

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

15 October 2013

Local Ethical Framework Issues

1.0 PURPOSE OF REPORT

- 1.1 To brief Members on any new ethical framework issues.
- 1.2 To seek authority from the Standards Committee to recommend to full Council the amendment of the Code of Conduct regarding registration requirements and to recommend the making of a consequent change to the current form for registering Members' interests at the County Council, so that Members can treat trade union membership as a personal non-pecuniary interest, as required under new DCLG guidance, and for the Monitoring Officer to contact all Members of the Council asking them to register such interests if they have them.
- 1.3 To seek the views of the Standards Committee on whether and how the "illustrative text for a code" which accompanied the letter from the DCLG might be used at this Council.
- 1.4 To seek the views of the Committee on whether and, if so, when Registers of Interests relating to former Members of the County Council, who are no longer County Councillors, should be disposed of.
- 1.5 To seek the views of the Committee on whether it would be appropriate and beneficial to provide specific advice to County Councillors who are also Members of a District Council about claims for and receipt of allowances from more than one Council, or other public body.
- 1.6 To seek the views of the Committee on whether any changes to the current County Council Code of Conduct would be appropriate and beneficial.
- 1.7 To seek the Committee's agreement to administrative revisions to the Jurisdiction and Assessment Criteria.

2.0 RECENT GUIDANCE ON INTERESTS FROM DCLG

- 2.1 On 20 September, 2013 the Deputy Director – Democracy at the Department for Communities and Local Government wrote to Chief Executives of local authorities with new guidance making it clear that councillors should treat trade union membership as a personal non-pecuniary interest which should be registered and declared. The letter, the accompanying illustrative text for the code of conduct, a guide for councillors on openness and transparency on personal interests, the Council's current Code of Conduct and proforma interests form are attached as appendices to this report, for Members' information.
- 2.2 The treatment of trade union membership as a personal non-pecuniary interest which should be registered and declared will require a change to the Code of Conduct (which currently only requires registration of the statutory disclosable pecuniary interests (mandatory) and makes no provision re interests other than

disclosable pecuniary interests (optional), in line with previous Council decisions on the ethical framework) and the current form for registering Members' interests at the County Council. Any changes to the Code of Conduct require the approval of full Council. The Committee is therefore requested to recommend to full Council the necessary amendments to the Code of Conduct and the format of the proforma interests form and to the Monitoring Officer contacting all Members of the Council asking them to register such interests if they have them.

2.2 The views of the Standards Committee are also sought on whether and how the "illustrative text for a code" which accompanied the letter from the DCLG might be used at this Council. The earlier version of this document was considered by the Standards Committee, in consultation with others, in formulating a new Code of Conduct and standards arrangements for the Council under the Localism Act.

2.3 An issue on which the views of the Standards Committee were to be sought, in any case, was the question of whether and, if so, when Registers of Interests relating to former Members of the County Council, who are no longer County Councillors, should be disposed of. The attached DCLG guidance, which reflects the statutory provisions of the Localism Act, states "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." This issue has been raised at the local Monitoring Officer Group. The Group acknowledged that there is a data protection consideration over how long such information should be kept. The general consensus appeared to be that four years was an appropriate period, as any issue was likely to be raised within this timescale (although criminal offence allegations could be raised within 12 months from when the matter came to light). The Group acknowledged that it would be helpful to have a consistent approach to this where possible and the Group should keep this under review. The Standards Committee is asked to consider the issues and give its view on the appropriate way forward.

2.4 Some other Councils have questioned whether it is necessary for Members to have a dispensation to take part in the business of setting the council tax. The recent guidance from DCLG specifically states that no dispensation is needed as "Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules". This accords with the pragmatic view so far taken by this Council, as reported to the Committee in February this year.

3.0 **"DUAL HATTED" MEMBERS**

3.1 Members of the Committee will be aware of the issues which have been raised with the Monitoring Officer, in recent months, about some Members who receive, or are entitled to receive, allowances from more than one local authority, because they are Members of more than one. The views of the Committee are sought on whether they consider it might be appropriate and beneficial to provide specific advice to County Councillors who are also Members of a district/borough council about claims for and receipt of allowances from more than one Council, or other public body.

