

**Democratic Services**

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29 January 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, 6th February, 2014**

You are invited to attend a meeting of the **Standards Committee**, to be held on **Thursday, 6th February, 2014** at **5.30 pm** in the **Council Chamber - Riverside, Keynsham BS31 1LA**.

The agenda is set out overleaf.

Yours sincerely



Ann Swabey  
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 Ann Swabey prior to the commencement of the meeting.
- 4. 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).

- 5. Attendance Register:** Members should sign the Register which will be circulated at the meeting.
- 6. THE APPENDED SUPPORTING DOCUMENTS ARE IDENTIFIED BY AGENDA ITEM NUMBER.**

## **7. 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

## **8. 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, 6th February, 2014  
at 5.30 pm in the Council Chamber - Riverside, Keynsham BS31 1LA**

**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 15 MAY 2013 (Pages 5 - 14)

9. DCLG NON-STATUTORY GUIDANCE - OPENNESS AND TRANSPARENCY ON PERSONAL INTERESTS (Pages 15 - 30)

10. INDEMNITIES FOR MEMBERS AND OFFICERS (Pages 31 - 36)

11. REVIEW OF PROCEDURE FOR HANDLING COMPLAINTS AND SUMMARY OF

COMPLAINTS RECEIVED (Pages 37 - 48)

12. SOCIAL MEDIA PROTOCOL (Pages 49 - 56)

The Committee Administrator for this meeting is Ann Swabey who can be contacted on 01225 394416.

## **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.

**BATH AND NORTH EAST SOMERSET**

**STANDARDS COMMITTEE**

**MINUTES OF THE MEETING OF WEDNESDAY, 15TH MAY, 2013**

PRESENT:-

**Independent Members:** Susan Toland (Chair),

**Parish Representatives:** Tony Crouch and Axel Palmer

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

**Officers:** Vernon Hitchman (Divisional Director, Legal and Democratic Services) and Stephen McNamara (Investigating Officer)

**77 WELCOME AND INTRODUCTIONS**

The Chair welcomed everyone to the meeting.

**78 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

**79 APOLOGIES FOR ABSENCE AND SUBSTITUTION**

Apologies were received from Dr Cyril Davies, Veronica Packham and Deborah Russell.

**80 DECLARATIONS OF INTEREST**

Cllr Sarah Bevan declared a non-pecuniary interest as a Trustee of the River Avon Trust.

Cllr Eleanor Jackson declared a non-pecuniary interest because she had dealings with the subject Councillor in her former role as Chair of the Housing and Major Projects Task and Finish Group.

Cllr Malcolm Lees declared a non-pecuniary interest in that he had arranged an insurance policy for the subject councillor's company.

**81 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

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

There were none.

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

There were none.

**84 MINUTES OF THE MEETING OF 13TH DECEMBER 2012**

The minutes of the meeting of 13<sup>th</sup> December 2012 were approved as a correct record and signed by the Chair.

**85 MINUTES OF THE MEETING OF 27TH FEBRUARY 2013**

The public and exempt minutes of the meeting of the 27<sup>th</sup> February 2013 were approved as a correct record and signed by the Chair.

**86 COMPLAINT AGAINST A COUNCILLOR - 12-12 B&NES**

The Chair reminded Members that this was a fresh hearing of this complaint and that the proceedings would be based on the report prepared by the Investigating Officer.

**RESOLVED** that the Committee having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of section 100(A)(4) of the Local Government Act 1972, that the public, with the exception of the wife and partner of the parties, 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 Schedule 12A of the Act as amended.

The Investigating Officer presented his report and answered questions put by Members and the parties. The parties made statements.

Following an adjournment the Committee **RESOLVED** as follows:

“The Standards Committee has carefully considered the Investigating Officer’s report, the later submissions and the verbal submissions by the complainant and the subject Councillor.

“The Committee recognises the strong feelings on both sides and has concluded that the subject Councillor has failed to show respect to the complainant, but that this does not amount to bullying. It has concluded that the other elements of the complaint are unfounded.

“It has decided that the subject Councillor should be rebuked for showing a lack of respect to the complainant; should apologise to the complainant in terms to be agreed with the Monitoring Officer; and the Committee suggests that the subject Councillor undertakes training in this aspect of the Code of Conduct.

“The Committee recommends that the Council considers training on “netiquette” for its Members.”

The meeting ended at 7.58 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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<b>Bath &amp; North East Somerset Council</b>		
<b>MEETING</b>	<b>Standards Committee</b>	
<b>MEETING</b>	<b>6 February 2014</b>	
<b>TITLE:</b>	<b>DCLG Non-Statutory Guide – Openness and transparency on personal interests – September 2013</b>	
<b>WARD:</b>	All	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>		
Appendix 1 - DCLG Non-statutory Guide		

**1 THE ISSUE**

1.1 To consider the guide issued by the DCLG and decide whether to recommend any changes to the Members Code of Conduct.

**2 RECOMMENDATION**

2.1 That the Committee consider this report and agree not to recommend any changes to the Members Code of Conduct.

**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 adopt a Code of Conduct for members of the Council.

**5 THE REPORT**

5.1 The guide is non-statutory and is not guidance issued by the Secretary of State under a specific power within the Localism Act 2011. It contains a disclaimer that it should not be taken as providing any definitive interpretation of the statutory requirements and that Members should seek their own legal advice.

