

# **West Devon Borough Council**

## **Standards Committee**

### **Dealing with Standards Complaints**

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**NB – numbering and final headings to be inserted at final draft stage**

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## 1. Definitions

Term	Meaning
Chairman	Chairman of the Standards Committee
Clerk	The Clerk to a Parish/Town Council
Code of Conduct	<p>The West Devon Borough Council Code of Members' Conduct or the relevant Parish/Town Council Code of Conduct.</p> <p>The West Devon Borough Council Code of Conduct applies to all elected or co-opted councillors when engaged in the business of the Council or when the Councillor behaves so as to give a reasonable person the impression that s/he is acting as a representative of his/her Council.</p> <p><b>NB:</b> It is important to check the relevant Council's Code; Parish / Town Councils are responsible for adopting their own Codes and may differ from the Borough Council Code</p>
Complainant	The person who has made the complaint to the Monitoring Officer about the Councillor
Complaint	A written allegation under the Localism Act 2011 that a Councillor has failed to comply with the relevant Council's Code of Conduct
Council	West Devon Borough Council
Councillor	The elected or co-opted Borough or Parish/Town Councillor against whom the complaint has been made
Hearing	A hearing of the Standards Hearing Panel to decide whether the Code has been broken and what (if any) sanctions should apply
Independent Person	A person appointed under the Localism Act 2011 in a consultative role in relation to Complaints.
Investigating Officer	A person appointed by the Monitoring Officer to carry out an investigation into allegations of a breach of the Code
Investigating Officer's Report	The Final Report written by the Investigating Officer following investigation
Law	The Localism Act 2011 is the law under which West Devon Borough Council derives its duties and powers in relation to standards and dealing with complaints that a Councillor has not complied with the Code of

	Conduct. West Devon Borough Council is responsible for administering its own Code and for dealing with Complaints about its own Councillors and also Parish and Town Councillors.
Monitoring Officer	The statutory officer with duties and powers in relation to standards under the Localism Act 2011. Reference to the Monitoring Officer includes her nominated representative or persons appointed on her behalf
Officer	An employee of the Council
Standards Committee	The Council's Standards Committee
Standards Panel	A sub-committee of three members appointed by the Standards Committee to consider Standards matters including hearings
Parish or Town Council	The relevant Town or Parish Council with the borough of West Devon
Within specified number of working days	These are the targets that the Council has set itself in order to deal with matters and will use all reasonable endeavours to meet these targets

## 2. Introduction

The Localism Act 2011 requires West Devon Borough Council to:

- Adopt its own Code of Members' Conduct
- Make arrangements for dealing with standards Complaints
- Appoint Independent Person(s)

### Arrangements for dealing with Complaints

This document sets out how the Council will deal with Complaints that a West Devon Borough Council or a West Devon Parish/Town Councillor has broken his/her authority's Code of Conduct. Complaints will be **considered** by the Monitoring Officer (and/or the Standards Committee) in consultation with the Independent Person.

### The Code of Conduct

Members' Codes of Conduct deal with the conduct expected of **elected and co-opted** Councillors when they are acting in an official capacity. The Code also includes provisions for registering and declaring pecuniary and other interests.

The Council has adopted a Members' Code of Conduct which can be inspected on the Council's website. Parish and Town Councils are responsible for adopting their own Codes of Conduct and copies are available from the Parish/Town Clerk.

### The Standards Committee and its sub-committees

The Standards Committee has overall responsibility for the adoption and application of the Code of Conduct and standards functions under the Localism Act 2011. The Committee may appoint subcommittees (Standards Panel) to deal with specific matters. ~~Some parts of the process are delegated to the Monitoring Officer.~~

### The Independent Person

The Council must appoint at least one **Independent Person**. The Independent Persons are not members of the Council and their role is advisory and consultative. **The Council has appointed three Independent Persons who are allocated Complaints on a rotation basis.**

**The Independent Person's** views:

- **must be** sought by the Council before the Council makes a decision to investigate a complaint
- **may be** sought at any other stage by the:
  - Monitoring Officer
  - Councillor
  - Standards Committee or **Standards Panel**

The Independent Person does not make formal decisions on Complaints, and the Council is not bound by the views of the Independent Person. The Independent Person does not represent the Councillor or the Council and must remain impartial and objective. There is no right for a Complainant to seek the views of the Independent Person.

### **Matters not covered by this procedure**

This procedure **does not** deal with complaints about matters that are not covered by the Members' Code of Conduct.

Complaints about:

- a decision or action of the Council or one of its committees/bodies
- a service provided by the Council
- Council Officers (employees, **including the Clerk**)

must be made under West Devon Borough Council's Corporate Complaints Procedure (please see the Council's website) or directed to the relevant Parish or Town Council.

**Example:** if a Complaint relates to a Councillor's behaviour in relation to the determination of a planning application then this Procedure will only consider the Councillor's behaviour. This Procedure cannot comment on the decision relating to the planning application and will not change the planning decision even where a breach of the Code may be found.

