



THE LOCALISM ACT 2011 - STANDARDS

1. INTRODUCTION

- 1.1 Provisions in the Localism Act 2011 significantly amend the current standards regime, including:
- (a) abolishing the national regulatory body Standards for England (the Standards Board), and statutory local Standards Committees (see section 2 below)
 - (b) amending provisions relating to Codes of Conduct (see section 3 below)
 - (c) amending provisions about dealing with complaints against members (see section 4 below)
 - (d) amending provisions for registering and disclosing interests (see section 5 below)
 - (e) amending provisions for granting dispensations (see section 6 below).
- 1.2 The implementation date for the new regime is likely to be 1 July 2012.
- 1.3 This report brings together recommendations for a way forward on each of the matters set out above.

2. ABOLITION OF STATUTORY STANDARDS COMMITTEE AND IMPLICATIONS FOR COMMITTEE STRUCTURE

- 2.1 Statutory local Standards Committees, which include co-opted voting Independent Members and Parish/Town Council representatives, were set up under Part III of the Local Government Act 2000, and automatically cease to exist in England when the new regime comes into effect (likely to be 1 July 2012).
- 2.2 Many of the local Standards Committee's terms of reference were imposed by the 2000 Act, and relate directly to the pre-Localism Act statutory standards regime. Under the new regime these need not be transferred to any other Committee or person. (Under the Localism Act the Council itself has a statutory duty to promote and maintain high standards of conduct). However, some of the Committee's current terms of reference relate to duties which will still need to be performed and decisions which will still need to be taken, and which it is either not lawful or not appropriate for full Council to decide. These are:
- (a) To determine whether a member has demonstrated that access to confidential information held by the Council is reasonably necessary to enable him properly to perform his duties as a Councillor:
 - (b) Decisions on requests for dispensations (this is dealt with in section 6 of this report);
 - (c) Recommendation and review of a Code of Corporate Governance;
 - (d) Approval of the annual statement of Internal Control;
 - (e) Various other Audit functions.

- 2.3 Under the Localism Act, the responsibility of deciding whether to grant exemptions for staff in politically restricted posts is transferred from the Standards Committee to the Head of the Paid Service (Chief Executive).
- 2.4 It is proposed that, where members need to be formally involved in the working up of proposals that need to be adopted by full Council (such as revisions to the Council's standards regime, or advising Council on Members' Allowances), initial reports would be brought to Cabinet who would make recommendations to Council.

2.5 Recommended:

- 2.5.1 That the following matter be delegated to the Chief Executive in consultation with the Monitoring Officer:**

Where the member does not accept the relevant Head of Service's decision to withhold access, to determine whether a member has demonstrated that access to confidential information held by the Council is reasonably necessary to enable him properly to perform his duties as a Councillor;

- 2.5.2 That an Audit Committee be constituted, to comprise eight members of the Council, with the following terms of reference:**

Accounts

- 1. To approve the Authority's statement of accounts and specifically to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statement or from the audit that need to be brought to the attention of the Council**
- 2. To consider the external auditor's report to those charged with governance on issues from the audit of accounts.**
- 3. To review, during the year, the Council's financial progress, including variances from budget, and bring any relevant findings to the attention of the Council, the Cabinet, the Portfolio Holder or Overview & Scrutiny Panel as appropriate.**

Audit Activity

External

- 4. To consider the external auditor's annual letter, relevant reports and the report to those charged with governance.**
- 5. To consider specific reports as agreed with the external auditor.**
- 6. To consider the annual programme of work and associated fees for the external auditors and provide challenge as appropriate.**

Internal

- 7. To consider the annual report and opinion of Internal Audit, and a summary of audit activity (actual and proposed) and the level of assurance it can give over the Council's governance arrangements.**
- 8. To approve (but not direct) internal audit's strategy, plan and monitor performance.**

9. To consider summaries of specific internal audit reports as requested.
10. To consider a report from internal audit on agreed high priority recommendations not implemented within a reasonable timescale.
11. To consider reports dealing with the management and performance of the Council's internal audit service, including the effectiveness of internal audit in accordance with the Accounts and Audit Regulations 2011.