5.2 There have been no legislative changes between when the guide was initially issued in March 2013 and the issuing of the September 2013 version however there are two specific additions to the “new guide”.

5.3 Firstly the penultimate paragraph has been added to page 2 of the guide which reads as follows:

*“As explained in the following section, your registration of personal interests should be guided by your duty to act in conformity with the seven principles of public life. You should ensure that you register all personal interests that conformity with the seven principles requires. These interests will necessarily include your membership of any Trade Union.”*

- 5.4 The second addition appears at paragraph 3 of page 3 where the following has been added to the first sentence: *“or your duty to act in conformity with the Seven Principles of Public Life, such as your membership of any Trade Union.”*
- 5.5 The legislation does not require compliance by Members with the “Seven Principles of Public Life” but rather that in adopting any Code of Conduct, each Local Authority is to ensure that its code is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It does not require that any Local Authority adopt the descriptions attributed to such principles by the Committee for Standards in Public Life.
- 5.6 Even if the legislation required Members to abide by the “Seven Principles of Public Life” as opposed to requiring that the Code adopted by the Council is consistent with the principles set out in the Act, it does not follow, logically or in law, that this amounts to a requirement to declare Trade Union Membership. Trade Union membership was expressly included as part of the old Standards regime and expressly excluded as part of the new regime unless the Council in adopting its Code of Conduct specifically required this of its Members, which the Council did not.
- 5.7 It is not clear why the guide has singled out only Trade Union Membership for special treatment. Unless the trade union membership falls within the ambit of sponsorship – in other words that there has been a payment or provision of financial benefit made or provided to the Member within the relevant period in respect of their duties as a Member or towards that Member’s election expenses by an external body (which would include a trade union) – there is no statutory basis for this requirement to declare trade union membership, either within the Localism Act or within the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. It is the latter legislation which specifies which interests Members are obliged to disclose. An extract from the regulations is appended to the guide which forms part of Appendix A to this report.

## **6 RATIONALE**

- 6.1 See section 5 of this report.

## **7 OTHER OPTIONS CONSIDERED**

- 7.1 None.

## **8 CONSULTATION**

- 8.1 None.

## **9 RISK MANAGEMENT**

- 9.1 Not applicable.

<b>Contact person</b>	<i>Vernon Hitchman, Monitoring Officer – 01225 395171</i>
<b>Background papers</b>	<i>List here any background papers not included with this report, and where/how they are available for inspection.</i>
<b>Please contact the report author if you need to access this report in an alternative format</b>	

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Department for  
Communities and  
Local Government

## Openness and transparency on personal interests

A guide for councillors

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# The Guide

This guide on personal interests gives basic practical information about how to be open and transparent about your personal interests. It is designed to help councillors, including parish councillors, now that new standards arrangements have been introduced by the Localism Act 2011<sup>1</sup>.

## Why are there new rules?

Parliament has abolished the Standards Board regime and all the rules under it. It has done this because that centrally-imposed, bureaucratic regime had become a vehicle for petty, malicious and politically-motivated complaints against councillors. Rather than creating a culture of trust and openness between councillors and those they represent, it was damaging, without justification, the public's confidence in local democratic governance.

The new standards arrangements that Parliament has put in place mean that it is largely for councils themselves to decide their own local rules. It is essential that there is confidence that councillors everywhere are putting the public interest first and are not benefiting their own financial affairs from being a councillor. Accordingly, within the new standards arrangements there are national rules about councillors' interests.<sup>2</sup>

Such rules, in one form or another, have existed for decades. The new rules are similar to the rules that were in place prior to the Standards Board regime. Those rules, originating in the Local Government Act 1972 and the Local Government and Housing Act 1989, involved local authority members registering their pecuniary interests in a publicly available register, and disclosing their interests and withdrawing from meetings in certain circumstances. Failure to comply with those rules was in certain circumstances a criminal offence, as is failure to comply in certain circumstances with the new rules.

## Does this affect me?

Yes, if you are an elected, co-opted, or appointed member of:

- a district, unitary, metropolitan, county or London borough council
- a parish or town council
- a fire and rescue authority
- a transport or other joint authority
- a combined authority or an economic prosperity board
- the London Fire and Emergency Planning Authority
- the Broads Authority

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<sup>1</sup> The Guide should not be taken as providing any definitive interpretation of the statutory requirements; those wishing to address such issues should seek their own legal advice.

<sup>2</sup> The national rules are in Chapter 7 of the Localism Act 2011 and in the secondary legislation made under the Act, particularly in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (S.I. 2012/1464).

- a National Park authority
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

## How will there be openness and transparency about my personal interests?

The national rules require your council or authority to adopt a code of conduct for its members and to have a register of members' interests.

