



DEVON & SOMERSET FIRE & RESCUE AUTHORITY

M. Pearson
CLERK TO THE AUTHORITY

To: **The Chair and Members of the Standards
Committee**

(see below)

**SERVICE HEADQUARTERS
THE KNOWLE
CLYST ST GEORGE
EXETER
DEVON
EX3 0NW**

Your ref :
Our ref : DSFRA/MP/SY
Website : www.dsfire.gov.uk

Date : 29 March 2019
Please ask for : Steve Yates
Email : syates@dsfire.gov.uk

Telephone : 01392 872200
Fax : 01392 872300
Direct Telephone : 01392 872329

STANDARDS COMMITTEE

Monday, 8th April, 2019

A meeting of the Standards Committee will be held on the above date, **commencing at 10.00 am in Conference Rooms, Service Headquarters, Exeter** 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 Apologies

2 Items Requiring Urgent Attention

Items which, in the opinion of the Chair, should be considered at the meeting as matters of urgency.

3 Minutes (Pages 1 - 4)

of the previous meeting held on 3 December 2018 attached.

PART 1 - OPEN COMMITTEE

4 Review of Code of Conduct and Complaints Guidance (Pages 5 - 48)

Report of the Director of Corporate Services (SC/19/1) attached.

MEMBERS ARE REQUESTED TO SIGN THE ATTENDANCE REGISTER

Membership:-

Councillors Thomas (Chair), Bown, Drean, Ellery (Vice-Chair), Prowse, Redman and Trail BEM

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 Chair - 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 Chair or the Democratic Services Officer in attendance so that all those present may be made aware that is happening.
3.	<u>Declarations of Interests at meetings (Authority Members only)</u> 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 dispensation in relation to the matter, you must: <ul style="list-style-type: none">(i) 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 – the nature of that interest; and then(ii) withdraw from the room or chamber during consideration of the item in which you have the relevant 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 an interest of a sensitive nature. You must still follow (i) and (ii) above. 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. 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.
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 37, 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.

STANDARDS COMMITTEE

(Devon & Somerset Fire & Rescue Authority)

3 December 2018

Present:-

Councillors Thomas (Chair), Coles (vice Bown), Drean, Ellery (Vice-Chair), Redman and Trail BEM.

Apologies:-

Councillors Bown and Prowse.

* **SC/7** **Minutes**

RESOLVED that the Minutes of the meetings held on 24 and 26 October 2018 be signed as correct records, subject to:

- (a). The Minutes of the meeting held on 24 October 2018 being amended to record the apologies of Cllr. David Thomas; and
- (b). The Minutes of the meeting held on 26 October being amended to record that Fr. David Watson (Independent Person) was in attendance and to record the apologies of Cllr. David Thomas.

* **SC/8** **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 Paragraph 1 of Part 1 of Schedule 12(A) as amended to the Act, namely information relating to an individual.

* **SC/9** **Standards Committee Hearing - Councillor Mark Healey MBE**

(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 MBE (“the Subject Member”) 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 OF FACT

During this stage, the Committee:

- Considered a report of the Director of Corporate Services (SC/18/3) to which was appended the final report of the external Investigating Officer summarising the complaint and the investigation into the alleged breaches of the Code; and
- Received an oral submission from and put questions to the Subject Member.

The report of the Investigating Officer detailed that relevant legislation to the investigation included Chapter 7 of Part 1 of the Localism Act 2011. The hearing focussed on the following alleged breaches of the Code as identified in the Investigating Officer's report:

- That the Subject Member had, on 14 June 2018, posted an inappropriate video on his "Twitter" account, the nature of which was considered to be contrary to paragraph 4.1(1) of the Code (a requirement to conduct oneself in a manner consistent with the Authority's duty to promote and maintain high standards of conduct by its Members) and paragraph 4.2(9) of the Code (a requirement not to conduct oneself in a manner or behave in such a way as to give a reasonable person the impression that you have brought your office or the Authority into disrepute). The investigation report also noted that the "Twitter" feed was headed up as "Mark Healey, Vice Chairman of the Devon & Somerset Fire & Rescue Authority" and that the way the account was set up at the time of the post would give the reader the impression that the Subject Member was acting in his official capacity. It was this link that caused the alleged breaches of the Code.

The Committee viewed the video during the hearing.

The Committee heard from the Subject Member that there was no malice involved in making the post and nor was it intended to cause any offence. The Subject Member regretted any offence caused and had, immediately on being notified of the alleged breach, removed the post, amended the heading on the "Twitter" account to remove the reference to the Authority and had written an apology to the Monitoring Officer.

Having considered all the submissions, the Committee adjourned to consider the findings of fact. On reconvening, the Committee

RESOLVED that, on the balance of probabilities having considered all the submissions received, Councillor Healey had breached the Code as follows:

- (a). By posting the video as he did with the Twitter account linked to his official capacity, Councillor Healey had brought his office (but not the Authority) into disrepute, which was contrary to paragraph 4.2(9) of the Code; and
- (b). By posting as he did, Councillor Healey had failed to adhere to the general principles of public life underpinning the Code and had therefore conducted himself in a manner contrary to paragraph 4.1(1) of the Code, namely the Authority's statutory duty to promote and maintain high standards of conduct.

Having established on the balance of probabilities, on the basis of the submissions received, that the "Twitter" post did amount to breaches of the Code, the Committee went on to consider submissions in mitigation and the imposition of sanctions.

