



Tuesday, 22 January 2013

STANDARDS COMMITTEE

A meeting of **Standards Committee** will be held on

Wednesday, 30 January 2013

commencing at **2.00 pm**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Torbay Council

Councillor Addis
Councillor Doggett
Councillor Stocks
Councillor Morey

Councillor Hernandez
Councillor Amil
Councillor Thomas (J)

Independent Person

Mr Heath

Our vision is working for a healthy, prosperous and happy Bay

For information relating to this meeting or to request a copy in another format or language please contact:

**Governance Support, Town Hall, Castle Circus, Torquay, TQ1 3DR
(01803) 207016**

Email: governance.support@torbay.gov.uk



STANDARDS COMMITTEE AGENDA

1. **Election of Chairman/woman**
To elect a Chairman/woman of the Committee for the remainder of the 2012/2013 Municipal Year.

2. **Apologies**
To receive apologies for absence, including notifications of any changes to the membership of the Committee.

3. **Appointment of Vice-Chairman**
To appoint a Vice-Chairman/woman of the Committee for the remainder of the 2012/2013 Municipal Year.

4. **Minutes**
To confirm as a correct record the Minutes of the meeting of the Committee held on 14 June 2012.

(Pages 1 - 2)

5. **Declarations of interest**

(a) To receive declarations of non pecuniary interests in respect of items on this agenda

For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(Please Note: If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

6. **Urgent items**
To consider any other items that the Chairman decides are urgent.

7. **Communications**
To receive any communications or announcements from the Chairman of the Committee.

8. **Terms of Reference of Standards Committee** (Page 3)
To note the Terms of Reference for the Standards Committee.
9. **Review of New Code of Conduct and Protocol** (Pages 4 - 45)
To review the Members Code of Conduct and Local Protocol for the Assessment and Determination of Allegations of Braches of the Members Code of Conduct.
10. **Determination of Independent Person Specification** (Pages 46 - 50)
To consider a report on the above.
11. **Statistics** (Pages 51 - 52)
To note the figures detailed in the report.



Minutes of the Standards Committee

14 June 2012

-: Present :-

Councillors Addis, Doggett and McPhail

Independent Members: Messers Bastow, Branch and Health

Brixham Town Councillor Boote

1. Election of Chairman/woman

Mr Heath was elected as Chairman for the meeting.

2. Apologies

Apologies for absence were received from Councillor Stocks, Independent Members Messers Dalzell and Hutchinson and Brixham Town Councillors Henderson and Lomas.

3. Minutes

The Minutes of the meeting of the Standards Committee held on 12 January 2012 were confirmed as a correct record and signed by the Chairman.

4. Communications

The Monitoring Officer informed Members that a new Code of Conduct was due to be considered by the Council on 12 July 2012. At present current Independent Members cannot be involved in the new regime, however it was hoped the regulations would provide a transitional period.

5. Standards Committee Terms of Reference and Appointment of Standards Sub-Committees

Members received and noted the terms of reference for the Standards Committee, as detailed in the report.

Resolved:

- i) that a Referrals Sub-Committee be established with the membership and Terms of Reference set out in the report;

- ii) that a Review Sub-Committee be established with the membership and Terms of Reference set out in the report;
- iii) that a Hearings Sub-Committee be established with the membership and Terms of Reference set out in the report; and
- iv) that a Standards Appointments Sub-Committee be established with the membership and Terms of Reference set out in the report.

Chairman/woman

Terms of Reference for Standards Committee

<p>Standards Committee:</p> <p>Terms of Reference:</p> <ol style="list-style-type: none"> 1. To promote and maintain high standards of conduct by the Mayor, councillors, co-opted members and church and parent governor representatives. 2. To assist the Mayor, councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct. 3. To advise the Council on the adoption or revision of the Members' Code of Conduct. 4. To monitor the operation of the Members' Code of Conduct. 5. To advise, train or arrange to train the Mayor, councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct. 6. To assist the Monitoring Officer in carrying out his responsibilities pursuant to the Code of Conduct and its protocols. 7. To review the Council's local protocols. 9. To review the Constitution in relation to ethics and probity issues. 10. To advise others on probity and ethics. 12. To share experience with other standards committees. <p>The Council may arrange for the Standards Committee to exercise such other functions as the Council considers appropriate.</p>	<p>7 members of Torbay Council (4 Conservative and 2 Liberal Democrat and 1 independent),.</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------



Public Agenda Item: **Yes**

Title: **Review of New Code of Conduct and Protocol**

Wards Affected: **None**

To: **Standards Committee** On: **30 January 2013**

Contact Officer: **Anthony Butler**

☎ Telephone: **01803 207155**

✉ E.mail: **anthony.butler@torbay.gov.uk**

1. Key points and Summary

1.1 At the full council meeting of 12 July 2012 the Council adopted its new code of conduct in accordance with the requirements of the Localism Act 2011. A protocol for the how complaints would be investigated was subsequently developed by the Monitoring Officer and adopted following receipt of comments from the members of the Standards Committee. The decision included a requirement for the code and protocol to be reviewed 6 months after its introduction and the Standards Committee is being asked for any comments it may have as part of this review.

2. Actions

2.1 Copies of the code of conduct and protocol are available on the Council's website and hard copies can be made available to members on request. Members are requested to provide their thoughts and comments on the code and protocol as adopted and suggest any improvement and/or amendments they consider would be beneficial to the operation of the Council's standards regime bearing in mind the Council's duty to maintain high standards of conduct by members.

3. Background

3.1 The Localism Act 2011 ('the Act') provided for the abolition the Standards Board regime, which consisted of the Standards Board for England, existing standards committees of local authorities, the jurisdiction of the First Tier Tribunal in relation to local government standards in England and the old code of conduct for councillors. The abolition of the Standards Board for England took place on 1 April 2012 and the revocation of the old code of conduct took place on 1 July 2012. None of the functions of the Standards Board for England were preserved.

3.2 The Act requires that a local authority must adopt a code of conduct that is consistent with the following principles: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership. The Act also requires that the adopted code includes such provision as the authority considers appropriate in respect of the registration in its register, and disclosure, of pecuniary interests, and interests other than pecuniary interests by members.

3.3 As well as the adoption of a code of conduct the Council is required to have in place arrangements for the investigation of allegations and arrangements for how decisions will be made following those investigations. Part of these arrangements must include provision for the appointment of one or more independent persons whose views are to be sought, and taken into account, before a decision is made on an allegation that has been investigated.

3.4 The code of conduct adopted by the Council on 12 July 2012 was based upon a code of conduct drafted by Devon County Council. The majority of council's within Devon chose to adopt codes based on this model in order to ensure consistency across Devon.