The national rules require your council's code of conduct to comply with the Seven Principles of Public Life, and to set out how, in conformity with the rules, you will have to disclose and register your pecuniary and your other interests. Within these rules it is for your council to decide what its code of conduct says. An illustrative text for such a code is available on the Department's web site.<sup>3</sup>

Your council's or authority's monitoring officer (or in the case of a parish council the monitoring officer of the district or borough council) must establish and maintain your council's register of members' interests. Within the requirements of the national rules it is for your council or authority to determine what is to be entered in its register of members' interests.

## What personal interests should be entered in my council's or authority's register of members' interests?

Disclosable pecuniary interests, and any other of your personal interests which your council or authority, in particular through its code of conduct, has determined should be registered.

Any other of your personal interests which you have asked the monitoring officer, who is responsible for your council's or authority's register of members' interests, to enter in the register.

As explained in the following section, your registration of personal interests should be guided by your duty to act in conformity with the seven principles of public life. You should ensure that you register all personal interests that conformity with the seven principles requires. These interests will necessarily include your membership of any Trade Union.

## What must I do about registering my personal interests?

Under your council's code of conduct you must act in conformity with the Seven Principles of Public Life. One of these is the principle of integrity – that 'Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in

<sup>3</sup> <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships.**<sup>4</sup>.

Your registration of personal interests should be guided by this duty and you should give the monitoring officer who is responsible for your council's or authority's register of members' interests any information he or she requests in order to keep that register up to date and any other information which you consider should be entered in the register.

All sitting councillors need to register their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered as required by your authority's code, or your duty to act in conformity with the Seven Principles of Public Life, such as your membership of any Trade Union. Any suggestion that you should tell the monitoring officer about your pecuniary interests only in the immediate aftermath of your being elected is wholly incompatible with this duty, with which you must comply.

If you have a disclosable pecuniary interest which is not recorded in the register and which relates to any business that is or will be considered at a meeting where you are present, you must disclose<sup>5</sup> this to the meeting and tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must tell the monitoring officer within 28 days of disclosing the interest. For this purpose a meeting includes any meeting of your council or authority, of its executive or any committee of the executive, and of any committee, sub-committee, joint committee or joint sub-committee of your authority.

If you have a disclosable pecuniary interest which is not shown in the register and relates to any business on which you are acting alone, you must, within 28 days of becoming aware of this, tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must also stop dealing with the matter as soon as you become aware of having a disclosable pecuniary interest relating to the business.

When you are first elected, co-opted, or appointed a member to your council or authority, you must, within 28 days of becoming a member, tell the monitoring officer who is responsible for your council's or authority's register of members' interests about your disclosable pecuniary interests. If you are re-elected, re-co-opted, or reappointed a member, you need to tell the monitoring officer about only those disclosable pecuniary interests that are not already recorded in the register.

## What are pecuniary interests?

A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider

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<sup>4</sup> <http://www.public-standards.gov.uk/about-us/what-we-do/the-seven-principles/>

<sup>5</sup> If the interest is a sensitive interest you should disclose merely the fact that you have such a disclosable pecuniary interest, rather than the interest. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

financial interests they might have (for example trust funds, investments, and assets including land and property).

## Do I have any disclosable pecuniary interests?

You have a disclosable pecuniary interest if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules (see annex). Interests of your spouse or civil partner, following the approach of the rules under the 1972 and 1989 Acts, are included to ensure that the public can have confidence that councillors are putting the public interest first and not benefiting the financial affairs of themselves or their spouse or civil partner from which the councillor would stand to gain. For this purpose your spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

## Does my spouse's or civil partner's name need to appear on the register of interests?

No. For the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is **your** disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.

## Does my signature need to be published online? Won't this put me at risk of identity theft?

There is no legal requirement for the personal signatures of councillors to be published online.

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## Who can see the register of members' interests?

Except for parish councils, a council's or authority's register of members' interests must be available for inspection in the local area, and must be published on the council's or authority's website.

For parish councils, the monitoring officer who is responsible for the council's register of members' interests must arrange for the parish council's register of members' interests to be available for inspection in the district of borough, and must be published on the district or borough council's website.

Where the parish council has its own website, its register of members' interests must also be published on that website.

This is in line with the Government's policies of transparency and accountability, ensuring that the public have ready access to publicly available information.

## Is there any scope for withholding information on the published register?

Copies of the register of members' interests which are available for inspection or published must not include details of a member's sensitive interest, other than stating that the member has an interest the details of which are withheld. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

## When is information about my interests removed from my council's register of members' interests?

If you cease to have an interest, that interest can be removed from the register. If you cease to be a member of the authority, all of your interests can be removed from the register.

## What does having a disclosable pecuniary interest stop me doing?

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not:

- participate in any discussion of the business at the meeting, or if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business, or
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

In certain circumstances you can request a dispensation from these prohibitions.

## Where these prohibitions apply, do I also have to leave the room?

Where your council's or authority's standing orders require this, you must leave the room. Even where there are no such standing orders, you must leave the room if you consider your continued presence is incompatible with your council's code of conduct or the Seven Principles of Public Life.

