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MID DEVON DISTRICT COUNCIL

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

Present

Councillors

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

Also Present

Councillor(s)

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

Also Present

Officer(s):

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

25 **APOLOGIES AND SUBSTITUTE MEMBERS**

There were no apologies given.

26 **PUBLIC QUESTION TIME**

There were no members of the public in attendance.

27 **MINUTES**

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

28 **CHAIRMAN'S ANNOUNCEMENTS**

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

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

29 **STANDARDS REGIME - PEER REVIEW**

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

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

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

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

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

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

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

1 The Code of Conduct

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

Discussion took place regarding:

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

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

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

(Proposed by the Chairman)

2 Disclosable Pecuniary Interests

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

Discussion took place regarding:

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

It was **RECOMMENDED** that Council:

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

(Proposed by the Chairman)

3 Arrangements for Dealing with Misconduct Complaints

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

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

Discussion took place regarding:

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

It was **RECOMMENDED** that Council:

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

(Proposed by the Chairman)

4 Sanctions

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

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

It was **RECOMMENDED** to Council that:

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

(Proposed by the Chairman)

5 Appeals Against Decision

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

Discussion took place regarding:

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

It was **RECOMMENDED** that Council:

That the current appeal process be reviewed.

(Proposed by the chairman)

6 Independent Person(s)

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

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

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

It was **RECOMMENDED** that Council:

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

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

(Proposed by the Chairman)

7 The Register of Councillors Interests

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

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

Discussion took place regarding:

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

It was **RECOMMENDED** that Council:

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

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

(Proposed by the Chairman)

8 Procedure when Disclosable Pecuniary Interests Arise

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

It was **RECOMMENDED** that Council:

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

(Proposed by Chairman)

9 Dispensations

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

It was **RECOMMENDED** that Council:

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

(Proposed by the Chairman)

10 Bias and Predetermination

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

It was **RECOMMENDED** to Council that:

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

(Proposed by the Chairman)

11 Other Matters Arising as a result of the Review

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

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

(Proposed by the Chairman)

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

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

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

Standards Action Sheet from Minute 29

30 COMPLAINTS (1:51:51)

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

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

Four new complaints had been received that day.

31 IDENTIFICATION OF ITEMS FOR THE NEXT MEETING

(The meeting ended at 7.55 pm)

CHAIRMAN

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Minute Annex

Standards Committee 25 January 2017 RECOMMENDATIONS to Council

To be Approved

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

Work to be Progressed

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

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

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

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

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