Regulatory Framework

12. To monitor the effective development and operation of risk management and governance in the council.
13. To approve council policies on Whistleblowing and Anti-Fraud and Corruption and Bribery.
14. To approve the authority's Annual Governance Statement.
15. To consider the Council's compliance with its approved Treasury Management Strategy.
16. To consider the Council's arrangements for governance and to agree necessary actions to ensure compliance with best practice.
17. To consider the Council's compliance with its own and other published standards and controls.
18. To appoint such Sub-Committees and Panels as it deems necessary for the proper performance of its duties, provided that Area Committees shall not be established without the prior consent of the Council.

3. NEW CODE OF CONDUCT

3.1 Under the Localism Act 2011, all Councils are required to adopt a Code dealing with the conduct that is expected of members and co-opted members of the Council when they are acting in that capacity. The wording of the Code is not prescribed, as it was under the 2000 Act. However it must, when viewed as a whole, be consistent with the following principles:

- (a) selflessness;
- (b) integrity;
- (c) objectivity;
- (d) accountability;
- (e) openness;
- (f) honesty;
- (g) leadership.

3.2 The Act also requires Councils to secure that its code of conduct includes the provision the Council considers appropriate in respect of the registration and disclosure of pecuniary, and non-pecuniary, interests.

3.3 Subject to the above, each Council is free to adopt its own Code.

3.4 Attached at Appendix 1 is a suggested Code of Conduct for New Forest District Council.

- 3.5 The draft takes as its starting point much of those paragraphs of the existing Code that cover matters other than the registration and disclosure of interests. (Further information on interests is set out in paragraph 3.7 and section 5 below).
- 3.6 Where possible, the wording of the corresponding provisions in the existing Code has also been simplified. The main principle applied when drafting this Code has been to set clear rules by which members' conduct is measurable.

3.7 Interests and the Code of Conduct

- 3.7.1 Various provisions in the Standards sections of the Localism Act 2011 lay down what action members who have a "disclosable pecuniary interest" (DPI) are required to take. A list of DPIs is to be prescribed by Regulations. At the time of writing, these are in draft form only, but are expected to be finalised soon and to come into force on 1 July 2012.
- 3.7.2 The Act as it relates to DPIs is quite complex. They must be disclosed: (a) to the Monitoring Officer (who will enter them in a register) within 28 days of taking office (but not following re-election if they are already registered); (b) at a meeting, or by a Portfolio Holder prior to making a decision, if they have not previously been registered; (c) in writing within 28 days of a disclosure under (b).
- 3.7.3 Failure to disclose a DPI in the way laid down in the Act, or to speak at a meeting or participate in decision making when you have a DPI, will be a criminal offence punishable by a fine and/or disqualification from office. Prosecutions can only be undertaken by the Director of Public Prosecutions. (Private prosecutions by aggrieved individuals are not permitted).
- 3.7.4 The statutory DPIs are expected to include all the pecuniary interests that are required to be disclosed under existing legislation (employment and business interests, sponsorship and election payments, contracts with the Council, interests in land, tenancies with the Council, and major share and security holdings in the relevant Council's area). In the light of this, it is not considered necessary for the Code to prescribe other pecuniary interests that must be registered and disclosed.
- 3.7.5 As criminal sanctions apply where members fail to comply with the law as it relates to DPIs, it is not considered necessary for the Code of Conduct to make separate provision for such failure.
- 3.7.6 Concerning non-pecuniary interests, it is proposed that provision for these be included in Standing Orders rather than in the Code (see section 5 of this report). The Council has well-established procedures for the registration and disclosure of (what are now) personal interests, which have been diligently followed by members for many years and which it is proposed will continue under the new regime. In the 2010/11 Municipal Year 344 individual declarations of personal interests were made by members. It is also proposed that, subject to common laws rules on bias and predetermination, having a non-pecuniary interest in a matter should not prevent a member from being able to participate in the decision making process. In the light of this, it is not considered appropriate that the Code of Conduct, with its formal complaints procedure, should be brought to bear when a member has been guilty only of a simple oversight. (In instances where there has been a deliberate failure to disclose an interest, with the intention of influencing the outcome of a decision, paragraph 1 of the proposed Code may in any event apply). Instead, the Chairman