4.0 **THE COUNTY COUNCIL'S CODE OF CONDUCT**

4.1 The views of all County Councillors on the Council's current Code of Conduct were recently sought by e-mail. At the time of writing this report (1 October, 2013) only two Members of the Council had expressed a view and neither raised any concerns about it.

4.2 Members may wish to consider widening the registration of interest requirements to cover the membership of public bodies in line with a number of neighbouring District Councils, or retain the narrower scope of the County Council's Code.

5.0 **JURISDICTION AND ASSESSMENT CRITERIA**

5.1 Revised Jurisdiction and Assessment Criteria (copy attached in the appendices to this report) are presented to the Committee for formal adoption. The document has been amended to reflect the new regime arrangements previously agreed by Council in terms of the Monitoring Officer and Independent Person role in the assessment of complaints – there are no changes to the criteria themselves.

6.0 **RECOMMENDATIONS**

6.1 That the Committee notes the contents of this report.

6.2 That the Standards Committee recommends to full Council for approval a change to the current Code of Conduct and form for registering Members' interests at the County Council, so that Members can treat trade union membership as a personal non-pecuniary interest, as required under new guidance, and to authorise the Monitoring Officer to contact all Members of the Council asking them to register such interests, if they have them.

6.3 That the Standards Committee determine whether and, if so, how the "illustrative text for code" which accompanied the letter from the DCLG might be used at North Yorkshire County Council.

6.4 That, in the light of the recent DCLG guidance, the Standards Committee determines whether and, if so, when Registers of Interests relating to former Members of the County Council, who are no longer County Councillors, should be disposed of.

6.5 That the Standards Committee determine whether it would be appropriate and beneficial to provide specific advice to County Councillors who are also Members of a District Council about claims for and receipt of allowances from more than one Council, or other public body and, if so, the form and content of such advice.

6.6 That the Standards Committee determine whether any other changes to the current County Council Code of Conduct would be appropriate and beneficial.

6.7 That the Standards Committee approve the Jurisdiction and Assessment Criteria document.

CAROLE DUNN
Monitoring Officer

Background Documents: None

County Hall
NORTHALLERTON

7 October, 2013

CODE OF CONDUCT FOR MEMBERS OF NORTH YORKSHIRE COUNTY COUNCIL

This Code sets out the standards of behaviour required of you whenever you are acting as a Councillor of North Yorkshire County Council. This Code also applies to any person appointed as a co-opted member with voting rights on any Committee of the County Council and references in this Code should be construed accordingly.

You must sign an Undertaking to comply with this Code of Conduct before acting as a Councillor or voting co-opted Member (“Members”).

The Code has been adopted by the County Council and also requires compliance with the general principles of public life set out at the end of the document. The Council has established a Standards Committee, consisting of members of the Council, to deal with any allegations of breaches of the Code.

1. You must not treat others with disrespect.
2. You must not do anything which may cause the County Council to breach any equality enactment.
3. You must not bully or intimidate any person, or attempt to bully or intimidate them.
4. You must not do anything which compromises the impartiality of anyone who works for or on behalf of the Council, or do anything that is likely to compromise their impartiality.
5. You must not disclose information which is given to you in confidence or which you believe is of a confidential nature, or ought reasonably to be aware is of a confidential nature, unless:
 - You have the permission of a person authorised to give it; or
 - You are required by law to disclose the information; or
 - You disclose it to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
 - The disclosure is reasonable; and is in the public interest; and is made in good faith; and is only made after having complied with any reasonable requirements of the Council to delay disclosure or to maintain confidentiality.

Before disclosing any information under this paragraph, you must consult the Monitoring Officer and/or the Chief Executive Officer.

