

STANDARDS ADVISORY COMMITTEE

AGENDA

Tuesday 5 March 2013 at 4.30 pm at the
Council Chamber, West Somerset House, Williton

1. Apologies for Absence

2. Minutes

To note the minutes of the meeting of the Standards Advisory Committee held on 4 December 2012, which were adopted by the Council at its meeting held on 23 January 2013 – **SEE ATTACHED.**

3. Declarations of Interest

To receive and record any declarations of interest in respect of any matters included on the agenda for consideration at this meeting.

4. Public Participation

The Chairman to advise the Committee of any items on which members of the public have requested to speak and advise those members of the public present of the details of the Council's public participation scheme.

For those members of the public wishing to speak at this meeting there are a few points you might like to note.

A three-minute time limit applies to each speaker and you will be asked to speak before Councillors debate the issue. There will be no further opportunity for comment at a later stage. Your comments should be addressed to the Chairman and any ruling made by the Chair is not open to discussion. If a response is needed it will be given either orally at the meeting or a written reply made within five working days of the meeting.

5. The Localism Act 2011 – Implementing the new Ethical Standards Regime

A. Registration of Interest forms and adoption of Code of Conduct

The Monitoring Officer to report on the latest position in regard to the adoption of a new Code of Conduct by Parish and Town Councils in West Somerset and the completion of Register of Interest forms by District, Parish and Town Councillors in the area.

B. Working with the Police in regard to dealing with complaints under the new regime

The Monitoring Officer to report on discussions with the Local Inspector for Police in regard to joint working on relevant matters relating to complaints made in regard to Councillor Code of Conduct issues in West Somerset.

C. Procedure for determining requests for dispensations

To consider Report No. WSC 10/13 prepared by the Monitoring Officer regarding the adoption of guidance and application forms in regard to the process to be followed to determine applications for dispensations received from District Councillors – **SEE ATTACHED.**

D. Investigation and Hearing Procedures

To consider recommending for adoption, with or without modification, investigation and hearing procedures in relation to complaints received under the new standards regime – **SEE ATTACHED**.

E. Issues relating to the role of the Independent Person

Referring to Minute No. SA16(attached under item 2 above), the Monitoring Officer to report on the various points made as follows:

- 1) This point has been clarified under clause 2 of the operational protocol.
- 2) A draft role description and operational protocol for the Independent Person has been prepared for consideration and recommendation, with or without amendments, to the Council – **SEE ATTACHED**. A copy of this draft document has been circulated to the other Monitoring Officers in Somerset.
- 3) This issue is clarified in item 3 of the operational protocol.
- 4) This item is clarified in item 4 of the operation protocol.
- 5) This item is clarified in item 5 of the operational protocol.
- 6) This item is emphasised in item 6 of the operational protocol.
- 7) The possibility of holding a joint Somerset-wide workshop involving the Independent Persons has been discussed with other Monitoring Officers and agreed in principle; the current thinking is that such a workshop should be held sometime after July 2013 to enable at least 12 months' learning experience to have occurred.
- 8) This issue has been clarified in item 7 of the operational protocol.
- 9) This item has been included as item 1 of the operational protocol.

6. Monitoring Officer's Update

To consider a progress report from the Monitoring Officer on activities undertaken during the months of December 2012 , January 2013 and February 2013 – **SEE ATTACHED**.

7. Dates of Future Meetings

18 June 2013, 4.30 pm in the Council Chamber, West Somerset House

Note: other 'meetings' of the Standards Advisory Committee may be convened to act as consultee with the Monitoring Officer when undertaking an initial assessment in response to the receipt of any formal complaints relating to allegations of a breach of a Code of Conduct. In this respect it is necessary to agree arrangements to make an initial assessment in respect of a complaint received on 18th February, 2013; to stay within the procedure guidelines the initial assessment should be undertaken by 3rd April, 2013.

**Minutes of the Meeting of the Standards Advisory Committee
held on 4 December 2012 in the Council Chamber, Williton**

Present:

Mr T Evans Chairman

Mr J Gamlin
Councillor S O de Renzy-Martin
Councillor P Grierson

Councillor J Davis
Councillor J Fulwell
Councillor D J Westcott

Officers in Attendance:

Monitoring Officer (Bruce Lang)

Meeting Administrator (Elisa Day)

SA11 Apologies for Absence

Apologies for absence were received from Mrs J Gunn, Mrs L Somerville Williams and Councillor H J W Davies

SA12 Minutes

Minutes of the last meeting of the Standards Advisory Committee held on 25 September 2012 were considered and agreed for the agenda.

RECOMMENDED that the Minutes of the meeting held on 25 September 2012 be confirmed as a correct record.

SA13 Declarations of Interest

Members present at the meeting declared the following personal interests in their capacity as a Member of a County, Parish or Town Council:

Name	Minute No	Description of Interest	Personal or Prejudicial	Action Taken
Cllr P Grierson	All items	Minehead	Personal	Spoke and voted
Cllr D J Westcott	All items	Watchet	Personal	Spoke and voted

SA14 Public Participation

The Chairman confirmed that no member of the public had requested to speak on any agenda items.

SA15 The Localism Act, 2011 –Implementating the New Ethical Standards Regime

A. **Parish and Town Council Training**

The Monitoring Officer reported on the two training sessions for Town and Parish Councils that were held on 29 and 31 October 2012 and thanked the Committee Members who had attended the sessions for their help and support. He advised that, although attendance was a

little disappointing, quite a few Councils were represented so he was hopeful that the information would be reported back.

The Monitoring Officer confirmed that he had emailed copies of the powerpoint presentation and briefing notes to all Town and Parish Clerks for distribution to their members.

Questions were raised regarding the new Localism Act and the possible involvement by the police in instances when potential breaches of the code of conduct may constitute a criminal offence. It was suggested that the Monitoring Officer should make contact with the local police to discuss this matter in more detail.

B. Registration of Interest Forms and Adoption of the Code of Conduct

The Monitoring Officer reported on the latest position in regard to the adoption of a new Code of Conduct by Parish and Town Councils in West Somerset and the completion of Register of Interest forms by District, Parish and Town Councillors in the area.

He confirmed that, so far, the response had been reasonably good. He advised that it was most important that every Town/Parish Council had adopted the new Code of Conduct and a record of the adoption date had been received. The Councils who had not responded had been contacted and the Monitoring Officer was hopeful that those outstanding would be received shortly.

The Monitoring Officer advised the Committee on the returns of completed Register of Interest forms from both District Councillors and Town/Parish Councillors. He advised that priority would be given to ensuring that all District Councillors had completed their forms ready for publishing on the Council website before beginning to chase Town/Parish Councillors.

Members of the Committee agreed that the Monitoring Officer chases up all Register of Interest forms outstanding for District Councillors as a matter of urgency.

It was suggested that an email be sent to all Town/Parish Clerks advising them that the Register of Interest forms would be going on the website from January 2013 and to request any outstanding forms be completed as soon as possible.