The Council **cannot** deal with a complaint under this Procedure which relates to:

- People who are not councillors of the relevant Council
- Conduct which occurred when the Councillor was not a member of the Council
- Conduct which applies in a Councillor's private life; the Code only applies to a councillor's behaviour as a member of the Council **i.e. when a Councillor is engaged in the business of the Council or when the Councillor behaves so as to give a reasonable person the impression that s/he is acting as a representative of the Council.**

- Conduct which occurred when the Councillor was acting as a member of another authority.
- Complaints that a Councillor has committed an offence under the Localism Act (e.g. failing to declare a Disclosable Pecuniary Interest). Such complaints may be referred to the Police (see [paragraph x below](#)).

**Example:** (obvious example of a councillor acting in private capacity)

### **Important: Potential Outcomes of a Standards Complaint**

It is important to note that not every complaint about a breach of the Code of Conduct will be referred for investigation or local resolution. The Monitoring Officer will decide what action is appropriate, based on the particular circumstances of the Complaint, the relevant Code of Conduct and in accordance with the criteria set out in this document.

Whilst the Council takes its duties and powers seriously with regards to the standards regime (and this Procedure ensures that there is a fair process for considering and dealing with standards complaints) there are limitations on the potential outcomes to standards complaints ([see paragraph x below](#)) and the potential sanctions, where a Councillor is found to have broken the Code ([see paragraph y below](#)).

The ability of the Council to impose and enforce meaningful sanctions or remedial action was severely curtailed by the changes to the standards regime introduced by the Localism Act 2011 which also repealed all of the preceding ethical governance legislation in its entirety.

**Example 1:** A Complainant makes a Complaint that a Councillor has broken his/her Code of Conduct. The Monitoring Officer considers the Complaint (after consultation with the Independent Person ) and decides that the outcome should be 'no further action' for given reasons ([see outcomes at paragraph x below](#) ). There is no right for a review or appeal of this decision by the Complainant or the Councillor and this is then the end of that matter.

**Example 2:** A Complainant makes a Complaint that a Councillor has broken his/her Code of Conduct. The Monitoring Officer refers the matter for investigation and the Investigating Officer finds that the Councillor has broken the Code. The Complainant has asked that the Councillor is suspended or removed from the Council. However, the Council has no powers to apply these sanctions and has recommended that the Councillor makes an apology and attends training on ethical standards ([see Sanctions at Paragraph y below](#))

### 3. How to make a complaint

Any complaints about the conduct of a West Devon Borough Councillor, or a West Devon Parish or Town councillor must be made **in writing** to:

- Email: [catherine.bowen@swdevon.gov.uk](mailto:catherine.bowen@swdevon.gov.uk) (Q. Do we want a Monitoring Officer email address that other officers can access?)
- Mail:

The Monitoring Officer  
West Devon Borough Council  
c/o South Hams District Council  
Follaton House  
Totnes  
Devon

There is a **Code of Conduct Complaint Form** available on the Council's website and paper copies are available from the Monitoring Officer on request. There are guidance notes attached to the form to help with completing the Code of Conduct Complaint Form. **Complainants will be required to confirm they have read and understood both the guidance notes and this procedure before submitting a complaint.**

**(NB: I will also review and update the Complaints Form as part of this process)**

#### Help

Although complaints should be made in writing, we can make reasonable adjustments to assist anyone who has a disability that prevents him/her from making a complaint in writing. We can also help if English is not the Complainant's first language.

### Receipt of complaints

#### Request for further information

~~In order to come to a decision,~~ The Monitoring Officer may request additional information or clarification (at any time) from:

- the Complainant
- the Councillor

- Clerk (where the matter relates to a parish or town councillor).

## Initial Assessment of Complaint

When a complaint is received, the Monitoring Officer will carry out an **Initial Assessment** to determine whether the Complaint falls within this Standards Complaint Procedure.

Complaints will be rejected with a decision of 'No Further Action' at this stage if the Complaint does not satisfy one or more of the following three tests:

- **The Complaint is about (one or more) named Councillors of the Council or a relevant Parish/Town Council**
- **The Councillor was a Councillor at the time of the alleged Complaint**
- **If proven, the Complaint would disclose a breach of the relevant Code of Conduct**

Complaints that are not rejected will then be considered further, but may be rejected at this stage if the Monitoring Officer considers that (based on the information contained in the Complaint) one or more of the following criteria apply:

### Criteria: no further action at **Initial Assessment**

- **The Complaint relates to a Councillor acting in his/her private capacity**
- It has not been possible to determine whether there has been a breach of the Code and the alleged conduct does not merit an investigation having regard to the public interest.
- Action has already been taken on the matter and there is no merit in pursuing the matter any further
- The Complaint is the same or substantially the same as a complaint previously dealt with
- The conduct complained of happened **more than 6 months** so long ago that **and** it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue (unless, in the Monitoring Officer's opinion, there are exceptional circumstances which would merit the complaint being progressed)
- The Complaint is **considered on an objective test to be** trivial or insubstantial or discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
- The Complaint is (or appears to be) malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive
- The Complaint is not considered to disclose sufficiently serious potential breaches of the code to merit further consideration,

