

## **Notes to help you with the Code of Conduct Complaint Form**

**Important:** Please read:

- These **Guidance Notes** before completing the Complaint Form. It is important that you give us the information we need to make a reasoned and informed decision on your complaint.
- The **Dealing with Complaints Policy** so you understand what this process can and cannot consider, the process that we will follow, the potential outcomes and any potential sanctions that might be imposed if a breach of the Code is found.

### **Guidance Note 1**

#### **Is this the right process for your complaint?**

The points listed below will help you decide whether the Standards (Code of Conduct) procedure is the right process for your Complaint:

- Your Complaint must be about one or more named members of West Devon Borough Council or a member of one of the Parish/Town Councils within West Devon.
- Your Complaint must be about a Councillor's conduct that occurred while the Councillor was in office. Conduct before the Councillor was elected, co-opted or appointed to the Council, or after s/he has resigned or otherwise ceased to be a Councillor, cannot be considered.
- Your Complaint must be that the Councillor has (or may have) breached the Code of Conduct. A copy of the West Devon Borough Code of Conduct is available on the Council's website at [www.westdevon.gov.uk](http://www.westdevon.gov.uk)
- Copies of the Parish/Town Council Code of Conduct are available from the Clerk to the relevant Parish/Town Council.
- If you are unhappy with:
  - a decision made by the Borough Council
  - any action taken by the Council or one of its committees
  - a service provided by the Council
  - the Council's procedures, or
  - the actions of people employed by the Council

then you need to use the Borough Council's Complaints Procedure instead.

- If you are unhappy with decisions, actions or procedures relating to the Parish/Town Council, then please contact the Parish /Town Council Clerk. West Devon Borough Council has no powers to consider complaints against Parish/Town Clerks.
- It is also important to note that not every Complaint that the Code has been broken will be referred for investigation. The Monitoring Officer must decide whether this is appropriate, and will make this decision using adopted criteria.
- If the Council decides not to refer your Complaint for investigation, we will give you the reasons for this decision.

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### **Guidance Note 2**

#### **(Box 1 on the Complaint Form)**

As a matter of fairness and in the interests of natural justice, a Councillor will usually be told at the outset that a Complaint has been made against him/her and by whom.

We need your contact details in case we need to clarify any details in your Complaint, however, your address and contact details will not usually be released unless necessary or in order to deal with your Complaint. However, we will tell the following people that you have made this Complaint:

- the Councillor(s) you are complaining about
- the Council's Monitoring Officer
- the Parish or Town Clerk (if applicable)
- the Independent Person
- Members of the Standards Committee

However, if you have serious concerns about your name, or details of your Complaint being released, please see Guidance Note 4 below and complete Box 3 on the Complaint Form.

### **Guidance Note 3**

**Anonymous complaints** will not be considered unless they relate to exceptionally serious or significant matters and are supported by documentary or other evidence.

### **Guidance Note 4**

#### **Confidentiality**

We believe that councillors who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with details of the complaint. We are unlikely to withhold your identity or the details of your complaint save in exceptional circumstances.

To help us to fully consider your request for confidentiality please explain in Box 3 why you think your details should be kept confidential.

Requests for confidentiality will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint. However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

### **Guidance Note 5**

#### **Details of the Councillors you are complaining about and details of your Complaint**

#### **(Boxes 4 (a), (b) and (c) of the Complaint Form)**

Identify in Box 4(a) the Councillor(s) by name and the name of the Council for whom they were acting at the time of your complaint.

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Please explain in Box 4(c) of the Complaint Form (or on separate sheets) what the Councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one Councillor you should clearly explain what each individual councillor has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account when your complaint is considered. For example:

- Identify from the options in Box 4(b) the relevant parts of the Code that you consider have been broken
- You should be specific (wherever possible) about exactly what you are alleging the Councillor said or did. For instance, as well as writing that the Councillor insulted you, you should state what it was s/he said
- Provide information, evidence and detail for each part of the Code that you are alleging has been broken
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible (and where possible obtain their consent to being identified as witnesses).
- You should provide of any relevant background information and copies of (or links to) documents relevant to your complaint.

### **Guidance Note 6**

#### **What decisions can be made on a Complaint?**

This is set out in more detail in the Dealing with Complaints' Policy but the following decisions may be made during the assessment and determination of a Complaint:

- That the Complaint should not proceed beyond the Initial assessment stage
- No finding as to whether there has been a breach of the Code and take no further action
- No finding as to whether there has been a breach of the Code but that action other than an investigation is appropriate
- Finding of no breach of the Code
- Finding of a breach of the Code without an investigation and impose no sanction
- Finding of a breach of the Code without an investigation and impose a sanction
- Referral for investigation to determine whether there has been a breach of the Code and, if so, the seriousness of the breach and whether sanctions should be applied.
- A potential offence under the Localism Act 2011 may have been committed and an investigation, by the police where appropriate, ought to be conducted to determine whether the subject member should be prosecuted.

In some circumstances, whether a breach of the Code is found or not, a Complaint may be referred for other action such as the provision of training to the Councillor or even the whole of his/her Council.

### **Guidance Note 7**

#### **Potential Sanctions**

It is important to note that not every complaint about a breach of the Code of Conduct will be referred for investigation or local resolution. The Monitoring Officer will decide

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what action is appropriate, based on the particular circumstances of the Complaint, the relevant Code of Conduct, and in accordance with the criteria set out in the 'Dealing with Standards Complaints' procedure.

Whilst the Council takes its duties and powers seriously with regards to the standards regime (and the above Procedure ensures that there is a fair process for considering and dealing with standards complaints) there are limitations on the potential outcomes to standards complaints, and the potential sanctions where a Councillor is found to have broken the Code. The ability of the Council to impose and enforce meaningful sanctions or remedial action was severely curtailed by the changes to the standards regime introduced by the Localism Act 2011 which also repealed all of the preceding ethical governance legislation in its entirety. For full details of potential sanctions, please refer to Appendix 1 of the 'Dealing with Standards Complaints' procedure.

### **Guidance Note 8**

#### **Notification of decisions**

A Decision Notice (other than at the Initial Assessment stage) will be sent to the Councillor, the Complainant, and Independent Person and, if applicable, the Clerk to the Councillor's Council, within 5 working days of the Decision setting out decision that has been made together with Reasons.

### **Guidance Note 9**

#### **Data Protection**

The information you provide on this form will be held by West Devon Borough Council and used by us to process your complaint. In accordance with West Devon Borough Council's Record Retention Policy, the information you provide on this form will be held for in accordance with the time limits set out in the Dealing with Standards Complaints' Policy.

All personal information held by West Devon Borough Council is held safely in a secure environment. We will share this information with other departments of the Council, and the relevant Town and Parish Councils, along with their elected representatives to enable completion of statutory duties. Information will not be used for any other purpose by West Devon Borough Council and will not be passed onto any other third party without your permission save in the limited circumstances available in the Code of Conduct local referral process.

The information you provide on this form will be held by West Devon Borough Council and used by us to assess, your Complaint. We will share this information, but not your personal contact details, with the Councillor and the Independent Person allocated to this Complaint, in order that s/he can provide his/her views on the Complaint. Your information will not be used for any other purpose by West Devon Borough Council or the Independent Person and will not be passed on to any other third party without your permission. It should be noted that the Councillor may share your information with a third party if s/he wishes to seek further advice on how to respond to your Complaint. All personal information held by West Devon Borough Council is held safely in a secure environment.