RECOMMENDED (1) that the Monitoring Officer makes contact with the local police regarding the new Localism Act and the possible involvement by the police.

RECOMMENDED (2) that the Monitoring Officer makes contact with District Councillors who have outstanding Register of Interest forms to request they are completed urgently.

RECOMMENDED (3) that the Monitoring Officer sends an email to all Town and Parish Clerks advising them that the Register of Interest forms would be

going on the website from January 2013 and requesting that any outstanding forms be completed as soon as possible.

SA16 Independent Persons Workshop

The Monitoring Officer reported on the Independent Persons Workshop that he and Louse Somerville Williams attended on Thursday 22 November 2012 at the East Devon Council Offices. He provided the Committee with a short written update and explained the key issues arising from the workshop as follows:

1. Clarification that it is good practice that only one independent person should have his/her views sought on each specific case. For example, there should not be any conflict of interest between the independent person's views being sought by the Council, the subject member and the complainant on the same case; indeed it could cause more problems if this role was separated. Therefore the Council should only use the reserve independent person when the appointed independent person was either unavailable or felt they had a conflict of interest in a particular case.
2. The desirability of agreeing a written job description for the appointed independent person. For consistency, the Committee may want to consider working with other Monitoring Officers in Somerset.
3. To agree the 'terms of engagement' by which the independent person can be contacted by any other parties – it is suggested that this should only be done through the West Somerset Council's Monitoring Officer and his staff.
4. That whilst the detailed nature of any discussions with the independent person can and should be kept confidential there would need to be a process for recording what views were expressed in a particular case by the independent person including being date specific as such views could change/vary as the case is progressed.
5. As part of the process for undertaking the assessment of an initial complaint it would be advisable to consciously agree whether the independent person can assist/their views be sought in dealing with the complaint over and above the necessity to consult with the independent person should a formal investigation be undertaken.
6. The importance of supporting the independent person to ensure that their independence is maintained as this is the post's most valuable asset.
7. With the Committee's support a joint Somerset wide workshop should be held of independent persons involving the other local authorities and all appointed independent persons in the county.
8. Desirability of clarifying a process by which the independent person can voice her/his concerns if they consider that their views are not being properly taken account of; for example, this could be via having the right to approach the Chief Executive or Leader of the Council direct.

9. It was suggested that it would be helpful for any independent person to be given a full background/briefing to the situation of the Council which they have been appointed to serve and how it operates – the Monitoring Officer could provide such a briefing if considered appropriate.

The Monitoring Officer sought the agreement from the Committee on points 1 – 9 above.

RECOMMENDED that points 1 – 9 above be agreed.

SA17 Monitoring Officer's Update

The Monitoring Officer submitted a progress report on activities undertaken since the last meeting and confirmed that he was still receiving requests for advice on a regular basis.

RECOMMENDED that the report be noted.

SA18 Dates of Future Meetings

It was confirmed that the next meeting of the Committee was scheduled for Tuesday 5 March 2013 commencing at 4.30pm.

The Committee acknowledged that other 'meetings' of the Committee may be convened to act as consultee with the Monitoring Officer when undertaking an initial assessment in response to the receipt of any formal complaints relating to allegations of a breach of the Code of Conduct.

RECOMMENDED that the report be noted.

The Chairman thanked all Members and wished them a Merry Christmas and a Happy New Year.

The meeting closed at 5.52pm

REPORT NUMBER WSC 10/13
 PRESENTED BY BRUCE LANG, MONITORING OFFICER
 DATE 5 MARCH 2013

LOCALISM ACT 2011 – PROCEDURE FOR DETERMINING REQUESTS FOR DISPENSATIONS

1. PURPOSE OF REPORT

- 1.1. The purpose of the report is to enable the Committee to recommend guidance and application form in regard to the process to be followed to determine applications for dispensations received from District Councillors for recommendation to full Council for adoption.

2. CONTRIBUTION TO CORPORATE PRIORITIES

- 2.1 Whilst the subject of this report does not specifically relate to either of the Council's Corporate Priorities, the Council has a duty to comply with the requirements of the Localism Act 2011 and by promoting good ethics the Council is demonstrating its core values of integrity, fairness, respect and trust.

3. RECOMMENDATIONS

- 3.1 That the Council be recommended to approve guidance notes and application form, as set out in Appendices A and B to this report, for the determination of applications received from District Councillors for dispensations to be granted to enable a member to deal with a matter with which they would otherwise not be permitted to deal with under the Code of Conduct.

4. RISK ASSESSMENT (IF APPLICABLE)

Risk Matrix

Description	Likelihood	Impact	Overall
The key risk is reputational in that the Council may be considered not to deal with any requests for a dispensation properly	Possible (3)	Moderate (3)	Medium (9)
<i>To put in place approved and transparent processes to be formally adopted by full Council</i>	Unlikely (2)	Moderate (3)	Low (6)

The scoring of the risks identified in the above table has been based on the scoring matrix. Each risk has been assessed and scored both before the mitigation measures have been actioned and after they have.

5. BACKGROUND INFORMATION

- 5.1 In accordance with Section 33 of the Localism Act 2011 District Councils are responsible for determining requests for a dispensation by a District Councillor to permit a member of

the Council to deal with a matter with which they would otherwise not be permitted to deal with as a result of a disclosable pecuniary interest or a personal and prejudicial interest.

- 5.2 Members may recall that the District Council previously had powers to deal with dispensation applications from parish and town councillors. However this has been repealed by the Localism Act 2011 and parish/town councils now deal with their own applications.
- 5.3 At its meeting held on 16 May 2012 full Council delegated authority to the Standards Advisory Committee to make recommendations to Council in regard to any dispensation applications received from members of West Somerset Council.
- 5.4 Provided Councillors act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law.
- 5.5 Section 31(4) of the Localism Act states that dispensations may allow the Councillor:
 - (a) to participate, or participate further, in any discussion of the matter at the meeting(s); and/or
 - (b) to participate in any vote, or further vote, taken on the matter at the meeting(s).
- 5.6 If a dispensation is granted the Councillor may remain in the room where the meeting considering the business is being held.
- 5.7 In accordance with the legislation the Standards Advisory Committee may recommend the granting of a dispensation to a Councillor who has a disclosable pecuniary interest or a personal and prejudicial interest if they consider that:
 - (a) so many members of the decision making body have a disclosable pecuniary interest or a personal and prejudicial interest that it would impede the transaction of the business (i.e. the meeting would be inquorate); or
 - (b) without the dispensation the representation of different political groups on the decision making body would be upset as to alter the likely outcome of any vote relating to the business; or
 - (c) the Authority considers that the dispensation is in the interest of persons living in the Authority's area; or
 - (d) without the dispensation each member of the Council's Executive would be prohibited from participating in any particular business to be transacted by the Executive; or
 - (e) it is otherwise appropriate to grant a dispensation.
- 5.8 In addition to setting out the above reasons for granting an application for dispensation, the legislation also provides that dispensations may be granted:
 - (a) for one meeting; or
 - (b) for a period not exceeding four years.
- 5.9 In the light of the legislative requirements and the administrative arrangements already established relating to the involvement of the Standards Advisory Committee, set out at Appendix A to this report is draft guidance for how such requests should be determined in regard to applications received from West Somerset Councillors, together with a draft application form as set out in Appendix B to this report.
- 5.10 It is important to maintain the public's confidence in the conduct of council business and the endorsement of a transparent process should assist in this regard.
- 5.11 The Committee is requested to consider the draft documents and recommend them for adoption to full Council with or without amendments.