<ul style="list-style-type: none"> <li>• The Complaint is covered by the Council's Persistent and Vexatious Complaints Policy</li> </ul>
<ul style="list-style-type: none"> <li>• The Councillor has provided a satisfactory remedy to the Complaint or made reasonable endeavours to do so and the Complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration.</li> </ul>
<ul style="list-style-type: none"> <li>• The Complaint is about a Councillor who is no longer a councillor and there are no overriding public interest reasons to merit further consideration</li> </ul>
<ul style="list-style-type: none"> <li>• The complaint is an anonymous complaint</li> </ul>
<ul style="list-style-type: none"> <li>• The Complaint is from a Councillor about another Councillor in the same Council and the Monitoring Officer considers that the allegations to be such that the issues between the Councillors ought to be capable of informal resolution (with or without the assistance of the Clerk or some other person)</li> </ul>
<ul style="list-style-type: none"> <li>• It would otherwise be inappropriate to expend the Council's resources on determining the Complaint having regard to the circumstances of the Complaint, any previous related complaints and the public interest.</li> </ul>

If the Complaint is rejected with a decision of 'No further Action at this **Initial Assessment** stage, the Monitoring Officer will **within [10 working] days**:

- write to the Complainant stating that the decision is No Further Action together with the reasons why
- write to the Councillor to advise that a Complaint\*\* has been received but advising that the Complaint has been rejected or that the decision is that No Further Action is to be taken, together with the reasons why
- advise the Clerk (where relevant) that a Complaint has been received against a parish/town Councillor(s) but advising that the Complaint has been rejected or that the decision is that No Further Action is to be taken, together with the reasons why

\*\* The Complainant's details will only be withheld in exceptional circumstances where a request for confidentiality has been granted (see 'Confidentiality' at **paragraph x below**).

## Formal Assessment of Complaint

Complaints that are not rejected at the **Initial Assessment** stage will be assessed in accordance with the following **Formal Assessment** procedure.

The Monitoring Officer will:

- acknowledge receipt of the complaint **within [10 working days]**
- write to advise the Complainant what happens next

- advise the Clerk (where relevant) that a Complaint has been received against a Parish/Town Councillor
- write to the Councillor to advise that a Complaint\*\* has been received and ask the Councillor to provide written comments on the Complaint **within 14 working days** (unless the Monitoring Officer agrees in writing to extend the time due to reasonable circumstances)
- at this **Formal Assessment Stage**, the Councillor will be asked to restrict his/her written response to two sides of A4 and supporting documents
- advise the Councillor of the Independent Person appointed **and advise that s/he can consult the Independent Person throughout the process**
- consult the Independent Person (providing full details of the Complaint, the Councillor's response and any other relevant factual information). The Independent Person will provide his/her views on the Complaint within [**14 working days**]

\*\* The Complainant's details will only be withheld in exceptional circumstances where a request for confidentiality has been granted (see 'Confidentiality' at **paragraph x below**).

The Monitoring Officer will consider the Complaint:

- on its merits and according to the facts,
- in the context of any written submissions and supporting documentation from the Councillor,
- taking into consideration any views from the Independent Person

The Monitoring Officer will make one (or more) of the following decisions:

<b>The Monitoring Officer will make one of the following decisions:</b>
• To take No Further Action (in accordance with the Criteria set out below)
• To make no finding as to whether there has been a breach of the Code but seek to resolve the Complaint informally
• <b>To make no finding as to whether there has (or may have) been a breach of the Code and that No further Action be taken as the public interest does not merit further investigation</b>
• To refer the Complaint for investigation to determine whether there has been a breach of the Code.
• <b>A finding of a breach of the Code without an investigation.</b>
• To refer the matter to the Police (or other relevant body) where the Complaint alleges that a criminal offence may have occurred under the Localism Act
• <del>To refer the Complaint to the Standards Committee (or subcommittee) which will have the same options as above</del>

Within 5 working days of making the Decision, the Monitoring Officer will issue a Decision Notice to the relevant parties explaining what decision has been made and why, in accordance with 'Notification of Decisions' (**Paragraph x below**) set out below.

**Further information on the procedure for each of these outcomes**

**To take No Further Action and/or no finding as to whether there has been of a breach of the Code**

The Monitoring Officer will take No further action if the Complaint:

- falls outside of the scope of the Code of Conduct or
- falls within one or more of the **Criteria** set out below

If no further action is to be taken then the Monitoring Officer will issue a Decision Notice. This will then be the end of the matter.

<b>Criteria: no further action at Formal Assessment stage</b>
• The Complaint relates to a Councillor acting in his/her private capacity
• The Complaint does not disclose any breach of the Code
• It has not been possible to determine whether there has been a breach of the Code and the alleged conduct does not merit an investigation having regard to the public interest.
• Action has already been taken on the matter and there is no merit in pursuing the matter any further
• The Complaint is the same or substantially the same as a complaint previously dealt with
• The conduct complained of happened more than 6 months so long ago that and it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue (unless, in the Monitoring Officer's opinion, there are exceptional circumstances which would merit the complaint being progressed)
• The Complaint is considered on an objective test to be trivial or insubstantial or discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
• The Complaint is (or appears to be) malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive, and the Complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration.
• The Complaint is not considered to disclose sufficiently serious potential breaches of the code to merit further consideration,
• The Complaint is covered by the Council's Persistent and Vexatious Complaints Policy