6. You must not prevent another person gaining access to information which that person is entitled to by law.

7. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council into disrepute, or your position as a Member into disrepute.
8. You must not use your position as a Member improperly to obtain any advantage or disadvantage for yourself or any other person, or attempt to do so.
9. You must not take part in the scrutiny of any decision you have been involved in making – except that you may provide evidence or opinion to those undertaking any scrutiny process.
10. You must not accept any gift or hospitality which could reasonably be perceived as creating an obligation upon the Council, or upon yourself as a Member. If you do accept any gift or hospitality which might be attributable to your membership of the Council (other than the refreshments which might usually be expected at a Council meeting or civic function) you must disclose this, or any offer of such gift or hospitality, to the Monitoring Officer.
11. You must act in accordance with the Council's guidance or requirements when using the resources of the Council (such as officer time, IT and copying equipment, or physical materials), or when authorising others to use them, and must ensure that those resources are not used improperly for political or other purposes.
12. You must have regard to relevant advice given by the Council's Chief Financial Officer or Monitoring Officer when making decisions and must give reasons for those decisions, in accordance with any requirements imposed by statute or the Council.
13. You must comply with the following sections of this Code, which relate to registering and declaring in meetings certain interests you may have. This includes complying with any procedure rule adopted by the Council which requires Members to leave the room during any meeting at which a matter in which they have a disclosable pecuniary interest is being discussed.

INTERESTS

Disclosable Pecuniary Interests

14. (1) A pecuniary interest is a "disclosable pecuniary interest" in relation to you if it is of a description specified in regulations (and listed in Appendix 1) and either:
 - (a) it is your interest; or
 - (b) it is an interest of:
 - (i) your spouse or civil partner;

- (ii) a person with whom you are living as husband and wife; or
- (iii) a person with whom you are living as if you are civil partners;

and you are aware that that other person has the interest.

Disclosure of pecuniary interests on taking office

15. (1) You must, before the end of 28 days beginning with the day on which you become a member or co-opted member of the Council, notify the Monitoring Officer of any disclosable pecuniary interests which you have at the time when the notification is given.
- (2) Where you become a member or co-opted member as a result of re-election or re-appointment, sub-paragraph (1) applies only as regards disclosable pecuniary interests not entered in the Council's register when the notification is given.
- (3) Where you give a notification for the purposes of sub-paragraph (1), the Monitoring Officer is to cause the interests notified to be entered in the Council's Register of Members' Interests ("the Register") (whether or not they are disclosable pecuniary interests).
- (4) Subject to paragraph 17 (regarding sensitive interests), you must, within 28 days of becoming aware of any new disclosable pecuniary interest or change to any interest already registered, register details of that new interest or change by providing written notification to the Monitoring Officer.

Pecuniary interests in matters considered at meetings

16. (1) Sub-paragraphs (2) to (4) apply if you:
- (a) are present at a meeting of the Council or Executive, or of any committee, sub-committee, joint committee or joint sub-committee of the Council or Executive;
 - (b) have a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting; and
 - (c) are aware that the condition in paragraph (b) is met.
- (2) If the interest is not entered in the Council's Register, you must disclose the interest to the meeting, but this is subject to this Code's provisions on sensitive interests.

- (3) If the interest is not entered in the Council's Register and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure.
- (4) You may not:
 - (a) participate, or participate further, in any discussion of the matter at the meeting; or
 - (b) participate in any vote, or further vote, taken on the matter at the meeting;

but this is subject to this Code's provisions on dispensations.

Pecuniary interests in matters considered by a single member

- (5) Sub-paragraphs (6) and (7) apply if:
 - (a) a function of a relevant authority may be discharged by a member of the authority acting alone;
 - (b) the member has a disclosable pecuniary interest in any matter to be dealt with, or being dealt with, by the member in the course of discharging that function, and
 - (c) the member is aware that the condition in paragraph (b) is met.
- (6) If the interest is not entered in the Council's Register and is not the subject of a pending notification, the member must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date when the member becomes aware that the condition in sub-paragraph (5)(b) is met in relation to the matter.
- (7) The member must not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by the member).
- (8) Where you give a notification for the purposes of sub-paragraph (3) or (6), the Monitoring Officer is to cause the interest notified to be entered in the Register (whether or not it is a disclosable pecuniary interest).
- (9) The Council's Constitution provides for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which, as a result of the operation of sub-paragraph (4), the member or co-opted member may not participate.
- (10) An interest is "subject to a pending notification" if:

- (a) the interest has been notified to the Monitoring Officer, but
- (b) has not been entered in the Register in consequence of that notification.

