

The New Code of Conduct

No.	Issues for consideration	Commentary and advice	Recommendation
1	Contents of Code		
1a	<p><u>Principles of Public Life</u> Localism Act Seven which must be included:</p> <ul style="list-style-type: none"> ○ Selflessness ○ Integrity ○ Objectivity ○ Accountability ○ Openness ○ Honesty ○ Leadership <p>Should we include these current principles too?</p> <ul style="list-style-type: none"> ○ Personal judgement ○ Respect for others ○ Stewardship ○ Duty to uphold the law 	<p>As a general point, the advantages of retaining some provisions in the current code include</p> <ul style="list-style-type: none"> (a) reducing the scope for confusion amongst members and officers in seeking to abide by the new arrangements and (b) being able to draw upon guidance and precedents created under the present code. <p>On that basis all these general principles should be included in the new code. They are set out in paragraph 1.3 of the draft Devon code.</p>	<p>It is recommended that all these General Principles be included as they appear in paragraph 1.2 of the draft Devon code:</p> <ul style="list-style-type: none"> ○ Selflessness ○ Honesty ○ Integrity ○ Objectivity ○ Accountability ○ Openness ○ Personal judgement ○ Respect for others ○ Duty to uphold the law ○ Stewardship ○ Leadership
1b	<p><u>Interests</u> The monitoring officer continues to be under a duty to keep a register of members' interests but there is no longer a prescriptive list. The present classification into "personal" and "prejudicial" interests is revoked. Instead it is for the authority to decide what it is appropriate to ask members to register. The one exception to this is that "discloseable</p>	<p>The term "pecuniary" is not defined in the Act but literally means to do with money.</p> <p>An interest will be pecuniary when someone's financial affairs are affected, whether beneficially or adversely.</p> <p>In the Local Government Act 1972, which</p>	<p>Subject to consideration of the definition when it is published in the expected Regulations, that members be required to register with the Monitoring Officer all discloseable pecuniary interests</p>

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	<p>pecuniary interests” (DPI) must be registered.</p> <p>The term “discloseable pecuniary interest” awaits definition in Regulations but a DPI may belong not only to</p> <ul style="list-style-type: none"> ○ the member but also to ○ the member’s spouse or civil partner or live-in partner <i>where the member is aware of it.</i> 	<p>used the same term, a member’s pecuniary interest in contracts, proposed contracts or other matters being considered by the authority had to be declared. The same can be expected to apply now.</p> <p>It is important that the term “discloseable pecuniary interests” is clearly defined and understood because a member with a DPI who participates in the discussion or vote at a meeting may commit a criminal offence.</p>	
	<p><u>Registration of other interests</u></p> <p>Apart from discloseable pecuniary interests, (if anything) the authority should consider what other interests it should require members to register.</p> <p>Members may agree there is much merit in being open about some personal matters that people in the community might consider would affect their judgment, and registering them, so that decisions are made openly and transparently. There is some protection for Members against allegations of self-interest (or worse) in doing so.</p> <p>The MO can withhold registration of sensitive information (i.e. where someone could be exposed to violence if the information were published).</p>	<p>Under the current code the following interests are registrable:</p> <ul style="list-style-type: none"> • Membership of another local authority • Appointments to an outside organisation • Membership of a trust, charity, philanthropic or benevolent fund • Membership of a body set up to influence public opinion e.g. a trade union • Your employer or business and any contracts either has with the Council • The name of the person who paid your election expenses • Any land you own or occupy in the authority’s area, including your home address • The receipt of gifts and hospitality 	<p>The draft Devon code has in paragraph 7 two alternative versions of the current list: one a direct quote from the current code, the other a simplified list in plain English. Either would be effective.</p> <p>It is recommended that the plain English list be adopted and that it include the additional paragraphs on the same page regarding</p> <ul style="list-style-type: none"> • perceived “significant or greater” interests and • voluntary declarations.