of a meeting will be able to exercise discipline over any member who he/she considers may not properly have disclosed an interest.

3.8 Recommended to Council

3.8.1 That the Code of Conduct attached at Appendix 1 to this report be adopted with effect from 1 July 2012; and

3.8.2 That it is not considered appropriate for the Code to make provision for the registration or disclosure of pecuniary or non-pecuniary interests, as:

(a) requirements for the registration and disclosure of disclosable pecuniary interests are to be laid down by law, and these are considered sufficient to fulfil the Council's obligations in respect of pecuniary interests under the Localism Act, and

(b) for the reasons set out in paragraph 3.7.6 above, members' duties relating to the registration and disclosure of non-pecuniary interests are more appropriately covered in the Council's Standing Orders.

4. COMPLAINTS AGAINST MEMBERS - PROCEDURE

4.1 Under the existing regime, the law lays down detailed procedures under which the Standards Committee is obliged to deal with complaints that Councillors have failed to comply with the Code of Conduct. The inflexibility of these statutory procedures has frequently been remarked on by commentators.

4.2 The Localism Act abolishes both Standards Committees and statutory procedures for complaints handling. Instead, Councils are obliged to put in place arrangements under which allegations that a member has failed to comply with the Code of Conduct can be investigated, and under which decisions on allegations can be made. These arrangements must include provision for the appointment of at least one independent person whose views **must** be sought and taken into account before the Council makes a decision on an allegation it has decided to investigate, and whose views **may** be sought by the Council, or by a member against whom an allegation has been made, in relation to the allegation (other than where there has been an investigation). Subject to these requirements, the Council is free to adopt its own procedures.

4.3 As was the case under the pre-Localism Act regime, the District Council will remain responsible for dealing with complaints about Parish and Town Councillors.

4.4 A draft procedure for handling complaints that a member has failed to comply with the Code of Conduct is set out at Appendix 2. The aim has been to ensure that complaints can be dealt with in a timely and flexible manner.

4.5 Under the Localism Act members who have failed to comply with their Council's Code of Conduct can no longer be disqualified or suspended from office, or forced to apologise or undergo training or mediation. The only sanctions remaining are censure, formal "naming and shaming", or removal of the member from a Committee or Council appointment.

- 4.6 The position of independent person(s) has by law to be advertised in such manner as the Council considers is likely to bring it to the attention of the public. An advertisement was placed in the local press and on the Council's website in April. A great many applications were received, which were of a consistently high standard. Following a short-listing exercise, a number of applicants have been interviewed by a panel comprising the Leader of the Council, the Leader of the Opposition Group, the Chief Executive and the Monitoring Officer. It is considered that two independent persons should be appointed, so that periods of unavailability by one or other of them, and possible conflicts of interest, can be covered. The names of the two successful applicants will be reported to the meeting, for formal appointment by the Council
- 4.7 In April 2008 the Council's pre-national Code of Conduct procedures for dealing with complaints that members had breached a locally adopted Code, such as the Council's Planning Code or Code for Member/Officer relations, were brought into line with the procedures for dealing with statutory Code of Conduct complaints, to be handled by the Standards Committee. The need to revise the statutory procedures in the light of the Localism Act means that the procedures for dealing with complaints about member conduct under these local Codes will need to be amended in the same way.
- 4.8 Recommended to Council:**
- 4.8.1 That the procedure for handling complaints that members have failed to comply with their Code of Conduct set out at Appendix 2 to this report be adopted, and that, as a consequence, the following be added to the Terms of Reference of the Appeals Committee:**
- "3. In accordance with the procedures adopted by the Council, to determine, through Panels of 3 members as determined by the Chief Executive, allegations that members of the District Council and of Parish and Town Councils within New Forest District have failed to comply with their Council's Code of Conduct; and where they find that the member did fail to comply with the Code, to censure the member, and/or give publicity to their findings, as Panel considers appropriate".**
- (Current Terms of Reference 3 and 4 to be renumbered 4 and 5 respectively)**
- 4.8.2 That two individuals, whose names will be submitted to the Council on the recommendation of the interviewing panel, be appointed as independent persons for the purpose of section 28 (7) of the Localism Act 2011;**
- 4.8.3 That an annual allowance of £255, being the allowance currently payable to independent members of the existing Standards Committee (plus standard travel and subsistence allowances as appropriate) be paid to each of the independent persons; and**
- 4.8.4 That the procedure set out in Appendix 2 also be followed when a complaint is received that a member has failed to comply with any of the Council's other local Codes.**