6. FINANCIAL/RESOURCE IMPLICATIONS

6.1 There are no direct financial implications in regard to the contents of this report; there will be both committee/council and staff time in processing any applications received from District Councillors for such dispensations and the adoption of a clear and transparent process should assist the efficiency of this process. The current proposed arrangements whereby all such applications will be subject of a recommendation to Council will inevitably result in some applications not being determined for a matter of 2 to 3 months subject to the calling of any special meetings. The process may, therefore, need to be reviewed should this prove to be problematic.

7. SECTION 151 OFFICER COMMENTS

7.1 The Section 151 Officer has considered this report and does not have any comments to add.

8. EQUALITY & DIVERSITY IMPLICATIONS

8.1 There are no implications directly associated with the recommendations in this report.

9. CRIME AND DISORDER IMPLICATIONS

9.1 There are no implications directly associated with the recommendations in this report.

10. CONSULTATION IMPLICATIONS

10.1 There are no implications directly associated with the recommendations in this report.

11. ASSET MANAGEMENT IMPLICATIONS

11.1 There are no implications directly associated with the recommendations in this report.

12. ENVIRONMENTAL IMPACT IMPLICATIONS

12.1 There are no implications directly associated with the recommendations in this report.

13. LEGAL IMPLICATIONS

13.1 The adoption of a clear and transparent process for determining applications for dispensations received from District Councillors should assist the Authority in meeting its obligations under Section 33 of the Localism Act 2011.

**REPORT TO A MEETING OF THE STANDARDS ADVISORY COMMITTEE TO BE HELD ON
5 MARCH 2013**

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Guidance and Application in relation to Dispensations for Councillors

1. Guide to Dispensations

District Councils are responsible for determining requests for a dispensation by a District Councillor under S33 of the Localism Act 2011. This legislation permits the Council to grant a dispensation to a member of the Council on a matter with which they would otherwise not be permitted to deal, as a result of a Disclosable Pecuniary Interest or a Personal and Prejudicial Interest.

On 16 May 2012 Full Council delegated authority to the Standards Advisory Committee to make recommendations to Council in regard to any dispensation applications received from members of West Somerset Council.

This guide explains:

- (a) the purpose and effect of dispensations
- (b) the procedure for requesting dispensations
- (c) the criteria which are applied in determining dispensation requests
- (d) the terms of dispensations

A member is required to submit a written request for a dispensation explaining why it is desirable and appropriate to grant the dispensation.

Until such a dispensation is granted a Councillor may not participate in the consideration of the matter before the Council (or any Committee or Sub-Committee).

2. Purpose and effect of Dispensations

In certain circumstances Councillors may be granted a dispensation which enables them to take part in Council business where this would otherwise be prohibited because they have a Disclosable Pecuniary Interest or a Personal and Prejudicial Interest. Provided Councillors act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law.

Section 31(4) of the Localism Act states that dispensations may allow the Councillor:

- (a) to participate, or participate further, in any discussion of the matter at the meetings(s); and/or
- (b) to participate in any vote, or further vote, taken on the matter at the meeting(s).

If a dispensation is granted, the Councillor may remain in the room where the meeting considering the business is being held.

Please note: If a Councillor participates in a meeting where he/she has a Disclosable Pecuniary Interest and he/she does not have a dispensation, they may be committing a criminal offence under s34 Localism Act 2011.

3. Process for making requests

Any Councillor who wishes to apply for a dispensation should fully complete a Dispensation Application form and submit it to the Monitoring Officer.

A request for dispensation must be made on an individual basis.

4. Consideration by the Council

The Standards Advisory Committee may recommend granting a dispensation to a Councillor who has a Disclosable Pecuniary Interest or a Personal and Prejudicial Interest to participate in any discussion of a matter at a meeting and/or to participate in any vote on the matter (as per paragraph 2 above) if they consider that:

- (a) **so many members of the decision-making body have Disclosable Pecuniary Interests or Personal and Prejudicial Interests that it would impede the transaction of the business (i.e. the meeting would be inquorate); or**
- (b) without the dispensation the representation of different political groups on the decision-making body would be upset as to alter the likely outcome of any vote relating to the business; or
- (c) the authority considers that the dispensation is in the interests of persons living in the authority's area; or
- (d) **without the dispensation each member of the Council's Executive would be prohibited from participating in any particular business to be transacted by the Executive; or**
- (e) it is otherwise appropriate to grant a dispensation.

Applications will be dealt with by the Standards Advisory Committee and will go to the next ordinary meeting. In exceptional circumstances, it may be possible to arrange a special meeting at the discretion of the Chairman of the Committee. Applications must be received at least 10 working days before a meeting to enable a report to be prepared and the agenda published five clear days before the meeting.

The terms of any dispensation shall be in accordance with paragraph 6. The Monitoring Officer will formally notify the Councillor of the Standards Advisory Committee's recommendation after the meeting and confirm the decision in writing within 5 working days of the matter being ratified by full Council.

5. Criteria for Determination of Requests

In reaching a recommendation on a request for a dispensation the Standards Advisory Committee will take into account:

- (a) the nature of the Councillor's interest

- (b) the extent to which the request could have been avoided or other arrangements could be made
- (c) the need to maintain public confidence in the conduct of the Council's business
- (d) the extent to which there is some personal benefit and the extent of public benefit obtained by agreeing to a dispensation
- (e) the possible outcome of the proposed vote
- (f) the need for efficient and effective conduct of the Council's business
- (g) any other relevant circumstances.

6. Terms of Dispensations

Dispensations may be granted:

- (a) for one meeting; or
- (b) for a period not exceeding 4 years.

7. Disclosure of Decision

Any Councillor who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates.

A copy of the dispensation will be kept with the Register of Members' Interests.

To: West Somerset Council's Monitoring Officer

**APPLICATION FORM FOR A DISPENSATION
UNDER SECTION 33 OF THE LOCALISM ACT 2011
IN RESPECT OF A DISCLOSABLE PECUNIARY INTEREST
AND/OR PERSONAL AND PREJUDICIAL INTEREST**

Name of Councillor:

A member who has a Disclosable Pecuniary Interest or a Personal and Prejudicial Interest in a matter which is under consideration may not participate in the consideration of that matter by the Council, a Committee or Sub-Committee or by the Executive or a Committee of the Executive unless he/she has first obtained a dispensation from the Council.

You may apply for a dispensation by completing this form and sending it to the Monitoring Officer.