Appendices

Members Code of Conduct

Local Protocol for the Assessment and Determination of Allegations of Breaches of the Members Code of Conduct

Anthony Butler
Monitoring Officer

Code of Conduct for Members

Contents

Part 1 – General Provisions	
1. Public Duty and Interests: An introduction.....	
2. Definitions.....	
3. Scope.....	
4. General Obligations	
Part 2 – Interests	
6. Registration of Interests	
8. Declaration of interests	
Annex A. General Notice of Registerable Interests	
Appendix A. General Principles of Public Life	
Appendix B. Public Sector Equality Duty.....	
Appendix C. Local Authority Code of Publicity	

CODE OF CONDUCT

PART 1 GENERAL PROVISIONS

Public Duty and Interests: An introduction

1 This Code applies to you as the Elected Mayor, a Member or a Co-opted Member of the Council of the Borough of Torbay ('the Council'). For the purposes of this code references to 'Member' or 'Member of the Council' include the elected Mayor and Co-opted members unless otherwise stated. A Co-opted Member means a person who is not a member of the authority but who:

- (a) is a member of any committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee

1.2 When acting in your capacity as a Member of the Council, you should have regard to the Principles of Public Life namely, Selflessness, Honesty/Integrity, Objectivity, Accountability, Openness, Personal judgment, Respect for others, Duty to uphold the law, Stewardship and Leadership. An explanation of what compliance with each of these principles requires is included at appendix A.

1.3 When acting in your capacity as a Member of the Council –

(a) you must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, a member of your family, close associate or relevant person;

(b) you must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;

(c) when carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit;

(d) you are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office;

(e) you must be as open as possible about your decisions and actions and the decisions and actions of the Council and should be prepared to give reasons for those decisions and actions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council or contained in its Constitution,

(f) you must declare any interests, whether disclosable or personal, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out at Part 2 of this Code;

(g) you must, when using or authorising the use by others of the resources of the Council, ensure that such resources are not used improperly for political purposes (including party political purposes) and that any use is in accordance with the Council’s reasonable requirements;

(h) you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 or any similar Communications Protocol or Code produced by the Council (as set out at Appendix C);

(i) you must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

1.4 Whilst you may be strongly influenced by the views of others, it is your responsibility alone to decide what view to take on any issue which Members have to decide.

1.5 You must do not do anything as a Member which you could not justify to the public.

1.6 It is your responsibility to comply with the provisions of this Code.

Definitions

2. In this Code –

“interest or interests” have the meanings set out in Part 2 of this Code

“relevant person” means:

- you or
- your spouse or civil partner, or
- a person with whom you are living as husband and wife or as if they were civil partners

“relevant period” means a period of 12 months ending with the date on which you notified the Monitoring Office of an interest

“meeting” means any meeting of –

- the Council;
- the Executive of the Council;
- any of the Council’s or the Executive’s, Committees, Sub-Committees, Joint Committees, Joint Sub-committees or Area committees;

“Member” includes a co-opted member

“Regulations” means the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464)

“sensitive information” has the meaning given to it in paragraph 7.4

Scope

3. You must comply with this Code whenever you are acting in your official capacity, when:
 - (a) you are engaged on the business of the Council; or
 - (b) you behave so as to give a reasonable person the impression that you are acting as a representative of the Council or in your capacity as a Member.

General obligations

4. You **must** –
 - (a) treat others with courtesy and respect,
 - (b) when reaching decisions on any matter, do so on the merits of the circumstances and in the public interest and have reasonable regard to any relevant advice provided to you by an officer of the Council.
5. You **must not** –
 - (a) attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
 - (b) do anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010 the requirements of which are included at appendix B);
 - (c) bully any person (bullying may be characterised as any single act or pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine or coerce or has the effect of undermining or coercing an individual or group of individuals by gradually eroding their confidence or capability which may cause them to suffer stress or fear);
 - (d) intimidate or attempt to intimidate any person who is or is likely to be –
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that any Member has failed to comply with the Council's Code of Conduct; or
 - (e) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council;

(f) 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, except where –

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made 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
- (iv) the disclosure is –

- (A) in the public interest; and
- (B) made in good faith and
- (C) in compliance with the reasonable requirements of the Council;

(g) prevent another person from gaining access to information to which that person is entitled by law;

(h) conduct yourself in a manner or behave in such a way so as to give a reasonable person the impression that you have brought your office or the Council into disrepute.

PART 2 INTERESTS

Registration of Interests

6. You must, within 28 days of—

- (a) this Code being adopted by, or applied to, the Council; or
- (b) your taking office as a Member or Co-opted Member of the Council,

whichever is the later, and annually thereafter, provide written notification to the Council's Monitoring Officer of:

- (i) any disclosable pecuniary interest as defined by Regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife); and
- (ii) any other personal interest as may be defined by the Council from time to time;

which will be recorded in the Council's Register of Members' Interests and made available for public inspection including on the Council's website at: <http://www.torbay.gov.uk/DemocraticServices/mgMemberIndex.aspx?bcr=1>

6.1 Within 28 days of becoming aware of any new interest or change to any interest already registered, you must register details of that new interest or change by providing written notification to the Council's Monitoring Officer.

6.2 Whether or not an interest within paragraphs 7.1 and 7.2 below has been entered onto the Council's register, you must disclose any interest to a meeting at which you are

present in any matter being considered, in accordance with paragraph 8 below, unless that matter is ‘sensitive information’.

- 6.3 Following any disclosure of an interest not on the Council’s register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.
- 6.4 In relation to disclosable pecuniary interests, in this Part of the Code the expressions in the left hand column below have the meanings attributed to them in the right hand column:

“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
“relevant authority”	means the authority of which you are a member
“relevant person”	means you, your spouse or civil partner, a person with whom you are living with as husband and wife or a person with whom you are living with as if you are 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

- 7. The interests you **must** register are:
 - 7.1 - those disclosable pecuniary interests defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) as set out below, namely:
 - (a) any employment, office, trade, profession or vocation carried on for profit or gain by you or a relevant person;
 - (b) any payment or provision of any other financial benefit (other than from the Council) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a Member, or towards your expenses, including any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992;

(c) any contract which is made between you or, so far as you are aware, a relevant person (as defined at Para 2 above) (in which the relevant person has a beneficial interest) and the Council:

- (1) under which goods or services are to be provided or works are to be executed; and
- (2) which has not been fully discharged

(d) any beneficial interest in land held by you, or so far as you are aware, a relevant person which is within the administrative area of the Council;

(e) any licence (alone or jointly with others) to occupy land in the administrative area of the Council for a month or longer

(f) any tenancy where (to your knowledge):

- (1) the landlord is the Council; and
- (2) the tenant is a body in which you or, so far as you are aware, a relevant person has a beneficial interest.