## Do I need a dispensation to take part in the business of setting council tax or a precept?

Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support.

If you are a homeowner or tenant in the area of your council you will have registered, in accordance with the national rules, that beneficial interest in land. However, this disclosable pecuniary interest is not a disclosable pecuniary interest in the matter of setting the council tax or precept since decisions on the council tax or precept do not materially affect your interest in the land. For example, it does not materially affect the value of your home, your prospects of selling that home, or how you might use or enjoy that land.

Accordingly, you will not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support, which is in any event a decision affecting the generality of the public in the area of your council, rather than you as an individual.

## When and how can I apply for a dispensation?

The rules allow your council or authority in certain circumstances to grant a dispensation to permit a member to take part in the business of the authority even if the member has a disclosable pecuniary interest relating to that business. These circumstances are where the council or authority considers that:

- without the dispensation so great a proportion of the council or authority would be prohibited from participating in that business as to impede the council's or authority's transaction of that business,
- without the dispensation the representation of different political groups dealing with that business would be so upset as to alter the likely outcome of any vote,
- the granting of the dispensation is in the interests of people living in the council's or authority's area,
- without the dispensation each member of the council's executive would be prohibited from participating in the business, or
- it is otherwise appropriate to grant a dispensation.

If you would like your council or authority to grant you a dispensation, you must make a written request to the officer responsible for handling such requests in the case of your council or authority.

## What happens if I don't follow the rules on disclosable pecuniary interests?

It is a criminal offence if, without a reasonable excuse, you fail to tell the monitoring officer about your disclosable pecuniary interests, either for inclusion on the register if you are a newly elected, co-opted or appointed member, or to update the register if you are re-elected or re-appointed, or when you become aware of a disclosable pecuniary interest which is not recorded in the register but which relates to any matter;

- that will be or is being considered at a meeting where you are present, or
- on which you are acting alone.

It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of your authority where that business involves a disclosable pecuniary interest. It is also a criminal offence to continue working on a matter which can be discharged by a single member and in which you have a disclosable pecuniary interest.

If you are found guilty of such a criminal offence, you can be fined up to £5,000 and disqualified from holding office as a councillor for up to five years.

## Where can I look at the national rules on pecuniary interests?

The national rules about pecuniary interests are set out in Chapter 7 of the Localism Act 2011, which is available on the internet here:

<http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7/enacted>

and in the secondary legislation made under the Act, in particular The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 which can be found here:

<http://www.legislation.gov.uk/uksi/2012/1464/contents/made>

# Annex A

## Description of Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your **disclosable pecuniary interests** under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

- Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.
- Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. The relevant period is the 12 months ending on the day when you tell the monitoring officer about your disclosable pecuniary interests following your election or re-election, or when you became aware you had a disclosable pecuniary interest relating to a matter on which you were acting alone.
- Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority –
  - under which goods or services are to be provided or works are to be executed; and
  - which has not been fully discharged.
- Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.
- Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.
- Any tenancy where (to your knowledge) –
  - the landlord is your council or authority; and
  - the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.



- Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where –
  - (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
  - (b) either –
    - the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
    - if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.



<b>Bath &amp; North East Somerset Council</b>	
MEETING	<b>Standards Committee</b>
MEETING	<b>6 February 2014</b>
TITLE:	<b>INDEMNITIES FOR MEMBERS AND OFFICERS</b>
WARD:	All
<b>AN OPEN PUBLIC ITEM</b>	
<b>List of attachments to this report:</b>	
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 Local Authorities (Indemnities for Members and Officers) Order 2004 enables the Council to provide indemnities for members and officers in relation to any act or failure to act which is:-
- 5.1.1 authorised by the Council; or
  - 5.1.2 in any case in which the member or officer is carrying out any function at the request of, with the approval of, or for the purposes of, the Council.
- 5.2. An indemnity may be provided by means of the Council securing the provision of an insurance policy for the member or officer.
- 5.3. There are some limitations to the cases in which indemnities may be provided. No indemnity may be provided under the order in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing of (but not the defence of) defamation proceedings. However, subject to certain provisos, an indemnity may be provided in relation to the defence of any criminal proceedings brought against an officer or member. Indemnities can also be given in relation to any civil liability arising from an action, or failure to act, which also constitutes a criminal offence.
- 5.4. The order gives a limited power to provide an indemnity or insurance where the action or inaction complained of is outside the powers of the Council itself or outside the powers of the member or officer who acts. It also covers situations where a member or officer makes a statement that certain steps have been taken or requirements fulfilled when it later becomes clear that that is not the case. However, in these situations, the person indemnified must reasonably believe that the matter in question was not outside those powers. Furthermore, where a document has been issued containing a statement which later proves to be untrue, the person seeking indemnification must reasonably have believed that the statement was true when it was issued or authorised.
- 5.5. The order enables the Council to negotiate such terms for indemnities or insurance as it considers appropriate. However, those terms must include provision for repayment of sums expended by the Council, or by an insurer, where a member admits or is found to have been in breach of the Code of Conduct, or if the member or officer is convicted of a criminal offence.
- 5.6. The Council's approved forms of indemnity for members and officers which were approved in July 2001 have been reviewed and a revised form is set out in Appendix A to this report.
- 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.