1.	Name of Councillor	
4.	What is the matter for which dispensation is sought? Please provide full details including amounts where the matter involves funding or finance.	
5.	For which type of meeting is dispensation sought? (Full Council, Executive, Committee or Sub-Committee).	
6.	What is the nature of the Disclosable Pecuniary Interest or Prejudicial Interest? Please give full details.	
7.	What is the date of the meeting at which this matter is to be considered?	
8.	For how long is the dispensation needed? Please note that it cannot be longer than 4 years nor exceed the term of office of the Councillor concerned.	

9.	Do you benefit <u>personally</u> from the business to which this application relates. If “yes” the full details must be provided of the nature and extent.	
10.	How is the business of the Council being impeded in the absence of a dispensation?	
11.	Are there any other factors which might help the Council to reach a decision on the application?	

Signed: **Date:**

Please complete, sign and return this form to:

The Monitoring Officer
 West Somerset Council
 West Somerset House
 Killick Way
 Williton
 Taunton
 Somerset
 TA4 4QA

WEST SOMERSET

Investigation and Hearing Procedures

Background

This guide sets out the procedure that will be followed where the Monitoring Officer in consultation with the Standards Advisory Committee decides that a complaint, that a Member of West Somerset Council or a Town/Parish in West Somerset has breached their Code of conduct, merits investigation. This guide sets out how the investigation will be conducted and what will happen once the officer responsible for the investigation has reached their conclusions.

It also explains the process for holding a “Hearing” where the investigation concludes that there has been a breach of the relevant authority’s Code of Conduct.

Investigations

Where a matter is referred for investigation, the following parties will be informed:-

- The Subject Member
- The Complainant
- The Clerk of the relevant town or parish council where the Subject Member is a town or parish councillor

The Investigating Officer

The Monitoring Officer will appoint an Investigator to conduct the investigation and reach a conclusion as to whether there has been a breach of the relevant Code of Conduct.

The Monitoring Officer will advise the Subject Member and the Complainant of the appointment of the Investigating Officer. The appointment will set out the responsibilities delegated by the Monitoring Officer to the Investigating Officer. The Monitoring Officer will maintain the function of overseeing the investigation.

When conducting an investigation the Investigating Officer will have the power to make enquiries of any person they think necessary. However, there is no obligation on any individual to respond. Interviews will be conducted either in person or by telephone. Where the Subject Member requests an interview in person, this will be accommodated wherever possible.

Statements will be prepared and agreed with each person interviewed during an investigation, including the Subject Member. The Subject Member will be advised that he/she may be accompanied by a professional representative or advisor, a Group colleague or friend during the interview. Any other person interviewed may be accompanied by a friend or representative if they so wish.

Referring cases back to the Monitoring Officer

During the investigation the Investigating Officer may uncover evidence of conduct by the Subject Member that breaches the relevant Code of Conduct, but extends

beyond the scope of the investigation referred to them. In these circumstances, the Investigating Officer may refer the matter back to the Monitoring Officer in consultation with the Standards Advisory Committee and with the Independent Person so they can decide whether this new evidence should also be investigated and combined into the Investigation.

The Investigating Officer may also refer the matter back to the Monitoring Officer if at any time during the Investigation circumstances arise that they consider may make it appropriate not to continue with the investigation. These circumstances may include the following situations, although this list is not exhaustive and there may be other reasons why it is not appropriate to continue with the investigation:-

- Evidence is uncovered suggesting a case is more or less serious than seemed apparent originally
- The subject member has died, is seriously ill or has resigned from the authority

In those circumstances the Monitoring Officer in consultation with the Standards Advisory Committee, in consultation with the Independent Person, will decide whether it is appropriate to continue with the investigation and that decision shall be final.

Deferring an investigation

An investigation should be deferred when any of the following conditions are met:-

- There are on-going criminal proceedings or a police investigation into the member's conduct.
- The investigation may prejudice another investigation or court proceeding.
- Because of the serious illness of a key party
- Due to the genuine unavailability of a key party.

Any deferral must be with the agreement of the Monitoring Officer in consultation with the Standards Advisory Committee.

Confidentiality

The Investigating Officer must treat the information they gather during the investigation as confidential. The Investigating Officer will also ask the people they interview to maintain confidentiality.

Any draft report that is issued will be marked as confidential. This is to preserve the integrity of any further investigation that the Investigating Officer needs to undertake.

Timescales for an Investigation

The Investigating Officer will complete the investigation within a reasonable period of time according to the nature of the complaint and the extent of the investigation required. There are many factors that can affect the time it takes to complete an investigation. However, most investigations should be carried out and a report on the investigation completed, within four months of the Monitoring Officer's decision, in consultation with the Standards Advisory Committee to investigate.

The Investigation Report

When the Investigating Officer has concluded their investigation, they will prepare a draft report to the Subject Member and the Complainant for review and comment. The report should cover the issues set out in the report template at Appendix A. Any draft report will indicate that it does not necessarily represent the Investigating Officer's final finding.

The draft report will be issued to the Subject Member and Complainant for review and comment. The draft will not be sent to other witnesses or parties involved but the Investigating Officer will seek confirmation of their evidence from them before issuing the report.

At this stage the Subject Member or Complainant may comment on the draft report. The Investigating Officer may then decide to redraft the report based on the comments received. Once the Investigating Officer has considered whether the responses add anything of substance to the investigation, they will make their final conclusions and recommendations and issue a Final Report.

This report must be sent to:-

- The Subject Member
- The Standards Advisory Committee of this and any other relevant authority
- The Complainant

The report must make one of the following findings:-

- That there has been a failure to comply with the relevant Code of Conduct
- That there has not been a failure to comply with the relevant Code of Conduct

The report will be considered by the Monitoring Officer, in consultation with the Standards Advisory Committee and the Independent Person.

If the Investigating Officer concludes that there has been no breach of the Code, The Monitoring Officer will, in consultation with the Standards Advisory Committee and the Independent Person, review the Investigating Officer's report and if it is considered to be satisfactory, will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

The Monitoring Officer will write to the Complainant and the Subject Member (and to the Clerk of the Town/Parish Council, where a complaint relates to a Town/Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report and the outcome will be reported to the next formal meeting of the Standards Advisory Committee.

If it is agreed that the investigation has not been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion.

If the Investigating Officer concludes that there has been a breach of the Code, the Monitoring Officer will, in consultation with the Standards Advisory Committee and the Independent Person, review the Investigating Officer's report and will then either

send the matter for a Local Hearing or seek Local Resolution which would be the preferred option if at all possible.

Local Resolution

Such resolution may include the Member accepting that their conduct was unacceptable and offer an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Advisory Committee – which will release the information into the public domain - and the Clerk to the Town/Parish Council (if appropriate) for information, but will take no further action. Up until this stage, all matters relating to processing the complaint will be treated as confidential.

If the Complainant or the Subject Member refuses Local Resolution in principle or to engage with the agreed outcome, the complaint will be referred to a Local Hearing without further reference to the Complainant or the Subject Member.

