </ul> <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	<b>Creation of Storm Record</b>	<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"> <li>• Name and address and contact details of complainant / informant.</li> <li>• Name and address of suspect – if known.</li> <li>• Grounds for complaint – i.e. what interest has the suspect not declared and at which council meeting?</li> </ul>
4	<b>Assessment and Allocation</b>	<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><b>Investigating Officer contacts Monitoring Officer</b></p> <p><b>Initial investigative review by Crime Supervisor/Investigative Officer</b></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. (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"> <li>• Request that register of interests is checked and minutes of relevant meeting are made available or be sign posted to their whereabouts.</li> </ul>

		<ul style="list-style-type: none"> <li>• Inquire whether the named suspect been the subject of similar complaints in the past?</li> <li>• Inquire whether the named informant been the subject of similar complaints in the past?</li> <li>• Ask for any other relevant material or intelligence on the offence, the suspects and witnesses involved or the circumstances surrounding it.</li> <li>• Ask for any other information relating to the 'personal interest' complained of that is held by the council.</li> <li>• 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.</li> <li>• 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.</li> </ul> <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> <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"> <li>• What circumstances were reported to the Monitoring Officer/Independent Person regarding this offence?</li> </ul>
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		<ul style="list-style-type: none"> <li>• What complaints have been received against the named suspect to this offence historically and from whom?</li> <li>• If not reported to the police, what was the basis of this decision? Where is this decision and rationale recorded?</li> <li>• What explanation was given in any previous complaint against the suspect by either the suspect themselves or any other person?</li> <li>• What other complaints have been received from or against the complainant in this case and how were these dealt with?</li> <li>• 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</li> </ul> <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"> <li>• Register of interests that relate to the matter under investigation.</li> <li>• The suspect's entries on that register both current and historic.</li> <li>• 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.</li> <li>• Where relevant, the minutes of the meetings where the interest was not declared.</li> <li>• Names and contact details and role of persons present at the meeting (s) concerned</li> <li>• Specific records made at the meeting by the secretary or clerk to the meeting</li> <li>• (Some meetings in some councils are video recorded and copies of these should be requested and preserved).</li> <li>• Any publicised minutes or sanctioned record of the meetings concerned.</li> </ul> <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>
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	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Any emails, messages or communications or other correspondence received or sent by the suspect during the relevant period of the offence.</li> <li>• Any emails, messages or communications or other correspondence received or sent by the complainant during the relevant period of the offence.</li> </ul> <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 subsection 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> <p><b>Other material to be sought with respect to the disclosable interest</b></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"> <li>• 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).</li> <li>• HMRC checks for declared earnings under PAYE VAT return for the relevant period.</li> <li>• Public, open source (E.g. Google) checks and local media websites and 'blogs'.</li> <li>• Police data and intelligence sources including PNC, PND etc.</li> </ul>
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		<ul style="list-style-type: none"> <li>• Council voters checks on appropriate addresses and persons.</li> <li>• Council tax records for occupancy held on appropriate addresses and persons.</li> <li>• Checks via area Financial Investigator on the subject and the disclosable interest under investigation</li> <li>• Any other check that the investigating officer believes is relevant to the investigation.</li> </ul>
6.	<b>Response to potential evidence of wider criminal activity</b>	<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"> <li>• 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.</li> <li>• The suspect has been the subject of similar complaints to either police or council in the past from different complainants.</li> <li>• There are substantial complicating factors in the investigation that require detailed investigation.</li> </ul> <p>Possible examples are as follows:-</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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)</li> <li>• There is a political element to either the nature, the substance of the complaint, the</li> </ul>

		<p>suspect or the informant that relates to an important public interest or local issue being promoted by one or more registered political parties.</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• The circumstances of the allegation constitute a substantial crime of:- <ul style="list-style-type: none"> <li>○ Bribery as defined in the Bribery Act 2010,</li> <li>○ Misconduct in public office at common law</li> <li>○ Fraud by abuse of position of trust contrary to the Fraud Act 2006.</li> </ul> </li> <li>• 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:- <ul style="list-style-type: none"> <li>○ Risk of a 'Critical Incident'</li> <li>○ Cross border criminality with a National or international context.</li> <li>○ 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.</li> <li>○ There exists substantial and relevant sensitive information relating to the offence.</li> <li>○ There is a serious risk of prejudice to an important public interest.</li> <li>○ 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.</li> </ul> </li> </ul> <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>
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		<p>Where an investigating officer identifies a more serious notifiable offence (eg. 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. (eg. 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	<b>Internal notifications</b>	<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	<b>Disposal</b>	<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</p>

		<p>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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## EXECUTION CLAUSES

**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 executive 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.

**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. There is no right of appeal against the Monitoring Officer's decision.