- 5.9. It would be possible for the Council to effect insurance for all members of the Council against costs incurred by them in defending against them under the Localism Act 2011 (ie Code of Conduct complaint) which are subsequently dismissed.

## **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 None.

## **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.

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

**PROPOSED FORM OF INDEMNITY FOR MEMBERS AND OFFICERS**

1. The Council will, subject to the exceptions set out below, indemnify each of its members and officers against any loss or damage suffered by the member or officer arising from his/her action or failure to act in his/her capacity as a member or officer of the Council.

This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:-

- 1.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or officer,
- 1.2 any act or failure to act by the member or officer otherwise and in his/her capacity as a member or officer of the Council, or
- 1.3 any failure by the member to comply with the Council's Code of Conduct for Members.

2. The Council will, subject to the exceptions set out below, indemnify each of its members and officers against the reasonable costs which he/she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings or Standards proceedings to which he/she is subject.

- 2.1 "Criminal proceedings" includes any interview or investigation by the police and any proceedings before a criminal court, in the United Kingdom.
- 2.2 "Standards proceedings" means any investigation or hearing in respect of an alleged failure to comply with the Council's Code of Conduct for Members under the Localism Act 2011.

- 2.3 This indemnity shall not extend to any advice or representation in respect of any claim or threatened claim in defamation by the member or officer.

- 2.4 Where any member or officer avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings or Standards proceedings, the indemnity is subject to a condition that if, in respect of the matter in relation to which the member or officer has made use of this indemnity:-

- 2.4.1 the member or officer is convicted of a criminal offence in consequence of such proceedings, or

- 2.4.2 in the case of Standards' proceedings a finding is made that the member has failed to comply with the Code of Conduct for Members or if the member admits that he/she has failed to comply with the Code of Conduct for Members and the conviction or finding is not overturned on appeal, the member or officer shall reimburse the Council for any sums expended by the Council pursuant to the indemnity.

- 2.5 Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in paragraph 2.5 shall apply as if references to the Council were references to the insurer.
3. For the purpose of these indemnities, a loss or damage shall be deemed to have arisen to the member or officer "in his/her capacity as a member or officer of the Council" where:-
- 3.1 the act or failure to act was outside the powers of the Council or outside the powers of the member or officer, but the member or officer reasonably believed that the act or failure to act was within the powers of the Council or within the powers of the member or officer (as appropriate) at the time that he or she acted or failed to act, as the case may be.
- 3.2 the act or failure to act occurred not in the discharge of the functions as the member or officer as a member or officer of the Council but in their capacity as a member or officer of another organisation, where the member or officer is, at the time of the action or failure to act, a member or officer of that organisation either:-
- 3.2.1 in consequence of his/her appointment as such member or officer of that organisation by the Council, or
- 3.2.2 in consequence of his/her nomination for appointment as such member or officer of that organisation by the Council, or
- 3.2.3 where the Council has specifically approved such appointment as such a member or officer of this organisation for the purpose of these indemnities.
4. The Council undertakes not to sue (or join in any action as co-defendant) an officer of the Council in respect of any negligent act or failure to act by the member or officer in his/her capacity as an officer of the Council, subject to the following exceptions:-
- 4.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or officer, or
- 4.2 any act or failure to act by the officer otherwise than in his/her capacity as a member or officer of the Council.
5. These indemnities and undertaking shall not apply if:-
- 5.1 in the case of a member, the member does not inform the Council's Monitoring officer and in the case of an officer, the officer does not inform his/her director and the Council's Monitoring Officer immediately he/she becomes aware of any circumstances likely to form the basis of any claim against the Council or likely to result in any financial loss to the Council and does not follow the advice of the Council's Monitoring Officer and Chief Finance Officer
- 5.2 if a member or officer without the express permission of the Council or of the Council's Monitoring Officer admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of these indemnities and undertaking

- 5.3 a member or officer does not co-operate with and assist the Council in the conduct of any legal proceedings to which the indemnity relates, including giving evidence.
6. These indemnities and undertaking are without prejudice to the rights of the Council to take disciplinary action against an officer in respect of any act or failure to act.
7. These indemnities and undertakings shall apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the member or officer has ceased to be a member or officer of the Council as well as during his/her membership of or employment by the Council.



<b>Bath &amp; North East Somerset Council</b>	
MEETING	<b>Standards Committee</b>
MEETING	<b>6 February 2014</b>
TITLE:	<b>Review of procedure for handling complaints and summary of complaints received</b>
WARD:	All
<b>AN OPEN PUBLIC ITEM</b>	
<p><b>List of attachments to this report:</b>            Appendix 1 - Procedure for handling code of conduct complaints.            Appendix 2 - Summary of complaints received since July 2012</p>	

**1 THE ISSUE**

- 1.1 To review the procedure for handling code of conduct complaints.
- 1.2 To note the summary of complaints received since July 2012.