The Committee noted that the Subject Member regretted any offence caused and had, immediately on being notified of the alleged breach, removed the post, amended the heading on the "Twitter" account to remove the reference to the Authority and had written an apology to the Monitoring Officer. This was acknowledged in the investigation report which also recommended – in light of the previous actions – that no further action be taken. The Subject Member also indicated that he had not used his "Twitter" account since being notified of the alleged breaches of the Code.

At this stage, the Committee gave regard to an e-mail received from the Independent Person (Fr. David Watson) who agreed with the investigating officer's view that no further action be taken.

RESOLVED

- (a). That, given the actions already undertaken by the Subject Member, no further sanctions be imposed for the breaches of the Code identified; and
- (b). That the Monitoring Officer be requested to provide all Authority Members with a copy of any Social Media Policy in place for Service employees.

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

The Meeting started at 12.00 pm and finished at 12.40 pm

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Agenda Item 4

REPORT REFERENCE NO.	SC/19/1
MEETING	STANDARDS COMMITTEE
DATE OF MEETING	8 APRIL 2019
SUBJECT OF REPORT	REVIEW OF CODE OF CONDUCT AND COMPLAINTS GUIDANCE
LEAD OFFICER	Director of Corporate Services
RECOMMENDATIONS	<p><i>That the Committee considers the contents of this report with a view to:</i></p> <p><i>(a). recommending to the Authority that:</i></p> <p><i>(i) an indemnity be provided for Independent Person(s) and co-opted members (if appointed) of the Standards Committee to meet any reasonable costs incurred in securing appropriate legal advice and representation in respect of any civil or criminal proceedings that may arise from their involvement in Authority standards matters – this indemnity to include a requirement that any expenditure incurred by the Authority under the indemnity be refunded in the event of a conviction that was not subsequently overturned on appeal</i></p> <p><i>(ii) the Authority’s Code of Conduct be amended:</i></p> <p><i>A. to incorporate the following definition of harassment in paragraph 4.2(4):</i></p> <p><i>“harassment” may be defined as any unwanted behaviour which the individual subject to that behaviour finds offensive or which makes them feel intimidated or humiliated. This can happen on its own or alongside other forms of discrimination. Examples of unwanted behaviour include:</i></p> <ul style="list-style-type: none"><i>• spoken or written words or abuse;</i><i>• offensive tweets, e-mails or comments on social networking sites;</i><i>• images and graffiti;</i><i>• physical gestures;</i><i>• facial expressions; and</i><i>• jokes</i>

	<p>B. to insert the following into the General Obligations paragraph of the Code (paragraph 4.1)(you must....)</p> <p>(6) comply and co-operate fully and openly in any formal standards investigation in which you are either the Subject Member or a witness;</p> <p>C. to insert the following into paragraph 4.2 of the Code (you must not....)</p> <p>(10) make trivial or malicious allegations against a fellow Member (or Members) of the Authority.</p> <p>(iii) two Independent Persons be appointed, with the Clerk delegated authority to undertake the process for and determine the appointments and with the term of office of the Independent Persons to be limited to three years, renewable once;</p> <p>(iv) that the Independent Persons be remunerated on the basis £100 for each standards issue they are involved in;</p> <p>(v) that up to four co-opted members be appointed to serve on the Standards Committee, with the Clerk delegated authority to undertake an appropriate appointments process and confirm actual appointments</p> <p>(vi) that the co-opted members be remunerated on the basis of £500 per annum.</p> <p>(b). approving the following amendment to the Guidance on Making a Complaint:</p> <p>amend the “Other Assessment Criteria” sub-heading by insertion of the words (the Public Interest Test) and amending the introductory paragraph to read “If your complaint meets the above criteria, the Monitoring Officer, following consultation with the Independent Person, may still decide to take no further action in respect of your complaint if it is felt that further action would not be in the public interest. This is likely to be the case where one or more of the following applies”.</p> <p>(c). determining whether to adopt either Option A or Option B as set out in paragraph 4.15 and relating to dealing with complaints that have been subject to investigation i.e. whether or not to hold hearings;</p> <p>(d). that, subject to the decision at (c) above:</p> <p>(i) should Option A be preferred, the revised arrangements should come into effect for any complaints received after the date of this Committee meeting; or</p>
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	<p>(ii) should Option B be preferred, the revised arrangements should come into effect for any complaints received after the date of this Committee meeting, initially with a Hearing Panel comprising three Members of the Standards Committee, selected by the Monitoring Officer in consultation with the Committee Chair from the full Standards Committee; with the Hearing Panel to be expanded subsequently to include two co-opted members, subject to the Authority approving the appointment of such members and to the appointments having been made.</p> <p>(e). that the complaints handling arrangements be amended as follows:</p> <p>(i) for those instances where a formal investigation report concludes that there is no breach of the code and/or no sanction is recommended, the Monitoring Officer should be delegated authority to determine the matter following consultation with the Independent Person; and</p> <p>(ii) for all cases where a complaint has been subject to formal investigation, then the Monitoring Officer should produce and publish on the Authority's website, as soon as possible, a Decision Notice including a brief statement of the facts, the provisions of the Code engaged by the allegations, the view of the Independent Person, the reasoning of the decision maker and any sanction (or other action) applied;</p> <p>(f). that the Clerk be authorised:</p> <p>(i) to revise the current Guidance on Making a Complaint to produce two separate documents (a Guide to Making a Complaint; and Procedures to be Followed on Receipt of a Complaint), both to be published on the website; and</p> <p>(ii) to amend the Procedures document to reflect the new arrangements as determined at (c) an (e) above.</p>
<p>EXECUTIVE SUMMARY</p>	<p>At its meeting on 30 April 2018, the Authority approved recommendations from the former Determinations and Dispensations Committee that saw, amongst other things, the change in name of that Committee to the Standards Committee along with revisions to the Authority's approved Code of Conduct and associated guidance and procedures for the making of and handling of complaints. These changes had been prompted by experience on operation of the new ethical standards regime as introduced by the Localism Act 2011.</p>