5. REGISTRATION AND DISCLOSURE OF INTERESTS

5.1 As explained in section 3 above, new or amended Standing Orders to regulate members' registration and disclosure of interests are proposed.

5.2 Disclosable Pecuniary Interests (DPIs)

5.2.1 Under legislation, failure by a member to disclose a DPI in the way laid down in the Act, or to speak at a meeting or participate in decision making when they have a DPI, will be an offence punishable by a fine and/or disqualification from office. Prosecutions can only be undertaken by the Director of Public Prosecutions.

5.2.2 The Act as it relates to DPIs is quite complex. They must be disclosed: (a) to the Monitoring Officer (who will enter them in a register) within 28 days of taking office (but not following re-election if they are already registered); (b) at a meeting, or by a Portfolio Holder prior to making a decision, if they have not previously been registered; (c) in writing within 28 days of a disclosure under (b).

5.2.3 In simple terms this means:

- i. There is no longer a statutory obligation on members to keep their register of interests up to date with changes that happen after they first became a Councillor, unless and until an unregistered DPI arises at a meeting or (in the case of a Portfolio Holder) prior to a Portfolio Holder decision.
- ii. Where an interest is entered in the register, there is no longer a statutory obligation to disclose it orally at a meeting.

5.2.4 It should also be noted that, under the Act, a member with a DPI will no longer be able to make a statement on the matter in which they have an interest before withdrawing from the meeting. Conversely, there is no statutory requirement to withdraw from the meeting room at all, so long as the member does not speak or vote.

5.3 Non-pecuniary interests

5.3.1 The Localism Act does not specify whether, and if so what, non-pecuniary interests have to be disclosed. It is up to individual Councils to make provision for this. At present, some interests that are not pecuniary have to be registered and disclosed. These are membership of bodies (a) to which the Council has appointed you; (b) which exercise functions of a public nature; (c) which are directed to charitable purposes, and (d) one of whose principal purposes includes the influence of public opinion (these are currently specified as including membership of political parties and trades unions).

5.3.2 If the Council were to decide that members need not disclose non-pecuniary interests, the result will be that Councillors who are members of organisations such as strong pressure or lobby groups will be able to speak and vote on matters on which that group campaigns, without their interest being brought to formal public attention. This could potentially lead to applications for judicial review on the basis that there was bias on the part of a member participating in the decision. Members may therefore consider it wise to make provision for the registration and disclosure of non-pecuniary interests, in the same way as at present. This could be done by way of Standing Orders if the Council does not wish to include provision in the Code of Conduct (see section 3 above).

5.3.3 So long as non-pecuniary interests are registered and disclosed, that would not of itself be a bar to members with such an interest participating in the decision-making process, subject to common law rules on bias and predetermination.