Local Hearing

Where it is agreed that a Local Resolution is not appropriate or the Complainant and/or Subject Member refuses to co-operate, then the Investigating Officer's report will be referred 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. A Hearing Panel will be held in public although under certain circumstances some elements of the proceedings may be held in closed session.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views must be sought and taken into consideration before the Hearings Panel makes any recommendation to Full Council 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.

The Hearings Panel consists of the Council's Standards Advisory Committee. The Council has decided that it will comprise 3 Independent Members, 3 Town/Parish Councillors and 3 Members of Council (who will be politically balanced).

Timing of the hearing

The Committee will usually hear a complaint within three months of the date on which the Investigating Officer's report was completed. However there may be some occasions where due to the particular circumstances, it may not be possible to hear the complaint within this timescale.

The hearing will take place at least 14 days after the Subject Member receives a copy of the report from the Monitoring Officer.

The Committee may consider the report in the Subject Member's absence if the Subject Member does not go to the hearing. If the Committee is satisfied with the Subject Member's reasons for not being able to come to the hearing, it should arrange for the hearing to be held on another date.

Scheduling a hearing

Except in the most complicated cases, the Committee should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. Late night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to important matters being forgotten.

The pre-hearing process

The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself. Other than in very straightforward cases, the council will use a pre-hearing process to:

- identify whether the Subject Member disagrees with any of the findings of fact in the investigation report
- identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
- identify whether evidence about those disagreements will need to be heard during the hearing
- decide whether there are any parts of the hearing that are likely to be held in private
- decide whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material

The pre-hearing process should usually be carried out in writing. However, occasionally a meeting between the Chairman of the Committee, the relevant parties and their representatives may be necessary.

Some matters in the pre-hearing process may be decided only by the Committee. Therefore, if it is necessary for the Committee to meet, they will have to do so formally as with any other council committee meeting. However, it is usually more appropriate for the majority of the pre-hearing process to be dealt with by the Monitoring Officer or other suitable officer.

Key points for the pre-hearing process

The officer providing administrative support to the Committee should write to the Subject Member proposing a date for the hearing, and they should do this in consultation with the Chairman of the Committee. They should also outline the hearing procedure, the member's rights and they should additionally ask for a written response from the Subject Member within a set time. This is to find out whether the Subject Member:

- wants to be represented at the hearing by a solicitor, barrister or any other person
- disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements
- wants to give evidence to the Committee, either verbally or in writing

- wants to call relevant witnesses to give evidence to the Committee
- wants any part of the hearing to be held in private
- wants any part of the investigation report or other relevant documents to be withheld from the public
- can attend the hearing

A critical part of the pre-hearing process is to attempt to focus the relevant parties' attention on isolating all relevant disputes of facts between them. This is because attention to the factual issues will save valuable time later on at the hearing.

The Council has approved Pre-hearing process forms that will be used to try and narrow the issues. These forms help the Subject Member respond to the Standards Advisory Committee.

Form A helps the Subject Member identify any disagreements about the findings of fact in the investigation report.

Form B helps the Subject Member set out any other evidence that is relevant to the complaint made about them.

Form C helps the Subject Member set out any representations the committee should take account of if the Subject Member is found to have broken the Code of Conduct.

Forms D and E cover details of the hearing and the witnesses who will give evidence.

Form F is a checklist of details for the pre-hearing process summary which is outlined below.

Copies of these Forms are attached at Appendix B.

Pre-hearing process summary

The Committee's clerk should consult with the Committee's legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks before the hearing or as soon as the Committee has received responses from the Subject Member and from the Investigating Officer. The pre-hearing process summary should:

- set the date, time and place for the hearing
- summarise the allegation
- outline the main facts of the case that are agreed
- outline the main facts which are not agreed
- note whether the Subject Member or investigating officer will go to the hearing or be represented at the hearing
- list those witnesses, if any, who will be asked to give evidence, subject to the power of the Committee to make a ruling on this at the hearing
- outline the proposed procedure for the hearing

The Hearing

A hearing is a formal meeting of the authority and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of

probabilities. The Committee should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and members of the authority, have confidence in its procedures and findings.

The Committee should bear in mind the need to maintain public confidence in the Council's ethical standards. This requires that the Committee's decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the Subject Member, the council and the public.

Representatives

The Subject Member may choose to be represented by counsel, a solicitor, or by any other person they wish. Even if represented, the Member must still personally answer any questions posed through the Chairman. If the Subject Member concerned wants to have a non-legal representative, the Subject Member must obtain the consent of the Committee. The Committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Evidence

The Committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned. In many cases, The Committee may not need to consider any evidence other than the investigation report and any other supporting documents. However, the Committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report. The Committee can allow questions from the Subject Member, the Investigating Officer, the Monitoring Officer or any representative. However, the Committee will ask that these questions be directed through the Chairman. The Committee can also question witnesses directly.

Witnesses

Generally, the Subject Member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. The Subject Member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing. The Committee has the right to govern its own procedures as long as it acts fairly. For this reason, the Committee may limit the number of witnesses if the number is unreasonable. The Committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.

Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be asked questions. Witnesses as to the character of the Subject Member, if required, regularly present their evidence in writing and may or may not actually attend the hearing. Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect. Witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

Sanctions

If the committee finds that a Subject Member has failed to follow the Code of Conduct and that they should be sanctioned, it may recommend to the Council to impose any one or a combination of the following:

- a) Publish its findings in respect of the Member's conduct;
- b) Report its findings to Council (or to the Town/Parish Council) for information;
- c) Recommend to Council that the Member be censured;
- d) Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- e) Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their Portfolio responsibilities;
- f) Instruct the Monitoring Officer to (or recommend that the Town/Parish Council) arrange training for the Member;
- g) Recommend to Council (or recommend to the Town/Parish Council) that the Member be removed from all outside body appointments to which they have been appointed or nominated by the Council (or by the Town/Parish Council);
- h) Withdraw (or recommend to the Town/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
- i) Exclude (or recommend that the Town/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.

Considering the sanction

When deciding on a sanction, the Committee should ensure that it is reasonable and proportionate to the Subject Member's behaviour. Before deciding what sanction to issue, the Committee should consider the following questions, along with any other relevant circumstances:

- What was the Subject Member's intention? Did the Subject Member know that they were failing to follow the Code of Conduct?
- Did the Subject Member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?

- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the Subject Member accept they were at fault?
- Did the Subject Member apologise to the relevant people?
- Has the Subject Member previously been warned or reprimanded for similar misconduct?
- Has the Subject Member failed to follow the Code of Conduct before?
- Is the Subject Member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a Subject Member has repeatedly or blatantly misused the authority's information technology resources, the Committee may consider withdrawing those resources from the Subject Member.

Sanctions involving restricting access to an authority's premises or equipment should not unnecessarily restrict the Subject Member's ability to carry out their responsibilities as an elected representative or co-opted member.