<ul style="list-style-type: none"> <li>• The Councillor has provided a satisfactory remedy to the Complaint or made reasonable endeavours to do so and the Complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration.</li> </ul>
<ul style="list-style-type: none"> <li>• The Complaint is about a Councillor who is no longer a councillor and there are no overriding public interest reasons to merit further consideration</li> </ul>
<ul style="list-style-type: none"> <li>• The complaint is an anonymous complaint (see paragraph x below)</li> </ul>
<ul style="list-style-type: none"> <li>• The Complaint is from a Councillor about another Councillor in the same Council and the Monitoring Officer considers that the allegations to be such that the issues between the Councillors ought to be capable of informal resolution (with or without the assistance of the Clerk or some other person)</li> </ul>
<ul style="list-style-type: none"> <li>• It would otherwise be inappropriate to expend the Council's resources on determining the Complaint having regard to the circumstances of the Complaint, any previous related complaints and the public interest.</li> </ul>

### **Informal Resolution**

The Monitoring Officer may decide to seek to resolve the Complaint informally without the need for a formal investigation.

The decision to resolve the complaint informally will normally be an alternative to a referral for investigation, and the purpose will not be to determine whether or not the Councillor has broken the Code. In such cases, the Monitoring Officer will make it clear to the parties involved that no conclusion has been reached about what happened and no decision has been made as to whether or not the Councillor has breached the Code of Conduct.

If the Monitoring Officer decides (taking into account the criteria below) that informal resolution is appropriate, then the Complaint cannot be referred back to the Monitoring Officer if the informal resolution is perceived to have failed. If further concerns are raised, they will need to be reported as a new complaint.

The following actions may be appropriate for informal resolution:

- apology
- explanation
- training
- meditation or conciliation
- referring the matter back to the Parish/Town Council for local resolution (with any appropriate recommendations)
- referral to Political Group Leader
- any other steps (not including investigation) which appear appropriate

~~If the Councillor (or Parish/Town Council) makes a reasonable offer of informal resolution, but the Complainant is not willing to accept that offer, then the Monitoring Officer will take that into account in deciding whether the complaint merits formal investigation.~~ Contradicts the above

Complaints **should not** be referred for informal resolution when:

- An investigation / **decision by the Monitoring Officer** is in the public interest
- An allegation challenges the Councillor's honesty or integrity

<b>Criteria: Informal Resolution or Other Action</b>
<ul style="list-style-type: none"><li>• Less serious complaints</li></ul>
<ul style="list-style-type: none"><li>• The Councillor accepts that there are grounds for the complaint and offers an apology</li></ul>
<ul style="list-style-type: none"><li>• A general breakdown in relationships:<ul style="list-style-type: none"><li>• (including those between members and officers)</li><li>• evidenced by a pattern of allegations of minor breaches</li><li>• where there is interpersonal conflict</li><li>• allegations and retaliatory allegations from the same councillors particularly where this is to such an extent that it becomes difficult to conduct the business of the Council.</li></ul></li></ul>
<ul style="list-style-type: none"><li>• Poor understanding (by Councillor or Councillor's authority) of the Code and relevant procedures</li></ul>
<ul style="list-style-type: none"><li>• Where informal resolution provides the best opportunity to resolve the issue, prevent any similar issues arising in the future and promote good governance.</li></ul>

### **Finding of a breach of the Code without an Investigation**

The Monitoring Officer may make a finding that there has been a breach of the Code based on the Complaint, the Councillor's response, and any supporting documentation or information and after having consulted the Independent Person.

This will be appropriate where:

- On the balance of probabilities, the information provided at the Formal Assessment stage demonstrates that the Code has been broken, and/or
- The Councillor admits the breach of the Code (whether or not s/he has offered to remedy the breach)
- In either of the above cases
  - it is reasonable to conclude that an investigation is unlikely to establish any further evidence regarding the Complaint, or
  - the public interest does not justify undertaking an investigation

NB. Please refer to the Councillor's Right of Review to this part of the process in **Paragraph x below**.

Where the Monitoring Officer finds that there has **been a breach of the Code**, the Monitoring Officer will (in consultation with the Independent Person):

- facilitate a local resolution (see paragraph x below), or
- In accordance with Appendix 1 below, consider whether it is appropriate to impose sanctions or recommend other action and if so, which sanctions/actions are appropriate.

## Councillor's right to request a Review

Where the Monitoring Officer has determined without an investigation, that the Councillor has broken the Code, the Councillor will have a right to request a review of that decision. This right will arise whether there has been a finding of a breach with or without the imposition of sanctions or recommended action(s).

Within **14 working days** of the issue of the Decision Notice that the Councillor has broken the Code of Conduct, the Councillor:

- May make a written request that the Decision be reviewed
- Must provide substantive reasons to support the request for a review of the decision which have not been previously provided (together with any relevant supporting documentation). Disagreement with the decision without giving substantive reasons or simply repeating the original response will result in the Request for Review being refused.

The Monitoring Officer will appoint a different officer to the one who made the original decision, to consider the Request for a Review (the **Review Officer**). The Independent Person will normally be the same Independent Person that considered the original complaint. A decision on the Request for a Review will be issued within [**14 working days**] of receipt of the request.