5.4 Interests of Relatives, Friends and Close Associates

5.4.1 The Act requires members to disclose the DPIs of their spouse or civil partner or person with whom they are living as such. However, where the financial affairs of another relative, friend or close associate could be affected by a Council decision, there is no longer a statutory obligation to disclose this.

5.4.2 To guard against accusations of bias under common law, it is considered that Standing Orders should continue to require disclosure of interests of this type.

5.5 Registration and Disclosure of Interests Generally

5.5.1 In the interests of openness, and to avoid confusion among the public who may be attending meetings and may not have inspected the register of interests beforehand, it is proposed that the current statutory rules requiring members to keep their register of interests up to date, and to disclose interests at meetings even when they are already entered in the register, be continued through amendment of, and addition to, Standing Orders.

5.6 Recommended to Council:

5.6.1 **That Standing Order No. 2 in the Council's Standing Orders for General Procedures be amended, to read as follows:**

"Members' Disclosable Pecuniary and Non-Pecuniary Interests

All members shall disclose to the Monitoring Officer their disclosable pecuniary interests, as required by legislation.

All members shall disclose to the Monitoring Officer their membership, or position of general control or management, of any body:

- (a) to which the Council has appointed or nominated them; or**
- (b) exercising functions of a public nature; or**
- (c) directed to charitable purposes; or**
- (d) one of whose principal purposes includes the influence of public opinion or policy.**

The Monitoring Officer shall record all such disclosures in a Register of Interests. The Register shall be open to public inspection.

Members shall notify any changes to the interests referred to in this Standing Order to the Monitoring Officer within 28 days of the change occurring, and the Monitoring Officer will amend the Register accordingly.

(Note: this is in addition to the requirement to disclose interests at meetings referred to in Standing Orders for Meetings)"

5.6.2 That Standing Order No. 37 in the Council's Standing Orders for Meetings be amended to read as follows:

“Note: This Standing Order is additional to Standing Orders for General Procedures No 2, which concerns registration of disclosable pecuniary interests and non-pecuniary interests

- 37.1 Any member who has a disclosable pecuniary interest, or a non-pecuniary interest within the meaning of Standing Orders for General Procedures (No. 2), in any matter that a meeting is considering, shall disclose the existence and nature of that interest to the meeting. The disclosure shall be at the beginning of the consideration of the matter, or when the interest becomes apparent.**
- 37.2 If the interest is a disclosable pecuniary interest the member shall not speak or vote on the matter unless a dispensation has been granted enabling him or her to do so.**
- 37.3 A member of the Executive who has a disclosable pecuniary interest in any matter on which he is empowered to make a decision, shall disclose that interest to the Monitoring Officer and shall not take any steps in relation to the matter other than enabling the matter to be dealt with by another member of the Executive.**
- 37.4 A member who has a non-pecuniary interest in any matter that a meeting is considering must disclose that interest to the meeting, and may speak and vote, unless prohibited from doing so by common law principles relating to bias and predetermination (see 37.7 below).**
- 37.5 A member of the Executive who has a non-pecuniary interest in any matter that he or she is empowered to decide, may make a decision on the matter subject to disclosing the interest in writing at the time of making the decision, unless prohibited from doing so by common law principles relating to bias and predetermination, in which case the member shall not take any steps in relation to the matter other than enabling the matter to be dealt with by another member of the Executive.**
- 37.6 Where a relative, friend or close associate of a member has an interest in a matter coming before a meeting of the Council and that interest is of the same nature as a disclosable pecuniary interest set out in legislation, and the member is aware of the existence of that interest, the member shall disclose the existence and nature of that interest to the meeting. The member may only participate in the meeting to the extent permitted by the rules set out in 37.7, relating to participation in situations where the common law rules of bias and predetermination apply.**

37.7 Where a member is prohibited from participating in a decision under the common law rules relating to bias and predetermination, the member must move to a designated area of the meeting room set aside for members who do not intend to vote, declare their position and explain that they will not be voting. They may then make a statement and answer any questions, and may remain in the meeting for the duration of the business. As well as not voting, the member must not move or second any recommendation.”

