

# **East Devon District Council's**

## **Standards Committee**

### **Procedure for Local Assessment of Complaints**

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## 1. Definitions

| Term  | Meaning  |
|---|--|
| Council's Standards Assessment and Hearings Sub-Committee | The sub-committee set up by the Standards Committee to deal with the initial assessment of complaints of misconduct  |
| Committee Officer   | The Officer responsible for supporting the Standards Committee   |
| Code of Conduct   | The <b>East Devon District Council</b> Code of Members' Conduct or the relevant Parish Council Code of Conduct   |
| Complainant   | The person who has made the complaint to the Standards Committee about the Councillor  |
| Council   | East Devon District Council  |
| Councillor  | The Councillor against whom the complaint has been made  |
| Monitoring Officer  | Includes her nominated representative or persons appointed on her behalf   |
| Officer   | An employee of the Council   |
| Regulations   | The Standards Committee (England) Regulations 2008 (SI 1085)   |
| Council's Standards Review Sub-Committee                  | The subcommittee set up by the Standards Committee to deal with the review of initial assessments of complaints (or the Review Sub-committee of East Devon District Council) |
| Standards Board   | The Standards Board for England which is the national body for promoting and overseeing ethical governance and for giving advice.  |
| Standards Board Guidance                                  | Local Assessment of Complaints 2008 (unless otherwise stated)  |
| Standards Committee                                       | The Council's Standards Committee  |
| Within specified number of working days                   | These are the targets that the Council has set itself in order to deal with matters and will use all reasonable endeavours to meet these targets                             |

## 2. Introduction

### 2.1 Chairman's introduction

All councillors (including district, co-opted and parish & town councillors), are bound by a strict Code of Conduct. This Code governs their general behaviour, setting out things councillors must and must not do while acting in their official capacity. It also includes rules about registering and declaring personal or prejudicial interests, gifts and hospitality, and explains what councillors must do when potential conflicts of interest arise at meetings.

The national body overseeing the ethical conduct of councillors is the Standards Board for England. At local level, this task falls to **local authority standards committees**. These local authority committees are made up of elected councillors from the district and parish councils and independent people appointed from the local community.

In May 2008, standards committees became responsible for receiving and assessing complaints made about councillors' conduct (previously, this was carried out by the Standards Board). The Standards Committee will examine each complaint and decide whether any action is required. Such action can range from suspension of the Councillor, after a full investigation in the more serious circumstances, to mediation between the Councillor and the Complainant. Should the Committee decide to take no action, the Complainant does have the opportunity to appeal or submit further information.

This document sets out the procedure to be followed by East Devon District Council's Standards Committee in carrying out this "Local Assessment" function. The procedure, based on legislation and national guidance, will be kept under regular review.

East Devon's Standards Committee, has always been committed to promoting and maintaining the highest standards of conduct. In relation to our new local assessment role, we make the following commitments, both to the general public and local councillors:

- We will judge each complaint fairly and on its merits;
- We will seek to ensure consistency in our judgements;
- We will deal with complaints in a timely way, communicating effectively with complainants and the councillors, and other relevant parties;
- We will review our procedures regularly in accordance with best practice

Ted Butt

Independent Chairman, East Devon District Council's Standards Committee

October 2008

## 2.2 Context

As from 8 May 2008, all allegations that a councillor has breached the Code of Conduct must be made to the local Standards Committee.

In relation to allegations of misconduct, the Standards Committee is responsible for:

- **Assessing allegations** of misconduct to decide whether or not to refer the complaint for investigation or other action
- **Reviewing** an initial decision not to refer for investigation, if the complainant so requests
- Receiving reports and conducting a **Hearing** following an investigation to determine whether the Code has been broken, and if so to consider what, if any, sanctions should be imposed.

## 2.3 When does this procedure apply and what does it cover?

This procedure applies to all complaints about councillor misconduct relating to East Devon District Councillors, co-opted members and councillors belonging to the parish and town councils within the District of East Devon.

The procedure applies to the initial **assessment** of complaints of councillor misconduct within the District of East Devon and any **review** of that initial decision (where it has been decided that no action be taken).

Please refer to the Council's associated procedure on:

- Standards Committee Determinations

The Assessment and Hearings Sub-committee can only deal with complaints about the behaviour of a Councillor. It cannot deal with complaints about things that are not covered by the Members' Code of Conduct.

If a Complainant wants to complain about:

- A decision or action of the Council or one of its committees
- A service provided by the Council
- Council Officers

then s/he should follow the Council's Corporate Complaints Procedure (please see details at the end of this procedure).

Also, the Assessment and Hearings Sub-committee has no jurisdiction in respect of any complaint which relates to:

- Person who are not members of the Council (or its parish/town councils)
- Conduct which occurred when the Councillor was not a member of the Council (or its parish/town councils)
- Conduct which incurred before the Council adopted a Code of Conduct
- Conduct which applies in a councillor's private life, as the Code only applies to a councillor's behaviour as a member of the council
- Conduct which occurred when the Councillor was acting as a member of another authority.