**Where a Request for a Review is refused**, the Review Officer will issue a Decision Notice with reasons, in accordance with the Rules set out below

**Where a request for a Review is granted**, the Review Officer will:

- Notify the Councillor that the request has been agreed
- Advise the Complainant that the Request for a Review has been received and provide a copy of the Request for Review, the reasons and any supporting documents and ask for a written response (restricted to 2 sides of A4) to be provided to the Review Officer [within 14 working days] from the date that the information is supplied
- Provide the Request for Review, the reasons and any supporting documents, together with the Complainant's response, to the Independent Person for his/her comments within [14 working days] from the date that the documents are supplied

- The Review Officer will review the Complaint in the light of all of the information using the same process, options and criteria as set out in Paragraphs x to y above for **Formal Assessment** of the Complaint.
- The Review Officer may make a different decision to the original decision made by the Monitoring Officer.
- There is no right to a further review at the conclusion of this Review stage.

### **Referral to the Police or other regulatory authorities**

If the complaint identifies potential criminal conduct under the Localism Act 2011 (or a breach of other regulations) the Monitoring Officer may refer the matter to the Police or other regulatory authority or body.

It may not be appropriate to progress the Complaint through this procedure for a potential breach of the Code in such circumstances, until the conclusion of the Police (or other appropriate body) investigation.

The Monitoring Officer will ask the Complainant at the determination of the Police (or other body's) procedure whether s/he wishes to continue with the standards Complaint.

### **Referral to the Standards Committee (or sub-committee)**

~~The Monitoring Officer may refer the complaint at any stage of the complaint process to the Standards Committee (or its sub-committee) for consideration.~~

~~Any such meeting of the Standards Committee (or subcommittee) shall be deliberative only and shall not be open to the public. The decision as to how the matter will be progress will remain with the Monitoring Officer. Press, members of the public, the Councillor and Complainant will not be allowed to attend these meetings.~~

~~The Monitoring Officer has discretion to decide whether to refer to the Standards Committee but the following factors may be relevant:~~

- ~~• Seriousness of the complaint~~
- ~~• Conflict of interests~~
- ~~• Potential public interest~~
- ~~• Political sensitivity~~

~~The Standards Committee (or sub-committee) has the same options in relation to the complaint as above and will consult the Independent Person before making any decision.~~

I have deleted this as there have no instances in 6 years that have warranted this course of action

### **To refer the complaint for investigation**

Where the Monitoring Officer decides that a Complaint merits a formal investigation, the Monitoring Officer will appoint an Investigating Officer. Complaints will normally be referred for investigation where there are potentially serious breaches of the Code and/or where it would be in the public interest.

The Investigating Officer may be:

- the Monitoring Officer
- another officer of the Council
- an officer of another Authority
- an external investigator

Investigations will be carried out in accordance with the guidance on 'How to Conduct an Investigation' produced by the former Standards for England. The Investigating Officer will:

- decide whether to conduct interviews or invite statements
- decide who to interview (by phone or in person at the Investigating Officer's discretion)
- ask for relevant supporting documentation from any of the relevant parties
- produce a draft written report for comment by the Councillor and Complainant
- send a copy to the Monitoring Officer
- ask for the Independent Person's comments on the draft Report
- have regard to any comments made on the draft report and will accept those comments at his/her discretion
- submit a Final Report to the Monitoring Officer setting out (with reasons) whether s/he considers that the Councillor has broken the Code.
- whilst the investigation will be undertaken as expeditiously as reasonably practicable, it is not possible to specify a timescale within which the investigation must be concluded.

## Outcomes of an Investigation

The Investigating Officer will make one of the following findings:

- that the Code has not been broken
- that the Code has been broken

### **Investigating Officer decides that the Code has not been broken**

The Monitoring Officer will (**within 14 working days**) of receipt of the Investigating Officer's Final Report:

- send a copy of the Report to the Complainant and Councillor
- Advise the following of the finding of no breach:
  - Clerk - if the matter relates to a Parish/Town councillor
  - Independent Person
  - The Chairman of the Standards Committee
- Advise all parties that all documents relating to the complaint will remain confidential.

This will normally be the end of the matter, and no further action will be taken. However, the Monitoring Officer has discretion to refer the Report to the Standards Committee to consider whether the Investigating Officer's findings should be accepted.

### **Investigating Officer decides that the Code has been broken**

Where the Investigating Officer finds that the Code has been broken the Monitoring Officer will (in consultation with the Independent Person and Chairman):

- Facilitate a **local resolution** (where appropriate) or,
- **Agree** with the Investigating Officer's findings that there has been a breach of the Code and **apply sanctions / other action or make recommendations** in accordance with Appendix 1, or
- Refer the matter to a Standards Panel for a **Hearing** for serious or complex complaints where it is in the public interest that the Complaint is considered by the Standards Panel, and in all of the circumstances the Monitoring Officer considers that it is necessary.

The procedures for Hearings falls outside the scope of this procedure (see xxxxxxxxx).

### **Local Resolution**

After an Investigating Officer's finding of a breach, the Monitoring Officer may consider that the matter may be reasonably resolved without the need to **impose sanctions or** to hold a formal hearing. In such cases, the Monitoring Officer will consult:

- the Independent Person
- **the Chairman**
- the Complainant
- the Councillor

to try and agree a local resolution which satisfies both parties, and which will seek to ensure a higher standard of conduct in the future.

