

Democratic Services

Guildhall, High Street, Bath BA1 5AW
Telephone (01225) 477000 main switchboard
Direct Line (01225) 394416
Email: democratic_services@bathnes.gov.uk
Web site: <http://www.bathnes.gov.uk>

15 October 2014

To: All Members of the Standards Committee

Independent Members: Susan Toland (Chair), Deborah Russell and Dr Cyril Davies

Parish/Town Councillors: Tony Crouch, Veronica Packham and Axel Palmer

Bath and North East Somerset Councillors: Councillor Sally Davis, Councillor Sarah Bevan, Councillor Eleanor Jackson, Councillor Nigel Roberts and Councillor Malcolm Lees

Chief Executive and other appropriate officers

Press and Public

Dear Member

Standards Committee: Thursday, 23rd October, 2014

You are invited to attend a meeting of the **Standards Committee**, to be held on **Thursday, 23rd October, 2014 at 6.00 pm** in the **Brunswick Room - Guildhall, Bath.**

The agenda is set out overleaf.

Yours sincerely



Sean O'Neill
for Chief Executive

If you need to access this Agenda or any of the supporting reports in an alternative accessible format, please contact Democratic Services or the relevant report author whose details are listed at the end of each report

NOTES:

- 1. Inspection of Papers:** Any person wishing to inspect minutes, reports, or a list of the background papers relating to any item on this Agenda should contact Ann Swabey who is available by telephoning Bath (01225) 394416 or by calling at the Riverside Offices, Keynsham (during normal office hours).
- 2. Details of Decisions taken at this meeting** can be found in the minutes which will be circulated with the agenda for the next meeting. In the meantime details can be obtained by contacting as above:-

Public Access points - Guildhall - Bath, Riverside – Keynsham, Hollies - Midsomer Norton, and Bath Central, Keynsham and Midsomer Norton public libraries.

For Councillors and officers papers may be inspected via Political Group Research Assistants and Group Rooms/Members' Libraries.
- 3. Substitutions:** Members are reminded that any substitutions must be made in accordance with the relevant Rule set out in the Council's Constitution and notified in writing to Democratic Services prior to the commencement of the meeting.
- 4. Recording at Meetings:-**

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control.

Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators.

To comply with the Data Protection Act 1998, we require the consent of parents or guardians before filming children or young people. For more information, please speak to the camera operator

The Council will broadcast the images and sound live via the internet www.bathnes.gov.uk/webcast An archived recording of the proceedings will also be available for viewing after the meeting. The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

5. Public Speaking at Meetings

The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. They may ask a question which must be submitted in writing to Democratic Services and to which a written answer will be given. Public and Councillor submissions to the Standards Committee under this scheme must relate to the general business of this Committee. Separate arrangements apply to hearings about individual cases.

Advance notice is required not less than two full working days before the meeting (for instance, this means that for meetings held on Thursdays notice must be received in Democratic Services by 4.30pm the previous Monday).

6. Attendance Register: Members should sign the Register which will be circulated at the meeting.

7. THE APPENDED SUPPORTING DOCUMENTS ARE IDENTIFIED BY AGENDA ITEM NUMBER.

8. Emergency Evacuation Procedure

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are sign-posted. Arrangements are in place for the safe evacuation of disabled people

9. Wards (the areas of the Authority which Councillors represent)

Where an item relates to a specific ward within the Authority, the name of that ward is given alongside the item heading. The name of the Ward is also shown on the front page of the associated report. Where no ward is given, this is because the item is a general matter or relates to the whole of the Bath and North East Somerset area.

**Standards Committee – Thursday, 23rd October, 2014
at 6.00 pm in the Brunswick Room - Guildhall, Bath**

A G E N D A

1. WELCOME AND INTRODUCTIONS

2. EMERGENCY EVACUATION PROCEDURE

The Chair will draw attention to the emergency evacuation procedure as set out on the Agenda.

3. APOLOGIES FOR ABSENCE AND SUBSTITUTION

4. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** *or* an **other interest**,
(as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

5. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

The Chair will announce any items of urgent business accepted since the agenda was prepared under the Access to Information provisions.

6. ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

7. ITEMS FROM COUNCILLORS AND CO-OPTED AND ADDED MEMBERS RELATING TO THE GENERAL BUSINESS OF THE COMMITTEE

8. MINUTES OF THE MEETING OF 26 JUNE 2014 (Pages 7 - 18)

9. REVIEW OF HANDLING OF COMPLAINTS RECEIVED (Pages 19 - 28)

10. REPORT ON ASSESSMENT OF COMPLAINTS (Pages 29 - 36)

11. INDEMNITIES FOR MEMBERS AND OFFICERS (Pages 37 - 44)

The Committee Administrator for this meeting is Sean O'Neill who can be contacted on 01225 395090.

