



DEVON & SOMERSET FIRE & RESCUE AUTHORITY

M. Pearson
CLERK TO THE AUTHORITY

To: **The Members of the Determinations and
Dispensations Committee**

(see below)

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DETERMINATIONS AND DISPENSATIONS COMMITTEE

Monday, 9 April, 2018

A meeting of the Determinations and Dispensations Committee will be held on the above date, **commencing at 2.00 pm in Conference Room B, Service Headquarters** to consider the following matters.

M. Pearson
Clerk to the Authority

AGENDA

PLEASE REFER TO THE NOTES AT THE END OF THE AGENDA LISTING SHEETS

- 1 Election of Chair**
- 2 Apologies**
- 3 Minutes (Pages 1 - 6)**
of the previous meeting held on 28 November 2016 attached.
- 4 Items Requiring Urgent Attention**
Items which, in the opinion of the Chair, should be considered at the meeting as matters of urgency.
- 5 PART 1 - OPEN COMMITTEE**
- 6 Review of Current Standards Arrangements (Pages 7 - 38)**
Report of the Director of Corporate Services (Clerk to the Authority) (DDC/18/1) attached.
- 7 Consultation on Review of Local Government Ethical Standards (Pages 39 - 46)**
Report of the Director of Corporate Services (Clerk to the Authority) (DDC/18/2) attached.

MEMBERS ARE REQUESTED TO SIGN THE ATTENDANCE REGISTER

Membership:-

Councillors Bown, Coles, Ellery, Redman and Thomas

NOTES

1.	<u>Access to Information</u> Any person wishing to inspect any minutes, reports or lists of background papers relating to any item on this agenda should contact the person listed in the "Please ask for" section at the top of this agenda.
2.	<u>Reporting of Meetings</u> Any person attending a meeting may report (film, photograph or make an audio recording) on any part of the meeting which is open to the public – unless there is good reason not to do so, as directed by the Chairman - and use any communication method, including the internet and social media (Facebook, Twitter etc.), to publish, post or otherwise share the report. The Authority accepts no liability for the content or accuracy of any such report, which should not be construed as representing the official, Authority record of the meeting. Similarly, any views expressed in such reports should not be interpreted as representing the views of the Authority. Flash photography is not permitted and any filming must be done as unobtrusively as possible from a single fixed position without the use of any additional lighting; focusing only on those actively participating in the meeting and having regard also to the wishes of any member of the public present who may not wish to be filmed. As a matter of courtesy, anyone wishing to film proceedings is asked to advise the Chairman or the Democratic Services Officer in attendance so that all those present may be made aware that is happening.
3.	<u>Declarations of Interests (Authority Members only)</u>
	(a). <u>Disclosable Pecuniary Interests</u> If you have any disclosable pecuniary interests (as defined by Regulations) in any item(s) to be considered at this meeting then, unless you have previously obtained a dispensation from the Authority's Monitoring Officer, you must: <ul style="list-style-type: none">(i). disclose any such interest at the time of commencement of consideration of the item in which you have the interest or, if later, as soon as it becomes apparent to you that you have such an interest;(ii). leave the meeting room during consideration of the item in which you have such an interest, taking no part in any discussion or decision thereon; and(iii). not seek to influence improperly any decision on the matter in which you have such an interest. If the interest is sensitive (as agreed with the Monitoring Officer), you need not disclose the nature of the interest but merely that you have a disclosable pecuniary interest of a sensitive nature. You must still follow (ii) and (iii) above.
	(b). <u>Other (Personal) Interests</u> Where you have a personal (i.e. other than a disclosable pecuniary) interest in any matter to be considered at this meeting then you must declare that interest no later than the commencement of the consideration of the matter in which you have that interest, or (if later) the time at which the interest becomes apparent to you. If the interest is sensitive (as agreed with the Monitoring Officer), you need not disclose the precise nature of the interest but merely declare that you have a personal interest of a sensitive nature. If the interest is such that it might reasonably be perceived as causing a conflict with discharging your duties as an Authority Member then, unless you have previously obtained a dispensation from the Authority's Monitoring Officer, you must not seek to improperly influence any decision on the matter and as such may wish to leave the meeting while it is being considered. In any event, you must comply with any reasonable restrictions the Authority may place on your involvement with the matter in which you have the personal interest.
4.	<u>Part 2 Reports</u> Members are reminded that any Part 2 reports as circulated with the agenda for this meeting contain exempt information and should therefore be treated accordingly. They should not be disclosed or passed on to any other person(s). Members are also reminded of the need to dispose of such reports carefully and are therefore invited to return them to the Committee Secretary at the conclusion of the meeting for disposal.
5.	<u>Substitute Members (Committee Meetings only)</u> Members are reminded that, in accordance with Standing Order 35, the Clerk (or his representative) must be advised of any substitution prior to the start of the meeting. Members are also reminded that substitutions are not permitted for full Authority meetings.

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DETERMINATIONS AND DISPENSATIONS COMMITTEE (Devon & Somerset Fire & Rescue Authority)

28 November 2016

Present:-

Councillors Bown, Coles, Edmunds, Julian and Randall Johnson.

* **DDC/1** **Election of Chair**

RESOLVED that Councillor Randall Johnson be elected Chair for the meeting.

* **DDC/2** **Exclusion of the Press and Public**

RESOLVED that, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in the following Paragraph(s) of Part 1 of Schedule 12A (as amended) to the Act:

- Paragraph 1 (information relating to an individual);
- Paragraph 2 (information likely to reveal the identity of an individual); and
- Paragraph 3 (information relating to the financial and business affairs of any particular person [including the authority holding that information]).

* **DDC/3** **Allegation of Breach of Member Code of Conduct - Councillor Mark Healey**

(An item taken in accordance with Section 100A(4) of the Local Government Act 1972 during which the press and public were excluded from the meeting).

The Committee conducted a hearing into allegations that Councillor Mark Healey had failed to comply with the Authority's approved Members' Code of Conduct ("the Code"). The Committee conducted the hearing in two stages, the first to determine "findings of fact" as to whether or not, on the balance of probabilities, the alleged breaches of the Code had been established. The second stage dealt with the imposition of sanctions – including hearing submissions in mitigation - in the event that breaches of the Code were found to have been established.

STAGE 1 – FINDINGS AS TO FACT

During this stage the Committee:

- considered a report of the Director of Corporate Services (Monitoring Officer) DDC/16/1) to which was appended:
 - a report of the external Investigating Officer summarising the investigation findings into the alleged breaches of the Code;
 - a copy of the Committee's Terms of Reference (which featured, amongst other things, sanctions available to the Committee in the event of a breach of the Code being established);
 - the Authority's approved Members' Code of Conduct; and
 - Guidance on Making a Complaint

- considered a written submission of Councillor Healey circulated with the agenda for the meeting together with a supplementary submission circulated subsequently;
- received presentations from both the Investigating Officer and Councillor Healey; and
- received evidence from two witnesses - Witness A and Witness B - as to fact.

The Investigating Officer, Councillor Healey and Witnesses A and B were also questioned in some depth on their submissions by each of the Committee Members and the Independent Person.

The report of the Investigating Officer detailed that relevant legislation to the investigation included Chapter 7 of Part 1 of the Localism Act and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The investigation itself had been conducted in accordance with guidance previously prepared by Standards for England and which had been judicially tested. The Investigating Officer had concluded at the outset of the investigation that, at all relevant times outlined in the complaint, Councillor Healey was acting in his official capacity as a Member of the Authority and as such was bound by the Code.

The alleged breaches of the Code focussed on the following specific aspects:

Point 1(a) - has there been a failure on behalf of Councillor Healey to register and declare a disclosable pecuniary interest in Firemark Education Community Interest Company (CIC)?

The Investigating Officer's report on this aspect detailed that Councillor Healey took no remuneration for his work with Firemark Education CIC and received nothing other than actual expenses. On this basis, the Investigating Officer did not consider that a disclosable pecuniary interest existed and flowing from this there could be no breach of the Code in terms of failure to register or declare any such disclosable pecuniary interest. This was accepted by the Committee.

Point 1(b) – has there been a further failure to register an interest other than a disclosable pecuniary interest?

Paragraphs 1.3(f) and 2.2 of the Code required the registration and declaration of any private interests which might create a conflict of interest, contrary to the public interest, in carrying out duties as an Authority Member.

The report of the Investigating Officer detailed that, while Councillor Healey did not have a disclosable pecuniary interest relating to his involvement with Firemark Education CIC, the sponsorship received by the CIC from several organisations had the potential to create conflicts of interest contrary to the Code and as such should have been, but had not been at the time of the investigation, included in Councillor Healey's Register of Interests.

As part of his submissions, Councillor Healey acknowledged that his involvement with Firemark Education CIC, together with details of companies sponsoring the CIC, should have been included in his Register of Interests from the outset and apologised for not having done so. Councillor Healey indicated that his failure to include this in his Register of Interests was not deliberate but a genuine oversight, that he had never sought to conceal his involvement and that he considered this to be common knowledge both locally and nationally. Since the investigation, and prior to this hearing, however, Councillor Healey had amended his published Register of Interests to include details of his involvement with Firemark Education CIC and the companies sponsoring Firemark.

Point 2 – has there been a failure on the part of Councillor Healey to have acted in accordance with the Code with regards to matters that may have benefitted a person with whom Councillor Healey has a close association?

The Code required, at paragraph 1.3(a) and 4.2(a), that a Member should not use their position in such a way as to confer an advantage or disadvantage on a person. This particular allegation was that Councillor Healey had a close association with an individual (Witness A) and that this relationship would benefit Witness B in their associated business interests.

The Committee considered the submissions of both the Investigating Officer and Councillor Healey in this respect and also had the opportunity to hear from and question Witness A.