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		<p>over say £25 in value</p> <p>If we continue to use the same definitions for registrable interests as under the current code, there is less scope for confusion under the new system.</p>	
1c	<p><u>Expected standards of behaviour</u></p> <p>There are no stipulations about what should be included in a new code regarding other aspects of behaviour.</p> <p>The current code includes provisions relating to:</p> <ol style="list-style-type: none"> 1) Respecting other people 2) Having regard to advice 3) Not gaining any personal advantage as a result of being a member 4) Complying with Equalities legislation 5) Bullying 6) Intimidation and other interference with investigations 7) Not compromising officers' impartiality 8) Handling confidential information 9) Bringing the authority into disrepute 10) Use of the authority's resources 11) Respecting the authority's rules and requirements e.g. IT protocol, publicity 12) Declaring receipt of gifts and hospitality 	<p>On the principle of maintaining certain provisions in the current code for the sake of reducing confusion (see above), it is suggested that there should continue to be defined standards in all these matters.</p> <p>The first nine of those listed on the left are included in paragraphs 4 and 5 of the draft Devon code.</p> <p>The last three are included in the "illustrative text" supplied by the Minister and appear in paragraph 1.3 of the Devon draft, with other provisions.</p> <p>Taken together these represent a statement of the expected standards of behaviour which conforms to what most people would expect of persons in public office.</p>	<p>It is recommended that paragraphs 1, 4 and 5 of the draft Devon code are approved.</p>
1d	<p><u>Application of code</u></p> <p>The Code applies to Members when they are acting in that capacity. It is as well to spell out when that will be.</p> <p>It will include not only formal meetings and the</p>	<p>The present code applies to Members when they are conducting the authority's business or give the appearance to other people that they are acting as a councillor, in other words when Members are –</p>	<p>It is recommended that the definitions in paragraph 2 and the provisions of paragraph 3 of the draft Devon code be approved.</p>

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	<p>carrying out of the many other duties required of Members because they are councillors.</p>	<ul style="list-style-type: none"> ○ Attending meetings of the Council, Executive, or any of its committees or other bodies ○ (in South Hams) informal meetings to discharge the authority's functions. <p>This includes site visits, meetings as an appointed member of an outside body, and also doing casework.</p> <p>The draft Devon code covers these points in paragraph 3 and in the definition of "meeting" in paragraph 2. That definition is a little narrower than applies in South Hams now, being tied to meetings where a formal record is being kept.</p>	
2	<p><u>Disclosure of interests</u> Under the new provisions there is no requirement for members with any interest other than a discloseable pecuniary interest in an agenda item to leave the room while the item is discussed. Participation in a meeting when you have a DPI is a criminal offence, unless you have a dispensation.</p> <p>From now on it is entirely up to the Council what interests are registered and declared – see above. We don't know yet how wide the classification of "DPI" will be, or whether there may turn out to be a category of pecuniary interests which are non-discloseable – this seems unlikely.</p> <p>This aspect will have to be revisited once the Regulations have been published.</p>	<p>The Localism Act does not actually say that if you have a DPI you should leave the room. Members may think that it would be prudent to do so, in order to demonstrate that everything is above board and in that case, the Council Procedure Rules would have to be amended to provide for that.</p> <p>The present rule in respect of personal interests that are not prejudicial is that Members "say" (declare) "and stay" in the room. There seems to be no reason why a member should not declare a non-pecuniary interest and continue to take part in the discussion and vote, as now.</p>	<p>It is recommended that the Council Procedure Rules be amended to provide that Members with pecuniary interests in an agenda item should leave the room while the item is considered but that they may remain and participate if their interest is non-pecuniary.</p> <p>(Note that this may need to be reconsidered when we receive the Regulations).</p>

