

You are requested to attend a meeting of the Standards Committee to be held in The John Meikle Room, The Deane House, Belvedere Road, Taunton on 24 January 2012 at 14:30.

Agenda

- 1 Apologies.
- 2 Minutes of the meeting of the Standards Committee held on 7 December 2011 (attached).
- 3 Public Question Time.
- 4 Declaration of Interests
To receive declarations of personal or prejudicial interests, in accordance with the Code of Conduct.
- 5 The Localism Act 2011 - The Amended Standards Regime. Report of the Monitoring Officer (attached).
Reporting Officer: Tonya Meers
- 6 The Model Arrangements for dealing with standards allegations under the Localism Act 2011 (attached).
Reporting Officer: Tonya Meers
- 7 Date of next meeting.

The following items are likely to be considered after the exclusion of the press and public because of the likelihood that exempt information would otherwise be disclosed relating to the Clause set out below of Schedule 12A of the Local Government Act 1972.

- 8 Update on complaints made against Councillors under the Local Assessment Framework. Report of the Monitoring Officer. Clause 2 - Information which would reveal the identity of an individual.
Reporting Officer: Tonya Meers

13 April 2012

Members of the public are welcome to attend the meeting and listen to the discussions.

There is time set aside at the beginning of most meetings to allow the public to ask questions.

Speaking under “Public Question Time” is limited to 4 minutes per person in an overall period of 15 minutes. The Committee Administrator will keep a close watch on the time and the Chairman will be responsible for ensuring the time permitted does not overrun. The speaker will be allowed to address the Committee once only and will not be allowed to participate further in any debate.

If a member of the public wishes to address the Committee on any matter appearing on the agenda, the Chairman will normally permit this to occur when that item is reached and before the Councillors begin to debate the item.

This is more usual at meetings of the Council’s Planning Committee and details of the “rules” which apply at these meetings can be found in the leaflet “Having Your Say on Planning Applications”. A copy can be obtained free of charge from the Planning Reception Desk at The Deane House or by contacting the telephone number or e-mail address below.

If an item on the agenda is contentious, with a large number of people attending the meeting, a representative should be nominated to present the views of a group.

These arrangements do not apply to exempt (confidential) items on the agenda where any members of the press or public present will be asked to leave the Committee Room.

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Lift access to the John Meikle Room and the other Committee Rooms on the first floor of The Deane House, is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available off the landing directly outside the Committee Rooms.



An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter.

For further information about the meeting, please contact Democratic Services on 01823 356382 or email d.durham@tauntondeane.gov.uk

Standards Committee Members:-

Councillor J Allgrove

Mr T Bowditch

Councillor S Brooks

Mr A Cottrell

Mr H Davenport

Mrs A Elder

Councillor E Gaines

Mr D Macey

Mr M Marshall

Mr L Rogers

Mr R Symons

Mr B Wilson

Standards Committee – 7 December 2011

Minutes of a meeting of the Standards Committee held in the John Meikle Room, The Deane House, Belvedere Road, Taunton on Wednesday, 7 December 2011 at 2.30 p.m.

Present: Mrs A Elder (Chairman)
Mr A Cottrell (Vice-Chairman)
Councillors Mrs Allgrove, Brooks and Gaines
Mr A Cox, Mr H Davenport, Mr L Rogers, Mr R Symons and Mr B Wilson

Officers: Mrs T Meers (Monitoring Officer) and Mr R Bryant (Democratic Services Manager)

98. Apologies

Mr T Bowditch, Mr D Macey and Mr M Marshall.

99. Welcome

The Chairman welcomed Adrian Cox to his first meeting of the Committee as one of the independent Members.

100. Minutes

The minutes of the previous meeting of the Committee held on 13 September 2011 were taken as read and were signed.

101. Declaration of Interests

The Chairman, Anne Elder, declared personal interests as a Public Governor of the Taunton and Somerset NHS Trust and as a Member of the House Management Committee of one of the premises operated by the Royal Agricultural Benevolent Institution. Councillor Mrs Allgrove declared a personal interest as a Member of the Somerset Association of Local Councils. Councillor Brooks declared a personal interest as a Member of Somerset County Council.

102. The future of the Standards Regime – The Localism Act 2011

The Monitoring Officer, Tonya Meers, reported on the likely changes and affects to the current Standards Regime following the Localism Act being given Royal Assent on 15 November 2011.

Although a paper produced by Peter Keith-Lucas of the Law Firm Bevan Brittan had already been circulated to Members, Mrs Meers informed the Committee that the following were the main points of interest and the focus of future discussion in trying to establish a clear way forward for Standards under the new legislation:-

1. The provisions would apply to Principal Councils and Town and Parish Councils;
2. The implementation date was likely to be 1 April 2012.
 - It was anticipated that there would be a two month transitional period;
 - The practicalities of this would need to be assessed.
3. There would be a statutory duty to promote and maintain high standards of conduct.
 - The Standards Committee would no longer be a statutory Committee;
 - Co-opted Members – the definition now only applied to Members of Committees and Sub-Committees of the authority;
 - Any Code of Conduct would not apply to co-opted non-voting Members;
 - The Act provided no mechanism or powers to enforce high standards of conduct.
4. Standards Committee – Questions to answer:-
 - Would we still have one?
 - What would its remit be?
 - The role of the Independent Person?
 - The role of the Parish representatives?
5. Code of Conduct – The Council was required to adopt a Code of Conduct.
 - The General Principals Order and the model Code of Conduct had been revoked;
 - The new Code had to be consistent with the seven principles of public life;
 - A Council would be free to adopt their own Code but the issue was one of consistency between Council's and the Parishes;
 - Any new Code of Conduct must be adopted by Full Council.

All Standards matters would be non-executive functions.
6. The Council needed to have arrangements in place to deal with complaints of any breach of the Code of Conduct and this also applied if the Council was dealing with complaints regarding Parish Councillors.
 - The process for convening a Committee to deal with a complaint must be in line with all other Committees, that is five clear days notice;

- They must be conducted in public;
- The deliberations of any Standards Committee must be heard in public.

7. Role of the Monitoring Officer for local resolution.

Did this compromise the role of the Monitoring Officer or give greater flexibility?

8. The Localism Act gave no powers to undertake investigations or to conduct hearings. So there were no powers to require access to documents or to require Members or officers to attend interviews, and no powers to require the Member to attend a hearing. This might prove problematic.

9. There were no powers to take action for a breach of the Code - there only appeared to be a naming and shaming power.

10. Parishes were under no obligation to have regard to any findings of the District Council or its Standards Committee.

11. Independent Persons – this was a new role. They should be appointed by advertisement and application. There were also strict rules on appointment.

- Independent Persons could not be a friend/relative to any Member or officer of the Authority;
- Be a Parish Councillor;
- Or had been a Member or co-opted Member for the past five years.

Therefore no independent Member of our current Standards Committee would appear to be eligible. This meant that all of the knowledge/experience and respect that had been built up with the current Committee Members would be lost.

12. The functions of the Independent Person (IP) would be:-

- The IP could be consulted by a Member of the Authority against whom an allegation has been made. But, if they were so consulted, it was hard to see how they could then participate impartially in the determination of that allegation. It was also hard to see what such consultation could achieve as the IP could not exercise any decision-making functions.
- The IP could be consulted by a Parish Councillor against whom an allegation has been made. But in this instance the IP would appear to be even less able to make any useful contribution; and
- The IP could be consulted by the Principal Authority in circumstances where the Authority was not taking a decision whether to investigate the allegation. Logic would suggest that the IP would be able to make a useful contribution as a moderator

sitting alongside any Hearing Panel, but that would not be practicable if their impartiality had been prejudiced by previously being consulted by the Member concerned.