(g) any beneficial interest that you or, so far as you are aware, a relevant person has in securities of a body where:

(1) that body (to your knowledge) has a place of business or land in the administrative area of the Council and

(2) either:

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

(B) 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.

7.2 In addition to the disclosable pecuniary interests prescribed by the Regulations this Code also requires that you **must** register the following interests:

(a) your membership of any body:

- (1) to which you have been appointed by the Council
- (2) which exercises functions of a public nature directed to charitable purposes; or
- (3) whose principal purposes include influence of public opinion or policy

(b) your membership of any political party or trade union.

7.3 In addition to those interests listed at 7.1 and 7.2 above which you are required to register, you **may** wish also to declare membership of any body which, in your view, might create a conflict of interest in carrying out your duties as a Member, such as membership of the Freemasons or any similar body.

7.4 Where the Council's Monitoring Officer agrees that any information relating to your interests is "*sensitive information*" namely information whose availability for inspection by the public is likely to create a serious risk that any person may be subjected to

violence or intimidation, you need not include that information when registering that interest, or, as the case may be, any change to that interest.

- 7.5 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded is no longer sensitive information, notify the Council's Monitoring Officer asking that the information be included in the Council's Register of Members' Interests.

Declaration of Interests

8. Unless a dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function which relates to or is likely to affect any matter in which you have a disclosable pecuniary interest as defined by Regulations referred to at Para 6(b)(i) .

- 8.1 Where you have any interest in business of the Council and you attend a meeting at which that business is to be considered, you must:

- (a) disclose to that meeting the existence and nature of that interest but where your interest is sensitive you are not required to disclose the nature of the interest but merely the fact that you have an interest in the matter concerned;
- (b) disclose any interest, no later than the commencement of the consideration of the business in which you have that interest, or (if later) the time at which the interest becomes apparent to you;
- (c) where you have a disclosable pecuniary interest, withdraw from the room or chamber where a meeting considering the business is being held at the commencement of the consideration of that business in which you have that interest, or (if later) the time at which the interest becomes apparent to you;
- (d) not seek to influence improperly any decision about that business;

unless you have obtained a dispensation from the Council's Monitoring Officer.

- 8.2 Members should note that the following is a criminal offence:

- (a) failing to notify the authority's monitoring officer of any disclosable pecuniary interests which the person has at the time when the notification is given, before the end of 28 days beginning with the day on which the person becomes a member or co-opted member of the authority,
- (b) failing to disclose a disclosable pecuniary interest to a meeting which has not been previously notified to the monitoring officer and if that interest is not the subject of a pending notification, failing to notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date of the disclosure
- (c) participating, or participating further, in any discussion of a matter in which a member has a disclosable pecuniary interest
- (d) participating in any vote, or further vote, taken on the matter at the meeting in which a member has a disclosable pecuniary interest

**MEMBERS' CODE OF CONDUCT
GENERAL NOTICE OF REGISTERABLE INTERESTS**

2012/13



I,

being a Member/Co-opted Member of the Council of the Borough of Torbay,

give notice below of those interests which I am required to declare under The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and Torbay Council's Code of Conduct:

I understand that in so doing I must declare any interest of my spouse or civil partner or of any person with whom I am living as a husband or wife and acknowledge that all references to 'you' below include reference to my spouse or civil partner or of any person with whom I am living as a husband or wife.

1. Employment, Office, Trade, Profession or Vocation

Please give details of (i) every employment, job, trade, business or vocation you have, for which you receive any benefit or gain (i.e. profit, salary or benefit in kind) including a short description of the activity e.g. 'Accountant' or 'Farmer' and (ii) the name of any employer or body, firm or company which you own or in which you have any beneficial interest.

Description of employment, job, vocation, trade or business	
Name of Employer, body, firm or company by which you are employed or in which you are a partner or a remunerated Director in which you have a beneficial interest	

2. Sponsorship

Please give details of any person or body (other than the Council) who has made any payment to you in respect of your election or any expenses you have incurred in carrying out your duties as a Councillor.

3. Securities: Interests in Companies

Please give details of body which has a place of business or owns land in the Council's area and in which you have a beneficial interest (a shareholding) of more than £25,000 (nominal value) or more than 1/100th of the total share issue of that body (whichever is the lower) or if there is more than one class of share, the total nominal value of shares in any class of that body of more than 1/100th of the total shares of that class

Note: It is not necessary to declare the nature or size of the holding, simply the name of the company or other body.

4. Contracts: for Goods, Works or Services with the Council

Please give details of any current, existing contracts for goods, works or services between the Council and you or any body, firm or company by which you are employed or which you own or in which you have a beneficial interest, as referred to at 3 above.

5. Landholdings and Licenses in the Area

Please give the address or other description (sufficient to identify the location) of any land or property in the Council's area in which you have a beneficial interest, indicating whether you are the owner, lessee or tenant, including land in which you may have a licence, alone or with others, to occupy for a period of one month or longer.

You must include the land and house you live in and for example an allotments you own or use.

6. Corporate Tenancies: Land leased from the Council

Please give the address or other description (sufficient to identify the location) of any land leased or licensed from the Council by a you or any body firm or company by which you are employed or which you own or in which you have a beneficial interest (specified at 3 above).

--

7. Membership of Other Bodies

Please give details of your membership of, or any position of general control or management, of any bodies in the categories listed below.

<p>Any Body or Organisation to which you have been appointed or nominated by the Council as its representative</p>	
<p>Any body which exercises functions of a public nature directed to charitable purposes <i>(e.g., an Industrial and Provident Society or Charitable Body)</i></p>	

<p>Any Body whose principle purpose is to influence public opinion or policy <u>or</u> which, in your view, might create a conflict of interest in carrying out their duties as a Councillor.</p> <p><i>(e.g. Political Party; Trade Union, Professional Association, Local Action Forum, Civic Society or Interest Group (e.g. National Trust; RSPB: Greenpeace or membership of the Freemasons or similar body)</i></p>	
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

DECLARATION

I recognise that if I fail to comply with the Code of Conduct for Members of the Council of the Borough of Torbay or:

- (i) omit any information that should be included in this Notice;
- (ii) give false or misleading information; or
- (iii) do not tell the Council of any changes to this Notice or new interests I acquire,

that may be a criminal offence and/or the matter may be referred for investigation.