It was acknowledged by both Councillor Healey and Witness A that they had an association. This had developed over time as a result of involvement by both in various aspects, both locally and nationally, of the fire and rescue sector. Witness A did not consider, however, that this association had benefitted them in terms of their business interests and refuted strongly any allegation that this might be the case and that questioning the personal and professional integrity of both Witness A and Councillor Healey in this respect was both unwarranted and illogical.

The Committee considered that the evidence as presented, while it confirmed the close association between Councillor Healey and Witness A, did not indicate in any sense that Witness A, either personally or through any business interests, had benefitted from this close association – particularly given the relative sizes of the businesses with which Councillor Healey and Witness A were associated.

Point 3 – has Councillor Healey disclosed information given to him in confidence?

The allegation here was that Councillor Healey, contrary to paragraph 4.2(f) of the Code, disclosed information to a third party on an initiative which Red One Ltd. was seeking to progress when he knew or should reasonably have believed the information was of a confidential nature and when he did not have the consent of Red One Ltd. to so disclose the information.

The evidence as presented to the Committee referred to a number of e-mails and to minutes of a Red One Board meeting which detailed, amongst other things, that Councillor Healey should not raise the matter with the third party. The Investigating Officer's report and presentation to the Committee also indicated that Councillor Healey had other avenues available to him on this particular issue that would not have required any form of communication with the third party.

For his part, Councillor Healey stated that the Board of Red One Ltd. had been informed at a meeting that the third party was seeking to "block" an initiative currently being pursued by Red One Ltd. Councillor Healey asserted that he was acting in the best interests of Red One Ltd. in seeking to obtain confirmation from the third party as to whether or not this was the case and that – if it were the case – what the reasons might be and whether any way forward might exist. Further, Councillor Healey made the point that – if the third party was indeed blocking the initiative as he had been led to believe at a Red One Ltd. Board meeting – then the third party must already have been aware of the Red One Ltd. initiative meaning that Councillor Healey could not possibly have disclosed "confidential" information or information that had not already been obtained by the third party but from another source.

In giving evidence to the Committee, Witness B confirmed that they had been present at the same Red One Ltd. Board Meeting when the allegation of the third party blocking the initiative had been raised. Witness A had also commented that the nature of the information – relating to accreditation – was of itself not confidential.

Notwithstanding this, the Committee noted that:

- the minutes of the Red One Board meeting clearly indicated that Councillor Healey should not raise this matter directly with the third party;
- that the report of the Investigating Officer and his presentation to the meeting indicated that other avenues existed to Councillor Healey to ascertain the accuracy of the allegation made at the Red One Ltd. Board meeting;
- that Councillor Healey had not denied that he had raised the matter with the third party and when doing so had been accompanied by Witness B.

The Committee concluded that, on the balance of probabilities, Councillor Healey had divulged certain information to the third party in circumstances when he was not so authorised to do so.

Having considered the findings of fact in relation to each of the allegations, the Committee:

RESOLVED that, in light of the evidence as considered at the hearing and on the balance of probabilities, Councillor Healey:

- (a). had breached paragraph 1.3(f) of the Code by not included on his published Register of Interests, at the time of the investigation, a personal (albeit non-pecuniary) interest that might be perceived as giving rise to conflicts contrary to the public interest;
- (b). had not breached the Code with regard to matters which may have benefitted a person with whom he had a close association and which would have been contrary to paragraphs 1.3(a) and 4.2(a) of the Code; and
- (c). had breached paragraph 4.2(f) of the Code by having disclosed to a third party information which he believed or ought reasonably to have been aware of was confidential and where he was not authorised to so disclose such information.

STAGE 2 - MITIGATION

Having established breaches of the Code (see (a) and (c) above) as findings of fact on the balance of probabilities, the Committee then went on to consider submissions in mitigation in relation to the imposition of any potential sanctions to the breaches.

The Committee had previously heard from Councillor Healey that he had now included personal interests relating to Firemark Education CIC and sponsors of that company in his published Register of Interests.

The Committee also noted the comments of Councillor Healey and Witness A as to the nature of the information disclosed to a third party without the consent of the Board of Red One Ltd.

The Committee also received a submission as to the character of Councillor Healey from Witness C. Witness C considered Councillor Healey to be a person of utmost integrity who espoused the principles of public life and worked tirelessly both locally and nationally to promote fire safety generally and specifically the best interests of both the Devon & Somerset Fire & Rescue Authority and Red One Ltd. (the commercial trading arm of the Authority). Councillor Healey had recently been awarded the Member of the Order of the British Empire in recognition of his endeavours.

Witness C felt that Councillor Healey's general business acumen and connections with the fire and rescue service both locally and nationally added considerable benefit and value to the Authority and Red One Ltd. and contributed positively to the ability of both the Authority and Red One Ltd. to realise their goals and ambitions. As a corollary to this, Witness C considered that – were Councillor Healey not to be involved with either the Authority or Red One Ltd. – this would be detrimental to both organisations.

The Committee was also cognisant of the views of the Investigating Officer on the potential number of conflicts faced by Councillor Healey and – given these – the ability of Councillor Healey to manage these appropriately. The Committee accepted the mitigation offered by Witness C as to the significant integrity of Councillor Healey (as evidenced by his willingness to co-operate both with the investigation, this hearing and in relation to addressing - prior to the hearing - the first Code breach) and light of this considered that – with appropriate training - there was no reason to assume that Councillor Healey would not be equipped to manage potential conflicts at both Authority and Board level. Also, the Committee considered the contributions Councillor Healey afforded to Red One Ltd. by virtue of his national contacts far outweighed the arrangements that would need to be put in place to assist Councillor Healey in managing any conflicts of interest. Consequently, the Committee felt there was no reason for the Authority to consider imposing any further sanctions other than the requirement for Councillor Healey to receive training on the handling of confidential information and the implications and limitations associated with Non-Disclosure Agreements.

The Committee found these submissions to be both credible and persuasive and consequently, in determining appropriate sanctions in consultation with the Independent Person,

RESOLVED

- (a). that, in relation to the breach of the Code on failure to register a personal interest, given Councillor Healey had, following the investigation but prior to the hearing:
 - (i). amended his published Register of Interests to include those interests that were the subject of the complaint;
 - (ii). held several discussions with the Authority's Monitoring Officer on the requirement to and importance of declaring all relevant interests; and
 - (iii). voluntarily entered onto his Register, in accordance with the required timescales, further interests that had arisen post- the investigation but prior to the hearing;
- no further action was required; and

- (b). that, in relation to the breach of the Code on disclosure of information in circumstances where Councillor Healey was not authorised to do so, Councillor Healey should receive training (to be arranged by the Monitoring Officer) both in the appropriate handling of confidential information and in Non-Disclosure Agreements (NDAs).

DDC/4 General Recommendations to the Authority

(An item taken in accordance with Section 100A(4) of the Local Government Act 1972 during which the press and public were excluded from the meeting).

Having dealt specifically with the allegations into breaches of the Code of Conduct by Councillor Healey, the Committee then went on to consider whether – arising from the investigation and hearing – any general recommendations should be made to the Authority. The Committee

RESOLVED that the Authority be recommended to approve:

- (a). the undertaking of a review of the Code of Conduct by this Committee, in consultation with the Independent Person, to ensure compliance with current best practice; and
- (b). that, upon adoption of any revised Code, the provision of training to all Authority Members on the revised Code in general and on the registration and declaration of interests in particular.

***DENOTES DELEGATED MATTER WITH POWER TO ACT**

The Meeting started at 12.30 pm and finished at 5.45 pm

Agenda Item 6

REPORT REFERENCE NO.	DDC/18/1
MEETING	DETERMINATIONS AND DISPENSATIONS COMMITTEE
DATE OF MEETING	9 APRIL 2018
SUBJECT OF REPORT	REVIEW OF CURRENT STANDARDS ARRANGEMENTS
LEAD OFFICER	Director of Corporate Services (Clerk to the Authority)
RECOMMENDATIONS	<p><i>That the Committee review, with a view to recommending to the Authority approval of:</i></p> <ul style="list-style-type: none"> <i>(a). the revised Members Code of Conduct as contained at Appendix A to this report;</i> <i>(b). the revised form for Declaration of Members' Registerable Interests, as set out at Appendix B;</i> <i>(c). the revised Guide to Making a Complaint, as set out at Appendix C (with the Director of Corporate Services [Clerk to the Authority] authorised to make any consequential changes stemming from approval of [d] below);</i> <i>(d). the renaming of this Committee to the Standards Committee; and</i> <i>(e). the revised Terms of Reference for the Standards Committee, as set out at Appendix D.</i>
EXECUTIVE SUMMARY	<p>In November 2016, this Committee met to consider allegations of a breach by a Member of the Authority of the existing Code of Conduct. Stemming from this meeting was a recommendation to review the Code of Conduct to ensure compliance with best practice and arrange, on adoption of any revised Code, for the provision of relevant training both on the revised Code generally and the registration and declaration of interests specifically.</p> <p>While the review has not progressed as rapidly as might otherwise have been the case, it has now been completed. Accordingly, a revised Code of Practice, together with associated Declaration of Interests form and Guidance on Making a Complaint, are now attached to this report for consideration with a view to recommending to the Authority for approval.</p> <p>Additionally, as a result of undertaking the review, revised Terms of Reference are now proposed along with a recommendation to consider amending the name of this Committee to the Standards Committee (for transparency purposes).</p>
RESOURCE IMPLICATIONS	None.

EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	The contents of this report are considered compatible with existing equalities and human rights legislation.
APPENDICES	<ul style="list-style-type: none"> A. Proposed revised Members Code of Conduct. B. Revised Registration of Interests form. C. Revised Guidance on Making a Complaint. D. Revised Terms of Reference
LIST OF BACKGROUND PAPERS	<ul style="list-style-type: none"> A. Localism Act 2011. B. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. C. "Openness and transparency on personal interests – A guide for Councillors" issued by the Department for Communities and Local Government in September 2013. D. Report DSFRA/11/31 (Localism Act 2011) to the Authority meeting held on 16 December 2011 and the Minutes of that meeting. E. Report DSFRA/12/11 (Localism Act 2011 - New Member Conduct Provisions – appointment of independent person) to the Annual Authority Meeting held on 30 May 2012 and the Minutes of that meeting. F. Report DSFRA/12/23 (Localism Act 2011 – New Member Conduct Regime) to the Authority meeting held on 30 July 2012 and the Minutes of that meeting. G. The Local Authorities (Model Code of Conduct) Order 2007. H. Plymouth City Council Code of Conduct. I. Torbay Council Code of Conduct. J. Devon County Council Code of Conduct. K. Somerset County Council Code of Conduct. L. Avon Fire Authority Code of Conduct. M. Dorset & Wiltshire Fire & Rescue Authority Code of Conduct.

1. INTRODUCTION

- 1.1. The Localism Act 2011 (“the Act”) introduced significant changes to the previous standards regime. The requirement to adopt a Model Code of Conduct, mandated in Regulations, was abolished as was the Standards Board for England established to address complaints made under that Code. Instead, a duty was placed on all relevant authorities (including the Devon & Somerset Fire & Rescue Authority) to promote and maintain high standards of conduct by its Members and Co-opted Members. In discharging this duty, authorities are required to:
- adopt a code of conduct to be followed by its Members and Co-opted Members when acting in that capacity. The code must reflect the Nolan principles (selflessness; integrity; objectivity; accountability; openness; honesty; leadership) and contain provisions for the registration and disclosure of pecuniary and other interests;
 - put in place “arrangements” to investigate and determine allegations of breaches of the code, with the “arrangements” to feature an “independent person” (not a Member or officer of the Authority) whose views must be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.
- 1.2. The Act requires Authority Members to register and declare “disclosable pecuniary interests”, with subsequent Regulations specifying the types of disclosable pecuniary interests requiring to be registered and declared. The Act made failure to register and declare disclosable pecuniary interests an offence carrying a fine, on summary conviction, not exceeding level 5 on the standard scale (£5,000). The Act also gives flexibility for an authority to specify and adopt other, registerable interests. Finally, the Act requires the registerable interests of individual Members to be published.
- 1.3. In accordance with the provisions of the Act, the Devon & Somerset Fire & Rescue Authority at its meeting on 30 July 2012 adopted a Code of Conduct and approved arrangements for dealing with alleged breaches of this Code.
- 1.4. The Code then adopted (which remains in force to date) enshrines the seven “Nolan” principles as required by the Act and also reflects requirements contained in Regulations made under the Act relating to Disclosable Pecuniary Interests. Additionally, the Code also reflects many of the provisions contained in the former Model Code, the Authority at the time accepting the view that these were consistent with the minimum standards that should be expected of someone in public office and that consequently to move away from these would be a retrograde step.
- 1.5. The Code has remained in place since 2012 but, arising from a hearing in November 2016 on alleged breaches of the Code, has now been subject to review to ensure compliance with current best practice.

2. OUTCOME OF REVIEW

- 2.1 As indicated, other than prescribed disclosable pecuniary interests and ensuring that the contents are, when taken as a whole, consistent with the Nolan general principles of public life, the contents of Code of Conduct are a matter for each individual local authority to determine. In undertaking the review, account has been taken of:
- the contents of the previous, prescribed Model Code;
 - the requirements of the Localism Act, and any Regulations and guidance subsequently issued;

- a sample of other local authority codes (including the Codes of constituent authorities and other combined fire and rescue authorities);
- the Code of Conduct for Cornwall Council (which provides legal advice to the Authority and undertook the investigation on the alleged breach in 2016).

2.2 In the main, there was found to be a great deal of consistency in terms of the basic content of the Codes examined (perhaps unsurprising given the requirements for all Codes to be consistent with the Nolan principles and to require the registration and declaration of prescribed disclosable pecuniary interests).

2.3 The main differences tended to relate to those other interests which authorities had considered appropriate to be registered and those interests which, while not requiring registration, should nonetheless still be declared at meetings. In addressing these aspects, consideration has been given to statutory requirements, the contents of other Codes examined and guidance issued by the [then] Department for Communities and Local Government on “Openness and transparency on personal interests”. Additionally, account has been taken of the contents of the former Model Code (in so far as this defined personal interests and how these should be treated i.e. registered and/or disclosed at meetings), given that Authority was previously of the view that these were consistent with the minimum standards that should be expected of someone in public office and that to move away from these would be a retrograde step.

2.4 A proposed revised Code is now attached at Appendix A. Content-wise, the Code is broadly the same as that currently in force but following the review the opportunity has been taken to:

- clarify personal interests that should be registered to make them more consistent with the Nolan principles and with registerable, non-pecuniary interests as set out in the former Model Code;
- reflect the provisions of the former Model Code in relation to non-registerable interests;
- clarify the requirements in relation to the declaration of disclosable pecuniary, personal and non-registerable interests at meetings; and
- generally, reformat the lay-out of the Code to assist transparency and understanding.

2.5 The Committee is invited to consider the revised Code with a view to recommending its approval to the Authority. Should the revised Code be approved, it will be necessary to modify the Registration of Interests form. A draft form, reflecting the revised Code, is attached at Appendix B and – subject to its decision on the revised Code – the Committee is asked to recommend this for approval by the Authority.

3. **OTHER ISSUES**

Guidance on making a complaint

3.1 In addition to proposed revisions to the Code of Conduct and associated Registration of Interests form, the opportunity has also been taken to review and revise as appropriate the public-facing guidance on making a complaint under the Code.

3.2 Proposed revised guidance is now attached at Appendix C. The revisions proposed are:

- the inclusion of two additional criteria to feature as part of the initial assessment procedures. These are shown highlighted (under the “Other Assessment Criteria” sub-heading) and are proposed for inclusion in the interests of greater certainty and clarity and to make the process more robust, proportionate and balanced;
- inclusion of a new Section 12 setting out, for clarity purposes, courses of action that might follow if an allegation passes the initial assessment criteria.

3.3 The Committee is asked to consider the revised guidance with a view to recommending its approval to the Authority.

Name and Terms of Reference of the Committee

3.4 Finally, as part of the review the opportunity has been taken to revisit the Terms of Reference of this Committee. Suggested revised Terms of Reference, amended to more appropriately reflect the wider, statutory, requirement to promote and maintain high standards of conduct.

3.5 For similar reasons and in the interests of transparency, it is also suggested that the Committee be renamed the Standards Committee (this being the most commonly used name for committees with similar rolls in other public authorities).

3.6 The Committee is invited to consider these proposals with a view to recommending their approval to the Authority.

MIKE PEARSON

Director of Corporate Services (Clerk to the Authority)



DEVON & SOMERSET FIRE & RESCUE AUTHORITY MEMBERS' CODE OF CONDUCT

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1. INTRODUCTION – GENERAL PRINCIPLES OF PUBLIC LIFE

- 1.1 This Code has been locally developed for and adopted by the Authority in support of its duty under the Localism Act 2011 to promote and maintain high standards of conduct by Authority Members. It is your responsibility as a Member of the Authority to comply fully with this Code.
- 1.2 Underpinning the Code are the following Principles of Public Life which you must always have regard to when acting in your capacity as a Member of the Authority
- (1) **Selflessness** - you must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, a member of your family, close associate or relevant person;
 - (2) **Honesty and Integrity** – you should never place yourself in a position where your honesty and integrity might be called in question. For example, you must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
 - (3) **Objectivity** - when carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit;
 - (4) **Accountability** - you are accountable for your decisions to the public and you must co-operate fully and honestly with whatever scrutiny is appropriate to your office;
 - (5) **Openness** - you must be as open as possible about your decisions and actions and the decisions and actions of the Authority and should be prepared to give reasons for those decisions and actions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Authority or contained in its constitutional governance documents;
 - (6) **Personal Judgment** – while you may take account of the views of others (including those of any political groups to which you may belong and your appointing constituent authority), you should always reach your own conclusions on Authority issues before you and act in accordance with those conclusions;
 - (7) **Respect for Others** – you should promote equality and not discriminate against any person, treating all people with respect regardless of their race, age, religion, gender, sexual orientation or disability. You should respect the impartiality and integrity of the Authority’s statutory officers and its other employees;
 - (8) **Duty to Uphold the Law** – you should always uphold the law and on all occasions act in accordance with the trust the public is entitled to place in you
 - (9) **Stewardship** - you should do everything within your power to ensure that the Authority’s resources are used prudently and in accordance with the law;
 - (10) **Leadership** – you should lead by example when serving in your public post in promoting high standards of conduct as reflected in the above principles.

1.3 The reputation of the Authority depends on your conduct and what the public believes about your conduct. It is not enough to avoid actual impropriety, you should at all times avoid any occasion for suspicion or appearance of improper conduct. In essence, you should do nothing as a Member which you could not justify to the public.