13. Register of Interests

- The content of the register must be approved by Full Council;
- Disclosable pecuniary interests – these would be defined by regulations;
- The Code must provide for disclosable and non-disclosable pecuniary interests as well as non-pecuniary interests;
- Only the disclosable pecuniary interests would be defined by regulations. It would be for the Authority to define non-disclosable pecuniary interests and non-pecuniary interests;
- This would create a great deal of confusion for Members, especially those who were also Parish Councillors or Councillors of other Authorities who might agree different definitions;
- The Monitoring Officer must ensure that the register is put on the Council's website;
- The Monitoring Officer must ensure that all Parish Registers were publically available and each Parish Council would be required to keep a copy on their website, if they have one.

14. Criminal offence provision –

- A failure to register interests within 28 days of election or co-option or providing misleading information without reasonable excuse would be guilty of an offence with a fine up to £5000 and/or disqualification for up to five years.

15. There was a duty to disclose interests including the nature and existence except for a sensitive interest.

16. But if it was on the register then the Member was under no obligation to disclose the interest at a meeting.

17. The lack of a sanction if there was a failure to disclose a non-disclosable pecuniary interest or a non-pecuniary interest, even if it was included in any new Code of Conduct.

18. Participation in a meeting – If a Member had a disclosable pecuniary interest then he/she had to disclose it and withdraw from the meeting. The Member was barred from participating in discussion and voting, unless given a dispensation. This therefore appeared to be more restrictive than current prejudicial interest provisions.

19. Participation in the discussion or taking steps in respect of the matter where a disclosable pecuniary interest was declared would be a criminal offence.

20. Dispensations

- Could be delegated to the Monitoring Officer to ensure timely decisions;
- The 50% provision remained but only if it meant that the meeting would be inquorate;
- The political balance provision remained unchanged but the Act had added
 - If all Executive Members were precluded;
 - It was in the interests of persons living in the area; and
 - It would otherwise be appropriate.

During the discussion of this item, Members made the following comments and asked questions. Responses are shown in italics:-

- Unhappy with the political balance proposals and the potential loss of our current independent Members. To achieve political balance would mean more Councillors having to be drafted onto the Committee. From the outset, the Committee has always had an independent Chairman and greater numbers of independent Members than Councillors. This was what had made the Committee so effective;
- A Somerset-wide Code of Conduct – possibly drafted by the Local Government Association or the National Association of Local Councils would ensure consistency of approach across the County. *All of the Somerset Monitoring Officers were keen to move forward together. It was thought that the Association of Council Secretaries and Solicitors had already put together a replacement Code;*
- The Political Groups could be asked to deal with the suspension of Councillors found to have breached any new Code of Conduct. However this would be severely tested if there was a hung Council;
- Removing the “low level” sanctions that could be imposed on a Councillor by the Standards Committee could mean that some interests would not be declared;
- Link Parish Register of Interests to Taunton Deane’s website to enable easier updating to take place;
- Was the appointment of an Independent Person discretionary? *No.*
- What was the political view of Taunton Deane as to the retention of a Standards Committee? *The Political Groups have been very supportive in the past. A briefing note on the changes to the Standards regime is shortly to be circulated to the Group Leaders for consideration. Their reaction will be reported to the next meeting of the Committee;*

- Was it correct that the Police would need to be involved in pursuing prosecutions against Members who failed to declare interests? Yes – *but what level of priority would the Police give to such matters?*
- Regretted that things like “treating others with respect” and “duty to uphold the law” were not required to be included in any new Code of Conduct;
- Important for a Standards Regime to continue, otherwise things were likely to “free-fall”;
- Further lobbying called for to alter the legislation. *It was too late to lobby on the Act, however Councils like Taunton Deane could still try to influence the Statutory Instruments which would bring the various parts of the Act into operation. These were due to be published in the next few months;*
- Was there a difference between co-option and appointment to a Standards Committee? *Clarification on this point was awaited;*
- What role would the Committee have in the formulation of the new Standards regime? *It would be important for the Council to be guided by the Committee as to what was considered workable in the new legislation and what was not. Ultimately though Full Council would decide upon the most suitable regime for Taunton Deane.*

As a starting point towards future deliberations by the Committee, it was suggested that:-

- (1) The Monitoring Officer’s report be noted;
- (2) Concern be expressed in relation to some elements of the Localism Act which appeared to undermine the current Standards regime and the fact that these measures would be imposed on Councils;
- (3) The Council should continue to have a Standards Committee to ensure any new Code of Conduct adopted was adhered to by Councillors;
- (4) The opportunity to influence forthcoming regulations and guidance be taken; and
- (5) Measures to either adapt or streamline the investigative process be also considered.

These suggestions were generally supported and further discussions would take place at the next meeting of the Committee.

103. Attendance at Taunton Deane Committee Meetings

The Chairman reported that since the last meeting she had attended all meetings of the Planning Committee and Full Council as the independent representative from the Standards Committee.

With regard to the proposal agreed at the last meeting concerning the re-introduction of visits to Parish Councils, it was felt that this should be delayed until the new Standards regime was in place and the likely relationship between Taunton Deane and its parishes became clear.

Resolved that the report be noted.

104. Date of next meeting

The next meeting would be held on Tuesday, 24 January 2012 at 2.30 p.m. in The John Meikle Room at The Deane House.

105. Exclusion of the Press and Public

Resolved that the press and public be excluded from the meeting for the following items because of the likelihood that exempt information would otherwise be disclosed relating to Clause 2 of Schedule 12A to the Local Government Act 1972 and the public interest in withholding the information outweighed the public interest in disclosing the information to the public.

106. Update on complaints made against Councillors

Mrs Meers reported that with regard to the one current complaint against a Taunton Deane Councillor, the investigator appointed had recently submitted a draft report on the findings for comment.

The final report, once received, would be referred to a Consideration Sub-Committee to decide whether a hearing into the complaint should be held.

Mrs Meers also reported the receipt of two new complaints against Parish Councillors – the first of this type received. An Assessment Sub-Committee would be set up shortly to determine whether the complaints should be investigated.

The Chairman reported that she had been sent a complaint by a Parish Council about an officer. This was outside the Committee's remit and she had responded accordingly.

Resolved that the report be noted.

(The meeting ended at 4.01 p.m.)

Taunton Deane Borough Council

Standards Committee – 24 January 2012

The Localism Act 2011 – The Amended Standards Regime

Report of the Monitoring Officer

(This matter is the responsibility of Executive Councillor John Williams, Leader of the Council)

1. Executive Summary

<p>This report details the changes to the Standards Regime that will be required to comply with the provisions of the Localism Act 2011.</p>
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2. The Localism Act 2011

- 2.1 The Localism Act 2011 makes fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors. The date for implementation of these changes was proposed to be 1 April 2012, however the Government announced just before Christmas that the new regime will come into force on the 1 July 2012.
- 2.2 This report describes the changes and recommends the actions required for the Council to implement the new regime.

3. Duty to promote and maintain high standards of conduct

- 3.1 The authority will remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members.