**NB.** It is important to note that not every complaint that **does** fall within the jurisdiction of the Standards Committee, will be referred for investigation or other action. The Assessment and Hearings Sub-committee will decide whether this is appropriate, based on referral criteria. Please refer to section 8 on Assessment Criteria..

## **2.4 Responsibilities**

In accordance with the Regulations, the Standards Committee has set up the following subcommittees:

- **The Assessment and Hearings sub-committee** which deals with the initial assessment of a complaint received by the Standards Committee. It also holds hearings following a Monitoring Officer investigation report and determines whether the Code has been broken, and if so considers what, if any, sanctions should be imposed. This procedure deals with local assessment, so for simplicity the sub-committee will be referred to as the Assessment sub-committee.
- **The Review sub-committee** (made up of different members to the Assessment Sub-committee) which will deal with a request from the Complainant for a review of the initial decision (in cases where the Assessment Sub-committee has decided that no action should be taken)

The purpose of an assessment decision (or review) is to simply decide whether any action should be taken on the complaint. The Assessment and Review Subcommittees make no findings of fact.

## **2.5 Legislation and Guidance**

The Standards Committee (England) Regulations 2008 (SI 1085) set out the framework for the operation of a locally based system for the assessment, referral, investigation and hearing of complaints of councillor misconduct.

In setting up this procedure due regard has been had to the Standards Board Guidance “**Local Assessment of Complaints**”.

## **2.6 Other relevant Legislation and Guidance**

- Local Government Act 1972
- Local Government Act 2000
- Local Government and Public Involvement in Health Act 2007
- Standards Committee (England) Regulations 2008
- Standards Board Guidance - Local Assessment of Complaints
- Standards Board Guidance - Role and Make-up of Standards Committees
- Standards Board Code of Conduct Guidance for Members 2007

(Please see “Links to websites” at the end of this procedure).

### 3. How to complain

If anyone wishes to complain about the conduct of an East Devon District Councillor, co-opted member or an East Devon parish or town councillor, s/he must complain in writing to:

The Standards Committee  
C/o The Monitoring Officer  
East Devon District Council, Knowle, Sidmouth EX10 8HL  
Email: [monitoringofficer@eastdevon.gov.uk](mailto:monitoringofficer@eastdevon.gov.uk)  
Fax: 01395 517507

There is a **Code of Conduct Complaint Form** available on the Council's website, and paper copies are available from the Monitoring Officer and the Council's offices. There are notes to help Complainants on the Complaint Form and in the additional notes accompanying the Form (follow the links to [The Council and Councillors on the Council's website at www.eastdevon.gov.uk](#)).

The Complainant must set out clearly:

- Who the complaint is about
- What s/he believes the Councillor did wrong
- Why s/he believes that the Councillor's conduct amounts to a breach of the Code of Conduct
- Provide copies of any relevant documents

Although complaints should be made in writing, we can make reasonable adjustments to help Complainants who have a disability that prevents them from making a complaint in writing. We can also help if English is not your first language.

If you need any support in completing the Complaint Form, please let us know as soon as possible. Similarly, if you have difficulties with understanding this Procedure, please let us know and we can help you.

#### 4. Receipt of complaints

All complaints should be directed to the Standards Committee care of the Monitoring Officer (see “How to Complain” above).

The **Monitoring Officer** will:

- write to the Complainant to acknowledge receipt of the complaint within 5 working days of its receipt;
- tell the Councillor within 5 working days that a complaint has been made against him/her (unless confidentiality requested by Complainant - see below).

The Notification letter to the Councillor will:

- Say that a complaint has been received
- Give the name of the Complainant (unless confidentiality requested – see paragraph 10 below)
- Include the paragraphs of the Code which appear to be relevant
- Give the date of the Assessment Sub-committee (if known)

**Please Note:**

The notification letter to the Councillor will **not** include a written summary of the complaint. This can only be provided after the Assessment Sub-committee has met to consider the complaint.

- Where relevant, tell the Clerk that a complaint has been made against a town/parish councillor
- Add the complaint to the database of complaints using the reference system: authority/case number/date [EDDC/LSB-0].

The **Democratic Service Officer** will arrange for a meeting of the Assessment Sub-committee to be held within **20 working days** of the date of the receipt of the complaint, in order for it to decide whether or not any action should be taken.

## 5. Pre-assessment of complaints

### 5.1 Pre-assessment inquires

The Monitoring Officer may carry out any pre-assessment inquiries that she thinks might be necessary to help the Assessment Sub-committee at its meeting.

The Monitoring Officer will not make any enquiries that could amount to investigation, or ought properly be carried out at the investigation stage. Only easily obtainable, factual information (and not opinion) will be sought at the Pre-assessment stage of this procedure.

The Monitoring Officer may contact the Complainant for clarification of the complaint if it is not clear.

The Monitoring Officer may carry out pre-assessment inquiries such as:

- A copy of the Councillor's Declaration of Acceptance of Office/Undertaking to observe the Code
- Minutes of relevant meetings
- A copy of the Register of Interest
- Information from Companies House/Land Registry
- Other easily obtainable documents

## 6. Assessment of Complaints by the Assessment Sub-committee

### 6.1 Assessment Sub-committee meeting

The Assessment Sub-committee will meet to decide whether or not any action or investigation should be taken on the complaint.