2. DEFINITIONS

2.1 In this Code the following terms have the meanings indicated:

TERM	MEANING
<i>“close association”</i>	an affiliation, more than just a passing casual acquaintance, which a reasonable person, aware of all the facts, would consider so significant as to prejudice your ability to act in the public interest.
<i>“family”</i>	includes any relative, whether by blood or by marriage, with whom you have a close association.
<i>“disclosable pecuniary interest”, “personal interest” and “non-registerable interest”</i>	have the meanings set out in the relevant sections of this Code
<i>“meeting”</i>	any meeting of any meeting of the full Authority or any of its Committees, Sub-Committees, Working Parties etc. as may from time to time be established
<i>“member”</i>	Any Councillor appointed to serve on the Authority by one of its constituent authorities (Devon and Somerset County Councils; Plymouth City Council and Torbay Council) and also includes any person co-opted to membership of the Authority
<i>“appropriate third party”</i>	means either a qualified legal practitioner or qualified accountant.
The following definitions are derived from The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) – See Section 5(b) below	
<i>“body in which the relevant person has a beneficial interest”</i>	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
<i>“director”</i>	includes a member of the committee of management of an industrial and provident society

TERM	MEANING
"land"	excludes any easement, servitude, interest, or right 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
"relevant authority"	means the authority of which you are a member
"relevant person"	means <ul style="list-style-type: none"> • you; or • your spouse or civil partner; or • a person with whom you are living as husband and wife or as if they were civil partners and you are aware that that other person has an interest
"relevant period"	a period of 12 months ending with the date on which you notified the Monitoring Office of an interest
"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

3. APPLICATION OF THIS CODE

3.1 This Code should be read together with the preceding general principles of public life.

3.2 You must comply with this Code whenever you are acting in your official capacity as a Member of the Devon & Somerset Fire & Rescue Authority, that is when:

- (1) you are engaged on the business of the Authority; or
- (2) you behave so as to give a reasonable person the impression that you are acting as a representative of the Authority.

3.3 Where you act as a representative of this Authority:

- (1) on another authority which has a Code of Conduct, you must, when acting for that other authority, comply with that other authority's Code of Conduct; or
- (2) on any other body, you must, when acting for that other body, comply with this Code of Conduct **except in so far as** conflicts with any lawful obligations to which that other body may be subject.

3.4 In relation to your membership of other local authorities, you must ensure that you comply with the Code of Conduct in place for the authority concerned when acting in your capacity as member of that authority. Please note that your conduct may be subject to more than one Code of Conduct depending on the circumstances. Advice on this can be sought from the Monitoring Officer or Democratic Services.

4. GENERAL OBLIGATIONS

4.1 You **must** –

- (1) conduct yourself in a manner consistent with the Authority's duty to promote and maintain high standards of conduct by its Members;
- (2) treat others with courtesy and respect,
- (3) when reaching decisions on any matter:
 - (a). do so solely on the merits of the case; and
 - (b). act in the public interest; **and**
 - (c). have reasonable regard to any relevant advice provided to you by an officer of the Authority (e.g. the Chief Financial Officer and the Monitoring Officer); and
 - (d). give reasons for all decisions in accordance either with statutory requirements or any reasonable requirements consistent with serving the public interest;
- (4) have regard to statutory or other requirements relating to local authority publicity (e.g. the Local Authority Code of Publicity);
- (5) ensure you use any Authority resources in accordance with any reasonable requirements of the Authority do not use any Authority resources improperly (e.g. for purely personal or party political purposes).

4.2 You **must not** –

- (1) attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
- (2) accept any gifts or hospitality that could be seen by the public as likely to influence your judgement in relation to any matter that you deal with in your official capacity;
- (3) treat others in a way that amounts to, or which may be reasonably construed as, unlawfully discriminating against them;
- (4) bully any person (bullying may be characterised as any single act or pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine or coerce or has the effect of undermining or coercing an individual or group of individuals by gradually eroding their confidence or capability which may cause them to suffer stress or fear);
- (5) in relation to any allegation that any Member has failed to comply with the Authority's Code of Conduct, intimidate or attempt to intimidate any person who is or is likely to be either a complainant; or a witness; or is otherwise involved in the administration of any investigation or proceedings in respect of the allegation;
- (6) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority;
- (7) 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 (including exempt information as defined in Schedule 12A [as amended] to the Local Government Act 1972), except where:

- (a). you have the consent of a person authorised to give that consent; **or**
 - (b). you are required by law to do so; **or**
 - (c). the disclosure is made to an appropriate third party for the purpose of obtaining professional advice **provided that** the third party has agreed in writing not to disclose the information to any other person before the information is provided to them; **or**
 - (d). the disclosure is:
 - (i). in the public interest; **and**
 - (ii). made in good faith; **and**
 - (iii). the disclosure is made in compliance with the reasonable requirements of the Authority, where these requirements are demonstrable to an adopted policy, procedure or similar document of the Authority or evidenced by advice provided by the Monitoring Officer or his nominee.
- (8) prevent another person from gaining access to information to which that person is entitled by law;
- (9) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Authority into disrepute.

5. INTERESTS

(a). **Registration of Interests**

5.1 You **must**, within 28 days of:

- (1) this Code being adopted by, or applied to, the Authority; **or**
- (2) your taking office as a Member or Co-opted Member of the Authority, whichever is the later, and annually thereafter, provide written notification to the Authority's Monitoring Officer of:
 - (a). any **disclosable pecuniary interest** as defined by Regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife – see Section 5(b) below; **and**
 - (b). any **personal interest** as may be specified from time to time by the Authority – see Section 5(c) below;

5.2 Details of any interests so registered will, unless the Monitoring Officer has agreed that they are "sensitive" (see Section 5(e) below), be recorded in the Authority's Register of Members' Interests and made available for public inspection including on the Authority's website at:

<https://fireauthority.dsfire.gov.uk/uuCoverPage.aspx?bcr=1?siteCategoryId=10>

5.3 You **must also**, within 28 days of becoming aware of any new disclosable pecuniary or registerable personal interest, or change to any such interest already registered, provide written notification to the Authority's Monitoring Officer of that new interest (or change in interest already registered, as the case may be).

(SEE ALSO PARAGRAPH 5.11 BELOW)

(b). Disclosable Pecuniary Interests

5.4 Disclosable pecuniary interests, as currently defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464), are:

- (1) any employment, office, trade, profession or vocation carried on for profit or gain by you or a relevant person;
- (2) any payment or provision of any other financial benefit (other than from the Authority) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a Member, or towards your expenses, including any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992;
- (3) any contract made between the Authority and a relevant person (or body in which the relevant person has a beneficial interest):
 - (a) under which goods or services are to be provided or works are to be executed; and
 - (b) which has not been fully discharged
- (4) any beneficial interest in land held by you or a relevant person where the land is within the administrative area of the Authority;
- (5) any licence (alone or jointly with others) to occupy land in the administrative area of the Authority for a month or longer
- (6) any tenancy where (to your knowledge):
 - (a) the landlord is the Authority; and
 - (b) the tenant is a body in which you or a relevant person has a beneficial interest.
- (7) any beneficial interest that you or a relevant person has in securities of a body where:
 - (a) that body (to your knowledge) has a place of business or land in the administrative area of the 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.

(c). Personal Interests

5.5 You are also required to register the following personal interests:

- (1) Your membership of a trades union; and
- (2) your membership of any body to which you have been appointed by the Authority; and
- (3) your membership of any other public body or authority (e.g. County or District Council; Parish Council etc.); and

- (4) your membership of any other body influencing public opinion (e.g. political party); and
 - (5) your directorship or membership (within the meanings of the Companies Act 2006) of any company, where such directorship or membership **does not** constitute a disclosable pecuniary interest.
- 5.6 Your participation in discharging the following functions of the Authority does not constitute a personal interest requiring either registration or disclosure at meetings:
- (1) the setting of any Authority allowance, payment or indemnity to Members; and
 - (2) the setting of the Authority budget and associated Council Tax precept.
- (d). Non-Registerable Interests**
- 5.7 You have a non-registerable interest where a decision in relation to a matter being determined, or to be determined:
- (1) might reasonably be regarded as affecting the financial position or well-being of either yourself; or a member of your family; or any person with which you have a close association; or any body or group of which you are a member, more that it might affect the majority of council tax payers or inhabitants of the area served by the Devon & Somerset Fire & Rescue Authority; **and where**
 - (2) the interest is such that a reasonable person with knowledge of all the relevant facts would consider your interest to be so significant that it is likely to prejudice your judgement of the public interest.
- 5.8 Business relating to the following functions **will not** give rise to a non-registerable interest:
- (1) setting of the council tax; and
 - (2) any allowance, payment or indemnity give to Members.
- (e). Declaration of Interests at Meetings**
- 5.9 If you are present at a meeting and you are aware that you have either a disclosable pecuniary interest, personal interest or non-registerable interest **in any matter being considered or to be considered at the meeting then**, unless you have a current and relevant in relation to the matter, you must:
- (1) **disclose** at that meeting, by no later than commencement of consideration of the item in which you have the interest or, if later, the time at which the interest becomes apparent to you, the existence of and – for anything other than a “sensitive” interest (see Section 5(f) below) – the nature of that interest; **and then**
 - (2) withdraw from the room or chamber during consideration of the item in which you have the relevant interest.
- 5.10 Where a dispensation has been granted to you either by the Authority or its Monitoring Officer in relation to any relevant interest, then you must act in accordance with any terms and conditions associated with that dispensation.
- 5.11 Where you declare at a meeting a disclosable pecuniary or personal interest that you have not previously included in your Register of Interests then you must, within 28 days of the date of the meeting at which the declaration was made, ensure that your Register is updated to include details of the interest so declared.

(f). “Sensitive” Interests

- 5.12 You must notify the Monitoring Officer of the details of any interests which you consider are “sensitive” - namely, details which, should they be made available for inspection by the public, would be likely to create a serious risk that any person may be subjected to violence or intimidation.
- 5.13 Where the Authority’s Monitoring Officer agrees that any information relating to your interests is “sensitive” then the details of such interests will not be included in any published version of the register.
- 5.14 Similarly, the requirement to disclose interests at meetings shall, in relation to “sensitive” interests, be limited to declaring the existence of such interests and the detail of the “sensitive” interests need not be disclosed.
- 5.15 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded is no longer “sensitive”, notify the Authority’s Monitoring Officer asking that the information be included in the Authority’s Register of Members’ Interests.