4. Standards Committee

- 4.1 The Act repeals Section 55 of the Local Government Act 2000, which provides for the current statutory Standards Committee. So, there will be no requirement for a Standards Committee. However, there will still be a need to deal with standards issues and case-work, so that it is likely to remain convenient to have a Standards Committee. It will be a normal Committee of Council, without the unique features which were conferred by the previous legislation. As a result –
 - The composition of the Committee will be governed by proportionality, unless the Council votes otherwise with no Member voting against. The present

restriction to have only one member of the Executive on the Standards Committee will cease to apply;

- The current co-opted independent Members will cease to hold office. The Act establishes a new category of Independent Persons (see below) who must be consulted at various stages, but provides that the existing co-opted independent Members cannot serve as Independent Persons for five years. The new Independent Persons may be invited to attend meetings of the Standards Committee, but are unlikely to be co-opted onto the Committee; (it should be noted that Counsels opinion is being sought by the Association of Council Secretaries and Solicitors on this point as it is not entirely clear and there are differences of opinion amongst the various local government lawyers);
- The District Council will continue to have responsibility for dealing with standards complaints against elected and appointed Members of Parish Councils, but the current Parish Council representatives cease to hold office. The District Council can choose whether it wants to continue to involve Parish Council representatives and, if so, how many Parish Council representatives it wants. The choice is between establishing a Standards Committee as a Committee of the District Council, with co-opted but non-voting Parish Council representatives (which could then only make recommendations in respect of Parish Council Members), or establishing a Standards Committee as a Joint Committee with the Parish Councils within the District (or as many of them as wish to participate) and having a set number of Parish Council representatives as voting members of the Committee (which could then take operative decisions in respect of Members of Parish Councils, where the Parish Council had delegated such powers to such a Joint Standards Committee).

Issue 1 – The District Council must decide whether to set up a Standards Committee, and if so how it is to be composed.

Recommendation 1 –

- a. That the Council establishes a Standards Committee comprising eight elected Members of the District Council, appointed proportionally;**
- b. That the Leader of the Council be requested to nominate to the Committee only one member who is a member of the Executive;**
- c. That the Parish Councils be invited to nominate a maximum of three Parish Councillors to be co-opted as non-voting Members of the Committee;**

5. The Code of Conduct

- 5.1 The current ten General Principles and Model Code of Conduct will be repealed, and Members will no longer have to give an undertaking to comply with the Code of

Conduct. However, the Council will be required to adopt a new Code of Conduct governing elected and co-opted Member's conduct when acting in that capacity.

5.2 The Council's new Code of Conduct must, viewed as a whole, be consistent with the following seven principles: –

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

5.3 The Council has discretion as to what it includes within its new Code of Conduct, provided that it is consistent with the seven principles. However, regulations to be made under the Act will require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

5.4 The result is that it is not possible yet to draft Code provisions which reflect the definition of DPIs which will appear in regulations, but it is possible to give an indicative view of what the Council might consider that it might be appropriate to include in the Code in respect of the totality of all interests, including DPIs, other pecuniary interests and non-pecuniary interests. Accordingly, it might be sensible at this stage to instruct the Monitoring Officer to prepare a draft Code which requires registration and disclosure for those interests which would today amount to personal and/or prejudicial interests, but only require withdrawal as required by the Act for DPIs.

5.5 The Act prohibits Members with a DPI from participating in authority business, and the Council can adopt a Standing Order requiring Members to withdraw from the meeting room.

5.6 So, the Council's new Code of Conduct will have to deal with the following matters –

- General conduct rules, to give effect to the seven principles. This corresponds broadly with Paragraphs 3 to 7 of the current Code of Conduct. In practise, the easiest course of action would be simply to re-adopt Paragraphs 3 to 7 of the existing Code of Conduct. The Council can amend its Code of Conduct subsequently if the need arises; and
- Registration and disclosure of interests other than DPIs – effectively, replacing the current personal interests provisions. The Act requires that the Code contains "appropriate" provisions for this purpose, but, until the regulations are published, defining DPIs, it is difficult to suggest what additional disclosure would be appropriate.

Issue 2 – The Council has to decide what it will include in its Code of Conduct

Recommendation 2 -

- a. That the Monitoring Officer be instructed to prepare and present to Council for adoption a draft Code of Conduct. That draft Code should –**
 - i. equate to Paragraphs 3 to 7 of the current Code of Conduct applied to Member conduct in the capacity of an elected or co-opted Member of the Council or its Committees and Sub-Committees; and**
 - ii. require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only require withdrawal as required by the Act in relation to Disclosable Pecuniary Interests.**
- b. That, when the Disclosable Pecuniary Interests Regulations are published, the Monitoring Officer, after consultation with the Chairman of the Standards Committee, the Mayor and the group leaders add to that draft Code provisions which she considers to be appropriate for the registration and disclosure of interests other than Disclosable Pecuniary Interests.**

6. Dealing with Misconduct Complaints

6.1 “Arrangements”

6.1.1 The Act requires that the Council adopts “arrangements” for dealing with complaints of breach of Code of Conduct both by District Council Members and by Parish Council Members, and such complaints can only be dealt with in accordance with such “arrangements”. So the “arrangements” must set out in some detail the process for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the relevant Code of Conduct.

6.1.2 The advantage is that the Act repeals the requirements for separate Referrals, Review and Hearings Sub-Committees, and enables the Council to establish its own process, which can include delegation of decisions on complaints. Indeed, as the statutory provisions no longer give the Standards Committee or Monitoring Officer special powers to deal with complaints, it is necessary for Council to delegate appropriate powers to any Standards Committee and to the Monitoring Officer.

6.2 Decision whether to investigate a complaint

6.2.1 In practice, the Standards for England guidance on initial assessment of complaints provided a reasonably robust basis for filtering out trivial and tit-for-tat complaints. It is sensible to take advantage of the new flexibility to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with the Independent Person and the ability to refer particular

complaints to the Standards Committee where he/she feels that it would be inappropriate for him/her to take a decision on it - for example where he/she has previously advised the Member on the matter or the complaint is particularly sensitive.

6.2.2 These arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation. If this function is delegated to the Monitoring Officer, it is right that she should be accountable for its discharge. For this purpose, it would be appropriate that she makes a quarterly report to Standards Committee, which would enable her to report on the number and nature of complaints received and draw to the Committee's attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

6.3 "No Breach of Code" finding on investigation

6.3.1 Where a formal investigation finds no evidence of failure to comply with the Code of Conduct, the current requirement is that this is reported to a Standards Assessment Sub-Committee and the Sub-Committee take the decision to take no further action.

6.3.2 In practice, it would be reasonable to delegate this decision to the Monitoring Officer, but with the power to refer a matter to Standards Committee if she feels it appropriate. It would be sensible if copies of all investigation reports were provided to the Independent Person to enable him/her to get an overview of current issues and pressures, and that the Monitoring Officer provide a summary report of each such investigation to the Standards Committee for information.

6.4 "Breach of Code" finding on investigation

6.4.1 Where a formal investigation finds evidence of failure to comply with the Code of Conduct, there may yet be an opportunity for local resolution, avoiding the necessity of a local hearing. Sometimes the investigation report can cause a Member to recognise that his/her conduct was at least capable of giving offence, or identify other appropriate remedial action, and the complainant may be satisfied by recognition of fault and an apology or other remedial action.

6.4.2 However, it is suggested that at this stage it would only be appropriate for the Monitoring Officer to agree a local resolution after consultation with the Independent Person and where the complainant is satisfied with the outcome, and subject to a summary report for information to the Standards Committee.