## **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. 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. There is no right of appeal against the Monitoring Officer's decision.

**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 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 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. There is no right of appeal against the Monitoring Officer's decision.

- 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 Appendix 8 to these Arrangements.

## 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.

### 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) Somerset County 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.

## INDEPENDENT PERSON PROTOCOL

This Protocol sets out the expected conduct of ..... 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.

## PROTOCOL RELATING TO INDEPENDENT PERSONS

### 1. Introduction

- 1.1 This Protocol sets out the relationships between the Independent Persons (IP's) and the various parts of the Council involved in the process of handling Code of Conduct complaints and the wider promotion of Standards. Its aim is to ensure that responsibility is clear at each stage of the process and to set out the expectations and rights of the IP's.
- 1.2 It is written with the following assumptions:-
  - a) Each of the IP's has an equal right to give his/her views when requested by the Monitoring Officer (MO), the Standards Committee or a subject Councillor with respect to any particular complaint or hearing except where, for any reason, they are deemed by the MO to have a conflict of interest. In such a situation the IP will withdraw from involvement.
  - b) The MO is solely responsible for taking decisions on whether or not any further action should be taken with regard to a complaint or an investigation.
  - c) The MO will consult each IP on allegations which appear to show a potential breach of the Code of Conduct before reaching a decision. The relevant details will be sent by email and also by post. However should one of the IP's be unavailable or fail to respond to the MO within 15 working days of the date of the email request the MO will be entitled to proceed once the views of the available IP have been given.
  - d) As required by the Localism Act 2011 the local arrangements permit the subject Councillor to have access to each of the IP's. Any such access is restricted to postal or email contact only and there is no right for the subject councillor to meet either of the IP's. If an IP is contacted by a subject councillor a written record of the discussion will be kept and this will be forwarded to the MO.

### 2. Considering written allegations

- 2.1 Save as otherwise referred to above the MO will seek the views of each IP before reaching a decision on the action to take on a written complaint that meets the criteria for consideration as a Code of Conduct complaint.
- 2.2 When issuing the decision letter the MO will record that he has consulted each of the IP's and that their views have been taken into account.
- 2.3 Where the views of the MO and the IP differ the MO will record the reasons for the difference of opinion and explain them in writing to the relevant IP. The letter to the complainant and subject Councillor will make clear that it is the MO, and not the IP, who is the decision maker.



- 2.4 As indicated above, a Councillor who is the subject of a complaint is entitled to seek the views of each of the IP's. For this purpose the only contact details of the IP's that will be offered to the subject Councillor are their postal and email addresses. When the IP's views are sought in this way they will not advise the subject councillor on the merits of either the complaint or the alleged conduct and they will refer the subject councillor to the MO should any procedural queries be made. The IP's will inform the subject councillor that their role is a statutory one and that they are part of the overall process in order to ensure that it is fairly applied on both sides.
- 2.5 When an IP is approached by a subject Councillor for his/her views the IP will make clear that it is not his/her role to advise the subject councillor on either matters of procedure (which should be referred to the MO) or the likelihood of the Code of Conduct having been breached (which is a matter upon which the subject Councillor must seek their own advice). The IP should make a written record of any views which he/she gives to a subject Councillor and forward them to the MO to be kept on file.
- 2.6 Save in exceptional circumstances, which will be agreed between the MO and the IP's, meetings between the subject Councillor and either or both of the IP's shall not take place.

### **3. Matters under Investigation**

- 3.1 The MO may consult each of the IP's at any stage during the process including on matters which relate to the procedures for handling complaints.
- 3.2 When an investigation has been concluded and a final report submitted to the MO by the Investigating Officer its contents will be shared with each of the IP's and their views sought on the appropriate course of action for the MO to take. Where the view of the MO and either of the IP's differ the MO will make a record of the reasons for the difference of opinion and notify them to the relevant IP. The letter to the subject Councillor and the complainant will make clear that the MO has taken the relevant decision but that the views of the IP's have been taken into account.
- 3.3 Where the MO has referred a matter to the Standards Committee for hearing and determination the Committee must seek the views of each of the IP's before reaching its conclusions. The IP's will be invited to the Committee as observers and invited to give their views prior to determination. Should either of the IP's be unavailable to attend the Committee meeting his/her views will be requested in writing and made available to members of the Committee at the appropriate time. The Clerk to the Committee will record each of the IP's views in the committee minutes and where the Committee's decision does not reflect the IP's viewpoint the decision notice will make this clear and give reasons for not doing so. It will also make clear that it is the Committee and not the IP who is the decision maker.