Such resolution may include:

- the Councillor agreeing that his/her behaviour was unacceptable
- the Councillor offering an apology
- the Councillor offering other remedial action

If the Councillor complies with the suggested resolution the Monitoring Officer will report the matter to the Standards Committee (and Town & Parish Council where appropriate) and that will be the end of the matter.

## **Hearing**

The matter may be dealt with by way of a 'paper' hearing where:

- local resolution is not appropriate or possible, or
- the Councillor accepts the findings of the Investigating Officer's Report and does not wish to make any further representations (save for written representations on possible sanctions) on the Report at a formal Hearing
- there are no overriding public interest or other reasons why the matter should be referred to a formal Hearing.

Please see Appendix B.

## **Hearing**

The Monitoring Officer will refer the matter to the Hearing Panel for a Hearing where:

- local resolution is not appropriate or possible, or
- the Complainant and/or the Councillor do not co-operate in any local resolution
- the Councillor does not wish to deal with the matter without a formal hearing.

A hearing will normally be a **public meeting** in which the Councillor and the Investigating Officer will be asked to make representations to the Hearing Panel before it decides:

- whether the Councillor has broken the Code of Conduct
- what action (if any) to recommend
- what sanctions (if any) as appropriate

Please see Appendix A for the **Hearing Procedure**.

## **Hearing outcomes**

- That there has been no breach of the Code
- That the Code has been broken

The Hearing Panel has no power to:

- suspend members

- ~~disqualify members~~
- ~~withdraw members' allowances~~

## Notification of Decisions

The Monitoring Officer's decision will be set out in a **Decision Notice**. Within **five working days** of the decision being made, the Monitoring Officer will send the Decision Notice to the relevant parties, including:

- the Complainant
- the Councillor
- the Independent Person
- Parish/Town Clerk (if relevant)

The **Decision Notice** will:

- Summarise the complaint
- Give the decision
- Give reasons for the decision
- Say briefly what will happen next (if relevant)
- Explain that there is no right of **review** / appeal

During the pre-election period known as 'Purdah', Complaints will be accepted and will be assessed at the discretion of the Monitoring Officer. However, no Decision Notices will be issued during the Purdah period.

## Publicity

**Finding of a breach:**

- Where there has been a finding of a breach of the Code, the Decision Notice will be published on West Devon Borough Council's website after 10 working days of the Decision Notice being issued to the relevant parties.
- All findings of a breach of the Code of Conduct will be reported in full to the Standards Committee .

**Finding of No Further Action at formal assessment stage:**

- The Monitoring Officer will ask the Councillor whether s/he wishes the Decision to be published. If no response is received within 10 working days then the Decision will be published on the Council's website.

Decisions/rejections at the **Initial Assessment** stage will not be published.

## Other issues relating to complaints

### Confidentiality

As a matter of fairness and in the interests of natural justice, a Councillor should normally be told **at the outset** that a complaint has been made and by whom.

However, there may be instances when the Complainant asks for his/her identity to be withheld. Such requests will only be granted in **exceptional circumstances** and at the discretion of the Monitoring Officer **(or the (sub) Committee)**. The Monitoring Officer may consult the Independent Person.

#### The following criteria will be taken into account when considering requests for confidentiality:

- The Complainant has reasonable grounds for believing that s/he (or someone else) will be at a risk of physical harm if his/her identity is disclosed
- The Complainant is an officer who works closely with the Councillor and is afraid of the consequences to his/her employment if identity is disclosed
- The Complainant (or someone else) suffers from a serious health condition and there are medical risks associated with his/her identity being disclosed. In such circumstances the Monitoring Officer may wish to request medical evidence.
- The public interest: in some circumstances the public interest in proceeding with an investigation may outweigh the Complainant's wish for confidentiality.

The Complainant will be asked if s/he wishes to withdraw the complaint where:

- it is not possible to pursue the Complaint without revealing the Complainant's identity (e.g. allegations of bullying), or
- the Complainant's request for confidentiality is refused.

### Withdrawal of complaints

Requests to withdraw complaints by the Complainant will normally be granted but in considering such requests the Monitoring Officer (in consultation with the Independent Person as appropriate) will consider the following and may refuse the request:

- Does the public interest in taking some action on the complaint outweigh the Complainant's wish to withdraw it?
- Can the complaint be investigated without the Complainant's participation?

- Is there an identifiable underlying reason for the request to withdraw the complaint?

### **Multiple complaints about the same Councillor**

Where several Complaints are received from different Complainants about the same Councillor that relate to the same matter, these may be considered by the Monitoring Officer as a single complaint. The Monitoring Officer may issue a separate decision on each individual complaint or issue a single Decision Notice but make clear that it relates to more than one complainant.

### **Anonymous complaints**

Anonymous complaints will only be referred for investigation if the complaint includes documentary or other evidence showing an exceptionally serious or significant matter.

### **Where a councillor ceases to be councillor**

If at any time during the Complaints process the Councillor ceases to be a Councillor for whatever reason, then (unless there are overriding public interest reasons to merit continuing with the process) the complaint will not be considered any further and the matter closed.