Protocol for Decision-making

Guidance for Members when making decisions

When making decisions, the Cabinet/Committee must ensure it has regard only to relevant considerations and disregards those that are not material.

The Cabinet/Committee must ensure that it bears in mind the following legal duties when making its decisions:

- Equalities considerations
- Risk Management considerations
- Crime and Disorder considerations
- Sustainability considerations
- Natural Environment considerations
- Planning Act 2008 considerations
- Human Rights Act 1998 considerations
- Children Act 2004 considerations
- Public Health & Inequalities considerations

Whilst it is the responsibility of the report author and the Council's Monitoring Officer and Chief Financial Officer to assess the applicability of the legal requirements, decision makers should ensure they are satisfied that the information presented to them is consistent with and takes due regard of them.

This page is intentionally left blank

BATH AND NORTH EAST SOMERSET

STANDARDS COMMITTEE

MINUTES OF THE MEETING OF THURSDAY, 26TH JUNE, 2014

PRESENT:-

Independent Members: Susan Toland (Chair), Dr Cyril Davies (Independent Member)

Parish Representatives: Tony Crouch, Veronica Packham and Axel Palmer

Bath and North East Somerset Councillors: Sally Davis, Nigel Roberts and Malcolm Lees

Officers: Vernon Hitchman (Divisional Director, Legal and Democratic Services), Amanda Brookes (Corporate and Community Law) and Sean O'Neill (Democratic Services Officer)

1 WELCOME AND INTRODUCTIONS

The Chair welcomed everyone to the meeting.

2 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

3 APOLOGIES FOR ABSENCE AND SUBSTITUTION

Apologies were received from Councillors Eleanor Jackson and Sarah Bevan and from Deborah Russell.

4 DECLARATIONS OF INTEREST

There were none.

5 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

6 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

There were none.

7 ITEMS FROM COUNCILLORS AND CO-OPTED AND ADDED MEMBERS RELATING TO THE GENERAL BUSINESS OF THE COMMITTEE

There were none.

8 MINUTES OF THE MEETING OF: 6 FEBRUARY 2014

The public and exempt minutes of the meeting of 6 February 2014 were approved as a correct record and signed by the Chair.

The Monitoring Officer said that the revised Policy on Indemnities for Members and Officers (Minute 96) and the summary report on complaint cases would be presented to the next meeting of the Committee.

9 INVESTIGATION INTO COMPLAINTS 21-13 & 22-13

RESOLVED that having been satisfied that the public interest would be better served by not disclosing relevant information, the Committee resolves, in accordance with the provisions of section 100(A)(4) of the Local Government Act 1972, that the public be excluded from the meeting for this item of business because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act as amended.

The Investigating Officer presented her report.

The complainants and the subject member made statements to the Committee. Following an adjournment, the Committee **RESOLVED** as follows:

The Standards Committee has carefully considered the complaints, the Investigating Officer's report, the evidence presented and the statements made at this meeting. The Committee accepts that the discussion at the Parish Council meeting was robust, but does not find that this was sufficient to amount to a breach of the Code. The Committee reminds parish councillors that training on the Code of Conduct is readily available.

The Chair thanked the Investigating Officer for her report.

The meeting ended at 7.09 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

Document is Restricted

This page is intentionally left blank

Bath & North East Somerset Council		
MEETING	Standards Committee	
MEETING	23 rd October 2014	
TITLE:	Review of procedure for handling complaints received	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix 1 – Procedure for handling code of conduct complaints.		

1 THE ISSUE

- 1.1 To review the procedure for handling code of conduct complaints following comments made at the February meeting.

2 RECOMMENDATION

- 2.1 That the revised procedure for handling complaints be approved and the Committee determine the issues set out in paragraphs 5.3 and 5.4.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 None.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Localism Act 2011 requires the Council to make arrangements for handling complaints made against members of the Council and members of town and parish councils within the Council's area.

5 THE REPORT

- 5.1 The current procedure for handling code of conduct complaints is attached for review by the Committee. It has been updated in the light of comments at the February meeting in bold type.

- 5.2 Two particular issues on which the Committee's views are sought have arisen since the February meeting at 5.3 and 5.4 below.

5.3 The procedure as drafted (Section 14) makes no provisions for any review of a decision made as to whether or not to investigate. This has been queried by both complainants and subject members. The Committee's views are sought on this. Under the arrangements prior to the current regime – when more penal sanctions were available to the Committee – the complainant but not the subject member was entitled to request a review.

5.4 In a number of cases it is clear from the complaint itself that the Code has not been breached – for example when the actions complained about took place when the Councillor was clearly acting in a personal capacity. In such circumstances, it is not necessary to seek the Councillor's views. Clearly where the subject members' views are sought it is only right that they should be notified of the outcome and the complainant could not reasonably expect otherwise. However practice amongst some Councils is not to notify the subject member if the complaint is rejected at the first stage.