3.4 The IP's should not make any comments to the media. Any requests made to an IP for comments from the media shall be referred in the first instance to the MO who may refer these to the Chairman of the Standards Committee and/or the Council's Communications officer as appropriate.

3.5 The IP may be requested by the MO or Standards Committee to assist in any training on code of conduct issues as appropriate.

#### **4. Relationship with the Standards Committee**

4.1 Each of the IP's shall receive agendas and minutes of all meetings of the Standards Committee and shall be entitled to request items to be included on the agenda with the agreement of the Chairman. The IP's can attend meetings as observers and, with the permission of the Chairman the IP may speak to the Committee.

4.2 The IP's are not members of the Standards Committee and therefore are not part of the formal business of the meeting and cannot vote on any matters put to the meeting. They may be invited to observe confidential matters with the agreement of the Chairman.

#### **5. Other Matters**

5.1 An IP has the right to raise any concerns about Standards issues or implementation of the complaints process with the Council's Chief Executive or the MO. He/she also has the right to address a meeting of the Full Council about any concerns.

5.2 The Council, through the Standards Committee and MO, is responsible for ensuring that the Council meets its duty to promote and maintain high standards of conduct by Councillors. However, an IP has the right to be consulted on any proposed changes to the Code of Conduct or to the Arrangements for dealing with complaints of Councillor Misconduct.

5.3 An IP has the right of access to any confidential information which he/she requires to carry out his/her role effectively. The MO will agree with the IP how they can access such information and how it should be stored.

5.4 The MO will meet with the IP's to review relevant matters once a quarter and more frequently should the need arise.

5.5 Each of the IP's will declare to the MO any relevant interests in relation to particular matters and the MO will decide whether the interest conflicts the IP out of involvement with that particular matter.

5.6 The IP is considered to be an office holder of the Authority in accordance with the duty under Section 28(7) of the Localism Act 2011 and is therefore entitled to be covered by the Council's Indemnity Insurance provided he/she acts reasonably and within the terms of this Protocol.

## 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.

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

<b>Signature</b> (Councillor)	
<b>Date</b>	
<b>Signature</b> (Monitoring Officer)	
<b>Date</b>	

NB: This form will be retained by the Monitoring Officer

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

### GUIDANCE NOTES FOR PARISHES

Every elected, re-elected or co-opted Member of Mendip District Council or a Town or Parish Council within Mendip 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><b><u>Employment</u>, office, trade, profession or vocation carried out for profit or gain.</b></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><b><u>Sponsorship</u> received in respect of carrying out duties as a member of my Council area, or towards my election expenses</b></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"> <li>• This would usually mean a political party at election time and</li> <li>• This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</li> </ul> <p>You do <b>not</b> need to include payments or Members' allowances from your Parish/Town Council.</p>
<p><b>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</b></p> <p><b>Either</b></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><b>Or</b></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 <b>not</b> 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><b><u>Contracts between myself (or body in which I have a beneficial interest) and the Council (or organisation contracted to carry out business on its behalf)</u></b></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> <p>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> <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 <b>must</b> be identified.</p>
<p><b><u>Land or property in my Council area in which I have a beneficial interest</u></b></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><b><u>Any licence (alone or jointly with others) to occupy land in my Council area for a month or longer</u></b></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><b>Any tenancy where (a) the landlord is the Council; and (b) the tenant is a body in which the relevant person has a beneficial interest</b></p>	<p>"Land" includes any buildings or parts of buildings. Please attach a map if appropriate.</p>
<p><b><u>Membership of other bodies as follows:</u></b></p> <p>(a) <b>Body to which I have been appointed or nominated by the authority as its representative;</b></p> <p>(b) <b>Public authority or body exercising functions of a public nature;</b></p> <p>(c) <b>Company, industrial and provident society, charity or body directed to charitable purposes;</b></p> <p>(d) <b>Body whose principal purposes include the influence of public opinion or policy</b></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>



<p><b><u>Disclosure of Gifts and Hospitality</u></b></p> <p><b>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.</b></p>	<p><b>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).</b></p> <p><b>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.</b></p> <p><b>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.</b></p> <p><b>Gifts received in a personal capacity do not need to be registered.</b></p>
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## 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@mendip.gov.uk](mailto:monitoringofficer@mendip.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 Avon and Somerset 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:

## 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 (ie. 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.

## 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 predetermination<sup>1</sup> 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.