**2 RECOMMENDATION**

- 2.1 That the procedure for handling complaints be noted.
- 2.2 That the summary of complaints be noted.

**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. The summary of complaints received since the introduction of the new review is attached for the Committee's information and comments.

**6 RATIONALE**

6.1 It is appropriate for the Committee to review the complaints procedure and to receive a summary of the complaints received by the Monitoring Officer.

## 7 OTHER OPTIONS CONSIDERED

7.1 None.

## 8 CONSULTATION

8.1 None.

## 9 RISK MANAGEMENT

9.1 Not applicable.

<b>Contact person</b>	<i>Vernon Hitchman, Monitoring Officer – 01225 395171</i>
<b>Background papers</b>	<i>List here any background papers not included with this report, and where/how they are available for inspection.</i>
<b>Please contact the report author if you need to access this report in an alternative format</b>	

## **BATH AND NORTH EAST SOMERSET COUNCIL**

### **ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CODE OF CONDUCT FOR MEMBERS**

#### **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](mailto: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 (and in the case of a complaint about a Town/Parish Councillor to the Clerk of the Town/Parish Council as well) 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, 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 is relatively inexperienced as a Member, or 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 inform the Clerk of the Town/Parish Council of the complaint and 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. 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.

#### **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).

#### **Local Hearing - Procedure B**

Where the Monitoring Officer 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 will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is 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 the complaint relates to a Town/Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.

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.

### **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.

### **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 Withdrawn (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.

### **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 14.1 or 14.2 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 14.3.1 or 14.3.2;
  - 12.3.6 A spouse or civil partner of a person within paragraphs 14.3.3, 14.3.4 or 14.3.5;
  - 12.3.7 Living with a person within paragraphs 14.3.3, 14.3.4 or 14.3.5 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, 2 Conservative, 1 Labour, 1 Independent 0  
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 Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated 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.

#### **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.

Appendix 2

<b>Complaint No.</b>	<b>Date Received</b>	<b>Council</b>	<b>Complaint</b>	<b>Assessment</b>	<b>Committee Decision</b>	<b>Sanction Complied with?</b>
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	
08-12	July 2012	BANES	Behaviour of Cllr at public meeting.	Actions pre-dated new Standards' Regime – unable to take any action.	NO FURTHER ACTION	
09-12	03.08.12	Bathford PC	Cllr X and Bathford PC not acting in accordance with BPC Code of Conduct.	No breach.	NO FURTHER ACTION	
10-12	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.	No breach.	NO FURTHER ACTION	
12-12	1.10.12	BANES	<ul style="list-style-type: none"> <li>• Bullying and intimidation</li> <li>• Failing to treat others with respect and courtesy</li> <li>• Disreputable conduct</li> </ul>	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	Apology received and sent to complainant.  Training offered to Cllr.

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					respect to the complainant; should apologise 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	Breach to be remedied by apology.	Apology	Cllr X apologised to Chair at Full Council on 08.11.12.
14-12	02.12.12	PSJPC	Failure to treat with respect.	Potential breach capable of remedy by apology.	Apology	
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		
03-13	14.02.13	BANES	Failure to treat with respect	Informal resolution	Apology	Apology was sent
04-13	20.03.13	CMPC	Failure to declare interest.	No breach	NO FURTHER ACTION	
05-13	20.03.13	CMPC	Failure to declare interest	No breach	NO FURTHER ACTION	
06-13	22.03.13	BANES	Social Media complaint	No breach	NO FURTHER ACTION	
07-13	25.03.13	PSJPC	Failure to treat with respect	Potential breach capable of remedy by apology.	Apology	
08-13	25.03.13	PSJPC	Failure to treat with respect	Potential breach capable of	Apology	

				remedy by apology.		
09-13	11.04.13	BANES	Misuse of position	No breach.	NO FURTHER ACTION	
10-13	11.04.13	BANES	Misuse of position	No breach.	NO FURTHER ACTION	
11-13	18.04.13	HBPC	Failure to treat with respect	Mediation		
12-13	20.05.13	BANES	Involvement in planning application	No breach	NO FURTHER ACTION	
13-13	24.05.13	RTC	Failure to declare prejudicial interest	No breach	NO FURTHER ACTION	
14-13	24.05.13	RTC	Prejudicial interest	No breach	NO FURTHER ACTION	
15-13	24.05.13	RTC	Prejudicial interest	No breach	NO FURTHER ACTION	
16-13	24.05.13	RTC	Prejudicial interest	No breach	NO FURTHER ACTION	
17-13	08.06.13	RTC	Prejudicial interest	No breach	NO FURTHER ACTION	
18-13	08.06.13	RTC	Prejudicial interest	No breach	NO FURTHER ACTION	
19-13	08.06.13	RTC	Prejudicial interest	No breach	NO FURTHER ACTION	
20-13	28.06.13	DPC	Prejudicial interest	No breach	NO FURTHER ACTION	
21-13	04.10.13	CPC	Bullying and failure to treat with respect	Currently under investigation		
22-13	04.10.13	CPC	Bullying and failure to treat with respect	Currently under investigation		
23-23	09.10.13	CPC	Failure to treat with respect			