Sensitive interests

- 17.(1) Sub-paragraphs (2) and (3) apply where:
- (a) you have an interest (whether or not a disclosable pecuniary interest); and
 - (b) the nature of the interest is such that you and the Monitoring Officer consider that disclosure of the details of the interest could lead to you, or a person connected with you, being subject to violence or intimidation.
- (2) If the interest is entered in the Register, copies of the Register that are made available for inspection, and any published version of the Register, must not include details of the interest (but may state that you have an interest the details of which are withheld under section 32(2) of the Localism Act 2011).
- (3) If paragraph 16(2) applies in relation to the interest, that provision is to be read as requiring you to disclose not the interest but merely the fact that you have a disclosable pecuniary interest in the matter concerned.

DISPENSATIONS FROM NON-PARTICIPATION

18. (1) The Council may, on a written request made to the Monitoring Officer by you, grant a dispensation (in accordance with the relevant statutory provisions) relieving you from either or both of the restrictions in paragraph 16(4) in cases described in the dispensation.
- (2) Paragraph 16(4) does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this section.

OFFENCES

19. (1) You commit a criminal offence if, without reasonable excuse, you:-
- (a) fail to comply with an obligation imposed on you by paragraph 15(1) or 16(2), (3) or (6);

- (b) participate in any discussion or vote in contravention of paragraph 16(4); or
 - (c) take any steps in contravention of paragraph 16(7).
- (2) You commit an offence if under paragraph 15(1) or 16(2), (3) or (6) you provide information that is false or misleading and you:
 - (a) know that the information is false or misleading; or
 - (b) are reckless as to whether the information is true and not misleading.
- (3) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

20. **If you are in any doubt as to your position under the Code of Conduct, please consult the Monitoring Officer.**

DISCLOSABLE PECUNIARY INTERESTS

The pecuniary interests which are specified in regulations as disclosable pecuniary interests are the interests specified in the second column of the Schedule below:

SCHEDULE

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of

the relevant authority for a month or longer.

Corporate tenancies

Any tenancy where (to M's knowledge)—

(a) the landlord is the relevant authority; and

(b) the tenant is a body in which the relevant person has a beneficial interest.

Securities

Any beneficial interest in securities of a body where—

(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and

(b) either—

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) 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 the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For these purposes:-

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member (entitled to vote);

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act (the corresponding provisions in this Code are paragraphs 15(1) and 16(6));

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act (corresponding provision in this Code is paragraph 14(1)(b)), namely:

- M’s spouse or civil partner;
- a person with whom M is living as husband and wife; or
- a person with whom M is living as if they were civil partners;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

GENERAL PRINCIPLES OF PUBLIC LIFE

Principle

Revised description

Preamble

The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

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 order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

NORTH YORKSHIRE COUNTY COUNCIL

REGISTER OF MEMBERS' INTERESTS

Section 29 Localism Act 2011 and associated legislation

***PLEASE NOTE THE CATEGORISATION IN THIS FORM IS FOR ADMINISTRATIVE PURPOSES ONLY
AND HAS NO OTHER SIGNIFICANCE***

I, **(Name)**

give notice that I have the following disclosable pecuniary interests as described in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 of which I am aware and which are **my interests** and those of **my spouse/civil partner/partner with whom I am living as spouse or civil partner** ("relevant persons").

1. Employment, office, trade, profession or vocation

You should register details of any employment, office, trade, profession or vocation carried on for profit or gain.