	<p>Since that time, there have been two further Standards Committee hearings and, in January of this year, the Committee on Standards in Public Life published the findings of its review into local government ethical standards.</p> <p>This contains a number of “best practice” recommendations along with other recommendations the majority of which would require legislative change.</p> <p>This report now considers the Authority’s current regime in light of experience over the last twelve months and the contents of the Committee on Standards in Public Life report and suggests areas where revisions might be beneficial.</p>
RESOURCE IMPLICATIONS	As indicated in the report.
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	The contents of this report are considered compatible with existing equalities and human rights legislation.
APPENDICES	<p>A. Executive Summary, Recommendations and Best Practice Recommendations from the report by the Committee on Standards in Public Life on Local Government Ethical Standards.</p> <p>B. Amended Code of Conduct</p> <p>C. Amended Guidance on Making a Complaint</p>
LIST OF BACKGROUND PAPERS	<p>Local Government Act 1972</p> <p>Local Government & Housing Act 1989</p> <p>Local Government Act 2000</p> <p>The Local Authorities (Members’ Allowances)(England) Regulations 2003</p> <p>The Fire & Rescue Services Act 2004</p> <p>The Localism Act 2011</p> <p>The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012</p>

1. INTRODUCTION

- 1.1. At its meeting on 30 April 2018, the Authority approved recommendations from the former Determinations and Dispensations Committee that saw, amongst other things, the change in name of that Committee to the Standards Committee along with revisions to the Authority's approved Code of Conduct and associated guidance and procedures for the making of and handling of complaints. These changes had been prompted by experience on operation of the new ethical standards regime as introduced by the Localism Act 2011.
- 1.2. Since that time, there have been two further Standards Committee hearings and, in January of this year, the Committee on Standards in Public Life published the findings of its review into local government ethical standards. This contains a number of "best practice" recommendations along with other recommendations the majority of which would require legislative change.
- 1.3. This report now considers the Authority's current regime in light of experience over the last twelve months and the contents of the Committee on Standards in Public Life report and suggests areas where revisions might be beneficial.

2. LEGISLATIVE BACKGROUND

- 2.1. The Localism Act 2011 introduced a new ethical standards regime for all local authorities. The former regime under the Local Government Act 2000 provided, amongst other things, for a Model Code of Conduct which applied across all authorities together with an independent external body – the Standards Board for England – which administered arrangements for dealing with complaints that Members had failed to follow the Code of Conduct. The Standards Board for England was able, in cases where breaches of the Model Code were established, to impose a range of sanctions up to and including suspensions.
- 2.2. The Localism Act 2011 ("the Act") saw the old regime completely abolished, with local authorities placed under a duty to promote and maintain high standards of conduct by Members and co-opted members of the authority and so doing to:
 - adopt a code dealing with the conduct expected of authority Members and co-opted members when acting in that capacity (Section 27(2) of the Act);
 - ensure that the code so adopted is, when viewed as a whole, consistent with the seven "Nolan" principles of public life (Section 28(1));
 - include provision in the code of registering and disclosing pecuniary and other interests (Section 28(2));
 - have in place arrangements to investigate and make decisions on allegations of breaches of the code of conduct adopted (Section 28(6));
 - appoint one or more "independent persons" whose views:
 - must be taken into account by the authority before it makes a decision on an allegation which has been investigated (Section 28(7)(a)); and
 - may be sought by the authority in other circumstances (to be determined by the authority in question) and by a Member or co-opted member subject to an allegation (Section 28(7)(b));

- maintain and publish on its website a register detailing for each Member and co-opted member (including the spouse or civil partner of the Member or co-opted Member or anyone with whom the Member or co-opted member is living either as husband or wife or as if they were civil partners) a register of disclosable pecuniary interests and any other interests as determined by the authority (Sections 29 and 30).

- 2.3. Section 31 of the Act requires all Members and co-opted members with a disclosable pecuniary interest to declare this interest at meetings when matters where the interest exists are being discussed and not to participate in the debate or vote on such matters. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, made under Section 30 of the Act, identifies disclosable pecuniary interests that must be both registered and declared at meetings. Section 34 of the Act makes failure to register and/or declare a disclosable pecuniary interest an offence which may only be instituted by the Director of Public Prosecutions and which is punishable, on summary conviction, of a fine not exceeding level 5 on the standard scale (currently £5,000).
- 2.4. The Act removed the ability for Members to be suspended or disqualified for proven breaches of the code of conduct. Consequently, sanctions currently available to local authorities (including this Authority) include public censure, apology, training, removal from committee and/or outside body responsibilities and withdrawal of access to facilities and resources.
- 2.5. Other than the requirements of Section 28, there are no prescriptions in the Act either in relation to the contents of the code of conduct to be adopted by an authority or the nature of arrangements for dealing with allegations of non-compliance with the code.