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**DEVON & SOMERSET FIRE & RESCUE AUTHORITY
MEMBERS' CODE OF CONDUCT
GENERAL NOTICE OF REGISTERABLE INTERESTS**

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I,

being a Member/Co-opted Member of the Devon & Somerset Fire & Rescue Authority,

give notice below of those interests which I am required to declare under The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and the Devon & Somerset Fire & Rescue Authority's Code of Conduct:

I understand that in so doing I must, in relation to disclosable pecuniary interests (categories 1 to 6 inclusive of this form), declare any interest – in so far as I am aware of it - of my spouse or civil partner or of any person with whom I am living as if husband and wife or civil partners.

| <b>DISCLOSABLE PECUNIARY INTERESTS</b>                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p><b>1. EMPLOYMENT, OFFICE, TRADE, PROFESSION OR VOCATION</b></p> <p><b>Please give details of (i) every employment, job, trade, business or vocation you have, for which you receive any benefit or gain (i.e. profit, salary or benefit in kind) including a short description of the activity e.g. 'Accountant' or 'Farmer' and (ii) the name of any employer or body, firm or company which you own or in which you have any beneficial interest.</b></p> |  |
| Description of employment, job, vocation, trade or business                                                                                                                                                                                                                                                                                                                                                                                                    |  |
| Name of Employer, body, firm or company by which you are employed or in which you are a partner or a remunerated Director in which you have a beneficial interest                                                                                                                                                                                                                                                                                              |  |

**2. SPONSORSHIP**

Please give details of any person or body (other than the Authority) who has made any payment to you in respect of your election as a Councillor on a constituent authority or any expenses you have incurred in carrying out your duties as a Member of the Authority. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

**3. CONTRACTS: FOR GOODS, WORKS OR SERVICES WITH THE AUTHORITY**

Please give details of any current, existing contracts for goods, works or services between the Authority and you or any body, firm or company by which you are employed or which you own or in which you have a beneficial interest.

**4. LANDHOLDINGS AND LICENSES IN THE AREA**

Please give the address or other description (sufficient to identify the location) of any land or property in the Authority's area in which you have a beneficial interest, indicating whether you are the owner, lessee or tenant, including land in which you may have a licence, alone or with others, to occupy for a period of one month or longer.

*You must include the land and house you live in and for example any allotments you own or use.*

**5. CORPORATE TENANCIES: LAND LEASED FROM THE AUTHORITY**

Please give the address or other description (sufficient to identify the location) of any land leased or licensed from the Authority by a you or any body firm or company by which you are employed or which you own or in which you have a beneficial interest (specified at 3 above).

**6. SECURITIES: INTERESTS IN COMPANIES**

Please give details of any body which has a place of business or owns land in the Authority's area and in which you have a beneficial interest (a shareholding) of more than £25,000 (nominal value) or more than 1/100<sup>th</sup> of the total share issue of that body (whichever is the lower) or if there is more than one class of share, the total nominal value of shares in any class of that body is more than 1/100<sup>th</sup> of the total shares of that class

*Note: It is not necessary to declare the nature or size of the holding, simply the name of the company or other body.*

**PERSONAL INTERESTS**

Please give details of your membership of, or any position of general control or management, of the following

|                                                                                                          |  |
|----------------------------------------------------------------------------------------------------------|--|
| Any trade union of which you are a member                                                                |  |
| Any body to which you have been appointed by <i>the Devon &amp; Somerset Fire &amp; Rescue Authority</i> |  |

|                                                                                                                                                                                                       |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>Any other body exercising functions of a public nature<br/><i>(e.g. County, District or Parish Council; Health, Police or Quasi Autonomous Non-Governmental Body)</i></p>                          |  |
| <p>Any other body whose principle purpose is to influence public opinion or policy <i>(e.g. Political Party)</i></p>                                                                                  |  |
| <p>Any company in which you are a director or member (within the meanings of the Companies Act 2006), where such directorship or membership does not constitute a disclosable pecuniary interest.</p> |  |

**DECLARATION**

I recognise that if I fail to comply with the Code of Conduct for Members of the Devon & Somerset Fire & Rescue Authority or:

- (i) omit any information that should be included in this Notice;
- (ii) give false or misleading information; or
- (iii) do not tell the Authority of any changes to this Notice or new interests I acquire,

that may be a criminal offence and/or the matter may be for investigation.

Signed : .....

**FOR OFFICE USE ONLY**

Received: .....

Updated (insert date[s]).....

**DEVON & SOMERSET FIRE & RESCUE AUTHORITY**

**MEMBERS' CODE OF CONDUCT**

**GUIDE TO MAKING A COMPLAINT**

**1. Summary**

- 1.1 This guide provides information on making a complaint against certain types of inappropriate behaviour by Members - elected Councillors appointed to the Authority by constituent authorities. The guide explains:
- who you can complain about;
  - what you can complain about; and
  - what will happen to your complaint.
- 1.2 If you have any questions or difficulties arising from this guide – for example, if English is not your first language – then please contact the Monitoring Officer to the Authority on Exeter (01329) 872200.

**2. Background**

- 2.1 The Devon & Somerset Fire & Rescue Authority is a stand-alone local authority. As such, the law requires that it has its own Members' Code of Conduct and arrangements in place for dealing with any allegations that a Member has failed to follow this Code. The Code is also required to include appropriate provisions relating to the registration and disclosure of pecuniary and other interests.
- 2.2 A copy of the Members' Code of Conduct as approved by the Authority can be found on the website ([www.dsfire.gov.uk](http://www.dsfire.gov.uk)) or is available on request from:-
- The Monitoring Officer  
Devon and Somerset Fire and Rescue Authority  
Service Headquarters  
The Knowle  
Clyst St. George  
EXETER EX3 0NW  
Tel: (01392) 872200  
e-mail: [membercomplaints@dsfire.gov.uk](mailto:membercomplaints@dsfire.gov.uk)
- 2.3 The Authority is made up of a total of elected councillors (Members) appointed to it by four constituent authorities (Devon and Somerset County Councils; Plymouth City Council and Torbay Council). All Members are required to follow the Authority's approved Members' Code of Conduct. Details of those Members currently serving on the Authority can be found on the Authority's website.
- 2.4 The Authority also has – as required by law – an “independent person” whose role is set out in Section 3 below. The “independent person” is not a Member or employee of the Authority or its constituent authorities.

### **3. The “Independent Person”**

3.1 The Localism Act 2011 requires the Authority to have at least one “Independent Person” whose views:

- (a). must be sought by the Authority before it makes any determination on an allegation it has decided to investigate;
- (b). may be sought in other circumstances; and
- (c). may be sought by a Member subject to an allegation of failure to follow the Code.

3.2 In relation to (b), this Authority has determined that the views of the Independent Person must be sought by the Monitoring Officer when making the initial decision about any complaint received (see Section 10 below).

3.3 There is no right for a complainant to seek the views of the Independent Person and no such contact will be permitted. The Independent Person does not represent and nor are they an advisor either to any Member subject to a complaint or the Authority as a whole. The Independent Person must remain completely impartial and objective and cannot take sides. Their only role is to assess complaints and form a view on them.

### **4. The Determinations and Dispensations Committee**

4.1 This forms part of the Authority’s arrangements for dealing with complaints that a Member may have failed to follow its approved Code of Conduct. Its membership and Terms of Reference can be found on the Authority’s website and its functions are outlined elsewhere in this document.

4.2 Meetings of this Committee are also governed by legislation. Members of the press and public can normally attend to observe, but not partake in, the proceedings unless one of the statutory exemptions applies under which the press and public can be excluded from the meeting.

### **5. Who and What You CAN Complain About**

5.1 You can only use this complaints procedure to complain that a Member, in their official capacity (i.e. when acting or purporting to act as a Member of the Authority) may have failed to follow the Authority’s approved Members’ Code of Conduct. The Code **does not** extend to behaviour in a Member’s private life. ***Please remember that a “Member” is an elected councillor appointed to the Authority by one of its constituent authorities (Devon and Somerset County Councils; Plymouth City Council and Torbay Council).***

5.2 Your complaint may be that the Member has:-

- failed to treat others with respect;
- acted in a way that that amounts to, or which may reasonably be construed as. unlawfully discrimination against someone;
- bullied someone;
- intimidated, or attempted to intimidate, a person involved in an allegation against them;



- compromised the impartiality of those who work for, or on behalf of, the Authority;
- disclosed confidential information;
- prevented someone from gaining access to information to which they are lawfully entitled;
- brought an office of, or the Authority itself, into disrepute;
- used their position as a Member improperly to confer or secure an advantage or disadvantage;
- not used the resources of the Authority in accordance with its requirements
- disregarded advice when reaching decisions
- failed to give reasons for decisions where there is a statutory requirement to do so;
- failed to act appropriately in relation to a disclosable pecuniary interest as defined by the Code (**NOTE: please see Section 16 of this Guide**).

## **6. What CANNOT be dealt with under this procedure**

6.1 This procedure **cannot** be used for:-

- complaints where a Member is not named;
- complaints that are NOT in writing;
- incidents or actions that are not covered by the Authority's approved Members' Code of Conduct (e.g. that the complaint concerns acts carried out in the Member's private life);
- incidents that are about a fault in the way the Authority has or has not done something. This is known as maladministration and may be a matter for the Local Government Ombudsman;
- complaints about people employed by this Authority;
- incidents that happened before OR after the person complained of was a Member of the Authority;
- incidents that happened before the Authority adopted its approved Members' Code of Conduct;
- complaints about the way in which the Authority conducts and records its meetings.