The Committee's views on this approach are sought; the Monitoring Officer's view is it is right that members should know that a complaint has been made irrespective of whether any action is to be taken or not.

6 OTHER OPTIONS CONSIDERED

6.1 None.

7 CONSULTATION

7.1 None.

8 RISK MANAGEMENT

8.1 Not applicable.

Contact person	<i>Vernon Hitchman, Monitoring Officer – 01225 395171</i>
Background papers	<i>None.</i>
Please contact the report author if you need to access this report in an alternative format	

BATH AND NORTH EAST SOMERSET COUNCIL

ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CODE OF CONDUCT FOR MEMBERS – REVISED OCTOBER 2014

Introduction

1. This procedure applies when a complaint is received that a Member, Co-opted Member or Town/Parish Member has or may have failed to comply with the relevant Code of Conduct for Members.
2. The person making the complaint will be referred to as “The Complainant” and the person against whom the complaint is made will be referred to as the “Subject Member”.
3. No Member or officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

4. Making a complaint

A complaint must be made in writing by post or email to:-

The Monitoring Officer
Bath and North East Somerset Council
Riverside
Temple Street
Keynsham
BS31 1LA

OR

Councillor-Complaints@bathnes.gov.uk

The standard complaint form should be used. This can be obtained from the Monitoring Officer or downloaded from the Council’s website in order that all required information is included.

The Monitoring Officer will normally acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Subject Member with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The Subject Member may, within 10 working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued his Complaint Initial Assessment.

5. Complaint Initial Assessment

The Monitoring Officer will review the complaint and, after consultation with the Independent Person and the lead independent co-opted member, take a decision (a Complaint Initial Assessment) as to whether it merits further consideration (see Section

8), or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

A complaint will be rejected if:

- It is not against one or more named Members or co-opted Members of the Council or a Town/Parish Council within the Council's area;
- The Subject Member was not in office at the time of the alleged conduct/or a Code of Conduct was not in force at the time;
- The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.

If appropriate, the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be investigated, dealt with informally, or rejected:

- Whether a substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:-
 - (i) The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;
 - (ii) Whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- Whether the complaint suggests that there is a wider problem throughout the authority;
- Whether it is apparent that the subject of the allegation has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response;

6. Confidentiality

If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Complaint Initial Assessment stage.

As a matter of fairness and natural justice, the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, he will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the Subject Member.

7. Additional Information

The Monitoring Officer may require additional information to come to a decision and may request information from the Subject Member. Where the complaint relates to Town/Parish Councillor, the Monitoring Officer may also seek information from the Clerk of the Town/Parish Council before deciding whether the complaint merits formal consideration or other action. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits further consideration.

8. Further Consideration

In the event that it is concluded that the complaint merits further consideration, the matter will be dealt with in one of two ways: either by Local Resolution or by a Local Hearing. If it is decided to hold a Local Hearing, depending on the nature and complexity of the complaint, then there are two options which can be followed; either Procedure A or Procedure B – see below for further details.

The decision as to how to proceed will be made by the Monitoring Officer following consultation and will be final.

9. Local Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, he will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Town/Parish Council (if appropriate) for information, but will take no further action. (Timescale: 10 working days of Complaint Initial Assessment).

If the Complainant or the Subject Member refuses Local Resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Local Hearing without further reference to the Complainant or the Subject Member. (Target Timescale: 15 working days).

10. Local Hearing - *Procedure A*

Where, in the opinion of the Monitoring Officer, Local Resolution is not appropriate or the Complainant and /or Subject Member refuse to co-operate, the Monitoring Officer will report on the complaint to the Standards Committee 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.

Under this procedure, the complaint and the comments made by the member complained of will be collated into a report for Local Hearing. The parties will be informed of the hearing date and the complaint, together with supporting evidence/witnesses and the subject members' comments and supporting evidence/witnesses will be presented to the meeting. The Committee Members will make a decision based on the evidence presented by the two parties about whether there has been a breach of the Code, and if so, what sanctions they may impose (see paragraph 11). (This should take place within 20 working days of the Complaint Initial Assessment).

Local Hearing - *Procedure B*

Where the Monitoring Officer (following consultation as in paragraph 5) considers that a complaint merits formal investigation, an Investigating Officer will be appointed. The Investigating Officer may be a Council Officer, an officer of another Council, or an external investigator.

The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.

The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to a Monitoring Officer decision on confidentiality. At the end of their investigation, the Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

Investigating Officer finding of insufficient evidence of failure to comply with Code of Conduct.