The Assessment Sub-committee's meeting will not be open to the public (see section 13 below).

#### Assessment Timescales:

The Assessment Sub-committee will aim to meet within **20 working days** of receipt of the complaint to decide whether to take any further action.

The Assessment Sub-committee will issue its decision (by way of a Decision Notice) within **five working days** of its meeting.

### 6.2 Monitoring Officer Summary

The Monitoring Officer will prepare a short summary of the complaint for the Assessment Sub-committee to consider. The summary will be factual only and will not include anything to improperly influence the Assessment Sub-committee or the decision it will make.

The following will be included in the **Summary of the Complaint:**

Copy of the original complaint and documents sent with the complaint

A summary of the key aspects of the complaint (if lengthy or complex)

Any further information gathered at the pre-assessment stage that will help the Assessment Sub-committee with its decision e.g.

- A copy of the Councillor's Declaration of acceptance of office/undertaking to observe the Code
- Minutes of relevant meetings
- A copy of the Register of Interests
- Information from Companies House/land registry

Other easily obtainable information/documents

### 6.3 Initial tests

Before the Assessment Sub-committee begins to assess the complaint, it will ensure that the complaint meets the following initial tests:

#### Initial tests before assessing the complaint:

Is a potential breach of the Code disclosed?

To assist with the initial test:

- Is the complaint against a councillor who is a member of the Council (or one of its parish/town councillors)?\*\*
- Was the Councillor in office at the time of the alleged conduct?

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|---|
| <ul style="list-style-type: none"><li>• Was the Code of Conduct in force at the time of the alleged conduct?</li></ul>  |
| <ul style="list-style-type: none"><li>• Would the complaint (if proven) be a breach of the Code under which the Councillor was operating at the time of the alleged misconduct?</li></ul> |

\*\* For dual-hatted councillors see paragraph **13.5** below

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

## 7. Assessment

If the Assessment Sub-committee considers that the initial tests have been satisfied, it will then decide what action needs to be taken in relation to the complaint. Each complaint will be considered on its merits and according to its facts, and in accordance with the assessment criteria.

### 7.1 Decisions that the Assessment Sub-committee can make

| <b>The Assessment Sub-committee will make one of the following decisions:</b>                |
|--|
| • Complaint is referred to the Monitoring Officer for investigation                          |
| • Complaint is referred to the Standards Board for investigation (for complex/serious cases) |
| • Complaint is referred to the Monitoring Officer for other action                           |
| • No further action to be taken in respect of the complaint                                  |

### 7.2 Assessment Sub-committee decides to refer the complaint for investigation

The Assessment Sub-committee may decide that the complaint should be referred for investigation. In most cases, the matter will be dealt with locally. However, sometimes there will be issues in a particular case, or there may be public interest considerations which make it difficult for the Committee to deal with the case fairly and speedily. In such cases the Assessment Sub-committee may wish to refer the complaint to the Standards Board to be investigated by an ethical standards officer. Please see the criteria below in 8.3.

### 7.3 Assessment Sub-committee decides to refer the complaint for other action

It may not be in the interests of good governance to carry out an investigation into an allegation of misconduct, and the Assessment Sub-committee may decide that action other than investigation is more appropriate. If so, the Assessment Sub-committee can refer the matter to the Monitoring Officer to carry this out. The Assessment Sub-committee must consult the Monitoring Officer before reaching a decision to take other action.

The decision to take other action is an alternative to a referral for investigation, and the purpose of “other action” is not to find out whether the Councillor has breached the Code. In such cases, the Monitoring Officer will make it clear to the parties involved that no conclusion has been reached on whether or not the Councillor has breached the Code of Conduct.

In the interest of fairness, if “other action” is decided on, then the complaint cannot be referred back to the Standards Committee if the alternative action is perceived to have failed. If further concerns are raised, they will need to be reported as a new complaint.

The following are examples of alternatives to investigation:

| <b>Other action alternatives</b>   |
|--|
| <ul style="list-style-type: none"><li>• Arranging for the Councillor to have training</li><li>• Arranging for the Councillor and Complainant to engage in mediation or conciliation</li><li>• Recommending changes to the procedures of the Councillor's council, if these have caused or contributed to the complaint</li></ul> |

#### **7.4 Assessment Sub-committee decides to take no further action**

The Assessment Sub-committee cannot take any further action if the complaint does not disclose a potential breach of the Code.

The Assessment Sub-committee can also decide to take no action in respect of the complaint, for example if the matter appears to be trivial. Please refer to the criteria in the next section.

## 8. Assessment criteria

The Criteria for Assessment will be developed over time in the light of experience and local circumstances, together with guidance and best practice from the Standards Board.

The following is the current criteria against which the Assessment Sub-committee will assess all new complaints and decide what action (if any) to take. The criteria will be applied to ensure consistency in the way that the Assessment Sub-committee handles complaints. However, due to the wide variety of possible complaints, the criteria are to be used as a guide only.