Signed :

FOR OFFICE USE ONLY

Received: Update

Appendix A

General principles of public life

Selflessness – members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and integrity – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.

Objectivity – members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness – members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Leadership – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Personal judgement – members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others – members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship – members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.

Appendix B

Public sector equality duty (extract from s149 of the Equality Act 2010)

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under [the Equality Act 2010];

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Appendix C

Local Authority Code of Publicity

Introduction

1. This code applies to all local authorities in England specified in section 6 of the Local Government Act 1986 and to other authorities in England which have that provision applied to them by other legislation. Where the term “local authorities” is used in this code it should be taken as referring to both those categories of authority. References to “the Act” are to the Local Government Act 1986.

2. Local authorities are required by section 4(1) of the Act to have regard to the contents of this code in coming to any decision on publicity. Section 6 of the Act defines publicity as “any communication in whatever form, addressed to the public at large or a section of the public”. The code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newsheets and maintenance of websites – including the hosting of material which is created by third parties.

3. Nothing in this code overrides the prohibition by section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

Principles

4. Publicity by local authorities should:-

- be lawful
- be cost effective
- be objective
- be even-handed
- be appropriate
- have regard to equality and diversity
- be issued with care during periods of heightened sensitivity

Lawfulness

5. Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority’s Advertising Codes.

6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.

7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.

8. Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 (S.I. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority.

9. Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) (England) Regulations 2000 (S.I. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.

Cost effectiveness

10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved, including taking into account any loss of potential revenue arising from the use of local authority-owned facilities to host authority publicity.

11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is the most appropriate.

12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be achieved if locally produced publicity gives a local context to national issues.

13. The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations.

14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

Objectivity

15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views, but should avoid anything likely to be perceived by readers as constituting a political statement, or being a commentary on contentious areas of public policy.

16. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public

to hold a particular view on a question of policy. It is acceptable for local authority publicity to correct erroneous material which has been published by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.

17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.

18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

Even-handedness

19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.

20. Other than in the circumstances described in paragraph 34 of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the "face" of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.

21. It is acceptable for local authorities to host publicity prepared by third parties – for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.

22. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.

23. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.

24. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as a directly elected mayor, or

leader of the authority. Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.

25. Where local authorities provide assistance to third parties to issue publicity they should ensure that the principles in this code are adhered to by the recipients of that assistance.

Appropriate use of publicity

26. Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.

27. Local authorities should not incur expenditure on providing stands or displays at conferences of political parties for the purpose of publicity designed to influence members of political parties to take a particular view on any issue.

28. Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newssheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newssheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the council or other local service providers.

29. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or by any particular group for which services are provided.

30. All local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newsletters, newssheets or similar publications published by the local authority, should do this on the front page of the publication.

Equality and diversity etc

31. Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.

32. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

Care during periods of heightened sensitivity

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to

9 of this code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.

34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.

35. In general, local authorities should not issue any publicity which seeks to influence voters. However this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

**Protocol for the Assessment and Determination of Allegations of Breaches of
the Members Code of Conduct**

1. Introduction

- 1.1 Torbay Council and Brixham Town Council are required to have a Code of Conduct which deals with the conduct expected of their elected and co-opted members when they are acting in their official capacity. The Code of Conduct is also required to include appropriate provisions relating to the registration and disclosure of pecuniary and other interests.
- 1.2 The obligations in the Code of Conduct only apply when a Member is acting, holding themselves out as acting or giving the impression that they are acting in their official capacity.
- 1.3 There is no national regulator since the abolition of Standards for England. Torbay Council is responsible for administering its own Code of Conduct and the Code for Brixham Town Council. Torbay Council is therefore required to have in place arrangements under which allegations against members can be investigated and decisions on allegations can be made.
- 1.4 Torbay Council is required to appoint at least one Independent Person whose views may be sought by the Council, usually through the Monitoring Officer, or by subject members whether they are members of Torbay or Brixham Councils. The Council must seek the views of an Independent Person before making a decision on an allegation that has been referred for investigation. There is no right for the complainant to seek the views of the Independent Person and no such contact will be permitted.
- 1.5 The Independent Persons do not represent and nor are they advisors to the subject member or the Council. They must remain completely impartial and objective. Their only role is to assess complaints and form a view on them.

- 1.6 This protocol sets out the procedure for submitting a complaint alleging that a member has breached the Code of Conduct and the procedures that will be followed in dealing with such complaints. It also sets out the criteria for assessing a complaint.
- 1.7 All allegations will be dealt with objectively, fairly and consistently. Regard will be had to the public interest and the Council's fiduciary duty to council tax payers.
- 1.8 Within this protocol references to the Monitoring Officer include the Monitoring Officer or his nominated representative(s).
- 1.9 In this protocol the term 'Code of Conduct' means the Code of Conduct applicable to the subject member.
- 1.10 In this protocol the term 'member' means the mayor, any councillor or co-opted member.
- 1.11 In this protocol the term 'subject member' means the member against whom the allegation has been made.

2. Submitting a complaint

- 2.1 All complaints must be submitted in writing to the Monitoring Officer, but this includes fax and electronic submissions. We will assist you if you have a disability that prevents you from making or makes it difficult for you to submit your complaint in writing. We can also help if English is not your first language.
- 2.2 Complainants are encouraged to use our complaints form which we can send out as a hard copy or which is available in electronic format from our web site. Further information and the complaint form are available at:
<http://www.torbay.gov.uk/index/yourcouncil/councillorsdecisions/behaviourinterestsstandards.htm>

- 2.3 If you make a verbal complaint we will ask that the complaint is confirmed in writing unless the Monitoring Officer is satisfied that the circumstances justify a departure from the requirement that complaints are made in writing. If you make a verbal complaint and simply decline to confirm the complaint in writing for reasons which we do not consider to be justifiable we will take no further action on the complaint.
- 2.4 Anonymous complaints will be rejected. This does not include complaints where the complainant requests confidentiality (see section 7 below and on the complaint form).
- 2.5 Some complaints will fall outside of the scope of this protocol. If that happens the complaints will be forwarded to the relevant officers in the Council the complainant will be advised of this.
- 2.6 To submit complaints electronically please use the on-line form at the link in paragraph 2.2 above.

All complaints must be sent or delivered to:

The Monitoring Officer
% Governance Support
Torbay Council
Town Hall
Castle Circus
Torquay TQ1 3DR

3. Processing and determination of complaints

Initial Assessment – Stage 1

- 3.1 When a complaint is received which is within the scope of this protocol we will aim to acknowledge receipt within 5 working days.
- 3.2 The Monitoring Officer will carry out an initial assessment of whether the

alleged behaviour could amount to a breach of the Code of Conduct and therefore within this protocol. This will normally be done within 10 working days. If the allegation could not amount to a breach of the Code of Conduct or is considered to be within one or more of the criteria set out below the complaint will not be progressed beyond this initial assessment stage.