3. LOCAL GOVERNMENT ETHICAL STANDARDS – A REVIEW BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

- 3.1. At its meeting on 30 April 2018, the Authority approved a response to the review being undertaken by the Committee on Standards in Public Life on local government ethical standards. The review had been prompted not by any specific allegations of misconduct but rather to assure the Committee that the current framework introduced by the Localism Act was conducive to promoting and maintaining the standards expected by the public.
- 3.1. The findings of the review were published by the Committee in January 2019. The full report of the Committee on Standards in Public Life can be accessed by following the link below:
<https://www.gov.uk/government/publications/local-government-ethical-standards-report>
- The report contains some 26 recommendations for amendments to the current legislative regime, the majority of which would require statutory change. The report also identifies some 15 examples of best practice which the Committee expects should be implemented by local authorities.
- 3.2. Appendix A to this report set out the Executive Summary of the Committee's review report, together with the 26 recommendations and 15 best practice examples, annotated where relevant with considerations for this Authority.
- 3.3. Specifically, the Committee is asked to consider whether it would wish to recommend to the Authority:

- (a). that, in line with Recommendation 11, an indemnity be provided for Independent Person(s) and co-opted members (if appointed) of the Standards Committee to meet any reasonable costs incurred in securing appropriate legal advice and representation in respect of any civil or criminal proceedings that may arise from their involvement in Authority standards matters. This indemnity would include a requirement that any expenditure incurred by the Authority under the indemnity be refunded in the event of a conviction that was not subsequently overturned on appeal.
- (b). that, in line with Best Practice recommendations 1 and 2, the Authority's Code of Conduct be amended as follows:
- (i) the following definition of harassment be incorporated into paragraph 4.2(4):
- “harassment” may be defined as any unwanted behaviour which the individual subject to that behaviour finds offensive or which makes them feel intimidated or humiliated. This can happen on its own or alongside other forms of discrimination. Examples of unwanted behaviour include:
- spoken or written words or abuse;
 - offensive tweets, e-mails or comments on social networking sites;
 - images and graffiti;
 - physical gestures;
 - facial expressions; and
 - jokes
- (ii) the following be inserted into the General Obligation paragraph of the Code (paragraph 4.1) (you must...):
- (6) comply and co-operate fully and openly in any formal standards investigation in which you are either the Subject Member or a witness.
- (iii) the following be inserted into paragraph 4.2 of the Code (you must not...)
- (10) make trivial or malicious allegations against a fellow Member (or Members) of the Authority.
- (c). that, in line with Best Practice recommendation 7, two Independent Persons should be appointed and the Clerk delegated authority to undertake the process for and make the appointments, with the term of office for the Independent Persons to be limited to three years, renewable once;
- (d). that Independent Persons be remunerated on the basis of £100 for each standards issue that they are involved in, in recognition of the associated time commitment.

- 3.4. In recognition of Best Practice recommendation 6, the Committee is also recommended to approve that the Guidance on Making a Complaint be amended to insert the words (the Public Interest Test) after the “Other Assessment Criteria” sub-heading and amending the introductory paragraph to read:

“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 it is felt that further action would not be in the public interest. This is likely to be the case where one or more of the following applies:”

- 3.5. For ease of reference, copies of the Code of Conduct and Guidance on Making a Complaint, amended in accordance with (b) and (c) above, are provided at Appendices B and C respectively to this report.

4. LOCAL REVIEW OF CURRENT ARRANGEMENTS

- 4.1. In compliance with the requirements of the Act, the Authority initially adopted a Code of Conduct and arrangements for dealing with allegations in 2012. These, in the main, retained the contents of the previous Model Code and mirrored arrangements in place for dealing with allegations under the old regime.
- 4.2. The Authority has not dealt with many complaints relating to failure to follow the Code of Conduct but in light of experience in those complaints that had been dealt with, both the Code and arrangements were reviewed and revised in 2018. Since that time, a further review has been undertaken in light of the experience in dealing with other complaints since that time.
- 4.3. In undertaking this review, the opportunity has been taken to examine the arrangements currently in place for the constituent authorities and for Cornwall Council (which has previously provided assistance for this Authority on standards issues). As previously indicated, other than a requirement to have in place “arrangements” to deal with alleged code of conduct breaches, there are no statutory prescriptions as to what form these arrangements should take. Consequently, there are a number of local variations to the arrangements in place for constituent authorities and Cornwall Council. This aspect of the review has focussed on:
- whether or not the arrangements feature hearings to determine the outcome of complaints that have been investigated; and
 - whether the arrangements provide for co-opted members of Standards Committees.
- 4.4. The outcome of this review is summarised in the table below:

Authority	Total size of Standards Committee	No. of Independent Members	Holds hearings (Yes or No)
Devon County Council	12	5	N
Somerset County Council	9	4	Y
Plymouth City Council	6	0	N
Torbay Council	6	0	Y
Cornwall Council	18	4	N

- 4.5. Other issues of relevance here are:

Cornwall Council

Does not at present hold hearings and only refers those issues to its Standards Committee where it is felt that public censure is necessary, to confirm this decision.

Devon County Council

Devon County Council's procedures provide for the full Standards Committee to consider the findings of investigations together with the views of the Independent Person on those findings for determination and imposition of sanction(s) as appropriate. Additionally, at such full Standards Committee hearings, the Devon County Council procedures allow the co-opted members to give an "indicative vote" on whether or not a breach has occurred and what the sanction for that breach should be.

Somerset County Council

While Somerset County Council's procedures provide for hearings to be held, the Chair of the Standards Committee, in consultation with the Monitoring Officer, has delegated authority to determine the scope and content of the hearing panel process following a "case management" meeting involving the Chair of the Standards Committee, the Subject Member, the Monitoring Officer, the County Solicitor and a co-opted member of the Committee. The format of the hearing may be a full hearing with witnesses etc. or whether the matter could be dealt with by written representations.