### 8.1 Assessment Criteria

#### General criteria

- Has the Complainant submitted enough information to satisfy the Assessment Sub-committee that the complaint should be referred for investigation or other action?
- Is the complaint about a councillor who is no longer a member of the Council (or parish/town council) but is a member of another authority? If so, does the Committee wish the Monitoring Officer to refer the complaint to the other authority?
- Has the complaint already been the subject of an investigation or other action relating to the Code, or the subject of an investigation by other regulatory authorities??
- Is the complaint about something that happened so long ago that there would be little benefit in taking action now?
- Is the complaint too trivial to warrant further action?
- Does the complaint appear to be malicious, politically motivated or tit-for-tat? \*\*

\*\* See paragraph 12.3 for vexatious complaints.

### 8.2 Criteria - Referral to the Monitoring Officer for investigation

Complaints alleging serious misconduct which might include the following:

- Failure to treat others with respect, especially if this is repeated or sustained
- Conduct that might cause the authority significantly to breach any equality laws
- Bullying, especially if this is repeated or sustained
- Intimidation of anyone involved in a standards investigation
- Disclosure of confidential information, except in the circumstances permitted by the Code
- Preventing anyone obtaining information they are entitled to in law
- Conduct that would bring the office of councillor or the Council into disrepute,

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|--|
| especially if such conduct is deliberate, dishonest or duplicitous   |
| <ul style="list-style-type: none"> <li>• Improper use of position, especially if this is deliberate</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Improper use of the Council's resources</li> </ul>  |
| <ul style="list-style-type: none"> <li>• A failure to declare a prejudicial interest and take the appropriate action in relation to that interest</li> </ul> |
| <ul style="list-style-type: none"> <li>• A repeated failure to declare a personal interest</li> </ul>  |
| <ul style="list-style-type: none"> <li>• A failure to register a significant item on the register of interests</li> </ul>                                    |
| <ul style="list-style-type: none"> <li>• A repeated failure to register items on the register of interests</li> </ul>  |
| <ul style="list-style-type: none"> <li>• A failure to register and disclose a significant gift or item of hospitality</li> </ul>                             |
| <ul style="list-style-type: none"> <li>• A repeated failure to register and disclose gifts and hospitality</li> </ul>  |

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| <b>8.3 Criteria - Referral to the Standards Board for investigation</b>  |
| The Assessment Sub-committee may consider referring a complaint to the Standards Board in the following circumstances:   |
| <ul style="list-style-type: none"> <li>• <b>Status of Councillor</b><br/>Does the Assessment Sub-committee believe that the status of the Councillor would make it difficult for it to deal with the complaint (e.g. Leader, senior councillor or member of the Standards Committee)?</li> </ul>                                 |
| <ul style="list-style-type: none"> <li>• <b>Status of Complainant</b><br/>Does the Assessment Sub-committee believe that the status of the Complainant would make it difficult for it to deal with the complaint (e.g. senior councillor, chief officer)?</li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Conflict of interest: Standards Committee ***</b><br/>Does the Assessment Sub-committee believe that there is a potential conflict of interest of so many members of the Standards Committee that it could not properly monitor the investigation?</li> </ul>                        |
| <ul style="list-style-type: none"> <li>• <b>Conflict of interest: officers***</b><br/>Does the Assessment Sub-committee believe that there is a potential conflict of interest of the Monitoring Officer or other officers and that suitable alternative arrangements cannot be put in place to address the conflict?</li> </ul> |
| *** See paragraph 13.3 for conflict of interest  |
| <ul style="list-style-type: none"> <li>• <b>Complexity</b><br/>Is the case so serious or complex or involves so many councillors, that it cannot be handled locally?</li> </ul>  |
| <ul style="list-style-type: none"> <li>• <b>Evidence issue</b><br/>Will the complaint require substantial amounts of evidence to be gathered beyond that available from the Council's documents?</li> </ul>  |
| <ul style="list-style-type: none"> <li>• <b>Governance</b><br/>Is there a governance problem in the Council or its Standards Committee?</li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Bullying</b><br/>Does the complaint relate to long-term or systemic councillor/officer bullying which could be more effectively investigated by someone outside the authority?</li> </ul>  |
| <ul style="list-style-type: none"> <li>• <b>Legal issues</b><br/>Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?</li> </ul>   |

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| <ul style="list-style-type: none"> <li>• <b>Public perception</b><br/>Might the public reasonably perceive the Council to have a prejudicial interest in the outcome of the complaint (e.g. if the Council could be judicially reviewed if the complaint was upheld)?</li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Exceptional circumstances</b><br/>Are there exceptional circumstances which would prevent the investigation being carried out competently, fairly and in a reasonable period of time, or meaning that it would be unreasonable for local provision to be made for an investigation?</li> </ul> |
| <ul style="list-style-type: none"> <li>• <b>Sanctions</b><br/>Is the complaint so serious that, if proven, the conduct complained of would merit sanctions in excess of those which may be imposed by the Standards Committee?</li> </ul>  |