## **Other issues**

### **Public access to meetings and records**

- The assessments, review and consideration of the complaint by the Monitoring Officer (and consultations with the Independent Person) will take place in private i.e. the public and press are not allowed to attend these deliberations. This is because the Monitoring Officer may have to consider unfounded and potentially damaging complaints against councillors which it would not be appropriate to make public.
- Initial and formal assessments and consideration papers that do not progress to the initial assessment stage will not be disclosed to the public. (However the original complaint will be disclosed to the councillor – see above).
- Hearings (except paper hearings) will be open to the public and press unless exempt information under Schedule 12A of the Local Government Act 1972 is likely to be disclosed. **Please see the Hearing Procedure at Appendix X.**

- Documents relating to complaints that have not been referred for investigation **or that have a finding of No Further Action**, will be kept for 12 months.
- Other documentation will be kept in accordance with the Council's records retention policy.
- Decision Notices will be available for inspection (but not publication) for 6 years from the date that Decision has been notified to the Councillor.
- Papers relating to Committee and sub-committee meetings will be kept for 6 years from the date of the meeting. However, sections of documents relating to parts of the Hearing (or paper hearing) that were held in private will not be made available for public inspection.
- Data Protection and Freedom of Information requirements will be considered and complied with and may prevent disclosure of some documents.

### **Conflicts of interest**

The consideration of complaints must be conducted with impartiality and fairness. If any officer, member or Independent Person has any personal or professional conflict of interest in relation to a complaint s/he should have no (further) involvement in dealing with that complaint. Please see the guidelines set out below.

### **Members**

A member of the Standards Committee who has been involved in an earlier part of the process can be a member of the Hearing Panel that determines the complaint at the end of the investigation.

Members must not discuss complaints with anyone who is not a member of the committee and discussion between Standards Committee Members should only take place at meetings of the Standards Committee or its subcommittees.

### **Officers**

An officer who has previously advised the Councillor or the Complainant should consider whether s/he should take part in the complaints process having regard to public perception and the public interest.

Officers who take part in the consideration of the complaint must not take part in the investigation or review of that matter.

The role of any officer who has a conflict of interest in a matter will be undertaken by another officer.

### **Independent Person**

Where an Independent Person has a conflict, another Independent Person will be appointed to deal with that matter.

**Guidelines as to when a Committee Member, Independent Person or Officer should not take part in this procedure:**

- If s/he is the Complainant
- If s/he is closely associated with some one who is a Complainant
- S/he is a potential witness or victim relating to a complaint
- The complaint is likely to affect the well-being or financial position of the member/officer /Independent Person (or of a family member, friend, or someone with whom s/he has a close association)
- The member/officer is directly or indirectly involved in the case in any way.
- A family member, friend or close associate of the Standards Committee member / officer / Independent Person is involved in the case.
- The member / officer / Independent Person has an interest in any matter relating to the case

**Complaints about dual-hatted Councillors**

Councillors who belong to more than one authority may have breached more than one Code of Conduct, and it is therefore possible that the Monitoring Officer of more than one authority may receive a complaint on the same matter.

When a complaint is received about a dual-hatted councillor, the Monitoring Officer should check if a similar complaint has been received by the other authority.

**Variation and Review of this procedure**

This Procedure may be amended from time to time by the Monitoring Officer to take in to account any changes in law, guidance as to best practice or in the light of experience.

The Monitoring Officer will review this Procedure every three years or as otherwise necessary.

Any substantial amendments or variations will be considered by the Standards Committee who will make any necessary recommendations to the Executive /Council.

**Appeals**

There is no right of appeal by the Complainant or the Councillor\*\* against the decision of:

- the Monitoring Officer
- the Review Officer
- the Standards Committee
- the Standards Hearing Panel

If the Complainant reasonably believes that the Council has failed to deal with his/her complaint properly s/he may make a complaint to the Local Government Ombudsman.

\*\* the Councillor has a right of review against the decision of the Monitoring Officer in accordance with paragraph xxx above where the finding is a breach of the Code

## **Appendix 1**

### **Deciding on whether to apply sanctions for breaching the Code, and if so, what sanctions are appropriate**

The powers of the Council to impose and enforce sanctions or remedial action has been severely limited since the introduction of the current standards regime under the Localism Act 2011.

If the Monitoring Officer or Review Officer finds that the Councillor has broken the Code of Conduct, s/he will have regard to the following in deciding whether to:

- apply sanction(s) and if so what form those sanctions should take
- make any recommendations to the relevant Council with a view to promoting high standards of conduct amongst Members.
- make a recommendation or stipulations as to timing of any sanctions or recommendations.

The Monitoring Officer / Review Officer may consult the Independent Person before making this decision.

### **Consideration of sanctions/actions or recommendations**

In deciding what (if any) action to take, the Monitoring Officer/Review Officer should bear in mind the aim of upholding and improving the standard of conduct expected of councillors as part of the process of fostering public confidence in local democracy.

The action taken or recommended should be designed to discourage or prevent the Councillor from any future non-compliance, discourage similar action by others, and maintain public confidence in the Code of Conduct.