6.4.3 In all other cases, where the formal investigation finds evidence of a failure to comply with the Code of Conduct, it would be necessary for the Standards Committee (in practice a Hearings Panel constituted as a Sub-Committee of the Standards Committee) to hold a hearing at which the Member against whom the complaint has been made can respond to the investigation report, and the Hearing Panel can determine whether the Member did fail to comply with the Code of Conduct and what action, if any, is appropriate as a result.

6.5 Action in response to a Hearing finding of failure to comply with Code

6.5.1 The Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on Members. So, where a failure to comply with the Code of Conduct is found, the range of actions which the authority can take in respect of the Member is limited and must be directed to securing the continuing ability of the authority to continue to discharge its functions effectively, rather than “punishing” the Member concerned. In practice, this might include the following:–

- Reporting its findings to Council [*or to the Parish Council*] for information;
- Recommending to the Member’s Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommending to the Leader of the Council that the Member be removed from the Executive, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to [*or recommend that the Parish Council*] arrange training for the Member;
- Removing [*or recommend to the Parish Council that the Member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish Council*];
- Withdrawing [*or recommend to the Parish Council that it withdraws*] facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
- Excluding [*or recommend that the Parish Council exclude*] the Member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

6.5.2 There is a particular difficulty in respect of Parish Councils, as the Localism Act gives the Standards Committee no power to do any more in respect of a Member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the Member.

6.5.3 Parish Councils will be under no obligation to accept any such recommendation. The only way round this would be to constitute the Standards Committee and Hearings Panels as a Joint Committee and Joint Sub-Committees with the Parish Councils, and seek the delegation of powers from the Parish Council to the Hearings Panels, so that the Hearings Panels can effectively take decisions on action on behalf of the particular Parish Council.

6.6 Appeals

- 6.6.1 There is no requirement to put in place any appeals mechanism against such decisions. The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the authority had no power to impose.

Issue 3 – The Council has to decide what “arrangements” it will adopt for dealing with standards complaints and for taking action where a Member is found to have failed to comply with the Code of Conduct.

Recommendation 3A – That the Monitoring Officer be instructed to prepare and submit to Council for approval “arrangements” as follows:-

- a. That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
- b. That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation. She be instructed to seek resolution of complaints without formal investigation wherever practicable, and that she be given discretion to refer decisions on investigation to the Standards Committee where she feels that it is inappropriate for him to take the decision, and to report quarterly to Standards Committee on the discharge of this function;
- c. Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the Member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;
- d. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, she is to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing;
- e. That Council delegate to the Hearings Panels such of its powers as can be delegated to take decisions in respect of a Member who is found on hearing to have failed to comply with the Code of Conduct, such actions to include –
 - Reporting its findings to Council [*or to the Parish Council*] for information;

- **Recommending to the Member’s Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;**
- **Recommending to the Leader of the Council that the Member be removed from the Executive, or removed from particular Portfolio responsibilities;**
- **Instructing the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the Member;**
- **Removing *[or recommend to the Parish Council that the Member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;**
- **Withdrawing *[or recommend to the Parish Council that it withdraws]* facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or**
- **Excluding *[or recommend that the Parish Council exclude]* the Member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.**

Recommendation 3B – That a meeting be arranged between the Chairman of the Standards Committee and the Group Leaders for the District Council and representatives of Parish Councils to discuss how the new system can best operate.

7. Independent Person(s)

7.1 The “arrangements” adopted by Council must include provision for the appointment by Council of at least one Independent Person.

7.2 “Independence”

7.2.1 The Independent Person must be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of all Members of the District Council (not just of those present and voting).

7.2.2 A person is considered not to be “independent” if:–

- He/she is, or has been within the last five years, an elected or co-opted Member or an officer of the District Council or of any of the Parish Councils within its area;
- He/she is, or has been within the last five years, an elected or co-opted Member of any Committee or Sub-Committee of the District Council or of any

of the Parish Councils within its area (which would preclude any of the current co-opted independent Members of Standards Committee from being appointed as an Independent Person); or

- He/she is a relative or close friend of a current elected or co-opted Member or officer of the District Council or any Parish Council within its area, or of any elected or co-opted Member of any Committee or Sub-Committee of such Council.
- For this purpose, “relative” comprises:–
 - (a) the candidate’s spouse or civil partner;
 - (b) any person with whom the candidate is living as if they are spouses or civil partners;
 - (c) the candidate’s grandparent;
 - (d) any person who is a lineal descendent of the candidate’s grandparent;
 - (e) a parent, brother, sister or child of anyone in Paragraphs (a) or (b);
 - (f) the spouse or civil partner of anyone within Paragraphs (c), (d) or (e); or
 - (g) any person living with a person within Paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

7.3 Functions of the Independent Person

7.3.1 The functions of the Independent Person(s) are:–

- They must be consulted by the authority before it makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- They may be consulted by the authority in respect of a standards complaint at any other stage; and
- They may be consulted by a Member or co-opted Member of the District Council or of a Parish Council against whom a complaint has been made.

7.3.2 This could cause some problems, as it would be inappropriate for an Independent Person who has been consulted by the Member against whom the complaint has been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

7.4 How many Independent Persons?

7.4.1 The Act gives discretion to appoint one or more Independent Persons, but provides that each Independent Person must be consulted before any decision is taken on a complaint which has been investigated. Accordingly, there would appear to be little advantage in appointing more than one Independent Person, provided that a couple of reserve candidates are retained and can be activated at short notice, without the

need for re-advertisement, in the event that the Independent Person is no longer able to discharge the function.

7.5 Remuneration

- 7.5.1 As the Independent Person is not a Member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer comes within the scheme of Members' Allowances, and can therefore be determined without reference to the Independent Remuneration Panel.
- 7.5.2 In comparison to the current Chairman of the Standards Committee, the role of Independent Person is likely to be less onerous. He/she is likely to be invited to attend all meetings of the Standards Committee and Hearings Panels, but not to be a formal Member of the Committee or Panel (he/she could be co-opted as a non-voting Member but cannot chair as the Chairman must exercise a second or casting vote).
- 7.5.3 He/she will need to be available to be consulted by Members against whom a complaint has been made, although it is unclear what assistance he/she could offer. Where he/she has been so consulted, he/she would be unable to be involved in the determination of that complaint. This report suggests that the Independent Person should also be involved in the local resolution of complaints and in the grant of dispensations. However, it would be appropriate to undertake a proper review of the function before setting the remuneration.

Issue 4 – How many Independent Persons are required?

Recommendation 4 –

- a. That the Monitoring Officer, in consultation with the Chairman of the Standards Committee, the Mayor and the Group Leaders, with the advice of the Retained HR Manager, be authorised to set the initial allowances and expenses for the Independent Person and any Reserve Independent Persons, and this function subsequently be delegated to the Standards Committee;**
- b. That the Monitoring Officer advertise a vacancy of the appointment of one Independent Person and two Reserve Independent Persons;**
- c. That a Committee comprising the Chairman and three other Members of Standards Committee be set up to short-list and interview candidates, and to make a recommendation to Council for appointment.**

8. The Register of Members' Interests

8.1 The Register of Members' Interests

- 8.1.1 The Localism Act abolishes the concepts of personal and prejudicial interests. Instead, regulations will define "Disclosable Pecuniary Interests" (DPIs). The Monitoring Officer is required to maintain a Register of Interests, which must be

available for inspection and available on the Council's website. The Monitoring Officer is also responsible for maintaining the register for Parish Councils, which also have to be open for inspection at the District Council offices and on the District Council's website.