6. DISPENSATIONS

- 6.1 A member with a disclosable pecuniary interest can apply for a dispensation which, if granted, would enable him or her to speak and/or vote at a meeting on a matter in which he or she has an interest. Currently, the Standards Committee is responsible for deciding applications for dispensations. Under the new regime, and in the absence of a statutory Standards Committee, each Council is responsible for making its own arrangements for dealing with requests for dispensations.
- 6.2 District Councils will no longer be responsible for deciding applications for dispensations from Parish and Town Councillors.
- 6.3 The grounds on which dispensations may be granted have also been amended. A dispensation is now possible if the Council (or the person to whom the power to make decisions is delegated) considers that:
- (a) the number of members prohibited from participating would be so great a proportion of the Council or Committee concerned as to impede the transaction of the business; or
 - (b) without the dispensation the representation of different political groups on the Council or Committee would be so upset as to alter the likely outcome of any vote; or
 - (c) granting the dispensation is in the interests of persons living in the Council area; or
 - (d) where the business to be transacted is a matter for the Executive, without the dispensation each member of the Executive would be prohibited from participating; or
 - (e) it is otherwise appropriate to grant a dispensation.
- 6.4 However, this does not mean that requests for dispensations will automatically be granted. In particular, issues relating to the common law rules on bias and predetermination may arise and will need to be taken into account.
- 6.5 Dispensations are not available to individual Portfolio Holders who have a DPI in a matter on which they would otherwise be required to make an Executive decision, unless the entire Cabinet has a DPI in the matter (6.3 (d) above).

6.6 Recommended to Council

That the following power be delegated to the Monitoring Officer:

“To be the proper officer for the purpose of requests for dispensations under section 31(4) of the Localism Act 2011, and, in consultation with the Chief Executive, to decide whether to grant a dispensation to enable the member concerned to participate in the discussion, or to vote, or both”.

Further Information

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Background Papers

Published Information

APPENDIX 1

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NEW FOREST DISTRICT COUNCIL

CODE OF CONDUCT

EXPLANATORY NOTE FOR COUNCIL MEMBERS

By law, all Councillors are required to follow their Council's Code of Conduct when acting in their capacity as a Councillor.

The Code set out below has been adopted by New Forest District Council to fulfil its obligations under section 27 (2) of the Localism Act 2011, and is consistent with the following principles of public life set out in the Act: selflessness; integrity; objectivity; accountability; openness; honesty, and leadership.

If you have any doubt about whether any action you propose to take may be in breach of the Code, you should seek advice from the Monitoring Officer beforehand. However, please remember that responsibility for your actions remains at all times with you.

Anyone who considers you have failed to comply with this Code may make a formal complaint about you. The Council has adopted procedures for dealing with complaints. If a complaint is upheld, this may lead to your formal censure, adverse publicity ("naming and shaming"), or the Council removing you from a Committee or other position.

Apart from the provisions of this Code, members are required to register and disclose both pecuniary and non-pecuniary interests, as set out in the law and the Council's Standing Orders. Failure to comply with the law as it applies to disclosable pecuniary interests is a criminal offence.

(This explanatory note does not form part of the Code).

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NEW FOREST DISTRICT COUNCIL

CODE OF CONDUCT

Whenever you are acting in your capacity as a Councillor:

1. You must not use, or try to use, your position improperly to obtain an advantage or disadvantage for yourself or any other person or body.
2. You must not use your Council's resources improperly for political purposes or any other purposes forbidden by your Council.
3. You must not do anything that compromises, or is likely to compromise, the impartiality of those who work for the Council.
4. You must not bully anyone.
(Bullying is offensive, intimidating, malicious, insulting or humiliating behaviour that is directed at someone over whom you have some actual or potential influence).
5. You must not intimidate, or try to intimidate, anyone who has complained about you or who may be involved with a complaint about you.
6. You must not disclose information that you know, or ought to know, is confidential, without authority or a legitimate reason.
7. You must not prevent, or try to prevent, anyone from obtaining information to which they are entitled by law.
8. You must not do anything that may cause your Council to breach any of the Equality laws that prohibit discrimination on grounds such as age, sex, race, disability, religion/belief, sexual orientation or pregnancy.