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| <h4>8.4 Criteria - Referral for other action</h4>   |
| <p>The Assessment Sub-committee may consider referring a complaint for other action in the following circumstances:</p>   |
| <ul style="list-style-type: none"> <li>• <b>Resolving the issue</b><br/>Is the Assessment Sub-committee satisfied that taking other action provides the best opportunity to resolve the issue, prevent any similar issues arising in the future and promote good governance?</li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Less serious complaints</b><br/>Does the Assessment Sub-committee consider that the complaints, if proven, may represent a less serious breach of the Code than those that ought to be referred for local investigation?</li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Councillor understanding</b><br/>Does the Assessment Sub-committee believe that the Councillor appears to have a poor understanding of the Code and other relevant procedures?</li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Relationship issues at the Council</b><br/>Does the Assessment Sub-committee believe that the Councillor's authority is suffering from widespread breakdown in relationships and trust where a course of action other than investigation may be more appropriate?</li> </ul>  |
| <ul style="list-style-type: none"> <li>• <b>Complaints where the costs of investigation cannot be justified in the public interest</b><br/>Does the Assessment Sub-committee believe that, having regard to the nature of the complaint and the level of its potential seriousness, the public interest in conducting an investigation does not justify the costs of such an investigation?</li> </ul>  |
| <ul style="list-style-type: none"> <li>• <b>Complaints where independent evidence is likely to be difficult or impossible to obtain</b><br/>Does the Assessment Sub-committee believe that an investigation is unlikely to be able to establish independent evidence on the complaint (or that the cost of obtaining such evidence could not be justified in the public interest). This might apply where documentary or witness evidence on the complaint is likely to be extremely limited (for example, where the only witnesses are the Complainant and the Councillor).</li> </ul> |

| <b>8.5 Criteria - No Action to be taken in respect of the complaint</b>  |
|--|
| The Assessment Sub-committee must decide that no action should be taken where the complaint does not disclose any potential breach of the Code because:  |
| <ul style="list-style-type: none"> <li>• The complaint does not satisfy the initial tests (see paragraph 6.3 above)</li> </ul>   |
| <ul style="list-style-type: none"> <li>• There is insufficient information – the Complainant has not submitted enough information to allow the Assessment Sub-committee to make a decision</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Action has already been taken on a matter, and the Assessment Sub-committee believes that little or nothing can be gained from pursuing it further</li> </ul> |
| <ul style="list-style-type: none"> <li>• The conduct complained of happened so long ago that there would be little benefit in pursuing it</li> </ul>   |
| <ul style="list-style-type: none"> <li>• The complaint is trivial or discloses a minor technical breach</li> </ul>   |
| <ul style="list-style-type: none"> <li>• The complaint is malicious, politically motivated or tit-for-tat and the complaint is not sufficiently serious**</li> </ul>                                   |
| <ul style="list-style-type: none"> <li>• The Complaint is covered by the Council’s vexatious complaints procedure and the complaint is not sufficiently serious**</li> </ul>                           |
| <ul style="list-style-type: none"> <li>• The Councillor has provided a satisfactory remedy to the complaint</li> </ul>   |
| <ul style="list-style-type: none"> <li>• It is an anonymous complaint (unless exceptionally serious)</li> </ul>  |
| Please see paragraph 12.3 for malicious or vexatious complaints  |

## 9. Notification of Assessment Decisions

**9.1** The Assessment Sub-committee's decision will be set out in a **Decision Notice**. Within **five working days** of the decision being made, the Monitoring Officer will send the Assessment Sub-committee's Decision Notice to the relevant parties, including:

- the Complainant
- the Councillor
- Parish/town clerk (if relevant)
- The Standards Board (where referred for investigation by the Standards Board)

### 9.2 Referral for other action

The Monitoring Officer will write to the relevant parties with a Decision Notice explaining:

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|--|
| • What is being proposed   |
| • Why the action is being proposed   |
| • Why the Councillor should co-operate   |
| • What the Standards Committee hopes to achieve by the action  |
| • That the complaint cannot be referred back to the Standards Committee  |
| • That the Councillor needs to confirm in writing that s/he will co-operate with the action to be taken.   |
| • The Monitoring Officer will report back after three months as to the outcome of other action with the possibility of further action being needed |

### 9.3 Referral for investigation

The Monitoring Officer will write to the relevant parties with a Decision Notice which will:

|   |
|---|
| • Summarise the complaint ***   |
| • Say that the matter has been referred for local investigation by the Monitoring Officer |
| • Give Reasons for the decision   |

\*\*\*In certain circumstances a summary of the complaint does not have to be given (please paragraph 9.5 below).

### 9.4 Referral to Standards Board

The Monitoring Officer will write to the relevant parties with a Decision Notice which will:

|  |
|--|
| • Summarise the complaint ***  |
| • Say that the matter has been referred to the Standards Board for investigation |
| • Give Reasons for the decision  |

\*\*\*In certain circumstances a summary of the complaint does not have to be given (please see 9.5 below).

The Standards Board will normally advise the Standards Committee within **ten working days** of referral, of its decision.