<b>Bath &amp; North East Somerset Council</b>		
MEETING	<b>Standards Committee</b>	
MEETING	<b>6 February 2014</b>	
TITLE:	<b>Social Media Protocol</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>		
Appendix 1 - Social Media Protocol for Members		

**1 THE ISSUE**

1.1 To consider and recommend for adoption a social media protocol for members.

**2 RECOMMENDATION**

2.1 That the Committee recommend the Social Media Protocol for members for adoption.

**3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

3.1 None.

**4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

4.1 Social media is an important and growing means of communication. The adoption of a social media protocol for members would facilitate this use of communication by giving advice and support to members.

**5 THE REPORT**

5.1 The Standards Committee has recognised the potential issues that the use of social media raises and asked for guidance so that members have greater clarity as to what and what is not acceptable. The Social Media Protocol will provide such guidance and compliment the Code of Conduct.

**6 RATIONALE**

6.1 As set out in the report.

## 7 OTHER OPTIONS CONSIDERED

7.1 None.

## 8 CONSULTATION

8.1 The Communications and Marketing Manager has been consulted in preparing this report

## 9 RISK MANAGEMENT

9.1 Not applicable.

<b>Contact person</b>	<i>Amanda Brookes, Deputy Monitoring Officer – 01225 395172</i>
<b>Background papers</b>	<i>List here any background papers not included with this report, and where/how they are available for inspection.</i>
<b>Please contact the report author if you need to access this report in an alternative format</b>	

## **SOCIAL MEDIA PROTOCOL FOR MEMBERS**

Social media is one of the most important and growing means of communication for individuals and businesses. The Council welcomes Members' increasing use of social media and would like to facilitate this by giving proper advice and support. The Standards Committee has also, recognising the potential issues that social media raises, asked for some guidance so that Members have greater clarity as to what is and is not acceptable. This protocol is intended to provide such guidance and complements the general rules under the Code of Conduct for Members. As members might expect, the basic position is that the same standards of behaviour and conduct apply online as would be expected offline.

### **What is social media?**

Social media is the term to describe websites and online tools which allow people to interact with each other by creating their own content. The content could, for example, be blogs, videos or short messages, known as tweets, via twitter.

On social media sites, users share information, discuss opinions and may create interest groups or pages. Ultimately, people use these sites and tools to build online communities and networks which encourage participation and engagement.

It is not a requirement for members to have a Facebook or Twitter account or use other forms of social media. However, if you are already using or planning to use social media in connection with your work as a Councillor, or are already using such media in your private capacity, these guidelines will be relevant.

### Social Media can be used:

- To support you in performing your community leadership role
- To keep in touch with local views and opinions
- For political campaigning
- For campaigning on local issues

### Types of Social Media:

- Blogging and microblogging – online journals – Twitter is an example of microblogging, where entries are limited to 140 characters
- Online Forums – people with similar interests sharing information and opinions – AccyWeb is an example
- Social networking sites – these facilitate connections between people who already know each other, often in a social context, but are increasingly used by businesses to promote their products or services - Facebook is an example
- Video and photo publishing – sharing videos and photographs worldwide – Flickr is an example

## Things to bear in mind from the beginning:

- Any form of communication is capable of being misunderstood. While the use of social media should not in theory be more susceptible to this problem than any other form of communication, something about the immediacy of social media seems to magnify the problem.
- By the nature of such media, “misfiring”, or being misunderstood, particularly with regard to something that is perceived as being more controversial than it was intended to be, is likely to lead to rapid and wide broadcasting of that apparently “controversial”, misunderstood item.
- There are no special, additional legal or ethical burdens relating to the use of social media. The same rules apply here that govern the rest of your behaviour as a Councillor – you just need to think about them in this new context.
- Although the best use of social media is conversational in tone, publishing to the web is still publishing. What you’ve said on the web is written down and it is permanent. Most pitfalls will be avoided if your online content is accurate, informative, balanced and objective. If in any doubt, speak to the Monitoring Officer, or a member of the Legal Services Team.
- This doesn’t mean that members cannot, in the appropriate context, communicate politically. This is expected of a Councillor, but you should be careful not to say anything that you wouldn’t be comfortable repeating or justifying, for example, at a public meeting.

## Some general legal issues:

- **Libel** – If you publish an untrue statement about a person which is damaging to their reputation, they may take a libel action against you. The same thing may happen if, for example, someone else publishes something libellous on your website, you know about it and don’t take swift action to remove it. A successful libel claim could result in the award of damages against you,.
- **Copyright** – Placing images or text on your site from a copyrighted source (for example extracts from publications or photos), without obtaining permission, is likely to breach copyright laws. Therefore, don’t publish anything you are unsure about, or obtain prior permission. Again, a successful claim for breach of copyright would be likely to lead to an award of damages against you.
- **Data Protection** – Do not publish the personal data of individuals unless you have their express permission.
- **Bias and Predetermination** – if you are involved in making planning, licensing or other quasi-judicial decisions, do not say anything through social media (or indeed anywhere) that suggests you have completely and irrevocably made your mind up on an issue that is due to be formally decided upon. While your likely view on a particular application may be well known, you need to be able to show that you attended the committee or hearing prepared to take on board and weigh all the evidence and arguments, and were genuinely persuadable to a different view. If you weren’t, the decision may be later challenged as invalid. If a person has suffered some sort of detriment as a result of such an invalid decision, they may have a claim against the Council for damages.