Councillor's Interest(s)	Councillor's spouse/partner's interest(s)

2. Sponsorship

- (i) You should declare any payment or provision of any other financial benefit (other than from North Yorkshire County Council) made or provided within the last 12 months in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.
- (ii) This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

Name of person or body making payment/other financial benefit

3. Contracts

- (i) You should describe all contracts of which you are aware which are made between you/the relevant person (or a body in which you/the relevant person has a beneficial interest) and North Yorkshire County Council:
 - (a) under which goods or services are to be provided or works are to be executed; and
 - (b) which has not been fully discharged.
- (ii) “body in which the relevant person has a beneficial interest” means a firm in which you/the relevant person is a partner or a body corporate of which you/the relevant person is a director, or in the securities of which you/the relevant person has a beneficial interest.
- (iii) “director” includes a member of the committee of management of an industrial and provident society.
- (iv) “securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Councillor’s Interest(s)	Councillor’s spouse/partner’s interest(s)

4. Land

- (i) You should register any beneficial interest in land which is within the area of North Yorkshire County Council.
- (ii) "land" excludes an easement, servitude, interest or right in or over land which does not carry with it a right for you/the relevant person (alone or jointly with another) to occupy the land or to receive income.

Councillor's Interest(s)	Councillor's spouse/partner's interest(s)

5. Licences

- (i) You should register any licence (alone or jointly with others) to occupy land in the area of North Yorkshire County Council for a month or longer.
- (ii) “land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income.

Councillor’s Interest(s)	Councillor’s spouse/partner’s interest(s)

6. Corporate Tenancies

- (i) You should register any tenancy where (to your knowledge) —
 - (a) the landlord is North Yorkshire County Council; and
 - (b) the tenant is a body in which you/the relevant person has a beneficial interest.
- (ii) “body in which the relevant person has a beneficial interest” means a firm in which you/the relevant person is a partner or a body corporate of which you/the relevant person is a director, or in the securities of which you/the relevant person has a beneficial interest.
- (iii) “director” includes a member of the committee of management of an industrial and provident society.
- (iv) “securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Councillor’s Interest(s)	Councillor’s spouse/partner’s interest(s)

7. Securities

- (i) You should register any beneficial interest in securities of a body where—
 - (a) that body (to your knowledge) has a place of business or land in the area of North Yorkshire County Council; and
 - (b) either—
 - I. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - II. 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/the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.
- (ii) “securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Councillor’s Interest(s)	Councillor’s spouse/partner’s interest(s)

DECLARATION

I declare that the above information is complete and accurate to the best of my knowledge.

I recognise that it is a breach of the Authority’s Code of Conduct and may be a criminal offence to:

- a) omit, without reasonable excuse, information that ought to be given in this notice;**
- b) provide information that I know to be false or misleading;**
- c) provide information where I am reckless as to whether the information is true and not misleading;**
- d) fail to give further notice, within 28 days of becoming aware of any new disclosable pecuniary interest or change to the interests specified, in order to bring up to date the information given in this notice.**

Signed..... Date.....

Subsequent amendments to notice:

Signed..... Date.....

Signed..... Date.....

Signed..... Date.....

Signed..... Date.....

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NORTH YORKSHIRE COUNTY COUNCIL

ETHICAL FRAMEWORK

Complaints of breach of Members' Code of Conduct

Jurisdiction and Local Assessment Criteria

Jurisdiction

Before assessment of a complaint begins, the Monitoring Officer, in consultation with the Independent Person, should be satisfied that the complaint meets the following tests:

1. it is a complaint against one or more named Members/voting co-opted Members ("Members") of the authority;
2. the named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.
3. the complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.

Assessment Criteria

All complaints falling within the jurisdiction of the standards regime will be assessed by the Monitoring Officer, in consultation with the Independent Person, in accordance with the criteria below.

More than one criteria may be applicable to a complaint.

1. Capacity

Was the Member acting in his/her official capacity at the time of the alleged conduct?