Plymouth City Council

Rather than having a Standards Committee as such, Plymouth City Council has a Standards Advisory Panel whose views are sought by the Monitoring Officer on sanctions to apply following an investigation when a breach of the code has been found.

Torbay Council

Hearings following investigations are conducted not by the full Standards Committee but by a Hearings Panel of three Members selected from the full Standards Committee.

- 4.6. This Committee has delegated authority to oversee the arrangements for assessment, investigation and determination (as appropriate) of allegations of any breach of the Code of Conduct. Given this and in light of the above review findings, the Committee is invited to consider and determine the following.

Co-opted Members

- 4.7. Devon, Somerset and Cornwall each feature co-opted members as part of their standards arrangements. Unlike the Independent Person, whose role is defined and required by the Localism Act, the Act does not require any authority to feature, as part of its arrangements, co-opted members.
- 4.8. That having been said, the presence of co-opted members who are independent from the Authority would convey a strong public message that the Authority does take seriously its statutory duty to promote and maintain high standards of ethical conduct by its Members. The Local Government Act 1972 empowers this Authority to appoint, should it wish, co-opted members to serve on its Standards Committee. While the Local Government and Housing Act 1989 prohibits co-opted members from exercising an actual vote, the Authority could adopt a convention similar to that of Devon County Council of giving co-opted members an "indicative vote" on issues (albeit that this could not be binding.)

- 4.9. Co-opted Members views could be sought generally on how best the Authority discharges its statutory duties (e.g. future reviews of the Code of Conduct and arrangements for dealing with breaches) and could also be sought in relation to code breaches that have been subject to investigation when reaching a conclusion on whether or not there has been a breach and if so what sanction should be imposed.
- 4.10. The Committee is invited to recommend to the Authority that up to four co-opted members should be appointed to serve on the Standards Committee, with the Clerk delegated authority undertake an appropriate appointments process and confirm the actual appointments. It would also be permissible to pay co-opted members a small allowance to recognise the time commitment involved. It is suggested that this be fixed initially at £500 per annum and that, subject to approval by the Authority, the Clerk be authorised to amend the Authority's Approved Scheme of Members Allowances to reflect this.

Whether or not to hold hearings

- 4.11. Neither Devon nor Plymouth holds hearings to determine the outcomes of any alleged code breaches which have been subject to investigation.
- 4.12. While this might seem contrary to natural justice principles, the following should also be recognised:
- that arrangements to deal with such issues under the Localism Act should be proportionate, given that sanctions such as suspension are currently not available;
 - that Subject Members have the opportunity to comment on investigation reports at the draft stage and have these comments reflected in the final report to be considered by the Standards Committee;
 - that there is a danger of hearings can become overly adversarial rather than seeking to determine, on the balance of probability, whether evidence presented indicates a code breach and if so what sanction(s) should apply.
- 4.13. It is also worth noting that the Devon County Council procedures have been tested at judicial review and found to be fully compliant with the requirements of the Localism Act.
- 4.14. Alternatively, if the Committee is minded to retain a hearings process for to determine those cases where an investigation indicates there may have been a code breach, then it is suggested that hearings are not conducted by the full Standards Committee but rather by a Hearings Panel comprising three Members and two co-opted members selected (subject to the Authority approving the appointment of such members) by the Monitoring Officer (in consultation with the Committee Chair) from the full Standards Committee. This would provide for a timely, proportionate process.
- 4.15. The Committee is invited to consider and determine one of the following options:
- Option A:** that instances where alleged code breaches have been the subject of investigation be determined by the full Standards Committee, with neither party (i.e. complainant and Subject Member) having a right of attendance; or
- Option B:** that instances where alleged code breaches have been the subject of an investigation be determined by a Hearings Panel comprising three Members and two co-opted members (subject to the Authority approving the appointment of such members) selected by the Monitoring Officer in consultation with the Committee Chair from the full Standards Committee.

- 4.16. It is recommended that:
- (a). should Option A be preferred, the revised arrangements should come into effect for any complaints received after the date of this Committee meeting; or
 - (b). should Option B be preferred, the revised arrangements should come into effect for any complaints received after the date of this Committee meeting, initially with a Hearing Panel comprising three Members of the Standards Committee, selected by the Monitoring Officer in consultation with the Committee Chair from the full Standards Committee; with the Hearing Panel to be expanded subsequently to include two co-opted members, subject to the Authority approving the appointment of such members and to the appointments having been made.

- 4.17. It is also recommended that, irrespective of which Option at 4.15 above is determined, the complaints handling arrangements be amended as follows:
- (a). for those instances where a formal investigation report concludes that there is no breach of the code and/or no sanction is recommended, the Monitoring Officer should be delegated authority to determine the matter following consultation with the Independent Person;
 - (b). for all cases where a complaint has been subject to formal investigation, then the Monitoring Officer should produce and publish on the Authority's website, as soon as possible, a Decision Notice including a brief statement of the facts, the provisions of the Code engaged by the allegations, the view of the Independent Person, the reasoning of the decision maker and any sanction (or other action) applied;
 - (c). that the Clerk be authorised:
 - (i) to revise the current Guidance on Making a Complaint to produce two separate documents (a Guide to Making a Complaint; and Procedures to be Followed on Receipt of a Complaint), both to be published on the website; and
 - (ii) to amend the Procedures document to reflect the new arrangements as determined at paragraphs 4.15 and 4.17 above.