## **Social Media and the Code of Conduct for Members generally:**

- Aspects of the Code of Conduct for Members will apply to your online activity in the same way as they do to any other written or verbal communication you may engage in. The key to whether your online activity is subject to the Code is whether you are, or even just appear to be, acting in your capacity as a Councillor rather than as a private individual.
- Councillors can have “blurred identities”. This can happen where you have a social media account and you comment both as a Councillor and as an individual. Although you may be clear in your mind that you are acting in a private capacity, it may be less clear to others. This can also mean that your views can be taken as being those of your organisation or party (rather than you personally) when this may not be the case.
- One way of avoiding blurring of the lines between your personal and Councillor life, and avoiding some of the potential problems related to the Code of Conduct, may be to consider keeping your online accounts as a Councillor separate from those where you communicate in a personal capacity. This is a decision for each Member and some Members may find the convenience of having one account outweighs the advantages of separate accounts. The Council’s Communications Team can help you with more specific advice if needed.

## **Particularly Relevant Elements of the Members’ Code of Conduct:**

- **You must treat others with respect** - do not use social media to make personal attacks or indulge in rude, disrespectful or offensive comments.
- **You must comply with equality laws** – do not publish anything that might be seen as racist, sexist, ageist, homophobic or anti-faith.
- **You must not bully or intimidate anyone** – do not say anything, particularly if it is part of a series of similar comments about a person or on a theme that might be construed as bullying or intimidation, whether the comments relate to a Council employee, a fellow-Councillor or anyone else.
- **You must not bring the Council into disrepute** – you should not publish anything that could reasonably be perceived as bringing yourself as a councillor, or the Council in general, into disrepute.
- **You must not disclose confidential information** - you must not, in your usage of social media, just as in any other circumstances, disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature. Members are referred to paragraph 10 (4) of the Members’ Code of Conduct for a fuller exposition on non-disclosure of confidential information.

## **Staying out of Trouble -Some Do's and Don'ts**

### **Some Do's**

- set appropriate privacy settings for your blog or networking site – especially if you have a private, non-political blog;
- keep an eye out for defamatory or obscene posts from others on your blog or page and remove them as soon as possible to avoid the perception that you condone such views;
- be aware that the higher your profile as an elected member, the more likely it is you will be seen as acting in your official capacity when you blog or network;
- consider keeping your personal and elected member profile on social networking sites separate and maintain appropriate professional boundaries;
- ensure you use council facilities appropriately; if you use a Council provided blog site or social networking area, any posts you make will be viewed as made in your official capacity;
- be aware that you will be seen as acting in your official capacity if you publish information that you could only have accessed by being an elected member;
- feel able to make political points, but be careful about being too specific or personal if referring to individuals. An attack on individuals may be seen as disrespectful, whereas general comments about another party or genuine comments on policy are less likely to be viewed as disrespectful.

### **Some Don'ts**

- blog in haste, particularly in circumstances where your judgement might be impaired; for example if you have consumed alcohol.
- make unguarded statements which could lead to potential liability
- post comments that you would not be prepared to make on paper or face to face
- use Council facilities for personal or political blogs
- request or accept a Bath & North East Somerset Council employee or contractor providing services to the Council as a “friend” on a social networking site where this suggests close personal association. For the avoidance of doubt, this does not apply to sites which are intended as a neutral, professional connections registry (such as LinkedIn)
- use social media in any way to attack, insult, abuse, defame or otherwise make negative, offensive or discriminatory comments about council staff, service users, their family or friends, colleagues, other professionals, other organisations, or the council
- publish confidential information that you may have learned or had access to as part of your role as an elected Member. This includes personal information about service users, their families or friends or others e.g. contractors, Council staff as well as

### Council related information

- represent your personal views, or those of any political party or interest group you belong to, as being those of the Council, on any social medium
- browse, download, upload or distribute any material that could be considered inappropriate, offensive, defamatory, illegal or discriminatory
- make conspicuous, excessive and continuous use of social media technology during the course of a Council or committee meeting so that you give the impression to the public of not being respectful of the proceedings and, more seriously, taking decisions that are not based on full engagement with the facts and arguments.

### **General**

The Council wishes to encourage Members' use of new technology, including social media. This guidance is intended to help Members use social media in a way that avoids legal and reputational risk.

The Monitoring Officer and the Communications Team are happy to help Members by providing additional advice and guidance as appropriate. Training is also available to individual Members or Groups on the use of social media.

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