- If the complaint is the same or substantially the same as a complaint previously dealt with within the subject members term of office
- If the period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue
- If the complaint is insubstantial
- If the complaint discloses a minor or technical breach of the Code that it would not be in the public interest to pursue
- If the complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive
- If the complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration
- If the complaint is covered by the Council's policy on persistent and vexatious complaints
- If the member against whom the allegation has been made has remedied or made reasonable endeavours to remedy the matter
- If the complaint is about a person who is no longer a member of a relevant council and there are no overriding public interest reasons to merit further consideration
- The complainant has suffered no significant injustice or emotional upset from the breach complained about

Provided always that if the complaint falls into one or more of the above categories but is deemed sufficiently serious by the Monitoring Officer then the complaint may be progressed at the Monitoring Officer's discretion.

- 3.3 At this stage, if the complaint is not to progress further the Monitoring Officer will notify the complainant in writing of that fact and with the reasons. The Monitoring Officer will also write to the subject member with details of the complaint, the decision made and the reasons for the decision. Where the subject member is a member of Brixham Town Council, the Monitoring Officer will also provide the same information to Brixham Town Council's Clerk. The name of the complainant will be disclosed to the subject member and, where appropriate, the Brixham Town Council's Clerk unless confidentiality has been requested and the Monitoring Officer considers the request to be justified.
- 3.4 Notwithstanding paragraph 3.2, the Monitoring Officer will in appropriate circumstances pass to the police or Director of Public Prosecutions any allegations it receives which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.

Assessment of Complaints – Stage 2

- 3.5 For those complaints which are to be taken beyond the process detailed in the preceding paragraphs, the following steps will be followed. The Monitoring Officer and the subject member may seek the views of the nominated Independent Person at any time during this process. If considered necessary by the Monitoring Officer he or she may convene a panel of members of the Standards Committee to assist him or her with the consideration and determination of the complaint. The Monitoring Officer may do this at any time during the process. Where a complaint is in respect of a breach of Brixham Town Council's code of conduct the Monitoring Officer will ask the Clerk to Brixham Town Council to nominate a member of Brixham Town Council to sit on any such panel.

Step	Action
1	<p>The Monitoring Officer will write to the subject member with details of the complaint, including those of the complainant unless any confidentiality request has been agreed, and also the name and contact details of the Independent Person who has been nominated for the complaint and who the subject member may contact to seek their views. If the Monitoring Officer considers it appropriate the Clerk to Brixham Town Council will be notified of the complaint. At this stage the subject member will be given an opportunity to provide the Monitoring Officer with a written response to the complaint. Ordinarily we will ask the subject member to restrict their written comments to two sides of A4 but they will be permitted to provide copies of supporting documents.</p>
2	<p>The Monitoring Officer will consider the complaint again in the context of any written submissions and supporting documentation provided by the subject member.</p>
3	<p>The Monitoring Officer will determine the complaint in accordance with the Assessment Criteria set out in Annex A. The options the Monitoring Officer has are:</p> <ul style="list-style-type: none"> (i) to make no finding as to whether there has been a breach of the Code and take no further action; (ii) to make no finding as to whether there has been a breach of the Code but determine that some action other than an investigation is appropriate; (iii) to find no breach of the Code; (iv) to find a breach of the Code without an investigation but impose no sanction; (v) to find a breach of the Code without an investigation; (vi) to require the complaint to be investigated to determine whether there has been a breach of the Code and the seriousness of the breach; (vii) No further action; (viii) Referral for other action; and

	(ix) to conclude that the circumstances of the complaint indicate that an offence under Chapter 7 of Part 1 of the Localism Act 2011 may have been committed and that the complaint ought to be investigated, by the police where appropriate, to determine whether a prosecution should be brought.
4	The outcome of the determination of the complaint will be notified in writing to the complainant, the subject member and, where appropriate, the Clerk to Brixham Town Council within 5 working days of the determination.

3.6 The above steps 1 to 4 will normally be conducted within 28 days of receipt of the complaint. If it is not possible to do this within this time the complainant, subject member and, where appropriate, the Clerk to Brixham Town Council will be contacted and advised of the delay and provided with an estimate of when the Steps will be completed.

4 What happens following assessment of complaints?

4.1 Any action or investigation will be implemented. If other action is determined as appropriate and either party declines to cooperate that will be reported to the Monitoring Officer who may decide to deal with the complaint under another option under step 3 in the table above. Where the subject member belongs to a political group any failure by that subject member to cooperate will be reported to their group leader by the Monitoring Officer.

4.2 If potential criminal offences are identified and the complaint referred for investigation with a view to prosecution the appropriate procedures of the police or the Council will be followed so as to protect the integrity of the investigation.

4.3 A report setting out all the complaints received and what action was taken regarding them will be forwarded to members of the Standards Committee on a quarterly basis.

4.4 Where an investigation is deemed appropriate investigations will be carried out in accordance with the guidance on 'How to Conduct and Investigation' produced by Standards for England that was applicable to the Code of Conduct for Members pursuant to the Local Government Act 2000. Prior to the final investigation report being issued the Independent Person shall be asked for any comments they may have in respect of the investigation report and the investigator must take into account these comments but is not obliged to follow them. Any comments of the investigator will be included as part of the final report.

4.5 Any hearings following investigation will be dealt with in accordance with Annex B to this protocol.

5 General rules concerning assessments – public access to meetings and information

5.1 Should the Monitoring Officer decide to convene a panel of the Standards Committee to assist him or her in the consideration or determination of a complaint such meetings shall be deliberative only and shall not be open to the public. The decision as to how the matter should be progressed shall remain the decision of the Monitoring Officer. The press, members, officers (except the Monitoring Officer and Governance Support Officer), members of the public, the subject member and the complainant will not be permitted to attend the meetings.

5.2 Data protection requirements will be complied with and may prevent the public disclosure of information relating to complaints.

5.3 On completion of the assessment a written summary will be published in the form of a decision notice. Once this has been sent to the subject member and the complainant a copy will be placed on the Councils web site.

6 Withdrawal of complaints by Complainants

6.1 Request to withdraw complaints will normally be granted but in considering such a request from the complainant the Monitoring Officer will consider the following factors:

- (i) Whether the public interest in taking action on the complaint outweighs the complainant's desire to withdraw it;
- (ii) Whether the complaint is such that action can or should be taken on it without the complainant's participation; and
- (iii) Whether there appears to be an identifiable underlying reason for the request to withdraw the complaint such as whether there is information to suggest that the complainant may have been pressurised into withdrawing the complaint.