The Monitoring Officer (following consultation as in paragraph 5) will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is satisfactory, will within 10 working days 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 the complaint relates to a Town/Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report – (target timescale 10 working days).

If the Monitoring Officer is not satisfied that the investigation has been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion. (This should be done within 10 working days of the Complaint Initial Assessment).

Investigating Officer finding of sufficient evidence of 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 Standards Committee or, after consulting the Independent Person, seek Local Resolution. (Target timescale – 10 working days).

11.Action the Standards Committee may take where a Member has failed to comply with the Code of Conduct

Where the Standards Committee finds that a Member has failed to comply with the Code of Conduct, the Council has delegated to the Standards Committee 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 Standards Committee may –

- 11.1 Publish its findings in respect of the Member's conduct;
- 11.2 Report its findings to Council (or to the Town/Parish Council) for information;
- 11.3 Recommend to Council that the Member be censured;
- 11.4 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;
- 11.5 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from their Portfolio responsibilities;
- 11.6 Instruct the Monitoring Officer to (or recommend that the Town/Parish Council) arrange training for the Member;
- 11.7 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);
- 11.8 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;
- 11.9 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.
- 11.10 Require an apology in suitable terms to the complainant/the Council.

FURTHER INFORMATION ABOUT THE COMMITTEE'S ROLE AND PROCESSES

12. The Independent Person

The Independent Person must be a person who has applied for the post following advertisement of a vacancy for the post, and appointed by a positive vote from a majority of all the Members of Council at a meeting of the Full Council.

A person is not eligible for appointment if they:

- 12.1 Are, or have been within the past 5 years, a Member, co-opted Member or officer of the Council, with the exception that former Independent Members of Standards Committees can be appointed as Independent Persons;
- 12.2 Are or have been within the past 5 years, a member, co-opted Member or officer of a town/parish council within the Council's area, or
- 12.3 Are a relative or close friend, of a person within paragraph 12.1 or 12.2 above. For this purpose, "relative" means –
 - 12.3.1 Spouse or civil partner;
 - 12.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 12.3.3 Grandparent of the other person;
 - 12.3.4 A lineal descendent of a grandparent of the other person;
 - 12.3.5 A parent, sibling or child of a person within paragraphs 12.3.1 or 12.3.2;
 - 12.3.6 A spouse or civil partner of a person within paragraphs 12.3.3, 12.3.4 or 12.3.5;
 - 12.3.7 Living with a person within paragraphs 12.3.3, 12.3.4 or 12.3.5 as husband and wife or as if they were civil partners.

13. Membership of the Standards Committee

3 Independent Members (elected every 4 years)
5 B&NES Councillors (2 Lib Dem, 1 Conservative, 1 Labour, 1 Independent,
3 Parish/Town Councillors (nominated by the B&NES Local Councils group)

Constitution of the Standards Committee when considering a Local Hearing

When the Standards Committee is conducting a Local Hearing, the quorum for the Committee will comprise of 5 members. At least one member will be an independent member and where the Local Hearing relates to the conduct of a Town/Parish Council member, one member may be a town/parish council representative.

The Independent Person is invited to attend all meetings of the Standards Committee and their views must be sought and taken into consideration before the Committee 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.

14. Revision of these arrangements

The Committee may by resolution agree to amend these arrangements and delegate to the Chair of the Standards Committee the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter; following consultation by the Chair with the Monitoring Officer and the Independent Persons.

15. Appeals

There is no right of appeal against a decision of the Monitoring Officer or of the Standards Committee.

If a complainant feels that the Council has failed to deal with his or her complaint properly, he or she may make a complaint to the Local Government Ombudsman.

Bath & North East Somerset Council		
MEETING	Standards Committee	
MEETING	23 rd October 2014	
TITLE:	Report on assessment of complaints	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Annex 1 – Report on assessment of complaint		

1 THE ISSUE

- 1.1 The Committee is asked to consider the attached details of complaints received and discuss any issues arising.

2 RECOMMENDATION

- 2.1 That the Committee consider the report and agree to receive six monthly updates at future meetings.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 None.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Council is required to have in place adequate arrangements to assess complaints and deal with any warranting further action.

5 THE REPORT

- 5.1 Attached as Annex 1 is a table giving information about complaints received.

- 5.2 The Committee is asked to consider the following aspects:-

- Timelines of the process (5.3)
- Emerging patterns or trends (5.4)

- Customer and public expectations (5.5)
- Any lessons learned or future actions (5.6)

5.3 There have been some cases which have taken longer to resolve than was expected. In most of these cases, this has been caused by the need to assess further information, to clarify facts or to seek additional comments from either the complainant or the member the subject of the complaint. In particular -

09/12 - An assessment was required of the decision-making process of the Parish Council and various members involved.