5. CONCLUSION

- 5.1. The Committee is invited to consider the contents of this report and determine:
- what, if any changes, it would wish to recommend to the Authority to the Code of Members' Conduct; and
 - what, if any, changes it would wish to make in relation to the required arrangements for dealing with allegations of breaches of the approved Code.

MIKE PEARSON
Director of Corporate Services

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Executive summary

Local government impacts the lives of citizens every day. Local authorities are responsible for a wide range of important services: social care, education, housing, planning and waste collection, as well as services such as licensing, registering births, marriages and deaths, and pest control. Their proximity to local people means that their decisions can directly affect citizens' quality of life. High standards of conduct in local government are therefore needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy.

Our evidence supports the view that the vast majority of councillors and officers maintain high standards of conduct. There is, however, clear evidence of misconduct by some councillors. The majority of these cases relate to bullying or harassment, or other disruptive behaviour. There is also evidence of persistent or repeated misconduct by a minority of councillors.

We are also concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality, and the increased complexity of local government decision-making.

Giving local authorities responsibility for ethical standards has a number of benefits. It allows for flexibility and the discretion to resolve standards issues informally. We have considered whether there is a need for a centralised body to govern and adjudicate on standards. We have concluded that whilst the consistency and independence of the system could be enhanced, there is no reason to reintroduce a centralised body, and that local authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government.

We have made a number of recommendations and identified best practice to improve ethical standards in local government. Our recommendations are made to government and to specific groups of public officeholders. We recommend a number of changes to primary legislation, which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code, which we expect could be implemented more swiftly. Our best practice recommendations for local authorities should be considered a benchmark of good ethical practice, which we expect that all local authorities can and should implement. We will review the implementation of our best practice in 2020.

Codes of conduct

Local authorities are currently required to have in place a code of conduct of their choosing which outlines the behaviour required of councillors. There is considerable variation in the length, quality and clarity of codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.

There are, however, benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. The scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.

Declaring and managing interests

The current arrangements for declaring and managing interests are unclear, too narrow and do not meet the expectations of councillors or the public. The current requirements for registering interests should be updated to include categories of non-pecuniary interests. The current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.

Investigations and safeguards

Monitoring Officers have responsibility for filtering complaints and undertaking investigations into alleged breaches of the code of conduct. A local authority should maintain a standards committee. This committee may advise on standards issues, decide on alleged breaches and sanctions, or a combination of these. Independent members of decision-making standards committees should be able to vote.

Any standards process needs to have safeguards in place to ensure that decisions are made fairly and impartially, and that councillors are protected against politically motivated, malicious, or unfounded allegations of misconduct. The Independent Person is an important safeguard in the current system. This safeguard should be strengthened and clarified: a local authority should only be able to suspend a councillor where the Independent

Person agrees both that there has been a breach and that suspension is a proportionate sanction. Independent Persons should have fixed terms and legal protections. The view of the Independent Person in relation to a decision on which they are consulted should be published in any formal decision notice.

Sanctions

The current sanctions available to local authorities are insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, lacks the necessary independence and transparency to play the central role in a standards system. The current lack of robust sanctions damages public confidence in the standards system and leaves local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.

Local authorities should therefore be given the power to suspend councillors without allowances for up to six months. Councillors, including parish councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.

The current criminal offences relating to Disclosable Pecuniary Interests are disproportionate in principle and ineffective in practice, and should be abolished.

Supporting officers

The Monitoring Officer is the lynchpin of the current standards arrangements. The role is challenging and broad, with a number of practical tensions and the potential for conflicts of interest. Local authorities should put in place arrangements to manage any potential conflicts. We have concluded, however, that the role is not unique in its tensions and can be made coherent and manageable with the support of other statutory officers. Employment protections for statutory officers should be extended, and statutory officers should be supported through training on local authority governance.

Councils' corporate arrangements

At a time of rapid change in local government, decision-making in local councils is getting more complex, with increased commercial activity and partnership working. This complexity risks putting governance under strain. Local authorities setting up separate bodies risk a governance 'illusion', and should take steps to prevent and manage potential conflicts of interest, particularly if councillors sit on these bodies. They should also ensure that these bodies are transparent and accountable to the council and to the public.

Our analysis of a number of high-profile cases of corporate failure in local government shows that standards risks, where they are not addressed, can become risks of corporate failure. This underlines the importance of establishing and maintaining an ethical culture.

Leadership and culture

An ethical culture requires leadership. Given the multi-faceted nature of local government, leadership is needed from a range of individuals and groups: an authority's standards committee, the Chief Executive, political group leaders, and the chair of the council.

Political groups have an important role to play in maintaining an ethical culture. They should be seen as a semi-formal institution sitting between direct advice from officers and formal processes by the council, rather than a parallel system to the local authority's standards processes. Political groups should set clear expectations of behaviour by their members, and senior officers should maintain effective relationships with political groups, working with them informally to resolve standards issues where appropriate.

The aim of a standards system is ultimately to maintain an ethical culture and ethical practice. An ethical culture starts with tone. Whilst there will always be robust disagreement in a political arena, the tone of engagement should be civil and constructive. Expected standards of behaviour should be embedded through effective induction and ongoing training. Political groups should require their members to attend code of conduct training provided by a local authority, and this should also be written into national party model group rules. Maintaining an ethical culture day-to-day relies on an impartial, objective Monitoring Officer who has the confidence of all councillors and who is professionally supported by the Chief Executive. An ethical culture will be an open culture. Local authorities should welcome and foster opportunities for scrutiny, and see it as a way to improve decision making. They should not rely unduly on commercial confidentiality provisions, or circumvent open decision making processes. Whilst local press can play an important role in scrutinising local government, openness must be facilitated by authorities' own processes and practices.