The following are examples of aggravating and mitigating factors that Members may take into account when assessing an appropriate sanction:

Examples, but not an exhaustive list, of mitigating factors are:

- An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- A member's previous record of good service.
- Substantiated evidence that the member's actions have been affected by ill-health.
- Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

Examples, but again not an exhaustive list, of aggravating factors are:

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people.
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

In deciding what action to take, the Committee should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Committee should be designed both to discourage or prevent the Subject Member from any future non-compliance and also to discourage similar action by others.

The Committee should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.

Notice of the Committee's findings

The Committee will announce its decision at the end of the hearing. A short written recommendation will be made available on the day of the hearing and a full written recommendation will be prepared before people's memories fade. The officer providing administrative support to the Committee will also draft minutes of the meeting. Once the recommendation is ratified by the full Council, a full written decision will be provided to the relevant parties as soon as possible.

The relevant parties are:

- the Subject Member
- the Complainant
- the standards committees of any other authorities concerned
- any parish or town councils concerned
- the Investigating Officer

Making the findings public

The Council will arrange for a summary of the decision and reasons for it to be published on the Council's website and a press release issued. A summary of the decision may also be published in any other publication if the Council considers it appropriate.

If the Council finds that the Subject Member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding. In such cases, the Subject Member is also entitled to decide that no summary of the decision should be published.

If the Council finds that the Subject Member failed to follow the Code but no action needs to be taken the summary must:

- say that the member failed to follow the Code, but that no action needs to be taken
- outline what happened
- give reasons for the Council's decision not to take any action.

If the Committee finds that the member failed to follow the Code and it imposes a sanction, the public summary must:

- say that the member failed to follow the Code
- outline what happened
- explain what sanction has been imposed
- give reasons for the decision made by Committee.

The committee's reports and minutes should be available for public inspection for six years after the hearing. However, sections of documents relating to parts of the hearing that were held in private will not have to be made available for public inspection.

Written decision format

For consistency and thoroughness, the Council will use the following format for their full written decisions. The front cover of the Council's full written decision should include the name of the:

- The Authority
- Subject Member
- Complainant
- Committee member who chaired the hearing
- Committee members who took part in the hearing
- Monitoring Officer
- Instigating Officer who investigated the matter (if applicable)
- Clerk of the hearing or other administrative officer
- Case reference number
- Date of the hearing
- Date of the report.

The Council's full written decision will include:

- A summary of the complaint
- The relevant section or sections of the Code of Conduct
- A summary of the evidence considered and representations made
- The findings of fact, including the reasons for them
- The finding as to whether the member failed to follow the Code, including the reason's for that finding
- the sanctions imposed, if any, including the reasons for any sanctions.

Subject Members are responsible for meeting the cost of any representation at a Committee hearing.

The Role of the Monitoring Officer

It is important that the Committee receives high quality, independent advice. For this reason the Monitoring Officer will be the main adviser to the Committee, unless he/she has an interest in the matter that would prevent them from performing this role independently. If this situation arises, the Monitoring Officer should arrange for another appropriately qualified officer to advise the Committee.

The Monitoring Officer or other legal adviser's role in advising the Standards Advisory Committee is to:

- make sure that members of the Committee understand their powers and procedures
- make sure that the determination procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible
- make sure that the Subject Member understands the procedures the Committee will follow
- provide advice to the Committee during the hearing and their deliberations
- help the Committee produce a written recommendation and a summary of that recommendation.

Model hearing procedures for the Committee

The Committee has adopted Model procedures for the conduct of the hearing. These are attached at Appendix C. These may be varied at the discretion of the Committee.

Public or Private Hearings

In most cases hearings should take place in public. The views of the subject Member and the Investigating Officer will be sought as early as possible to allow for legal advice to be obtained if required. In most cases, the public interest in transparent decision-making by the Committee will outweigh the Subject Member's interest in limiting publication of an unproved allegation that has not yet been determined.

Right of Appeal

There is no right of appeal against the decision of the Council. However, if the Subject Member or the Complainant is unhappy with the outcome, they are still entitled to complain to the Local Government Ombudsman about the process followed or challenge a decision through the Courts by way of Judicial Review.

Appendix A Investigation Report Template

Appendix B Forms A to F

Appendix C Hearing Procedures

TEMPLATE INVESTIGATION REPORT

Case Reference:

Report of an investigation by [insert Investigating Officer name] appointed by the Monitoring Officer for [insert authority name] into an allegation concerning [insert subject member name].

DATE: [insert date]

Contents

- 1 Executive summary
- 2 **[Insert member's name]**'s official details
- 3 The relevant legislation and protocols
- 4 The evidence gathered
- 5 Summary of the material facts
- 6 **[Insert member's name]**'s additional submissions
- 7 Reasoning as to whether there have been failures to comply with the Code of Conduct
- 8 Finding

Appendix A **Schedule of evidence taken into account and list of unused material**

Appendix B **Chronology of events**

1 Executive summary

1.1 [Insert summary of allegation]

1.2 [Insert summary of Investigation outcome]

2 [Insert member's name]'s official details

2.1 [Insert member's name] was elected to office on [insert date] for a term of [insert number] years. [insert member's name] is also a member of the following other relevant authorities: insert authority names].

2.2 [Insert member's name] currently serves on the following committees: [insert committee names] and has also served on [insert committee names] committees in recent years.

2.3 [If no longer a member, state how the period of office ceased]

2.4 [Insert member's name] gave a written undertaking to observe the Code of Conduct on [insert date].

2.5 [Insert member's name] has received the following training on the Code of Conduct [insert training details].

3 The relevant legislation and protocols

3.1 The council has adopted a Code of Conduct in which the following paragraph[s] is/are included:

- [insert included paragraph]
- [insert included paragraph]
- [insert included paragraph]
- [insert included paragraph]

4 The evidence gathered

4.1 I have taken account of oral evidence from [insert evidence details]

4.2 I have also taken account of documentary evidence obtained from [insert evidence details]

5 Summary of the material facts

5.1 [Insert summary]

6 [Insert member's name]'s additional submissions

6.1 [Insert submissions]

7 Reasoning as to whether there have been failures to comply with the Code of Conduct

7.1 [Insert reasoning]

8 Finding

8.1 [Insert finding]

Appendix A

Schedule of evidence taken into account

Core documents

Doc No	Description	Pages
XX123	Complaint	1-

Notes of telephone conversations, letters, and interviews with witnesses

Doc No	Description	Pages

Minutes of meetings and other documentary evidence

Doc No	Description	Pages

Comments on draft report

Doc No	Description	Pages

List of unused materials

Appendix B

Chronology of events

- [insert event]
- [insert event]
- [insert event]
- [insert event]
- [insert event]

FORM A

Subject Member's response to the evidence set out in the investigation report

Please enter the number of any paragraph in the investigation report where you disagree with the findings of fact, and give your reasons and your suggested alternative.