## **7. How Do I Make a Complaint?**

7.1 Your complaint **MUST** be in writing – this includes fax and electronic submissions. If, however, this would be difficult for you (for example, because of a disability or if English is not your first language) then please contact the Monitoring Officer to the Authority (whose contact details are provided above).

7.2 A complaints form is available on the Authority website (www.dsfire.gov.uk) or on request from the Monitoring Officer to the Authority (e-mail: membercomplaints@dsfire.gov.uk). If you wish to make a complaint you are encouraged to use this form although you may prefer to write a letter setting out your complaint. If you choose to write a letter, it is important that you include in it **all** of the following information:-

- your name, address and other contact details (telephone number(s), e-mail address etc.);
- your status (e.g. member of the public; local authority member; monitoring officer; Member of Parliament);
- for the purposes of the Authority's ethnic monitoring, brief details of your ethnic origin (e.g. British; Irish; Other White Background; White and Black Caribbean etc.)<sup>1</sup>;
- the name of the Member who the complaint is about;
- details of how the Member has failed to follow the Code with, where possible, dates, witness details and other supporting information.

***Please note that your identity will normally be disclosed to the Member about whom you complaining. This information may, however, be withheld from that Member in exceptional circumstances and at the discretion of the Monitoring Officer, in consultation with the Independent Person, if the following criteria are met:-***

- ***you have reasonable grounds for believing that you will be at risk of physical harm if your identity is disclosed; and/or***
- ***you are an officer (i.e. employee of the Authority or a constituent authority) who works closely with the Member who is the subject of the complaint and you are afraid of the consequences to your employment or of losing your job if your identity is disclosed; and/or***
- ***you suffer from a serious medical condition and there are medical risks associated with your identity being disclosed. In this event, medical evidence of your condition will be required.***

## 8. Anonymous Complaints

8.1 Anonymous complaints will only be considered for investigation if the complaint includes photographic evidence indicating an exceptionally serious or significant matter.

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<sup>1</sup> For full details or ethnic origin classifications used by the Authority, please refer to the Members' Code of Conduct Complaints Form

## 9. What will happen to my complaint?

9.1 On receiving your complaint, the Monitoring Officer will:

- aim to acknowledge it within three working days; and
- send a copy of your complaint to the Independent Person and gather any other information deemed necessary to make, in consultation with the Independent Person, an initial decision on whether or not the complaint should be investigated or some other form of action taken (for example, whether a mutually agreeable local settlement can be achieved). The Monitoring Officer will aim to reach this initial decision within an average of 20 working days.

## 10. How will this initial decision be made?

### (a). Initial Criteria

10.1 Before any other assessment of the complaint begins, the Monitoring Officer will need to be satisfied that your complaint meets **ALL** of the following criteria:-

- it is a complaint against one or more **named** Members of the Authority; **and**
- the **named** Member was in office at the time of the alleged conduct **and** the Code of Conduct was in force at the time; **and**
- the complaint, if proven, would be a breach of the Code.

10.2 If your complaint fails to meet one or more of these criteria it cannot be progressed as a potential breach of the Code and you will be informed that no further action will be taken in respect of your complaint.

### (b). Other Assessment Criteria

10.3 If your complaint meets the above criteria, it may be that the Monitoring Officer, following consultation with the Independent Person, may still decide to take no further action in respect of your complaint if one or more of the following applies:-

- your complaint falls within any of the areas that CANNOT be dealt with under this procedure - see Section 6 of this guide;
- if your complaint discloses such a minor or technical breach of the Code that it would not be in the public interest to pursue it;
- it is felt you have not provided sufficient information on which to base a decision on whether the complaint should be investigated or some other action taken;
- your complaint is about someone who is no longer a Member of this Authority BUT is a Member of another Authority. In this case, your complaint may be referred to the Monitoring Officer of the other authority concerned;
- your complaint has been the subject of an investigation or other action relating to the Code of Conduct, or by other regulatory authorities, and there is nothing to be gained by further action being taken;
- your complaint is about something that happened over six months or more ago and it would be unfair, unreasonable or otherwise not in the public interest to pursue the matter unless the Monitoring Officer feels there are exceptional reasons to pursue it;

- your complaint is considered to be not sufficiently serious to warrant further action;
- if the Member you are complaining about has remedied or made reasonable endeavours to remedy the matter and the complaint does not disclose sufficiently serious potential breaches of the Code to merit further consideration; or
- your complaint appears to be simply malicious, politically motivated or “tit-for-tat”; and
- it would otherwise be inappropriate to expend the Authority’s resources on determining the complaint, having regard to its circumstances, any previous related complaint and the public interest.

## 11. What happens next?

- 11.1 As indicated, the Monitoring Officer will aim to make the initial decision within an average of 20 working days of receiving the complaint.
- 11.2 If your complaint is rejected following the initial decision, then no further action will be taken and you will be written to advising of this.
- 11.3 If your complaint is not rejected at the initial decision stage, then the following procedure will apply:
- you will receive written confirmation of this;
  - the Member who you are complaining about (“the subject member”) will be sent a copy of your complaint. Please note that your identity will normally be disclosed unless the Monitoring Officer (following consultation with the Independent Person) feels that there are exceptional circumstances for not doing so – please refer to the note at Section 7.2 of this document;
  - the subject member:
    - will be given the opportunity to speak to the Independent Person in response to the complaint made; and
    - be asked to provide to the Monitoring Officer and Independent Person, within ten days of receiving the complaint, a brief written response to it. This brief written response should be restricted to two sides of A4 paper but copies of supporting documents and witness statements may be attached. Please note that the Authority will not be obliged to take any account of any late submission made by the subject member;
  - the Independent Person will:
    - within five days of being sent the subject member’s written submission; or
    - in any event, by no later than fifteen days after submission of the complaint to the subject member

notify the Monitoring Officer of their view of the complaint
  - the Monitoring Officer, following consultation with the Independent Person, will reach a finding on the complaint and will, within five working days of reaching the finding, write to you to set out this finding.

## **12. What finding might be reached?**

12.1 On conclusion of the procedure as outlined in Section 11 above, one of the following findings will be reached by the Monitoring Officer (following consultation with the Independent Person):

**(a). No conclusive evidence of breach of Code of Conduct, with no further action to be taken**

12.2 This finding will be made when, on the basis of all the available facts (i.e. the complaint, any submission of the subject member and any other material gathered in relation to the complaint), it is not possible to determine either whether there has or may have been a breach of the Code and, taking account of the public interest, there is nothing to suggest that there would be benefit in taking any further action.

**(b). No conclusive evidence of breach of Code of Conduct, but action other than an investigation may be appropriate**

12.3 This finding will be made when, on the basis of all the available facts (i.e. the complaint, any submission of the subject member and any other material gathered in relation to the complaint), it is not possible to determine either whether there has or may have been a breach of the Code and:

- taking account of the public interest, the allegation does not merit investigation; **but**
- the allegation discloses an underlying issue that some other action (e.g. a written apology; and/or mediation; and/or or training on the Code or other Authority procedures) may be helpful or desirable.

12.4 In deciding whether action other than an investigation may be appropriate, the Monitoring Officer will consider:

- (i) whether taking the other action would provide an opportunity to resolve the issue, prevent similar issues arising in future and/or promote good governance; and/or
- (ii) whether the issue arose from a poor understanding by the subject member either of the Code or other relevant Authority procedures.

**(c). Finding of no breach of the Code of Conduct**

12.5 This finding will be reached when application of the balance of probabilities to all the available facts indicates no breach of the Code of Conduct. If no breach has occurred, then a sanction cannot be imposed but some other action – as outlined in paragraph 12.3 - may still be considered.

**(d). Finding of breach of the Code of Conduct without referral for investigation**

12.6 This finding will be made where:

- on application of the balance of probabilities to the available evidence, it is clear that the Code has been breached; **or**
- the subject member has admitted to the breach (irrespective of whether or not they have offered to remedy the breach); **and**
- in either case the Monitoring Officer is of the view that, taking account of the public interest, it is unlikely that an investigation would establish any further, independent, relevant evidence relating to the complaint and where the cost of undertaking an investigation cannot be justified.

12.7 Where a breach of the Code is found but it is not felt that an investigation should be undertaken, then the Monitoring Officer:

- may determine, following assessment of the available evidence, that no further action should be taken as there would be no benefit in doing so (for example, if the the breach is trivial, **or** of a technical nature **or** arose from an innocent mistake **and** has only limited or no impact); **or**;
- may determine that some other action should be taken (see paragraph 12.3 above); **or**
- may refer the matter to the Authority's Determinations and Dispensations Committee to consider whether a sanction should be imposed.

**(e). Finding of breach of the Code of Conduct with referral for investigation**

12.8 A complaint will usually be referred for investigation in cases where:

- the subject member has denied the allegation which, on the basis of the initial evidence available, indicates a potential breach of the Code; **and**
- the potential breach is so significant that further investigation should be undertaken to establish the facts as fully as possible so as to determine, on the balance of probabilities, whether there has been a breach of the Code and if so what sanction or other action might be appropriate.

**13. What if some action short of investigation is proposed that either I am not satisfied with or the Member I am complaining about is not satisfied with (or refuses to co-operate with)?**

13.1 In this event, the matter will be referred to the Authority's Determinations and Dispensations Committee. You will be notified of the date and time of the Committee and may attend to observe (but not take part in) the proceedings unless one of the statutory reasons for excluding you from the meeting applies. You will be notified in advance if this is the case.

13.2 The Committee will consider the issue and decide what, if any, action should be undertaken. If the Committee feels some action should be undertaken, this may include imposing a different sanction on the Member about whom you have complained or requiring the matter to be investigated more formally.