14/12 – There was a considerable amount of correspondence designed to ensure that the complaint could be dealt with fairly and, given the nature of the complaint, anonymously.

2 and 11/13 – The discussions and negotiations necessary to start and pursue a mediated outcome are inevitably time consuming and on occasions necessitate review and reflection.

3/13 – There was a lengthy dispute both about the facts and whether the councillor was or was not acting as a councillor at the time the incident of concern occurred.

6/13 – A considerable amount of research had to be done to ascertain the precise nature of the complaint and its evidential base.

9/13 & 10/13 – The complaint related to a number of court proceedings and a whole range of concerns that took a long period of time to assess.

4/14 & 5/14 – The case took a long time to resolve as a high court decision on similar facts was awaited.

9/14 – The allegations necessitated a considerable amount of research and correspondence with the complainant but found no evidence to support the belief of undue influence.

5.4 There are a number of cases (1/13, 4 and 5/13, 14-20/13, 13/13) where the provisions of the Code concerning Disclosable Pecuniary and 'other' interests have been considered. Whilst the form concept is fairly straightforward, the latter has been seen as less than clear – not least because in the case of parish councils they have their own codes that are not always the same. This would appear to be a training issue that will be addressed in Bath & North East Somerset as part of the induction for new members and through liaison with ALCA.

One frequent belief is that members who have more than one role in their council (eg member of the staffing committee and member of full Council) have some form of prohibitive interest that prevents them from fulfilling both roles. This is not the case. A member of a Staffing Committee which recommends a point of view to the full Council can quite properly vote on the Committee's recommendations.

This also applies to members who are both on B&NES and a Parish Council.

5.5 There is a legitimate concern (of both complainants and those complained about) that the process is both lengthy and rarely results in outcomes that are satisfactory to all concerned. Having reviewed a number of other Council's approaches, the former concern appears common but it is not felt that the process can be shortened. On the latter point, the experience of those involved is that the Code itself does not address all potential concerns but this appears to be primarily because the complaint is often about the outcome of an issue rather than the conduct of those involved.

5.6 Greater priority should be given to speeding up all the steps in the process and that will be done within the Legal Service.

6 OTHER OPTIONS CONSIDERED

6.1 None.

7 CONSULTATION

7.1 None.

8 RISK MANAGEMENT

8.1 Not applicable.

Contact person	<i>Vernon Hitchman, Monitoring Officer – 01225 395171</i>
Background papers	<i>None.</i>
Please contact the report author if you need to access this report in an alternative format	

Annex 1

Complaint No.	Date Received	Type of Council	Relevant provision of Code	Assessment	Decision reached	Date concluded
07-12	04.10.12	BANES	Disclosed personal details of a nature that the Council would not normally disclose.	Breach was an inadvertent one rather than a deliberate one.	NO FURTHER ACTION	16.11.12
08-12	July 2012 (unclear when)	BANES	Bringing Council into disrepute.	Actions pre-dated new Standards' Regime – unable to take any action.	NO FURTHER ACTION	18.08.12
09-12	03.08.12	PC	Not acting in accordance with BPC Code of Conduct.	No breach.	NO FURTHER ACTION	15.11.12
10-12 Page 32	03.10.12	BANES	Failed to declare a “non--disclosable pecuniary interest”	Decision at Standards Committee 17.01.13 – Should have declared a non-discloseable pecuniary interest.	Cllr X be censured.	Full Council – March 2013
11-12	19.10.12	BANES	Behaviour of Cllr in breach of the Code.	No breach.	NO FURTHER ACTION	15.11.2
12-12	1.10.12	BANES	<ul style="list-style-type: none"> Bullying and intimidation Failing to treat others with respect and courtesy Disreputable conduct 	Investigation undertaken.	Standards Committee decision – 15.05.13 – “Cllr failed to show respect to the complainant”. Cllr to be rebuked for showing a lack of respect to the complainant; should apologise	Apology received and sent to complainant. Training offered to Cllr.

					to the Complainant and undertake training in this aspect of the Code of Conduct. Other elements of complaint no breach.	
13-12	12.11.12	BANES	Did not show dignity or respect towards the Chairperson of the council – bringing the Council into disrepute.	Breach to be remedied by apology.	Apology	Cllr X apologised to Chair at Full Council on 19.02.13
14-12	22.12.12	PC	Failure to treat with respect.	Potential breach capable of remedy by apology.	Apology	Apology made 28.05.13
01-13	18.01.13	BANES	Failure to declare interests.	No breach	NO FURTHER ACTION	
02-13	06.02.13	HBPC	Bullying and intimidation.	Mediation	Meditation undertaken	20.11.13
03-13	04.04.13	BANES	Failure to treat with respect	Informal resolution	Apology	Apology was sent 28.08.13
04-13	20.03.13	CMPC	Failure to declare interest.	No breach		29.04.13
05-13	20.03.13	CMPC	Failure to declare interest	No breach		29.04.13
06-13	22.07.13	BANES	Failure to treat with respect	No breach		14.10.13
07-13	15.05.13	PC	Failure to treat with respect	Potential breach capable of remedy by apology.	Apology	29.05.13
08-13	25.03.13	PC	Failure to treat with respect	Potential breach capable of remedy by apology.	Apology	29.05.13
09-13	11.04.13	BANES	Misuse of position	No breach.	NO FURTHER ACTION	07.11.13