Paragraph number from the investigation report	Reasons for disagreeing with the findings of fact provided in that paragraph	Suggestion as to how the paragraph should be changed

FORM B

Other evidence relevant to the complaint

Please set out below, using the numbered paragraphs, any evidence you feel is relevant to the complaint made about you.

Paragraph number	Details of the evidence
1	
2	
3	

FORM C

Representations to be taken into account if a Subject Member is found to have failed to follow the Code of Conduct

Please set out below, using the numbered paragraphs, any factors that the Committee should take into account if it recommends that you have failed to follow the Code of Conduct. Please note that no such finding has yet been made.

Paragraph number	Factors for the Committee to take into account when recommending whether to impose a sanction
1	
2	
3	

FORM D

Arrangements for the Committee hearing

Please tick the relevant boxes.

1	Are you planning to attend the Committee hearing on the proposed date in the accompanying letter? If 'No', please explain why.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Reason:
2	Are you going to present your own case?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
3	If you are not presenting your own case, will a representative present it for you? If 'Yes', please state the name of your representative.	Yes <input type="checkbox"/> No <input type="checkbox"/>	Name:

<p>4</p>	<p>Is your representative a practising solicitor or barrister?</p> <p>If 'Yes', please give their legal qualifications. Then go to Question 6.</p> <p>If 'No' please go to Question 5.</p>	<p>Yes</p> <input type="checkbox"/> <p>No</p> <input type="checkbox"/>	<p>Qualifications:</p>
<p>5</p>	<p>Does your representative have any connection with your case?</p> <p>If 'Yes', please give details.</p>	<p>Yes</p> <input type="checkbox"/> <p>No</p> <input type="checkbox"/>	<p>Details:</p>
<p>6</p>	<p>Are you going to call any witnesses?</p> <p>If 'Yes', please fill in Form E.</p>	<p>Yes</p> <input type="checkbox"/> <p>No</p> <input type="checkbox"/>	

<p>7</p>	<p>Do you, your representative or your witnesses have any access difficulties? For example, is wheelchair access needed?</p> <p>If 'Yes', please give details.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>
<p>8</p>	<p>Do you, your representative or witnesses have any special needs?</p> <p>For example, is an interpreter needed?</p> <p>If 'Yes' please give details</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Details:</p>
<p>9</p>	<p>Do you want any part of the hearing to be held in private?</p> <p>If 'Yes', please give reasons.</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p>	<p>Reasons:</p>

10

Do you want any part of the relevant documents to be withheld from public inspection?

Yes

If so, please explain which documents/parts of documents and give reasons for withholding from public inspection.

No

If 'Yes', please give reasons.

Reasons:

FORM E

Details of proposed witnesses to be called

Name of witness or witnesses	1		
	2		
	3		
Witness 1			
a	Will the witness give evidence about the allegation?	Yes <input type="checkbox"/>	Outline of evidence:
	If 'Yes', please provide an outline of the evidence the witness will give.	No <input type="checkbox"/>	

<p>b</p>	<p>Will the witness give evidence about what action the Committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <input data-bbox="612 226 659 271" type="checkbox"/> <p>No</p> <input data-bbox="612 445 659 490" type="checkbox"/>	<p>Outline of evidence:</p>
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Witness 2

a	<p>Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <input type="checkbox"/> <p>No</p> <input type="checkbox"/>	<p>Outline of evidence:</p>
b	<p>Will the witness give evidence about what action the Committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <input type="checkbox"/> <p>No</p> <input type="checkbox"/>	<p>Outline of evidence:</p>

Witness 3

a	<p>Will the witness give evidence about the allegation?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <input type="checkbox"/> <p>No</p> <input type="checkbox"/>	<p>Outline of evidence:</p>
b	<p>Will the witness give evidence about what action the Committee should take if it finds that the Code of Conduct has not been followed?</p> <p>If 'Yes', please provide an outline of the evidence the witness will give.</p>	<p>Yes</p> <input type="checkbox"/> <p>No</p> <input type="checkbox"/>	<p>Outline of evidence:</p>

FORM F

Checklist for the pre-hearing process summary

After the Committee has received responses from the Subject Member and the Monitoring Officer, it should prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:

<input type="checkbox"/>	the name of the authority
<input type="checkbox"/>	the name of the subject member
<input type="checkbox"/>	the name of the complainant (unless there are good reasons to keep their identity confidential)
<input type="checkbox"/>	case reference number
<input type="checkbox"/>	the name of the Committee Member who will chair the hearing
<input type="checkbox"/>	the name of the Monitoring Officer
<input type="checkbox"/>	the name of the clerk of the hearing or other administrative officer
<input type="checkbox"/>	the date the pre-hearing process summary was produced
<input type="checkbox"/>	the date, time and place of the hearing
<input type="checkbox"/>	a summary of the complaint
<input type="checkbox"/>	the relevant section or sections of the Code of Conduct

<input type="checkbox"/>	the findings of fact in the investigation report that are agreed
<input type="checkbox"/>	the findings of fact in the investigation report that are not agreed
<input type="checkbox"/>	whether the Subject Member or the Investigating Officer will attend or be represented
<input type="checkbox"/>	the names of any witnesses who will be asked to give evidence
<input type="checkbox"/>	an outline of the proposed procedure for the hearing

MODEL HEARING PROCEDURE FOR THE COMMITTEE

Interpretation

1. 'Subject Member' means the member of the authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the Subject Member's nominated representative.
2. 'Investigating Officer' means the Monitoring Officer or other Investigating Officer and his or her nominated representative.
3. 'Committee' refers to the Standards Advisory Committee who act as the Hearing Committee.
4. 'Legal advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
5. **"Independent Person" means the individual appointed by the Council under the Localism Act 2011 whose view will be sought and taken into account by the Committee before it makes a recommendation on the allegation.**

Representation

6. The Subject Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

Legal Advice

7. The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Subject Member and the Investigating Officer if they are present.

Setting the scene

8. After all the members and everyone involved have been formally introduced, the Chairman should explain how the Committee is going to run the hearing.

Preliminary procedural issues

9. The Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making findings of fact

10. After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.
11. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.

12. If there is a disagreement, the Investigating Officer, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee may give the Subject Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.

13. The Subject Member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.

14. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigating Officer to challenge any evidence put forward by witnesses called by the Subject Member.

15. If the Subject Member disagrees with most of the facts, it may make sense for the Investigating Officer to start by making representations on all the relevant facts, instead of discussing each fact individually.

16. If the Subject Member disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Subject Member's explanation for not raising the issue at an earlier stage, the Committee may then:-

(a) continue with the hearing, relying on the information in the Investigating Officer's report;

(b) allow the Subject Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or

(c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.

17. Cross-examination will not be permitted at the hearing and any questions will be at the discretion of and through the Chairman of the Committee.

18. The Committee will usually move to another room to consider the representations and evidence in private.

19. On their return, the Chairman will announce the Committee's findings of fact.

Did the Subject Member fail to follow the Code?

20. The Committee then needs to consider whether or not, based on the facts it has found, the Subject Member has failed to follow the Code of Conduct.