Account should be taken of the actual consequences which have followed as a result of the Councillor's actions whilst at the same time bearing in mind what the possible consequences may have been even if they did not materialise.

In determining a sanction, the Monitoring Officer/Review Officer will ensure that it is reasonable and in proportion to the Councillor's behaviour.

### **Mitigating or Aggravating factors**

When making a decision on actions to take, the Monitoring Officer/Review Officer will consider the seriousness of the breach of the Code and any potential consequences, having regard to any mitigating or aggravating factors.

<b>Mitigating factors</b>
<ul style="list-style-type: none"> <li>• An honest (but mistaken) belief that the action was not a breach of the code (particularly where such a view has been formed after taking appropriate advice)</li> </ul>
<ul style="list-style-type: none"> <li>• A Councillor's previous record of good service</li> </ul>
<ul style="list-style-type: none"> <li>• The breach was a minor or technical breach</li> </ul>
<ul style="list-style-type: none"> <li>• Substantiated evidence that the Councillor's actions have been affected by ill-health</li> </ul>
<ul style="list-style-type: none"> <li>• Recognition that there has been a failure to follow the Code; co-operation in rectifying that failure; an apology to affected person where that is appropriate; self-reporting of the breach</li> </ul>
<ul style="list-style-type: none"> <li>• Compliance with the Code since the events giving rise to the finding of the breach</li> </ul>
<b>Aggravating factors</b>
<ul style="list-style-type: none"> <li>• Dishonesty</li> </ul>
<ul style="list-style-type: none"> <li>• Continuing to deny facts despite clear evidence to the contrary</li> </ul>
<ul style="list-style-type: none"> <li>• Seeking unfairly to blame other people</li> </ul>
<ul style="list-style-type: none"> <li>• Failing to follow appropriate advice or warnings</li> </ul>
<ul style="list-style-type: none"> <li>• Previous breaches – particularly if they are a similar nature</li> </ul>
<ul style="list-style-type: none"> <li>• Persisting with a pattern of behaviour which involves repeatedly failing to abide by the Code</li> </ul>

<b>The Monitoring Officer/Review Officer may impose one (or any combination of) the following:</b>	
<b>No further action</b>	One or more of the above mitigating factors may be appropriate here
<b>Censure</b>	<p>This is effectively the only real sanction that the Council impose and will be the appropriate sanction to the most serious breaches of the Code. The Monitoring Officer will consult the Independent Person and Chairman of the Standards Committee with regards to the wording of the Censure/</p> <p>In respect of Parish/Town Councillors, the Monitoring Officer will consider whether it is appropriate for the Council to censure the Councillor or request that the Councillor's own</p>

	Council should give effect to the sanction
Other Action	<p>The Council does not have the power to compel any Councillor to comply with recommendations for remedial actions. The Council must rely on the Councillor's conscience and willingness to observe and uphold the Code of Conduct. Notwithstanding this, the Council may request or recommend some action on the part of the Councillor or the wider relevant Council.</p> <p>Examples of <b>Other Action</b> include one or more of the following:</p> <ul style="list-style-type: none"> <li>• Asking the Councillor to make an <b>apology</b></li> <li>• <b>Training for the individual Councillor</b> on the Code of Conduct and ethical standards or Council procedures to help the Councillor observe the and uphold the Code in the future</li> <li>• <b>Training for the whole Council or identified members such as the Chairman</b> on the Code of Conduct and ethical standards or Council procedures to help the wider Council address any underlying issues that the Complaint has raised</li> <li>• Recommend (or recommend to the Town / Parish Council) that the Councillor's political group (or in the case of an un-grouped Councillor, recommend to Council or a Committee) that the Councillor's membership of Committees, sub-committees or outside bodies, is reviewed where there is a link to the Conduct that has resulted in a breach of the Code.</li> <li>• Recommend (or recommend to the Town / Parish Council) that the Councillor be removed from all outside appointments to which s/he has been appointed or nominated by the Authority</li> <li>• Exclude (or recommend that the Town / Parish Council excludes) the Councillor from the Council's offices or other premises (with the exception of meeting rooms as necessary for attending council, committee or subcommittee meetings)</li> <li>• Withdraw (or recommend to the Town / Parish Council that it withdraws ) facilities provided to the councillor (e.g. computer, website, and/or</li> </ul>

	email and Internet access)
Failure to give effect to Other Action	<p>It is not possible for Council (or any other body) to enforce any of the sanctions/actions or recommendations. Refusal to do so by the Councillor is difficult to address. A further complaint for failure to comply with sanctions and recommendations could be considered but the public interest in doing so has to be weighed up with the amount of public resource that would be involved against any potential effect on the Councillor's behaviour.</p> <p>If a Parish or Town Council fails to comply with any recommendation for other action involving the whole (or part the) Council then that is a matter for that Council, and there is no action that West Devon Borough Council can properly take.</p>
Suspension or disqualification from office	<p>The Council has no power to suspend or disqualify the Councillor; to request this would be unlawful.</p> <p>The only way that a councillor can cease to hold office is through his/her resignation (which cannot be forced) or by the Councillor not being re-elected in the next Council election.</p>
Withdrawing allowances	The Council has no power to withdraw members' allowances.