The Standards Board can decide:

- To investigate the complaint
- Refer the complaint back to the Standards Committee together with reasons
- Take no further action

If the complaint is referred back, the Assessment Sub-committee must decide (normally **within 20 working days**) what action should be taken next i.e.

- To take no further action
- Refer the matter for local investigation
- Take some other action

### 9.5 No action to be taken

The Monitoring Officer will write to the relevant parties with a Decision Notice which will:

|   |
|---|
| • Summarise the complaint   |
| • Explain that no action is to be taken   |
| • Give Reasons for the decision   |
| • Explain that the Assessment Sub-committee cannot take any further action as the complaint does not disclose a potential breach of the Code.                             |
| • Advise the Complainant that s/he has a right to ask for a Review of the decision of “no action” to be taken.  |
| • Advise the Complainant that s/he must ask in writing that the Standards Committee reviews its decision within <b>30 working days of receipt</b> of the Decision Notice. |

### 9.6 Summary of the Complaint

The Assessment Sub-committee will normally give a summary of the complaint in its Decision Notice. After it has made its decision, the Assessment Sub-committee does not have to give the Councillor a summary of the complaint, if it decides that doing so would be against the public interest or would prejudice any future investigation. The Assessment Sub-committee can withhold the summary entirely or give limited information to the Councillor. In deciding whether the summary should be disclosed to the Councillor, the Assessment Sub-committee should take advice from the Monitoring Officer. A decision to withhold the summary must be kept under review as circumstances change.

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| Criteria where it will not be in the public interest, or would prejudice any future investigation, if the Assessment Sub-committee gave a summary of the complaint: |
| • The Assessment Sub-committee believes that it is likely that the Councillor will intimidate the complainant or witnesses  |
| • The Assessment Sub-committee believes that early disclosure of the complaint may lead to evidence being compromised or destroyed.                                 |

## 10. Confidentiality

As a matter of fairness and in the interests of natural justice, a councillor should normally be told that a complaint has been made and by whom.

However, there may be instances when the Complainant asks for his/her identity to be withheld. Such requests will only be granted in exceptional circumstances and at the discretion of the Assessment Sub-committee. The Assessment Sub-committee will consider the request for confidentiality alongside the complaint itself.

The following criteria will be taken into account by the Assessment Sub-committee when considering requests for confidentiality:

- The Complainant has reasonable grounds for believing that s/he will be at a risk of physical harm if his/her identity is disclosed
- The Complainant is an officer who works closely with the Councillor and they are afraid of the consequences to their employment or losing their job if their identity is disclosed (please also see the Council's Whistle-blowing Policy)
- The Complainant suffers from serious health condition and there are medical risks associated with his/her identity being disclosed. In such circumstances the Standards Committee may wish to request medical evidence.

The Assessment Sub-committee needs to consider whether it is possible to investigate the matter without revealing the Complainants identity.

Where is not possible to pursue the complaint without revealing the identity of the Complainant (e.g. allegations of bullying) the Complainant will be asked if s/he wishes to withdraw the complaint.

In other cases, where the Assessment Sub-committee decides to refuse the requests for confidentiality, it will offer the Complainant the option of withdrawing his/her complaint, rather than proceeding and disclosing the Complainant's identity.

In some circumstances the public interest in proceeding with an investigation may outweigh the Complainants wish to have his/her identity withheld from the Councillor. The Assessment Sub-committee will decide where the balance lies in the particular circumstances of each complaint.

## 11. Review of initial decision

### 11.1 Review of initial decision

If the Assessment Sub-committee decides not to take any action on a complaint, the Complainant has the right to ask for a review of the decision.

The Complainant must ask for a review **within 30 days** of the date on the Initial Assessment Decision Notice (this is 30 days in total not working days).

The Complainant should lodge the request for the Review together with his/her reasons for the request. The contact details for lodging the review request are:

The Standards Committee  
C/o the Monitoring Officer  
East Devon District Council, Knowle, Sidmouth, EX10 8HL  
Fax: 01395 517507  
Email: [monitoringofficer@eastdevon.gov.uk](mailto:monitoringofficer@eastdevon.gov.uk)

The complaint will be reviewed by the **Review Sub-committee** which has a completely different membership from the Assessment Sub-committee that made the original decision.

The Review Sub-committee will carry out a review within **three months** of the receipt of the review request.

Within 5 working days of receipt of the request for a review, the **Monitoring Officer** will:

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| • write to the Complainant to acknowledge receipt of the review request                                      |
| • tell the Councillor (unless confidentiality requested - see above) that a review request has been received |
| • inform the parish/town clerk (where relevant)  |

### 11.2 Review Sub-committee assessment

The Monitoring Officer will provide to the Review Sub-committee with:

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| • The information provided to the Assessment Sub-committee about the complaint  |
| • The Decision Notice   |
| • Any additional relevant information available since the assessment took place |

The Review Sub-committee will apply the same criteria used for the initial assessment by the Assessment Sub-committee in deciding whether or not to take any action on the complaint, and the Review Sub-committee has the same decision options available to it as the Assessment Sub-committee, plus the option of passing the complaint back to the Assessment Sub-committee.