21. The Subject Member should be invited to give relevant reasons why the Committee should not recommend, based on the findings of fact, that he or she has failed to follow the Code.

22. The Committee should then consider any verbal or written representations from the Investigating Officer.

23. The Committee should then consider any verbal or written representations from the Independent Person.

24. The Committee may, at any time, question anyone involved on any point they raised in their representations.

25. The Subject Member should be invited to make any final relevant points.

26. The Committee will then move to another room to consider the representations.

27. On their return, the Chairman will announce the Committee's recommendation as to whether or not the Subject Member has failed to follow the Code of Conduct.

If the Subject Member has not failed to follow the Code of Conduct

28. If the Committee recommends that the Subject Member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the authority.

If the Subject Member has failed to follow the Code

29. If the Committee recommends that the Subject Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer, the Independent Person and the Subject Member as to:

- (a) Whether or not the Council should be recommended to set a penalty; and
- (b) What form any penalty should take

30. The Committee may question the Investigating Officer, **Independent Person** and Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

31. The Committee will then move to another room to consider whether or not to impose a penalty on the Subject Member and, if so, what the penalty should be.

32. On their return, the Chairman will announce the Committee's decision.

Recommendations to the authority

33. After considering any verbal or written representations from the Investigating Officer, the Committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

34. The Committee will announce its recommendation on the day and provide a short written recommendation on that day. Once the recommendation of the Committee is ratified by the Council, a full written decision will be provided to the relevant parties as soon as possible.

ROLE OF THE INDEPENDENT PERSON – WEST SOMERSET COUNCIL

ROLE DESCRIPTION

Responsible to: The Council

Liaison with: Monitoring Officer, members of the Standards Advisory Committee, Officers and Members of West Somerset Council and Town and Parish Councillors within the district, key stakeholders within the community.

1. To assist the Council in promoting high standards of conduct by elected and co-opted members of West Somerset Council and Town and Parish Councillors and in particular to uphold the Code of Conduct adopted by the Council and the seven principles of public office, namely selflessness, honesty, integrity, objectivity, accountability, openness and leadership.
2. To have their views sought by the Council through the Monitoring Officer and the Standards Advisory Committee before it makes a decision on an investigated allegation and to be available to attend meetings of the Hearing Panel of the Standards Advisory Committee for this purpose as appropriate.
3. To have their views sought, if requested, by the Monitoring Officer and the Standards Advisory Committee before a decision is taken as to whether to investigate a complaint or to seek local resolution of the same.
4. To be available to have their views sought by any elected Member, including Town and Parish Councillors, who is the subject of a standards complaint and otherwise assist with the process as mutually agreed with the Monitoring Officer and Standards Advisory Committee.
5. To develop a sound understanding of the ethical framework as it operates within West Somerset Council and its Town and Parish Councils.
6. To participate in training events to develop skills, knowledge and experience and in networks developed for Independent Persons.
7. To attend, as appropriate, training events organised and promoted by the Council's Standards Advisory Committee.
8. To act as advocate and ambassador for the Council in promoting ethical behaviour.

OPERATIONAL PROTOCOL

1. The independent person to be given a full background/briefing regarding the operation and decision making processes currently in operation at West Somerset Council.
2. It being recognised that it is good practice that only one independent person should have his/her views sought on each specific case. Therefore the Council should only use the reserve independent person when the appointed independent person was either unavailable or feel they have a conflict of interest in a particular case.
3. If any external parties wish to contact the independent person this should always be done via the West Somerset Council's Monitoring Officer and colleagues based at West Somerset House.
4. Whilst the detailed nature of any discussions that the independent person may have with parties can and should be kept confidential the independent person should keep a record of what views were expressed in a particular case, by them, including being date specific, such views could change/vary as a case is progressed.
5. As part of the process for undertaking the assessment of an initial complaint the Monitoring Officer in consultation with the Standards Advisory Committee will agree whether the independent can assist/their views be sought, at this initial stage. This would be in addition to the independent person having their views sought should a formal investigation be undertaken at a later stage.
6. The staff and members of West Somerset Council should at all times support the independent person to ensure that their independence is maintained.
7. If the independent person should consider that his/her views are not being properly taken into account then they have the right to approach the Chief Executive or Leader of the Council direct to voice their concerns.

Monitoring Officer's Activities – December 2012, January 2013 and February 2013

Date	Activities
3 December 2012	Preparing for Committee
5 December 2012	Attended Somerset Monitoring Officers Group Meeting
5 December 2012	Advice to Parish Councillor
6 December 2012	Work arising from Committee
11 December 2012	Work arising from Committee
13 December 2012	Work arising from Committee
17 December 2012	Developing dispensation process
18 December 2012	Prepared report on dealing with dispensation process
19 December 2012	Drafting Investigation and Hearings Procedure
2 January 2013	Advice to Councillor
4 January 2013	Advice to Councillor
4 January 2013	Prepared report for Standards Committee
8 January 2013	Advice to Parish Councillor
10 January 2013	Advice to Parish Councillor
10 January 2013	Prepared Independent Person Protocol
11 January 2013	Advice to Parish Councillor
14 January 2013	Advice to Parish Councillor
15 January 2013	Advice to Parish Councillor
15 January 2013	Advice to Parish Councillor
16 January 2013	Advice to Parish Councillor
16 January 2013	Advice to Parish Councillor
18 January 2013	Advice to Councillor
18 January 2013	Advice to Councillor
21 January 2013	Advice to Councillor
22 January 2013	Advice to Parish Clerk
22 January 2013	Advice to Councillor
22 January 2013	Advice to Parish Councillor
23 January 2013	Advice to All Councillors
24 January 2013	Advice to Parish Councillor
24 January 2013	Advice to Parish Clerk
25 January 2013	Advice to Parish Council
29 January 2013	Advice to District Council
30 January 2013	Attended Somerset Monitoring Officers Group Meeting
31 January 2013	Advice to Councillor
7 February 2013	Follow up work to Members' Declarations of Interest
8 February 2013	Advice to Councillor
12 February 2013	Follow up work on Members' Interests
13 February 2013	Advice to officer

14 February 2013	Preparing agenda and reports for Standards Advisory Committee March meeting
18 February 2013	Work on complaint
19 February 2013	Advice to Councillor
19 February 2013	Advice to Councillor
19 February 2013	Advice to Councillor
20 February 2013	Advice to Councillor
20 February 2013	Advice to colleague
25 February 2013	Advice to Parish Clerk
25 February 2013	Finalising Standards Agenda
26 February 2013	Work on complaint
Note:	<p>During this period also attended the following formal meetings in role as Monitoring Officer:</p> <ul style="list-style-type: none"> • Standards Advisory Committee – 4 December • Cabinet – 5 December • Special Council – 12 December • Scrutiny – 17 December • Cabinet – 9 January • Council – 23 January • Cabinet – 6 February • Scrutiny Committee – 18 February • Council – 20 February • Council – 27 February