10-13	11.04.13	BANES	Misuse of position	No breach.	NO FURTHER ACTION	07.11.13
11-13	18.04.13	PC	Failure to treat with respect	Mediation		See 02/13
12-13	20.05.13	BANES	Involvement in planning application – amounting to a failure to declare an interest	No breach	NO FURTHER ACTION	08.07.13
13-13	24.05.13	TC	Failure to declare prejudicial interest or other interest	No breach	NO FURTHER ACTION	15.07.13
14-13	24.05.13	TC	Failure to declare prejudicial interest or other interest	No breach	NO FURTHER ACTION	15.07.13
15-13	24.05.13	TC	Failure to declare prejudicial interest or other interest	No breach	NO FURTHER ACTION	15.07.13
16-13	24.05.13	TC	Failure to declare prejudicial interest or other interest	No breach	NO FURTHER ACTION	15.07.13
17-13	08.06.13	TC	Failure to declare prejudicial interest or other interest	No breach	NO FURTHER ACTION	15.07.13
18-13	08.06.13	TC	Failure to declare prejudicial interest or other interest	No breach	NO FURTHER ACTION	15.07.13
19-13	08.06.13	TC	Failure to declare prejudicial interest or other interest	No breach	NO FURTHER ACTION	15.07.13
20-13	28.06.13	PC	Prejudicial interest	No breach	NO FURTHER ACTION	15.07.13
21-13	04.10.13	PC	Bullying and failure to treat with respect		Hearing June 2014	
22-13	04.10.13	PC	Bullying and failure to treat with respect		Hearing June 2014	
23-23	09.10.13	PC	Failure to treat with respect	Not pursued		09.11.13
01-14	21.01.14	BANES	Failure to treat with respect	No breach	NO FURTHER ACTION	15.03.14
02-14	04.02.14	BANES	Failure to treat with respect			
03-14	04.02.14	PC	Failure to treat with respect	No breach	NO FURTHER ACTION	14.03.14
04-14	19.02.14	BANES	Involvement in planning	No breach	NO FURTHER	23.07.14

			application		ACTION	
05-14	19.02.14	BANES	Involvement in planning application	No breach	NO FURTHER ACTION	23.07.14
06-14	16.03.14	BANES	Involvement in planning application	No breach	NO FURTHER ACTION	08.05.14
07-14	28.04.14	PC	Bringing pc into disrepute	No breach	NO FURTHER ACTION	08.07.14
08-14	28.04.14	PC	Bringing pc into disrepute	No breach	NO FURTHER ACTION	08.07.14
09-14	27.05.14	BANES	Improper use of position	No breach	NO FURTHER ACTION	08.08.14
10-14	12.06.14	BANES	Involvement in planning application	No breach	NO FURTHER ACTION	08.07.14
11-14	09.07.14	BANES	Bringing the Council into disrepute	No breach	NO FURTHER ACTION	13.08.14
12-14	28.07.14	BANES	Bringing the Council into disrepute via social media comments	No breach	NO FURTHER ACTION	28.08.14
13-14	14.08.14	PC	Inappropriate behaviour	No breach	NO FURTHER ACTION	01.10.14
14-14	03.09.14	PC	Inappropriate behaviour	No breach	NO FURTHER ACTION	01.10.14
15-15	04.09.14	PC	Inappropriate behaviour	No breach	NO FURTHER ACTION	01.10.14
16-15	14.08.14	PC	Inappropriate behaviour	No breach	NO FURTHER ACTION	01.10.14

This page is intentionally left blank

Bath & North East Somerset Council		
MEETING	Standards Committee	
MEETING	23 rd October 2014	
TITLE:	INDEMNITIES FOR MEMBERS AND OFFICERS	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix 1 – Proposed form of Indemnity for Members and Officers		

1 THE ISSUE

- 1.1 To consider and recommend for approval by the Cabinet and Council, a form of indemnity to be granted to members and officers of the Council.