APPENDIX 2

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CODE OF CONDUCT

LOCALISM ACT 2011 SECTION 28 - ARRANGEMENTS FOR DEALING WITH ALLEGATIONS

1. Making complaints

Any complaint that a member has failed to comply with the Code of Conduct should be addressed to:

The Monitoring Officer
New Forest District Council
Appletree Court
Beaulieu Road
LYNDHURST
SO43 7PA.

A form for making complaints is available. Its use is encouraged, but is not essential providing the complaint includes all the necessary information.

2. Initial action by Monitoring Officer (MO)

On receiving the complaint the MO may dismiss it without further action if:

- (a) The person complained about is no longer a member of the relevant Council; or
- (b) The MO considers the complaint does not relate to behaviour in the member's official capacity as a Councillor; or
- (c) The matter being complained about happened more than 12 months before the complaint was received; or
- (d) The matter being complained about came to the complainant's notice more than 6 months before the complaint was received.

The MO will inform the complainant and the member accordingly.

If the MO does not dismiss the complaint on one of the above grounds, he/she will acknowledge it and inform the complainant of the procedure to be followed. The MO may ask the complainant for further information or clarification.

The MO will (except in exceptional circumstances where he/she considers that it is in the public interest not to do so) send the member complained about a copy of the complaint, and invite the member to submit initial written comments within 10 working days.

The MO will also:

- (a) Ask the member if they wish the views of an Independent Person (IP) appointed under section 28 of the Localism Act 2011 to be taken into account when the complaint is initially examined, and
- (b) Ask the member any specific questions the MO considers will assist the initial assessment of the complaint.
- (c) As an alternative to the above action, the MO may, if he/she considers it appropriate, refer the complaint to the Police and take no further action under this procedure unless and until informed by the Police that they will not proceed.

3. Initial assessment of the complaint

Initial assessment will, if practicable, take place within 15 working days of receipt of the member's written comments under section 2 above.

The decision on the initial assessment will be made by the Monitoring Team. This will comprise the MO and Chief Executive and, if the member has requested his/her involvement or the MO considers his/her involvement appropriate, the IP.

If the MO considers that it is not appropriate for him/her to act, the Deputy MO will take his/her place. If the Chief Executive considers that it is not appropriate for him/her to act, an Executive Director will take his/her place.

Before the Monitoring Team considers the complaint, the MO will send the Chief Executive and (if participating) the IP

- (a) A copy of the complaint;
- (b) A copy of the member's comments in response to the complaint; and
- (c) Any other information in the MO's possession that he/she considers relevant.

The Monitoring Team's decision on the initial assessment, with reasons and the views of the IP (if involved) will be given in writing to the member, the complainant, and the Clerk to the Parish/Town Council (if the complaint was about a Parish/Town Councillor) within 5 working days.

There will be no right of appeal.

The decision will be available for public inspection.

4. Decision Options at Initial Assessment

The Monitoring Team may decide:

- (a) To take no action (see Annex 1); or
- (b) To attempt to resolve the matter informally between the complainant and member, either in writing, by face-to-face meeting, or by any other method they consider appropriate. In this case there will be no formal decision as to whether or not there was a breach of the Code of Conduct. If an attempt to resolve the matter in this way

is not achieved to the satisfaction of the member and the complainant, options (a), (c) and (d) will remain open; or

- (c) To arrange a hearing before a Panel of 3 members drawn from the Appeals Committee and the IP, at which the member and complainant can state their case and, if appropriate, call witnesses. Procedures are set out at Annex 2. The hearing will reach a formal decision as to whether the member breached the Code of Conduct; or.
- (d) If the complaint is potentially complex, to arrange for a formal investigation to be undertaken, including interview of appropriate witnesses, and to seek the view of the investigator as to whether there has been a breach of the Code of Conduct. If the investigator considers there has been a breach of the Code, a hearing will be arranged as in (c). If the investigator considers that there has not been a breach of the Code, the MO will issue a formal finding to that effect.