7 Complainant confidentiality

7.1 The subject member will, in normal circumstances, be told from the outset who has complained about them. If a complainant asks for their identity to be withheld their request will be considered by the Monitoring Officer prior to the member being notified that a complaint has been made.

7.2 Each request for confidentiality will be considered on its merits and in determining such a request the following will be considered:

- (i) Whether the complainant reasonably believes that they, or those connected to them, will be at risk of harm if their identity is disclosed;
- (ii) That the complainant is reasonably concerned about the consequences to their employment, or those connected to them, if their identity is disclosed;
- (iii) That the complainant, or somebody closely connected to them, suffers from a medical condition and there is evidence of medical risks associated with their identity being disclosed or confirmation from an appropriate medical professional that that is the case; and

(iv) Whether the public interest in proceeding with the complaint outweighs the complainant's wish to have their identity withheld.

7.3 If it is not considered appropriate to grant a request for confidentiality the complainant will be offered the opportunity to withdraw the complaint rather than proceed with it.

Annex A - Complaint Assessment and Determination Procedure

Assessment Criteria

1. Introduction

- 1.1 All complaints and reviews will be considered on their merits and according to the facts.
- 1.2 The Monitoring Officer will determine when it is appropriate to seek the views of the Independent Person.
- 1.3 These assessment criteria, will be used as guidance in the consideration and determination of complaints. However, due to the wide variety of complaints received by the Council, avoiding the perception of inconsistency, even in assessing complaints, is no easy task. For example two complaints may be about the same aspect of the Code but differ considerably in terms of the facts, how serious they are and there may be huge differences in the relevance and amount of detail regarding the complaint. For these reasons the assessment criteria can only be a guide.

2. The Assessment Criteria

Overriding criteria

These three tests will be applied during the initial assessment of a complaint:

- Is the complaint about one or more named members of a relevant authority?
- Was the subject member in office at the time of the alleged conduct?
- If proven, would the complaint disclose a breach of the Code of Conduct?

No finding of whether there is a breach of the Code

If, based on the facts, it is not possible to determine whether there has been or may have been a breach of the Code and the alleged conduct does not merit an

investigation, having regard to the public interest, this is the appropriate finding to make.

No finding of whether there is a breach of the Code but action other than investigation is appropriate

Where, based on the facts, it is not possible to determine whether there has been or may have been a breach of the Code and having regard to the public interest, the alleged conduct does not merit an investigation. If the allegation and any response from the subject member disclose an underlying issue that action such as mediation or training on the Code or council procedures might assist with, this is the appropriate finding to make.

Finding of no breach of the Code

If the facts available demonstrate on the balance of probabilities that there has been no breach of the Code, this is the appropriate finding to make. If there is no breach of the Code a sanction cannot be imposed but other action such as mediation or training might still be considered.

Finding of a breach of the Code without an investigation

A finding that the Code of Conduct has been breached without the need for an investigation will usually be appropriate in the following circumstances:

- It can clearly be shown that from the information that has been provided by the subject member and the complainant that a breach of the Code has occurred without the need for an investigation;
- The subject member has admitted to the breach of the Code, whether or not they have offered to remedy the breach;
- It can be shown that an investigation is unlikely to be able to establish any further independent relevant evidence regarding the complaint or that the cost of obtaining any further evidence would not be justified having regard to the public interest and that on the evidence supplied a breach of the Code can be shown.

A breach of the Code without investigation can only be found if the complaint satisfies the first three initial tests and that it can be clearly shown, on the balance of probabilities, that a breach of the Code of Conduct has occurred.

No Further Action

If a breach of the Code is found but it is trivial, a technical breach or otherwise of limited effect it may be appropriate to take no further action.

Referral for other action

A complaint may be referred for other action in the circumstances listed below. Other action may be appropriate whether a breach is found or not. However, in general, other action may be used where the complaint discloses a widespread problem rather than a specific one concerning the members conduct.

The following should be considered in determining whether it is appropriate to refer a complaint for other action:

- Does taking further action provide an opportunity to resolve the issue and to prevent any similar issues arising in the future and promote good governance?
- Does the complaint present a potentially less serious breach of the Code than would require the matter to be referred for investigation and is any benefit to be gained from referring the matter for investigation?
- Is the council of which the subject member is a member suffering from a widespread breakdown in internal relationships and trust where a course of action other than an investigation of a complaint may be more appropriate and beneficial to that council?

Referral for Investigation

A complaint should usually be referred for investigation in the following circumstances:

- The complaint has passed all three of the initial tests
- The subject member has denied the allegations but the information presented indicates that there may be a breach of the Code
- On the information provided the potential breach of the Code of Conduct is sufficiently serious that an investigation should be undertaken to either discount or substantiate the complaint and to determine what sanction, if any, is appropriate

Potential offences under the Localism Act 2011

If it is considered that the allegation concerned may disclose an offence under the Localism Act it should be referred to the police or other appropriate person(s) for further consideration as to whether there should be an investigation with a view to prosecution. No prosecution can be brought without the consent of the Director of Public Prosecutions.

If it transpires that no offence was committed, whether following trial or otherwise, the complaint ought to be reintroduced to this procedure for determination of any breach of the code and appropriate sanction, if any.

Annex B – Actions Following Completion of Investigation Report

1. Processing the Investigator's Report

1.1 As soon as possible following receipt of the Investigator's report the Governance Support Team will write to the complainant and the subject member enclosing a copy of the report.

1.2 Where the investigation report makes a finding of no breach, no further action will be taken in respect of the complaint and both parties will be informed of this when the report is sent to them. A press release will also be made confirming that there the report found there to be no breach.

1.3 Where the investigation report does find there to be a breach of the Code of Conduct the Governance Support Team will arrange for three members of the Standards Committee (plus one member of Brixham Town Council where the complaint is in respect of a breach of Brixham Town Council's Code of Conduct) to make up the Hearing Sub Committee and set a date a Hearing is to take place. The complainant and subject member will be contacted with details of when the Hearing is to take place and given a deadline by which to submit the following:-

- Whether they will be attending the hearing and if they will be represented
- The names of any witnesses they will be bringing to the hearing
- What findings of fact (if any) they dispute in the investigator's report
- Any other matters that they would like to be take into consideration

1.4 Prior to the Hearing taking place and after the deadline for responses to the above paragraph from the complainant and the subject member the nominated members of the Hearing Sub Committee will meet with the Monitoring Officer in private to discuss:

- (a) The findings of fact in the Investigator's report that are agreed.
- (b) The findings of fact in the Investigator's report that are not agreed.