If the answer is **no**, then unless there is some direct link between the activity and the Member's office, the Code did not apply to the Member at the time of the alleged conduct and therefore there can be no breach of the Code. The response should therefore be: "The Member concerned was not acting in his/her official capacity at the time of the alleged conduct and therefore the Code of Conduct for Members did not apply to the Member at that time. Consequently no potential breach of the Code has been disclosed and no action may be taken in respect of the complaint."

The Code does not currently apply to Members' conduct outside of the performance of their functions as Members. Only if they have engaged in private conduct/activity which has a link with the functions of the office of member, might the conduct in question be covered by the Code.

2. Triviality

Is the complaint too trivial to warrant further action?

If the answer is **yes**: “The matter is not considered to be sufficiently serious to warrant further action.”

3. Sufficient Information

Has the complainant submitted enough information to satisfy the Monitoring Officer assessing the complaint that the complaint should be referred for investigation or other action?

If the answer is **no**, the response should be: “The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. So unless, or until, further information is received, the Monitoring Officer is taking no further action on this complaint.”

4. Current Membership

Is the complaint about someone who is no longer a Member of the authority, but is a member of another authority? If so, does the Monitoring Officer wish to refer the complaint to the monitoring officer of that other authority?

If the answer is **yes**: “Where the member is no longer a member of our authority but is a member of another authority, the complaint will be referred to the Monitoring Officer of that authority for consideration.”

5. Prior Investigation/Action

Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?

If the answer is **yes**: “The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken.”

6. Passage of Time

Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

If the answer is **yes**: “The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.”

7. Underlying Motivation

Does the complaint appear to be simply malicious, vexatious, politically motivated or tit-for-tat?

If the answer is **yes**: “The matter appears to be simply malicious, vexatious, politically motivated or tit-for-tat, and not sufficiently serious, and it was decided that further action was not warranted”.

8. Anonymous Complaints

Is the complaint under consideration anonymous?

If the answer is **yes**, the Monitoring Officer will only refer such a complaint for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter and/or if there is a significant public interest in doing so.

9. Requests for Confidentiality

Has the complainant asked for his/her identity to be withheld?

If the answer is **yes**, the Monitoring Officer will need to consider the request by the complainant for confidentiality alongside the substance of the complaint itself.

As a matter of fairness and natural justice, Members will usually be told who has complained about them. Requests for confidentiality should only be granted in exceptional circumstances and at the discretion of the Monitoring Officer, in consultation with the Independent Person.

The following considerations may assist the Monitoring Officer's deliberations in this respect:

- (a) Whether the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- (b) Whether the complainant is an officer who works closely with the subject Member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (NB: this should be covered by the Council's Whistle-Blowing Policy);
- (c) Whether the complainant suffers from a serious health condition and there are medical risks associated with his/her identity being disclosed. In such circumstances, the Monitoring Officer may wish to request medical evidence of the complainant's condition. In such cases, the Monitoring Officer may give the complainant the option of requesting a withdrawal of his/her complaint;
- (d) Whether the disclosure of the complainant's identity is necessary for the investigation of the complaint; for example, this may be relevant in a bullying allegation. In such cases, the Monitoring Officer may give the complainant the option of requesting a withdrawal of his/her complaint;
- (e) Whether it is possible to investigate the complaint without making the complainant's identity known;
- (f) Whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject Member.

Where the Monitoring Officer decides to refuse a request by a complainant for confidentiality, s/he may, in the particular circumstances, decide to offer the complainant the option to withdraw the complaint, rather than proceed with their identity being disclosed.

10. Withdrawal of Complaints

Has the complainant indicated that s/he wishes to withdraw his/her complaint?

If the answer is **yes**, the Monitoring Officer will need to decide whether to grant the request. The following considerations may assist the deliberations in this respect:

- (a) Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- (b) Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- (c) Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured to withdraw the complaint?

Possible decisions

The Monitoring Officer assessing a complaint may decide to refer the complaint for investigation or other action (eg training, conciliation); or may decide that no action should be taken in respect of the complaint.

July 2012