- 8.1.2 At present we do not know what DPIs will comprise, but they are likely to be broadly equivalent to the current prejudicial interests. The intention is to simplify the registration requirement, but in fact the Act extends the requirement for registration to cover not just the Member's own interests, but also those of the Member's spouse or civil partner, or someone living with the Member in a similar capacity.
 - 8.1.3 The provisions of the Act in respect of the Code of Conduct require an authority's code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.
 - 8.1.4 The Monitoring Officer is required by the Act to set up and maintain registers of interest for each Parish Council, available for inspection at the District Council offices and on the District Council's website and, where the Parish Council has a website, provide the Parish Council with the information required to enable the Parish Council to put the current register on its own website.
- 8.2 Registration on election or co-option
- 8.2.1 Each elected or co-opted Member must register all DPIs within 28 days of becoming a Member. Failure to register is made a criminal offence, but would not prevent the Member from acting as a Member.
 - 8.2.2 In so far as the Code of Conduct which the Council adopts requires registration of other interests, failure to do so would not be a criminal offence, but merely a failure to comply with the Code of Conduct.
 - 8.2.3 There is no continuing requirement for a Member to keep the register up to date, except on re-election or re-appointment, but it is likely that Members will register new interests from time to time, as this avoids the need for disclosure in meetings. When additional notifications are given, the Monitoring Officer has to ensure that they are entered into the register.
 - 8.2.4 The preparation and operation of the register, not just for this authority but also for each Parish Council, is likely to be a considerable administrative task, especially where different Parish Councils adopt different Code requirements for registration and disclosure in respect of interests other than DPIs. There is no provision for the District Council to recover any costs from Parish Councils.

Issue 5 – Preparation of the Registers

Recommendation 5 –

- a. **That the Monitoring Officer prepares and maintains a new Register of Members' Interests to comply with the requirements of the Act and of**

the Council's Code of Conduct, once adopted, and ensure that it is available for inspection as required by the Act;

- b. That the Monitoring Officer ensures that all Members are informed of their duty to register interests;**
- c. That the Monitoring Officer prepares and maintains new Registers of Members' Interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council and ensure that it is available for inspection as required by the Act; and**
- d. That the Monitoring Officer arranges to inform and train Parish Clerks on the new registration arrangements.**

9. Disclosure of Interests and Withdrawal from Meetings

As set out above, DPIs are broadly equivalent to prejudicial interests, but with important differences. So:–

- 9.1 The duty to disclose and withdraw arises whenever a Member attends any meeting of Council, a Committee or Sub-Committee, or of Executive or an Executive Committee, and is aware that he/she has a DPI in any matter being considered at the meeting. So it applies even if the Member would be absent from that part of the meeting where the matter in question is under consideration.
- 9.2 Where these conditions are met, the Member must disclose the interest to the meeting (i.e. declare the existence and nature of the interest). However, in a change from the current requirements, the Member does not have to make such a disclosure if he/she has already registered the DPI, or at least sent off a request to the Monitoring Officer to register it (a "pending notification"). So, members of the public attending the meeting will in future need to read the Register of Members' Interests, as registered interests will no longer be disclosed at the meeting.
- 9.3 Where the Member does make a disclosure of a DPI, he/she must then notify it to the Monitoring Officer within the next 28 days, so that it can go on the Register of Interests.
- 9.4 If a member has a DPI in any matter, he/she must not:–
 - Participate in any discussion of the matter at the meeting. The Act does not define "discussion", but this would appear to preclude making representations as currently permitted under paragraph 12(2) of the model Code of Conduct; or
 - Participate in any vote on the matter, unless he/she has obtained a dispensation allowing him/her to speak and/or vote.
- 9.5 Failure to comply with the requirements (paragraphs 9.2, 9.3 or 9.4) becomes a criminal offence, rather than leading to sanctions.

- 9.6 The Council's Code of Conduct must make "appropriate" provisions for disclosure and withdrawal for interests other than DPIs, but failure to comply with these requirements would be a breach of the Code of Conduct but not a criminal offence.
- 9.7 The requirement to withdraw from the meeting room can be covered by Standing Orders, which would apply not just to Council, Committees and Sub-Committees, but can apply also to Executive and Executive Committee meetings, so that failure to comply would be neither a criminal offence nor a breach of Code of Conduct, although the meeting could vote to exclude the Member.

Issue 6 – What Standing Order should the Council adopt in respect of withdrawal from meetings for interests?

Recommendation 6 – The Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct requirement that a Member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he is permitted to remain as a result of the grant of a dispensation.

10. Disclosure and Withdrawal in respect of matters to be determined by a Single Member

- 10.1 Matters can be decided by a single member acting alone where the Member is an Executive Member acting under Portfolio powers, or where the Member is a Ward Councillor and the Council chose to delegate powers to Ward Councillors.
- 10.2 The Act provides that, when a Member becomes aware that he/she will have to deal with a matter and that he/she has a DPI in that matter:–
- Unless the DPI is already entered in the Register of Members' Interests or is subject to a "pending notification", he/she has 28 days to notify the Monitoring Officer that he/she has such a DPI; and
 - He/she must take no action in respect of that matter other than to refer it to another person or body to take the decision.
- 10.3 Standing Orders can then provide for the exclusion of the Member from any meeting while any discussion or vote takes place on the matter.
- 10.4 Note that the Act here effectively removes the rights of a Member with a prejudicial interest to make representations as a member of the public under Paragraph 12(2) of the current Code of Conduct

Issue 7 – In what circumstances should Standing Orders exclude single Members from attending meetings while the matter in which they have a DPI is being discussed or voted upon?

Recommendation 7 – The Monitoring Officer be instructed to recommend to Council a Standing Order which equates to the current Code of Conduct

requirement that a Member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she has a DPI, except where he/she is permitted to remain as a result of the grant of a dispensation.

11. Sensitive Interests

- 11.1 The Act effectively re-enacts the existing Code of Conduct provisions on Sensitive Interests.
- 11.2 So, where a Member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose) at a meeting or on the Register of Members' Interests would lead to the Member or a person connected with him/her being subject to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest".
- 11.3 If the Monitoring Officer agrees, the Member then merely has to disclose the existence of an interest, rather than the detail of it, at a meeting, and the Monitoring Officer can exclude the detail of the interest from the published version of the Register of Members' Interests.

12. Dispensations

- 12.1 The provisions on dispensations are significantly changed by the Localism Act.
- 12.2 At present, a Member who has a prejudicial interest may apply to the Standards Committee for a dispensation on two grounds:–
- That at least half of the Members of a decision-making body have prejudicial interests (this ground is of little use as it is normally only at the meeting that it is realised how many Members have prejudicial interests in the matter, by which time it is too late to convene a meeting of the Standards Committee); and
 - That so many Members of one political party have prejudicial interests in the matter that it will upset the result of the vote on the matter (this ground would require that the Members concerned were entirely predetermined, in which case the grant of a dispensation to allow them to vote would be inappropriate).
- 12.3 In future, a dispensation will be able to be granted in the following circumstances:–
- (i) That so many Members of the decision-making body have DPIs in a matter that it would "impede the transaction of the business". In practice this means that the decision-making body would be inquorate as a result;
 - (ii) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that Members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;

- (iii) That the authority considers that the dispensation is in the interests of persons living in the authority's area;
- (iv) That, without a dispensation, no Member of the Executive would be able to participate on this matter (so, the assumption is that, where the Executive would be inquorate as a result, the matter can then be dealt with by an individual Executive Member. It will be necessary to make provision in the scheme of delegations from the Leader to cover this, admittedly unlikely, eventuality); or
- (v) That the authority considers that it is otherwise appropriate to grant a dispensation.