The Complainant does not have a further right of review on the same complaint. If further information becomes available after this then a new complaint must be made.

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| <b>The Review Sub-committee will make one of the following decisions:</b>   |
| <ul style="list-style-type: none"> <li>• Complaint referred to the Monitoring Officer for investigation</li> </ul>                          |
| <ul style="list-style-type: none"> <li>• Complaint referred to the Standards Board for investigation (for complex/serious cases)</li> </ul> |
| <ul style="list-style-type: none"> <li>• Complaint referred to the Monitoring Officer for other action</li> </ul>                           |
| <ul style="list-style-type: none"> <li>• No further action to be taken in respect of the complaint</li> </ul>                               |
| <ul style="list-style-type: none"> <li>• No further action but pass to Assessment Sub-committee to consider as a new complaint</li> </ul>   |

### 11.3 Review or new complaint?

There may be cases where further information is made available in support of a complaint, which changes its nature or gives rise to a new complaint. In such cases the Review Sub-committee will consider if it is more appropriate to pass this to the Assessment Sub-committee to be handled as a new complaint. The Review Sub-committee will still make a formal decision that the request will not be granted.

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| <b>A review may be appropriate if the complaint wishes to challenge that:</b>  |
| <ul style="list-style-type: none"> <li>• Not enough emphasis has been given to a particular aspect of the complaint</li> </ul>   |
| <ul style="list-style-type: none"> <li>• There has been failure to follow any published criteria</li> </ul>  |
| <ul style="list-style-type: none"> <li>• There has been an error in the procedure</li> </ul>   |
| <b>A referral to the Assessment Sub-committee as a new complaint may be appropriate:</b>   |
| <ul style="list-style-type: none"> <li>• If more or new information of any significance is available and this information is not a repeat of the complaint.</li> </ul> |

### 11.4 Notifications of Review Sub-committee's Decision

Within **5 working days** of the Review Sub-committee's decision, the Monitoring Officer will send a Decision Notice to all relevant parties. The Decision Notices are as for the Assessment Sub-committee above, plus the additional option of referring back to the Assessment Sub-committee as a new complaint.

## 12. Other issues relating to complaints

### 12.1 Withdrawal of complaints

There may be occasions where the Complainant asks to withdraw his/her complaint prior to the Assessment Sub-committee's consideration of the matter.

In such cases, the Assessment Sub-committee will decide whether to grant the request. The Assessment Sub-committee will take the following into account when making its decision:

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| • Does the public interest in taking some action on the complaint outweigh the Complainant's wish to withdraw it? |
| • Can the complaint be investigated without the Complainant's participation?                                      |
| • Is there an identifiable underlying reason for the request to withdraw the complaint?                           |

### 12.2 Multiple complaints

Several complaints may be received from different complainants on the same matter and these may be considered by the Assessment Sub-committee at the same time. However, the Assessment Sub-committee must still make a separate decision on each individual complaint.

### 12.3 Repetitive and vexatious complaints

If it receives repetitious or vexatious complaints, the Assessment Sub-committee may decide that the matter can be dealt with under the Council's existing Vexatious Complaints Procedure ([http://www.eastdevon.gov.uk/making\\_a\\_complaint.htm](http://www.eastdevon.gov.uk/making_a_complaint.htm) ).

As above, however, the Assessment Sub-committee will still reach a decision on each individual complaint that is received in relation to the Code.

If the Assessment Sub-committee has already dealt with the same complaint by the same person, and the Monitoring Officer does not believe that there is any new evidence, then a complaint does not need to be considered.

### 12.4 Anonymous complaints

Anonymous complaints will only be referred for investigation (or other action) if the complaint includes documentary or other evidence showing an exceptionally serious or significant matter.

## 13. Other issues

### 13.1 Public access to meetings and decision making

Assessment and Review Sub-committees will take place in closed meetings i.e. the public and press are not allowed to attend these meetings. This is because these meetings may have to consider unfounded and potentially damaging complaints against councillors which it would not be appropriate to make public.

This means that the Assessment Sub-committee and the Review Sub-committee are not subject to the following rules:

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| • Rules regarding notices of meetings  |
| • Rules on the circulation of agenda   |
| • Rules of public access to meetings   |
| • Rules on the validity of proceedings |

After an Assessment Sub-committee or Review Sub-committee meeting, the sub-committee must produce a written summary of the complaint and its decision. The summary must include the name of the Councillor (unless it is not in the public interest to do so and/or it would prejudice any subsequent investigation).

Once it has been sent to the Councillor, the summary will be made available for public inspection at the Council's offices for six years, and a copy given to any parish/town council (if relevant).

In cases where the Sub-Committee decides not to give the summary to the Councillor (usually when a referral has been made), the summary will only be made available for public inspection (or sent to the parish/town council where relevant) after it has been sent to the Councillor (usually, this will be at an appropriate point during the investigation process). Please see paragraph 9 on notification requirements.