2 RECOMMENDATION

- 2.1 The Standards Committee is asked to recommend to the Cabinet and to the Council that they grant an indemnity to members and officers of the Council in the terms set in the appendix to this report and instruct the Divisional Director; Business Support, to secure insurance to cover the Council's liability under this indemnity in so far as he is of the opinion that such insurance would be financially prudent.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The cost implications of granting the proposed form of indemnity are unknown. The cost of individual cases will initially be borne by the Council's Contingency Fund. Ultimately it is likely that they will need to be recharged and absorbed from within existing Directorate and Members' budgets.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Local Authorities (Indemnities for Members and Officers) Order 2004 enables the Council to provide indemnities for Members and Officers in specified circumstances.
- 4.2 The granting of an indemnity would encourage Members and Officers to be proactive and to take prompt decisions and not be put off from taking necessary decisions by concerns that they may be put to considerable legal expense in justifying decisions taken in good faith.

5. THE REPORT

5.1 The Committee at its last meeting considered a version of this report and asked for the draft indemnity to be reconsidered in the light of its comments.

5.2 Research has been carried out into the practice of other Councils on this issue. The content of the Indemnity at Appendix 1 is consistent with arrangements made by Councils and is considered to strike the right balance between enabling members and officers to act in the best interests of the Council and protecting the Council and the public purse.

5.3 An indemnity/insurance can be provided to Members or Officers in respect of any action or failure to act which:

- (1) is authorised by the Council; or
- (2) forms part of or arises from powers or duties placed on the Member/Officer as a consequence of them exercising functions with the approval of the Council or for the purposes of the Council, for example, action taken as a director of an outside body.

5.4 An indemnity can be given for actions which are outside the powers of the Council or the Officer or Member in question in the following circumstances:

- (1) if the Member or Officer believed that the action, or failure to act was within their powers or the powers of the Council; or
- (2) where the action or failure to act consists of issuing or authorising a document containing a statement as to the powers of the Council or that requirements have been fulfilled and the Member or Officer believed the statement to be true;

and in either case it was reasonable for them to hold that belief at the time.

5.5 An indemnity can be provided in relation to:

- (1) the defence of criminal proceedings (subject to reimbursement of the Council or the insurer if the Member or Officer is convicted) and
- (2) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.
- (3) defending a claim for libel or slander (but not bringing such a claim).
- (4) defending allegations that a Member has breached the Members' Code of Conduct (subject to having to reimburse the Council or the insurer if the Member is found to have failed to comply or admits they failed to comply).

5.6 RESTRICTIONS ON THE POWER TO INDEMNIFY/INSURE

An indemnity may not be provided in relation to any action or inaction which:

- (1) constitutes a criminal offence; or
- (2) is the result of fraud, or other deliberate wrongdoing or recklessness.

As noted above, the Officer or Member has to reimburse the Council or the insurer if they are convicted of a criminal offence or found to be in breach of the Members' Code of Conduct.

5.7 Where the Council has a power to grant an indemnity, it may also provide insurance, either in place of or in addition to the indemnity. The only exception to this is that the regulations do not permit it to provide insurance in respect of any action which is beyond the powers of the Council or beyond the powers of the individual member or officer.

5.8 It would be appropriate to secure insurance to cover the Council's liability under this indemnity in so far as the Divisional Director, Business Support, is of the opinion that such insurance would be financially prudent. The cost of such cover is being researched and that information will be provided to the Cabinet and Council.

6 RATIONALE

6.1 The Council currently has in place a form of indemnity for officers and members and insurance arrangements in respect thereof. It is necessary to reconsider the arrangements in the light of legislative amendments to the Council's powers.

7 OTHER OPTIONS CONSIDERED

7.1 It would be possible for the Council not to put in place any arrangements but this is not considered to be a responsible approach to take.

8 RISK MANAGEMENT

8.1 Not applicable.

9 CONSULTATION

9.1 The Chief Executive, Divisional Director, Business Support and Head of HR have been consulted in the preparation of this report.

Contact person	<i>Vernon Hitchman, Monitoring Officer – 01225 395171</i>
Background papers	<i>None</i>
Please contact the report author if you need to access this report in an alternative format	

FORM OF INDEMNITY FOR MEMBERS AND OFFICERS

1. Bath & North East Somerset ('the Council') will indemnify ('the indemnity') each Member and officer of the Council against any costs claim, liability, loss and/or damage in relation to any action of, or failure to act by a Member or officer which :-

(a) Is authorised by the Council.

(b) Forms part of, or arises from any powers or duties placed on that Member or officer, as a consequence of any function being exercised by him/her (whether or not when exercising that function he/she does so in the capacity of Member or officer of the Council) and the function is being exercised at the request of, or with the approval of the Council, or for the purposes of the Council.

2. The terms of the indemnity shall be incorporated into the contract of employment of all Council officers.

Restrictions on Indemnities

3. The indemnity shall not apply in relation to any action by, or failure to act by, any Member or officer which constitutes a criminal offence.