12.4 Any grant of a dispensation must specify how long it lasts for, up to a maximum of four years.

12.5 The next significant change is that, where the Local Government Act 2000 required that dispensations be granted by the Standards Committee, the Localism Act gives discretion for this power to be delegated to the Standards Committee or a Sub-Committee, or to the Monitoring Officer. Grounds (i) and (iv) are pretty objective, so it may be appropriate to delegate dispensations on these grounds to the Monitoring Officer, with an appeal to the Standards Committee, thus enabling dispensations to be granted "at the door of the meeting". Grounds (ii), (iii) and (v) are rather more objective and so it may be appropriate that the discretion to grant dispensations on these grounds remains with the Standards Committee, after consultation with the Independent Person.

Issue 8 – What arrangements would be appropriate for granting dispensations?

Recommendation 8 – That Council delegate the power to grant dispensations:-

- a. on the Grounds set out in Paragraphs 12.3 (i) and (iv) of this report to the Monitoring Officer with an appeal to the Standards Committee, and
- b. on Grounds 12.3 (ii), (iii) and (v) to the Standards Committee, after consultation with the Independent Person.

13. Transitional Arrangements

13.1 Regulations under the Localism Act will provide for –

- a. transfer of Standards for England cases to local authorities following the abolition of Standards for England;
- b. a transitional period for the determination of any outstanding complaints under the current Code of Conduct. The Government has stated that it will allow two months for such determination, but it is to be hoped that the final Regulations will allow a little longer;

- c. removal of the power of suspension from the start of the transitional period; and
- d. removal of the right of appeal to the First Tier Tribunal from the start of the transitional period.

14. Finance Comments

There will be some financial implications due to the recruitment of the Independent Persons and it is not clear yet how much this will be. However this will be off-set by the fact that the composition of the Standards Committee will not require independent Members who are currently paid an allowance. In addition, there may be a special responsibility allowance in respect of the Member who chairs the Committee but this will need to be set by the Council's Independent Remuneration Panel.

15. Legal Comments

The Council will have a statutory duty to promote and maintain high standards of conduct as well as the various requirements set out in this report. Therefore careful consideration will need to be given to the various recommendations to ensure that the duty is met.

16. Links to Corporate Aims

There are no links to the Council's Corporate Aims.

17. Environmental Implications

There are no environmental implications in this report.

18. Community Safety Implications

There are no community safety implications

19. Equalities Impact

Any impact on Equalities will be assessed in due course.

20. Risk Management

The Council needs to demonstrate that it can comply with its duty to promote and maintain high standards of conduct and the recommendations in this report will assist the Council in doing that. Failure to have appropriate processes and procedures in place to deal with any complaints could be damaging to the Council's reputation and credibility.

21. Partnership Implications

There is a requirement to work with Parish Councils to ensure consistency in operating these arrangements.

22. Recommendations

To discuss the report and make any relevant recommendations and comments.

Contact: Tonya Meers
Monitoring Officer
01823 356391
t.meers@tauntondeane.gov.uk

Model Arrangements for dealing with standards allegations under the Localism Act 2011

1 Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority *[or of a parish council within its area]* has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority *[or of a parish council within the authority’s area]*, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member *[or a member or co-opted member of a parish council]* against whom an allegation as been made.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and available for inspection on the authority’s website and on request from Reception at the Council Offices.

[Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the parish council and request the parish clerk to allow you to inspect the parish council’s Code of Conduct.]

3 Making a complaint

If you wish to make a complaint, please write or email to –

The Monitoring Officer
The Council Offices
Belvedere Road
Taunton
TA1 1HE

Or email

t.meers@tauntondeane.gov.uk

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request from Reception at the Council Offices.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, she will inform you of her decision and the reasons for that decision.

Where she requires additional information in order to come to a decision, she may come back to you for such information, and may request information from the member against whom your complaint is directed. *[Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council or your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.]*

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

5 How is the investigation conducted?

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix Two to these arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned [*and to the Parish Council, where your complaint relates to a Parish Councillor*], notifying you that she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee *[and the Parish Council]* for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for local hearings, which is attached as Appendix Three to these arrangements.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter..

8 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may –

- 8.1 Publish its findings in respect of the member's conduct;
- 8.2 Report its findings to Council [*or to the Parish Council*] for information;
- 8.3 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.5 Instruct the Monitoring Officer to [*or recommend that the Parish Council*] arrange training for the member;
- 8.6 Remove [*or recommend to the Parish Council that the member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish Council*];
- 8.7 Withdraw [*or recommend to the Parish Council that it withdraws*] facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 8.8 Exclude [*or recommend that the Parish Council exclude*] the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

9 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member *[and to the Parish Council]*, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10 Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Standards Committee. The Standards Committee has decided that it will comprise a maximum of five members of the Council, including not more than one member of the authority's Executive and comprising members drawn from at least 2 different political parties. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.

The Independent Person is invited to attend all meetings of the Hearings Panel and his/her views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is the appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 11.2 *[Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority's area], or*
- 11.3 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
 - 11.3.1 Spouse or civil partner;
 - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 Grandparent of the other person;
 - 11.3.4 A lineal descendent of a grandparent of the other person;

- 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
- 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
- 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

12 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Appendix One	The authority's Code of Conduct
Appendix Two	Procedure for Investigations
Appendix Three	Procedure for Hearings

Standards Committee – 24 January 2012

Minutes of a meeting of the Standards Committee held in the John Meikle Room, The Deane House, Belvedere Road, Taunton on Tuesday, 24 January 2012 at 2.30 p.m.

Present: Mrs A Elder (Chairman)
Councillors Mrs Allgrove, Brooks and Gaines
Mr H Davenport, Mr M Marshall, Mr L Rogers, Mr R Symons and
Mr B Wilson

Officers: Mrs T Meers (Monitoring Officer) and Mr R Bryant (Democratic Services Manager)

1. Apologies

Mr A Cottrell (Vice-Chairman), Mr T Bowditch, Mr A Cox and Mr D Macey.

2. Minutes

The minutes of the previous meeting of the Committee held on 7 September 2011 were taken as read and were signed.

3. Declaration of Interests

The Chairman, Anne Elder, declared personal interests as a Public Governor of the Taunton and Somerset NHS Trust and as a Member of the House Management Committee of one of the premises operated by the Royal Agricultural Benevolent Institution. Councillor Mrs Allgrove declared a personal interest as a Member of the Somerset Association of Local Councils. Councillor Brooks declared a personal interest as a Member of Somerset County Council.

4. The Localism Act 2011 - The amended Standards Regime

Considered report previously circulated, concerning The Localism Act 2011 which had made fundamental changes to the system of regulation of standards of conduct for elected and co-opted Councillors.

The date for implementation of these changes was the 1 July 2012.

Taunton Deane would remain under a statutory duty to promote and maintain high standards of conduct for its elected and co-opted Members.

The Act repealed Section 55 of the Local Government Act 2000, which provided for the current statutory Standards Committee.