APPENDIX 2, ANNEX 1

No action will be taken where any of the following apply:

- a. the Monitoring Team considers that there is no prima facie evidence that the Code has been breached;
- b. taking into account the nature of the allegation. the Monitoring Team considers that using public funds to examine the matter further would be disproportionate;
- c. the Monitoring Team considers that the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;
- d. the conduct complained about has already been the subject of investigation or enquiry by another public body;
- e. the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and the Monitoring Team considers that there is nothing further to be gained;
- f. the Monitoring Team considers that there is not enough information to take the matter further;
- g. the complaint was made anonymously;
- h. the complainant has requested that their identity as complainant be withheld from the member, and the Monitoring Team considers that the matter cannot reasonably be taken further in these circumstances;
- i. the member has already apologised for the action that was the subject of the complaint, and the Monitoring Team considers that this is sufficient to dispose of the complaint;
- j. the Monitoring Team considers that the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member(s).

APPENDIX 2, ANNEX 2

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PROCEDURE FOR HEARINGS

General:

Hearings will where possible be held within 2 months of the initial assessment decision where there is no prior investigation, and within 2 months of receipt by the MO of the investigator's report where there has been a prior investigation.

The hearing will be before a Panel of 3 members drawn from the Appeals Committee. One of the members will be elected Chairman.

The Independent Person [IP] appointed under section 28 of the Localism Act 2011 will also be present. His/her views will be requested and taken into account by the Panel, but by law he/she cannot vote.

The MO or deputy MO will be present as legal advisor to the Panel

Both the member and complainant will be invited to appear. They may present their own case or they may be represented.

They may bring witnesses (of a number the Panel considers is reasonable), in which case written statements from the witnesses must be lodged with the MO at least 8 working days before the hearing. "Character witnesses" who cannot provide evidence on the matter complained about will not be permitted.

The cost of any attendance/representation must be borne by the party concerned.

All written evidence will be circulated to the Panel, the IP, the member and the complainant at least 5 working days before the hearing.

Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with their contents.

The legal advisor can speak at any time to advise the Panel on technical matters or ask questions of any party.

Proceedings:

The complainant can address the Panel and call witnesses (if any).

The member can ask the complainant and witnesses questions.

The Panel and IP can ask the complainant and witnesses questions.

The member can address the Panel and call witnesses (if any)

The complainant can ask the member and witnesses questions.

The Panel and IP can ask the member and witnesses questions.

The complainant can make a closing statement.

The member can make a closing statement.

All those present except the Panel, the IP, the legal advisor and Clerk will leave the room while the Panel makes its decision.

The Panel's decision will be announced orally as soon as possible.

A written report of the hearing and decision, with reasons, will be prepared, usually within 5 working days. A copy will be sent to all those present at the hearing and to the Clerk of the Parish/Town Council if the complaint was about a Parish/Town Councillor.

The written report will be available for public inspection.

Decisions open to the Panel:

These are:

- (a) That the member did not fail to comply with his/her Council's Code of Conduct;
- (b) That the member did fail to comply with his/her Council's Code of Conduct, and that
 - (i) No action need be taken; or
 - (ii) The member be censured; and/or
 - (iii) Whatever publicity the Panel considers appropriate be given to their findings; and/or
 - (iv) It be recommended to the Council (or to the member's political group where Committee appointments are made by political groups) that the member be removed from a specific Committee(s), or from any other position to which the Council has appointed him/her.

The Panel may also make any recommendations it considers appropriate to the Council concerned on procedural amendments that might assist members generally to follow the Code of Conduct.