4. This indemnity shall not apply in relation to any action by, or failure to act by, any Member or officer which is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that Member or officer.

5. However the indemnity may be provided in relation to :-

(a) The Defence of criminal proceedings arising in relation to the undertaking of functions (excluding motoring offences) brought against the officer or Member, subject to paragraph 10 of this indemnity below.

(b) Any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

Within the terms of the indemnity policy, the Chief Executive, in consultation with the Leader of the Council, the Chief Financial Officer, and the Monitoring Officer is authorised to endorse the payment of indemnity to any Member or officer up to a maximum of £50,000 where such indemnity is not covered by insurance, and that any sums in excess of that figure must be referred to Council for approval.

6. No indemnity is provided in relation to the pursuit by a Member or officer of any claim for alleged defamation of that Member or officer. The indemnity may be provided in relation to the costs of defending a claim of defamation made against a Member or officer.
Council

Conditions of Indemnity

7. A Member or officer seeking the indemnity from the Council must :-

(a) Where the act or failure to act falls outside the powers of the Council, he/she must have believed that the action or failure to act in question was within the powers of the Council.

(b) Where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the Council, or any statement that certain steps have been taken or requirements fulfilled, believe that the contents of that statement were true.

and it must be reasonable for the Member of office to hold that belief at the time when he/she acted or failed to act.

8. The indemnity may apply to an act or omission which is subsequently found to be beyond the powers of the Member or officer in question, but only to the extent that the Member of officer reasonably believed that the act or omission in question was within his powers at the time when he/she acted.

Acting as Member or Officer

9. Where the Member or officer is acting on behalf of another organisation then the activities covered will be deemed to have arisen in the capacity as a "member or officer of the Authority" where :-

(a) The appointment to that outside body was made by the Authority; or

(b) The nomination to that outside body was made by the Authority; or

(c) Such appointment to that outside body was specifically approved for the purpose of these indemnities.

Repayment of and Approval of Costs of Legal Representation

10. Where a Member or officer seeks the indemnity in relation to :-

(a) The defence of any criminal proceedings; or

(b) The defence of an action for defamation; or

(c) The defence of any proceedings pursuant to Part 1 Chapter 7 of the Localism Act 2011 relating to alleged failure to comply with the Members' Code of Conduct ("Part 7 Proceedings").

the indemnity shall be subject to the terms that if :-

(a) In the case of criminal proceedings, the Member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal.

(b) In the case of civil proceedings for defamation the Member or officer in question is

found to have acted out of malice.

(c) In the case of Part 7 proceedings :-

(i) A finding is made that the Member in question has failed to comply with the Code of Conduct, and that finding is not overturned following any appeal.

(ii) The Member admits that he has failed to comply with the Code of Conduct. The Member or officer shall reimburse the Council for any sums expended by the Council in relation to those proceedings pursuant to this indemnity.

11. Where a Member or officer is obliged to reimburse the Council pursuant to the terms of the indemnity, those sums shall be recoverable by the Council as a civil debt.

12. The level of fees which will be reimbursed will be those which are deemed reasonable.

13. The Monitoring Officer must be consulted prior to any legal advice being sought under the terms of the indemnity, with regard to the prevailing level of fees that are deemed acceptable.

Relationship with Other Insurances

14. The indemnity shall not apply to the extent that an external body in respect of which the Member or officer is carrying out any function at the request of, or with the approval, or for the purposes of the Council, indemnifies or insures such Member or officer itself.

15. The indemnity will not apply in respect of claims falling within the cover provided to Members and officers under any insurance policy taken out by the Council or otherwise, or any motor insurance taken out by the Member or officer.

Notification of a claim, approval of expenditure etc.

16. The indemnity will have no effect if the Member or officer fails to :-

(a) Notify the Monitoring Officer as soon as reasonably practicable after the Member or officer is aware that a claim might be made.

(b) Take reasonable steps to mitigate the amount that might otherwise be claimed under the indemnity.

(c) Permit appropriate Council officers access to any information or advice, such as legal advice, relevant to the matter and comply with all other requests of the Council in the code of the matter.

17. The indemnity will not apply if a Member or officer, without the express permission of the Council or the Monitoring Officer acting on behalf of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the indemnity.

18. The indemnity is without prejudice to the rights of the Council to take disciplinary action against an officer in respect of any act or failure to act.

Insurance

19. To assist in discharging the indemnity, the Council may at its discretion, arrange insurance.

20. In any case where insurance cover is available, any Member or officer claiming to be indemnified by the Council shall use all reasonable endeavours to abide by any requirements of the insurer and to assist the Council in claiming and securing payment(s) under the insurance policy.

Lawfulness

21. The indemnity shall not extend to any situation where it would be unlawful for the Council to give an indemnity.

This page is intentionally left blank