Although there would be no requirement for a Council to have a Standards Committee, there would still be a need to deal with standards issues and

case-work. In such circumstances, it was felt that it would be convenient to retain a Committee but without the unique features which were conferred by the previous legislation. As a result:–

- The composition of the Committee would be governed by proportionality, unless the Council voted otherwise. The restriction to have only one Member of the Executive on the Standards Committee would cease to apply;
- The current co-opted independent Members would cease to hold office. The Act established a new category of Independent Persons but made it clear that the existing co-opted independent Members could not serve as Independent Persons for five years;
- The Council would continue to have responsibility for dealing with standards complaints against elected and appointed Members of Parish Councils, but the current Parish Council representatives would cease to hold office. The District Council could choose whether it wanted to continue to involve Parish Council representatives and, if so, how many representatives it wanted.

The choice would be between establishing a Standards Committee with co-opted but non-voting Parish Council representatives or establishing a Standards Committee as a Joint Committee with the Parish Councils within Taunton Deane and having a set number of Parish Council representatives as voting members of the Committee.

Reported that the current ten General Principles and Model Code of Conduct would be repealed by the Act and Members would no longer have to give an undertaking to comply with the Code of Conduct.

However, the Council would be required to adopt a new Code of Conduct governing elected and co-opted Member's conduct when acting in that capacity. The new Code was required to be consistent with the following seven principles:–

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

The Council had discretion as to what it included within its new Code of Conduct, provided it was consistent with these principles. However, regulations to be made under the Act would require the registration and disclosure of "Disclosable Pecuniary Interests" (DPIs), broadly equating to the current prejudicial interests. The provisions of the Act also

required a Council's Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests and non-pecuniary interests.

The Act prohibited Members with a DPI from participating in Council business, and the Council had the option to adopt a Standing Order requiring such Members to withdraw from the meeting room.

The Act also required the Council to adopt "arrangements" for dealing with complaints of breaching the Code of Conduct both by Taunton Deane Members and by Parish Council Members.

The "arrangements" had to set out in detail the process for dealing with complaints of misconduct and the actions which might be taken against a Member who was found to have failed to comply with the relevant Code of Conduct. The Council would be enabled to establish its own process, which could include delegation of decisions on complaints.

It was felt sensible to take advantage of the new flexibility by delegating to the Monitoring Officer the initial decision as to whether a complaint required investigation, subject to consultation with the Independent Person and the ability to refer particular complaints to the Standards Committee.

Such arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision as to whether the complaint merited formal investigation. It would be appropriate for a quarterly report to be submitted to the Standards Committee concerning the number and nature of complaints received and drawing to the Committee's attention areas where training or other action might avoid further complaints, and keep the Committee advised of progress on investigations and costs.

In situations where a formal investigation found no evidence of failure to comply with the Code of Conduct, it was thought reasonable to also delegate this decision to the Monitoring Officer, but with the power to refer a matter to Standards Committee if it was felt appropriate. Copies of all investigation reports could be provided to the Independent Person to enable him/her to obtain an overview of current issues and pressures with a summary report of each such investigation being submitted to the Standards Committee for information.

Where a formal investigation found evidence of failure to comply with the Code of Conduct, there might be an opportunity for local resolution, avoiding the necessity of a local hearing. It was suggested that this could occur after consultation with the Independent Person and where the complainant was satisfied with the outcome.

In all other cases, where the formal investigation found evidence of a failure to comply with the Code of Conduct, it would be necessary for a

Hearing Panel of the Standards Committee to hold a hearing at which the Member against whom the complaint had been made could respond to the investigation report. The Hearing Panel could determine whether the Member had failed to comply with the Code of Conduct and what action, if any, was appropriate as a result.

Further reported that the Act did not give the Council or its Standards Committee any powers to impose sanctions such as suspension or requirements for training or an apology on Members.

Where a failure to comply with the Code of Conduct was found, the range of actions which the Council could take in respect of the Member was limited and had to be directed to securing the continuing ability of the Council to continue to discharge its functions effectively, rather than “punishing” the Member concerned. Details as to what this might comprise in practice, was submitted.

There was a particular difficulty in respect of Parish Councils, as the Localism Act gave the Standards Committee no power to do any more in respect of a Member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the Member.

Parish Councils would be under no obligation to accept any such recommendation unless the Council constituted the Standards Committee and Hearings Panels as a Joint Committee and Joint Sub-Committees with the Parish Councils, and then sought the delegation of powers from the Parish Council to the Hearings Panels. If this were to be done, the Hearings Panels could effectively take decisions on action on behalf of a particular Parish Council.

The “arrangements” adopted by the Council had to include provision for the appointment by Full Council of at least one Independent Person.

The Independent Person would have to be appointed through a process of public advertisement, application and appointment by a positive vote of a majority of Members of the Council.

The criteria of what would preclude someone being considered “independent” was set out in the report.

The functions of the Independent Person(s) were:–

- They had to be consulted by the Council before it made a finding as to whether a Member had failed to comply with the Code of Conduct or decided on action to be taken in respect of that Member;
- They had to be consulted by the authority in respect of a standards complaint at any other stage; and

- They had to be consulted by a Member or co-opted Member of the Council or of a Parish Council against whom a complaint has been made.

Noted that this could cause some problems, as it would be inappropriate for an Independent Person who had been consulted by the Member against whom the complaint had been made, and who might as a result be regarded as prejudiced on the matter, to be involved in the determination of that complaint.

As the Independent Person was not a Member of the authority or of its Committees or Sub-Committees, the remuneration of the Independent Person no longer came within the scheme of Members' Allowances.

The Localism Act had abolished the concepts of personal and prejudicial interests. Instead, regulations would define "Disclosable Pecuniary Interests" (DPIs).

The Monitoring Officer would be required to maintain a Register of Interests, which had to be available for inspection and available on the Council's website. The Monitoring Officer was also responsible for maintaining the register for Parish Councils, which also had to be open for inspection at The Deane House and on the Council's website.

At present it was not known what DPIs would comprise, but they were likely to be broadly equivalent to the current prejudicial interests but with a number of important differences, details of which were submitted.

Each elected or co-opted Member would be required to register all DPIs within 28 days of becoming a Member. Failure to register had been made a criminal offence, but would not prevent the Member from acting as a Member.

The provisions on dispensations were significantly changed by the Localism Act.

In future, a dispensation would be able to be granted in the following circumstances:—

- (i) That so many Members of the decision-making body had DPIs in a matter that it would "impede the transaction of the business". In practice this meant that the decision-making body would be inquorate as a result;
- (ii) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumed that Members were predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate;

- (iii) That the authority considered that the dispensation was in the interests of persons living in the authority's area;
- (iv) That without a dispensation no Member of the Executive would be able to participate on this matter (so the assumption would be that, where the Executive was inquorate as a result, the matter could then be dealt with by an individual Executive Member. It would be necessary to make provision in the scheme of delegations from the Leader to cover this, admittedly unlikely, eventuality); or
- (iv) That the authority considered that it was otherwise appropriate to grant a dispensation.

During the discussion of this item, Members made the following comments:-

- The proposed make up of any new Standards Committee would result in all the accumulated experience of the current Committee being lost;
- Would there be any merit in the former County Joint Committee being re-established to oversee Standards in Somerset?
- The new Independent Person who had to be consulted would very likely commence the role without any relevant experience;
- Parish Council representatives on the new Standards Committee would have to have voting rights if Taunton Deane wanted its Parish Councils to fully participate in the new arrangements;
- The Parish Liaison Officer was likely to be hard pressed to persuade all Parish Councils in the district to adopt the same code as Taunton Deane's new version;
- The Somerset Association of District Councils was attempting to find a way forward for all parishes to adopt the same Code of Conduct later in the year;
- It was felt this was unlikely to occur as there was no requirement for a Code to be approved by anyone other than the Parish Council itself; and
- Hoped that the Independent Persons appointed in Somerset could, where appropriate, work across the district boundaries to provide experience and keep costs down. Joint training could also be provided too.