13.3 You will be notified in writing in due course of the decision of the Committee and the reasons for the decision.

**14. What if my complaint is referred for investigation?**

14.1 You will be written to confirming this decision. The actual time taken for the investigation may vary depending on the complexity and seriousness of the complaint.

- 14.2 The investigation will conclude by the production of a report by the Monitoring Officer for consideration by the Determinations and Dispensations Committee unless your complaint relates to an alleged breach of the Code in respect of disclosable pecuniary interests – please see Section 16 of this guide below. You will be notified in writing of the date of the Determinations and Dispensations Committee and sent a full copy of the Monitoring Officer’s report unless this reveals any sensitive or confidential information, in which case you may be sent an edited version (omitting the sensitive information). If you are sent an edited version, this will be made clear in the letter accompanying the report.
- 14.3 You may attend to observe, but not take part in, the proceedings unless one of the statutory reasons for excluding you from the meeting applies. You will be notified in advance if this is the case. The Committee will, at the meeting, consider the Monitoring Officer’s report and allow the Member who is the subject of the complaint to put forward his/her case. The Committee will then, in consultation with the Independent Person, decide what, if any, action needs to be taken.
- 14.4 You will be notified in writing of the decision of the Committee and its reasons for this decision usually within five working days of the date of the meeting.

**15. What sanctions might the Determinations and Dispensations Committee impose?**

- 15.1 If, following consideration of a complaint which has been subject to investigation, the Committee finds that, on the balance of probabilities, a breach of the Code has occurred then it may (following consultation with the Independent Person) decide to impose one of the following sanctions:
- a. censure the subject member. The Committee will determine the terms and manner of this censure (which may include, but is not limited to, notifying the subject member’s appointing constituent authority and/or arranging for details for the censure to be published in local media circulating in the area of the Authority;
  - b. recommend to the full Authority that the subject member be removed from any Committees, Sub-Committees, Working Parties or outside bodies to which they have been appointed or nominated by the Authority;
  - c. withdraw any Authority facilities provided to the subject member (e.g. e-mail accounts, internet access);
  - d. exclude the subject member from the Authority’s premises (save to the extent that the subject member requires access to attend meetings of the full Authority or any Committee etc. to which the subject member may have been appointed by the Authority);
  - e. instruct the Monitoring Officer to arrange for training for subject member.

**16. What if my complaint is about a Member not following the rules on disclosable pecuniary interests?**

- 14.1 The Localism Act 2011 has introduced a new criminal offence for failure to follow the statutory rules in relation to disclosable pecuniary interests. Such interests are defined in Regulations and are set out in the Members' Code of Conduct approved by the Authority. In addition to registering such interests, Members are required to disclose them at meetings where matters in which they have such an interest are being discussed and are not permitted to take part in any discussions or decision making, or seek to influence any decision, on such matters.
- 14.2 Action, in the form of a prosecution, in relation to a breach of the Code of Conduct relating to disclosable pecuniary interests may only be instigated by the Director of Public Prosecutions. Consequently, should your complaint relate to a proposed breach of the Code dealing with disclosable pecuniary interests, then – after any internal investigation felt necessary to establish the facts of the case – it may be referred to the police (together with the outcome of any internal investigation so conducted) to determine the matter. You will be notified of this.



## STANDARDS COMMITTEE

### TERMS OF REFERENCE

#### *Advisory ONLY*

1. In accordance with the provisions of the Localism Act 2011:
  - a. To consider and recommend to the Authority any actions considered necessary to discharge the statutory duty to promote and maintain high standards of conduct by Members and Co-opted Members of the Authority.
  - b. To develop, keep under review and make recommendations to the Authority on a Code of Conduct expected of Members and Co-opted Members of the Authority when acting in that capacity.
  - c. To oversee and make recommendations to the Authority on arrangements for the assessment, investigation and determination (as appropriate) of allegations of any breach of the Code of Conduct.
2. To oversee the content and operation of the Authority's "Whistleblowing" Code (Confidential Reporting Policy), making recommendations to the Authority as appropriate.

#### *Matters with Delegated Power to Act*

1. To consider the findings of any investigation into an alleged breach of the Authority's approved Code of Conduct (affording the Member subject to the allegation ["the subject Member"] a right of hearing) and – in consultation with the "independent person" - to determine whether or not (on the basis of the evidence available and on the balance of probabilities) a breach of the approved Code has been proven.
2. In the event that a Code breach is proven, to consider:
  - a. whether a sanction should be imposed; and
  - b. if so, determine what the sanction(s) should be from the following:
    - reporting the Code breach to the Authority for information and publishing it in local media; and/or
    - instructing the Monitoring Officer to arrange training for the Member; and/or
    - recommending to the Authority that, for the Member concerned:
      - they be removed from any or all Committees or Sub-Committees of the Authority; and/or
      - they be removed from all outside appointments to which they have been appointed or nominated by the Authority; and/or
      - any facilities provided by the Authority, such as e-mail and Internet access, be withdrawn as specified; and/or

- they be excluded from the Authority's offices or other premises, with the exception of meeting rooms as necessary for attending Authority, Committee and Sub-Committee meetings.
- 3. In the event of "sensitive" allegations of Code breach (e.g. where the Monitoring Officer may have previously advised the Member subject to the allegation on the matter concerned), to determine, following consultation with the independent person, whether or not an allegation should be investigated.
- 4. To consider, following submission in writing to the Monitoring Officer by the Member concerned, any request for a dispensation either to talk or to talk and vote in relation to a disclosable pecuniary interest in the following circumstances:
  - that, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to potentially alter the outcome of any vote on the matter;
  - That the Committee considers that the dispensation is in the interests of persons living in the authority's area; or
  - That the Committee considers that it is otherwise appropriate to grant a dispensation.
- 5. To approve responses to external consultation documents on issues within the remit of the Committee and as referred by officers.

# Agenda Item 7

|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <b>REPORT REFERENCE NO.</b> | <b>DDC/18/2</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>MEETING</b>              | <b>DETERMINATIONS &amp; DISPENSATIONS COMMITTEE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>DATE OF MEETING</b>      | <b>9 APRIL 2018</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>SUBJECT OF REPORT</b>    | <b>CONSULTATION ON REVIEW OF LOCAL GOVERNMENT ETHICAL STANDARDS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>LEAD OFFICER</b>         | <b>Director of Corporate Services (Clerk to the Authority)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>RECOMMENDATIONS</b>      | <p><i>That, subject to any amendments as may be indicated at the meeting, the Authority be recommended to:</i></p> <p><i>(a) approve the attached response to the consultation on the review of local government ethical standards be approved; and</i></p> <p><i>(b) authorise the Clerk to submit the response on behalf of the Authority.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>EXECUTIVE SUMMARY</b>    | <p>The Committee on Standards in Public Life (CPSL) is an advisory, non-departmental public body sponsored by the Cabinet Office. It advises the Prime Minister on ethical standards across the whole of public life in England and monitors and reports on issues relating to the standards of conduct of all public office holders.</p> <p>The Committee is undertaking a review of local government ethical standards. The review has the following terms of reference:</p> <ul style="list-style-type: none"> <li>• examine the structures, processes and practices in local government in England for: <ul style="list-style-type: none"> <li>○ maintaining codes of conduct for local councillors</li> <li>○ investigating alleged breaches fairly and with due process</li> <li>○ enforcing codes and imposing sanctions for misconduct</li> <li>○ declaring interests and managing conflicts of interest</li> <li>○ whistleblowing</li> </ul> </li> <li>• assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government</li> <li>• make any recommendations for how they can be improved</li> <li>• note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation</li> </ul> <p>To help inform the review process, the Committee has issued a consultation document. The closing date for responses to this document is Friday 18 May 2018.</p> <p>A copy of the consultation document, together with suggested responses to each of the questions posed, is attached at Appendix A.</p> |

|                                                    |                                                                                                                                                                                                                                                                                 |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>RESOURCE IMPLICATIONS</b>                       | Nil.                                                                                                                                                                                                                                                                            |
| <b>EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)</b> | The contents of this report are considered compatible with existing equalities and human rights legislation.                                                                                                                                                                    |
| <b>APPENDICES</b>                                  | A. Draft response to consultation on review of local government ethical standards.                                                                                                                                                                                              |
| <b>LIST OF BACKGROUND PAPERS</b>                   | <ul style="list-style-type: none"> <li>A. Localism Act 2011</li> <li>B. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.</li> <li>C. Committee on Standards in Public Life Consultation on Review of Local Government Ethical Standards.</li> </ul> |

## Review of Local Government Ethical Standards: Stakeholder Consultation

By way of general introduction and context to the following responses, it should be appreciated that the Devon & Somerset Fire & Rescue Authority is a combined authority, with membership not directly elected but rather appointed from four other constituent authorities (Devon County Council, Somerset County Council, Plymouth City Council and Torbay Council).

Nonetheless, this Authority is still required to operate its own “standards” arrangements as required by the Localism Act, as is each of its constituent authorities.

### Consultation questions

- a. Are the existing structures, processes and practices in place working to ensure high standards of conduct by local councillors? If not, please say why.

*While this Authority has not experienced a high number of complaints, it is felt that the ability to determine matters at a local level and to set the procedures by which complaints have to be managed has delivered benefits, particularly in allowing for the introduction of a robust assessment procedures to filter out genuine complaints from those which are clearly malicious, tit-for-tat or politically motivated.*

*The lack of consistency in Code content, however, is an issue (given that our Authority Members also serve on at least one other local authority, with its own Code of Conduct) as is the ability to impose meaningful sanctions in the (albeit rare) instances where a breach of the Code has been established.*

- b. What, if any, are the most significant gaps in the current ethical standards regime for local government?