### 13.2 Records

Documents that relate to complaints that the Assessment Sub-committee have decided not to investigate will be kept for 12 months.

Other documentation will be kept in accordance with the Council's records retention policy.

Papers relating to sub-committee meetings will be kept for 6 years.

### 13.3 Conflicts of interest

#### (1) Councillors

In accordance with Standards Board Guidance, a member of the Standards Committee who is involved in any of the following decisions can be a member of the subcommittee that hears or determines the complaint at the end of the investigation:

- An initial assessment decision

- A referral back for another assessment decision
- A review of an assessment decision

However, a member of the Standards Committee who is involved in the assessment stages of the process (either initially or following a referral back from the Standards Board or Monitoring Officer) **cannot** take part in the Review of that decision.

The assessment process must be conducted with impartiality and fairness. There may be cases where it would not be appropriate for a Standards Committee member to be involved in the process even if not disqualified from doing so by law (see below).

## **(2) Officers**

An officer who has previously advised the Councillor or the Complainant should consider whether s/he should take part in the assessment process.

Officers who take part in the Assessment, review or hearing process must not take part in the investigation of that matter.

The role of any officer who has a conflict of interest in a matter will be undertaken by another officer.

## **(3) Personal conflicts**

A conflict of interest may arise under the Code of conduct. In such cases the councillor or officer concerned cannot take part in that particular matter.

Members must not discuss complaints with any one who is not a member of the committee and discussion between Standards Committee members should only take place at meetings of the Standards Committee or its subcommittees.

## **13.4 Guidelines**

| <b>Guidelines as to when a Standards Committee member or officer should not take part in the assessment, review or hearing process:</b>   |
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| • If s/he is the Complainant  |
| • If s/he is closely associated with some one who is a Complainant  |
| • S/he is a potential witness or victim relating to a complaint   |
| • The complaint is likely to affect the well-being or financial position of the member/officer (or of a family member, friend, or someone with whom s/he has a close association (see Standards Board's Code of Conduct Guidance) |
| • The member/officer is directly or indirectly involved in the case in any way.   |
| • A family member, friend or close associate of the Standards Committee member or officer is involved in the case.  |
| • The member or officer has an interest in any matter relating to the case  |

## **13.5 Complaints about members of more than one authority (“dual-hatted” councillors)**

Councillors who belong to more than one authority may have breached more than one Code of Conduct, and it is therefore possible that Assessment Sub-committees of more than one authority may receive a complaint on the same matter.

When a complaint is received about a dual-hatted councillor, the Monitoring Officer should check if a similar complaint has been received by the other authority. Decisions on which Standards Committee should deal with a particular complaint must be taken by the Standards Committee themselves, following discussion with each other. The Standards Committee can take advice from the Standards Board on such issues as necessary.

### **13.6 Role of the Monitoring Officer in relation to this procedure**

The Monitoring Officer plays an important role in helping the Standards Committee to carry out its functions.

Under the Local Government Act 2000 Monitoring Officers are responsible for investigating allegations and they receive directions to carry out actions other than investigation from the Standards Committee and/or sub-committees.

The Monitoring Officer is the main adviser to the Standards Committee and subcommittees (unless she has an interest in the matter which would prevent her from performing that role independently).

### **13.7 Information to be supplied to the Standards Board**

The Monitoring Officer is required to provide complaints information to the Standards Board for England on a quarterly basis. The information relates to the number and type of complaints, and the outcome of Assessment and Reviews and Investigations.

### **13.8 Responsibility for variations of this procedure**

The Monitoring Officer shall have regard to the advice and guidance given by the Standards Board from time to time in relation to local investigation issues.

This procedure may be amended from time to time by the Monitoring Officer to take in to account any changes in law, guidance as to best practice or in the light of experience.

Any substantial variations will be referred to the Standards Committee for approval.

### **13.9 Review of this procedure**

The Monitoring Officer will initially review this procedure within 6 months or as otherwise deemed necessary. The Procedure will then be reviewed every 12 months or as otherwise necessary. Substantial amendments will be approved by the Standards Committee.

### **13.10 Approval of procedure**

The Standards Committee approved this procedure on 20 October 2008.

### **13.11 Other related procedures and documents**

- Constitution
- Monitoring Officer Protocol (not yet available)
- Investigation procedures
- Hearing procedures

- Complaints procedures
- Ombudsman procedures
- Whistle-Blowing Policy
- Complaint Form

### **13.12 Links to websites**

Standards Board: [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)  
East Devon District Council: [www.eastdevon.gov.uk](http://www.eastdevon.gov.uk)  
Legislation: <http://www.opsi.gov.uk>

### **13.13 Other services at East Devon**

#### **Corporate Complaints Procedure**

You can complain to the Council by:

- *Phoning the main switchboard on 01395 516551*
- *Faxing a copy of your complaint to 01395 517507*
- *Sending it by email to [complaints@eastdevon.gov.uk](mailto:complaints@eastdevon.gov.uk)*
- *Using the on-line complaints form on the Council's website at [www.eastdevon.gov.uk](http://www.eastdevon.gov.uk) (follow the links on the Contacts page)*