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3.	<p><u>Dispensations</u></p> <p>Under the Localism Act it is for the authority itself to grant dispensations from the provisions which prohibit a member who has a DPI in the subject to participate in debate and to vote. Parish councils will grant their own – they will no longer have to ask the District Council to do it.</p> <p>They may granted and on the grounds that</p> <ul style="list-style-type: none"> • So many members (of a committee or the executive) would be prohibited from participating that business cannot be carried out • Political balance would be affected • It is in the interests of the inhabitants that a dispensation be granted or • It is appropriate to grant a dispensation <p>A dispensation lasts up to 4 years.</p>	<p>Granting a dispensation is an operational matter. Sometimes dispensation is required in a hurry, for example where a member realises late on that they have a DPI in an item they were intending to speak on. For that reason it would seem to be sensible to delegate authority to the monitoring officer, who could refer it to Members (e.g. a standards committee – as to that see below) in complex or controversial cases, such as where there is an issue of political balance or the majority of members are affected.</p> <p>The Council would need rules on how this was to be done. These can be drafted before the provisions become effective.</p>	
4	<p><u>Governance</u></p> <p>There continues to be a role for members in standards matters, which includes</p> <ul style="list-style-type: none"> • Approval of the code • Dealing with dispensations • Dealing with allegations of under the code – ordering investigations, considering reports and imposing sanctions. These are called “arrangements”. <p>It could also deal with reviewing the constitution and the code of corporate governance (jointly with the audit committee).</p> <p>It is sensible to establish a standards committee</p>	<p>It is thought that as their functions are dissimilar, there is nothing to be gained from, for example, combining Audit with Standards.</p> <p>A standards committee should have sufficient members to enable it to carry out its work. It may also need sub-committees to deal with individual cases. Between five and eight members would be sufficient.</p> <p>As the committee will oversee investigations into complaints about town</p>	<p>It is recommended that a standards committee comprising between 5 and 8 members of the Council be appointed to carry out the functions listed in column 1 and any other functions the Council thinks fit including up to two representatives of South Hams parish and town councils</p>

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	<p>to carry out these now functions but there is no longer any prescription as to its membership.</p> <p>The standards committee would be set up under s101 of the LGA 1972 so if it has more than 3 members it must be politically balanced (unless the authority decides that it need not be).</p> <p>Its functions are not executive functions.</p>	<p>and parish councillors it could have co-opted parish representatives sit on it, but they would not be able to vote unless the committee's functions were purely advisory (which in some instances they clearly would not be).</p> <p>Up to two representatives of South Hams parish and town councils could be co-opted within that number to provide confidence in the process for that tier of government. Hitherto the Standards Committee has largely proceeded by consensus and it is not thought anything would be lost by parish/town representatives having no vote.</p> <p>Council would have to delegate appropriate powers.</p> <p>The establishment of a joint standards committee with one or more other Devon authorities has been raised but no firm proposals produced.</p>	

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5	<p><u>Independent Persons (IP)</u></p> <p>As part of the “arrangements” for dealing with complaints, we must appoint at least one Independent Person whose views must be sought and taken into account by the authority before it makes any decision on an allegation it is going to investigate, and may be sought on any other matter. The Independent Person is also to be available to advise a member whose conduct is the subject of any allegation, and any town or parish councillor likewise.</p> <p>An independent person must have no connection with the authority and may be appointed only after advertisement, application and approval of the majority of members of the authority (i.e. by full Council).</p> <p>Independent Persons do not sit on the standards committee, although some authorities are considering having them present at meetings to advise if required.</p> <p>They are not employees but office holders and may receive an allowance (apparently not tied to Members’ Scheme) and expenses</p>	<p>Since the Independent Person can be consulted both by the authority and by the affected member, it makes sense to have at least two to avoid a conflict of interest. More might be needed to allow for absence.</p> <p>Discussions are continuing amongst Devon MOs about the possibility of appointing a panel of IPs from whom a person can be appointed case by case. We would still have to appoint by name.</p> <p>If an IP is to be paid an allowance and expenses a budget must be found.</p>	<p>It is recommended that the Monitoring Officer take steps to advertise for and appoint up to four independent persons (from a panel for the whole of Devon if so agreed).</p>
6.	<p><u>Procedures and implementation</u></p> <p>Once the format of the code and the governance arrangements are in place, we will have to devise, draft and submit for approval</p> <ul style="list-style-type: none"> • appropriate procedures for registration of interests • changes to the Council Procedure Rules if so indicated • guidance for members (and training) 	<p>These will be devised after the new framework has been approved</p>	<p>That the Monitoring Officer be tasked with drafting appropriate procedures for approval by Council in due course.</p>

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	<ul style="list-style-type: none">• terms of reference and delegations for the standards committee• procedures for granting dispensations• details of the “arrangements” for considering complaints including procedures and sanctions		