*As indicated above, it is felt that the significant gaps are:*

- *The inability to apply meaningful sanctions for certain breaches of the Code of Conduct; and*
- *The lack of consistency with regards to the way a code should be worded, code*

### Codes of conduct

- c. Are local authority adopted codes of conduct for councillors clear and easily understood?

*The Localism Act 2011 only gives limited guidance on what should be in the Code of conduct that it is a requirement for each authority to adopt. Similarly, suggested Codes produced as examples by bodies such as the Local Government Association offered little other than to reiterate the requirements of the Act and associated Regulations on disclosable pecuniary interests.*

*When the new regime was introduced, this Authority held discussions with its appointing constituent authorities with a view to seeking to agree a consistent Code to apply across the piste. For political reasons this was not possible and it is felt the variations in resulting Codes, while in some cases subtle, have nonetheless not aided in promoting either clarity or understanding for elected members and the public.*

*This Authority is of the view that, while there were undoubtedly problems in the previous regime, these were not rooted in the former Model Code which it is felt was robust, proportionate and easily understood. Consequently, the Authority would request that, as part of the review of ethical standards, consideration is given to the introduction of a national statutory Code based on that in use up until 2012.*

- d. Do the codes cover an appropriate range of behaviours?

*Given the limited statutory requirements of what is to be in a Code and the limited guidance that has since been issued it is a matter of subjective interpretation as to whether the Code covers an appropriate range of behaviours.*

*This Authority has based its Code on the former statutory Code and in this respect feels that it does cover an appropriate range of behaviours.*

- e. What examples of good practice, including induction processes, exist?

*This Authority features a session on its Code of Conduct in its induction process for newly appointed Members. As with other issues, however, securing attendance can be difficult. It is felt that consideration should be given to introducing a statutory requirement to attend Code of Conduct at least once a year in support of the statutory duty to promote and maintain high standards of conduct.*

- f. A local authority has a statutory duty to ensure that its adopted code of conduct for councillors is consistent with the Seven Principles of Public Life and that it includes appropriate provision (as decided by the local authority) for registering and declaring councillors' interests. Are these requirements appropriate as they stand? If not, please say why.

*No. It is felt that the aspect of Codes including "...appropriate provision (as decided by the local authority) for registering and declaring councillors' interests" is too open to individual interpretation and has resulted in a diverse range of codes in England, to the detriment of clarity and understanding both by elected members and the public.*

#### *Investigations and decisions on allegations*

- g. Are allegations of councillor misconduct investigated and decided fairly and with due process?

*As there is no set process it is for individual councils to interpret this as they consider appropriate. That having been said, this Authority has adopted procedures which it considers are fit for purpose in ensuring that any complaints received are dealt with impartially and with consistency.*

- h. What processes do local authorities have in place for investigating and deciding upon allegations?

*The procedures for assessing and dealing with complaints as adopted by this Authority are attached to this submission.*

- i. Do these processes meet requirements for due process?

*This Authority considers that they do.*

- j. Should any additional safeguards be put in place to ensure due process?  
*This Authority would strongly support a robust ‘filtering’ process (as included in its procedures) for initial assessment of complaints to help prevent malicious, vexatious or tit for tat complaints which in the past have caused people to view the process a complainants charter.*
- k. Is the current requirement that the views of an Independent Person must be sought and taken into account before deciding on an allegation sufficient to ensure the objectivity and fairness of the decision process?  
*This Authority considers that it does*
- l. Should this requirement be strengthened?  
*While the current requirement is that the views of the Independent Person must be sought prior to decisions being made on allegations that have been investigated, this Authority has also used the flexibility under the Act to seek the views of the Independent Person in other circumstances (e.g. at initial assessment stage).*
- m. If so, how?  
*Further guidance could be issued on the role of the Independent Person – perhaps based on “best practice” case studies of other authorities.*
- n. Monitoring Officers are often involved in the process of investigating and deciding upon code breaches. Could Monitoring Officers be subject to conflicts of interest or undue pressure when doing so?  
*Yes, this is possible and something this Authority has considered in developing its assessment procedures which currently allow for, amongst other things:*
  - *initial assessments of sensitive allegations (for example, where the Monitoring Officer may previously have advised the Member concerned on the subject matter of the allegation) to be conducted by a small committee of Members; and*
  - *investigations to be undertaken by experienced staff external to this organisation..*
- o. How could Monitoring Officers be protected from this risk?  
*This Authority is perhaps fortunate in that, to date, it has not faced a significant number of complaints. On this basis, the Authority considers the safeguards it currently has in place (see answer to [n] above) are probably sufficient and proportionate.*

### **Sanctions**

- p. Are existing sanctions for councillor misconduct sufficient?  
*The sanctions that are available for failing to register or act in accordance with the provisions of the Localism Act 2011 if a member has a disclosable pecuniary interest are considered to be sufficient. However, the method of employing these sanctions, referral to the police, a police investigation and a possible court hearing, are considered to be cumbersome and very costly to the public purse.*

*Even though (as previously indicated) this Authority has not had to deal with many complaints, it nonetheless feels – on the basis of the limited experience it has had – that those sanctions which would seem to be open, under the current legislative arrangements, for other breaches of the Code of Conduct (for example, failure to declare ‘interests other than disclosable pecuniary interests’) are very limited, particularly where a potentially serious “other” breach is concerned (e.g. bullying/harassment; complaints involving equalities issues).*

- q. What sanctions do local authorities use when councillors are found to have breached the code of conduct?

*In line with the current legislative provisions, this Authority has agreed the following sanctions to apply for Code breaches other than those relating to disclosable pecuniary interests:*

- reporting the finding to the Authority for information and publishing the finding in local media;*
- a recommendation to the Authority that the Member concerned be removed from any or all Committees or Sub-Committees of the Authority;*
- instructing the Monitoring Officer to arrange training for the Member;*
- removing the Member concerned from all outside appointments to which s/he has been appointed or nominated by the Authority;*
- withdrawing facilities provided to the Member by the Authority, such as e-mail and Internet access; or*
- Excluding the Member from the Authority’s offices or other premises, with the exception of meeting rooms as necessary for attending Authority, Committee and Sub-Committee meetings.*

- r. Are these sanctions sufficient to deter breaches and, where relevant, to enforce compliance?

*No. It is not considered that the sanctions as listed at [p] above (which would seem to be the only available sanctions under the current legislative provisions for Code breaches other than those relating to disclosable pecuniary interests) represent any real or effective sanctions for what might be more serious “other” breaches – certainly in terms of how these might be perceived by the public. This in turn weakens what it purported to be the underlying purpose of the current regime – to promote high standards of conduct in public life.*

- s. Should local authorities be given the ability to use additional sanctions?

*Yes.*

- t. If so, what should these be?

*There should be limited powers of suspensions up to six months as was exercised under the previous ethical standards regime. Suspensions should be only issued only by a hearing panel of a Standards Committee in those instances where the proven “other” breach is considered to warrant such a sanction.*



### *Declaring interests and conflicts of interest*

- u. Are existing arrangements to declare councillors' interests and manage conflicts of interest satisfactory? If not please say why.

*No. As a minimum it should not be left to individual councils to have in their standing orders the requirement for a member to remove themselves if they have a disclosable pecuniary interest. It should be a statutory requirement for a member to always remove themselves if they have any interest, whether disclosable pecuniary interest or otherwise, where such an interest might reasonably be perceived as impacting upon the ability of the Member concerned to act in the public interest..*

- v. A local councillor is under a legal duty to register any pecuniary interests (or those of their spouse or partner), and cannot participate in discussion or votes that engage a disclosable pecuniary interest, nor take any further steps in relation to that matter, although local authorities can grant dispensations under certain circumstances. Are these statutory duties appropriate as they stand?

*This Authority has no real practical experience of this aspect of the Code and as such does not feel in a position to comment.*

- w. What arrangements do local authorities have in place to declare councillors' interests, and manage conflicts of interest that go beyond the statutory requirements? Are these satisfactory? If not, please say why.

*At present, this Authority's Code in essence replicates the provisions of the former Model Code in terms of the registration, declaration and management of interests other than disclosable pecuniary interests. As indicated in previous responses, while these are considered appropriate and proportionate in the context of upholding high standards of conduct in public office, consistency across the piste is lacking, given that not every local authority will necessarily have the same provisions. For this reason (and given that our Authority Members are also members of at least one other local authority), having a consistent set of rules, i.e. a Model Code, would be beneficial.*

### *Whistleblowing*

- x. What arrangements are in place for whistleblowing, by the public, councillors, and officials? Are these satisfactory?

*The Authority's Constitutional Governance Framework includes a well-established whistleblowing policy which accords with existing legislation and best-practice. This policy is reviewed at least annually, along with other documents in the Authority's Constitutional Governance Framework, to ensure it remains fit for purpose.*

### *Improving standards*

- y. What steps could local authorities take to improve local government ethical standards?

*As indicated in previous responses, general awareness raising during new Member induction is fundamental but securing attendance at such sessions can be problematic. Sharing best practice with neighbouring local authorities, including close working relationships between Monitoring Officers, is also beneficial.*

- z. What steps could *central government* take to improve local government ethical standards?

*As indicated in previous responses, it is felt that the introduction of a standard Model Code (based on the previous Model Code), together with more meaningful sanctions for breaches other than disclosable pecuniary interests, would promote greater consistency and understanding for both elected Members and the public.*

*Intimidation of local councillors*

- aa. What is the nature, scale, and extent of intimidation towards local councillors?

*This Authority has no real experience of this and as such does not feel in a position to comment.*

- bb. What measures could be put in place to prevent and address this intimidation?

*See response to [bb] above.*