- (c) Whether or not the complainant, the subject member and/or the Investigator will attend or be represented or should be asked to attend.
- (d) The names of any witnesses who the complainant and/or subject member intend to invite
- (e) The comments of the Independent Person in respect of the investigation report
- (f) An outline of the proposed procedure for the hearing.
- (g) Any other matters the Monitoring Officer considers appropriate.

Following this pre hearing discussion the complainant and the subject member will be informed in writing of persons who will be present at the Hearing and the agenda for the Hearing. At this stage the complaint and/or subject member may also be asked to attend the Hearing if they have not already indicated that they will be attending.

2. The Hearing

2.1 Unless otherwise specified following the pre hearing meeting referred to at paragraph 1.4 above, those required to attend the Hearing shall be the Hearing Sub Committee members, the investigator and a legal adviser (who shall not be the investigator) nominated by the Monitoring Officer. The subject member and complainant and any witnesses either may have nominated cannot be required to attend the meeting although will be expected to attend if requested following the pre hearing meeting.

2.2 The subject member or the complainant may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Hearing Sub Committee, another person. Where representation is required by either party subject to this clause the party should notify the Monitoring Officer as soon as possible and failure to notify in good time may mean that the request for representation is refused.

Note: the member or complainant (as the case may be) must meet the cost of their representation.

2.3 The Hearing Sub Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The Hearing Sub Committee may adjourn to hear legal advice but this advice will then be repeated by the legal advisor in the public forum.

2.4 At the Hearing Sub-Committee, it will not normally be permitted to raise new disagreements over findings of fact in the final report unless there are good reasons for doing so (for example, new evidence becoming available). It is therefore important that the subject member raises any issues of concern with the Monitoring Officer or the Governance Support Manager before the hearing.

3. Preliminary Procedural Issues

3.1 Before the Hearing Sub-Committee considers the Investigator's report it will consider any procedural issues, including requests for paperwork to be withheld from the public and/or for any part of the meeting to be held in private. The Hearing Sub-Committee will then resolve any other issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

3.2 The Hearing Sub-Committee may adjourn at any time to require further information or a further investigation to be carried out.

4. Making Findings of Fact (Stage 1)

4.1 After dealing with any preliminary issues, the Hearing Sub-Committee will then move to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

4.2 If there is no disagreement about the facts, the Hearing Sub-Committee will move on to the next stage of the hearing.

4.3 If there is a disagreement, the Investigator, will be invited to make any necessary representations to support the relevant findings of fact in the report. With the Hearing Sub-Committee's permission, the Investigator may call any necessary

supporting witnesses to give evidence. The Hearing Sub-Committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the Investigator.

4.4 The subject member will then have an opportunity to make representations to support his or her version of the facts and, with the Hearing Sub Committee's permission, call any necessary witnesses to give evidence.

4.5 At any time, the Hearing Sub-Committee may question any of the people involved or any of the witnesses and may allow the Investigator to challenge any evidence put forward by witnesses called by the member of the complainant.

4.6 If the subject member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement during the pre-hearing process, he or she must give good reasons for not mentioning it before the hearing. After considering the member's explanation for not raising the issue at an earlier stage, the Hearing Sub Committee will then:

- (a) continue with the hearing, relying on the information in the Investigator's report;
- (b) allow the subject member to make representations about the issue, and invite the Investigator to respond and call any witnesses as necessary; or
- (c) adjourn the hearing to arrange for appropriate witnesses to be present but only if they believe that those witnesses will attend any adjourned hearing.

4.7 The Hearing Sub Committee will normally move to another room to consider the representations and evidence in private unless there are no significant disagreements about the facts contained in the Investigator's report.

4.8 If the Hearing Sub Committee have withdrawn they will then return for the Chairman to announce its findings of fact.

**5. Did the Subject Member Fail to Follow the Code of Conduct for Members?
(Stage 2)**

5.1 The Hearing Sub Committee will then consider whether or not, based on the facts it has found, the subject member has failed to follow the Code of Conduct.

5.2 The subject member will be invited to give relevant reasons why the Hearing Sub Committee should not decide that he or she has failed to follow the Code.

5.3 The Hearing Sub Committee will then consider any verbal or written representations from the Investigator.

5.4 The Hearing Sub Committee may, at any time, question anyone involved on any point they raise in their representations.

5.5 The subject member will be invited to make any final relevant points.

5.6 The Hearing Sub Committee will then move to another room to consider the representations.

5.7 If the Hearing Sub-Committee have withdrawn when they return the Chairman will announce its decision as to whether or not the subject member has failed to follow the Code of Conduct.

6. If the Subject Member has not Failed to Follow the Code of Conduct for Members

6.1 If the Hearing Sub Committee decides that the member has not failed to follow the Code of Conduct, it will move on to consider whether it should make any recommendations to the authority.

7. If the Subject Member has Failed to Follow the Code of Conduct (Stage 3)

7.1 If the Hearing Sub Committee decides that the subject member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigator and the member (in that order) as to:

- (a) whether or not the Hearing Sub Committee should set a sanction; and
- (b) what form any sanction should take.

7.2 The Hearing Sub Committee will move to another room to consider whether or not to impose a sanction on the subject member and, if so, what that sanction should be. On their return, the Chairman will then announce the Hearing Sub Committee's decision.

7.3 When deciding on a sanction, the Hearing Sub-Committee will make sure that it is reasonable and in proportion to the subject member's behaviour.

8. Recommendations to the Council

8.1 After considering any verbal or written representations from the Investigator, the Hearing Sub-Committee will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct among members.

9. The Written Decision

9.1 The Hearing Sub Committee will announce its decision on the day and provide a short written decision on that day. A full written decision prepared by the Governance Support Manager and approved by the Monitoring Officer and Chairman of the Hearings Sub-Committee will be published within ten working days.



Public Agenda Item: **Yes**

Title: **Determination of Independent Person Specification**

Wards Affected: **None**

To: **Standards Committee** On: **30 January 2013**

Contact Officer: **Anthony Butler**

☎ Telephone: **01803 207155**

✉ E.mail: **anthony.butler@torbay.gov.uk**

1. Key points and Summary

1.1 At the full council meeting of 12 July 2012 the Council adopted its new code of conduct in accordance with the requirements of the Localism Act 2011. Part of that decision included confirmation of the Council's independent persons appointed under the old regime continuing for a further year whilst new independent persons were appointed. The Localism Act 2011 and the regulations prohibit the independent persons appointed under the old regime for continuing in the role beyond July 2013.