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

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



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**

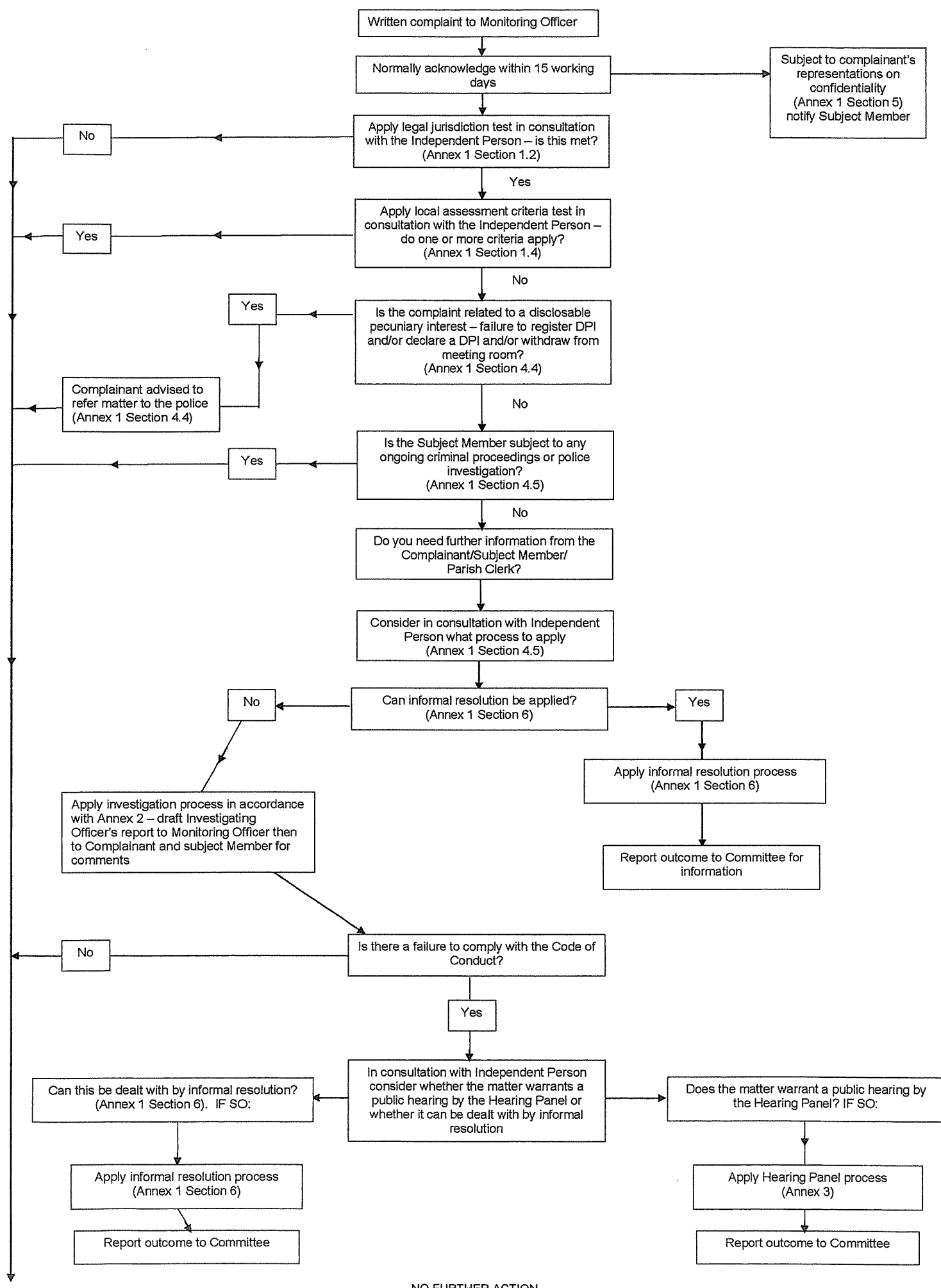
With this in mind:-

- 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.

# Procedure on Receipt of a Complaint



## 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.
- 1.5 Please contact ..... Head of Democratic Services ..... 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 ....., Head of Democratic Services. 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.

## 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. There is no right of appeal against this decision.
- 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. There is no right of appeal against this decision.

## 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;
- (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.

## **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 ....., Head of Democratic Services, telephone ..... 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 Mendip 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.