Mrs Meers stated that more information from the Department for Communities and Local Government, together with the draft Regulations, were currently awaited. These would hopefully be to hand before the Committee's next meeting in March.

The Committee expressed its deep dissatisfaction with the proposed new Standards Regime. Even though it was accepted that the Localism Act had now be enacted, the Committee felt that the Member

of Parliament and, if appropriate, other senior figures should be invited to a future meeting of the Committee to hear first hand the very real concerns Members had about the effectiveness of a new Code of Conduct and how complaints would be dealt with in the future.

Resolved that:-

- (1) The Monitoring Officer be requested to write to the local Member of Parliament, Mr Jeremy Browne, setting out the Committee's concerns about the new Standards Regime which was to be brought into effect from July 2012 and inviting him to attend a future meeting of the Committee to discuss those concerns; and
- (2) In connection with the proposals for the new Standards Regime, the following recommendations be supported:-

Recommendation 1

- (a) That the Council established a Standards Committee comprising eight elected Members of the District Council, appointed proportionally;
- (b) That the Leader of the Council be requested to nominate to the Committee only one Member who was a member of the Executive; and
- (c) That the Council established a Joint Committee with the Parish Councils and the Parishes be invited to nominate a maximum of three Parish Councillors to be co-opted as voting Members of the Committee.

Recommendation 2

- (a) That the Monitoring Officer be instructed to prepare and present to Full Council for adoption a draft Code of Conduct. The draft Code should:-
 - (i) equate to Paragraphs 3 to 7 of the current Code of Conduct applied to Member conduct in the capacity of an elected or co-opted Member of the Council or its Committees and Sub-Committees; and
 - (ii) require registration and disclosure of interests which would today constitute personal and/or prejudicial interests, but only required withdrawal as stated by the Act in relation to Disclosable Pecuniary Interests.
- (b) That, when the Disclosable Pecuniary Interests Regulations were published, the Monitoring Officer, after consultation with the Chairman of the Standards Committee, the Mayor and the Group

Leaders be required to add to the draft Code provisions which it was considered to be appropriate for the registration and disclosure of interests other than Disclosable Pecuniary Interests.

Recommendation 3A

That the Monitoring Officer be instructed to prepare and submit to Full Council for approval “arrangements” as follows:-

- (a) That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
- (b) That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merited formal investigation and to arrange such investigation. The Monitoring Officer be instructed to seek resolution of complaints without formal investigation wherever practicable, and that officer be given discretion to refer decisions on investigation to the Standards Committee where it was deemed inappropriate for the Monitoring Officer to take the decision, and to report quarterly to Standards Committee on the discharge of this function;
- (c) Where the investigation found no evidence of failure to comply with the Code of Conduct, the Monitoring Officer be instructed to close the matter, providing a copy of the report and findings of the investigation to the complainant and to the Member concerned, and to the Independent Person, and reporting the findings to the Standards Committee for information;
- (d) Where the investigation found evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution was not appropriate or not possible, the Monitoring Officer was to report the investigation findings to a Hearings Panel of the Standards Committee for local hearing;
- (e) That Full Council be requested to delegate to the Hearings Panels such of its powers as could be delegated to take decisions in respect of a Member who was found on hearing to have failed to comply with the Code of Conduct, such actions to include:-
 - Reporting its findings to Full Council [*or to the Parish Council*] for information;
 - Recommending to the Member’s Group Leader (or in the case of un-grouped Members, recommend to Full Council or to

Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

- Recommending to the Leader of the Council that the Member be removed from the Executive, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to *[or recommending that the Parish Council]* arrange training for the Member;
- Removing *[or recommending to the Parish Council that the Member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;
- Withdrawing *[or recommending to the Parish Council that it withdraws]* facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
- Excluding *[or recommending that the Parish Council exclude]* the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Recommendation 3B

That a meeting be arranged between the Chairman of the Standards Committee and the Group Leaders for the Council and representatives of Parish Councils to discuss how the new system could best operate.

Recommendation 4

- (a) That the Monitoring Officer, in consultation with the Chairman of the Standards Committee, the Mayor and the Group Leaders, with the advice of the Retained HR Manager, be authorised to set the initial allowances and expenses for the Independent Person and any Reserve Independent Persons, and this function subsequently be delegated to the Standards Committee;
- (b) That the Monitoring Officer be authorised to advertise a vacancy of the appointment of one Independent Person and two Reserve Independent Persons;
- (c) That a Committee comprising the Chairman and three other Members of the Standards Committee be set up to short-list and interview candidates, and to make a recommendation to Full Council for appointment; and
- (d) That an agreement be reached with the other Somerset Authorities

as to the use of one of their Independent Persons should there be a conflict.

Recommendation 5

- (a) That the Monitoring Officer should prepare and maintain a new Register of Members' Interests to comply with the requirements of the Act and of the Council's Code of Conduct, once adopted, and ensure that it was available for inspection as required by the Act;
- (b) That the Monitoring Officer ensured that all Members were informed of their duty to register interests;
- (c) That the Monitoring Officer should prepare and maintain new Registers of Members' Interests for each Parish Council to comply with the Act and any Code of Conduct adopted by each Parish Council and ensure that it was available for inspection as required by the Act; and
- (d) That the Monitoring Officer arranges to inform and train Parish Clerks on the new registration arrangements.

Recommendation 6

That the Monitoring Officer be instructed to recommend to Full Council a Standing Order which equated to the current Code of Conduct requirement that a Member must withdraw from the meeting room, including from the public gallery, during the whole of consideration of any item of business in which he/she had a Disclosable Pecuniary Interest, except where he/she was permitted to remain as a result of the grant of a dispensation.

Recommendation 7

That Full Council delegated the power to grant dispensations:-

- (a) on the grounds set out in sub-paragraphs (i) and (iv) above to the Monitoring Officer with an appeal to the Standards Committee, and
- (b) on the grounds set out in sub-paragraphs (ii), (iii) and (v) to the Standards Committee, after consultation with the Independent Person.

5. The Model Arrangements

The Model Arrangements for dealing with standards allegations under the Localism Act 2011 were submitted for consideration by Members.

Resolved that the Model Arrangements be noted.

6. Date of next meeting

The next meeting would be held on Tuesday, 20 March 2012 at 2.30 p.m. in The John Meikle Room at The Deane House.

7. Exclusion of the Press and Public

Resolved that the press and public be excluded from the meeting for the following items because of the likelihood that exempt information would otherwise be disclosed relating to Clause 2 of Schedule 12A to the Local Government Act 1972 and the public interest in withholding the information outweighed the public interest in disclosing the information to the public.

8. Update on complaints made against Councillors

Mrs Meers reported that with regard to the one current complaint against a Taunton Deane Councillor, the investigator appointed had now submitted his final report.

A Consideration Sub-Committee would shortly be set up to decide whether a hearing into the complaint should be held.

Mrs Meers also reported that an Assessment Sub-Committee had been held immediately prior to the meeting of the Standards Committee to assess complaints that had been received against Parish Councillors from three of Taunton Deane's Parish Councils.

She added that all complaints would need to be resolved by 30 June 2012, before the new Standards Regime as required by the Localism Act came into effect.

Resolved that the report be noted.

(The meeting ended at 4.11 p.m.)