2. Actions

2.1 A job description and person specification have been developed and members are asked for their comments and amendments to these prior to the role being advertised. A copy of the draft job description and person specification are included at Appendix A. Comments are specifically sought in respect of the following:-

1. What allowance (if any) should be paid to the person(s) appointed?
2. How many independent persons should be appointed?
3. Are there any additional eligibility criteria that should be included or considered?

3. Background

3.1 The Localism Act 2011 ('the Act') requires the Council to appoint at least one independent person:-

(a) whose views are to be sought, and taken into account, by the Council before it makes its decision on an allegation that it has decided to investigate, and

(b) whose views may be sought—

(i) by the Council in relation to an allegation in circumstances not within paragraph (a),

(ii) by a member, or co-opted member, of the Council or Brixham Town Council if that person's behaviour is the subject of an allegation

3.2 The provisions of the Act mean that a member, co-opted member or officer of Torbay Council or Brixham Town Council cannot be appointed as the independent person for Torbay and nor can a relative or close friend of such a person be appointed. Furthermore, a person who was a member, co-opted member or officer of Torbay Council or Brixham Town Council cannot be appointed as an independent person within 5 years of their ceasing to be the same.

3.3 The applicants will be interviewed by the Monitoring Officer and Executive Head Commercial Services and the appointments must be approved by full council. It is expected that a report will be put to full council in May 2013.

Anthony Butler
Monitoring Officer

Appendix A

Appointment of Independent Person - DRAFT

The Localism Act 2011 provides the statutory framework for regulating the conduct of Councillors.

To assist the Council in maintaining high standards of conduct, ethics and probity, the Council is seeking to recruit two Independent Persons. The role of the Independent Person is:

- To provide their views on complaints made against Councillors at the assessment stage, if requested;
- To provide their views on all complaints that reach the investigation stage;
- To provide support to the Councillor complained against at any time after a complaint is received, if requested by the relevant Councillor;
- When required, to assist the Standards Committee and/or the Council in encouraging and maintaining high standards of conduct.

The appointment will be effective from July 2013. To be eligible to be an Independent Person you must NOT:

- Currently be a Councillor or Officer or a co-opted Member of a Committee of Torbay Council or Brixham Town Council or have been a Councillor, Co-opted Member or Officer of either in the last 5 years;
- Be a relative or have any close links with any Councillor or Officer of Torbay Council or Brixham Town Council which might lead people to question your independence;
- Have made a formal complaint to the Council in respect of the behaviour of any member of Torbay Council or Brixham Town Council in the past 2 years.

Appropriate training will be given (and travelling and subsistence expenses will be paid.)(The position attracts an allowance of ???) The position does not attract an allowance.

If you would like an information discussion please telephone Anthony Butler, Monitoring Officer, telephone number 01803 207155 or anthony.butler@torbay.gov.uk

Applications should be submitted by 15 March 2013

Interviews will be held in April 2013

Please complete the application form in full and return it to Lisa Antrobus, Governance Support Officer by 12 noon on 15 March 2013. Your form can be completed electronically and returned by email to lisa.antrobus@torbay.gov.uk.

Alternatively, please post to: Torbay Council, Town Hall, Castle Circus, Torquay, TQ1 3DR.

Job Description - Independent Person

Post: Independent Person

As required by the Localism Act 2011, an Independent Person contributes towards promoting and encouraging high standards of conduct by bringing an independent and impartial voice to issues relating to complaints about a Member (including co-opted Members) of the Authority. Specifically the views of the Independent Person must be sought, and taken into account, by the Authority before it makes its decision on an allegation. The Independent Person may also be asked by the Standards Committee and/or the Council to assist in reviewing the general conduct of Members from time to time.

Objectives of the Post:

- Offer an objective and independent view on complaints of non-compliance with the Council's Code of Conduct;
- Consider and advise on the other matters relating to conduct, ethics and probity as referred to it by the Council's Monitoring Officer;
- Assist the Council in maintaining high standards of conduct, ethics and probity.

In order to achieve this, Independent Person will be expected to:

- attend appropriate training courses, briefing sessions and events arranged by the Council.
- Adhere to the Council's Code of Conduct.

Person Specification – Independent Person

Qualifications	
1. No specific qualifications or background is required.	
Essential Knowledge and Skills	Desirable Knowledge and Skills
2. A good communicator with questioning skills. 3. Assertive. 4. Inquisitive, open-minded and non-judgemental.	1. General understanding of the principles behind the Members Code of Conduct. 2. Awareness of the background to the new ethical framework for local government.
Essential Experience	Desirable Experience
5. An interest in public service and local government in particular.	3. A demonstrable interest in local issues. 4. Experience in committee working/weighing evidence and dealing with ethical issues.
Essential Competencies	Desirable Competencies
6. A person in whose impartiality and integrity the public can have confidence. 7. Understand and comply with confidentiality requirements.	
Essential – Other Requirements	
8. Meets all the eligibility requirements	

Agenda Item 11



Title: **Statistics**

Wards Affected: **All Wards in Torbay**

To: **Standards Committee** On: **30 June 2013**

Contact Officer: **Anthony Butler**

☎ Telephone: **01803 207155**

✉ E.mail: Anthony.Butler@torbay.gov.uk

- 1.1 As Members are aware the 'old' standards regime and Code of Conduct came to an end in 2012 and was replaced with the current structure.
- 1.2 As a conclusion to the regime, Members may wish to note the overall figures below which cover the period of May 2008 to July 2012

	Torbay Council	Brixham Town Council
Number of complaints received	29	13
Number of complaints resulting in 'no further action'	18	11
Number of complaints investigated by the Monitoring Officer	11	2
Number of complaints investigated by the Monitoring Officer resulting in 'no further action'	6	2
Number of Hearings held	5	0
Number of breaches of the Code of Conduct	5	0

- 1.3 The Localism Act did not allow a transition period, which resulted in some complaints having to be considered under both regimes, the table below covers the period from July 2012 until 18 January 2013:

	Torbay Council	Brixham Town Council
Number of complaints received	4 (3 of these were also considered under the old regime)	2 (1 of these was also considered under the old regime)
Number of initial assessments undertaken by the Monitoring Officer resulting in 'no further action'	4	2
Number of complaints investigated by the Monitoring Officer	0	0
Number of complaints investigated by the Monitoring Officer resulting in 'no further action'	0	0
Number of Hearings held	0	0
Number of breaches of the Code of Conduct	0	0

Anthony Butler
Monitoring Officer