List of recommendations

Number	Recommendation	Responsible Body
1.	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association
2.	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government
3.	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government
4.	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government
5.	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government
6.	local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	Government

Number	Recommendation	Responsible Body
7.	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, "if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter".	Government
<p>COMMENT</p> <p>This Authority's Code of Conduct already contains this provision.</p>		
8.	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government
<p>COMMENT</p> <p>Although currently not a statutory requirement at present, the Authority could determine itself that the term of office for the Independent Person should be fixed at two years, renewable once.</p>		
9.	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government
<p>COMMENT</p> <p>As a matter of good practice, the Authority could determine that this should happen in any event. In recent previous hearings, the view of the Independent Person has been recorded in the minutes.</p>		
10.	A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government

Number	Recommendation	Responsible Body
11.	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government/all local authorities
<p>COMMENT</p> <p>This Authority has, since its establishment, had in place an indemnity for officers and Members against reasonable costs which may be incurred in securing appropriate legal advice and representation in respect of civil or criminal proceedings. This indemnity extends to defending a claim for defamation. It is considered that the Authority could (using Section 5A of the Fire & Rescue Services Act 2004 [as inserted by the Localism Act 2011]) provide Independent Person(s) (and co-opted members) with a similar indemnity.</p>		
12.	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government
13.	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government
14.	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government
15.	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government
<p>COMMENT</p> <p>It is considered the Authority could adopt this recommendation now, as a matter of best practice and in the interests of greater transparency.</p>		
16.	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government

Number	Recommendation	Responsible Body
17.	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government
18.	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government
19.	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish councils
20.	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.	Government
21.	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.	Government
22.	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government
23.	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government
24.	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government
25.	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political groups National political parties
26.	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association

List of best practice

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

COMMENT

The Authority's current Code already provides, at paragraph 4.2(4), a prohibition on bullying and defines what constitutes bullying. It is proposed that this paragraph of the Code be amended to refer also to "harassment" and contain the following definition of what constitutes "harassment":

"harassment" may be defined as any unwanted behaviour which the individual subject to that behaviour finds offensive or which makes them feel intimidated or humiliated. This can happen on its own or alongside other forms of discrimination. Examples of unwanted behaviour include:

- spoken or written words or abuse;
- offensive tweets, e-mails or comments on social networking sites;
- images and graffiti;
- physical gestures;
- facial expressions; and
- jokes

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

COMMENT

The Authority's current Code does not contain such provisions at present, albeit that the procedures for dealing with complaints provides for the Monitoring Officer, following consultation with the Independent Person, to decide to take no further action on a complaint if it is considered that the complaint appears to be simply malicious, politically motivated or "tit-for-tat".

It is felt that the Authority's Code should be amended to include the following as an additional General Obligation to paragraph 4.1 (you must...):

(6) comply and co-operate fully and openly in any formal standards investigation in which you are either the Subject Member or a witness.

The Authority's Code could be amended to include the following as an addition to paragraph 4.2 (you must not...)

(10) make trivial or malicious allegations against a fellow Member (or Members) of the Authority.

It should be noted, though, that inclusion of these issues in the Code will mean that any perceived breach of these provisions will of itself be, on the face of it, a breach of the Code of Conduct.

<p>Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.</p>
<p>COMMENT</p> <p>This Authority reviews its Code annually and in consultation with neighbouring authorities as necessary to seek to ensure consistency of practice. Views of the public or community organisations are not sought at present.</p>
<p>Best practice 4: An authority’s code should be readily accessible to both councillors and the public, in a prominent position on a council’s website and available in council premises.</p>
<p>COMMENT</p> <p>Both the Authority Code and guidance on making a complaint are readily accessible (in 3 clicks) from the Devon & Somerset Fire & Rescue Service (the Service) website Home Page.</p>
<p>Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.</p>
<p>COMMENT</p> <p>The Authority currently publishes its Gifts and Hospitality register on its website and this is updated as required. At present, though, it is not in an accessible format, but this will be explored.</p>
<p>Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.</p>
<p>COMMENT</p> <p>The Authority’s current Guidance on Making a Complaint currently identifies criteria against which allegations are initially filtered. These are based on criteria used by the former Standards Board for England to filter allegations and identify those instances when it would not be in the public interest to take action in relation to any complaint received.</p> <p>It is suggested, though, that the Guidance could be amended to include the words (the Public Interest Test) after the “Other Assessment Criteria” sub-heading and then amending the introductory paragraph to read “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 it is felt that further action would not be in the public interest. This is likely to be the case where one or more of the following applies:”</p>
<p>Best practice 7: Local authorities should have access to at least two Independent Persons.</p>
<p>COMMENT</p> <p>It is felt that this could be beneficial in providing resilience in dealing with complaints in a timely manner. As such, it is proposed that the Authority should seek to appoint a second Independent Person. Additionally, given Recommendation 8 (see recommendations above), it is proposed that the Term of Office for both Independent Persons should be limited to two years, renewable once.</p>

<p>Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.</p>
<p>COMMENT</p> <p>The Authority's current Guidance on Making a Complaint already provides for the Independent Person to be consulted at all stages of the process up to and including a decision to investigate and, as required by statute, prior to any decision being taken on an allegation that has been investigated.</p>
<p>Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker and any sanction applied.</p>
<p>COMMENT</p> <p>The Authority's current process provides that any matter which has been subject to investigation should then be determined by the Standards Committee. Full Minutes of such meetings have been published on the Authority's website. The Minutes include all of the issues identified in Best Practice and also record the views of the Independent Person (see Recommendation 9 above and the associated comment to this recommendation).</p> <p>Going forwards, it is recommended that, for those matters which have been subject to investigation but where either no breach of the code is found and/or no sanction is recommended, then the Monitoring Officer should be delegated authority to determine the matter following consultation with the Independent Person. It is also recommended that, for all cases where a complaint has been subject to formal investigation, then the Monitoring Officer should produce and publish on the Authority's website, as soon as possible, a Decision Notice including a brief statement of the facts, the provisions of the Code engaged by the allegations, the view of the Independent Person, the reasoning of the decision maker and any sanction (or other action) applied.</p>
<p>Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.</p>
<p>COMMENT</p> <p>The Authority's Guidance on Making a Complaint (which includes the process for handling complaints and estimated timescales) is published on the Service website.</p>
<p>Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.</p>
<p>COMMENT</p> <p>Not applicable to this Authority</p>

<p>Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.</p>
<p>COMMENT</p> <p>Not applicable to this Authority</p>
<p>Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.</p>
<p>COMMENT</p> <p>To maintain the safeguard the Monitoring Officer from potential conflicts of interest, the Service currently has arrangements in place to enable investigations to be undertaken independently.</p>
<p>Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.</p>
<p>COMMENT</p> <p>This Authority has established Red One Ltd. in accordance with the relevant legislation to undertake trading on a commercial basis. Red One Ltd. is referenced in the Authority's annual governance statement. Red One Ltd. is, though, a separate legal entity that operates under the provisions of the Companies Act and its Board meetings will discuss matters which are commercially sensitive and to which exemptions for this purpose are provided by the Freedom of Information Act. For this reason, it is not felt appropriate that Red One Ltd. should publish its board agendas etc. in an accessible place.</p>
<p>Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.</p>
<p>This Authority does not have political groups with leaders or whips. It is suggested that a proportionate response to this best practice recommendation would be to discharge it through meetings of the Standards Committee.</p>

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

TABLE OF CONTENTS

1.	INTRODUCTION – GENERAL PRINCIPLES OF PUBLIC LIFE	1
2.	DEFINITIONS	2
3.	APPLICATION OF THIS CODE	3
4.	GENERAL OBLIGATIONS.....	4
5.	INTERESTS	5
	(a). Registration of Interests	5
	(b). Disclosable Pecuniary Interests	6
	(c). Personal Interests	6
	(d). Non-Registerable Interests.....	7
	(e). Declaration of Interests at Meetings.....	7
	(f). “Sensitive” Interests.....	8

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
<i>“land”</i>	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
<i>“relevant authority”</i>	means the authority of which you are a member
<i>“relevant person”</i>	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
<i>“relevant period”</i>	a period of 12 months ending with the date on which you notified the Monitoring Office of an interest
<i>“securities”</i>	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 and do not use any Authority resources improperly (e.g. for purely personal or party political purposes);
- (6) comply and co-operate fully and openly in any formal standards investigation in which you are either the Subject Member or a witness.

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 or harass 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. "Harassment" may be define as any unwanted behaviour which the individual subject to that behaviour finds offensive or which makes them feel intimidated or humiliated. Examples of unwanted behaviour include:
 - spoken or written words or abuse;
 - offensive tweets, e-mails or comments on social networking sites;
 - images and graffiti;
 - physical gestures;
 - facial expressions; and

- jokes;

- (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 legal or accountancy 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 by reference 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;
- (10) make trivial allegations against a fellow Member (or Members) of the Authority.

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 you or a relevant person (or body in which you or 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);
- (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;
- (6) any contract made between the Authority and you or a relevant person (or body in which you or 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;but where neither you nor the relevant person has 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 given 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 dispensation 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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APPENDIX C TO REPORT SC/19/1

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) 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

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 Standards 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. It should be noted that while the Standards Committee may be required to seek the views of the Independent Person, the Independent Person is neither a member nor co-opted member of the Committee.

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 If you are complaining about more than one Member, you must submit a separate complaint for each Member complained about, specifying how you feel the Member concerned has failed to follow the Code.
- 7.3 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; Authority employee; monitoring officer; Member of Parliament);
 - 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.
- 7.4 To assist the Authority with its monitoring, you are also asked to include brief details of your ethnic origin (e.g. British; Irish; Other White Background; White and Black Caribbean etc)¹.

Please note that your identity will normally be disclosed to the Member about whom you are 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 and/or documentary evidence indicating an exceptionally serious or significant matter.

¹ 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 (The Public Interest Test)

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 it is felt that to do so would not be in the public interest. This is likely to be the case where 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 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;
- 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 appears to be simply malicious, politically motivated or “tit-for-tat”;
- your complaint is about something that happened 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;
- 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 7.4 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 working 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 working days of being sent the subject member’s written submission; or
 - in any event, by no later than fifteen working days after submission of the complaint to the subject membernotify 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 Standards 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 Standards 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 Standards 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 Standards 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 Standards Committee impose?

- 15.1 If, following consideration of a complaint, 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 of 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 that may have been provided to the subject member (e.g. e-mail accounts);
 - 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?

- 16.1 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.
- 16.2 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.

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